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COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:	)	**APPEARANCES:**
	)	
	)	
HER MAJESTY THE QUEEN	)	Danielle Simard &
	)	Keri Anderson
	)	for the Crown
	)	
- and -	)	
	)	
	)	
JONATHON JOSEPH JAMES WOOD	)	Scott Newman
Accused.	)	for the Accused
	)	
	)	Judgment Delivered
	)	January 12, 2021

MARTIN J.

I. INTRODUCTION

[1] After a trial last year, I convicted Jonathon Wood of manslaughter for killing his wife, Kathleen Wood, on January 27, 2018, in their home community of St. Theresa Point First Nation, Manitoba.

[2] The commonness of Indigenous women dying at the hands of men means, tragically, Mrs. Wood's death is not unique. Nonetheless, it is by any measure horrible, perhaps more so because of how often these senseless deaths occur. In this case, it is

the fallout of a domestic relationship, set against *Gladue* circumstances including poverty, isolation, alcoholism, past violence by a husband against his wife and court orders designed to keep a husband away from his wife. The context of the killing starkly personifies the plight of many Indigenous families struggling with the lingering effects of Canada's historical treatment of its First Peoples and the seeming inability, or neglect, to meaningfully repair the damage with a sense of urgency. In the end, a mother is dead, a family is broken apart, and a father will lose his freedom.

[3] This decision addresses the fit and appropriate sentence for Mr. Wood for this crime. The Crown says Mr. Wood should be jailed for 20 years, less time-in-custody credit of 4½ years, for a go-forward sentence of 15½ years. On the other hand, the defence seeks a sentence of 12 years, or 7½ years go-forward.

[4] As a bit of a roadmap, I will set out the facts, concisely outline Mr. Wood's background, the sentencing principles, followed by my analysis and conclusion.

II. FACTS

[5] It is important to outline some of Mr. and Mrs. Wood's history to understand what transpired during the evening of January 27, 2018.

[6] Both Mr. Wood and his wife are Indigenous persons who were raised, and lived, at St. Theresa Point First Nation in northeastern Manitoba, about 600 km northeast of Winnipeg. It is an isolated First Nation with a population of about 4,000 people, accessible only by air, boat or winter ice-road. It is part of the Island Lake First Nations communities comprised of Wasagamack, St. Theresa Point, Red Sucker Lake and Garden Hill First Nations.

[7] Mr. and Mrs. Wood were both about 35 years-old when this event occurred. They began their relationship in 2004 and were married in 2010. Mr. Wood intermittently assaulted Mrs. Wood since 2012. He was convicted of assaulting her four times.

[8] The first assault occurred in 2012, when Mrs. Wood was about seven months pregnant with their second child. Mr. Wood violently assaulted her by grabbing her by the throat. The following year Mr. Wood punched her. He was on bail for the first assault at the time. These two violent episodes led to two convictions for common assault in April 2013.

[9] The third assault was in October 2014. One morning, Mr. Wood woke up and started to punch, kick and stomp Mrs. Wood on her face and arms. In January 2015, he again pled guilty to common assault.

[10] Grimly, another, more significant, assault followed in September 2015. During a verbal argument, Mr. Wood got on top of Mrs. Wood, who was lying on the bed, and punched her face and head, and the sides of her chest. Despite trying to defend herself, she suffered a fractured left arm, an orbital fracture of the right face, a partially collapsed lung and fractured ribs. In February 2016, Mr. Wood pled guilty to assault causing bodily harm, resulting in his fourth conviction for assaulting his wife. By this point, they had three children together, along with an older boy from Mrs. Wood's prior relationship.

[11] These assaults followed a consistent pattern: a verbal argument became the run-up to physical violence; no one else was involved; Mr. Wood was always intoxicated when he assaulted his wife; a weapon was never used; and Mr. Wood grabbed, punched, kicked and stomped Mrs. Wood in the head and other parts of her body.

[12] Further, when he attacked Mrs. Wood in 2013, 2014 and 2015, he was on some form of bail or probation aimed at reducing the chance he would assault her again. Likewise, when he ultimately assaulted and killed her, on January 27, 2018, he was still bound by two Probation Orders, from February 2016 and July 2017, which stipulated he was not to have contact with Mrs. Wood and imposed restrictions on him when drinking. Moreover, as part of the July 2017 Order, he was not to return to St. Theresa Point until he completed a residential alcohol treatment program. That did not happen.

[13] Regardless of these Orders, while in Winnipeg, in September 2017, Mr. Wood was charged again for assault and aggravated assault of several people, including Mrs. Wood, as well as four probation breaches. I am not aware of the exact allegation, or charge, respecting Mrs. Wood. He was released in December on a Recognizance requiring him to reside at Garden Hill First Nation, abide by a 7:00 p.m. curfew, not to communicate with Mrs. Wood and not to be at St. Theresa Point or travel on any winter road, or use any other form of transportation, leading to St. Theresa Point. Clearly, this Recognizance was designed to keep him away from Mrs. Wood, in part, by allowing him to be arrested even if he was just in the area of St. Theresa Point. Defence counsel advised that regardless of these restrictions, Mrs. Wood helped bail out Mr. Wood and get him to the nearby Garden Hill First Nation community. In the general context of battered spouse situations, this is not so surprising. Following Mrs. Wood's death, all of the September 2017 charges were dropped. To be clear, I am not relying on these allegations or charges in any way as a factor to determine Mr. Wood's sentence except to take into consideration his bail conditions, which were in effect when he killed Mrs. Wood.

[14] Despite the court orders, and his promise to abide by them, on January 27, 2018 Mr. Wood went to St. Theresa Point to see his family and Mrs. Wood. He also wanted to finish a "super juice" homebrew he and one of his brothers started days earlier, and to party. Super juice is a form of home brew alcohol, popular among users because it is simple to make, using a few basic ingredients that ferment quickly, yielding a potent swill within days.

[15] Mr. and Mrs. Wood arrived at the brother's house in St. Theresa Point between 5:00 and 6:00 p.m. No one observed Mrs. Wood to be injured, nor was she suffering from any injuries. They started partying with the brother and his girlfriend. The four of them drank super juice, snorted crushed Percocets and smoked marijuana. All of them became intoxicated. For better or worse, the brother and his girlfriend became the key witnesses.

[16] Most of the party took place in the living room and the adjacent kitchen area. As the evening progressed, Mr. and Mrs. Wood got into an argument, which eventually led to Mr. Wood assaulting Mrs. Wood with his fists and feet; repeating the escalating pattern of the four prior convictions. At one point, the brother stepped in to settle down the hostility but Mr. Wood told him to go away. Later on, when the brother left the house to get cigarettes, his girlfriend saw Mr. Wood punching Mrs. Wood and heard stomping sounds. At approximately 11:00 p.m., the brother wanted to check on Mrs. Wood, who was then lying on the floor, but Mr. Wood told him to leave her alone, that she was just passed-out. Concerned, the brother went next door for help. He returned moments later. Mrs. Wood was not breathing; she was dead.

[17] Mrs. Wood's injuries were awful. Civilian witnesses only saw bruising to her face, and bleeding from her right eye and head. The autopsy revealed the true devastation of her injuries. As the forensic pathologist detailed, Mrs. Wood suffered many injuries to her head, torso, extremities and organs. Numerous bones were broken including her jaw, left clavicle or collarbone, left wrist and all 24 ribs, 23 of which had multiple fractures. She also suffered a subarachnoid hemorrhage, full-thickness tongue laceration, contusions and lacerations of the lungs and diaphragm, and contusion of the liver. At minimum, she suffered well over a dozen blows from fists or feet, many very forceful.

[18] It is defence counsel's position that the assault was a short burst. I disagree. While the eyewitness evidence was imperfect, owing to drunkenness and personal relations among the witnesses and Mr. Wood, I find the assault happened throughout the evening. It was not a few minutes of violence, although at some point the final blows may have followed quickly, one after the other.

[19] Mr. Wood was charged with murder. At trial, I found there was no evidence Mrs. Wood's injuries were caused by anything other than Mr. Wood beating her at the party. She was fine when she arrived, Mr. Wood was seen and heard assaulting her, and she was dead by about 11:00 p.m. She did not leave the residence during the evening. Mr. Wood had the means, opportunity and motive (the argument) to inflict the injuries that caused her death. No weapons were used. Considering Mr. Wood's degree of intoxication and other evidence of his state of mind at the time, despite the severity of Mrs. Wood's injuries, he was entitled to the benefit of a reasonable doubt whether he had the necessary intent to cause her such serious and dangerous bodily harm that he

knew it would likely kill her. As a result, I found him not guilty of murder but guilty of manslaughter.

III. MR. WOOD'S BACKGROUND

[20] A pre-sentence and *Gladue* report (collectively, "the PSR") was prepared for sentencing. The *Gladue* component was fairly scant. Counsel ably added to it in oral submissions. Mr. Wood expressly declined my offer to have another report done.

[21] As noted earlier, Mr. Wood was raised in St. Theresa Point First Nation; that is his home. His parents still live there, as do most of his siblings. He left school in grade nine but believes he really only has a grade six level, as he was "pushed along" without learning. He has no vocational skills to speak of. He had not been gainfully employed for well over a decade before 2018, having spent that time either on assistance through St. Theresa Point First Nation or, from time to time, in jail. Aside from now suffering from depression and anxiety, there is nothing to suggest Mr. Wood experienced any mental health concerns in January 2018.

[22] Not unlike many members of this Oji-Cree community, and the surrounding communities, the effects of Canada's colonialism of the Island Lake area since the early 1900's continue to afflict Mr. Wood and his nuclear family. Many Oji-Cree around Island Lake were split from their traditional belief system, which had served them for hundreds of years, and enticed into Christianity, the Roman Catholic Church or Pentecostal. Mr. Wood considers himself Catholic but says his culture is very important to him. He is more comfortable speaking Oji-Cree than English. Mr. Wood's mother avoided residential school because of her young age while other members of her family were sent there.

Mr. Wood's father attended the day-school in Garden Hill First Nation where he recalls suffering physical and emotional abuse from the Catholic nuns.

[23] Crown counsel provided more information about the Island Lake First Nations, an area she knows well, as did defence counsel. Generally, the community is significantly impacted by colonialism with the telltales of unemployment, poverty, overcrowding and substance abuse commonplace. As to domestic violence specifically, it is very prevalent, "always on the [court] docket". It is insidious. It directly and deeply damages intimate partner victims and the family children, and indirectly scars multi-generations of families and the community as a whole. While there are some services and counsellors focused on anger management and substance abuse, there is no real ability to deal with domestic violence and no specific services or facilities to help victims, or their batterers, in the Island Lake group of First Nations. It is very difficult for a victim to "escape" the chronic cycle of abuse. Looked at more broadly, I understand there are 63 First Nations in Manitoba and only five shelters for battered women, two of which are located in Thompson and The Pas, considerable distances from St. Theresa Point; none are in the Island Lake area.

[24] Poverty, unemployment, lack of education and substance abuse were negative influences in Mr. Wood's upbringing. He suffered verbal and physical abuse and witnessed domestic abuse; his father assaulted his mother numerous times. Not surprisingly, Mr. Wood started abusing alcohol and soft drugs around age 11. Ultimately, it grew into an addiction -- he was binge drinking often daily, or as much as he could. To his credit, he took a residential treatment program when he was 21 years-old and stopped

drinking for several years afterward. Regrettably, his sobriety did not last. Mr. Wood says he first connected with his wife by making homebrew for her and frequently drank excessively with his wife. Blackouts were common.

[25] After marrying, and having their first child, Mr. and Mrs. Wood had difficulties in their relationship with issues of trust and his absences from the family home, which in large part he attributed to her putting him in jail. Otherwise, he described their relationship as very good and that he loved her very much. Moreover, she loved him. Inspired by a Facebook generated 2012 "memory", just weeks before her death, on January 13, 2018, she posted on social media, "… i still got a crush on him … gives me wild butterflies … gawt daym thas my big J.. still madly in love with him!!" [sic]. Mr. Wood expresses deep remorse for killing his wife. Relatives in Winnipeg are raising their three youngest children and the oldest boy is on his own.

[26] Mr. Wood's criminal record is comprised mainly of various forms of assaults (eight convictions), including one with a weapon and two for causing bodily harm, and breach of court orders (nine convictions) from 2004 onward. As noted earlier, Mrs. Wood was the victim in four of those assaults. His longest sentence was for the last assault causing bodily harm on her, for which he received the equivalent of 18 months pre-sentence custody, and two years of probation. I also note another much earlier assault was against a different domestic partner.

[27] During the course of his times in custody, Mr. Wood participated in many programs, including anger management, parenting skills and healthy relationships. While in remand custody for this matter, he has had some institutional violations, including

disciplinary action for physical altercations with other inmates. Otherwise, his current time-in-custody has been uneventful.

[28] At the sentencing hearing, Mr. Wood explained that he knows alcohol is his "demon" – his disease – and he has tried to deal with it over the years, mostly unsuccessfully. Other than while in custody, he has mainly been turned away from what limited resources there may be at St. Theresa Point or the Island Lake area, such as the Native Alcohol and Drug Abuse Program, and resources in Winnipeg which he says were not available to him because he did not live in Winnipeg. He says both he and his wife had a problem with alcohol, intermittently they both wanted help, but it was not readily available.

[29] The PSR concludes by saying Mr. Wood is a high risk to reoffend, which is based on certain risk factors, some of which correlate to his *Gladue* factors. Unremarkably, focusing on *Gladue* issues, the author expressed the common sense opinion that "Mr. Wood would benefit from personal counselling to address intergenerational effects of trauma, family violence, domestic violence, substance abuse and emotional management". Remarkably, going further, the author concluded that Mr. Wood is a suitable candidate for community supervision. I disagree; that is out of the question.

IV. SENTENCING CONSIDERATIONS

[30] A sentence imposed by a judge on an accused for a serious crime should be tailor-made in the sense that, mindful of principles of sentencing, it responds appropriately to the circumstances of the offence and the particulars of the offender. The *Criminal Code,* RSC 1985, c C-46, articulates that the fundamental purpose of sentencing is to contribute

to respect for the law and the maintenance of a safe, 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.

[31] Further, the *Criminal Code* mandates that a judge consider a number of principles, including sections:

- 718.1: a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender;
- 718.2(a): a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender;
- 718.2(a)(ii): spousal or common-law partner abuse is a deemed aggravating factor;
- 718.2(b): the parity principle that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and
- 718.2(e): the restraint principle. In other words, jail should be used sparingly, with particular attention to the circumstances of Aboriginal offenders (particularly as affected by *Gladue* considerations).

To this statutory list are a number of common law principles that have developed over many decades of jurisprudence.

[32] Section 718.04, which mandates that denunciation and deterrence be primary sentencing principles where offences are committed against vulnerable people, including Aboriginal females, and s. 718.201, which calls for additional consideration of the increased vulnerability of female victims of intimate partner abuse, "giving particular attention to the circumstances of Aboriginal female victims", were enacted after this offense occurred. As such, strictly speaking, the provisions do not apply to this sentencing. The provisions give voice to Parliament's concerns for the plight of Indigenous women, as detailed in the Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (*Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, (Ottawa: Government of Canada, 2019)) ("the MMIWG report").

[33] In Mr. Wood's situation, regardless of these two enactments, the vulnerability of a victim, particularly a woman in a domestic context, are well established aggravating factors on sentencing and ones which emphasize denunciation and deterrence, both specific to the offender and generally to society as a whole, as paramount principles in setting a fit sentence. Moreover, several Courts of Appeal have commented that attention to Aboriginal female victims, as a sentencing factor, was well set in common law before s. 718.04 and 718.201 were enacted (for example: ***R. v. L.P.***, 2020 QCCA 1239, at paras 80 - 91).

[34] As to manslaughter sentences generally, I start with the Manitoba Court of Appeal's comments in ***R. v. Caincsa***, [1993] M.J. No. 237 at paras 4 and 5:

> [4] ... D. A. Thomas, in his text *Principles of Sentencing*, 2d ed. (London: Heinemann, 1979), commented at p. 74:

> "Manslaughter" is a generic term for a group of offences with different definitions, linked only by the common requirement of a death.

[5] In *R. v. Cascoe*, [1970] 2 All E.R. 833 (C.A.) Salmon L.J. wrote:

> As for sentence, manslaughter is, of course, a crime which varies very, very greatly in its seriousness. It may sometimes come very close to inadvertence. That is one end of the scale. At the other end of the scale, it may sometimes come very close to murder. (p 837)

Freedman C.J.M., in *R. v. Sinclair* (1980), 3 Man. R. (2d) 257 (C.A.) made a similar observation:

> The offence of manslaughter presents the widest possible range for sentencing among all the offences in the *Criminal Code*. A sentence of life imprisonment may in one set of circumstances not be too much, and a suspension of sentence may in a different set of circumstances not be too little. (p. 257)

In short, the breadth of the factual circumstances in which the offence of manslaughter may be committed is equalled only by the wide discretion given to the judge on sentencing.

[35] That noted, since the type of conduct and circumstances captured by the manslaughter provisions of the *Criminal Code* varies greatly, the range of sentence for spousal (also referred to as domestic or intimate partner) manslaughter also is broad. The statutory parameters are no minimum penalty (other than when a firearm is used) to a maximum penalty of life in prison. Generally, though, spousal killings attract a higher sentence, and greater condemnation, than other types of manslaughter.

[36] Counsel provided me with about 16 precedents. For the quantum of sentence, I will refer only to some of the more salient ones, particularly those of intimate partner manslaughter. Bearing in mind that manslaughter sentences are very case specific, and that precedents are most helpful as foundational guidance only, especially as every sentencing is an individualized process, I succinctly note the following cases (oldest to most recent):

- in ***R. v. Kane***, 2005 QCCA 753, the Court of Appeal upheld an 18 year sentence for a husband who, in a fit of rage, beat and stabbed his ex-wife to death;
- in ***R. v. Montgrand***, 2007 SKCA 102, the Court of Appeal upheld a life sentence for a husband who stabbed his wife to death. He had a record for serious violence and had committed manslaughter once before;
- in ***R. v. Ammaklak***, 2008 NUCJ 27, an Inuit man who pled guilty to beating his wife to death with a weapon, received a 13 year term. Finding that past sentences did not properly address the prevalence of such crimes, the court observed that "there is a compelling need to step up the sentences imposed for this type of offence" in Nunavut (para 45), while noting the high-end of the range at 15 years (para 46);
- in ***R. v. Jamieson***, 2012 ONSC 1114, the court recognized a general sentence range of 9 to 15 years imprisonment for domestic homicide in Ontario. Mr. Jamieson stabbed his wife once and left her without medical help for about 24 hours before she died. He was sentenced to 12 years;
- in ***R. v. Peter***, 2014 NUCJ 28, the Indigenous accused was charged with murder but found guilty of manslaughter, by beating his Indigenous wife to death with his fists and feet in an act of "extreme violence". He had a prior record of domestic assaults against his wife and breaching court orders. The court recognized the apparent high-end sentence range of 15 years and imposed that, while commenting that "the level is not high enough" (see paras 63 - 66 and 164);

- in ***R. v. Quigley***, 2016 BCSC 2184, the court imposed a sentence of 12 years on an Indigenous man, with no record, for the stabbing death of his spouse in the context of a domestic breakup. The accused had mental health issues and an addiction to crack;
- in ***R. v. MacKenzie***, 2019 NSSC 67, the court agreed to a joint recommendation of 15 years for a boyfriend who stabbed his intimate partner to death; and
- in ***R. v. Profeit***, 2020 ABQB 138, an Indigenous man, with a history of domestic violence, was sentenced to 12 years for killing his Indigenous girlfriend by blunt force. The court found that in Alberta, domestic manslaughter cases have generally attracted sentences ranging from 8 to 12 years for offenders who pled guilty and had a limited record. A sentence of 12 years was imposed, after considering the accused's *Gladue* and FASD factors.

[37] I acknowledge defence counsel's able submission in distinguishing various spousal manslaughter cases from one another, particularly respecting the use of weapons, stabbing versus beating offenses, the presence of *Gladue* factors, and an accused's criminal antecedents, age, addictions or mental health issues and so on.

[38] All in, considering submissions made by counsel and my judicial experience dealing with numerous domestic and non-domestic manslaughter cases, I would agree with defence counsel's submission that the high end of the range for such a case usually does not exceed 15 years. Life sentences are rare and usually reserved for the extreme cases, mostly where the future dangerousness of the offender is of substantial concern, often

shown by the nature of the killing, the cumulative gravity of circumstances and the offender's background and record.

[39] I turn to the status of Indigenous women dying from spousal or intimate partner violence. The Alberta Court of Appeal's comments in ***R. v. A.D.***, 2019 ABCA 396, at paras 25 to 28, are enlightening for two reasons: first, to highlight the scope of violence Indigenous women suffer compared to non-Indigenous women; and second, for its discussion of the interplay of the victim's status as an Aboriginal woman and the offender's status as an Aboriginal man:

> [25] The fundamental purpose of sentencing is to protect society (s 718). Unfortunately, there is clear and overwhelming evidence that, when it comes to protecting Aboriginal women from violence and discrimination, more needs to be done. The homicide rate for Aboriginal women is six times that of non-Aboriginal women, and higher than the rate for non-Aboriginal men. Aboriginal women are almost three times more likely to experience violent victimization than non-Aboriginal women. Compared with non-Aboriginal women, Aboriginal women are almost three times more likely to report being the victim of spousal violence and, compared with non-Aboriginal victims of spousal violence, Aboriginal women are more likely to have experienced spousal violence on more than one occasion.
>
> (footnotes omitted)
>
> [26] The sad fact is that Aboriginal women are disproportionately affected by domestic violence and violence in general and this reality should inform the sentencing process if there is to be any hope of achieving the fundamental purpose of sentencing and meeting the objectives set out in section 718 of the *Criminal Code*, which include denunciation and deterrence.
>
> [27] Consideration of the victim, in this case the fact that she was an Aboriginal female, does not negate or otherwise trump the necessity of courts, when sentencing offenders, paying particular attention to the circumstances of Aboriginal offenders (s 718.2(e)). Rather, it requires that, in having regard to the circumstances of Aboriginal offenders, the courts do not discount the lives of or harms done to *Aboriginal victims of crime, their families and their communities* …
>
> [28] Considering the circumstances of the victim and the effects of the offence on the community does not mean that the circumstances of the offender, in particular the circumstances of Aboriginal offenders, are disregarded or, as was argued by the appellant in *R v Johnny*, 2016 BCCA 61,

> that consideration of the victim's circumstances effectively disentitles the offender from a meaningful *Gladue* analysis under s. 718.2(e). What it does mean is that, in arriving at a fit sentence, judges must take into account the circumstances of the offender, the circumstances of the victim and the effect of the crime on the community in which it took place. The fact that a sentencing judge is required to consider one set of circumstances does not mean other circumstances are ignored (see *Johnny* at para 21).

[40] For completeness, while ***A.D.*** was not provided as a sentencing precedent, I note the Court of Appeal upheld an eight-year sentence, on a defence appeal only, for the blunt force manslaughter of an Indigenous woman by her intoxicated spouse.

[41] The law is not static; it evolves. As to sentencing, there are many examples where, due to a greater understanding of the prevalence of certain types of crime and the consequent harm, sentences or sentence ranges have increased over time. The Supreme Court of Canada commented in ***R. v. Stone***, [1999] 2 S.C.R. 290 at paras 239 and 240:

> [239] It is incumbent on the judiciary to bring the law into harmony with prevailing social values. This is also true with regard to sentencing. …
>
> This Court's jurisprudence also indicates that the law must evolve to reflect changing social values regarding the status between men and women; …
>
> [240] In *Weatherall v. Canada (Attorney General)*, [1993] 2 S.C.R. 872, this Court recognized the "historical trend of violence perpetrated by men against women" (p. 877). More specifically, in *Lavallee*, *supra*, at p. 872, the growing social awareness of the problem of domestic violence was recognized by this Court. In my opinion, these cases indicate that prevailing social values mandate that the moral responsibility of offenders be assessed in the context of equality between men and women in general, and spouses in particular. Clearly, spousal killings involve the breach of a socially recognized and valued trust and must be recognized as a serious aggravating factor under s. 718.2 (*a*)(ii).
>
> (emphasis added)

[42] More recently, in ***R. v. Friesen***, 2020 SCC 9, the Supreme Court signaled greater punishment was fit for sexual child abusers, in part because of society's greater knowledge of the harm done by such crimes and the corresponding proportionality

assessment of the gravity of the crime and the offender's role in it. At para 76 the Court noted:

> [76] Courts must impose sentences that are commensurate with the gravity of sexual offences against children. It is not sufficient for courts to simply state that sexual offences against children are serious. The sentence imposed must reflect the normative character of the offender's actions and the consequential harm to children and their families, caregivers, and communities ….

[43] Further, at para 108, the Court commented:

> [108] Courts can and sometimes need to depart from prior precedents and sentencing ranges in order to impose a proportionate sentence. Sentencing ranges are not "straitjackets" but are instead "historical portraits" … Accordingly, as this Court recognized in *Lacasse*, 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 the harm arising from that offence increases …

and explained at para 110:

> [110] … there has been a considerable evolution in Canadian society's understanding of the gravity and harmfulness of these offences … Sentences should thus increase "as courts more fully appreciate the damage that sexual exploitation by adults causes to vulnerable, young victims" … Courts should accordingly be cautious about relying on precedents that may be "dated" and fail to reflect "society's current awareness of the impact of sexual abuse on children" … Even more recent precedents may be treated with caution if they simply follow more dated precedents that inadequately recognize the gravity of sexual violence against children … Courts are thus justified in departing from precedents in imposing a fit sentence; such precedents should not be seen as imposing a cap on sentences …
>
> (citations omitted)

[44] Thus, sentencing courts may need, in the right situation, to reflect on these types of issues in a specific sentence. Judges are not constrained to a precedent or sentence ranges, provided the sentence they impose is proportionate and properly takes into account all relevant factors, in effect, provided the sentence is just (***Friesen***, at para 112).

[45] Arguably, the sentiments, about child sexual abuse sentencing in ***Friesen***, and particularly Indigenous child victims at para 70, are analogous to the dynamics coloring domestic violence toward Indigenous women. The vulnerability of Indigenous women and girls to violence, because of their race, is patently obvious from statistics, such as those summarized in ***A.D.***, and more so from the history, stories and evidence detailed in the MMIWG report released in 2019.

V. ANALYSIS

[46] Turning to my analysis, the aggravating factors are significant while the mitigating circumstances are minimal.

[47] The aggravating factors include:

- the brutality of the beating and death, as noted by the pathologist. It is rare to see such violence, resulting in such a cascade of injuries. While it was not over a prolonged period, the beating nevertheless took place intermittently over hours, not minutes. While a weapon was not used, Mr. Wood's fists and feet were an equal substitute;
- Mrs. Wood was vulnerable, particularly because she was a woman who was much smaller in stature compared to Mr. Wood and grossly intoxicated (229mg% blood/alcohol level plus some drugs at autopsy);
- Mr. Wood should not have been in St. Theresa Point, or with Mrs. Wood, at all. In doing so, he breached several court orders, deliberately and while sober. More troubling, he did so knowing he would take her to a super juice party, where they would get drunk, and consume the Percocets he possessed. Mr. Wood did all of

this knowing the risk that he might beat her again. As a mature 35 year-old man, if he cared to think for a moment, he knew from his past convictions, his September bail conditions preventing him from contacting her, and their unresolved problems, that being together at a small family party, getting drunk on super juice of unknown potency, was a recipe for disaster. If he had simply followed the court orders, she would be alive; and

- Mr. Wood's criminal record for domestic assault, and breaching court orders, takes away from leniency, demonstrating, as it does, a deep-rooted tendency for violence against females.

[48] Further, the victim was Mr. Wood's spouse, which is an additional aggravating factor (s. 718.2(a)(ii) of the *Criminal Code*). Underpinning this factor are two important societal concerns. First, the violent breach of the highly valued trust of a domestic union. Second, the cunning nature of domestic abuse where, despite the abuse and the ongoing risk of abuse, a victim often is compelled or lured by emotional, psychological, family, shelter or financial reasons to remain in a dangerous relationship. Additionally, Mrs. Wood's Indigenous status, and living in a community so under-serviced and isolated as St. Theresa Point First Nation, heightened her vulnerability to spousal violence.

[49] Finally, it is clear that this event was not only catastrophic for Mrs. Wood but also for her four teenage children. They are deprived of her love, support and guidance. Her death, at her husband's hands, greatly impacted the children, extended family, friends and the community. It is another sad story of Canada's missing and murdered Indigenous women phenomenon.

[50] As to mitigating factors, I disagree that Mr. Wood's misplaced attempt at CPR upon Mrs. Wood, once others realized she was not breathing, is of help to him. It had no real value and is blunted by him telling his brother not to bother with Mrs. Wood earlier in the evening when, perhaps, intervention may have been lifesaving. I accept that after the fact, and over the last few years he has been in jail, he has a profound sense of remorse for everything he did that night. I also accept that, facing the stark terror of what he did, he has greater insight of himself, his actions and consequences of his addiction to alcohol and drugs. Further, while married to Mrs. Wood, he attempted at times to seek help, but it was not easily available. He was not determined or resilient enough to get the help he needed. All of this leads to *Gladue* factors.

[51] By now, at least for those who observe legal proceedings on a frequent basis, the reasons for, and the meaning of, *Gladue* factors are well known. I need not dive deep into an explanation. Suffice it to say, from what I explained about the context around the offense, the historical and current living conditions of St. Theresa Point First Nation, and Mr. Wood's background, assessing his moral blameworthiness for killing his wife must take into account the person he has become. He is a product of his environment. He was born into, and felt the effects of, inter-generational trauma, including family and domestic violence, poverty and substance abuse. His addictions, and learned behaviours towards Indigenous partners, in part, fueled violence toward his wife. There is no discount, per se, to be applied to his sentence. Rather, his *Gladue* circumstances must factor in the mix when assessing his overall moral blameworthiness. To be clear, this

does not excuse what he did – he alone is responsible for his catastrophic choices that night – but it provides some perspective.

[52] In order to assess Mr. Wood's moral blameworthiness, a host of factors need to be taken into account. Critically, without repeating or belaboring it, the nature of the beating, the force required and the number and nature of the strikes he made with his fists and feet move this case very far from an impulsive drunken act and very close to murder. It was merciless. His previous pattern of beating Mrs. Wood and resulting convictions, his sober defiance of court orders, and his willful disregard for placing her, his wife, in situations of grave danger, adds considerably to his blameworthiness. All in, his moral blameworthiness, even when tempered for his *Gladue* circumstances, is very high. This situation was egregious, extremely severe.

[53] In terms of other sentencing considerations, denunciation and deterrence are paramount. Denunciation is critical in condemning spousal violence, particularly the chronic threat to Indigenous women, simply because they are Indigenous women, and more so for those who cannot escape their situation. As noted, domestic abuse allegations are featured prominently during St. Theresa Point court sittings. Deterrence is critical as well. It is specific to Mr. Wood, because at some point, he will be released from jail to resume his life, and he has thus far not been able to control his violence. I hope as well that some measure of general deterrence will influence other potential offenders, particularly those men who do not know, or who do not respect, the sacred place of Indigenous women as those who give life, who heal, who are truth tellers and who traditionally have defended their communities and lands.

[54] Also important is the need to separate Mr. Wood from his community so he is no longer a threat to them. At this point, Mr. Wood remains a danger. I accept he has been sincere in taking programs while in custody. However, in order to excise his "demons" and learn to cope and behave in the community and within a family, without resorting to violence, he requires intensive treatment. Rehabilitation is a possibility, but nothing more. Despite his past attempts at treatment, his insight and his stated motivation, it is not realistic to believe his chances of moving past drunken violence can be ranked any better. Unfortunately, his character appears heavily ingrained.

[55] As to sentencing precedents, I acknowledge that 15 years imprisonment for a spousal manslaughter, with aggravating features, appears to be at the high end of sentences, which comparatively, similar offenders with similar offenses received even where the victim was an Indigenous woman or girl. The Crown has not provided the Court with an analogous case in support of their position of 20 years. However, a sentence of 12 years, as suggested by defence counsel, would be insufficient to recognize the critical factors of this case, along with sentencing principles.

[56] Sentence ranges and precedents are just that, ranges and precedents. They provide guidance but not necessarily an answer. As a society, we do not have firm answers to reduce domestic violence and spousal homicide, particularly within Indigenous communities like St. Theresa Point First Nation. It remains a menace of bleak yet glaring proportions. While the Federal and Provincial Governments, along with First Nation Governments, are best suited to proactively assist local communities and advocates to establish programs to help victims and abusers, and to protect victims, courts are at the

end of the line. A judge's important, but limited, role is to mete out justice in the circumstances of the particular case. Sometimes a specific sentence will fall outside of the norm. That should happen cautiously and for good reason. This is such a case. A 15 year sentence is not a just sanction here.

[57] Such a sentence would not adequately account for Mr. Wood's dangerousness and, more critically, would not place enough emphasis on the vulnerability of Indigenous women as a factor in sentencing such an offender; domestic killings remain a scourge. For example, for 2019, Statistics Canada reported that of solved cases, 73% of Indigenous female victims were killed by an intimate partner, spouse or family member[1]. This while the number of Aboriginal women homicides per 100,000 Aboriginal women in Canada is consistently significantly higher than the rate of non-Aboriginal women homicides (over 6 times higher in 2019).[2] The reasons for this are complex and beyond the scope of this sentence decision but are anchored, both for the victim and for the offender, in Canada's historical treatment of Indigenous populations and the fallout from that. While restorative sentences are important in many situations of an Indigenous victim and abuser, that is far less so in cases of murder or manslaughter.

VI. CONCLUSION

[58] After considering all the circumstances, the gravity of this crime and this offender, and balancing all the sentencing principles and factors I must, I find a just sentence is 18 years' incarceration.

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[1] Police-Reported Crime Statistics in Canada, 2019, by Greg Moreau, Brianna Jaffray and Amelia Armstrong, Catalogue No 85-002-X (ISSN 1209-6393) (Ottawa Statistics Canada, 29 October 2020)

[2] Statista 2021: rate of female homicide victims in Canada from 2001 to 2019, by aboriginal identity

[59] I deduct the equivalent of 4½ years for the time he has spent in custody since his arrest, for go-forward sentence of 13½ years. There will be the usual ancillary orders of a lifetime ban from owning or possessing any weapon and he must provide a sample of his DNA to be stored on the DNA databank.

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Martin J.