SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Garnier*, 2018 NSSC 196

Date: 2018 08 14
Docket: Hfx No. 454738
Registry: Halifax

Between:

Her Majesty the Queen

v.

Christopher Garnier

DECISION: Sentencing and Parole Ineligibility

Judge:	The Honourable Justice Joshua M. Arnold
Heard:	May 28 and August 13, 2018, in Halifax, Nova Scotia
Counsel:	Christine Driscoll, Carla Ball and Adam McCulley, for the Crown Joel Pink, Q.C. and Nicola Watson, for the Defence

By the Court:

Introduction

[1] After 18 days of pre-trial motions and five weeks of trial, on December 21, 2017, at approximately 1:55 PM, a jury convicted Christopher Garnier of the second degree murder of Catherine Campbell and of improperly interfering with the human remains of Catherine Campbell.

The Facts

[2] Section 724 of the *Criminal Code of Canada* states:

> 724 (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.
>
> Jury
>
> (2) Where the court is composed of a judge and jury, the court
>
> > (a) shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty; and
> >
> > (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] In accordance with s. 724(2) of the *Criminal Code*, as the trial judge I am required and entitled to make my own findings of relevant facts, so long as they are consistent with the jury's verdict. Having heard the evidence of eyewitnesses, forensic specialists, expert witnesses, having seen video-evidence, having seen Mr. Garnier's police statement, and hearing from Mr. Garnier himself, the jury convicted Mr. Garnier of second degree murder and interfering with Ms. Campbell's remains. This was not, as the defence suggests, a situation where the jury merely chose between what Mr. Garnier said to the police in his statement and what he testified to in court.

[4] On September 10, 2015, Christopher Garnier had just broken up with his girlfriend, Brittany Francis. They had been living together and Mr. Garnier agreed to move out. He had been financially stressed for some time leading up to September 10, and was poised to start a new job.

[5] Mr. Garnier made arrangements with his friend Mitch Devoe to stay at his house at 5714 McCully Street as he had moved out of the residence he shared with Ms. Francis. On September 10, 2015, Mr. Garnier and Mr. Devoe drank alcohol and smoked marijuana. Mr. Devoe tried to cheer Mr. Garnier up regarding the end of his relationship with Ms. Francis. He prepared his pull-out couch for Mr. Garnier to sleep on. After drinking and smoking at Mr. Devoe's, the pair went to a bar in downtown Halifax called the Alehouse. They continued to drink. Mr. Devoe eventually left the Alehouse and ended up in the Halifax Regional Police drunk tank.

[6] Surveillance video from the Alehouse shows Christopher Garnier meeting the victim in this case, an off-duty police officer named Catherine Campbell. The video shows Mr. Garnier and Ms. Campbell dancing, kissing, and embracing each other passionately at the Alehouse between 3:00 and 3:30 AM. Bar staff had to tell them to "cool it" on a couple of occasions. The video shows Christopher Garnier and Catherine Campbell leaving together. The pair took a taxi to Mr. Devoe's house on McCully Street. There, Mr. Garnier killed Ms. Campbell.

[7] In a recorded video statement, Mr. Garnier confessed to the police:

- that he punched downward into Ms. Campbell's face twice;
- that his punches were fast;
- that he guessed her nose was bleeding;
- that he did not think Ms. Campbell moved much from where she was originally after he punched her and was not sure if she was alert after that;
- that he then put his hands around her neck with his thumbs together while he was standing over her;
- that she was choking while he was doing this;
- that she was not struggling very much while he was choking her;
- that he removed his hands from her neck when she was gasping; and
- that he does not know what he was feeling when he did this, but by the time he thought about it, it was already done.

[8] Dr. Matthew Bowes, forensic pathologist, testified that:

- Ms. Campbell had black eyes and a fractured nose;
- the fractured nose occurred around or just before death;
- more likely than not Ms. Campbell's cause of death was strangulation; and

- with steady pressure on the neck it may be a low number of seconds or more for person to become unconscious depending on the circumstances.

[9] Dr. Bowes said studies estimate that time to death by strangulation is in the vicinity of two to six minutes if pressure is continuously applied to the neck. It depends on the effort put into the strangulation.

[10] Sergeant Adrian Butler, an RCMP Bloodstain Pattern Analyst, testified that:

- when he examined the crime scene at McCully Street, he found 26 blood spatter stains on the floor of the den, one on the speaker cabinet, three on the front of the speaker, five on the bottom of the wall near the kitchen, and four on the hallway floor;
- additionally, Mr. Devoe's Swiffer mop had blood transfer stains, as did the TV; and
- there were also bloodstains on a Kleenex box.

[11] Sergeant Butler said that the 41 total spatter stains found in the McCully Street apartment were consistent with a source of liquid blood, with a DNA profile matching Catherine Campbell's, being situated in the den and affected by a measure of force creating droplets of blood that travelled through the air and onto the hallway floor, den floor, speaker and cabinet in the den, as well as the den walls. This confirms that Ms. Campbell was struck in the face, as Mr. Garnier described.

[12] Dr. Greg Litzenberger, a Forensic DNA Analyst, confirmed that Ms. Campbell's DNA matched the blood splatter in McCully Street.

[13] Mr. Garnier testified at trial that Ms. Campbell died during erotic asphyxiation gone wrong. By way of the verdict, the jury clearly rejected Mr. Garnier's testimony. Interestingly, during his police interview, the following exchange occurred:

> A. Like I said, I don't think we had sex.
>
> CST. ALLISON: Okay.
>
> A. Like, I ... I would have known ... I would have felt it the next day.
>
> CST. ALLISON: Okay. Do you remember, like, if she ... if there was any kind of talking about, like, you know, rough sex or anything like that, Chris, or ...
>
> A. (Shakes head No)

Q. No?

A. I can't remember.

CST. ALLISON: Do you remember ... did you ... were you trying to choke her or anything like that? You know what I mean? Like, some people are in ... you know what I mean? Like, into that kind of thing.

A. (Shakes head No)

Q. You know what I'm saying?

A. (Shakes head No)

Q. You don't remember that at all?

A. No.

CST. ALLISON: Okay. Because there are some people that like ... you know, that's part of their ... sometimes when they have sex they like to have that happen as well, right? Like a little asphyxiation. Or I forget the exact name for it.

Chris, I appreciate you being honest with both of us there. I think you ...

A. I wanted to be.

CST. ALLISON: No, I know you did. I know you did. Like, and that's ...

A. I don't know why this happened.

[14] There is no evidence to explain why things went so wrong once Mr. Garnier and Ms. Campbell entered the McCully Street residence. What is clear is that shortly after they went into the McCully Street residence, Christopher Garnier punched Ms. Campbell in the face, broke her nose, stunning her, and then strangled her for between two and six minutes until she died, all while she was lying on the pull-out couch. Aside from Mr. Garnier's broken chain, a scratch on his shoulder and his DNA being found on Ms. Campbell's fingernail and the chain, there was no evidence or indication of an actual altercation between Mr. Garnier and Ms. Campbell.

[15] Video and forensic evidence confirm that after strangling her to death, Mr. Garnier put Ms. Campbell's body into a wheeled recycling green bin. He put garbage bags on top of her body in the green bin to hide her body. He then wheeled her through the North End of Halifax, dropped her down a small cliff, dragged her through brush, and eventually put a large box used to house feral cats on top of Ms. Campbell's remains in an effort to further hide his crime.

[16] When Mr. Devoe arrived back at his own home at approximately 9:30 AM on September 11, the pull-out couch was folded back up, the mattress was gone and Mr. Garnier was sleeping on a different couch.

[17] The police located Ms. Campbell's body where Mr. Garnier left her on September 16, 2015, five days after she was killed. At that time, Ms. Campbell was in brush, hidden underneath the feral cat box, partially clothed and was starting to decompose.

[18] Dr. Litzenberger found DNA matching Ms. Campbell on a discarded blue t-shirt of Mr. Garnier's concealed in yet another location, and on Mr. Garnier's watch. He found both Ms. Campbell's and Mr. Garnier's DNA on Mr. Garnier's neck chain located by police on top of the building housing Fred's. He also found Mr. Garnier's DNA on or under Ms. Campbell's fingernail.

[19] Some of Ms. Campbell's personal effects from that evening, such as her ID, phone, and shoes were never located. Neither was Mr. Devoe's missing mattress or bedding.

Catherine Campbell

[20] Catherine Campbell was a member of the Truro Police Service. She was also a volunteer firefighter. She was a daughter, a sister, an aunt and a friend. As a first responder she was a valued member of society. Society has suffered a significant loss as a result of Catherine Campbell's murder.

[21] I have read and heard Victim Impact Statements from: Susan and Dwight Campbell, Autumn Garneau, Amanda Wong, Amy Garneau, Hillary Daigle, Erin Adams, Robert-John Hunka, and Amy Pointon. Her family and friends are devastated. They loved her and miss her. According to some of their statements, their pain was exacerbated during the trial when Mr. Garnier attempted to blame Ms. Campbell for her own death, a position the jury rejected through their verdict.

[22] Erin Adams stated in her Victim Impact Statement that she now worries when her adult daughters go out to clubs and meet new men. There is no evidence at all that Ms. Campbell's death was related to her employment as a police officer. She was however trained in law enforcement and self-defence. As Ms. Adams suggests, there can be no doubt that many members of society, including women and parents of women throughout this Province who would be less able to defend themselves than Ms. Campbell, have been deeply troubled by this crime. I am

mindful of the importance to society of stopping violence against women, and of the importance of ensuring that women do not have to fear for their safety.

Sentencing Provisions

[23] The *Criminal Code of Canada*, R.S.C., 1985, c. C-46, (the "*Code*") sets out the punishment for murder. Section 235 of the *Code* states:

> 235 Everyone who commits first degree murder or second degree murder is guilty of an indictable offence and shall be sentenced to imprisonment for life.

[24] Subsection (2) states:

> For the purposes of Part XXIII, the sentence of imprisonment for life prescribed by this section is a minimum punishment.

[25] Relevant also are subsections 745(a) and (c) of the *Code*, which state:

> 745. Subject to section 745.1, the sentence to be pronounced against a person who is to be sentenced to imprisonment for life shall be
>
> > (a) in respect of a person who has been convicted of high treason or first degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served twenty-five years of the sentence;
> >
> > …
> >
> > (c) in respect of a person who has been convicted of second degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served at least ten years of the sentence or such greater number of years, not being more than twenty-five years, as has been substituted therefor pursuant to section 745.4; …

[26] Section 745.4 of the *Code* states:

> 745.4 Subject to section 745.5, at the time of the sentencing under section 745 of an offender who is convicted of second degree murder, the judge who presided at the trial of the offender or, if that judge is unable to do so, any judge of the same court may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and to the recommendation, if any, made pursuant to section 745.2, by order, substitute for ten years a number of years of imprisonment (being more than ten but not more than twenty-five) without eligibility for parole, as the judge deems fit in the circumstances.

[27] Section 746 of the *Code* states:

> 746. In calculating the period of imprisonment served for the purposes of section 745, 745.1, 745.4, 745.5 or 745.6, there shall be included any time spent in custody between
>
> > (a) in the case of a sentence of imprisonment for life after July 25, 1976, the day on which the person was arrested and taken into custody in respect of the offence for which that person was sentenced to imprisonment for life and the day the sentence was imposed…

[28] Section 182 states:

> 182 Every one who
>
> > (a) neglects, without lawful excuse, to perform any duty that is imposed on him by law or that he undertakes with reference to the burial of a dead human body or human remains, or
> >
> > (b) improperly or indecently interferes with or offers any indignity to a dead human body or human remains, whether buried or not,
>
> is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Crown Recommendation

[29] The Crown says that Mr. Garnier's parole ineligibility date for the second degree murder conviction should be set at 16 years.

[30] The Crown says that Mr. Garnier should be sentenced to five years in relation to the interfering with human remains conviction.

Defence Recommendation

[31] Mr. Garnier says that his parole ineligibility should be set at 10 years. He says he should receive two years concurrent for the s. 182 conviction.

[32] In the Defence brief, counsel states:

> The Supreme Court of Canada addressed the approach to be taken in determining the length of parole ineligibility in *R. v. Shropshire* [1995] 4 SCR 227 (Tab 1). In *Shropshire*, the Court held that, as a general rule, the period of parole ineligibility is for 10 years unless the trial judge, exercising his or her discretion under Section 745.4, determines the offender should wait a longer period before having his suitability assessed:
>
> > 27 … [A]s a general rule, the period of parole ineligibility shall be for 10 years, but this can be ousted by a determination of the trial judge that,

> according to the criteria enumerated in s. 744 [now 745.4], the offender should wait a longer period before having his suitability to be released into the general public assessed. To this end, an extension of the period of parole ineligibility would not be "unusual", although it may well be that, in the median number of cases, a period of 10 years might still be awarded.

The Court went on to explain that the objective of the Section 745.4 is to reflect the range of seriousness and varying degrees of moral culpability in second degree murder convictions:

> 31 If the objective of s. 744 [now s. 745.4] is to give the trial judge an element of discretion in sentencing to reflect the fact that within second degree murder there is both a range of seriousness and varying degrees of moral culpability, then it is incorrect to start from the proposition that the sentence must be the statutory minimum unless there are unusual circumstances. As discussed *supra*, a preferable approach would be to view the 10-year period as a minimum contingent on what the "judge deems fit in the circumstances", the content of this "fitness" being informed by the criteria listed in s. 744 [now 745.4]. As held in other Canadian jurisdictions, the power to extend the period of parole ineligibility need not be sparingly used.

Section 745. 4, therefore, requires the trial judge to undertake a fact-specific analysis based on the enumerated factors in assessing whether to increase the period of parole ineligibility. The factors outlined in Section 745.4 include:

(a) Character of the offender;

(b) Nature of the offence;

(c) Circumstances of the commission of the offence; and

(d) Recommendations of the jury, if any.

The leading case in Nova Scotia with respect to the parole ineligibility analysis is *R. v. Hawkins*, 2011 NSCA 7 (Tab 2). The offender in *Hawkins* slit the throat of a mentally disabled man in his own home as the offender was robbing him, and showed no remorse for his actions. The callousness and brutality of the offence left the trial judge to conclude that a period of 20 years was appropriate. After canvassing the jurisprudence, the Nova Scotia Court of Appeal subsequently reduced the parole ineligibility to 15 years.

[33] The Defence goes on to state in its brief:

> In *R.v. Gabriel*, 2017 NSSC 90 (CanLII) (Tab 4) at para 119, Justice Campbell citing *Hawkins*, explained the categorization of parole eligibility cases into 3 separate ranges:

> 119 ... The first category of 10-15 years is reserved for those offenders for whom the prospects of rehabilitation appear to be good and little would be served by extending the period of parole ineligibility other than to further the sentencing objectives of denunciation and retribution. The third category of 20-25 years is reserved for the worst offenders who commit the worst offences. The category between 15-20 years is for those who do not fall into either of the other two.

[34] The Defence brief goes on to state:

> Background
>
> Mr. Garnier was born on November 30, 1987 in Calgary, Alberta. He is the only child of Vincent Garnier and Kimberley Edmunds. At the time of the offence, Mr. Garnier was 27 years old. He is now 30 years old and has no criminal record.
>
> Mr. Garnier completed high school at Memorial High School in Sydney Mines, Nova Scotia in 2006. During his early to mid-teenage years, Mr. Garnier was enrolled in the Royal Canadian Air Cadets.
>
> When Mr. Garnier was 19, he moved to Banff, Alberta and worked at Banff Fire and Safety for 2 years. Upon returning to Nova Scotia, Mr. Garnier attended firefighting school in Waverley, Nova Scotia. While there were no firefighting jobs open at the time of his graduation in the Halifax Regional Municipality, Mr. Garnier volunteered as a firefighter in Hammonds Plains.
>
> Over the years, Mr. Garnier was employed at Goodlife Fitness, various restaurants, and Simplex-Grinnell in Dartmouth testing and installing fire alarm systems. In addition to this, Mr. Garnier worked for his father's company, which provided occupational health and safety services.
>
> Bail
>
> Mr. Garnier was released on bail on December 20, 2016. Mr. Garnier complied with the conditions of his release up until his trial, almost a year later. Further, while on bail, Mr. Garnier worked full-time and completed online courses from Queen's University in Psychology. This speaks to his willingness and ability to live in a law abiding and peaceful way and react positively to court and correctional sanctions.
>
> Remorse
>
> During Mr. Garnier's interrogation by police, when asked what he would say to Catherine's parents, Mr. Garnier responded, "I'm sorry for what happened." (Page 106 of Transcript, Tab 1 of Defence Book of Supplementary Documents). Later in the interrogation, Mr. Garnier wrote a letter to the loved ones of Ms. Campbell. This letter read as follows:
>
> > I don't know where to start. I only hope this will give you some closure. I never wanted this to happen. I've always been a caring person, but this is

> my darkest moment. I don't expect you to forgive me for what happened, so I won't ask for your forgiveness.
>
> I do need you to know that I am so sorry this happened. If I could give my own time to get hers back I would. I will carry this with me for the rest of my life.
>
> (Letter attached as Tab 3 of Defence Book of Supplementary Documents, see also Transcript page 244-245 at Tab 2 of Defence Book of Supplementary Documents)

At trial, Mr. Garnier reiterated this apology, and tearfully expressed great remorse for his role in Ms. Campbell's death.

Although Mr. Garnier has maintained his innocence of murder, as is his right, Mr. Garnier's sincere expressions of remorse should be taken into consideration by the Court when setting his parole ineligibility.

Remorse

[35] Mr. Garnier says that the statements of remorse to the police and his letter to the Campbells were sincere and should be considered by the court. He provided legal authority for this proposition. He argued at trial that these items of evidence, his statement and the apology letter, should be excluded as they are not trustworthy and that at times he was merely telling the police what they wanted to hear. I rejected that argument. I agree that Mr. Garnier did express remorse soon after he was caught by the police.

Parole eligibility for second degree murder

[36] Section 718 of the *Code* describes considerations that have to be applied when determining sentence. They include denouncing unlawful conduct, deterring the offender and other persons from committing offences, separating offenders from society where necessary, assisting in rehabilitation of offenders, providing reparations for harm done to victims or to the community, promoting a sense of responsibility in offenders, and an acknowledgement of the harm done to victims and to the community.

[37] Section 718.2 states that a court that imposes a sentence "shall", so that section imposes a mandatory duty on a judge, to also take into consideration certain principles:

> a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstance relating to the offence or the offender and, without limiting the generality of the foregoing…

[38] None of the statutorily-enumerated aggravating factors exist in this case.

[39] In 1995 the Supreme Court of Canada, in *R. v. Shropshire*, [1995] 4 S.C.R. 227, had to consider parole eligibility or ineligibility. In *Shropshire*, the Supreme Court of Canada stated:

> 23. The only difference in terms of punishment between first and second degree murder is the duration of parole ineligibility. This clearly indicates that parole ineligibility is part of the "punishment" and thereby forms an important element of sentencing policy. As such, it must be concerned with deterrence, whether general or specific. The jurisprudence of this Court is clear that deterrence is a well-established objective of sentencing policy. …
>
> …
>
> 27. In my opinion, a more appropriate standard, which would better reflect the intentions of Parliament, can be stated in this manner: as a general rule, the period of parole ineligibility shall be for 10 years, but this can be ousted by a determination of the trial judge that, according to the criteria enumerated in then s. 744, the offender should wait a longer period before having his [or her] suitability to be released into the general public assessed. To this end, an extension of the period of parole ineligibility would not be "unusual", although it may well be that, in the median number of cases, a period of 10 years might still be awarded.
>
> …
>
> 29. Section 742(b) [as it was] of the *Code* provides that a person sentenced to life imprisonment for second degree murder shall not be eligible for parole "until he has served at least ten years of his sentence or such greater number of years, not being more than twenty-five years, as has been substituted therefor pursuant to section 744". In permitting a sliding scale of parole ineligibility, Parliament intended to recognize that, within the category of second degree murder, there will be a broad range of seriousness reflecting varying degrees of moral culpability. As a result, the period of parole ineligibility for second degree murder will run anywhere between a minimum of 10 years and a maximum of 25, the latter being equal to that prescribed for first degree murder. The mere fact that the median period gravitates toward the 10-year minimum does not, ipso facto, mean that any other period of time is "unusual".
>
> …
>
> 31. If the objective of s. 744 is to give the trial judge an element of discretion in sentencing to reflect the fact that with a second degree murder there is both a

> range of seriousness and varying degrees of moral culpability, then it is incorrect to start from the proposition that the sentence must be the statutory minimum unless there are unusual circumstances. As discussed supra, a preferable approach would be to view the 10-year period as a minimum contingent on what the "judge deems fit in the circumstances", the content of this "fitness" being informed by the criteria listed in s.744. As held in other Canadian jurisdictions, the power to extend the period of parole ineligibility need not be sparingly used.
>
> ...
>
> 34. On another note, I do not find that permitting trial judges to extend the period of parole ineligibility usurps or impinges upon the function of the parole board. I am cognizant of the fact that, upon expiry of the period of parole ineligibility, there is no guarantee of release into the public. At that point, it is incumbent upon the parole board to assess the suitability of such release, and in doing so it is guided by the legislative objectives of the parole system. … However, it is clear that the parole board is not the only participant in the parole process. All it is designed to do is, within the parameters defined by the judiciary, decide whether an offender can be released. A key component of those parameters is the determination of when the period of parole eligibility (i.e. when the parole board can commence its administrative review function) starts to run. This is the manner in which the system is geared to function - - with complementary yet distinct input from both the judiciary and the parole administrators. …

[40] In *R. v. Hawkins*, 2011 NSCA 7, Beveridge J.A. stated on behalf of the unanimous court:

> 2 Life imprisonment is the maximum sentence of incarceration in Canada. Since the abolition of capital punishment, the only penalty for any accused convicted of murder is life imprisonment. Subject to a grant of clemency from the executive, the offender will always be subject to this sentence for the rest of his natural life.
>
> 3 Parole is a possibility. For an offender convicted of first degree murder, there is no eligibility for parole prior to serving 25 years incarceration…
>
> …
>
> 98 It must be remembered that the appellant will forever be subject to a sentence of imprisonment. He may never be released on parole. Whether his risk of re-offending is such that he be permitted to be released conditionally will be up to the Parole Board. If he is released, it is only on his satisfactory compliance with whatever conditions the Board places on him to ensure his respect for a peaceful and safe society.

Character of the Offender

[41] Until he murdered Ms. Campbell, Mr. Garnier lived a pro-social lifestyle. Mr. Garnier has provided character reference letters from:

a. Vincent Garnier, Mr. Garnier's father;
b. Angela Garnier, Mr. Garnier's stepmother;
c. Brittany Francis, Mr. Garnier's common-law spouse;
d. Floyd Gaetz, Mr. Garnier's employer while on bail;
e. Tracey Schroeder, Mr. Garnier's co-worker while on bail;
f. Jennifer Aker Gracie, friend of Mr. Garnier;
g. Laura MacKeigan, friend of Mr. Garnier;
h. Kristin Higham-MacIntyre, friend of Mr. Garnier;
i. Mitch Devoe, friend of Mr. Garnier;
j. Danielle MacDonald, friend of Mr. Garnier;
k. J.L. Russell, friend of Mr. Garnier;
l. Malcolm MacDonald, friend of Mr. Garnier;
m. Sharon Garnier, Mr. Garnier's grandmother;
n. Patricia MacEachern, Mr. Garnier's aunt;
o. Crystal Logan, sister of Mr. Garnier's common-law spouse;
p. Robert Mills, brother of Mr. Garnier's step-mother;
q. Allison Deveau and Andy Deveau, friends of step-mother;
r. April Sainthill, friend of mother;
s. Mary Aker, mother of Mr. Garnier's friend;
t. Diane Harrison-Slack, friend of Garnier family;
u. Trevor Morine and Carol Morine, friend of Garnier family;
v. Paula J. Francis, mother of Mr. Garnier's common-law spouse;
w. Linda Louise Misener, grandmother of Mr. Garnier's common law spouse;
x. Barry L. MacDonald, friend of Garnier family;
y. Amanda Theriault and Kevin Clarke, friends of Mr. Garnier;

z. Kimberley Edmunds, mother of Mr. Garnier;

aa. Aaron Francis, brother of Mr. Garnier's common-law spouse;

bb. Calvin Edmunds, uncle of Mr. Garnier;

cc. Paul Millington and Karen Millington, friend of Garnier family;

dd. Patricia Axworthy, second cousin of Mr. Garnier;

ee. Myrtle Richards, step-grandmother of Mr. Garnier

[42] These character references variously describe Mr. Garnier as a decent, thoughtful and gentle person. They say he has volunteered his time variously to worthy causes and has loyally and bravely supported persons who were in trying situations. Some of his family and friends are in disbelief at his participation in this offence, some dispute the jury's verdict and many request leniency on behalf of Mr. Garnier.

Pre-Sentence Report

[43] Mr. Garnier's Pre-Sentence Report is about as positive as could be, given the circumstances. It confirms that Mr. Garnier has been well-educated and employed. Everyone who knows him has spoken positively about him. He was not previously violent or in any sort of legal trouble. He has no issues of domestic problems or issues toward women. He has tried to better himself since his arrest on these charges. He has a history of mental health concerns, all of which were previously manageable. The Pre-Sentence Report also states:

> The offender reported no recent thoughts of self-harm, noting he did experience such thoughts after the offences and prior to his arrest, as well as initially when in custody in 2015.

Testimony of Brittany Francis

[44] Ms. Francis testified at this hearing. She maintains her relationship with Mr. Garnier, supports him and, to a great extent, extols his virtues. Despite the fact that the Crown showed her texts between herself and others, including Mr. Garnier, that exhibit problems in the relationship, she denied any significant relationship problems with him.

[45] While very briefly separated from Ms. Francis, Mr. Garnier met Ms. Campbell, brought her to Mitch Devoe's home, murdered her, wheeled her body around the city in a green bin and then dumped her in a brushy area of downtown Halifax in an effort to hide his crime. Mr. Garnier also bought a new chain as a replacement for the one that had been a gift to him and that was broken during his murder of Ms. Campbell. At the time the chain was on the roof of Fred's. He replaced that chain so that Ms. Francis would not be suspicious of him. Mr. Garnier then immediately reconciled with Ms. Francis, but did not disclose any of this information to her. Ms. Francis testified that despite his not telling her about these events, she does not believe that he was untruthful with her, as she says she did not ask him about these things. Ms. Francis maintains that Mr. Garnier is a trustworthy person.

[46] While Ms. Francis is a loyal source of support for Mr. Garnier, as a result of what I can only describe as her naïve comments, I did not find her to be a reliable witness at this sentencing hearing.

Expert Reports and PTSD

[47] The defence filed expert reports from Dr. Marina Sokolenko, psychiatrist, and Silvia Frausin, clinical psychologist. The Crown concedes, as is referenced in the reports, that Mr. Garnier has been diagnosed with significant post-traumatic stress disorder. The PTSD arises from Mr. Garnier's own murder of Ms. Campbell. Ms. Frausin concludes her report by stating:

> Of concern is what happens next. Dissociation is associated with a more difficult treatment course (Brand et al. 2003), higher rates of suicide, suicide attempts, and self-harm (Foote et al. 2008) and studies also suggest that incarceration may exacerbate or possibly even induce dissociative symptoms (Snow et al 1996). Mr. Garnier has a mental illness and he will be incarcerated in maximum security institution because of the type of sentence he received. He is unlikely to receive treatment for posttraumatic stress disorder because this is not a criminogenic factor. I would have concerns about his risk for suicide and/or self-harm. I would strongly and respectfully hope that all these factors be considered in sentencing.

[48] The defence had originally suggested that the PTSD be considered a mitigating factor. They have since withdrawn from that position. They now say the PTSD should be considered by me in recommending that Mr. Garnier serve his time at a medium-security institution. They say that maximum security institutions are not properly staffed to allow for treatment of his PTSD. However, they offer no evidence in support of this proposition.

[49] If it is necessary, I will recommend that Mr. Garnier get whatever mental health treatment he requires while incarcerated. There is no evidence before me to support any claim that one institution is better equipped to treat Mr. Garnier than another. I therefore decline to recommend where Corrections Canada should house him.

The nature of the offence and the circumstances surrounding its commission

[50] On September 11, 2015, as shown on the surveillance video from the Alehouse, Catherine Campbell was expecting romance and affection on the evening she was murdered. She was vulnerable. Once at McCully Street, for reasons unknown, Mr. Garnier punched her in the face, broke her nose, strangled her to death and then in an effort to hide his crime, treated her remains like garbage.

[51] There is no indication whatsoever that the crime was premeditated in any way.

[52] In considering the nature and circumstances of the crime, Dr. Bowes' testimony must always be kept in mind, that is, to strangle someone to death takes between two and six minutes. Therefore, Ms. Campbell's death was not akin to a single punch that results in death, the quick squeeze of a trigger, or even a quick stroke of a knife. Mr. Garnier intentionally squeezed the life out of Ms. Campbell over minutes and such action was not merely a split-second lapse of self-control.

[53] However spontaneous Ms. Campbell's murder may have been, the fact that Mr. Garnier must have strangled her for between two and six minutes in order for her to have died is significant. Similarly, Mr. Garnier's efforts at concealing his crime raise the this case above the mandatory minimum.

Recommendation by the jury

[54] Section 745.2 of the *Code* states:

> 745.2 Subject to section 745.3, where a jury finds an accused guilty of second degree murder, the judge presiding at the trial shall, before discharging the jury, put to them the following question:
>
> > You have found the accused guilty of second degree murder and the law requires that I now pronounce a sentence of imprisonment for life against the accused. Do you wish to make any recommendation with respect to the number of years that the accused must serve before the accused is eligible for release on parole? You are not required to make any recommendation but if you do, your recommendation will be considered by me when I am determining whether I should substitute for the ten year period, which the law would otherwise require the accused to serve before the accused is eligible to be considered for release on parole, a number of years that is more than ten but not more than twenty-five.

[55] In accordance with s. 745.2, the court received the following recommendation from the jury in relation to Mr. Garnier's parole ineligibility date:

7 Jurors: No recommendation

4 Jurors: 10 years before eligibility

1 Juror: 12 years before eligibility

[56] Therefore, those five of twelve jurors who chose to make a recommendation, suggested a parole ineligibility date close to, or equalling, the 10 year range. Although I am not bound by the jury's recommendation, I must consider it, which I have done.

Range of Parole Ineligibility

[57] In *R v. Nash,* 2009 NBCA 7, Robertson J.A. discussed the ranges of sentencing imposed in second degree murder cases and stated, at para. 54:

> ... Not only are these cases instructive, they provide support for a general thesis: more often than not, trial and sentencing judges work with three time frames when fixing the period of parole ineligibility: (1) 10 to 15 years; (2) 15 to 20 years; and (3) 20 to 25 years. In practice, the third time frame is reserved for the "worst of offenders" in the "worst of cases". The first is reserved for those offenders for whom the prospects of rehabilitation appear good and little would be served by extending the period of parole ineligibility other than to further the sentencing objectives of denunciation and retribution. The second time frame is reserved for those who fall somewhere in between the first and third. Obviously, these time frames are not cast in cement and represent a basic starting point for analysis.

[58] In addition to *R. v. Hawkins, R. v. Nash* and *R. v. Shropshire,* in *R. v. Beaver,* 2014 NSSC 10 and *R. v. Oland,* 2016 NBQB 43, the courts extensively reviewed various cases dealing with parole ineligibility. I have read them. There is no need to review the myriad gruesome facts of all of those previous murders in this setting. Suffice to say that those cases assist in providing a range of parole ineligibility for second degree murder cases. The *Criminal Code* and the many cases provided instruct that I consider the character of the offender, the nature of the offence and the circumstances surrounding its commission, and the recommendation, if any, made by the jury pursuant to section 745.2.

[59] Nonetheless, I must also consider dispositions for similar offenders in similar circumstances. Of the many authorities provided to me by counsel, I wish to refer to the following cases:

[60] *R. v. Tan*, 2011 BCSC 595: The accused was 22 when, unprovoked, he stabbed a store owner twice and killed him. The victim did not resist and there was no significant altercation. The accused killed the victim because he felt he had been overcharged and disrespected. The accused had no criminal record and no history of violence. During his police interview, the accused wrote an apology letter, expressed remorse and confessed to his crime. There was no interference with human remains. Mr. Tan's parole ineligibility was set at 10 years.

[61] *R. v. Edgecombe*, [1991] O.J. No. 2044 (Ont. Ct. J. Gen. Div.)): The accused was a cocaine addict with a prior criminal history, including convictions for violence and breaches of court orders. He did not suffer from any major mental illness that would make him an ongoing danger to the public. He murdered his common-law partner. She was beaten and then strangled to death. The murder occurred after both the accused and the victim were significantly impaired. The accused kept the deceased's body in his tent for a day, then, after contemplating suicide, called 911 and confessed. As Watt J. (as he then was) noted:

> 17 The accused is solely responsible for the death of the deceased. The fatal attack included at least two (2), perhaps three (3), discrete types of violence. No weapon was brought to the scene of the fatal attack, though it would appear that one may have been used there. The case is not one in which the violence used to cause the death may be characterized as gratuitous, excessive or sadistic. There was no mutilation or dismemberment. There is no evidence of any preconcerted activity, nor of any attempts to interfere with the administration of justice to avoid detection. The accused called emergency personnel, albeit some time after the death of the deceased, and surrendered voluntarily to the investigating police force.

[62] In determining that parole ineligibility should be set at 10 years, Watt J. also stated:

> 24 … There is no pattern of domestic violence with the deceased or any other common law partner. To be certain, the present case displayed it. The killing, I am satisfied, though murder, was spontaneous. It was one dominated by emotions gone awry. It was senseless, without rational motive and yielded the accused no other return but a life sentence in the penitentiary.

> 25 There is no sentence which I can impose which would fully assuage the feelings of the deceased's family. What I do cannot, and is not designed to restore the deceased to the living. Every murder leaves, in its wake, varying amounts of sorrow, grief, anger and frustration, not only on the part of the family of the deceased but on the part of other right-thinking members of society. In all cases a life or lives is or are extinguished. Others, quite often, are ruined. The imposition of sentence is, however, governed by statute and fixed principle, not by emotional reaction. It does not measure the value of the life extinguished, either in absolute or in relative terms. I am not persuaded, in light of the principles enumerated by the Ontario Court of Appeal, that there is anything in this offence or this offender which justify an increase in the period of parole ineligibility. Society's revulsion at domestic violence will be adequately here expressed by the imposition of the statutory minimum term.

[63] *R. v. Paiement,* [2002] O.J. No. 5137, 2002 CarswellOnt 6228 (Sup. Ct. J.): The facts of the murder are not clearly outlined in this case. The offender was 63 years old, had no criminal record, no history of violence, was in poor health and lived a modest and quiet lifestyle. In that case the judge set 10 years as the parole ineligibility date

[64] *R. v. Hawkins*: Justice Beveridge set out the facts:

> 59 The strongest mitigating factor is the fact that the appellant had demonstrated in his life he was a skilled tradesman. He demonstrated a consistently strong work ethic and was well thought of as an employee. His downfall was substance abuse, in particular, an addiction to cocaine. It was uncontested that he had, since arrest, been drug free. No one suggested that the offence of murder was in any way planned, but likely was committed due to resistance to the appellant's insistence of obtaining money or property belonging to the deceased. The appellant was not considered to have a reputation for violence. He had but one incident that led to charges of assault with a weapon. This had been explained in his statement to the police as being a bar room dispute in Edmonton in 2002, for which he received a 90-day intermittent sentence.
>
> 60 The aggravating factors are that the murder was committed during the course of a robbery of a vulnerable victim in his own home. While the appellant may have been a welcome visitor initially, the fact remains the murder was committed in the home of the deceased. The death of the victim may have followed from the knife wounds to his neck, nonetheless, it could also have been caused by the ligature strangulation from a towel and telephone cord placed around the victim's neck, apparently done to prevent interference in the robbery or access to help by phone. The appellant demonstrated callousness by using the proceeds of the robbery to buy cocaine, and later selling cigarettes taken from the deceased, and in trying to disguise his involvement in the offence. The appellant was on 18

> months probation commencing May 9, 2006 for the property offences of theft and fraud and breach of probation.

[65] In determining that parole ineligibility should be set at 15 years, Beveridge J.A. stated:

> 95 The facts speak of a brutal and callous murder of a vulnerable victim in his own home by an offender driven by the scourge of addiction to a corrosive drug. Most murders are brutal and callous. As recognized by many cases, the imposition of a sentence of life imprisonment without parole ineligibility for at least ten years already carries with it a significant element of denunciation and general deterrence. However, here the appellant recognized at trial and on appeal that some additional period beyond the automatic minimum ten years was appropriate and suggested 15 years. I agree that in light of the circumstances of this offence, some increase in the period of parole ineligibility is warranted. In my opinion, the acceptable range of sentence in these circumstances is between 12 and 15 years. I would accept the suggestion of the appellant and set it at 15 years.

[66] *R. v. Calnen*, 2016 NSSC 35, [2016] N.S.J. No. 29, affirmed, 2017 NSCA 49, application for leave to appeal reserved, [2017] S.C.C.A. No. 305: Mr. Calnen murdered his victim and then burned her body to hide his crime. He did other things in order to obscure his crime and divert police suspicion. In discussing the aggravating and mitigating factors, Chipman J. stated, at para. 43:

> Once again, s. 718.2(a) requires me to consider any aggravating factors or mitigating circumstances in my determination of the nature and extent of sentence.
>
> <u>Aggravating Factors</u>
>
> 1. The crime was particularly horrific as it involved the secret moving, hiding, repeated burning and disposal of Ms. Jordan's body;
>
> 2. Despite Mr. Calnen's overt attempts to minimize his relationship with Ms. Jordan, I have found that they lived together in a domestic relationship and that the crimes he perpetrated amount to the ultimate acts of domestic violence;
>
> 3. Not only were Mr. Calnen's actions which involved incinerating Ms. Jordan's body shocking, they amounted to concealing and destroying evidence relating to how he murdered her, which obstructed justice; and
>
> 4. By not disclosing the truth to the police along with Ms. Jordan's family, Mr. Calnen prolonged the agony for them of not knowing what happened to her.
>
> <u>Mitigating Circumstances</u>

> 1. Mr. Calnen has no prior criminal record;
>
> 2. He has a good work history;
>
> 3. Mr. Calnen has expressed remorse and at the outset of trial he plead guilty to interfering with human remains; and
>
> 4. The P.S.R. is generally positive and includes background indicating:
>
> a) solid family support;
>
> b) grade 12 diploma and machinist's certificate;
>
> c) no present issues with drugs or alcohol; and
>
> d) good overall health.

[67] Justice Chipman set 15 years for Mr. Calnen's parole ineligibility and sentenced him to five years for the indignity to human remains charge.

[68] *R. v. MacCrae*, CRH No. 336925 (N.S.S.C., March 2, 2011): Mr. MacRae beat, strangled and murdered his wife, left her body in the trunk of a car and diverted suspicion from himself for five years. He was caught by way of a Mr. Big operation. Mr. MacRae entered a guilty plea to second degree murder. In imposing a 15-year parole ineligibility date, Coady J. stated variously:

> … My only discretion today is to decide how long it will be before Mr. MacRae is eligible to be considered for parole. Whatever my decision is, that does not mean that Mr. MacRae will be approved for parole at that time or will suddenly be released from prison. I am not making an order as to when Mr. MacRae is paroled. Rather, my order deals only with the issue of ineligibility for a period of time.
>
> …
>
> We are not a society that locks people in a cell for the remainder of their lives as retribution. We are a society that recognizes that people can learn from their mistakes and sins and become contributing members of our society. We are a society that recognizes rehabilitation as a goal of sentencing and we are a society that sees rehabilitation of an offender as the most effective was to protect society.
>
> Not all offenders find rehabilitation while in jail for those long periods of time. Those persons who do not, stay in jail until the end of their sentences, but many offenders are rehabilitated. It is all up to the offender. Some reach for the light at the end of the tunnel and others do not, for a wide of reasons.
>
> …
>
> In relation to the character of Mr. MacRae, in many cases this factor usually amounts to a mitigating factor. In the case of Mr. MacRae, that is not as much the case, though not aggravating. He is not an addict, as we often see. He had a solid

> employment history and I understand that he enjoys strong family support. As the Crown stated in their brief, he enjoyed a normal middle class life. But his true character came out when he killed his spouse and took steps to avoid detection. He obviously presented as a normal person, but the reality is that he is a very dangerous person under certain sets of circumstances. Mr. MacRae's potential for violence is real. He did not kill his spouse in a rage or after provocation. He just decided to do it, more or less to settle an argument.
>
> …
>
> A man with Mr. MacRae's character would have to search hard for any excuse or explanation for what he did to his wife. On the other hand, those characteristics should assist Mr. MacRae in his long-term rehabilitation, should Mr. MacRae avail himself of those opportunities. If he does not, he'll probably spend the rest of his life in jail.
>
> …
>
> In light of these authorities which I have reviewed and applying the principles that have been provided to me and the submissions that have been made to me, I have determined that the appropriate range of parole ineligibility is between 12 and 15 years, so I sentence Mr. MacRae to life imprisonment with parole ineligibility set at 15 years.

[69] *R. v. Sodhi*, (2003), 179 C.C.C. (3d) 60, [2003] O.J. No. 3397 (Ont. C.A.): Mr. Sodhi murdered his wife by strangling her to death. He then dumped her body on the side of a rural road in an effort to make it look like a stranger had robbed and killed her. Her body was discovered by a passing motorist. In upholding a 14-year period of parole ineligibility, Moldaver J.A, (as he then was), speaking for the unanimous court, stated:

> 130 I see no basis for interfering with that finding. That said, it is at least arguable that the trial judge overstated the case when he described the scene as one of the worst fact situations. In my view, however, what separates this case from others and takes it out of the twelve-year range is the appellant's conduct after the event.
>
> 131 The appellant's attempt to cover-up his crime and his persistent efforts to create suspicion that someone else had committed it were despicable and cowardly. This conduct amounted to a serious aggravating feature and, in and of itself, warranted a significant increase in the period of parole ineligibility. Combining that with the domestic nature of the crime and the brutality associated with it, I cannot say that the trial judge erred in imposing the sentence he did.

[70] *R. v. Ward*, 2011 NSCA 78, leave to appeal denied, [2014] S.C.C.A. 228: That case involved a charge of second degree murder which occurred after a social

gathering where alcohol was involved. A dispute arose and the victim was hit in the head with a baseball bat. Following conviction, the trial judge imposed a period of 16 years before parole eligibility and the Court of Appeal reduced that to 13.5 years. Some of the comments from unanimous Court of Appeal are instructive in discussing the *Hawkins* case:

> 107. There, my colleague Justice Beveridge meticulously examined leading cases in this and other jurisdictions before stating what this Court sees as being the appropriate current range for parole ineligibility following conviction for second degree murder in cases where similar circumstances may be ascribed to both the offence and the offender. In such cases as those, this Court has declared that the appropriate period of imprisonment before eligibility for parole can be considered ranges between 12 and 15 years.
>
> …
>
> 110. After carefully reviewing the record, I see nothing in the facts of this case which would take it outside the range. While it might seem distasteful to some to "compare" the features of one homicide against another, the reality is that such an analysis is required in order that proper, sensible and predictable "ranges" might be established. To the extent that one can ever "grade" the level of viciousness or brutality associated with murder, such an analytical exercise is warranted if one's objectives are to achieve proportionality and consistency in sentencing for similar crimes and similar offenders.
>
> 111. At the time of sentencing Shane Ward was 35 years of age, single, with a Grade 12 education. He and his brother Matt left Nova Scotia "for greener pastures" and worked in Ontario for nine years before returning to Nova Scotia. He then entered a common law relationship which continues. While in high school he was a wrestler who displayed sufficient skills to make it to the nationals and be asked to try out for the Canada Games team. Witnesses referred to the appellant as being a very capable and hard-working drywaller. He denied using drugs and said he rarely drank alcoholic beverages. His probation officer described him as an intelligent, pleasant and co-operative individual. Letters of support described Mr. Ward as kind, honest and non-violent, in many ways "a peacemaker" within his group of friends. People said the offence was out of character and that the appellant was one who always put the interests of others ahead of his own. The appellant was also cited as the person responsible for saving the lives of several individuals whose house was on fire. Mr. Ward was able to raise the alarm and get people to safety before anyone was hurt.
>
> 112. Such commendable qualities and mitigating factors must be contrasted with the aggravating features noted by the trial judge. The appellant told his probation officer that he could not remember the details of the offence. He thought Phillip Love said "I'm going to kill you", he felt scared and only recalled hitting Love with an unknown object. Mr. Ward had a somewhat dated criminal

> record, but which did include crimes of violence including assault, possession of a weapon, and assault causing bodily harm. Significantly these incidents involved assaults upon relatives and friends. This suggests that the appellant has a hair trigger temper or little capacity to control his emotions.
>
> 113. There can be no question that Phillip Love was the victim of a brutal murder. He was virtually beaten to death in his own home. He lingered on in the hospital for several days. However, given the nature of his severe skull and brain injuries, death was inevitable.
>
> 114. Undoubtedly alcohol was a factor in these tragic circumstances. The trial judge found that the appellant was intoxicated but also appeared to be the least intoxicated of all of the persons who were in the residence that evening.
>
> 115. After taking into account all of these circumstances including the principles and objectives of sentencing; the appellant's culpability in such a senseless and vicious assault; and a recognition that in his case the prospects for parole should not be so distant as to dash all hope for rehabilitation, I would fix the appellant's period of parole ineligibility at 13½ years.

Analysis

[71] It can not be forgotten that Christopher Garnier has been automatically sentenced to imprisonment for life.

[72] In *Hawkins*, Beveridge J.A., in speaking for the Court, made several comments about parole eligibility or ineligibility and reviewed a number of cases that helped or assist in determining what the appropriate period of parole ineligibility should be for a second degree murder charge. Justice Beveridge stated:

> 2. Life imprisonment is a maximum sentence of incarceration in Canada. Since the abolition of capital punishment, the only penalty for any accused convicted of murder is life imprisonment. Subject to a grant of clemency from the executive, the offender will always be subject to this sentence for the rest of his [or her] natural life.
>
> 3. Parole is a possibility. For an offender convicted of first degree murder there is no eligibility for parole prior to serving 25 year incarceration. Offenders convicted of second degree murder must serve a minimum period of ten years before being eligible to apply for parole. However, a sentencing judge is required to consider whether that minimum period of ten years should be increased by some number up to a maximum of 25 years.
>
> …

> 53. In my opinion a trial judge is required to consider the principle that a sentence order being imposed be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. …

Nature of the offence and circumstances surrounding its commission

[73] Mr. Garnier was a physically capable man. Ms. Campbell was an unsuspecting and vulnerable woman. Her strangulation was ongoing for between two and six minutes, and Mr. Garnier went to considerable efforts to hide her body and other evidence. This warrants an increase beyond the 10-year minimum. However, unlike *Calnen, McRae,* and *Sodhi,* this was not a domestic situation and that statutorily proscribed aggravating factor is not present.

[74] Balancing this is Mr. Garnier's previously pro-social lifestyle, extremely positive character reference letters and Pre-Sentence Report, as well as his lack of prior involvement with the criminal justice system. However, the facts of his crime are serious and reflect a high degree of moral culpability. Mr. Garnier's personal circumstances do not outweigh the aggravating factors in this case.

[75] Mr. Garnier's previous good character and positive Pre-Sentence report do keep the range within the 10 to 15 years as described in *Nash*. I do not agree with the Crown that he falls into the second range of 15 to 20 years. However, the circumstances of his crime overwhelm his previous good character.

[76] Considering cases that involve similar offenders and similar situations, Christopher Garnier's parole ineligibility will be set at 13.5 years.

Time spent in custody

[77] Section 746 of the *Criminal Code states:*

> 746. In calculating the period of imprisonment served for the purposes of section 745, 745.1, 745.4, 745.5 or 745.6, there shall be included any time spent in custody between
>
> > (*a*) in the case of a sentence of imprisonment for life after July 25, 1976, the day on which the person was arrested and taken into custody in respect of the offence for which that person was sentenced to imprisonment for life and the day the sentence was imposed; or …

[78] Mr. Garnier was not in custody for the entire time he was awaiting trial. He was remanded when he was arrested on September 16, 2015. He received bail

on December 20, 2016. He was charged with an alleged breach of his bail and taken back into custody on February 19, 2017. He again received bail on April 12, 2017. The Crown was estopped from proceeding on the s. 145 charge. His bail was never revoked.

[79] Mr. Garnier argues that time he spent in custody for the s. 145 allegation, 53 days, should be included in the total time provided for remand credit. I do not agree. Mr. Garnier was remanded during that time for the s. 145 charge, not in relation to the murder charge or the interfering with human remains charge. His bail on the murder charge was never revoked. There is no authority to apply remand credit for time served on remand in relation to one charge to reduce the sentence of a separate charge.

[80] Additionally, Mr. Garnier has been in custody since being convicted by the jury on December 21, 2017.

[81] Therefore, because of his time in custody since his arrest on these charges, Mr. Garnier must receive 699 days credit for his time in custody.

Indignity to Human Remains: Section 182

[82] Christopher Garnier was convicted of improperly interfering with the remains of Catherine Campbell. The relevant facts are:

- Mr. Garnier murdered Ms. Campbell while she was lying on the pullout couch;
- He disposed of the mattress and bedding well enough that it was never located;
- He similarly disposed of Ms. Campbell's ID, shoes and cell phone well enough that they were never located;
- In the SOMA VEIN video Mr. Garnier can be seen wheeling a green bin toward the McCully Street apartment and the green bin appears not to be heavy;
- He is then seen on video wheeling a heavier looking green bin away from the McCully Street apartment. He put Ms. Campbell's body in the green bin and placed garbage bags on top of her to hide her body;

- He threw his necklace chain on top of the roof of a nearby building. The chain was located and had both Mr. Garnier's and Ms. Campbell's DNA on it. It was damaged while Mr. Garnier was strangling Ms. Campbell. Mr. Garnier also had some scratches on his neck and his DNA was found under Ms. Campbell's fingernail;

- Witnesses saw him wheeling the green bin through the north end of Halifax;

- Mr. Garnier is seen on the Bridge Commission video wheeling the green bin in the area where the wheel marks are noticeable in the gravel and near to where Ms. Campbell's body was discovered;

- A green bin originating from the McCully Street area was found in the area where Ms. Campbell's body was discovered. Mr. Garnier wheeled the green bin containing Ms. Campbell's body along this route in the north end of Halifax until he dumped her;

- He dragged her body through brush, dropped her over a small cliff, and put a 90-pound feral cat box on top of her;

- The police found Ms. Campbell's body in an area of dense brush, covered by a 90-pound feral cat box;

- Mr. Garnier also attempted to conceal his t-shirt, Ms. Campbell's keys and two towels by putting them in a black garbage bag and putting it in the dumpster in the EHS parking lot across from the McCully Street address;

- He disposed of the bedding as well;

- Mr. Garnier went to sleep afterwards;

- The next day he went to his father's and spoke to his father;

- He reconciled with Ms. Francis on the evening of September 11, 2015;

- He returned to the backyard at McCully Street on September 12, 2015;

- He exchanged texts and spoke with Mitchell Devoe, during which he lied and said he got rid of the mattress because it had vomit on it;

- He then attended his father's birthday party;

- He started a new job on the following Monday, September 14, 2015;
- He worked that Monday and Tuesday with no apparent difficulties;
- Prior to driving at least twice to the area where Ms. Campbell was hidden, Mr. Garnier took items from his own personal vehicle (blanket, tarp with rope, gas can, and gloves) and placed them in Ms. Francis' SUV. He also took with him toiletries, clothing, his passport, medication and love notes from Ms. Francis. He drove down very near to where the body was located and came to a stop for approximately 10 seconds. He was debating going back to retrieve Ms. Campbell's body to dispose of it in a more permanent manner. In his video-recorded confession, Mr. Garnier stated:

CST. ALLISON: Okay. Well, the stuff you had in your car. What was that for?

A. Well, I had my bag because I wasn't sure if I was going to leave or not.

CST. ALLISON: Right. What else?

A. The tarp and gas, it could have been for one of two things.

CST. ALLISON: Which? Which were what? Chris ... that's what I'm saying, Chris. What were those things for? What? What did you have those for? You know what you had them for. You were going back down there to get her.

A. Thought about it.

CST. ALLISON: Yes, you were, and then you were going to ... what were you going to do with the gasoline?

A. (I don't know?).

CST. ALLISON: Chris, stop playing this game. Okay? Seriously. You knew what you were going to do. If there hadn't been anybody around there you would have went down and did that.

A. I don't think I could have. I drove by there before.

CST. ALLISON: Yes, I know you drove by there before. We were following you. I appreciate your honesty. Okay? I appreciate your honesty.

A. I was going to go somewhere. I don't know where. One thing I forgot to grab out of my trunk was my ... I have a sleeping bag. I was going to use the tarp as like a ... a shelter, use the gas because the ground was wet, but that crossed my mind.

CST. ALLISON: So you were going to use the grass ... sorry, the gas to dry the ground out, you mean?

A. Well, to be able to burn wood and make a fire.

> CST. ALLISON: Okay. Okay. I see what you mean now.
>
> A. I don't know what I was thinking.
>
> CST. ALLISON: And you had ...
>
> A. But I couldn't ...
>
> CST. ALLISON: Chris, you had your girlfriend's car too, right? Why? Why would you do that? Because you didn't want ...
>
> A. No, I didn't have a lot of gas left, and I thought she might have had more in case I had to go for ... further away, to try to get away.

- During this time, Mr. Garnier did a computer search regarding Cipralex and violence, Cipralex and alcohol, Cipralex and marijuana, and Cipralex and memory loss.

[83] All of this after the fact conduct is significant, as all of this occurred while Mr. Garnier was aware that Ms. Campbell's body was hidden in brush, exposed to the elements, decomposing, in the middle of Halifax.

[84] At trial Mr. Garnier said that he was suffering from a mental illness or Acute Stress Disorder when he disposed of Ms. Campbell's body. He said that he could not remember what occurred. Dr. Hucker was called by the defence and opined that Mr. Garnier was an automaton when he disposed of Ms. Campbell's body. By way of their verdict, the jury rejected the defence of automatism.

[85] Mr. Garnier was fully aware of what he was doing when he disposed of Ms. Campbell's body and hid the various items of inculpatory evidence. He was simply trying to hide his crime. He strategically, and with full knowledge, secreted various items of inculpatory evidence, including Ms. Campbell's body, in separate locations to avoid detection. These were a calculated series of events done for a very obvious purpose: covering up murder.

[86] In *R. v. Calnen*, 2017 NSCA 49, the Court upheld a five-year concurrent sentence for interference with human remains:

> [10] What the appellant did to Ms. Jordan's body after her death can only be described as horrific. He moved her remains on a number of occasions; first, from his house to a wooded area, moving the remains a number of times thereafter. Mr. Calnen also burned her remains on a number of occasions. The final time was in a fire pit in his own back yard. Eventually, he spread what was left of Ms. Jordan's ashes in a lake in front of Ms. Jordan's parents' cottage.

[11] A subsequent investigation resulted in the recovery of what appeared to be some bone fragments from the lake, in the area where the appellant said he had deposited the ashes. There was no DNA available in the recovered material to confirm that the material recovered matched the DNA of the deceased.

…

> [103] I would dismiss the appeal of the sentence as imposed on those offences. In spite of the guilty plea and the fact Mr. Calnen is a first time offender, the prolonged and repeated, horrific actions of Mr. Calnen were extremely serious. The impact on Ms. Jordan's family and the community at large is no doubt severe. The sentencing judge is entitled to deference on the issue of sentencing. I am not satisfied that he misapplied any principles of sentencing, or that the sentence is inappropriate.

[87] In *R. v. L.M.*, [2008] 2 S.C.R. 163, [2008] S.C.J. No. 31, Lebel J., for the majority, reiterated that the maximum sentence is no longer reserved only for the worst offender in the worst circumstances:

> [18] This individualized sentencing process is part of a system in which Parliament has established a very broad range of sentences that can in some cases extend from a suspended sentence to life imprisonment. The *Criminal Code* provides for a maximum sentence for each offence. However, it seems that the maximum sentence is not always imposed where it could or should be, as judges are influenced by an idea or viewpoint to the effect that maximum sentences should be reserved for the worst cases involving the worst circumstances and the worst criminals. As can be seen in the case at bar, the influence of this notion is such that it sometimes leads judges to write horror stories that are always worse than the cases before them. As a result, maximum sentences become almost theoretical:
>
> > In the end the difficulty with maximums is that they may be seen as almost theoretical rather than as an indication of how seriously an offence is to be treated in the "ordinary" case.
> >
> > (T. W. Ferris, *Sentencing: Practical Approaches* (2005), at p. 292)
>
> [19] As Morin J.A. noted in his dissenting reasons, human nature is such that it will always be possible for a court to imagine a worse case than the one before it. Morin J.A. rightly pointed out that it is important for a judge, when deciding whether the maximum sentence can or should be imposed for a given offence, to avoid contemplating fictitious situations in this way. This approach is consistent with this Court's recent case law.
>
> [20] In *R. v. Cheddesingh*, [2004] 1 S.C.R. 433, 2004 SCC 16 (CanLII), the Court acknowledged the exceptional nature of the maximum sentence, but firmly rejected the argument that it must be reserved for the worst crimes committed in the worst circumstances. Instead, all the relevant factors provided for in the *Criminal Code* must be considered on a case-by-case basis, and if the circumstances warrant imposing the maximum sentence, the judge must impose it and must, in so doing, avoid drawing comparisons with hypothetical cases:

> . . . terms such as "stark horror", "worst offence" and "worst offender" add nothing to the analysis and should be avoided. All relevant factors under the *Criminal Code* … must be considered. A maximum penalty of any kind will by its very nature be imposed only rarely . . . and is only appropriate if the offence is of sufficient gravity and the offender displays sufficient blameworthiness. As is always the case with sentencing, the inquiry must proceed on a case-by-case basis. [para. 1]
>
> [21] Even where a maximum sentence is imposed, therefore, regard must be had to the trial judge's discretion, the individualized nature of sentencing and the normative principles set out by Parliament in ss. 718, 718.1 and 718.2 *Cr. C.* There is still a place in criminal law for maximum sentences in appropriate circumstances.
>
> [22] Thus, the maximum sentence cannot be reserved for the abstract case of the worst crime committed in the worst circumstances. The trial judge's decision will continue to be dictated by the fundamental principle that a "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender" (s. 718.1 *Cr. C.*). Proportionality will be achieved by means of a "complicated calculus" whose elements the trier of fact understands better than anyone.

[88] Mr. Garnier murdered Ms. Campbell. Unlike *Calnen* and *R. v. Johnson*, 2016 NSSC 297, cases referred to by the Crown, Mr. Garnier did not dismember or burn Ms. Campbell. In this case, Mr. Garnier put Ms. Campbell's body in a green bin, covered it with a garbage bag and wheeled it throughout downtown Halifax until he found what he felt was a suitable hiding spot. He then dropped her body over a small cliff, dragged it through brush and covered with a feral cat box in order to cover up his crime. He then left Ms. Campbell's body to decompose in the middle of Halifax while he went back about his normal life.

[89] Again, balancing this is Mr. Garnier's previously pro-social lifestyle, extremely positive character reference letters and Pre-Sentence Report, as well as his lack of prior involvement with the criminal justice system.

[90] However, the facts of his crime are serious and reflect a high degree of moral culpability. Mr. Garnier's personal circumstances do not outweigh the aggravating factors in this case.

[91] Considering similar sentencings for similar crimes, I believe that a sentence of four (4) years concurrent to the sentence he will serve for murder is appropriate. I sentence Mr. Garnier to slightly less than the maximum since, in contrast to the circumstances in *Calnen* and *Johnson*, Ms. Campbell's body was recovered intact.

However, Mr. Garnier purposefully, in an effort to hide his crime, treated her body like garbage, wheeling it around the city and leaving it to decompose in the middle of Halifax. Significant police resources were used and required to discover Ms. Campbell's remains. Residents of Halifax were no doubt deeply disturbed by the actions of Mr. Garnier in this regard.

Conclusion

[92] The imposition of life imprisonment already carries with it a significant element of denunciation and general deterrence. Mr. Garnier may never be released on parole. He might spend the rest of his life in prison. However, the National Parole Board might eventually determine that he can return to society. If the Parole Board does determine that Mr. Garnier can leave prison, he will be subject to strict conditions and supervision. Even then, that supervision and those strict conditions would be in place be for the rest of his life.

[93] With regard to the Victim Fine Surcharge, there is a fine of $200 per offence. Mr. Garnier has been sentenced to life in prison and has no source of employment. Mr. Garnier's father advised the court that he will pay the fine. Six months will be allowed for payment.

[94] Mr. Garnier has been sentenced to life in prison. I set his parole ineligibility at 13.5 years, that is he must serve 13.5 years before he can apply for parole. That is not the date he gets parole. It is merely the date he can start applying for parole. As discussed, that 13.5-year time frame starts on the date of his arrest, September 16, 2015, but it does not include the time he spent released on bail, nor does it include the time he spent in custody in relation to the breach allegation.

[95] In imposing this sentence, I ask him to keep in mind the words of Justice Beveridge in *Hawkins* that he will be subject to a sentence of imprisonment forever. He may never be released on parole.

[96] Whether his risk of reoffending is such that he will be permitted to be released conditionally will be up to the parole board. If he is released it will only be on his satisfactory compliance with whatever conditions the board places on him to ensure his respect for a peaceful and safe society.

[97] Mr. Garnier is also sentenced to four years concurrent for indecently interfering with the remains of Catherine Campbell.

[98] Additionally, as requested by the Crown and agreed to by Mr. Garnier, I will order a primary DNA order and a firearms prohibition order pursuant to s. 109 of the *Criminal Code*.

Arnold, J.