ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

V.

R.C.

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REASONS FOR SENTENCE

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BEFORE THE HONOURABLE MADAM JUSTICE KATZSCH On December 7, 2020, at KITCHENER, Ontario

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30 APPEARANCES:

K. Enns

Counsel for the Crown

K. Srodulski

Counsel for R.C.

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R. v. R.C.
Reasons e
- Katzsch, J.

MONDAY, DECEMBER 7, 2020

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REASONS FOR SENTENCE

KATZSCH, J. (ORALLY):

- [1] R.C. comes to court today and has pled guilty to three offences, two from December 21st, 2018, an aggravated assault and a count of uttering threats, and a breach of his release order in relation to drinking alcohol from September 20th, 2019.
- The facts with respect to the aggravated assault and the count of threatening were entered by way of an agreed statement of facts filed as exhibit one. I don't intend in the Reasons for Sentence to go over them again in detail, but suffice to say by way of summary met R.C. the victim in downtown Kitchener. She may or may not have been a prior acquaintance. He asked her for help getting some groceries home. assisted him and stayed at his house and within an hour of being at that residence R.C. flew into a rage and began to repeatedly strike with the butt end of a knife. She Victim was struck on the head, she was struck on the face, she appeared to have been struck around the area of her upper torso according to photographs filed, and the assault left her in and out of consciousness with multiple serious injuries. Hair was pulled out, she lost a tooth, she

required staples to a laceration on the top of her head and truly the photographs of her injuries, both at the time of her hospitalization and those taken a few days later, depict what could only be described as a savage beating.

[3] The assault was of a prolonged nature, so much that as I said the victim was in and out of consciousness and not one but two people who happened to be walking by on the street outside ' home observed portions of the R.C. altercation, one called the police and the second attempted to assist. The first individual who witnessed the altercation and called 911 told the dispatcher he thought it was two men and he saw the older man, identified as now. R.C. taking the victim's head and hitting it off the floor during the portion of the altercation that he was able to see.

- [4] It is also noted in the agreed statement of fact that while he was inflicting this savage and violent assault, R.C. told the victim that she was going to die tonight, and the quote is, "You are going to die tonight bitch." That was uttered while she was being attacked.
- [5] The police arrived at the tail end of the assault, found the victim lying there covered in blood and an ambulance was called for her.

 R.C. was there, he was seen crawling on his hands and knees towards the door, he had a knife

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with a seven inch blade, and that he was found to have an icepick or some sort of other object on his belt at the time.

Most concerningly, and for the Court's purposes today most aggravating, is that when speaking with the police, in addition to immediately acknowledging that he had committed an act, a violent assault against the victim, and being covered in her blood, he unprompted said a number of highly offensive and - highly offensive statements, if I can put it that way, directed at the victim, who he believed at the particular time was what he referred to as a cross-dresser. He indicated to the police that he believed erroneously that the victim was in fact a man posing as a woman and that that was his motivation for the violent assault. He referred to the victim in highly derogatory terms and continued with his rant, both at the scene and after he was on video at Central Division.

[7] So those are the facts in relation to the aggravated assault and the threatening. He was released on a number of release orders following this offence and has acknowledged that on September 20th, 2019 his surety or a family member ended up phone the police to say he was at her house and breaching his bail terms, and he was found in an intoxicated state, thereby violating the no alcohol term.

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- [8] Those are the facts for the Court to address today. The criminal record has been filed, along with a pre-sentence report prepared for R.C., and I have received victim impact statements from both Victim and her daughter, which are both poignant and compelling.
- [9] On behalf of the defence Ms. Srodulski notes the mitigating factors that R.C. has pled guilty, has taken responsibility for this offence and has indicated through his plea and his comments in the pre-sentence report that he is highly remorseful for his actions on December 21st, 2018. It is noted that while he comes to court with a prior criminal record, the offences of violence are limited and dated, and that his record ceased in 2010 until this offence in December of 2018.
- an alcoholic, he acknowledges having issues with respect to binge drinking and that these are issues of longstanding for him, which is also borne out by his daughter's comments in the presentence report.

 R.C. has not been receptive to formalized rehabilitation programs in the past, preferring to attempt to cease drinking on his own over the years.
- [11] It is further noted by the defence that he has exhibited other pro-social behaviours in terms of holding down employment for a number of

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decades, staying out of trouble with the law and has incurred no further breaches with respect to his release orders in the past 13 months. He comes to the court as an older offender at and his age is also asked by the defence to be taken into account in determining what period of custody is required and appropriate.

[12] And so on behalf of the defence Ms. Srodulski has asked me to consider a sentence in totality of 18 months less the pre-sentence custody, which in this case totals 72 actual days, or 108 days if credit is given at a rate of one and a half to one.

[13] On behalf of the Crown Ms. Enns properly notes the aggravating factors, which quite frankly leap off the page in this case: The violent and sustained nature of this beating on a defenseless woman who herself was in her sixties and had suffered some prior health issues; the nature of her injuries; the extent of her injuries; and the profound physical and emotional and mental impact of this crime on her; and to say nothing of the fact that this appeared to be an assault primarily or solely motivated by

R.C. mistaken impression that this was a transgendered or cross-dresser individual and this inspired a significant amount of rage and hatred in him, thereby putting it in the category of what is colloquially referred to as a hate crime.

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[14] The Crown is asking the Court to consider a sentence of two years less a day, followed by a lengthy probation on top of the pre-sentence custody. A number of cases have been filed by the Crown, in addition pointing to cases of a similar nature where the aggravating factor of a discriminatory attack against an identified group was identified as the motivation for a violent assault.

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[15] , I referred a moment ago in R.C. speaking to your lawyer about how it is difficult to look at the photographs of the victim in this case. I am shocked and appalled by the nature of the beating that you inflicted on this poor woman for absolutely no reason. One can only imagine, and she speaks to it in her statement, but one can only imagine the fear that she had as this beating went on and on and on, and she was unable to defend herself, and you were unwilling to stop your violent assault on her. And truly the photographs taken three days after she is released from the hospital depict bruising all over this woman's face and head, all along the side of her face, all along her upper torso and her arms, and one can only imagine the type of beating that you inflicted on her to have these types of injuries show up in the day and days following. It is a concerning violent assault and one, again, has to wonder at your age how you were even capable of this sort of rage and violence towards another human being.

[16] The nature of the assault and the nature of your comments to the police upon their arrival is also significantly aggravating in my view, that you mistakenly took this woman to be a transgendered person and felt that that for some reason afforded you some justifiable reason to act out towards her in this manner and to assault her in this way is, again, difficult to comprehend, and in my view is a factor here that has to be properly taken into account and considered by the Court in crafting an appropriate sentence.

[17] While I acknowledge the mitigating factors of your plea and your age, and the fact that you are clearly remorseful, in my view the primary principles of denunciation and deterrence must be addressed by way of the court sentence. This crime calls out for a denunciatory sentence that takes into account that the motivation for this assault was your prejudice towards this person who you viewed as a, to use your word, crossdresser.

[18] As is highlighted by the Crown, in the cases provided by the Crown, it is an aggravating factor that the Court has to take into account under 718.2 of the Code, that this is a crime that is motivated by hate towards a person that you viewed of a certain sexual orientation or gender identity, and it is a fundamental principle of Canadian society that every member

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must respect the dignity, privacy and person of another member of the community.

[19] R.C., in my view the appropriate sentence in this case, even on a plea, would be four years. I think the nature of this assault is so concerning, and the gravity of this offence is so high, that that would have been the appropriate sentence, and had the Crown asked me to consider that, I can tell you, sir, I would have had no difficulty in finding that a four year sentence was appropriate.

[20] Taking into account all the factors and the position of the Crown in this case, I am prepared to agree with the submission that two years less a day, while very much at the low end of what is appropriate, is not so low as to bring the administration of justice into disrepute, although, again, I note the aggravating factors here are so significant that in my view certainly a sentence in the range of four to six years would have absolutely been warranted.

[21] So with respect to the aggravated assault, your pre-sentence custody is going to be noted, that's 72 actual days. You will get credit at a rate of one and a half to one, so it will show as 108 days. There will be an additional sentence of two years less a day, followed by three years' of probation.

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[22] On the count of uttering threats, there will be a sentence of six months concurrent, followed by three years' of probation, and on the breach of recognizance, again, a sentence of 90 days on the breach concurrent, also followed by three years' probation.

(...THE COURT IS INTERUPTED BY THE TELEPHONE IN THE COURTROOM RINGING...)

R.C., the terms are going to be as follows.

You are to keep the peace and be of good
behaviour, appear in court when you are required,
and you are to notify the court or probation
officer in advance of changing your address. You
will report to a probation officer within two
working days of your release from custody, and I
will note that to be report in person and
hopefully it will be back there at that time. So
report in person to probation within two working
days of your release from custody, and then after
that at all times and places as they direct.

MS. ENNS: Victim.

THE COURT: With victim, and you are not to attend at any place, or within 100 meters of any place that you know to be her place of work,

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residence, school, or any place she frequents, or any place you know her to be, except for required court attendances.

[25] You are not to possess any weapons as defined by the <u>Criminal Code</u>, and you are to attend and actively participate in assessment, counselling or rehabilitative programs as directed by your probation officer for issues relating to alcohol abuse, anger management, and any other issues as identified by probation. You will sign a release so they can monitor your attendance, and you will provide proof of attending and completing any assessments, counselling or programs as directed.

I do think it is appropriate that this woman receives some restitution and I am told by way of the pre-sentence report and your counsel that you are in receipt of a pension and not on social assistance at this time, so I am going to make a restitution term on your probation that you are to make a payment of her in the amount of \$300 and you are to make restitution in that amount to , which is to be paid in Victim full - now I am trying to thing when it is likely the probation will begin - well paid in full we will say by December $31^{\rm st}$, 2024. I am going to pause there just with respect to probation before I get to the ancillary orders. Are there any questions or concerns with respect to the terms of probation, anything that is missed?

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MS. ENNS: I may have missed it, but did the court impose a no weapons term?

THE COURT: I did, yes.

MS. ENNS: Okay.

[27] With respect to the aggravated assault, there will be a DNA order, that you provide a sample of your DNA. And there will be a further order pursuant to s. 109 of the <u>Criminal Code</u>, again, in relation to the aggravated assault, that you are prohibited from possessing any weapons as defined by the Code for a period of 20 years. The forfeiture order, once it is amended, will be signed on consent. And further it may not be required, but I am going to make a further order under s. 743.21 of the <u>Criminal Code</u>, that you are further not to communicate with Ms.

victim while you are in custody, in any way,
directly or indirectly.

THE COURT: Is there anything that I have neglected to address? The victim fine surcharge would attach to all counts.

MS. ENNS: I think it was 2019 that it came into effect, ...

THE COURT: Is it 2019, am always hooked....

MS. ENNS: ...yes.

THE COURT: So just the 2019 count, I am going to waive that in light of his incarceration. And other than the outstanding charges, is there anything further?

MS. ENNS: I don't think so. I will ask that the PUBLICATION BAN

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outstanding charges be marked withdrawn, please. THE COURT: All right, so noted. All right,

R.C., they will take you into custody and I wish you the best, sir, good luck.

R.C. Okay, thank you.

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13. Certification

| Certificate | | of | Transcript | |
|-------------|------|-----|------------|-------|
| Evidence | Act, | Suk | section | 5 (2) |

I, <u>Elaine Paquette</u>, certify that this document is a true and accurate transcript of the recording of <u>December 7, 2020</u>, in the <u>Ontario Court of Justice</u> held at <u>85 Frederick St., Kitchener, Ontario taken from Recording 4411 CrtRm-401-20201207-085236-6-KATZSCKA which has been certified in Form 1 by David Megyesi.</u>

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October 5, 2021

Date

Elaine Paquette
Authorized Court Transcriptionist

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