

SUPREME COURT OF NOVA SCOTIA

Citation: *R v. Isadore*, 2022 NSSC 209

Date: 20220706

Docket: CRPH 501091

Registry: Port Hawkesbury

Between:

Her Majesty the Queen

v.

Dwight Austin Isadore

SENTENCING DECISION

Judge: The Honourable Associate Chief Justice Patrick J. Duncan

Oral Decision: July 6, 2022, in Port Hawkesbury, Nova Scotia

Written Release: July 20, 2022

Counsel: Glenn F. Gouthro and Peter J. Harrison, for the Crown
Wayne J. MacMillan for the Accused

By the Court (Orally):

NOTE: In reducing to writing the oral decision rendered in this matter, editing has taken place to include omitted citations and quotes from secondary sources and to make changes to format or to grammar for readability. No changes have been made to the substantive reasons for decision.

Introduction

- [1] Mr. Isadore is before me having entered a plea of guilty to the charge that he unlawfully caused the death of Cassidy Bernard and in doing so committed manslaughter contrary to s. 236(b) of the **Criminal Code**. That offence carries a maximum sentence of life imprisonment. There is no minimum sentence for that offence.
- [2] He has also entered a plea of guilty to the charge that he abandoned his twin daughters, who were seven months old at the time, and endangered their lives. In doing this he committed an offence contrary to s. 218 of the **Criminal Code** which sets a maximum sentence of five years' imprisonment, with no prescribed minimum punishment.

Circumstances of the Offences

- [3] The circumstances of these offences have been read into the record today so I am not going to read them in. The Agreed Statement of Facts, which was put forward by the Crown and agreed to by Mr. Isadore on the record today, will be appended to this decision and so form part of these reasons for the decision. I am satisfied that they justify the charges that Mr. Isadore has admitted to. I will speak to what those facts mean in assessing what is a fit and proper sentence. In doing so, I must make that determination in light of the principles of sentencing.
- [4] Section 718.2 of the **Criminal Code** states that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or to the offender. Subsection (a) lists aggravating factors which support an increase in a sentence.
- [5] I note the prosecution's distinctions in the description of aggravating factors in s. 718.2 as at the time of the offence in 2018 and in the present provisions.

I also note the inclusion now of 718.04 and 718.201 of the **Code**. In my view, these are codifications of what were already well recognized aggravating circumstances. I will note though, in particular, the codification as it is set out in 718.201 because the underlying principle to that section is relevant to these proceedings.

718.201 A court that imposes a sentence in respect of an offence that involved the abuse of an intimate partner shall consider the increased vulnerability of female persons who are victims, giving particular attention to the circumstances of Aboriginal female victims.

- [6] The evidence of abuse in this case is an aggravating factor.
- [7] Mr. Isadore and Ms. Bernard were in an intimate partner relationship. They parented twin daughters. Mr. Isadore abused Ms. Bernard previously in the relationship. He is not here to be sentenced for those assaults, but they demonstrate that he has had a history of violence against women, and it speaks to his moral culpability and, in a separate context that I will touch on later, his potential for rehabilitation. When he killed Cassidy Bernard, Mr. Isadore committed the ultimate act of domestic violence.
- [8] Mr. Isadore abused M. and P., their seven-month-old infants, when he left them alone that day in a cold house with their mother, deceased. He told no one that they were there. And why did he do that? Because it would alert someone to what he had done. So, I infer that his first thought was to protect himself, to avoid responsibility for what he had done. At best, he failed to consider that he could be leaving those two babies to die. At worst, he did not care if they died. These actions constitute in my mind deemed aggravating factors as set out in s. 718.2(a)(ii.1) which relates to the abuse of a person under the age of 18.
- [9] Further, Mr. Isadore was in a position of trust, that is, he had the responsibility that a parent has to protect their vulnerable children from harm. In abandoning these children, he breached that trust of a parent towards their children. That too is a deemed aggravating factor set out in s. 718.2(a)(iii).
- [10] Section. 718.2(a)(iii.1) says that evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation is a deemed aggravating factor. It is self evident that these children will bear a burden as they grow up to

understand and cope with the knowledge of what Mr. Isadore did to them and to their mother.

- [11] All of these circumstances of the offences are relevant to the sentence that I will impose today. While the offence of manslaughter recognizes the absence of a specific intent to cause death, the circumstances of this offence attach a high degree of moral blameworthiness or culpability to Mr. Isadore. As has been recognized by courts, there is a spectrum of blameworthiness in manslaughter cases from something that is close to accidental to one that approximates the full offence of murder. The nature and quality of the acts that lead to Cassidy Bernard's death fall at the high end of that spectrum.
- [12] So too is the moral blameworthiness high for the abandonment of his children. The sentence to be imposed in this matter will reflect that fact.

Circumstances of the Offender

- [13] In determining the circumstances of Mr. Isadore, I have the benefit of the submissions of his counsel.
- [14] I have the report of Dr. Andrew Starzomski, a Registered Psychologist, which report was prepared during Mr. Isadore's remand while pending these charges and was completed in April of this year, 2022.
- [15] I also have a Presentence Report prepared in unrelated matters. This is dated July 2019, approximately eight months after the offences in this case, but prior to his arrest in November 2019.
- [16] Finally, I note that Mr. Isadore has opted not to request a Gladue Report, instead relying upon the content of the Presentence Report which addresses some of the Gladue factors.

Presentence Report

- [17] I will speak first to the contents of the Presentence Report. This report was prepared in relation to matters before the Provincial Court. The prosecution has provided the court history with respect to the offences for which it was prepared and presented.

- [18] The report provides a detailed family history. It describes a high degree of instability in Mr. Isadore's life and his exposure to abuse and drug use at a very early age and in his home. It notes the trauma that he experienced when his maternal grandfather was killed by police a number of years ago. This was a man who he described as a father-like figure to him.
- [19] Mr. Isadore described how drug use and exposure to negative influences in his home life and in his community influenced his life and relationships including with the victim in this case.
- [20] The Presentence Report provides us with information about his other intimate partners and two other children that he fathered. I note that in each case it appears that he has not filled a parental role with respect to these children.
- [21] Mr. Isadore has worked largely as a labourer, but it has been intermittent. At the time of being taken into custody he was in receipt of social assistance benefits.
- [22] The Presentence Report confirmed Mr. Isadore's addiction issues with respect to alcohol, drugs, and gambling.
- [23] The Gladue factors described in the report noted his membership of the Wagmatcook Band and his commitment to his culture and to his language. He expressed a closeness for the elders in his community. The report describes the Wagmatcook community, being one of the five Mi'kmaw First Nation Communities of Unama'ki (Cape Breton). It maintains a number of services to assist members to reduce harm in the community including substance abuse counselling and mental wellness team access. As outlined today by the prosecution, it is a community that has faced struggles, but I noted the community's efforts to provide programs to help people like Mr. Isadore. Sadly, Mr. Isadore did not or could not achieve the benefits that those programs offered him.

Report of Dr. Andrew Starzomski

- [24] The description of Mr. Isadore's health and lifestyle were, in my view, reviewed more reliably in Dr. Starzomski's report which I am going to turn to now. It is my opinion that the doctor's report reflects objective evaluations of Mr. Isadore's participation in earlier treatment/counselling programs.

- [25] I will state at the outset that I found Dr. Starzomski's report to be very credible. It provided a great deal of insight into Mr. Isadore's life history. It is particularly useful as Dr. Starzomski had access to Mr. Isadore's health and education records going back to when he was a very young child. As such it was possible for him to identify factors and behaviours that existed early in Mr. Isadore's life and to see how they have carried through into his now young adulthood. That is something we do not always have available to us when conducting a sentencing hearing.
- [26] I am summarizing Dr. Starzomski's report, which is very lengthy, but he did have access to all relevant information. The report reflects that Dr. Starzomski not just read the records and case-related information, but he understood it and considered it. He conducted 15 hours of in-person meetings and testing with Mr. Isadore. The report is balanced; it does not minimize the negative aspects of Mr. Isadore's personality/attitude, nor his history of criminal activity. It contains excellent detail and informs the reader extensively as to the very negative family history that involved, for Mr. Isadore, multiple parent figures, substance abuse and violence throughout his life. It references, as did the Presentence Report, the death of his maternal grandfather, John Simon, who was shot and killed by police in response to a 911 call in December of 2008, and the significant trauma that that created for Mr. Isadore. He reviewed his historical health and education records and most significantly found them to be consistent with the psychological testing results that he performed for the creation of the report. What it demonstrated was a progress through increasingly serious drugs, both as to quality and quantity, from a very early age; and further that any attempted medical interventions were unsuccessful. Those issues which developed early in life have continued up to and including the time of the murder.
- [27] The health and education records as well as psychological tests showed Mr. Isadore to:
- have documented cognitive impairments that influence [his] capacities with attention, memory and problem solving. In Mr. Isadore's case these intellectual limitations were documented as significant in his high school years and updated testing completed in this assessment ... shows those issues remain active and significant.

[28] Dr. Starzowski also said, during his assessment of Mr. Isadore's interaction with the undercover police officer referred to by the Crown in the Agreed Statement of Facts, that Mr. Isadore demonstrated:

...[his] willingness to change his answers as a function of negative feedback about his initial answers were striking and far outside the norm. That is, he changed his answers to the extent that is higher than more than 95% of intellectually disabled patients, and also higher than 95% of the general population.

Mr. Isadore's aggregate score of "total suggestibility" on the GSS was above-average relative to intellectually disabled forensic patients. It did not reach the highest and rarest ranges because his initial vulnerability to leading questions was relatively modest as noted earlier. On the other hand, he was exceptionally sensitive and responsive of the negative feedback in his willingness to shift his account away from information he initially presented as true.

...

It is my opinion that Mr. Isadore's long-standing and wide-ranging cognitive (including delayed memory) limitations and his substance abuse around the time of Ms. Bernard's death generated significant uncertainty in his attempts to navigate the (sic) his ability to accurately recall and articulate details [of the events of the offences] ...

(Emphasis added)

[29] He concluded, then, as a result of the testing:

- a. that Mr. Isadore is operating at a grade 3 or grade 4 level of education;
- b. that Mr. Isadore does have cognitive impairment relating to memory;
- c. that Mr. Isadore is overwhelmed by small increases in demand on his cognitive resources for organizing and processing information when relying on mental processes resulting in slowness, breakdowns and inaccuracies;
- d. that Mr. Isadore is easily overwhelmed in the face of pressure of time restrictions or increased cognitive load relative to the majority of most adults. His aggregate full score in this testing segment is in the lowest category that one can score;
- e. that Mr. Isadore shows significant difficulty with verbal processing, working memory and processing speed. He found the test results to be in a range consistent with the presence of intellectual disability.

- [30] Dr. Starzomski said one test placed Mr. Isadore in the lowest 3% of normative comparison for demonstrated serious shortcomings with problem-solving and executive functioning. He concluded that his borderline and antisocial traits would be considered moderate or "modestly above average".
- [31] The significance of this is that the moral blameworthiness of Mr. Isadore has to be assessed in the context of all of these findings and conclusions as well.
- [32] I will speak to the impact of these circumstances on my decision at a later point.

Impact of the Offences on the Victims and the Community

- [33] I want to turn to what I heard today in relation to the Victim Impact Statements and I thank all of you. It takes a great deal of courage, strength, particularly strength I think, to stand in a court to speak about anything, to have to share the kinds of personal experiences and so much of yourselves individually is very remarkable and I thank you all for that.
- [34] We have heard what you have had to say. I am just going to summarize very quickly what each of you have said in terms of how I heard you.
- [35] Mona Bernard is the mother of Cassidy Bernard. She expressed her grief for the loss of her daughter, but also for the pain her death brought to all the family and to her community. She described how she is now caring for Cassidy's two girls as they are about to enter school, and the fear that she holds for their safety. She described her anxiety knowing that the time is coming soon when they will need to be told what happened to their mother and how they will cope with that knowledge.
- [36] Georgina Poulette is Mona Bernard's sister and aunt to Cassidy Bernard. She describes arriving at the house after hearing the news that Cassidy was dead. She gives a voice to M. and P., telling us how fragile and in need the babies were that terrible day. She tells how they were cared for at that time and since and that they are loved. But she also describes the loss when children will never have the chance to know their mother. Finally, she describes Cassidy's quality for forgiveness and of course for Ms. Poulette's own personal sense of loss.

- [37] Lucinda Gould, who was not present today but whose statement was read into the record by Ms. Denny, indicates that she lost her best friend and has suffered as so many have that I have heard from today and those who I have heard about that also suffered from this murder and abandonment. Ms. Gould acknowledges her personal fear of Mr. Isadore and her lack of trust that he will be a different person when released. I am confident that she is probably not the only person in the community who would have these concerns.
- [38] Tyra Denny is the sister of the deceased and an aunt to the twins. I thank you for your poem today. She tells us of her journey through the many emotions that the loss of her sister in such tragic circumstances has caused and how she has tried to cope and continue.
- [39] Chief Annie Bernard Daisley recounts her personal feelings of regret and the indescribable hurt and pain that she and her family felt on the news of Cassidy's death. She added to that her personal experience of being at the house and seeing the terrible state that the baby girls were in after three days of abandonment. She describes how the smell and the scene has stayed with her. On behalf of the community, Chief Daisley tells us how Cassidy was loved and the many activities that she had been involved with in the community. Besides her personal feelings, Chief Daisley tells us of the heightened fears for safety that exist in her community since this tragedy, that how even though the community has gone through many difficult times, this murder was unique; it was not something that the community had ever suffered before. Her statement reminds us again of the history of violence against Indigenous women in this country and how this murder revisits that pain and alerts all of us to the need to do more.
- [40] Bree Menge was a family support worker for Cassidy Bernard and found Cassidy and her babies on entering the residence on October 24, 2018. She tells a compelling story of how she overcame her own personal struggles to become a social worker seeking to help the members of her community. The trauma of finding her client and friend dead has left her with PTSD, unable to work, unable to lead a life without fear. It has impacted her and her family who must also live with the personality and behavioural changes she has undergone since that tragic day.
- [41] What we learn from hearing these statements is that the damage done does not end with the death of Cassidy Bernard but extends beyond her, to her

daughters, to other members of her family, to her friends and into her community. All of these persons have had to find ways to cope with that trauma, that life altering experience. We hope that they may they find their peace.

- [42] What we know is that this also injures all of us in society. We are all part of a larger community, and this ultimate act of domestic violence undermines our sense of safety as well and we must once again face the reality of the murder of a young Indigenous woman. The sentence I pass today addresses Mr. Isadore's responsibility only, but the voices of the victims speak beyond this proceeding.

Legal Parameters

- [43] The **Criminal Code** sections that describe these offences do not prescribe a minimum sentence. The court must, having regard to the applicable law, arrive at a fit and proper sentence that is within an established range of sentences for persons who have committed the same crimes in similar circumstances and for persons with similar backgrounds. Sentencing judges are guided to this goal in two ways:
- by the statutory provisions set out in the **Criminal Code**; and
 - by the decisions of other courts that have considered similar circumstances.
- [44] In particular, we as sentencing judges, look to the guidance that is provided by the decisions of our Nova Scotia Court of Appeal.
- [45] The purposes and principles of sentencing are set out in ss. 718 and 718.1 of the **Code**. I am very familiar with those provisions, and I will not recite them today, but I will refer to the concepts that they speak to.
- [46] I have previously described a number of statutorily deemed aggravating factors as set out in s. 718.2(a). I have considered those principles in reaching the conclusion that I have today.
- [47] Suffice to say that the protection of the public is a paramount objective of sentencing. The question, though, is always how do we accomplish that with the sentencing options that are available? We impose sentences that try to

balance the factors so that we can accomplish that overriding goal of protection of the public.

General Deterrence and Denunciation

- [48] The sentence that is passed is intended to deter other persons who would be of like mind and in similar circumstances. It must also speak to the public at large with the message that there are significant penalties to pay for crimes of this nature.
- [49] The sentence is also intended as an expression of society's denunciation for criminal activity.
- [50] These principles, being general deterrence and denunciation, dominate the decision making in a case like this. A serious crime of violence can only result in a lengthy period of imprisonment. The sentence that has been proposed does adequately address general deterrence and denunciation.

Specific Deterrence and Rehabilitation

- [51] We look too, though, to the offender, Mr. Isadore, since most offenders do one day return to live among us. The sentence is intended to provide opportunities for people to rehabilitate themselves. It is also intended to deter the offender, in this case Mr. Isadore, from committing any more crimes. I am reminded of his heritage, and I am reminded that s. 718.2(e) of the **Criminal Code** requires me to consider:

718.2 (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

- [52] I am conscious of Mr. Isadore's culture and his place in it - his shared experiences of his people. I am also conscious of how in taking the life of Cassidy Bernard and threatening the lives of his children by his act of abandonment that his conduct runs contrary to the very fibre of his community. Chief Daisley reminds us of this today.
- [53] It is hard to predict what road Mr. Isadore will take. He is very young with a track record of criminal behaviour and addictions. However, he has faced many challenges in life while having little structure in his life. He tried

counselling to address his various mental and behavioral issues, including his illicit drug use, but unfortunately all without success.

- [54] We can hope that during his period of incarceration he is successful in dealing with his life's experiences and challenges and return to society living a positive and constructive life, no longer feared by his community.

Range of Sentences

- [55] The next step in the analysis is to see if the proposed sentences are within the range of those sentences that have been handed out to other persons in similar circumstances.
- [56] This is where it is important for me to look at specific cases. In the interests of time, I am going to simply list a number of cases without conducting any in-depth review.
- [57] There is a general view that the range of sentencing in Nova Scotia for manslaughter is 4-10 years. There are many examples, however, of much greater sentences which have been ordered in this province and also in others - generally, in cases like this where there is a high degree of what we characterize as moral blameworthiness; where, for example, a person has a criminal history and there are elements of callousness or extreme violence in the manner in which the crimes were committed.
- [58] A number of cases show the proposed 15-year sentence to be at the high end of the range for manslaughter. Some of those cases are *R. v. Landry*, 2015 NSSC 78, affirmed at 2016 NSCA 53; *R. v. White*, 2016 NSCA 20; and *R. v. Reed*, 2013 ONSC 4247 where we see cases that certainly involve the same or perhaps, depending on your perspective, even greater violence than was exhibited in this case.
- [59] *R. v. Farrow* is a decision that I rendered in Sydney (unreported) in September 2018, where there was a home invasion resulting in the death of the elderly male homeowner. The sentence in that case for manslaughter was also 15 years. The offender was drug addicted at the time of the offence but otherwise had no criminal history. It had some similar features to the facts of this case in the level of moral blameworthiness, the violence of the assault and leaving the victim to die to be found only later.

[60] I have also been referred to *R. v. Wood*, 2021 MANQB 4 which was affirmed by the Manitoba Court of Appeal earlier this year, and which resulted in a sentence of 18 years. The prosecution this morning read into the record paragraphs 32 and 39 of that trial decision. I cannot state those observations as to the role and prevalence of violence toward women and especially in Indigenous communities any better than it was said in that case. I adopt those statements:

[32] Section 718.04, which mandates that denunciation and deterrence be primary sentencing principles where offences are committed against vulnerable people, including Aboriginal females, and s. 718.201, which calls for additional consideration of the increased vulnerability of female victims of intimate partner abuse, “giving particular attention to the circumstances of Aboriginal female victims”, were enacted after this offense occurred. As such, strictly speaking, the provisions do not apply to this sentencing. The provisions give voice to Parliament’s concerns for the plight of Indigenous women, as detailed in the Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (*Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, (Ottawa: Government of Canada, 2019)) (“the MMIWG report”).

...

[39] I turn to the status of Indigenous women dying from spousal or intimate partner violence. The Alberta Court of Appeal’s comments in *R. v. A.D.*, 2019 ABCA 396, at paras 25 to 28, are enlightening for two reasons: first, to highlight the scope of violence Indigenous women suffer compared to non-Indigenous women; and second, for its discussion of the interplay of the victim’s status as an Aboriginal woman and the offender’s status as an Aboriginal man:

[25] The fundamental purpose of sentencing is to protect society (s 718). Unfortunately, there is clear and overwhelming evidence that, when it comes to protecting Aboriginal women from violence and discrimination, more needs to be done. The homicide rate for Aboriginal women is six times that of non-Aboriginal women, and higher than the rate for non-Aboriginal men. Aboriginal women are almost three times more likely to experience violent victimization than non-Aboriginal women. Compared with non-Aboriginal women, Aboriginal women are almost three times more likely to report being the victim of spousal violence and, compared with non-Aboriginal victims of spousal violence, Aboriginal women are more likely to have experienced spousal violence on more than one occasion.

(Footnotes omitted)

[26] The sad fact is that Aboriginal women are disproportionately affected by domestic violence and violence in general and this reality should inform the sentencing process if there is to be any hope of achieving the fundamental purpose of sentencing and meeting the objectives set out in section 718 of the *Criminal Code*, which include denunciation and deterrence.

[27] Consideration of the victim, in this case the fact that she was an Aboriginal female, does not negate or otherwise trump the necessity of courts, when sentencing offenders, paying particular attention to the circumstances of Aboriginal offenders (s 718.2(e)). Rather, it requires that, in having regard to the circumstances of Aboriginal offenders, the courts do not discount the lives of or harms done to *Aboriginal victims of crime, their families and their communities ...*

[28] Considering the circumstances of the victim and the effects of the offence on the community does not mean that the circumstances of the offender, in particular the circumstances of Aboriginal offenders, are disregarded or, as was argued by the appellant in *R v Johnny*, 2016 BCCA 61, that consideration of the victim's circumstances effectively disentitles the offender from a meaningful Gladue analysis under s. 718.2(e). What it does mean is that, in arriving at a fit sentence, judges must take into account the circumstances of the offender, the circumstances of the victim and the effect of the crime on the community in which it took place. The fact that a sentencing judge is required to consider one set of circumstances does not mean other circumstances are ignored (see *Johnny* at para 21).

[61] Other cases that I have taken note of include:

- *R. v. Kane*, 2005 QCCA 753 (C.A. Que.), the Court of Appeal upheld an 18-year sentence for a husband who, in a fit of rage, beat and stabbed his ex-wife to death;
- *R. v. Montgrand*, 2007 SKCA 102 (Sask. C.A.), the Court of Appeal upheld a life sentence for a husband who stabbed his wife to death. He had a much more serious record for serious violence and had committed a prior manslaughter;
- *R. v. Ammaklak*, 2008 NUCJ 27 (Nun. C.J.), an Inuit man who pled guilty to beating his wife to death with a weapon received a 13-year term;

- *R. v. Jamieson*, 2012 ONSC 1114 (Ont. S.C.J.); Mr. Jamieson stabbed his wife once and left her without medical help for about 24 hours before she died. He was sentenced to 12 years;
- *R. v. Peter*, 2014 NUCJ 28 (Nun. C.J.), the Indigenous accused was charged with murder but found guilty of manslaughter by beating his Indigenous wife to death with his fists and feet in an act of "extreme violence". He had a prior record of domestic violence against his wife and breaching court orders. The court recognized the sentence range of 15 years and imposed that, while commenting that "the level was not high enough" in the opinion of the court;
- *R. v. Quigley*, 2016 BCSC 2184 (B.C. S.C.), the court imposed a sentence of 12 years on an Indigenous man, with no record, for the stabbing death of his spouse in the context of a domestic breakup. The accused had mental health issues and an addiction to crack;
- *R. v. MacKenzie*, 2019 NSSC 67 (N.S. S.C.), the court agreed to a joint recommendation of 15 years for a boyfriend who stabbed his intimate partner to death; and
- *R. v. Profeit*, 2020 ABQB 138 (Alta. Q.B.), an Indigenous man, with a history of domestic violence, was sentenced to 12 years for killing his Indigenous girlfriend by blunt force.

[62] In all of these cases, I can find precedent for the type of disposition that has been achieved here between counsel.

Positions of the Crown and Defence

[63] The prosecution and the defence have made a joint recommendation that the sentence of the court be 15 years' imprisonment for the manslaughter and three years' consecutive for the abandonment charge.

[64] I have considered the words of Bateman, J.A., as she then was in *R. v. G.P.*, 2004 NSCA 154, where, at paras. 13-15, she reviewed the sentencing court's task when considering whether to adopt a joint recommendation of counsel. I have also reviewed the decision of then Justice Cromwell in *R. v. McIvor*, 2003 NSCA 60, where he stated:

[31] ... It is not doubted that a joint submission resulting from a plea bargain while not binding on the Court, should be given very serious consideration. This requires the sentencing judge to do more than assess whether it is a sentence he or she would have imposed absent the joint submission ... It requires the sentencing judge to assess whether the jointly submitted sentence is within an acceptable range - in other words, whether it is a fit sentence. If it is, there must be sound reasons for departing from it.

[Citations omitted]

[32] Even where the proposed sentence may appear to the judge to be outside an acceptable range, the judge ought to give it serious consideration, bearing in mind that even with all appropriate disclosure to the Court, there are practical constraints on disclosure of important and legitimate factors which may have influenced the joint recommendation.

Reasons

- [65] This matter comes before the court following a resolution conference, the particulars of which I have put on record at the time of the plea. I am satisfied, I can say without any hesitation, that the 15-year sentence in this case is in the range of sentences that would be appropriate for this type of behavior, and that favors acceptance of the joint recommendation.
- [66] Through the course of this decision, I have touched on the circumstances of the offences, of Mr. Isadore, of the sentencing principles and reviewed how similar cases have been decided. Sentencing is always challenging. It is a balancing of sometimes many competing factors.
- [67] The proposed sentence is lengthy, but the gravity of the crimes is serious. The focus today has been as it should be on denouncing these crimes, and on the role that this hearing has in telling others in society that the community firmly rejects this behaviour. The sentencing is to be an example to others that there will be serious consequences for the commission of these crimes.
- [68] But we must remember that it is also about Mr. Isadore. The message to him, one that he has acknowledged, is that these are terrible crimes and there is punishment to be handed out to him.
- [69] There is also a recognition that he will some day return to society and so I am required to consider his prospects for rehabilitation. His criminal past of disobeying court orders and engaging in violent behaviour undermines the

hopes for rehabilitation but I acknowledge that there are mitigating factors as well.

- [70] Mr. Isadore is to be credited for having entered guilty pleas which allows the victims and the community to see some measure of justice and to focus now on healing without the uncertainty of how, what would have been very lengthy court proceedings, would have ended. It also relieves the witnesses and the courts of having this proceeding pending for many months or even years.
- [71] Mr. Isadore did express remorse when confronted with his crimes by the police. He was a young person, just 19 years old at the time of these offences. As I have indicated he has carried the burdens of addiction, trauma and social disruption. His intellectual and coping skills to deal with those issues is significantly compromised according to Dr. Starzomski's report. All of these factors also come into the balancing of what is an appropriate sentence.
- [72] We cannot say today who he will be when he is released from custody. In the Victim Impact Statements we heard of the fear of his return to the community. I understand that fear. I heard of anger. I understand the anger as well; I think we all do. I also heard though from Ms. Menge, as traumatized as she has been, speaking of trying to find reconciliation. I heard Ms. Denny recognize that Mr. Isadore has his own demons to face. We hope that those demons - because it seems that you do have your demons, Mr. Isadore, from everything I read about you - we hope you can vanquish those so you can return to society and be seen as a person who can be trusted and wanted in your community.
- [73] For today's purposes, the emphasis has to be on denunciation and deterrence and that is reflected by a lengthy prison sentence.
- [74] In relation to the crime of manslaughter, I have spoken to the appropriateness of the 15-year sentence.
- [75] I want to address briefly, before imposing sentence, the circumstances of the abandonment case. I have been referred by the prosecution to the case of *R. v. Nguyen*, 2001 ONCJ. That offence was proceeded upon where the maximum penalty was only two years' imprisonment, not the five years that it is now. I accept the strong message of denunciation and deterrence that was made in that case.

[76] In real terms, abandonment is a crime of violence in relation to vulnerable children, and even though abandonment is violent by the offender's inaction, it is every bit as serious in my mind as if Mr. Isadore actually committed a serious assault upon those children. Therefore, I accept that a three-year consecutive sentence is fit and proper and within the range of sentences for the crime of abandonment.

[77] In arriving at a cumulative sentence of 18 years' imprisonment, the record will reflect that I have considered the effect of the totality of the two sentences in determining that they should be served consecutively and am satisfied that together the sentences do represent a fit and proper result.

Conclusion

The Sentence of this Court is:

[78] In relation to the offence of manslaughter causing the death of Cassidy Bernard, contrary to s. 236(b) of the **Criminal Code**, you are sentenced to 15 years' imprisonment.

[79] In relation to the offence of abandoning P. and M. who were under 10 years of age and thus endangering their lives, contrary to s. 218 of the **Criminal Code**, you are sentenced to three years' imprisonment, consecutive to the first charge.

Credit for time on remand

[80] Mr. Isadore was remanded into custody in relation to each of these charges for a period of 916 days. Enhanced credit is set at 1.5 days for each day served on remand. Therefore, credit for remand time is set at 1,374 days to be applied against the sentence imposed.

Ancillary Orders

[81] In relation to the manslaughter charge, I am ordering pursuant to s. 109 of the **Code** that you are prohibited from possessing any firearms, cross bows, restricted weapon, ammunition and explosive substance for life and from possessing any prohibited firearms, weapons, or ammunition also for life.

- [82] Also, in relation to the manslaughter charge, I order pursuant to s. 491 that you forfeit any weapons and ammunition as is described in the order.
- [83] Under s. 487.051, manslaughter is a primary designated offence and so I order you to provide samples of bodily substances suitable for forensic DNA analysis.
- [84] Pursuant to s. 743.21 you are prohibited from communicating directly or indirectly with a list of persons identified on the record today and listed in the Warrant of Committal during the time that you are in prison.
- [85] Pursuant to s. 737 (2.1) the Victim Surcharge is waived. The reports before me indicate that you are unable to pay, having had little or no meaningful employment or income prior to your incarceration and will not be in a position for several years to even attempt to pay the surcharge. I am satisfied therefore that your circumstances fall within the provisions described in ss. 737 (2.1), (2.2), and (2.3) which are the provisions that permit the waiver of the Victim Surcharge.

Patrick J. Duncan
Associate Chief Justice

Appendix "A"

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN

HER MAJESTY THE QUEEN

v.

AUSTIN DWIGHT ISADORE

AGREED STATEMENT OF FACTS

1. In the early morning hours of October 21, 2018, not long after 9:00 a.m. Cassidy Bernard ("Ms. Bernard") died as a result of injuries she received from being physically assaulted by Austin Isadore, ("Mr. Isadore").
2. At the time of her death, Ms. Bernard was 22 years of age. She was an indigenous woman who grew up and resided in the Waycobah First Nation.
3. Mr. Isadore is an indigenous man from the Wagmatcook First Nation. He was born on March 16, 1999, and when Ms. Bernard died on October 21, 2018, he was 19 years of age.
4. Mr. Isadore and Ms. Bernard began a dating relationship in the earlier part of 2017. From that relationship, twin girls, M. and P. ("the children") were born in 2018. The children were 7 months old when Ms. Bernard died on October 21, 2018.
5. Ms. Bernard lived with the children and her mother, Mona Bernard at ** Waycobah First Nation.
6. The relationship between Mr. Isadore and Ms. Bernard was often affected at times by episodes of domestic violence and shared drug use. Mr. Isadore had physically assaulted Ms. Bernard on many occasions in the past during their relationship by punching, grabbing and pushing her. This would often cause bruising, swelling, abrasions and contusions on Ms. Bernard.
7. The relationship deteriorated to an "on again off again" status in the months prior to her death.
8. Mona Bernard last saw her daughter, Ms. Bernard, alive on Friday, October 19, 2018. Mona Bernard travelled to Eskasoni on that date to spend time with friends and relatives. Ms. Bernard and the children remained at the family residence in

Waycobah. Mona Bernard last communicated with Ms. Bernard via Facebook messenger on October 20, 2018, at 10:30 p.m.

9. On October 21, 2018, between 10:00 a.m. and 11:00 a.m., Mona Bernard tried to contact Ms. Bernard without success. By October 24, 2018, Mona Bernard grew concerned as several days had passed without having heard from Ms. Bernard.
10. On the morning of October 24, 2018, Mona Bernard, and social worker Bree Mengee travelled together to the family residence in Waycobah. They entered the home and once inside the residence both Mona Bernard and Ms. Mengee were immediately concerned. The house was very cold and had areas that were untidy. While at the threshold of Ms. Bernard's bedroom they observed Ms. Bernard deceased. She was in her bed lying on her back and tightly tucked in under a blanket. Her face appeared swollen and covered in heavy makeup.
11. The children were in their cribs in the same bedroom. They were cold, dehydrated, malnourished, disorientated and confused. They had "blue lips" and their diapers were heavily soiled. Ms. Mengee immediately ran next door to have neighbour Brian Marshall phone 911 at 10:53 a.m.
12. RCMP Constables Hall and Henderson arrived at the residence shortly after the 911 call. RCMP observations of Ms. Bernard were consistent with the reports of Mona Bernard and Ms. Mengee. Ms. Bernard was in bed, deceased, lying on her back with her arms to her sides. She was clothed and under a comforter on the bed that was tightly placed around her body. Only her head and left foot were exposed. An excess of makeup was applied to Ms. Bernard's face.
13. On the bedroom floor was an RBC bank card with Mr. Isadore's name on it. Ms. Bernard's cell phone was present. Evidence of possible drug use was present in the bedroom.
14. On October 25, 2018, Medical Examiner and Forensic Pathologist, Dr. Marnie Wood with the Nova Scotia Medical Examiner Service, conducted a post-mortem examination of Ms. Bernard. The cause and manner of death was determined to be blunt force injuries to the head and neck of Ms. Bernard. Her death was formally classified as a homicide.
15. A neuropathology exam of Ms. Bernard's brain revealed a subdural hemorrhage, subarachnoid hemorrhage, and a cortical edema (swelling of the brain). Dr. Wood determined these injuries ultimately caused Ms. Bernard's death and were likely due to repeated blunt force trauma.

16. According to Dr. Wood's examination of Ms. Bernard's remains, Ms. Bernard was found to have sustained many areas of contusions and abrasions over her head, face, and neck area. Dr. Wood confirmed that these blunt force type injuries could be consistent with repeated blows from a fist on different locations in these areas although she would be unable to provide an exact number.
17. Dr. Wood noted numerous other injuries present over the surface of the body. The exact age of those injuries could not be determined based on autopsy findings alone.
18. Ms. Bernard did not suffer any broken bones nor was there evidence found indicating significant bleeding. Dr. Wood indicated in her report that the exact scenario that resulted in these injuries to Ms. Bernard could not be determined on autopsy findings alone.
19. On October 24, 2018, Mr. Isadore provided the RCMP with a cautioned statement where he indicated that he last saw Ms. Bernard on October 18, 2018. He said he next heard from Ms. Bernard via text message in the early morning hours of October 21, 2018.
20. Mr. Isadore told police he first learned of Ms. Bernard's death when he attended family court proceedings on October 24, 2018. His mother and grandmother arrived at the court saying Ms. Bernard had passed away.
21. In his statement to police, Mr. Isadore indicated that he had no relationship with the children and had not been allowed around them since they were born. When asked by police about his relationship with Ms. Bernard, he said he "didn't really have a relationship with her" and they were "not that close". He indicated he met her a year and a half prior and after six months she was pregnant. He further said that they broke up after she had the twins. Mr. Isadore told police that he had not been to Ms. Bernard's home in approximately 5 months, although he was "not quite sure".
22. The RCMP continued their investigation into Ms. Bernard's death, including obtaining and analyzing evidence from witness statements, forensic reports, bank records and cell phone records.
23. On May 27, 2019, the RCMP commenced an undercover investigative technique, commonly known as a "Mr. Big" or "Crime Boss" operation. The objective was to have Mr. Isadore, who the RCMP determined was the primary suspect in the killing of Ms. Bernard, to provide any information he had concerning Ms. Bernard's death to undercover RCMP officers. To realize this goal, the undercover officers

engaged Mr. Isadore in communications and provided him with opportunities to be part of their supposed criminal organization.

24. The operation lasted six (6) months. During that time Mr. Isadore was introduced to several undercover officers who played various roles within the mock organization. They posed as friends, associates, family members and customers of the organization and its members. Mr. Isadore bonded with these undercover officers. The entire operation was completed within Nova Scotia.
25. On November 30, 2019, as part of a scenario in this investigative technique, Mr. Isadore was provided an opportunity to meet the “crime boss”, who also was an undercover officer.
26. By this meeting date, the RCMP were aware from their overall investigation to that point, that Ms. Bernard and Mr. Isadore were arguing with each other over social media on October 19 and October 20, 2018, with both engaged in name calling; Mr. Isadore making veiled threats of violence towards Ms. Bernard and at times Ms. Bernard asking Mr. Isadore to leave her alone. The final social media message between them was from Ms. Bernard to Mr. Isadore at approximately 4:08 a.m. on early Sunday morning, October 21, 2018, where she expressed her feelings that she accepts that the two of them would not be together anymore and that she has to move on although she didn't necessarily want to do so.
27. As well, by this meeting date, the RCMP also suspected from evidence gathered from cell phone records of Ms. Bernard and phone messages from others, that Mr. Isadore attended at Ms. Bernard's home for a period of time in the morning hours of October 21, 2018. They also suspected that Mr. Isadore was upset and angry about Ms. Bernard having contact with other men and that Ms. Bernard was assaulted by Mr. Isadore at that time.
28. At the meeting with the crime boss, Mr. Isadore advised him that he was a suspect in a homicide investigation. During the conversation that was secretly recorded, Mr. Isadore indicated on the day of Ms. Bernard's death (which was October 21, 2018) he attended at her home in the early morning hours. Ms. Bernard was not expecting him. He further indicated that he and Ms. Bernard proceeded to argue over Ms. Bernard's supposed relationship with another man and about drug related matters.
29. During the argument, Mr. Isadore indicated that he took Ms. Bernard's phone and reviewed it. Messages on the phone suggested she may have been interested in becoming involved romantically with other men. Mr. Isadore became very angry at this. At one point he indicated he consumed a pill.

30. Mr. Isadore further alleged to the undercover crime boss that during their argument Ms. Bernard stuck him on two occasions in the hand with a needle because he wouldn't give her a pill. Toxicology reports on Ms. Bernard did not indicate the presence of drugs in her system. Mr. Isadore stated that he physically struck Ms. Bernard with his fists. He hit her in the face, neck, back and stomach. He indicated that he believed that he hit her approximately 10 times in the head, face, and neck area as hard as he could. He stopped hitting her. He noted that her face became quite swollen. He confirmed that he had assaulted her in the past but that this was the first time that he saw her face swollen like it was.
31. Shortly thereafter he was holding her up. He indicated that they were speaking briefly, and her head dropped. Ms. Bernard was silent. In an attempt to wake her up Mr. Isadore said he tried to get Ms. Bernard to do a line of drugs but she was unable to consume them.
32. Mr. Isadore then proceeded to take Ms. Bernard outside to see if the cold weather might wake her up. That didn't work either. Mr. Isadore indicated at that point he knew Ms. Bernard had died. He proceeded to carry her to her bedroom, he laid her on the bed and put a blanket over her and tucked it in around her. He told her that he loved her.
33. Before he left the residence, Mr. Isadore stated to the "Crime Boss" that he put makeup around Ms. Bernard's eyes, cheeks, and face with a makeup brush that he found. He then tried to wipe everything down to get rid of his fingerprints. He left the children in their crib.
34. When Mr. Isadore returned home, he advised that he burned the makeup he used on Ms. Bernard. He stated that there was no one else involved.
35. Mr. Isadore was formally arrested in the death of Ms. Bernard on December 3, 2019, and was brought to the Port Hawkesbury RCMP detachment.
36. While there, Mr. Isadore participated in a video recorded interview. He eventually admitted to the RCMP to going to Ms. Bernard's residence where they had an argument. Mr. Isadore confirmed that he struck Ms. Bernard several time in the face, neck and back. He indicated that she died in his arms. He then placed Ms. Bernard back in her bed, put a blanket over her and applied makeup to her face to conceal her injuries. He then confirmed that when he left the residence the twins were still in their crib. He did not return.

37. In his statement Mr. Isadore indicated that he loved Ms. Bernard and expressed remorse for what had happened.

DATED at _____, Nova Scotia, this _____ day of June 2022.

GLENN GOUTHRO
Senior Crown Attorney

WAYNE MACMILLAN
Defence Counsel

PETER HARRISON
Senior Crown Attorney

AUSTIN DWIGHT ISADORE