SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Hickey, 2011 NSSC 186

Date: 20110513
Docket: CRH 314673
Registry: Halifax

Between:

Her Majesty the Queen

v.

Donovin Patrick Hickey

Judge:	The Honourable Justice Felix A. Cacchione
Heard:	March 22-24, 28-31, 2011, in Halifax, Nova Scotia
Written Decision:	May 17, 2011
Counsel:	Timothy L. O'Leary and Christopher Nicholson, for the Crown Geoffrey C. Newton, for the Defendant

By the Court:

[1] The accused Donovin Patrick Hickey (the accused) was convicted by a jury of unlawful act manslaughter in the death of Colin Carter (the victim). He is to be sentenced today for that offence. Given that the verdict was rendered by a jury, section 724(2) of the **Criminal Code** governs for the purpose of determining the facts on which the sentence to be imposed is to be based.

[2] Section 724(1) states:

> (1) In determining a sentence, a court may accept as proved any information disclosed at the trial or at the sentencing proceedings and any facts agreed on by the prosecutor and the offender.
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> (2) Where the court is composed of a judge and jury, the court
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> (a) shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty; and
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> (b) may find any other relevant fact that was disclosed by evidence at the trial to be proven, or hear evidence presented by either party with respect to that fact.

[3] This tragedy began in a bar where the victim Colin Carter had been drinking. The accused, his employer Wayne Misener and a co-worker, Mr. Misener's son entered the bar. Wayne Misener was there to speak to someone regarding a boat to be used for recreational fishing. Wayne Misener knew Colin Carter for quite a few years. Mr. Carter made some teasing comments about Wayne Misener. The accused heard those comments. The accused took offence at what Mr. Carter said in Mickey's Bar.

[4] The accused left the bar and went outside to have a cigarette. Three minutes later Colin Carter also went outside to have a cigarette. He spoke to the accused and made what the accused viewed as further disparaging remarks about Wayne Misener's carpentry skills. The accused took offence at those remarks. He interpreted the comments as calling into question his own carpentry skills.

[5] The accused returned to the bar and advised Mr. Misener of Mr. Carter's comments. Mr. Misener could tell that the accused was upset by the tone of his

voice. Mr. Misener spoke to Mr. Carter in the bar about his comments. Mr. Carter told him that he did not mean what he said. Mr. Misener's evidence at trial was that "Mr. Carter said he is just being an asshole and didn't mean it". Some ten minutes later Mr. Misener and Mr. Carter went outside to have a cigarette and most likely discuss what Mr. Carter had said.

[6] The mall surveillance video, Exhibit #8, shows the accused leaving the bar 29 seconds after Mr. Misener and Mr. Carter left the bar. Less than three minutes later Mr. Carter was on the ground unconscious as the result of one punch struck by the accused.

[7] The evidence of Wayne Misener and the accused's statement, Exhibit #6 given to Detective Carlisle on June 2nd, 2008 established that the accused, in his own words "pissed off" because of Mr. Carter's comments. The accused told the officer that he felt belittled by Mr. Carter's comments even though the comments were not about him.

[8] The accused was aware that Mr. Carter was under the influence of alcohol. He stated to Detective Carlisle "buddy might have had a little too much to drink...getting a little loose with the tongue." The accused, despite knowing this, chose to involve himself in something that was none of his business. He acknowledged this by saying to Detective Carlisle, "I fucking stuck my fucking nose in when I shouldn't have."

[9] Instead of going to Mr. Misener's truck to retrieve his gear and return home, which the accused testified was his intention when he left the bar the second time, he, by choice, inserted himself into a discussion between Mr. Misener and Mr. Carter.

[10] The evidence clearly leads to a finding that the accused was upset about Mr. Carter's comments, even though they were not about him and that he became angry when he overheard Mr. Carter denying to Mr. Misener that he had made those comments. The accused believed that Mr. Carter was calling him a liar which made him angry. He then lashed out and struck Mr. Carter with one punch. Mr. Carter immediately fell to the ground unconscious.

[11] The blow was of such significant force that it not only broke many of Mr. Carter's facial bones, but also sheared the axons in Mr. Carter's brain. Dr. Wood,

the forensic pathologist, testified that this shearing resulted from the brain rotating in the skull. Her opinion was that the axonal shearing was most likely caused by a blow to the side of the head. An axonal injury presents immediately with a loss of consciousness or death.

[12] Implicit from the jury's verdict was a rejection of Mr. Hickey's testimony that he acted in self-defence. I accept as proven facts the evidence of Wayne Misener as to what he witnessed on June 2nd, 2008, the accused's statement to the police given that same day and his comments to his brother George also given that day.

[13] Mr. Misener testified that Mr. Carter's hands were by his side when he argued with the accused and that he did not see Mr. Carter make any motion with his hands before he was struck with a punch from the accused's right hand.

[14] The accused told his brother George of a verbal altercation where Colin Carter was waving his finger at him and had told him to go fuck himself. The accused told his brother that is when he hit Mr. Carter.

[15] At trial the accused stated for the first time since this incident that Mr. Carter took two steps towards him, that he had a look in his eye and that he, the accused, did not know what Mr. Carter would do. This evidence was rejected by the jury.

[16] Both common sense and logic would dictate that a person who, soon after the event, was relating to others what triggered his assault was the victim's actions would include that information in his version of the events. The accused did not. He did not tell the 911 operator that he had struck Mr. Carter. He did not tell his brother George what he testified to at trial, nor did he tell Detective Carlisle that he was reacting to a perceived threat and acting in self-defence. At a time when the events were freshest in his mind and it would make the most sense to remember them, Mr. Hickey did not tell others this pertinent and exculpatory information. This can be viewed either as Mr. Hickey having convinced himself that what he testified to at trial is what actually occurred or that the accused was attempting to mislead the court.

[17] I accept as proven facts the version of events contained in the accused's statement, Exhibit #6. I am satisfied the accused has come to believe that his testimony at trial is actually what occurred. He has convinced himself that he acted

in self-defence. This, however, is not supported by the evidence of Wayne Misener, a person who still considers himself a friend of the accused, and it is not supported by the accused's own words spoken the night of this occurrence.

[18] The accused told Detective Carlisle on June 2nd, 2008 that he was "pissed off" when he struck Mr. Carter. He made no reference to Mr. Carter rushing towards him.

[19] It is clear that the accused struck Mr. Carter in anger. One punch delivered with such significant force that it shattered many of Mr. Carter's facial bones and caused his brain to rotate in his skull. It is for this action that the accused is to be sentenced.

[20] The accused embarked on a dangerous course of action that carried a risk of harm. A risk which was foreseeable. The accused is required in law to take responsibility for all the consequences of his actions including the death of Mr. Carter: See **R. v. Creighton** (1993), 83 C.C.C. (3d) 346 (S.C.C.) at p. 378.

[21] The maximum sentence for manslaughter is life imprisonment. There is no statutory minimum penalty for this offence. Manslaughter is a residual category that covers an almost infinite array of circumstances ranging from near accidental killing to near murder. It is for this reason that sentences imposed for manslaughter must be flexible. Such sentences range from a suspended sentence: **R. v. Cormier** (1974), 9 N.S.R. (2d) 687 (SCA) or a conditional sentence: **R. v. Stratton** (2002), 204 N.S.R. (2d) 372 (SC) to 20 years imprisonment: **R. v. Julian** (1973), 6 N.S.R. (2d) 504 (CA). The sentence which is to be imposed must be tailored to suit the degree of moral fault of the offender: **R. v. Creighton** (supra).

[22] Most manslaughter convictions, as has been stated today, fall within a four to ten year range. However given the variable nature of manslaughter offences this "range" does not mean "that manslaughter sentences ought generally to fall within those limits": **R. v. Lawrence** (1999), 172 N.S.R. (2d) 375 (NSCA) at para. 14.

[23] In **R. v. Johnny** (1994), 46 B.C.A.C. 213 the offender, his girlfriend, the victim and others were spending the day drinking. At some point the accused observed his girlfriend and the victim kissing. At first he turned away, but then he turned around, ran at the victim and punched him once in the face. The victim was more susceptible to brain injury because of his intoxication and being involved in

another fight (not with the offender) earlier that day. The punch killed the victim. The offender pled guilty to manslaughter. The court held that this was a spontaneous act, but that it was not a case of "near accident". The court took into consideration the offender's aboriginal status, his guilty plea and the fact that the offence was out of character. The court rejected a conditional sentence and imposed a sentence of six months incarceration plus three years probation. The Court of Appeal rejected the accused's sentence appeal and held that a conditional sentence was only appropriate for manslaughter where there are exceptional circumstances. The court further held "that exceptional circumstances are more likely to be found to be present to justify non-custodial sentences or the imposition of a reduced sentence where the conduct is marked by carelessness or near accident as opposed to violence". (Para. 15)

[24] In **R. Braune**, [2006] ONCJ 50 the accused held a grudge against the victim apparently over remarks the victim had made about the accused and his girlfriend. By chance, the accused happened to encounter the victim in a parking lot. The accused confronted the victim. The victim attempted to diffuse the situation at which point the accused struck him with a single punch. The force of the blow caused the victim's head to hit an adjacent wall. The single punch thrown caused the death of the victim. The accused pled guilty to manslaughter. The accused was 18 years old at the time of the offence, had no prior record, showed remorse and there was a prospect for rehabilitation. These were viewed as mitigating factors. The court considered the force of the punch and its unprovoked nature as aggravating factors. The accused was sentenced to 16 months imprisonment followed by two years probation. The accused had already served seven months of pretrial custody.

[25] In **R. v. Cascisa**, [2001] MBCA 168 the accused and the victim engaged in a consensual drunken fist fight that was instigated by the victim. The accused knocked the victim unconscious and then kicked him in the head with such violence that a shoe imprint was left on the victim's forehead. The victim died and the accused was charged with manslaughter. The accused pled guilty and the sentencing judge noted the offender's remorse and guilty plea as mitigating factors. The accused was sentenced to two years less a day taking into account the time spent in pretrial custody and while on bail under strict bail conditions. The Crown appealed and the Court of Appeal upheld the sentence but added a two year probationary term.

[26] In **R. v. McGoran**, [2004] B.C.S.C. 173 the drunken victim approached the accused and his friend and told them that he was looking for a young female prostitute. The accused and his friend were offended and decided to rob the victim to teach him a lesson. The robbery went wrong. The accused believed that the victim was moving toward his friend and he then spontaneously hit the victim a single blow with a stick on the back of the head. The blow was not of great force but landed on a particularly vulnerable area of the head which led to the death of the victim. The accused pled guilty to manslaughter. The sentencing judge took into account the accused's troubled youth, his attention deficit hyperactivity disorder and his lack of a prior criminal record. The judge also took into consideration the offender's remorse. The court considered the offender's confession, guilty plea, young age and no prior criminal record as mitigating factors that shifted the appropriate sentence to the lower end of the range. The court rejected a conditional sentence as not being "consistent with the fundamental purpose and principles of sentencing" particularly given the accused's "aggressive reaction to authority, lack of obedience to rules and restriction and lack of a support network". The accused had spent seven months in pretrial custody and was sentenced to a period of two years less one day, plus three years probation.

[27] In **R. v. Henry**, [2002] N.S.C.A. 33 the accused witnessed a man assault a woman outside a bar. The accused intervened and shoved the intoxicated man. The man then left the scene but was followed by the accused who punched him once in the face. The punch caused the man to fall backwards, hitting his head in a manner that ultimately caused his death. The accused was convicted of manslaughter. The accused was 30 years old and had no prior criminal record. He was given a conditional sentence by the trial judge, but on appeal the Court of Appeal raised that sentence to four years imprisonment. The court noted at paragraph 19 that:

> A significant distinguishing factor between cases where a low or non-penitentiary term is appropriate and those where a lengthy sentence is imposed for manslaughter is the moral blameworthiness or fault of the offender...

The Court of Appeal listed the following possible mitigating factors: long term abuse of the accused by the victim; battered woman syndrome; impulsive act or immediate reaction to perceived or actual wrong by the victim; mental illness of the accused; extreme stress or provocation; concern about child care duties of the accused; poor family background, abuse as a child; self-defence; genuine remorse;

youth of the accused; and a ready admission of responsibility - voluntary surrender to the police. The Court of Appeal stated that:

> In many of these cases where a lenient sentence was imposed, there was more than one mitigating factor... (para. 21)

In **Henry** the court noted that an absence of intent to cause death could not be considered a mitigating factor since this is an element of the offence. The court also noted that a lack of a prior criminal record is not an exceptional factor favouring leniency. The Court of Appeal then went on to find that the moral blameworthiness in **Henry** was aggravated by

> ...the respondent's continued notion that his action was justified, and the predatory callousness of his intentional assault on a smaller, intoxicated man...

[28] In **R. v. Isenor**, [2007] NSPC 70 the offender was sentenced to a period of three years incarceration where the accused who had been drinking with the victim at a bar delivered a single punch to a much larger victim either:

> ...because he had been pushed past his limits of tolerance by [the victim's] verbal abuse...or because he decided to stop [the victim's] brief advance ...or some combination of both...

The court found that it was not a spontaneous action but was preplanned, however the offender believed in **Isenor** that he would merely end up fighting the victim and not that he would kill him. The accused in **Isenor** was convicted of manslaughter and the sentencing judge considered his preplanning and his statement that the victim "deserved a punch in the mouth" as aggravating factors. The accused had an unrelated criminal record and a strong record of employment. The accused's remorse was considered as a mitigating factor. The court found that a sentence of two years less a day inadequately addressed the need for general deterrence of these types of offences. The accused was sentenced to three years imprisonment.

[29] In **R. v. M(CA)**, [1996] 1 S.C.R. 500 at 529, the Supreme Court of Canada noted that:

> ...It is a well established tenet of our criminal law that the quantum of sentence imposed should be broadly commensurate with the gravity of the offence committed and the moral blameworthiness of the offender...

[30] By its very nature, manslaughter is a grave offence. The taking of another person's life is one of society's most serious crimes. At the same time, the nature of manslaughter means that the moral blameworthiness of the offender can vary significantly. Accordingly, this Court must determine where an offence falls on the spectrum between "near accident" and "near murder".

[31] In determining a fit and proper sentence for this offence, the court must not only consider the circumstances of the offender and those of the offence, but also the concerns of the victim. As Justice McLachlin stated in **R. v. Creighton** (supra) at page 381:

> ...The criminal law must reflect not only the concerns of the accused, but the concerns of the victim and, where the victim is killed, the concerns of society for the victim's fate. Both go into the equation of justice.

[32] It is difficult not to be moved by the statements and emotion expressed by Ms. Carter in her victim impact statement. I must, however, keep in mind that the criminal process and in particular the sentencing aspect of that process is not an instrument of vengeance nor one of appeasement.

[33] In **R. v. Costa**, [1996] OJ No. 299 (Ont.Gen.Div.) Justice Watt then a trial judge stated at para. 42:

> It is also worthy of observation that the sentence to be imposed is governed by fixed principles applied to the circumstances as I have found them to be. Too often and erroneously, it is thought to afford some measure or indication of the value which a court places upon the life of a deceased. Nothing could be further from the reality that is sentencing in criminal cases. There is no measuring of the inherent or intrinsic value of the principals, and the application of some measurement of equivalence in the sentencing process. The sentence imposed ought not to be thought reflective of the intrinsic value or worth of the deceased. It is not. That is not the function of a sentence in this or in any criminal case. No sentence will ever breathe life into the deceased person, nor restore him or her to his or her family and/or friends. Would that it were that simple.

[34] The purpose and principles of sentencing are contained in ss. 718-718.2 of the **Criminal Code**. Section 718 states:

> The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
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> (a) to denounce unlawful conduct;
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> (b) to deter the offender and other persons from committing offences;
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> (c) to separate offenders from society, where necessary;
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> (d) to assist in rehabilitating offenders;
>
> (e) to provide reparations for harm done to victims or to the community; and
>
> (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[35] Section 718.1 states:

> A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[36] Under section 718.2 I must take into account certain principles that are set out in that section. This section notes in paragraph (a) that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. It also indicates that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Section 718.2 also mandates that:

> ...
>
> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

> (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

POSITION OF THE PARTIES

[37] The defence submits that a sentence of two years is an appropriate sentence in this case. It points out that the accused spent six months in pretrial custody prior to the legislative change regarding credit, on a two for one basis, being given for pretrial custody. The defence argues that the accused should be credited for one year of pretrial custody based on a two for one basis.

[38] It is submitted by the defence that the present case is virtually identical to **R. v. Isenor** (supra), where the accused was sentenced to three years imprisonment. In both the **Isenor** case and the present case only one blow was struck which caused the death of the victim.

[39] In mitigation of sentence counsel for the accused submits the following: that only one blow was struck by the accused; that the accused performed first aid on the victim and called 911 immediately after the incident to obtain assistance for the victim; that the accused turned himself into the police that same night; that the accused immediately expressed his concern for the victim's well being to the police; that the accused's residence was firebombed on the day the victim died; that the accused had no prior criminal record at the time of the incident and that the accused has been a contributing member of society from a young age.

[40] The defence maintains that the incident would never have occurred had it not been for Mr. Carter's words and actions. It is the accused's position that Mr. Carter was verbally aggressive and demeaning toward the accused and his fellow workers. It is also proffered that not only was Mr. Carter verbally aggressive, but also that Mr. Carter was walking toward the accused when he was struck.

[41] It is evident from the jury's verdict that the justification of self-defence was rejected by the jury. The only other person present at the time of this incident, Wayne Misener, did not see the victim walking towards the accused before he was struck. The accused, in relating the events to his brother George a short time later, did not make reference to the victim walking towards him nor did he tell the police this later that same evening when he gave his statement to Detective Carlisle.

[42] The Crown submits that a sentence of four years incarceration is appropriate in this case. It argues that there was no legal provocation but rather that the accused reacted impulsively to what he perceived and did not like.

[43] The Crown suggests as aggravating factors: (1) the significance of the blow struck; (2) the devastating injuries caused by that blow; (3) the fact that the accused did not tell the 911 operator of his striking the victim; and (4) the irreparable harm caused to the family of the victim.

[44] It is submitted by the Crown that the accused's remorse is not genuine in that the accused still believes his actions were justified by the victim's actions.

[45] The Crown points to the moral blameworthiness of the accused as being in the middle of the range from near accidental killing to near intentional killing. It submits that deterrence and denunciation are the objectives which should be stressed in this case.

[46] In this case I find the aggravating factors are as follows: the accused's involvement in a dispute that was none of his business; the accused's use of violence in response to a verbal dispute; the accused's knowledge that the victim was under the influence of alcohol; the degree of force used by the accused and the accused's continued notion that his action was justified.

[47] The mitigating circumstances are the accused's remorse as initially expressed to Detective Carlisle on June 2nd, 2008 and his genuine remorse as I noted it expressed today to the family of Mr. Carter; his voluntary surrender to the police on June 2nd, 2008; the out of character and impulsive nature of his reaction to a perceived wrong; and his lack of a prior criminal record.

CIRCUMSTANCES OF THE OFFENDER

[48] The presentence report notes that Mr. Hickey is 38 years old. He is separated from his wife and has one child, a 15 year old son. Mr. Hickey has a Grade 6 education.

[49] Although the presentence report refers to the accused as having a prior criminal record, it is noted that all convictions on his record are for non violent offences which occurred after the offence for which he is being sentenced today. Accordingly, the accused will be dealt with as a first offender.

[50] The report shows as well that the accused has been on his own since age 16 when he began working. He has the benefit of a positive and supportive relationship with his family. He also maintains a very positive and supportive relationship with his former wife and his son. He was described by his former wife as a great father who loves his son and spends as much time as possible with him. The accused was also described as a very reliable person to others in need.

[51] The accused has been steadily employed for the past 25 years. The report states that there is no indication that the accused abuses alcohol or non-medically prescribed drugs.

[52] The experienced probation officer who prepared the presentence report described the accused as cooperative, polite and accepting responsibility for his actions. The accused expressed to that officer remorse and a concern for the victim's family.

[53] A good friend and co-worker for twenty years described the accused as always conducting himself professionally both on and off the work site. This person also commented that the accused's work habits were very professional and detailed.

[54] The presentence report concludes by stating:

> ...The subject does not have any issues with alcohol or non-medically prescribed drugs, nor does he appear to have any anger problems...

[55] This conclusion is called into question by the accused's actions. The accused testified that he brought four to five beers to work on June 2nd, 2008 and that he had his first beer at 8:00 a.m. Anyone who begins their work day by consuming an alcoholic beverage has, in my respectful opinion, a problem with alcohol.

[56] I cannot accept that the accused does not appear to have any anger problems. As previously indicated, the accused struck the victim because he was angered by the victim's comments and the victim's subsequent denial of having made those comments. Instead of leaving the area where the victim and Mr. Misener were discussing the victim's previous comments, the accused chose to involve himself in that discussion. The accused struck the victim because he was upset by the victim's previous comments and further angered by the victim's denial of having made those comments. It is obvious from the events of June 2nd, 2008, Mr. Hickey, that you have some anger management issues.

[57] While it can be said that the accused acted impulsively, it cannot be said that he acted accidentally. The accused's action in this case was a spontaneous act but it was not an accident, nor was it self- defence.

[58] I accept that the moral blameworthiness of the accused is, as the Crown has submitted, in the middle of the range between near accident and near intentional killing. The accused took offence to comments that were not about him. He argued about those comments with a man whom he knew had been drinking. The accused was, in his own words, "pissed off" when the comments were made. He was upset when he told Wayne Misener about the victim's comments. His temper continued to simmer in the bar. When Mr. Misener and Mr. Carter went out to discuss Mr. Carter's comments the accused was close behind. His temper reached the boiling point when he perceived Mr. Carter as calling him a liar. The accused struck the victim in anger with a significant degree of force. It was not a "slap" as he told Detective Carlisle, but rather a punch thrown in anger by a man whose trade has caused him to have considerable upper body strength. The blow was struck on a person who was unprepared and under the influence of alcohol by someone who has spent more than twenty years of his life swinging a hammer. From personal experience, Mr. Hickey, I know and I am aware that hammers used in framing houses usually weigh anywhere from twenty-two to twenty-eight ounces. Swinging those for twenty years, you have a lot of upper body strength.

[59] In my opinion this case straddles the line between **R. v. Isenor** where the accused received a three year term of imprisonment and **R. v. Henry** where the accused was sentenced to four years.

[60] The Crown has suggested a term of four year term with credit being given for six months pretrial custody on a two for one basis. This would bring the sentence to one of three years.

[61] I am not prepared to give the accused credit for any pretrial custody. The court file shows that the accused was released from custody on June 3rd, 2008 and remained on bail until April 2010. He then spent approximately one month in custody until he was again released on a recognizance.

[62] On October 14th, 2010 the surety rendered. The accused was then arrested and remanded. The accused has consented to his remand until trial. That covers a period of approximately five months.

[63] The time spent in pretrial custody was as a direct result of the accused violating the terms of his release and not because the accused was denied bail. On two occasions the accused had the surety who acted for him render because of his failure to abide by the terms of his release. The accused should not, in my opinion, benefit from his voluntary non-compliance with his bail conditions which resulted ultimately in his pretrial detention.

[64] There is a need for general deterrence and there is a need for denunciation. It must be understood by the community at large that violence will not be tolerated and that a simple assault can have tragic consequences and serious repercussions. One simply has to go to a hockey game involving children where parents are in the stand yelling and screaming at each other, and in fact I have seen parents throw swings at each other over a kid's hockey game. We cannot live like that in a just society.

[65] Although this act was not an intentional killing, it was, however, an intentional assault which caused a man to lose his life and a family to lose a father, a grandfather and a friend.

[66] The accused was, because of his anger, reckless when he struck Mr. Carter. This recklessness has resulted in tragic consequences for the Carter family. The accused's recklessness has also had repercussions on his own family and his own life. A son will be deprived for a time of his father's companionship, love and financial support. His ex-wife and friend will as well be affected by the loss of his support.

[67] The community will lose a productive, contributing and otherwise law abiding member.

[68] The accused will lose his liberty.

[69] A sentence of two years as suggested by counsel for the accused does not adequately reflect the magnitude of the offence and its consequences, nor would such a sentence demonstrate the degree to which the accused's actions were responsible for what happened. This was an intentional and unlawful, albeit impulsive, assault resulting in the death of another human being. The sentence imposed must reflect society's denunciation of violence as a means of settling verbal disputes.

[70] Mr. Hickey, I sincerely hope that you take this time behind bars to truly reflect on your actions and their results. More importantly I urge you sir to examine your use of alcohol and the role that that may have played in your apparently uncharacteristic response to a perceived offence by the use of violence.

[71] If you would stand please Mr. Hickey.

[72] The sentence of this Court is that you be incarcerated for a period of 42 months in a federal penitentiary. That is three and a half years. There will be a DNA order and there will be a s.109 firearms prohibition order for a period of ten years.

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Cacchione J.