

HER MAJESTY THE QUEEN

against

ROBERT LUTCZYK

VICTIM IMPACT STATEMENT of
MAUREEN A. POTTS

Thank you, Your Honour, for the opportunity to submit this victim impact statement. I am David's wife, Maureen. I am making this statement on behalf of both of us and our family. I need to describe the events of that night so that I can describe their impact on us then and now. We have relived the details of that night for each of the 1200 days and nights since. There are details of the impact that have intentionally been left out of this statement. I am hopeful that Your Honour will understand a wish for privacy and not misinterpret those omissions as suggesting that my husband's kidnapping is anything other than the most terrifying nightmare that one could ever inflict on a family. What happened is also important for anyone who has a role in the administration of justice.

David and I have 4 children. On October 15, 2012, Mary was 20, Sam was 19 and they were away at university. Ellen was 16, Julia was 14 and they were with me that night at our home in Courtice. At 10:50 pm, their father was kidnapped at gunpoint in our driveway.

My memories of that night are vivid. I arrived home from a meeting at 10:00. David was attending an Oshawa Council meeting. We texted each other and were looking forward to seeing each other after the Council meeting. At 10:50 pm, I heard the alarm on David's car. It didn't stop. Ellen and I ran from our bedrooms, down the stairs and out the front door into the driveway fearing that David had collapsed or hurt himself and was trying to get our attention. I had heard what sounded like a large vehicle pulling away quickly but did not see it. The driver's door on David's car was open. So was one of our garage doors. David was not there. I knew he had been taken.

We ran back into the house and I called the police. Ellen and I each tried calling David's cell phone. We left messages. Our messages were full of panic, fear and desperation. David's phone went dead during one of Ellen's voicemails.

The police arrived within a few minutes. We were realizing our worst fears. Who had taken my husband? Why? Robbery? Road rage? How many people were involved? Was he being beaten and dumped somewhere to be left for dead? Would we ever see him again? Would he be badly injured or dead? For the next several hours, Ellen, Julia, I, family and friends waited together helplessly in fear. I've never been so desperate and lost. I contemplated the

possibility that I would never see David again. I was trying to keep it together for Ellen and Julia. I could see the fear and pain in their faces. They were so scared. I wondered how I would cope with my grief and be strong enough to help our 4 children if we lost their father. I was angry to think that suddenly their lives would be completely changed because of the selfish violence someone had inflicted on their father. I couldn't bear to think of my life without Dave.

Then came the call. It was David! However, it was apparent that someone else was in control and that David was in serious trouble. David calmly repeated the same 4 statements to the effect that he was okay, he was with someone, they were working on a business matter and that he would get dropped off later. I knew that he wanted me to know he was trying. I pleaded with him to stay on the phone as long as possible. The police had said that David's signal was weak and that they thought he might be underground. So I told David that he needed to stay on the phone. I told him that I loved him forever. The call ended. I believed that that was the last conversation I would ever have with my husband.

I have learned the details of what was happening. I heard them first hand from David when Durham Regional Police Service returned him to us the next morning. I have been with David day and night since. I've also since read media versions and recently heard a negotiated version of the facts as they were read into Court.

David never saw it coming. Of course, he saw the truck in his rearview mirror as he opened one of our garage doors and prepared to exit his car in our driveway at 10:50 pm. He saw the man approaching but assumed he was lost and looking for directions. He recognized his kidnapper at the moment the kidnapping started, but not as a kidnapper. David greeted Mr. Lutczyk as a former colleague as the gun was thrust into his ribs and he was told he would be shot if he didn't get in the Yukon truck. Stunned and while being pushed into the truck at gunpoint, he instinctively hit the panic button on his key chain setting off his car alarm. He immediately regretted doing so realizing that it would be an invitation for us to open the door to the house within clear shot of the kidnapper. The high speed departure was in that sense a relief to David but the beginning of our nightmare.

Within seconds of the departure, while steering with his left hand and holding the gun in his right, Mr. Lutczyk relayed to David the details of my arrival at home, alone, at 10:00 pm that evening. David was no longer stunned by the kidnapping. His wife had been stalked and his home had been watched while he attended an Oshawa Council meeting. David's rage was suppressed by the realization that these details were a provocation. He mentally "flipped a switch" and calmly conversed with his kidnapper while they drove on. Mr. Lutczyk described his disintegrating personal and financial circumstances through gritted teeth. David was instructed to surrender his Blackberry and he did.

The industrial unit is on a dead-end street in a dark part of Whitby. Its parking compound is enclosed by a fence with a locked gate. After stopping in front of that gate, Mr. Lutczyk reached to the dark floor of the rear seat, pulled up a metal chain and instructed David to hold

his wrists in front of him. David complied and the chain was wrapped around his wrists and secured by a padlock. Mr. Lutczyk exited the vehicle. In the headlights, David could see Mr. Lutczyk unlocking the padlock that secured the gate. David realized that this was not a random stop. This was his kidnapper's destination and he controlled it. Instinctively, David raised his wrists to measure the length of the chain. It was affixed to the seat frame and was too short to allow any movement that might provide an opportunity when the kidnapper returned.

After driving into the compound, Mr. Lutczyk exited the vehicle to lock the gate. David's chains were replaced with plastic tie handcuffs while Mr. Lutczyk referenced his military training. Mr. Lutczyk then took my husband at gunpoint through a metal door into the industrial unit.

Within the unit, a small plastic footstool had been placed in the middle of the concrete floor directly underneath a single fluorescent light. A white Ford cube van was parked within the unit facing this space. David was directed to sit on the stool but declined and stood, handcuffed, in front of his armed kidnapper. Mr. Lutczyk removed the battery from David's Blackberry and inquired whether it was equipped with a GPS. He angrily described two incidents that David understood were the reasons for the kidnapping.

The first was a municipal prosecution in the early 2000's - a regulatory offence concerning a rental property owned by his father that Mr. Lutczyk operated while he was a member of Oshawa Council. In response to citizen complaints, there was an investigation by the City's by-law enforcement staff who then referred their investigative file to the City's Legal Services to determine whether there was enough evidence to proceed with a prosecution under the City's Zoning By-law. As the City Solicitor, it was ultimately David's responsibility to make that determination. David decided that there was sufficient evidence. The prosecution was commenced, there was a conviction following a trial and a \$1000 fine was imposed. Mr. Lutczyk pursued appeals all the way to the Supreme Court of Canada and lost.

The second was a garnishment proceeding. Mr. Lutczyk owed money. In 2009, Mr. Lutczyk's creditors initiated garnishment proceedings against him as debtor and the City as garnishee. Mr. Lutczyk was represented by legal counsel in those proceedings. The notice of garnishment issued by the Court required the City to pay into Court for Mr. Lutczyk's creditors any amounts that the City would normally pay to Mr. Lutczyk. The only relevant amount was what the City paid to municipal councillors as remuneration because Mr. Lutczyk was a member of Oshawa Council. David was contacted by the City's Finance staff who questioned whether they should be paying to the Court the whole amount of that remuneration or whether they should exempt 80% of it as "wages" and continue to pay the 80% to Mr. Lutczyk. David gave an opinion to Oshawa's Finance Department that councillor remuneration is not "wages" because a councillor is not an employee. So the wages exemption did not apply and the entirety of the remuneration was required to be paid into Court. The result was that Mr. Lutczyk's creditors received all of his councillor remuneration.

Mr. Lutczyk replaced the Blackberry battery and, after demanding the password, he sent messages to Oshawa's City Manager, Bob Duignan, pretending to be David and inquiring about Mr. Duignan's availability. As City Manager, Mr. Duignan had some authority to settle financial disputes involving the City. David had suggested this as a way to depersonalize the conflict and to buy time.

Mr. Lutczyk then demanded the second password to access David's voicemails. He listened to voicemails. He then selected two voicemails that he replayed on speaker phone in front of David. They were the frantic voicemails that Ellen and I left when we called the police.

Mr. Lutczyk's unimaginable cruelty found its mark that night and continues to haunt. Mr. Lutczyk had made no attempt to conceal his identity when he kidnapped my husband at gunpoint. He had angrily described his personal and financial circumstances and blamed David. He did not mention any detail to suggest a plan for which David's continuing existence was necessary. In Mr. Lutczyk's own words, this was about "exacting revenge". There were no witnesses to Mr. Lutczyk's serious crimes except David who was handcuffed in front of his armed kidnapper. David already knew there was no way out. His confinement in the unit also meant that his body might never be found. He agonized over the lifelong impact on me, our 4 children, our family and friends. Now his last moments were to be spent tormented by his armed kidnapper forcing him to listen to his wife's and their 16-year-old daughter's frantic pain and despair.

During the preliminary inquiry, David spent two days in the witness stand describing the details of that night. Except the part about the voicemails. He couldn't get the words out. He still can't. There are no words to describe Mr. Lutczyk's cruelty or David's rage and despair.

When David refocused, he saw in Mr. Lutczyk's expression a look of satisfaction. David realized that this torment and his humiliation were part of the plan for exacting revenge.

Mr. Lutczyk moved toward the rear of the cube van and appeared to be checking on something. He was not out of sight but David had a few moments without direct contact. He says it was like a few hours. Our life together replayed in front of him. Our wedding, each of our children as babies, family times at the cottage, his childhood home, his parents, his grandmother. And then acceptance and total peace.

Lutczyk returned and stood in front of David. David then forgave Mr. Lutczyk for what David believed he was about to do. Holding his gun, Mr. Lutczyk appeared not to have expected forgiveness and mentioned something about things having "gone too far". David held out his handcuffed wrists, questioned whether the handcuffs were necessary and requested that Mr. Lutczyk remove them. He did.

David then referred to the voicemails, stressed the importance of contacting me directly – not on speakerphone or by text – and undertook to keep his part of the conversation to the 4 points I mentioned before. David suggested that Mr. Lutczyk dial our home number and he

would see the phone's display to confirm. Mr. Lutczyk dialed the number and handed the phone to David. We spoke, as I've described before.

David thanked Mr. Lutczyk, handed the phone back to him and then encouraged him to go for food. A Tim Horton's drive through so that they would not have to exit the truck. Perhaps contact Mr. Duignan again. Mr. Lutczyk agreed. Now outside the unit, no matter what would happen next, at least it would happen outside. David would not go back into that unit.

Mr. Lutczyk again steered with his left hand and held the gun in his right. Driving south on Hopkins, he mentioned a "doomsday scenario" in relation to the unit. David tried to refocus the discussion to the plan for food and contact with Mr. Duignan. Mr. Lutczyk responded sarcastically to the effect that the plan seemed to be working well for David but not so well for him. With that and the doomsday scenario comments, David realized that time was running out. The doomsday scenario comment was ominous because of Lutczyk's military training. David thought for the first time about explosives. He realized that this could be more than an end-of-life situation for him but also for others that might be drawn into the unit. David would not go back into that unit or let others be drawn into it.

Driving east on Consumers Drive, David examined the driver's side door handle, lock and seatbelt as they passed under each street light. He mentally prepared for the release of his own seatbelt, unlocking and opening the door and rolling out. Mr. Lutczyk continued to hold his gun in his right hand between them. Lutczyk would have a clear shot but at least it would be in the open where David could be found.

Turning into the Tim Horton's, David planned for the moment when Mr. Lutczyk would turn to place the order. However, Lutczyk continued to look ahead while he placed the order at the drive through window. He could see David and continued to hold his gun in his right hand. David waited.

Driving forward to the pick-up window, David realized that this would be his very last chance. Mr. Lutczyk would have to turn momentarily to pick up the order. Lutczyk started to turn and David started to move his hand toward his seatbelt and the door. Lutczyk and David both stopped and turned toward a Durham Regional Police cruiser that had, at that moment, pulled diagonally into parking spots beyond the front passenger corner of Lutczyk's truck and was facing toward them.

Lutczyk, still holding the gun, became immediately agitated. David feared an armed confrontation while captive in the truck. He tried to reassure Lutczyk that there was nothing unusual about two guys in a drive through or a police car at Tim Horton's. Then the cruiser's spotlight was aimed directly toward them. David made the shape of a gun with his right hand and stared directly at the cruiser. He hoped that the police would understand that there was a firearm and that David was not in control. He hoped that they would follow if Lutczyk took off. Lutczyk floored the gas pedal, jumped the curb and sped out of the parking lot heading west on

Consumers through a red light at Thickson and toward the unit. In the side mirror, David saw several police cruisers in pursuit.

At high speed and with the police in pursuit, while holding the gun in his right hand, Lutczyk spoke about getting back to the unit and the cube van. David contemplated grabbing the steering wheel but decided against it. He tightened his seat belt.

The chase continued west on Thickson, north on Hopkins, east on the dead end street and into the unit's parking compound. Lutczyk smashed the truck through the gate and skidded to a stop near the door to the unit. David could see his and Lutczyk's shadows on the wall in front of them from the lights of the many police cruisers that now surrounded the parking compound behind Lutczyk's truck just outside the gate. The police yelled, "Hands up!", and David immediately raised both. Lutczyk, holding the gun, moved across the front seat and straddled David facing backward toward the police. He unbuckled David's seatbelt, opened the passenger door and jammed the gun into David's ribs to force him from the vehicle. Outside the vehicle, Lutczyk held his gun with his right hand while holding onto David with his left hand. They faced toward the police with Lutczyk behind David. My husband had become what is known as Mr. Lutczyk's "meat shield".

David saw the lights of many vehicles and the silhouettes of police with guns drawn. Some appeared to be rifles. Looking down, David saw red dots of light on his body. He felt the gun pressed into his ribs. We later learned that Mr. Lutczyk's gun was also pointed at David's head. The police were yelling, "Get down!" David shouted to Mr. Lutczyk that they should get down. Lutczyk continued to pull David toward the door to the unit. David would not enter that unit. David then dropped to the ground intending to provide at least a moment's separation between him and Mr. Lutczyk. Lutczyk quickly dropped behind him.

David and his armed kidnapper then wrestled on the ground immediately next to the door to the unit while the police continued to aim. Lutczyk was attempting to drag David into the unit and David resisted. If Lutczyk shot David, it would be outside and his family would know where he was and what had happened. David would not go into that unit.

With the door partially open, Lutczyk suddenly released his grip and slipped into the unit. The police yelled, "Run!", and David ran toward the lights.

Two officers grabbed David and frisked him. David immediately told them to not let their officers go into the unit. He told them about Lutczyk, his military training and the reference to "doomsday scenario". They sat with David in a cruiser and he drew pictures of the unit. Then they took David to the detachment in Whitby. He called me. At about 4:00am DRPS united David with his family and Bob Duignan at the downtown Oshawa detachment. David was disheveled, his wrists were red from the handcuffs but he was safe. At 6:30am, David was delivered home by DRPS. By 8:15 the next morning, David was back at Oshawa City Hall.

It is hard to explain how difficult it was to leave the house that next morning. David's decision to return to City Hall the next day was consistent with my own decision to return to the classroom and our expectation of our 4 children that they would do likewise. David and I knew that we each needed to reassure ourselves and family, friends and colleagues that we and they were not going to be changed by this attack. I will never forget David's courage as he left that morning from the exact spot from which he had been kidnapped. Or the next evening when, surrounded by media in that same spot, he thanked Durham Regional Police Service for their professionalism and declined comment except to say that Mr. Lutczyk was entitled to a fair trial. David's comments, at that time, on that spot say everything about my husband's integrity and professionalism. Each day since, David's commitment to family and client returns him to City Hall from the exact spot from which he was kidnapped.

Mr. Lutczyk has referred to my husband's return to work the next day. Almost 2 years later, in the August 28, 2014 edition of Oshawa This Week, an article detailed Mr. Lutczyk's "jailhouse interview" in which he is reported to have complained about the impact of his pre-trial custody on his plan to register for the upcoming municipal election:

"I mean the denial of bail in my case is a clear, a very clear and unequivocal example of political intrigue. This is about politics, make no mistake about it. Can I prove it? Yes. And I will. My bail denial is very suspect."

[...]

"Mr. Potts was back in his office the very next day after this crazy car ride that we were on ... So the bottom line is I need to get out on bail and then I'll be able to represent my constituents."

Mr. Lutczyk showed absolutely no remorse as he dismissively referred to his victim's return to City Hall the next day and by minimizing his serious crimes as simply a "crazy car ride". Mr. Lutczyk also made himself available for a jailhouse interview that was published in the December, 2014 edition of Loupe News Magazine. Never has Mr. Lutczyk expressed anything resembling remorse for his planned and outrageous attack on our family.

When the negotiated statement of facts was read into Court on December 1, 2015, we heard more of what Mr. Lutczyk had assembled. It was devastating.

The Yukon truck had stolen plates. The proper plates had been removed and were in the truck along with:

- An Armi Jager AP90 (AK47 variant) 0.22 calibre semi-automatic rifle with 2 clips containing 27 rounds and 15 rounds in a backpack behind the driver seat;
- Nylon ties;
- Gloves;
- Bear spray;

- Wire cutter;
- Collapsible shovel.

The cube van had been altered to include wooden cabinets and metal plates for the doors and windows. Inside the cube van and the unit were:

- 1,548 rounds of ammunition for the Armi Jager rifle;
- A 7.65 mm Semi-Automatic Langenhan Army Handgun with 18 rounds available. This is a prohibited firearm;
- A .22 calibre Colt, Revolver Handgun. This is a restricted firearm and uses the same ammunition as a Semi-automatic Armi Jager Rifle;
- A 14.5 x 114 calibre Single-Shot, bolt-action, Russian Anti-Tank Rifle with 19 rounds of ammunition available. This weapon is capable of piercing body armour and has an estimated range of 3 km;
- A 7.62 x 39 calibre Semi-Automatic Simonov Type 56 SKS Rifle. 1732 rounds of ammunition were available in the unit;
- A device with 3 filled propane tanks and ABS piping surrounding the outside;
- All materials required to make a pipe bomb: threaded pipe, end caps, wicks and 5 containers of gun powder;
- Nylon Ties;
- 2 hand grenades – both hollowed out but one had a live fuse;
- Plates for body armour.

Over these last three years, three months and thirteen days and through many pre-trial proceedings, we know that David's only connection to Mr. Lutczyk was David's professional responsibilities to his municipal client and as an officer of this Court. We know that David was targeted only because several years before the kidnapping, David exercised prosecutorial discretion and gave an opinion to his client in a civil proceeding. It is beyond shocking to think that David would be so deliberately targeted in this way for simply having performed his professional duties several years before his last contact with this man who is completely without remorse. Who might be next on the list? I constantly worry that Mr. Lutczyk will continue to "exact revenge" when he is released from prison.

I have known and loved David since we were 14. We celebrated our 25th anniversary last summer. David is a husband and he is a father, son, brother and friend to many. He describes himself as those things first even though most people outside of those circles know him as Oshawa's City Solicitor. He is intelligent, loyal, compassionate and hard-working. He has courage. These things also make him an excellent lawyer. He forgives and encourages forgiveness. David sees the potential in everyone including Mr. Lutczyk. He speaks of Mr. Lutczyk's intelligence and he's sympathetic to his personal and financial challenges. David

would have welcomed Mr. Lutczyk that night if he had had the chance and the first to help if he had been asked.

This is my perspective on why David has declined to submit a victim impact statement. He is grateful for what he has and will not describe himself as a victim. He loves me and our children and admires our strength. He forgives unconditionally. We know that it was grace and the excellent work of Durham Regional Police Service that saved my husband's life that night.

I want my husband to finish coming home from that October 15, 2012 Council meeting. I want him to come safely home tomorrow. I want the same for the police, Crown counsel, lawyers, court clerks, judges and others who serve like my husband. I want everyone to see that an attack like this is an attack on society itself.

Thank you for taking the time to consider my statement.

I would like to present my statement in court.

The information contained in this statement is true.

Dated this 27th day of January, 2016 at Courtice, Ontario



Maureen A. Potts