

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Boudreau, 2009 NSSC 30

Date: 20090130

Docket: CRBW-08-302992

Registry: Bridgewater

Between:

Her Majesty the Queen

v.

Penny Patricia Boudreau

Judge: The Honourable Justice Margaret J. Stewart

Heard: Bridgewater, Nova Scotia on January 30, 2009.

Sentence: (oral) January 30, 2009.

Counsel: Paul Scovil, Crown Attorney
Denise Smith, Chief Crown Attorney
J. Patrick Atherton, Defence Counsel

By the Court:

[1] This is the sentence of Penny Patricia Boudreau following her plea of guilty today to second degree murder in the death of her twelve year old daughter, Karissa Boudreau.

[2] Paul Scovil and Denise Smith for the Crown, and Patrick Atherton on behalf of Penny Boudreau, all experienced counsel, submit a joint recommendation as to sentence of mandatory imprisonment for life and a parole ineligibility of twenty (20) years.

[3] The Nova Scotia Court of Appeal in **R. v. MacIvor** (2003), 215 NSR (2d) 344 (C.A.) provides the following direction in regards to joint recommendations at p. 351;

...It is not doubted that the joint submission resulting from a plea bargain, while not binding on the court, should be given very serious consideration. This requires the sentencing judge to do more than assess whether it is a sentence he or she would have imposed absent the joint submission: see, e.g., **R. v. Thomas (O.)** (2000), 153 Man. R. (2d) 98; 238 W.A.C. 98 C.A. at para. 6. It requires the sentencing judge to assess whether the jointly submitted sentence is within the acceptable range - in other words, whether it is a fit sentence. If it is, there must sound reasons from departing from it...

[4] An Agreed Statement of Facts read into the record and filed forms part of this sentencing decision by attachment.

[5] Second Degree Murder carries a mandatory sentence of imprisonment for life. Section 745 and 745.4 of the **Criminal Code** provides for the imposition of a period of parole ineligibility on conviction on second degree murder of at least ten (10) years and not more than twenty-five (25) years, as the judge deems fit in the circumstances. The effect of an Order dealing with parole ineligibility is that it establishes the date upon which Penny Boudreau may first apply for release on parole. The operative word is “apply”. The order does not grant her parole. As many learn, eligibility is one thing, success in achieving parole another. Judges tell persons convicted of second degree murder when they can first apply for parole. The National Parole Board decides when or if a convicted murderer should be granted parole and only if the Board concludes that the offender does not pose a risk to society, will she be released on parole.

[6] The Supreme Court of Canada in the leading decision on the issue of parole ineligibility, **R. v. Shropshire** (1996), 102 C.C.C. (3d) 193 rejected a suggestion that more than the 10 year minimum would not be justified unless unusual

circumstances exist and affirmed the passage from the decision of the Nova Scotia Court of Appeal in **R. v. Doyle** (1991), 108 N.S.R. (2d) 1 at p. 5.

The Codes does not fix the sentence for second degree murder as life imprisonment with no parole eligibility for ten years. The discretion conferred on the sentencing judge by s. 742(b) and s. 744 is not whether to move from a prima facie period of ten years, but rather what is a fit sentence, applying the proper guidelines. Unusual circumstances are not a prerequisite for moving away from the ten year minimum, although as the cases illustrate, they certainly play a role in the proper exercise of the judicial discretion.

It is not the law that unusual circumstances, brutality, torture or a bad record must be demonstrated before the judge may exercise his discretion to move above the ten year minimum. Nor is there any burden on the Crown to demonstrate that the period should be more than the minimum .

[7] The sliding scale of parole ineligibility established by S. 745.4 recognizes that there is a broad range of seriousness reflecting varying degrees of moral culpability within the category of second degree murder (**R. v. Shropshire**, (supra) page 205.

[8] The determination of the appropriate period of parole ineligibility, is a fact sensitive process and involves a consideration of the specific factors to which S. 745.4 refers as well as the general objectives and principles of sentencing and any specific aggravating or mitigating factors that arise on the evidence.

[9] The paramount sentencing objectives in this case, a fatal offence against a 12 year-old child in a relationship of trust and dependency upon a parent who caused her death and a violent crime that shakes the core of societal values, shocking the community are denunciation, retribution, deterrence, promotion of a sense of responsibility and acknowledgment of harm. There is a need to express society's denunciation and abhorrence while bearing in mind the criminal law is not an instrument of vengeance but of retribution which requires the imposition of a just and appropriate punishment and nothing more.

[10] Section 745.4 lists four factors that judges are to take into account in establishing the period of parole ineligibility upon conviction. Since there is no jury only three are applicable here;

1. The character of the offender.
2. The nature of the offence, and
3. The circumstances surrounding the commission of the offence.

[11] Penny Boudreau is 34 years old and has no prior criminal record. At the time of the murder, she was separated from Karissa's biological father, Paul Boudreau and was in a common law relationship with Vernon MacCumber. At one point, she had a common law relationship with Karissa's father's brother who acted as a second father to Karissa. She has a work history clerking in a local grocery store.

[12] Nothing in her background provided to the court explains or mitigates her conduct. There is no evidence of health issues, anger management issues, cognitive functioning/intellect issues, drug use, depression, or any inability to think rationally about consequences of her actions. Ms. Boudreau is capable of manipulation and articulate in doing so.

[13] Any remorse flows from having an overwhelming case against her. She did not turn herself in. In fact, besides wishing for the police exhibit vault to burn down or blow up, she went as far as being prepared to accept help from an alleged criminal element in order to make her problem go away. It was only when she was

confronted with the evidence of months of investigative work and the sting operation video did she confess.

[14] A young vibrant life, full of promise terminated for a reason no more significant than Penny Boudreau's selfish desire to guarantee a love life that had no room for a child. What is heart wrenching and defies logic is that the simple act of allowing Karissa to be with her father or her maternal grandfather, whose lives centered around Karissa and who loved her dearly would have provided her with that child free existence.

[15] The nature of the offence Penny Boudreau committed and the circumstances surrounding its commission are described in detail in the Agreed Statement of Facts. The Crown's submission offers the following.

[16] The offence was an unprovoked vicious killing of the accused's own child by strangulation with a piece of twine. Such an offence is shocking by any community standards and brings to bear society's abhorrence and condemnation. The offence has had an extreme impact on the victim's father and his brother who served as surrogate father at times to the child. As can be imagined Karissa's

grade six classmates found the situation difficult as did the larger community. The offence was shocking not only to the community but to the investigating team of police officers as well. These are experienced officers not easily shocked by crimes of violence.

[17] The circumstances surrounding the offence include elements of planning and preparation that bring the facts close to if not within the range of first degree murder. These circumstances are reflected in the proposed length of parole ineligibility. As well, aggravating circumstances are the position of authority over the child held by the offender. Motivation for the murder appears to have been two fold. First, and primarily, to remove what the offender saw was a possible impediment to her relationship with MacCumber, and secondly, concern by the offender that Karissa was being disrespectful to her in conversations with others in the community and that she was thereby making her look bad. The offender had been considering the option of killing her daughter for several days and afterwards engaged in a systematic coverup of the offence. This coverup included disposing of the twine in a Tim Horton's coffee cup in a garbage barrel outside a Tim Horton's restaurant, hiding clothing of the victim in a garbage bin, calling her common-law to report the child missing as a run-away while the child was still

alive in the vehicle, reporting to police that the victim had taken off from the vehicle and was missing and participating in a tearful plea of crocodile tears to the community to assist in finding Karissa all the while knowing she had killed her. Her recounting to the undercover agent of the “Mr. Big” sting showed little or no remorse and could be described at times as jovial.

[18] The victim impact statements filed by Karissa’s father and aunt speak poignantly and movingly to the profound effect upon Karissa’s family by this crime. A father deprived of his daughter and all his hopes and dreams for her future gone.

[19] The court cannot assign value to the life of a human being in a sentencing proceeding; nor can I, unfortunately, bring Karissa back to life. Although I have read and reread the victim impact statements, I know the pain of grief expressed therein can never be fully understood by anyone. That cavernous loss has unfortunately only been exacerbated today with having to hear the horrible details of Karissa’s last moments as she laying staring into her mother’s face dying.

[20] On the side of mitigation, Penny Boudreau appears before the court as a first offender. She waived her preliminary hearing and plead guilty to second degree murder, at this, her second appearance in Supreme Court. The guilty plea is a public expression of responsibility for taking the life of another human being. In doing so, she has saved considerable state resources but more importantly, she has prevented further suffering to the community and most importantly, suffering to Karissa's "true" family and friends. I say "true" family because surely Penny Boudreau, you can never call yourself "mother" in conjunction with Karissa's name again and the words "mommy don't" from a trusting and loving Karissa are there to haunt you for the rest of your natural life.

[21] Among the many authorities filed by counsel in this case which prove useful in showing the spectrum of parole ineligibility is **R. v. Mitchell** (1987), 39 C.C.C. (3d) 141 (N.S.S.C.). A case more recently considered by both the trial and appeal court in **R. v. Johnson** 2001 NS.S.C. 119; 2004 N.S.C.A. 91. The 21 year parole ineligibility period ordered in **Mitchell**, where the accused had plead guilty to second degree murder of a two year old child is the highest period of parole ineligibility imposed in this province. The child died after being severely beaten and mistreated over a period of several weeks by the offender who had assumed a

parental role. Justice Hart in **Mitchell** at page 170 stated that he found it difficult to believe that there could be a more brutal, painful and prolonged murder of a defenceless child. The offender's conduct being repetitive and prolonged over a period of time was a significant factor. I also make reference to **R. v. Dewald** 2001 O.J. 1716 where the Ontario Court of Appeal reduced the parole ineligibility period from 23 years to 17 years deeming the offender who stabbed his 16 year old daughter to death because of religious beliefs and her association with a male friend, not to be one of the worst offenders; although the killing of one's own child to be one of the worst offences.

[22] Having regard to the principles and objections of sentencing contained in the **Criminal Code**, the nature of this offence, the circumstances surrounding its commission, the character and moral blameworthiness of the offender, a very substantial increase in the period of parole ineligibility is required. The twenty (20) year joint submission is within an acceptable range and is a fit sentence.

[23] Penny Patricia Boudreau please stand. Penny Patricia Boudreau, I sentence you to imprisonment for life. Eligibility for consideration for release on parole will not occur until you have served twenty years (20) from the date of your arrest.

You shall be prohibited from having in your possession any firearms, ammunition, explosive substances or any other items or devices mentioned in Section 109 for the balance of your life. You shall also provide such samples of bodily substances as may be required for the purpose of forensic DNA analysis under Section 487.051 (a) of the **Criminal Code**.

[24] Ms. Boudreau I am required by **Criminal Code** to tell you this. You have been found guilty of second degree murder and sentenced to imprisonment for life. You are not eligible for parole for twenty (20) years until June 14, 2028. However, after serving at least 15 (fifteen) years of your sentence you may apply under what is known as the “Faint Hope” clause - a reduction in the number of years of imprisonment without eligibility for parole. If the jury hearing your application, should you make one, reduces the period of parole ineligibility, you may then apply for parole under the **Corrections and Conditional Relief Act** at the end of that reduced period.

[25] You may remove the offender.

J.

AGREED STATEMENT OF FACTS

On January 27, 2008 at 8:35 p.m., the Bridgewater Police Department received a report of a missing 12 year- old girl. An officer spoke with Penny Boudreau who said that her 12 year- old daughter Karissa was missing from her vehicle which had been parked at Sobey's parking lot, 349 LaHave Street, Bridgewater, Nova Scotia. Penny Boudreau reported that she and her daughter had gone to Sobey's where Karissa waited in the car. When Penny Boudreau came out of the store, her daughter was missing from the vehicle. Penny Boudreau advised that she had searched all of the areas where Karissa hung out and drove the streets of Bridgewater, but had no luck in locating her. Penny Boudreau advised that her daughter had left her cell phone and had been wearing pink Crocs, jeans, t-shirt, black hoodie and a black vest. The weather was deteriorating with snow falls predicted for the evening. As part of the ensuing investigation, the accused made a tearful plea in the media to her daughter to return, as well as asking for assistance from the community in finding her. An extensive investigation began to find the missing child.

At 3:50 PM on January 29, 2008, a citizen was driving on William Hebb Road, in Hebbville Nova Scotia when he noticed something pink that looked like footwear laying in the snow. He remembered the press releases on the missing girl Karissa Boudreau, and in particular, the fact that the missing girl was wearing pink Crocs. The citizen stopped his car and took a closer look at the item, confirming that it was in fact a pink Croc. He contacted Bridgewater Police Department to report having found the Croc. The shoe was seized and later tested for DNA, and was determined to have belonged to Karissa.

On February 9, 2008, at 11:35 A.M., Bridgewater Police Department received a 911 call from a citizen reporting that her nine year old son found a body. The citizen reported that she was traveling along Highway 331 in Conquerall Bank when she pulled to the road side at a turn-around to allow her son to urinate out of sight of the public. The boy went to the edge of an embankment overlooking the LaHave River when he saw what appeared to be human toes sticking out of the snow. The boy screamed for his mother who went to his side and also observed the toes. They flagged down a passing motorist and had him confirm what they had seen over the embankment. Bridgewater Police Department were the first responding officers on scene. They secured the area and ensured that no persons approached the embankment where the body had been observed.

The Royal Canadian Mounted Police Major Crimes Unit, and a Detective from the Bridgewater Police observed the body and were able to ascertain that it was the body of

a young Caucasian female, and appeared to be that of the missing female Karissa Boudreau, based upon facial and physical observations.

Doctor Matt Bowes, Chief Forensic Pathologist for the Province of Nova Scotia, attended the scene and made observations of the body and its position as it lay over the embankment. Based on his observations, he believed that the body had been placed at the scene when it was not in rigor. It was positioned in a splayed -out manner, and would appear to have been supple at the time it came to rest there. Dr. Bowes believed it would have been placed there shortly after death had occurred.

The position of the body and the state in which Karissa was discovered was not released to the public and remained hold-back evidence. This included the manner in which the clothing was observed, together with missing articles of clothing that she was reported by the accused to have been wearing when the missing person's complaint was made.

There were noted ligature marks around Karissa's neck. Based on observations of the body, the position it came to rest, and the lack of evidence in the snow to indicate that this person struggled up the hill from the river, investigators were of the opinion that the body was dumped at this location.

On February 11, 2008 at 3:20 PM there was a ruckus reported in the apartment where the accused resided. Occupants of the apartment below the accused heard the

following; Vernon Macumber, common-law partner of Penny Boudreau, was agitated and throwing things around. He and Boudreau were going back and forth in the apartment. Macumber was telling her that he was leaving her. They went into the bathroom, water was running and it sounded like Boudreau was in the tub. Macumber was saying over and over, “ Penn, how could you do this ”, that he was disgusted with her. Macumber was saying “ Penn, Penn, c’mon speak Penn, how could you do this, how could you do this, I don’t understand, you got me involved” and that he wasn’t going to help her. Investigators already had concerns regarding Penny Boudreau’s involvement in the murder. These statements further added to their concerns and acted as a catalyst in the accused being the subject of further investigation.

On February 13, 2008 an autopsy was completed by Dr Matt Bowes on the found human remains located in Bridgewater on February 09, 2008. The frozen state of the body required that the autopsy be delayed until that date to allow it to thaw. The human remains were positively identified as that of Karissa Boudreau. The identification was made by Doctor Paul Miller, a dental surgeon, who reviewed Karissa Boudreau's dental charts and casts of her upper and lower teeth. They were compared to the human remains and were positively identified as those of Karissa Boudreau. The cause of death was determined to be asphyxiation. The method of death was determined to be strangulation. There were no other injuries to the body beside the ligature marks on her neck.

Karissa Boudreau’s body was found with her jeans only on her right lower leg and her

panties down to her knees. This gave the impression that she may have been victim of a sexual assault. There were no obvious signs of sexual intercourse and sexual assault was later ruled out. Karissa Boudreau was wearing a pink t-shirt, grey bra, white panties with Winnie the Pooh design, blue jeans and one brown sock with multi-colour horizontal stripes. The other sock of the same description was in her jeans.

On February 14, 2008 at 9:43 AM Penny Boudreau, and Vernon Macumber attended at Bridgewater Police Department on the request of Cpl. John Elliott of the Southwest Nova Major Crime Unit of the Royal Canadian Mounted Police. The purpose of this contact was to notify them that the found human remains were identified as Karissa Boudreau. Penny Boudreau and Vernon Macumber were arrested for the murder of Karissa Boudreau and were interviewed. Penny Boudreau declined to provide a statement.

On February 25, 2008, a citizen was at the playground adjacent to the swimming pool which is located at 154 Jubilee Road in Bridgewater, Nova Scotia. He noted a wooden trash bin beside the building at the swimming pool and decided to check it for recyclables. When he opened the trash bin, he saw what he thought was a pink sandal. He did not give it too much thought until he spoke with his fiancée; together they returned to the pool and looked again to confirm there was a pink croc inside the bin. They called Bridgewater Police Department who attended. He told police that he had checked the bin about one month earlier, at that time the items were not inside. The

responding officer photographed and seized a left size 8 pink croc, a black hoodie and a black vest from inside the wooden trash bin. The croc seized from the William Hebb Road area on January 29, 2008 was a matching right size 8 pink croc. This was not released to the general public and was hold- back evidence .

On February 14, 2008 while Penny Boudreau and Vernon Macumber were in custody, a cell mate (under-cover officer) plant was utilized. No admissions were gained however a bond was established between Vernon Macumber and the under cover operator. Throughout the course of the investigation, ten One- Party Consent Authorizations were utilized for under- cover operations. On February 25, 2008 a meeting occurred between Vernon MACUMBER and the under-cover operator he met while in the cell block at Bridgewater Detachment. A conversation took place during which Macumber was provided an opportunity to work for the under-cover operator. Utilizing One Party Consent Applications, the undercover operator(s) met with Macumber on several occasions over the next several weeks, under the guise that they were providing him work for a crime syndicate. A wide- scale under-cover operation began utilizing a number of scenarios to gain the trust of Macumber.

On April 01 2008 Penny Boudreau and Vernon Macumber moved from their apartment at 220 Jubilee Road in Bridgewater and relocated to apartments in Halifax. On April 16, 2008 during a meeting with an under-cover operator, Vernon Macumber made comments to the effect that he had nothing to do with the murder of Karissa. Macumber stated that he was asleep at the time. He also stated to the under-cover

operator that he suspected Penny Boudreau had murdered her daughter and he was still living with her in order to keep her close so she would not implicate him in the homicide.

On May 03, 2008 under-cover operators were able to convince Macumber they required the services of a female to assist in the work they were performing. Macumber was asked to approach Boudreau and have her meet the under-cover operators. A meeting was arranged and Boudreau became very active with the under-cover operators and their work. May 08, 2008 was the three month anniversary of the discovery of Karissa Boudreau's body and several local media outlets carried stories about the investigation. Investigators were aware that Penny Boudreau was troubled by media reports that named her place of employment and commented on the potential value of DNA evidence. During a meeting with an under-cover investigator on May 14, 2008 Penny Boudreau made a comment that she wished the " police exhibit vault would burn down or blow up" .

On June 2, 2008 an Authorization for the Interception of Private Communications was granted for a period of sixty days.

On June 11, 2008 Penny Boudreau met with another under-cover operator she was led to believe had connections and could possibly make her "problem" go away. The under-cover operator maintained that he was the head of the crime syndicate and that

Boudreau would have to tell him everything about what happened to her daughter, in order for him to understand her situation and what he would have to do to assist her.

Penny Boudreau disclosed the following details to the under-cover operator with regard to the events of January 27, 2008:

- * Penny Boudreau and Vernon Macumber were having issues because of Karissa.

Macumber actually gave her an ultimatum to either pick him or Karissa.

- * Boudreau states that Vernon Macumber had nothing to do with the murder and it was she who strangled Karissa

- * Boudreau said it was Sunday, January 27, 2008, the day she killed Karissa

- * Boudreau said she and Karissa went for a drive around 3:00 - 4:00 PM. They drove for a couple of hours, to Lunenburg and back, and were talking. She felt things got a little out of hand and both of them were angry . Boudreau said she “ did what she had to do”

- * Boudreau drove to the Sobey's parking lot around 5:30 PM and went in to get some juice and bacon. Karissa was still in her vehicle alive. She called Macumber to tell him that Karissa was not in the car when she came out of Sobey's. She left a message on the phone. She returned to the car and put the groceries in the trunk and while she did

this, she grabbed a piece of beige twine and put it in her pocket as she knew she had to do away with her.

* Karissa kept wanting to get out of the car so Boudreau waited until it was dark and drove to William Hebb Road and told Karissa that if she wanted to get out then, to get out. Boudreau said she couldn't let her go back and tell people what a horrible mom she was.

*Boudreau said they both got out of the car and it was a snowy, dark night. Boudreau went to grab her, but it was slippery, so she pushed/tackled her and Karissa fell on her back. The only thing Karissa said to her was "mommy don't". Boudreau said Karissa was scared. Boudreau used her knee on Karissa's chest to pin her down. Karissa's hands were under her, so she couldn't move her hands and Boudreau used her knees to pin her down so she couldn't fight back. Boudreau was face to face with her.

* Boudreau wrapped the rope around her hands and put the rope around Karissa's neck and pulled in a criss-cross motion with all her strength until she could no longer feel her breathing. Throughout all of this Boudreau said she could feel Karissa trying to move her hands and that they were digging at the ground. Karissa eyes were bulging, her tongue was stuck between her teeth and foam/drool was coming from her mouth and she could hear her heaving for air.

* Boudreau said when there was no more breathing, she dragged Karissa's body and put her in the passenger side of the vehicle in mostly a heap on the floor and then drove to Bridgewater to decide what to do next. Boudreau placed the twine in a empty Tim Horton's cup which she then threw into a garbage can at Tim Horton's on High Street.

* Boudreau drove on King Street, past Pendleton's store to the turn- around spot. She parked the car, turned it and the lights off, and dragged Karissa's body out of the car using her blue jeans as leverage. Karissa's pants, pink underwear and stripped socks came off as she was dragging Karissa to the bank's edge. Boudreau felt this would make people think Karris had been sexually assaulted.

* Boudreau stated Karissa's hoodie and vest came off and she was just left her wearing a t-shirt with one pant leg in her jeans. Boudreau then rolled her over the edge of the bank knowing that the weather was calling for lots of snow and that she wouldn't be found for awhile. Karissa landed amongst the trees and didn't hit the river.

* Boudreau got back in her car and took the hoodie, vest and croc and threw them in the garbage can by the Bridgewater swimming pool. She realized at this time that she only had one croc.

* Boudreau went home around 7:00pm to 7:30 pm and told Macumber that Karissa was missing . She called the police around 8:00pm. She called family, friends and teachers to check with them.

* Boudreau said she would do anything for Vernon and the thought of losing him was harder than the thought of losing her daughter.

Penny Boudreau also provided a physical re-enactment on the person of the under-cover operator during this meeting, in order to explain her actions against Karissa. After having described all that had occurred she then used pen and paper to write a detailed handwritten account of what occurred. Thereafter Penny Boudreau agreed to travel back to the Bridgewater area with the under-cover operator(s) to show them where the murder and body dumping took place. Boudreau directed them to William Hebb Road where she murdered her daughter. This was the same location where the croc was located on January 29, 2008. Penny Boudreau again provided a verbal and visual account of what occurred at that location and then directed them to the location near the LaHave river where Karissa's body had been dumped and provided the details of what occurred there. She indicated she had been considering the murder for several days prior to the event itself. When Penny Boudreau returned to the Halifax area she turned over an article of clothing to the under -cover operators that she had mentioned she had been wearing at the time of the murder.

On the morning of June 14, 2008 Penny Boudreau was arrested and interviewed by the Truth Verification Section of the Royal Canadian Mounted Police. Throughout this portion of the interview Penny Boudreau made no admissions. During the afternoon, Penny Boudreau was shown a short portion of the video / audio of her meeting with the

under-cover operator on June 11, 2008 in which she told the operator about killing her daughter. Boudreau was visibly shaken and shortly afterwards she provided an account of what occurred to her daughter on January 27, 2008. Boudreau admitted to having murdered her daughter, Karissa and explained the same details as she had previously in the covert interview. Penny Boudreau also provided a hand -written letter to her daughter Karissa, expressing her feelings.