SUPREME COURT OF NOVA SCOTIA
Citation: *R.* v. *Rhyno*, 2023 NSSC 9

Date: 20230110
Docket: *Hfx*. No. 508026
Registry: Halifax

Between:

His Majesty the King

v.

Nicholas Rhyno

DECISION ON SENTENCE

Judge:	The Honourable Justice John A. Keith
Trial:	September 6 – 23, 2022, in Dartmouth, Nova Scotia
Sentencing Hearing:	January 5, 2023, in Halifax, Nova Scotia
Oral Decision:	January 5, 2023
Counsel:	Eric Taylor and Nicole Campbell, for the Provincial Crown Patrick MacEwen, for the Defendant

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.

By the Court (Orally):

INTRODUCTION

[1] Early in the evening of October 22, 2020, Zachery Grosse and Nicholas Rhyno met, for the first time, at about 6:24:40 p.m., in apartment 12 on the 3rd floor of 24 Primrose Street in North Dartmouth where Mr. Grosse lived with his girlfriend, Kaila Ford. It is possible to pinpoint the precise time of this initial encounter (and many other events relevant to this case) because security cameras installed both outside 24 Primose Street and within the apartment building recorded the event on video which also captured the time of day.[1]

[2] Within less than a minute of meeting one another, the two men would square off against one another in the hallway just outside Mr. Grosse's apartment door. By this time, Mr. Grosse had retrieved a switchblade. But he did not know that Mr. Rhyno also carried a knife. Mr. Rhyno's knife was concealed in his right coat pocket. Mr. Rhyno struck first. He stabbed Mr. Grosse in the neck and opened up a wound in a major blood vessel. Blood began gushing from Mr. Grosse. The knife fight continued and Mr. Grosse suffered other wounds. But this initial cut proved fatal. Despite the efforts of first responders and E.R. medical professionals, Mr. Grosse succumbed to his wounds and died in the early hours of October 23, 2020.

[3] By verdict rendered September 23, 2022, a jury found Nicholas Rhyno guilty of manslaughter contrary to section 236(b) of the *Criminal Code* in the death of Zachery Grosse. The jury considered the charge of second degree murder but found Mr. Rhyno not guilty of that offence.

[4] I must now determine a fit, proper and just sentence for Mr. Rhyno's crime.

CIRCUMSTANCES OF THE OFFENCE

[5] It is necessary to outline the materials facts of the crime so as to better ensure the sentence for that crime is fit and just. However, this was a jury trial. Both the common law and section 649 of the *Criminal Code* recognize the sanctity of jury

[1] Prior to trial, the parties agreed that the running clock was exactly 18 minutes behind the actual time. I have converted the times in this decision to the actual time.

secrecy which, in turn, prohibits the Court from receiving information regarding jury deliberations – including the specific facts of the crime which jury members relied upon when reaching their verdict. That information must be held within the strictest of confidence. The underlying rationale includes a desire to protect the integrity of jury deliberations and shield the jury from outside influences (*R* v *Pan*, 2001 SCC 42).

[6] As such, where a jury finds an accused guilty, the sentencing judge is compelled to make certain factual determinations in the absence of input from the jury as to the facts which they used to support conviction. In *R v Ferguson*, [2008] 1 S.C.R. 96, the Supreme Court of Canada described the sentencing judge's obligation to make factual determinations:

> The sentencing judge therefore must do his or her best to determine the facts necessary for sentencing from the issues before the jury and from the jury's verdict. This may not require the sentencing judge to arrive at a complete theory of the facts; the sentencing judge is required to make only those factual determinations necessary for deciding the appropriate sentence in the case at hand.
>
> [at paragraph 16. See also paragraphs 17 – 18]

[7] This comment from the Supreme Court of Canada aligns with section 724(2) of the *Criminal Code* which states:

> 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.

[8] As a necessary corollary to the sentencing judge's obligation to only make factual determinations necessary to impose a sentence for the particular crime committed, the sentencing judge may not make such additional factual determinations that are inconsistent with the jury's verdict, or implicitly rejected by the jury having regard to the verdict (*R* v *Landry*, 2016 NSCA 53 at paragraph 49).

[9] The following circumstances surrounding the offence facts were developed with these principles in mind, based on the evidence before the Court.

[10] Zachery Grosse lived with his girlfriend, Kaila Ford, in apartment 12, on the 3rd floor of an apartment building located at 24 Primrose Street in North Dartmouth.

[11] During the late afternoon of October 22, 2020, Zachery Grosse and Kaila Ford were drinking and smoking cannabis in the apartment of their friend, Stevie Saulnier. Stevie Saulnier lived in an apartment one floor below Zachery Grosse and Kaila Ford (i.e. on the 2nd floor of the same building). Nothing happened that afternoon to suggest imminent danger or trouble.

[12] At about this same time, across the harbour in Halifax, Nicholas Rhyno was picking up Kaila Ford's sister, Taylor Forrest. They were driving in Mr. Rhyno's car and they were on their first date. Here again, there was nothing to suggest imminent danger or trouble.

[13] However, the two couples' paths would soon intersect and that is where trouble began.

[14] Earlier that same day, Ms. Forrest was texting with her sister, Ms. Ford. They decided that Ms. Forrest and Mr. Rhyno would meet for drinks at Ms. Ford and Mr. Grosse's apartment.

[15] The video footage from security cameras arrayed outside 24 Primrose Street show Mr. Rhyno and Ms. Forrest arriving by car at 6:18:18 p.m. Ms. Forrest texted Ms. Ford to say they arrived. Unfortunately, Ms. Ford did not immediately see the text and she did not know that her sister arrived with Mr. Rhyno in tow. Worse, Ms. Ford had not told Mr. Grosse about the plan to spend an evening drinking with Ms. Forrest and Mr. Rhyno. Pausing here, it bears repeating that Mr. Rhyno was a stranger to Mr. Grosse.

[16] Mr. Rhyno parked his car in the parking lot located to the rear of the apartment building. He and Ms. Forrest walked into the apartment building. Internal security cameras picked up their entrance and followed Mr. Rhyno and Ms. Forrest up a set of stairs to the 3rd floor. Mr. Grosse and Ms. Ford's apartment door was unlocked.

[17] Ms. Forrest and Mr. Rhyno entered apartment 12, which was empty except for a dog named Max. Ms. Ford and Ms. Grosse were still socializing one floor below, in Stevie Saulnier's apartment.

[18] Out of habit, Mr. Rhyno closed and locked the apartment door behind him.

[19] Less than 5 minutes later, at about 6:23:09 p.m., Mr. Grosse walked up the stairs to his apartment 12, but the door was now locked. He still did not know Ms. Forrest and Mr. Rhyno were there for drinks. Mr. Grosse started to return to the

second floor when Ms. Forrest opened the apartment door. Mr. Grosse turned quickly. This would have been the first time Mr. Grosse discovered that Ms. Forrest was visiting, but he still did not know Ms. Forrest was accompanied by Mr. Rhyno.

[20] Mr. Grosse returned to Stevie Saulnier's apartment on the 2nd floor and told Ms. Ford that her sister was in their apartment.

[21] Ms. Ford quickly left Stevie Saulnier's apartment and walked back up to the 3rd floor to speak with her sister.

[22] A minute or two later, Mr. Grosse followed Ms. Ford. He re-entered his apartment at 6:24:40 p.m.. At that moment, he and Mr. Rhyno met for the first time.

[23] Mr. Grosse was upset and agitated to find Ms. Forrest and a stranger (Mr. Rhyno) in his apartment. Ms. Ford said that Mr. Grosse was "freaking out". Ms. Forrest and Mr. Rhyno similarly testified that Mr. Grosse was furious.

[24] Mr. Grosse spoke accusingly towards Ms. Forrest. He then turned to Mr. Rhyno who was sitting on the couch. Mr. Grosse asked Mr. Rhyno: "Who the fuck are you?"

[25] This was a turning point. While I agree Mr. Grosse introduced an elevated level of aggression, Mr. Rhyno was not inclined to defuse or de-escalate the situation. Instead, Mr. Rhyno rose from the couch to ask Mr. Grosse if there was a problem.

[26] This initial exchange between Mr. Rhyno and Mr. Grosse lasted only a few moments but the atmosphere deteriorated rapidly and soon got out of hand.

[27] Within 24 seconds of arriving at apartment 12, Mr. Grosse concluded that Mr. Rhyno was not leaving the apartment. Mr. Grosse announced something along the lines of "You're not going to leave? Watch this." Mr. Grosse then stormed out of the apartment. The security cameras capture Mr. Grosse jogging down the stairs to the 2nd floor and re-entering Stevie Saulnier's apartment. He was there to retrieve a knife.

[28] There is evidence that Mr. Rhyno and Ms. Forrest felt threatened by Mr. Grosse's words and actions. However, Mr. Rhyno's response is notable. He did not respond by locking the apartment door or take other steps to avoid any perceived threat, avoid any further confrontation or de-escalate. He did not rush out of the apartment with Ms. Forrest.

[29] Rather, Mr. Rhyno followed Mr. Grosse out of the apartment. Security camera footage shows Mr. Rhyno looking around the 3rd floor hallway. Perhaps more tellingly, without any additional information regarding Mr. Grosse's intentions, the security camera footage clearly shows that Mr. Rhyno began walking around the hallway while holding a combat style knife in his right hand. Mr. Rhyno did not know Mr. Grosse either had a weapon or was in the process of arming himself.

[30] In other words, absent any new information as to what Mr. Grosse was doing, Mr. Rhyno took hold of his own knife and left the apartment to meet a perceived threat. His actions were, in my view, more consistent with a person inclined towards reciprocal confrontation than a person attempting to extricate himself from a situation which he may not have caused but was quickly spinning out of control.

[31] Mr. Rhyno's knife was designed with fitted handle which included a ring where the little finger is placed. The knife's blade was about 3' long and curved inward, resembling a claw. At one point, Mr. Rhyno looked up and stared directly into the security camera. Immediately after that, he placed the knife back in his right coat pocket.

[32] By 6:25:20 p.m., Mr. Grosse had entered Stevie Saulnier's apartment and was now leaving. He bounded back up the stairs from the 2nd floor towards the 3rd floor. As Mr. Grosse jumped up the first few stairs, he flicked opened a switchblade held in his right hand. Mr. Grosse was now armed.

[33] About 10 seconds later, at 6:25:30 p.m., Mr. Grosse arrived at the top of the stairwell leading to the third floor.

[34] The fire door which separated the stairwell from the third floor hallway was closed. Mr. Grosse transferred the switchblade from his right hand to his left so that he could push open the fire door.

[35] On the other side of the fire door was Mr. Rhyno, standing directly in front of Mr. Grosse's apartment.

[36] Mr. Grosse's switchblade was plainly visible when he opened the door. However, again, by this time Mr. Rhyno held his own knife in his right hand pocket. Mr. Grosse did not know that.

[37] When Mr. Grosse opened the fire door, Mr. Rhyno kept both hands in his coat pockets.

[38] What happened next, happened in an instant but, again, it was all captured on video.

[39] Mr. Grosse steps through the stairwell door and confronts Mr. Rhyno. Again, Mr. Rhyno did not retreat. He told Mr. Grosse to "Beat it" or "Move".

[40] At 6:25:32 p.m.[2], Mr. Grosse leans towards Mr. Rhyno and appears to be yelling something. There is no audio in security video footage. Mr. Rhyno testified that Mr. Grosse screamed "You're fucking dead!" By this point, Mr. Grosse had not yet transferred the knife from his left hand and back to his dominant right hand although the video shows he was preparing to do so.

[41] At that second, Mr. Rhyno suddenly pulled both hands out from his coat pocket, reached up toward Mr. Grosse's neck and pushed him back. As he did this, the knife in Mr. Rhyno's right hand stabbed Mr. Grosse on the left side of his neck.

[42] By this time, it bears noting that Mr. Grosse and Mr. Rhyno had known each other for less than a minute.

[43] The attack occurred over a split second of time but, in that instant, Mr. Rhyno opened a wound to Mr. Grosse's vertebral artery. The vertebral artery is a massive blood vessel (3 – 4 cm) that runs along a bony canal in the upper neck. Immediately after Mr. Rhyno stabbed Mr. Grosse, blood began to spurt from his neck and splatter all over the apartment door and floor. At this point, and absent urgent medical treatment, Mr. Grosse was at risk of imminent death.

[44] Pausing here, it is important to confirm four things:

1. First, Mr. Rhyno struck first with the knife that he concealed in his pocket. In addition, Mr. Grosse was taller. When Mr. Rhyno suddenly pushed Mr. Grosse, he also moved his hands up towards Mr. Grosse's neck;
2. Second, the knife continued after this first attack. But, again, the initial wound to the left side of Mr. Grosse's neck proved fatal. Nova Scotia's

[2] The time stamp on the security camera video which captured this event says 18:07:30. However, the parties agreed prior to trial that the time stamp was 18 minutes behind the actual time.

Chief Medical Examiner, Dr. Matthew Bowes, testified that this initial stabbing cut to the left side of Mr. Grosse's neck would have caused his death. The other cuts suffered during the fight would have been peripheral, by comparison. The effusion of blood gushing from Mr. Grosse's neck following this cut supports this conclusion; and

3. Third, I accept that Mr. Grosse was triggered into a volatile state of anger that was sufficiently intense as to motivate Mr. Grosse to leave apartment 12, arm himself with a knife, and then return to face Mr. Rhyno. However, the evidence is also clear that Mr. Rhyno was not so agitated and upset. Mr. Rhyno testified that he remained cool and in control throughout. His demeanour in the security camera footage also bears this out. I do not make the factual determination that Mr. Rhyno either lost his power of self-control or was provoked, as that term is understood at law; and

4. Fourth, while there may have been a defensive element Mr. Rhyno's actions, they equally suggest an intention to inflict the first blow. Nevertheless and consistent with the jury's verdict of manslaughter, he did not intend to kill Mr. Grosse or cause bodily harm that he knew was likely to cause death and was reckless whether death ensued. In short, Mr. Rhyno did not form the requisite intent under section 229 of the Criminal Code to commit culpable homicide or murder.

[45] After stabbing Mr. Grosse, Mr. Rhyno immediately retreated back into apartment 12. Mr. Grosse tried using his left arm and right leg to prevent Mr. Rhyno from shutting the door. He was unsuccessful. Mr. Rhyno shut and locked the door – a choice Mr. Rhyno unfortunately did not make earlier.

[46] Mr. Grosse neither sought nor received immediate medical treatment for his wounds. Instead, he was furious and presumably unaware of his actual peril. About 10 seconds after being stabbed, at 6:25:42 p.m., Ms. Ford opened the apartment door. Despite massive amounts of blood gushing from his neck, Mr. Grosse rushed past Ms. Ford and re-engaged with Mr. Rhyno.

[47] A chaotic knife fight ensued. Between 6:25:42 p.m. – 6:25:53 p.m., Mr. Grosse and Mr. Rhyno grappled and struggled violently with one another in the living room of apartment 12 and then spilled out onto the apartment's small, exterior balcony. In the words of Ms. Ford, "two grown men were attacking the hell out of each other."

[48] Mr. Grosse suffered additional, lesser knife wounds – none as serious or lethal as the first cut which sliced through his vertebral artery.

[49] At about 6:26:03 p.m., Mr. Rhyno pushed Mr. Grosse down on the balcony deck and ran. He and Ms. Forrest fled the apartment, charged down the stairs and out of the building. I do not find that this was the first opportunity they had to run.

[50] Mr. Grosse lifted himself from the balcony and chased Mr. Rhyno down the stairs, into the parking lot.

[51] There was a brief stand-off between Mr. Rhyno and Mr. Grosse in the parking lot, but it did not involve additional physical violence.

[52] By 6:26:31 p.m., about 15 second after reaching the parking lot, Mr. Grosse began to appear unsteady. He staggered back. Mr. Rhyno and Ms. Forrest (who was on the passenger side of the car) jumped in the car.

[53] At about the same time, Michael Saulnier rushed forward and discharged the contents of a fire extinguisher in the open car door. Michael Saulnier did not live in the apartment building, but his mother did. In addition, Michael Saulnier was Stevie Saulnier's brother who lived on the 2nd floor.

[54] The contents of the fire extinguisher enveloped Mr. Rhyno's car like a cloud of white smoke.

[55] Within 10 seconds of that, Mr. Grosse was visibly struggling and in grave danger. He bent slightly and placed his hand against his cut neck. He stumbled towards another friend, Amanda Saulnier, who was now in the parking lot. Amanda Saulnier is another sibling of Stevie Saulnier (his sister) and another member of the Saulnier family living in a separate apartment at 24 Primrose Street. Amanda Saulnier was also the building superintendent.

[56] Mr. Grosse then collapsed in front of Amanda Saulnier, about 20 feet or so from Mr. Rhyno's car.

[57] At 6:26:47, Mr. Rhyno put his car in reverse. The car was still filled with white discharge from the fire extinguisher. Mr. Rhyno momentarily stopped to open the driver's side door and exhaust some more white smoke (the discharge from the fire extinguisher). He and Ms. Forrest then sped out of the parking lot.

[58] Pausing here, I agree that Mr. Rhyno should not be faulted at this point for failing to stop and assist Mr. Grosse. After being stabbed by Mr. Rhyno, Mr. Grosse was seriously injured but he was also inflamed. He hurtling himself back into a knife fight with Mr. Rhyno as soon as the apartment door was unlocked. He chased Mr. Rhyno out of the building, still holding his switchblade. Unlike many cases where the victim became incapacitated while the offender was still present, Mr. Rhyno and Ms. Forrest only tore out of the parking lot at around the same time Mr. Grosse was just collapsing – and following a period of chaotic violence and confusion when Mr. Grosse was still armed and in pursuit.

[59] Police and paramedics were quick to arrive on scene. They found Mr. Grosse lying on the parking lot, having lost massive amounts of blood. Mr. Grosse's heart stopped but the paramedics managed to restore a weak pulse. They quickly transferred Mr. Grosse to the emergency room for urgent medical care. Despite heroic measures to save his life, Mr. Grosse never regained consciousness. Mr. Grosse died in the early hours of October 23, 2020.

STATUTORY PROVISIONS REGARDING SENTENCE FOR MANSLAUGHTER

[60] The offence of Manslaughter carries a maximum punishment of life imprisonment. There is no mandatory minimum sentence. (section 236(b) of the *Criminal Code*)

[61] Absolute and conditional discharges are not available for the crime of manslaughter (Section 730(1) of the *Criminal Code*). Conditional sentences are also not available (s. 742.1(c) of the *Criminal Code*)

[62] In addition, because manslaughter is a primary designated offence, the following ancillary orders are mandatory:

1. A DNA order is mandatory upon conviction (s. 487.051(1) of the *Criminal Code*; and
2. A mandatory firearms prohibition order pursuant to s. 109(1)(a) of the *Criminal Code*. The duration of such an order is governed by s. 109(2) of the *Criminal Code*.

CIRCUMSTANCES OF THE OFFENDER

[63] The parties filed a pre-sentence report prepared by Jennifer Keeler and dated November 16, 2022. I glean the following information from that report:

1. Mr. Rhyno was born on March 31, 1987. He will be 36 years old in less than 3 months time;
2. Mr. Rhyno is the eldest of four brothers and he describes his childhood as a happy one. There is no evidence that, during his youth, Mr. Rhyno suffered family dysfunction or other trauma that might have somehow twisted his behaviours or beliefs as an adult;
3. Mr. Rhyno left home when he was about 18 years old and quickly fell into a mess of trouble. By the age of 19, Mr. Rhyno was serving his first jail sentence. He has been in and out of jail ever since. I return to Mr. Rhyno's prior criminal record below. It is extensive. Nevertheless, Mr. Rhyno maintains strong ties of affection with family members, some of whom consistently supported him throughout this trial. That said, Mr. Rhyno has no significant personal connections beyond immediately family;
4. In terms of education, Mr. Rhyno was just 2 courses away from high school graduation when he was expelled. However, Mr. Rhyno returned to school while incarcerated and completed his Grade 12 General Equivalency Diplomacy;
5. As to work experience, Mr. Rhyno advises that he is considered a Journeyman Iron Worker and was working his way towards a Red Seal as an Iron Worker at the time of Mr. Grosse's death. Periods of incarceration for criminal offences consistently delayed and disrupted his work in this trade. During the sentencing hearing, Mr. Rhyno filed a letter from a "Placing Manager" at Harris Rebar: Blaine Singer. Mr. Singer confirmed that Mr. Rhyno worked full time with Harris Rebar. He described Mr. Rhyno as a "dependable worker that was always on time and never missed any shifts." He concluded that he would consider rehiring Mr. Rhyno if there were any openings in the future.
6. As to health, Mr. Rhyno reports suffering from anxiety and depression. His mother, Kimberley Guy, confirms the diagnosis of anxiety and adds Post Traumatic Stress Disorder. Mr. Rhyno is currently taking medication for sleep and anxiety.

7. Finally, in this report, Mr. Rhyno confessed to historic issues with drug abuse, notably opiates, but says that he is now drug-free. He also admitted having a "bit of a temper".

VICTIM IMPACT STATEMENTS

[64] Zachery Grosse's father (Charles Grosse) and mother (Roxanne Bowden-Grosse) both read their victim impact statements into Court. It was difficult to watch their searing grief while recounting the immeasurable damage done to themselves and their family when their son died so suddenly and violently on October 23, 2020. That family includes Zachery's very young daughter, Missy, his younger brother, and numerous members of the extended family who still struggle to understand his death.

[65] Mr. Grosse and Ms. Grosse are to be thanked and commended for the strength and courage needed to speak publicly of their loss and suffering. It is a torment which continues to this day and will haunt them and their family.

[66] Mr. Grosse and Ms. Grosse both commented that it is difficult to find justice in these tragic circumstances. They are right. Sometimes those who are lost cannot be found in this life, except in memory. We cannot always collect the pieces of a life shattered by the death of a loved one.

[67] Ms. Grosse is also right when she says that our system of justice is imperfect. There is a philosophical view that says justice means ensuring people receive what they deserve. This hearing seeks to achieve a measure of that justice by fashioning a deserving sentence for Mr. Rhyno based on the purposes and principles established under our law. For that reason, it is necessarily focussed on the offender.

[68] In a more profound sense, however, the Courts cannot provide the same justice to the victims (including Zachery and his family) because Zachery did not receive what he deserved. He did not deserve to die. And this Court cannot restore to Zachery or his family the life that was taken.

[69] Courts inhabit a place where ideals around justice mingle with the painful and often incomprehensible tragedies that surround the human condition – like Zachery's death. Inspired by ideals around justice, Courts appeal to our better nature. And Courts might moderate the injuries caused by our baser instincts. But Courts cannot prevent or fully heal the harsh realities of life.

[70] I conclude by commenting briefly on Ms. Grosse's final words, quoting from the Bible. She said "Do not repay evil for evil. Do what is right. Live in peace." I was taken by her words. They were remarkably gracious and offer a flicker of light in a dark time for the Grosse family. I realize that Zachery's family remain in mourning but these words demonstrate an abiding faith, an understanding that retributive vengeance is not the answer, and a hope that Zachery and his family will find their peace.

MR. RHYNO'S CRIMINAL RECORD

[71] Mr. Rhyno has a troubling criminal record punctuated with crimes of violence and, as well, weapons offences.

[72] Mr. Rhyno accepts the following brief summary of Mr. Rhyno's criminal record, taken from the Crown's written submissions on sentencing at paragraph 9:

> Mr. Rhyno has 22 prior convictions, grouped as follows:
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> Offences of Violence:
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> Assault Causing Bodily Harm
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> 2 x Assault with a Weapon
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> Assault
>
> Weapons Offences:
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> Use of a Firearm during the Commission of an Offence
>
> 2 x Possession of a Firearm While Prohibited
>
> Possession of a Firearm Knowing its Possession is Unauthorized
>
> Possession of a Prohibited or Restricted Weapon
>
> Conspiracy to Commit an Offence
>
> Careless Use of a Firearm
>
> Offences Against the Administration of Justice:
>
> 5 x Breach of Bail Orders
>
> Unlawfully at Large

Property Offences:

Theft Over

Possession of Stolen Property

Drug and Alcohol Offences

Trafficking in a Controlled Substance

Possession for the Purpose of Trafficking

Driving While Over 80"

[73] Attached as Appendix "A" to these reasons is a summary of facts which underpin certain of these convictions. All parties consented to the wording of these underlying facts.

[74] During oral submissions, the Crown reviewed Mr. Rhyno's record over the past 16 years, pointing out that Mr. Rhyno would only be briefly out of prison before re-offending and re-committed. The Crown suggests that Mr. Rhyno's adult life reveals a consistent pattern of crime interspersed not so much by peaceful, lawful behaviour but, rather, inactivity associated with incarceration. The Crown further argues that Mr. Rhyno's actions are consistently and predictably punctuated by bursts of violence and poor, impulsive decisions often involving criminality. The Crown concludes that to date, and notwithstanding significant time in prison, Mr. Rhyno's capacity for violence as a means to achieve his ends has neither dampened nor diminished.

GENERAL PRINCIPLES OF SENTENCING

[75] A fit and proper sentence is necessarily contextualized and individualized. Among other things, each offence involves a unique accused and unique surrounding circumstances.

[76] The analysis is informed by section 718 of the *Criminal Code* which confirms that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing "just sanctions".

[77] Section 718 further confirms that this purpose is achieved by imposing a "just sanction" that has one or more of the following objectives:

1. Denunciation (section 718(a));

2. Deterrence (section 718(b));

3. Separating offenders from society (section 718(c));

4. Rehabilitation (section 718(d));

5. Reparations to the victim or community (section 718(e)); and

6. Promoting accountability and the need to accept responsibility for harms done to victims and society (section 718(f)).

[78] Section 718.1 and 781. 2 provides principles which the Court must apply or consider to ensure the fundamental purpose and related objectives of sentencing are realized. In particular:

1. Section 718.1 codifies the principle of proportionality or, more specifically, that: "[a] sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender";

2. Section 718.2 lists the following additional principles that must be applied to reach a just sentence. For the purposes of this hearing, the following particular provisions are germane:

    a. Section 718.2(a): Aggravating or mitigating circumstances relating to the offence or the offender (section 718.2(a))[3];

    b. Section 718.2(b) of the *Code* speaks to parity and the notion that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances." The principle of parity differs from that of proportionality, mentioned above. Proportionality demands that a just sentence reflect the unique, particular circumstances of the offender and the offence. By contrast, a sentencing regime that is just and fair strives for parity so that similar sentences are imposed in similar situations. To achieve parity, the Court looks beyond the single case before it and searches for appropriate comparisons in the jurisprudence. In doing so, the Court not only

[3] Section 718.2(a) includes a non-exhaustive list of examples that constitute aggravating circumstances in sentencing. None of those examples apply here.

> achieves parity but invokes the collective wisdom of other judges facing similar issues. These two principles (proportionality and parity) do not work at cross-purposes. On the contrary, they work in tandem towards a just and proportionate sentence. Thus, in *R* v *Friesen*, 2020 SCC 9, the Supreme Court of Canada wrote: "Parity is an expression of proportionality. A consistent application of proportionality will lead to parity. Conversely, an approach that assigns the same sentence to unlike cases can achieve neither parity nor proportionality" (at paragraph 32).

CSC RECORDS AND NATIONAL PAROLE BOARD DECISION

[79] An issue arose regarding certain evidence relied upon by the Crown in sentencing. In particular, the Crown tenders and relies upon:

1. Criminal Profile Report, dated March 29, 2016;
2. An Assessment for Decision on Statutory Release, dated February 5, 2019; and
3. A Parole Board of Canada Decision on Statutory Release, dated April 3, 2019.

(collectively, "**Mr. Rhyno's Incarceration Records**")

[80] I previously decided that these documents were admissible but subject to weight. It is necessary to comment further on this issue.

[81] The Crown relies upon passages in Mr. Rhyno's Incarceration Records to demonstrate behaviours which are impulsive and often violent. These documents also offer negative opinions regarding Mr. Rhyno's lack of remorse, lack of progress towards a more peaceful lifestyle, aggression and the risks he poses to others. The Crown takes the position that this evidence does not constitute an "aggravating factor" in sentencing *per se* but goes to "character" or "context" relevant to the sentencing objectives of general and specific deterrence and, as well, the issue of Mr. Rhyno's rehabilitative prospects.

[82] The defence contends that the Crown's use of this information is disingenuous and disguises the true import of this evidence: aggravating factors intended to be the determinative factor pushing Mr. Rhyno's sentence well beyond the normal range for manslaughter. Moreover, the defence points to cases which support the basic,

uncontroversial proposition that an offender cannot be given a harsher sentences for various offences that have never been proven.

[83] Generally speaking, "aggravating factors" are "those that push the appropriate sentence towards the higher end of the range. Mitigating factors are those that push the appropriate sentence towards the lower end of the range" (*R* v *Henry*, 2011 ONCJ 501 at paragraph 36).

[84] "Aggravating factors" which, by themselves, can prompt a more severe or harsh penalty must be proven beyond a reasonable doubt (*R v Ferguson*, [2008] 1 SCR 96 ("***Ferguson***") at paragraph 18).

[85] Most "aggravating factors" referenced in sentencing decisions involve the specific facts and circumstances related to the particular offence in question. For example, the use of a knife or a firearm while committing manslaughter or the extent to which the offender instigated violence are frequently described as "aggravating factors". Because the offender has just been convicted, these facts will, by definition, have been proven beyond a reasonable doubt. And these types of factors may compel a harsher sentence.

[86] Obviously, when sentencing an offender, there are other facts which the Court may rely upon beyond the specific facts of the offence. For example, the Court is typically provided with a pre-sentence report which summarizes the offender's prior criminal record and also discusses such things as the offender's upbringing, family ties, social connections, health, education and work experience. This type of evidence is relevant to the broader sentencing objectives enumerated in section 718 and including, for example, the need for deterrence and the offender's rehabilitative prospects. Unlike "aggravating factors", this type of evidence must only be proven on a balance of probabilities (*Ferguson* at paragraph 18). The underlying rationale is, among other things, that the rigorous evidentiary standards that apply at trial must be relaxed at sentencing so that a sentencing judge might more easily access "the fullest possible information concerning the background of the accused if he is to fit the sentence to the offender rather than to the crime" (*R* v *Gardiner*, [1982] 2 S.C.R. 368 at paragraph 109).

[87] That said, the analysis which bears upon this additional evidence (i.e. evidence regarding facts not specifically connected to the offence itself) becomes more nuanced and complicated when dealing with an offender's prior criminal record. There are at least two concerns:

1. The offender has already served the sentences imposed in connection with prior offences. He cannot be punished twice past for the same criminal behaviours;

2. Evidence regarding a prior criminal record can become unduly prejudicial. Thus, while this sort of evidence might have an "aggravating" impact on sentencing (i.e. result in a harsher penalty), the Courts must take care to ensure that this evidence is not afforded so much weight that it results in a disproportionately harsh sentence (*R* v *Mauger*, 2018 NSCA 41 ("***Mauger***") at paragraph 68).

[88] In my view, the following principles apply:

1. Evidence around a prior criminal record is clearly admissible. "A prior record can speak to the need for greater emphasis on specific deterrence or diminish the importance of rehabilitation…" (*Mauger* at paragraph 65).

2. "A criminal record that is not dated and reveals a pattern of conduct for similar offences may well result in a stiffer sentence and is "aggravating" because it can impact the court's analysis of the purpose and principles of sentence to arrive at a fit sentence" (*Mauger* at paragraph 67);

3. However, a prior criminal record "on its own, it is not an aggravating factor leading to a sentence that is untethered to the purposes and principles of sentence" (*Mauger* at paragraph 64). A prior criminal record must not be given such weight such that it alone becomes the sole aggravating factor driving a harsher penalty disproportionate to the crime for which the offender is being sentenced. (*Mauger* at paragraph 65, quoting from the Supreme Court of Canada decision in *R* v. *Angelillo*, 2006 SCC 55 at paragraph 24)

[89] As indicated, these principles inform the Court's sentencing approach to an offender's prior criminal record. But what of other evidence that suggests misconduct that approaches criminal conduct but for which there is no conviction? More specifically in this case, what of Mr. Rhyno's Incarceration Records which indicate very problematic behaviours and attitudes? What weight should be afforded this evidence?

[90] Neither party provided caselaw dealing specifically with the use of institutional disciplinary records or Parole Board decisions.[4] There is caselaw which touches upon these issues but it is sparse. For example:

1. In *R v Strickland*, 2012 BCCA 276, the appellant alleged that the sentencing judge had made an unsupported finding that the appellant did not accept the harmful nature of his drug-dealing activity and used it as an aggravating factor. On a review of the record, the British Columbia Court of Appeal rejected this argument on the basis that the trial judge might have used "more nuanced" language but, nevertheless, this evidence went to the objective of specific deterrence (at paragraph 18);

2. In *R* v *Clarke-McNeil*, 2022 NSSC 63, Campbell, J. confirmed the offender's prior criminal record and his prison discipline record (see paragraph 25) and he commented:

> Again though, it is hard to square this record of behaviour with the person described by his sisters, his fiancé and his friend. That is not to say that their impressions are wrong. It does illustrate that people are too complex to be characterized as good or bad, kind-hearted or cruel, violent or peaceful. Kevin Clarke-McNeil's character is made up of the sum of everything he has ever done, for better or for worse. Neither the post offence convictions nor the institutional disciplinary record are aggravating factors in his sentencing. Both provide some context with which to consider Mr. Clarke-McNeil's assertions about his generally congenial disposition.
>
> [at paragraph 27, emphasis added.]

[91] With respect to Parole Board decisions in particular, I note the recent decision of *R* v *Watts*, 2022 NBCA 34 ("***Watts***"). In that case, the appellant had been convicted of breach of a long-term supervision order or "LTSO". In his sentence appeal, he challenged the use which the trial judge made of parole board decisions highlighting a string of suspensions of prior LTSOs. The New Brunswick Court of

[4] The Crown did refer to Roskinski, J's decision in *R* v *Melvin*, 2021 NSSC 4 which confirmed the extensive use of institutional disciplinary records in the context of a dangerous offender hearing. Respectfully, that decision is distinguishable and of limited jurisprudential value in typical sentencing matters such as the case at bar. Evidence around an offender's repetitive behaviours is of singular importance in a dangerous offender hearing. Indeed, section 753(1) of the *Criminal Code* ("Application for finding that an offender is a dangerous offender") focusses specifically on "patterns of repetitive behaviour" and "patterns of persistent aggressive behaviour" that are sufficiently troubling as to warrant being found a "dangerous offender". Given the unique statutory requirements, it is not surprising that information regarding an offender's institutional behaviour is . In my view, this case does not support, as a matter of general practise, the use of institutional records in a typical sentencing hearing.

Appeal recognized the "readily apparent" relevance of the Parole Board decision in question because the content of the Parole Board decisions related to the same offence (breach of an LTSO) and clearly overlapped the matter before the sentencing judge. Therefore, the Court of Appeal concluded, the nature of this evidence "dovetails with the necessity of having a broad range of information about an offender on sentencing" (at paragraph 60).

[92] The New Brunswick Court of Appeal also repeated the generally accepted proposition discussed above; namely, that a sentencing judge "must have as much information as possible about [the offender]" (at paragraph 60). The Court further states that this additional evidence could come in the form of an expert opinion regarding such things as rehabilitative prospects and risks of re-offending. However, the Court continued by offering the following, important caveat: "the probative value to be assigned to an expert opinion is directly related to the amount and quality of admissible evidence on which it relies…" (at paragraph 61, quoting from *R* v *Lévesque*, 2000 SCC 47 ("***Lévesque***").

[93] Finally, the New Brunswick Court of Appeal referred to sections 723 - 724 of the *Criminal Code* codifying how parties may make submissions regarding relevant facts on sentencing and, as well, how factual disputes are to be resolved (section 724(2)). On this issue, the New Brunswick Court of Appeal ultimately determined that:

> There was no clarity as to whether Mr. Watts intended at the sentencing hearing to dispute parts of the decisions, let alone which facts, if any, that he disputed. Against this background it is not surprising Mr. Watts did not appeal the judge's decision to admit the Board's decisions, albeit subject to the ability to dispute facts. Further, in light of the fact he did not identify any disputed facts, it now appears his initial objection to the decisions, which was advanced as part of his position that the judge should sentence him without any facts or evidence of his LTSO or his history since his release, was tactical. To now assert that it was an error for the judge to consider such evidence is, at best, unsustainable on appeal.
>
> [at paragraph 83]

[94] I have considered the information identified by the Crown in Mr. Rhyno's Incarceration Records. In my view, this information should be approached with caution and afforded limited weight. My reasons include:

1. As confirmed by the jurisprudence, a degree of latitude is afforded the evidence presented on sentencing to better ensure a fit and just result. As indicated, for example, much of the information contained in a pre-

sentence report contains hearsay evidence. With respect to facts surrounding a person's behaviours while incarcerated, for example, there are understandable differences between a person on remand who has an exemplary record and a person whose disciplinary record may be riddled with facts which demonstrate problematic behaviours. These issues may bear upon sentencing;

2. The facts which have been proven for the purpose of sentencing incorporate Mr. Rhyno's prior convictions, and include him being unlawfully at large which, in turn, led to the Parole Board's decision to revoke his statutory release. However, there is a difference between prior convictions and the Parole Board Decision. Evidence around prior convictions is a normal part of any sentencing hearing and it may have an "aggravating impact". I have given these facts due weight. However, again, this type of evidence is somewhat different from true "aggravating factors" which are related to the offence itself and, based on the conviction, have been proven beyond a reasonable doubt. By contrast, prior convictions going to such issues as deterrence or rehabilitation need only be proven on the balance of probabilities. Nevertheless, it is helpful to reiterate that the essential elements of prior crime were originally and, by definition, proven beyond a reasonable doubt. By contrast, the content of Mr. Rhyno's Incarceration Records were not subject to the same evidentiary rigours as a criminal trial. I mention this only to confirm that the origins, purpose, nature and quality of the information contained in "context" or character" evidence must be taken into account. I return to this issue.

3. Turning to the specific information contained in Mr. Rhyno's Incarceration Records, it is tendered primarily for the opinions they contain regarding Mr. Rhyno's lack of progress towards rehabilitation and the need for specific deterrence. The Crown focusses on these specific issues (specific deterrence and poor rehabilitative prospects) in support of a sentence that goes beyond the normal range in Nova Scotia of 4-10 years imprisonment for manslaughter in Nova Scotia (see *R* v *Isadore*, 2022 NSSC 209 ("***Isadore***") at paragraph 57 and *R* v *Lawrence*, [1999] N.S.J. No. 25 (N.S.C.A.) at paragraph 14). In my view, where sentencing evidence is relied upon primarily for its "aggravating" impact (i.e. resulting in a harsher sentence), the factors which go to weight include:

a. The nature of the evidence in question and the extent to while it clearly overlaps in the nature of the crime for which the offender is being sentenced;

b. The quality of the underlying evidence, bearing in mind the circumstances and purposes in which the evidence arose; and

c. The extent to which it is being relied upon for its "aggravating" impact – including the corresponding risk of imposing a disproportionate sentence.

[95] As to the nature of the evidence in question, as indicated, it is primarily in the form of opinions regarding Mr. Rhyno's impulsive decisions often involving non-compliant, illegal and sometimes violent misbehaviour, and his lack of demonstrable progress towards rehabilitation. These opinions are connected to the purposes and principles of sentencing, but only because they offer broad pronouncements on issues that are ultimately for the sentencing judge to assess. By contrast, I note that in *Watts*, the nature of the evidence (prior Parole Board decisions regarding the breach of an LTSO) specifically and clearly overlapped the particular issue before the sentencing judge.

[96] As to the quality of the opinion evidence contained in Mr. Rhyno's Incarceration Records, many of these opinions are derived from information contained in other file materials that were not produced. Examples include:

1. "This writer reviewed the Preventative Security file on 2016-03-29. According to the file, OMS and RADAR the offender [i.e. Mr. Rhyno] has a significant volume of negative institutional behaviour on prior federal terms. He has also been historically problematic while housed in the provincial system." (Criminal Profile Report at page 5);

2. "It is reported that Mr. Rhyno takes inappropriate risks and does not always consider the consequences of his actions." (Criminal Profile Report, page 6);

3. "File information indicates that the subject [Mr. Rhyno] has criminal ingrained values and beliefs, negative associates, poor problem solving skills, emotional aggression, and has a tendency to use intimidation, threats and violence to solve problems, all of which has contributed to his offence cycle." (Assessment for Decision, page 3);

4. In the Parole Board Decision revoking Mr. Rhyno's statutory release, the Board summarizes significant amounts of "file information" in support of such conclusions as:

    a. "The Board believes [Mr. Rhyno's] inability to follow the rules and terms of [his] release is consistent with [his] past criminal behaviour and that [his] inability to control [his] impulsive behaviour and remain substance free speak to the prevalent risk factors at play…." (at page 5); and

    b. "The Board is satisfied that [Mr. Rhyno] will, by reoffending before the expiration of [his] sentence according to law, present an undue risk to society. Also, [his] undue risk is due to circumstances well within [his control]."

[97] The difficulty with these opinions is that the expertise of the person who formed these opinions is unclear because it is embedded in Mr. Rhyno's undisclosed file information. Certain specific facts relied upon in support of these statements is similarly unclear. With respect to the Criminal Profile Report and the Assessment for Decision Report, it is similarly unclear the extent to which the underlying facts led to actual consequences (e.g. disciplinary levels) and also whether the offender was given the opportunity to challenge these opinions is also not always clear. To state the obvious: the purpose for which Mr. Rhyno's Incarceration Records were created are different from the purpose for which they are being used in this sentencing hearing. Those difference must be recognized.

[98] None of these concerns may affect or even be relevant to the purpose for which Mr. Rhyno's Incarceration Records were actually, originally created. These are not necessarily issues which, for example, concern a corrections officer recording observations regarding Mr. Rhyno. There are almost certainly other operational issues which predominate and supersede the particular concerns which arise at this sentencing hearing. I do not doubt or call into question the expertise and professionalism of the persons who authored Mr. Rhyno's Incarceration Records. And I do not suggest that Mr. Rhyno's Incarceration Records were somehow deficient having regard to the purposes for which they were created. On this point, the Crown emphasizes (and I recognize) that prison officials are under a statutory obligation to ensure their records are fair and accurate. I certainly do not question the National Parole Board's Decision.

[99] However, in the circumstances of this case, when the information in question is being removed from its original setting and imported into a sentencing hearing as an "aggravating" factor, a statutory obligation to be fair and accurate does not sweep away the concerns that arise around opinion evidence and the accuracy, reliability or weight of facts underlying such opinions. I repeat the Supreme Court of Canada's caution in *Lévesque* referenced above: the probative value of opinion evidence is directly related to the quality of admissible evidence upon which it is based. To that, I note that Supreme Court in *Lévesque* added that "before admitting new opinion evidence on appeal, it may be necessary to determine the basis of that opinion (for example, the version of events relied on by the expert, the documents he or she consulted, and so forth) and to establish whether the facts on which the opinion is based have been proven and are credible" (at paragraph 31 of *Lévesque* and quoted with approval at paragraph 61 of *Watts*).

[100] This leads to the remaining factor and the extent to which the evidence in question is being relied upon for its "aggravating" impact. In my view, again, the concerns identified above are heightened in the particular circumstances of this case because the Crown relies upon this evidence for a very significant "aggravating" impact which would see Mr. Rhyno imprisoned for a term longer than the normal range in Nova Scotia.

[101] Overall, I have carefully reviewed Mr. Rhyno's extensive criminal record. It is clearly admissible. It is problematic and I am troubled by it. I have given this evidence due weight in sentencing.

[102] I have also reviewed the passages of documents relied upon by the Crown in Mr. Rhyno's Incarceration Records. There may be other sentencing hearings where this type of information attracts greater weight. However, in the circumstances of this case and for the reasons given above, I give very limited weight to this evidence on the issue of deterrence and rehabilitative prospects. For clarity, I have not given them such weight as to push Mr. Rhyno into an entirely different range of sentencing outcomes such that this evidence becomes, in and of itself, the basis for a much longer term of imprisonment. In my view, the evidence relied upon in Mr. Rhyno's Incarceration Records raises a very serious risk of a disproportionate sentence if given too much weight.

RANGE OF SENTENCE

[103] There is no minimum sentence for manslaughter and the maximum penalty is lifetime. In other words, the range of possible sentences for manslaughter is wide. The reason for this huge scope is due to that where the ultimate outcome is a person's death, the acts, circumstances and intentions leading up to that outcomes are so varied. They range from truly unintentional harm to violence which approaches (but does not constitute) culpable homicide or "near murder". In *R* v *Henry*, 2002 NSCA 33, Roscoe, J.A. confirmed that the spectrum of sentencing decisions in cases involving manslaughter are so varied because "the offence covers such an extensive array of methods of commission" (at paragraph 16). As such, each sentence is determined on a case by case basis, having regard to the particular facts.

[104] Similarly, in *R* v *Creighton* (1993), 83 C.C.C. (3d) 346 (S.C.C.), the Supreme Court of Canada similarly noted that "the sentence can be and is tailored to suit the degree of moral fault of the offender" (at page 375) .

[105] In *R* v *Isadore*, 2022 NSSC 209 ("***Isadore***"), Duncan, ACJ equally observed that where there is a higher degree of moral blameworthiness, longer sentences have been imposed (at paragraph 57).

[106] The fact that sentences are determined on a case by case basis does not mean that the underlying reasoning is arbitrary or unprincipled. On the contrary, the jurisprudence reveals distinct principles which govern where a particular crime might fall within an otherwise wide spectrum of potential sentences. A key driving factor which determines where a particular incidence of manslaughter falls along the continuum of sentences is the "moral culpability or blameworthiness" of the offender having regard to the specific facts. In my view, that is a fact-driven inquiry. The factors include:

1. The nature and gravity of the act and the associated risk of harm to the victim. This would included an assessment as to whether the victim was armed;
2. Whether a weapon was used in committing the offence and, if so, the nature of the weapon; how the weapon was acquired; and whether it was used repeatedly (e.g. multiple stabbings as opposed to a single cut); and
3. The extent to which the offender was aware of and instigated violence. While a conviction for manslaughter necessarily precludes, by

> definition, an acquittal based on self-defence, the offender may not have instigated the violence and their actions may involve defensive responses to violence.

[107] I emphasize that this is not an exhaustive list of all relevant factors.

[108] As indicated above, in *Isadore*, Duncan, ACJ noted that the "general view that the range of sentencing in Nova Scotia is 4 – 10 years." (at paragraph 57. See also *R* v *Lawrence*, [1999] N.S.J. No. 25 (N.S.C.A.) ("***Lawrence***") at paragraph 14).

[109] The Court has also imposed longer sentences. See Lawrence at paragraph 14. Also, at paragraph 61 of *Isadore*, Duncan, ACJ listed a number of serious cases where the sentence for manslaughter ranged from 12 years to life imprisonment. I note that all of those cases listed by Duncan, ACJ involving sentences of more than 12 years are distinguishable from the facts before me in that they involve intimate relationships debased by brutality and ending with extreme violence causing death.

[110] I am attaching to this decision as Appendix "B" my review of the numerous cases reviewed in respect of sentencing ranges, including all of the cases relied upon by the Crown and the Defendant. I have taken all of these cases into account when reaching my decision on sentence.

ANALYSIS

[111] The Crown proposes a sentence on the higher end of the scale 10 – 12 years which is beyond the general range for manslaughter.

[112] The Defence proposes a sentence on the lower end: 5 years.

[113] In my view, the range of possible sentences for this type of offence in the circumstances of this case is 6 – 10 years. The question becomes where Mr. Rhyno falls within this range.

[114] I do not find that this is a case of "near murder". Nor do the facts suggest the sort of prolonged brutality with multiple stab wounds that are evidence in the cases relied upon by the Crown. Moreover, a key distinguishing factor is that Mr. Grosse left apartment 12 after only speaking with Mr. Rhyno for less than a minute. Mr. Grosse then decided to arm himself with a switchblade and return to confront Mr. Rhyno.

[115] In terms of other mitigating factors, the violence in this case was spontaneous and flared suddenly. There was no planning or premeditation. Mr. Rhyno did not arrive at 24 Primrose Street looking for trouble or with a view to inflicting harm. The lead-up to the lethal exchange was neither complex nor prolonged.

[116] As indicated, Mr. Grosse was also armed. To that extent, there was an element of defensiveness to Mr. Rhyno's actions. However, again and for emphasis, I find that Mr. Rhyno inclined towards confrontation and only retreated to apartment 12 after inflicting a knife wound to Mr. Grosse's neck with the knife Mr. Rhyno had concealed in his coat pocket.

[117] The confrontation did not involve the sort of multiple, frenzied or aggressive cuts that were on display in other cases involving greater cruelty or brutality.

[118] Mr. Rhyno did turn himself into the police. I recognize that Mr. Rhyno was already captured on security cameras and so his involvement would have been known. Nevertheless, he did not attempt to escape and his efforts avoided a search.

[119] Mr. Rhyno is still relatively young. He continues to enjoy family support that has remained dedicated despite Mr. Rhyno's past criminality. Mr. Rhyno has also begun to demonstrate his ability to integrate into the work force as evidenced by the supportive letter received from his employer's Placing Manager, Blaine Singer.

[120] There were, of course, aggravating factors as well.

[121] Mr. Rhyno used a combat style knife to cut Mr. Grosse. It is an inherently dangerous weapon.

[122] Mr. Rhyno held the knife in his coat pocket before lunging at Mr. Grosse. Mr. Grosse would not have known Mr. Rhyno was armed and would not have expected a sudden, ultimately lethal, cut to his neck.

[123] Mr. Rhyno was the first to strike and his stabbing motion moved upwards towards Mr. Grosse's upper body and neck. Prior to inflicting this cut, I do not find that Mr. Rhyno availed himself of available opportunities to extricate himself or avoid confrontation. On the contrary, my view is that Mr. Rhyno was not prepared to back down.

[124] An important "aggravating" issue in this case is the circumstances of the offender and what his criminal record says about the need to emphasize specific deterrence, that is, the imposition of a sentence that seeks to deter him from engaging

in further conduct that causes harm to other people. There is also a real chance in my mind that without that rehabilitation, and without his own personal commitment to it, he will continue to be a risk to his own safety and to those around him. The penalty to be imposed today must recognize the need therefore to protect society both through such rehabilitative programming and, in the interim, separating him from the community where he represents a danger.

CONCLUSION

[125] In all the circumstances, I sentence Mr. Rhyno to 8 years in prison. The credit for pre-sentence custody is 40 months, on agreement by all parties and representing 799 real days with credit of 1.5 = 1,199 days = 40 months, rounded up.

[126] The sentence of 8 years will be reduced by 40 months (rounded up), representing credit for pre-trial time in custody.

[127] There are to be Ancillary Orders which I understand the Defence does not challenge. These Ancillary Orders:

1. First, as manslaughter is a primary designated offence, you are required to comply with a DNA order pursuant to s. 487.051(1) of the *Criminal Code* and, specifically, to supply a sample of your DNA suitable for forensic analysis; and
2. Second, you shall be subject to a mandatory weapons Prohibition Order under s. 109(1)(a) of the Criminal Code. The duration of this prohibition shall be for life and shall include all firearms, cross bows, ammunition, explosive substances and other restricted devices. Similarly and pursuant to section 291, you must forfeit any weapons and ammunition as described in the order

[128] Finally, the Crown confirmed that pursuant to section 737(2.1) of the Criminal Code, the Victim Surcharge is waived. Mr. Rhyno had little or no meaningful employment or income prior to his 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.

Keith, J.

APPENDIX "A"

C A N A D A
PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

CR. H. No. 508026

IN THE SUPREME COURT OF NOVA SCOTIA

HIS MAJESTY THE KING

Against

NICHOLAS ROLAND RHYNO

PRIOR CONVICTION FACTS
for SENTENCING PURPOSES

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Pursuant to section 724 of the *Criminal Code*, **Nicholas Roland Rhyno** admits the following facts for the purpose of dispensing with proof thereof at his sentencing hearing:

HA-05-1973

Sentencing Date	Offence Date	Charge(s)	Description	Sentence
August 23rd, 2006	**May 26th, 2005**	**266**	**Assault**	**1 year Probation Part of Consolidation of several charges in Bridgewater**
FACTS from Court Recording of Sentencing Hearing. Matter was consolidated with others in Bridgewater. On May 26th, 2005 shortly before 9 am police attended a residence in Ingramport and spoke to Linda Sampson who advised she had had a verbal argument with a man. The son of the man, Nicholas Rhyno, intervened and spit on her (in her face, on her mouth and lips) and on her car. Police saw signs of that while there. Twenty minutes later police were in contact with Mr. Rhyno and he was arrested at that time for assault. A minimal assault.				

HA-05-3056

Sentencing Date	Offence Date	Charge(s)	Description	Sentence
August 23rd, 2006	**August 5th, 2005**	**355(a)**	**Possession of Property Over $5000**	**30 Days Part of Consolidation of several charges in Bridgewater**
FACTS from Court Recording of Sentencing Hearing. Matter was consolidated with others in Bridgewater. On August 5, 2005 in the middle of afternoon police from Tantallon were dispatched to look out for a 2003 red Chevrolet Impala motor vehicle that had been stolen the day before from the Hubbards area. Police received information the vehicle could be travelling down the 103 Hwy Halifax bound. Police were in Timberlea on the 103 Hwy and observed the described vehicle drive past. Police turned around and pursued the vehicle. The vehicle went around a corner and was then found still running but unoccupied. A witness told police he had almost been hit by the vehicle as it rounded the corner and saw two occupants leave the vehicle and run down a path. He described them. Police were able to locate and arrest one individual who indicated that he had been hitchhiking, had been picked up by Mr. Rhyno, who had told him the vehicle was "hot". When they saw police they bailed out. Mr. Rhyno told him to run so he did. A dog tracker was called in and eventually Mr. Rhyno was seen walking out from a path. He met the description given by the witness and was arrested. He was in possession of a vehicle stolen the day previous. Defence: the vehicle was returned, and had no damage to it.				

KE-06-0817

Sentencing Date	Offence Date	Charge(s)	Description	Sentence
August 23rd, 2006	**June 30th, 2006**	**267(a) 267(b) 145(3)**		**1 year Jail (Part of 2 year consolidation) 1 year probation DNA 109 – 10 years Part of Consolidation of**

				several files in Bridgewater
FACTS from Court Recording of Sentencing Hearing. Matter was consolidated with others in Bridgewater. At approximately 5:00 am on June 30th, 2006 Windsor police were called to a disturbance at the parking lot of Subway. Suspect in the disturbance was Nicholas Rhyno. Rhyno was on a recognizance with a condition to remain in his residence at all times with unrelated exceptions. At the time of the investigation there was also an outstanding warrant for Rhyno from Halifax Region. This investigation revealed that Rhyno was acquainted with the ex-girlfriend of the victim Chris Corbett. Rhyno and others attended the apartment of Corbett and an altercation ensured between the two. Witnesses say that Rhyno had a piece of metal in his hand and struck Corbett in the arm, which turned out to be a gulf club and the arm was broken as a result. Defence: initially abided by the terms of his release, but he learned of a co-accused's federal sentence, lost heart, left his house arrest, consumed drugs and/or alcohol and became involved in this assault.				

BR-06-0020

Sentencing Date	Offence Date	Charge(s)	Description	Sentence
August 23rd, 2006	**December 13th, 2005**	**334(b) 465(1)(c) 85(1) 145(5.1) x 2 351(2)**	**Theft Conspiracy to commit theft (Robbery) Use a sawed-off shotgun to commit theft Fail to KPBOGB x2 Masked Face**	**1 year jail (Part of 2-year consolidation) 1 year probation $620 restitution 351 & 145 (w/d) Part of Consolidation of several files in Bridgewater**
FACTS from Court Recording of Sentencing Hearing. Matter was consolidated with others in Bridgewater. On December 13th ,2005 co-accused Dean Messervey (who has been sentenced already) had been an employee at the Hubbards Irving gas station. He was disgruntled over not receiving a bonus for Christmas, so met with Mr. Rhyno and together they devised a plan to steal money from the Irving and to make it look like a robbery when Mr. Messervey was working alone. Mr. Rhyno was with a long barrelled gun and mask and purported to hold up the Irving. They went through the charade because they believed the store's cameras would capture all this, and wanted to divert suspicion from Mr. Messervey. Mr. Rhyno attended on December 13, went through this matter, did obtain money, was wearing a mask and did have a firearm. Police investigation resulted and Mr. Messervey did give a statement diverting suspicion from himself. The story did not smell right and Mr. Messervey eventually provided a second statement with the above facts. Mr. Rhyno had been on an outstanding undertaking requiring him to keep the peace and be of good behaviour. Defence: there was never any threat to anyone. Rhyno involved in the offence due to moneys he owed others from substance abuse issues and had to be repaid.				

HA-06-2070

Sentencing Date	Offence Date	Charge(s)	Description	Sentence
June 12th, 2006	**June 9th, 2006**	**145(3)**	**Failure to comply recognizance**	**15 days custody (dealt with in cells)**
FACTS unavailable.				

NG-08-1183

Sentencing Date	Offence Date	Charge(s)	Description	Sentence
January 19th, 2009	September 28th, 2008	253(1)(a) & (b) 145(3)	Impaired operation and over 80 Breach of Recog (No Alcohol)	$1000 fine $300 fine 1-year DPO 1 year probation
FACTS unavailable.				

HA-08-1545
HA-09-1319 (BCS)

Sentencing Date	Offence Date	Charge(s)	Description	Sentence
November 24th, 2008	April 9th, 2008	CDSA 5(2) 86(1) 117.01(1)	Drug Trafficking Unlawfully store ammunition in a careless manner Breach of Prohibition order	GP – CDSA & 86(1) 4-month CSO on 86(1) concurrent to CDSA (20 months CSO)
FACTS from Court Recording of Sentencing Hearing. On April 9th, 2008, police were conducting surveillance on room 231 of the Wedgewood Motel on the Bedford HWY. Police observed a black vehicle pull up to that location. Two males, Nicholas Rhyno and Joseph Chan exited the vehicle and entered the room. The then exited and left in the vehicle. Police followed and initiated a traffic stop. Officers noted the smell of fresh marijuana and advised the occupants they were under arrest for possession of a controlled substance. The occupants of the vehicle were searched. Rhyno was searched and officers located a quantity of marijuana in the front groin area of his pants. The drugs were in two separate bags, one a large Ziplock bad weighing 44.41 grams, the second weighed 13.04 grams. A warrant for room 231 of the Wedgewood Motel was obtained. Inside police located three more marijuana bags weighing 485.5 grams, 209.1 grams and 157.6 grams. Also located in the room was a 9mm round of ammunition found in the nightstand. At the time of this incident Mr. Rhyno was on parole and on a prohibition order regarding firearms and weapons.				

HA-09-1319

Sentence Date	Offence Date	Charge(s)	Description	Sentence
August 12th, 2009	March 25 to April 7th, 2009		CSO BREACH	CSO is terminated 454 days remaining to be served in custody

FACTS from Court Recording of Sentencing Hearing.
Crown requested termination of CSO. Defence did not oppose. CSO terminated. No facts read into record.

DA-09-1847

Sentence Date	Offence Date	Charge(s)	Description	Sentence
October 19, 2009	July 23rd, 2009	86(2) 88(1) 92(1) 95(1)96(1) 117.01	Weapons Offences Careless storage - .22 Caliber revolver Possession Dangerous Possession knowing no licence Possess restricted firearm with accessible ammunition and not holder of license Possession firearm knowing obtained by crime Possession while prohibited	GP – s.95, 117 3 Years Jail s.95 2 months conc s.117.01

FACTS from Court Recording of Sentencing Hearing.
On July 23rd, 2009, Police executed a search warrant at 123-51 Joseph Young Street in Dartmouth after noting a firearm under a mattress in the apartment when they were checking the apartment due to safety concerns for the tenant Kaylee Hermiston, girlfriend of Nicholas Rhyno. The police seized a prohibited firearm from under the bed of Ms. Hermiston. The firearm was a 22 caliber 6 shot handgun revolver. It is classified as prohibited due to its barrel length. Police interviewed Rhyno and he admitted to possessing the firearm and that he had placed it between the mattress in his girlfriend's bedroom. Rhyno stated that Hermiston was not aware the firearm was there and did not know he had put it there. Rhyno was the subject of a firearms prohibition order at the time.

HA-12-2489

Sentencing Date	Offence Date	Charge(s)	Description	Sentence
June 28th, 2012	June 16th, 2012	145(3)	Unlawfully at Large	30 days consecutive

FACTS from Court Recording of Sentencing Hearing.
On September 27th, 2011, Rhyno was released on Statutory Release from Springhill Institution. He had been serving a 3-year sentence for firearm offences. One of the conditions of his release was to reside at a community correctional centre. On June 16th, 2012, Rhyno signed out for a two-hour outing to Spring Garden Road. He never returned. A parole warrant was issued, and Mr. Rhyno was arrested on June 21st, 2012, after turning himself in to police.

DA-14-1656

Sentencing Date	Offence Date	Charge(s)	Description	Sentence
December 4th, 2015	July 23rd, 2014	267(a) x 2 266 264.1 88	Assault w/ weapon (Can & Knife) Assault Utter Threats Poss weapon dangerous to public peace	GP – 267(a) - knife 4 months jail 18 months' probation s.109 (10 year) DNA

FACTS from Court Recording of Sentencing Hearing.

On July 23rd, 2014, Police were called to a dispute involving weapons at 211 Jemalea Lane in Porters Lake. Police arrive and speak to Scott Myer who explains that he was inside, and his wife called from outside saying that two people were coming up the road with a pitbull. His wife had previously called the SPCA about that dog. Myer goes outside. The male with the dog started getting mad at them for calling the SPCA. As the male continued to argue he threw a pop can at his face and spit at him. Myer stumbled backwards and he saw the male pull a knife and slash it in his direction twice. Myer said he could feel the knife go by and thought it had cut his lip. Myer fell to the ground on his back and the male started to crouch over him still holding the knife. The male backed off when Myer's wife grabbed a stick. Myer told his daughter to call 911 and got out a shotgun and told the male to leave. The male started going down the driveway and said "go ahead shoot me, I've been shot before and my friends will be coming to pay visit later". Nicholas Rhyno was arrested at his residence; he matched the description provided by Myer. During a search police located a 12.5 inch folding knife.

DA-14-2973

Sentence Date	Offence Date	Charge(s)	Description	Sentence
December 23rd, 2014	December 5th, 2014	145(3)	Fail to Comply with Recognizance	30 days

FACTS from Court Recording of Sentencing Hearing.

On December 5th, 2014, the complainant contacted police reporting that he had just seen Nicholas Rhyno in the Costco store in Dartmouth. The complainant stated that Rhyno was currently in the middle of the store with his mother and was wearing a black jacket, bald head and red sneakers. Multiple police units attended to locate Rhyno. Police were unable to confirm via CPIC whether Rhyno was on any house arrest conditions. Police did observe Rhyno exiting the store with his mother at 19:18 hrs. Rhyno and his mother got into a vehicle and left the area. Police took no action believing Rhyno not to be on conditions.

On December 20th, 2014, officers learned that Rhyno was indeed on a valid recognizance with valid house arrest conditions. Rhyno was arrested on December 20th for the breach.

DA-15-2495

Sentence Date	Offence Date	Charge(s)	Description	Sentence
December 18th, 2015	November 4th, 2015	Weapons Offences with CDSA 86(2), 86(1) 88 92(1), 96(1) 117.01 x 2 145(3)	Careless storage – loaded shotgun Possession Dangerous Possession knowing no licence Possess restricted firearm with accessible ammunition and not holder of license Possession firearm knowing obtained by crime Possession while prohibited x 2 Breach Recog – no firearms	4 years total CDSA – 3 years GP 92(1) & 117.01 – 1 year consecutive s. 491 DNA 109 - life

FACTS from Court Recording of Sentencing Hearing.
Police doing a drug investigation on Nicholas Rhyno. They had confidential source information that he was selling crack cocaine. Police seize 6 dime bags of crack cocaine from Nicholas Rhyno during a traffic stop. They then attended 5A Brenton Street in Dartmouth, where other items seized were a cell phone, digital scales, bullet proof vest, small amount of marijuana, $3295 cash, 50 grams of crack cocaine and a loaded black tactical shot gun.

DATED this 13 day of December, 2022 at Halifax, Nova Scotia.

SIGNED:

Eric Taylor, Senior Crown Counsel

Patrick MacEwen, Defence Counsel

APPENDIX "B"

Cases referred to and relied upon by the Crown

1. R v Wright, 2010 NSCA 30 – The offender was involved in a street fight involving numerous, heavily intoxicated persons. The offender was being kicked and punched. At one point, he grabbed a pen knife and began widely swinging the weapon. He stabbed the victim 4 times, once in the heart causing the victim's death. The offender's record included an assault causing bodily harm, assault with a weapon and aggravated assault (paragraph 10 of the underlying decision at 2009 NSSC 192); and the trial judge was troubled by the offender's failure to connect his prior criminal record and the need for anger management. This decision was primarily related to the judge's failure to accept a joint recommendation for 15 years imprisonment less time served for a total of 10 years. Instead, the judge only deducted 4 years from the sentence.

2. R v Landry, 2016 NSCA 53 – This case involved a simmering feud between crew members of a fishing boat and the victim suspected of poaching lobster and then cutting the traps loose. The offender was 67 years old at the time of trial and enjoyed a good reputation in his community. The trial judge found that the offender confronted the victim at sea while they were both in their boats. The offender shot the victim and struck him in the leg. Thereafter, the offender's rammed the victim's boat, leaving him floating in the water. The offender then hooked the victim with a gaff (several times because the gaff became loose) and then dragged him out to sea where the offender eventually died. The Court of Appeal upheld these facts and further upheld a sentence of 14 years. This was a "close to murder" case highlighted by evidence of a sustained, violent encounter.

3. R v Cleyndert, 2006 CanLII 33851 (Ont CA) – The offender attended a high school graduation party "looking for trouble". He initiated two confrontations during the party, one of which involved the victim's girlfriend. The victim threw the first punch but the offender responded by stabbing the victim 8 times in the torso. The victim succumbed to these knife wounds. Again, the judge found that the case was "close to murder". Mitigating factors included the appellant's youth (nineteen at the time of the offence), his family support, his employment record, his prospects for rehabilitation, his pre-trial custody, and evidence of his good character while in pre-trial custody. Aggravating factors included the vulnerability of the victim, the appellant's youth record, including his convictions for assault and threatening, the impact of the crime on the victim and his family, the brutality of the attack and the appellant's after-the-fact conduct in fleeing the scene. The sentencing judge imposed a prison term of 12 years. The Court of Appeal upheld this 12-year sentence noting the offender's was looking for a fight, carrying a concealed weapon and then using it repeatedly on a man who was unarmed (at paragraph 13).

4. R v Docherty, 2010 ONSC 3603 – The victim was a loan shark to whom the offender owed money. The trial judge determined that the jury must have found the offender stabbed the victim in the heat of passion 7 or more times, after victim grabbed the offender's shirt and threatened him. The mitigating factors included the offender's lack of criminal record; the offender's fear at the time of the offence; and the fact that the offender turned himself in. Aggravating factors included the failure to properly deal with his increasingly desperate relationship with loan sharks; failure to extricate himself from the situation; excessive force including multiple wounds and, ultimately, watching the victim, without seeking help. (see paragraphs 35 – 36) The trial judge sentenced the offender to 12 years in prison.

5. R v White, 2013 NSSC 323 – The offender was charged with second degree murder but pleaded guilty to manslaughter. Rosinski, J. described the violent as having "the hallmarks of a frenzied killing" with multiple stab wounds such that the number could not be accurately counted. (at paragraph 36) The offender suffered from a mental illness but not to a degree where he would be criminally not responsible" (at paragraphs 46 – 47) Rosinski, J. looked to similar cases and concluded that the range in the circumstances was between 8 – 12 years. He accepted the joint recommendation equivalent to 12 years imprisonment as appropriate (paragraph 91)

6. R v Gillis, 2018 NSSC 22 – The offender believed the victim was introducing his girlfriend to drugs and exposing her to the sex trade. The offender confronted the victim and a fight ensued. During the course of the fight, the offender found a knife and stabbed the victim, who later died. The offender had a significant criminal record notable for various assaults and weapons convictions. Rosinski, J. distinguished the Crown's cases as distinguishable because they were more along the lines of "near murder". Two of the distinguished cases were R v Docherty, 2010 ONSC 3603 and R v Cleyndert, 2006 CanLII 33851, relied upon by the Crown here. Rosinski, J determined that the proper range in the circumstances was 7 – 11 years and he sentenced the offender to 9 years.

7. R v Reid, 2012 ONSC 7521 – The offender had a troubled childhood which evolved into drug addition and criminal conduct (assault causing bodily harm). He was intoxicated during an argument with an acquaintance. A fight broke out. The offender grabbed a steak knife and plunged it once in the victim's abdomen. The wound was fatal. The accused did not call for help and subsequently attempted to hide evidence of the stabbing. He was charged with second degree murder but pled guilty to manslaughter. The offender was sentenced to 8 years' imprisonment. The aggravating factors reflecting a high degree of moral blameworthiness included the fact that the offender introduced a weapon when the victim was unarmed. The victim was young and his death had a devastating effect on his family. In addition, the accused had a prior conviction for violence. Mitigating factors included the fact that it was a single wound and the offender did not bring the knife to the fight. There was no evidence of prior hostility or anything to suggest premeditation. In addition, the offender pleaded guilty and was still a relatively young man. (see paragraphs

49 -50). The Court suggested a range of 7 – 11 years. The offender was sentenced to 8 years imprisonment.

8. R v Francis, 2007 NSSC 184 – The offender was charged with second degree murder but pleaded guilty to manslaughter. At the time of the attack, the victim was talking to friends when the offender crossed the room. The victim ignored the confrontation. The accused responded by striking the victim in the neck area with a beer glass, opening a fatal wound. Warner, J considered this to be a case of "near murder". The mitigating factors included a minimal criminal record, Gladue considerations and a guilty plea. The offender was sentenced to 7 years in prison.

Cases referred to and relied upon by the Defendant

1. R v Tower, 2008 NSCA 3 – The offender and a friend confronted an intoxicated neighbour who they thought was being a nuisance. An altercation followed in which the offender took a long handled pruning shears and, with a baseball style swing, hit the neighbour across the back one or two times. The neighbour did not seek medical attention. The next day, the neighbour again became intoxicated and became involved in another altercation with different people (his roommates). The neighbour was arrested but then died in police custody. The medical evidence confirmed that the neighbour died as a result internal bleeding caused by the blows to his back from the pruning shears. The offender was sentenced to 5 years imprisonment. The defendant appealed his sentence, among other things. The defendant argued that the trial judge failed to give enough weight to the victim's failure to receive medical attention as a mitigation circumstance and, as well, gave insufficient weight to the offender's prospects for rehabilitation. Writing for the Court of Appeal, Cromwell, JA concluded: "The judge was right to characterize this as an offence of 'extreme violence'. A strong deterrent sentence was called for" (at paragraph 79).

2. R v G.A.M. (1996), 147 N.S.R. (2d) 343 (N.S.C.A.) – The offender was involved in an intimate partner relationship which involved physical and sexual abuse. On the night in question, the offender slapped her partner, hit him with her fist and hit him in the face with a kitchen pot. Some time after that the violence escalated and she stabbed her partner in the abdomen causing his death. The offender was charged with second degree murder but pleaded guilty to manslaughter. The sentencing judge determined (and the Court of Appeal agreed) that the sentencing range for manslaughter at the time was 4 – 10 years, absent exceptional circumstances. (see paragraph 32) The sentencing judge identified various mitigating and aggravating factors which Pugsley, J.A. confirmed on appeal were consistent with the evidence (see paragraphs 23 – 25). The mitigating factors included a guilty plea; an expression of remorse and evidence of battered women's syndrome. The aggravating factors included the use of a knife in a deliberate and extremely violent attack. In addition, there was no evidence of provocation. On the contrary, the victim was attempt to calm the offender. The sentencing judge then imposed a jail term of 2 years less a day

identifying various aggravating factors. The Crown appealed. Writing for the Court of Appeal, Pugsley, J.A. concluded that the sentence was "excessively and manifestly lenient, and did not appropriately reflect general deterrence". The offender's sentence was increased to 5 years' imprisonment.

3. R v Whynot (1996), 147 N.S.R. (2d) 111 (N.S.C.A.) – The offender and her husband had a tempestuous relationship. On the evening in question, they were drinking and arguing at a local pub. The victim expressed his desire for a divorce and left the pub. The offender followed him home and their arguing escalated into a physical fight. The offender stabbed and killed her unarmed husband. The mitigating factors considered by the trial judge included a guilty plea, the absence of a criminal record; statements of remorse and a diminished risk of reoffending. The aggravating factors included excessive drinking and the fact that the offender intentionally inflicted two stab wounds. (summarized at paragraphs 30 - 31 of the Court of Appeal decision). The offender's main argument on appeal was that the sentence was manifestly excessive given her plea of guilty and the volatile nature of the altercation suggesting reciprocal violence from the victim. However, the Court of Appeal agreed with the sentencing judge that critical aspects of the offender's testimony was not accurate and that there was no basis to conclude the victim was the aggressor or instigator. The sentence of 5 years was not considered manifestly excessive and the appeal was dismissed.

4. R v Maulen, 2022 BCSC 468 – A fist fight broke out between the offender and the victim. The victim was unarmed but instigated the fight and struck the first blow. The offender was armed with a knife, although he carried the knife for the innocent purpose of wood carving. During the fight, the offender's knife came loose. The offender was 55 years old. He testified that he feared for his life and the fight ended when he stabbed the victim twice. The offender was found not guilty of second degree murder but guilty of manslaughter. The mitigating circumstances included the fact that the offender did nothing threatening to prompt the attack. Instead, the victim was the first to strike the offender in the head, instigating the fight. In addition, there was no history of violence or intent to use the knife as he approached the victim. (at paragraph 34) Aggravating circumstances included the use of a large knife and the offender's decision to immediately leave the scene and hide his knife. (at paragraph 35) The sentencing judge confirmed a range of sentencing for manslaughter between 4 and 15 years. He then concluded that the offender "of course is to be faulted for excessive use of force in exigent circumstances, but frankly faulted for little else concerning the events that morning." He recognized that deterrence and denunciation are paramount but not overwhelming, particularly where the prospects of rehabilitation are strong (at paragraph 81). In the circumstances, the sentencing judge deemed it appropriate to go outside of the conventional range and sentenced the offender to 20 months plus 6 days imprisonment.

5. R v Drescher, 2022 NWTSC 15 – The offender stabbed the victim, his brother, 6 times. One of the stab wounds pierced the victim's heart, causing death. The offender was charged with second degree murder, but pleaded guilty to manslaughter. Both the offender and the victim had been drinking on the night in question and became involved in a physical altercation before the stabbing occurred. The sentencing judge recognized the wide range of possible sentences for manslaughter and that the result often turned on the level of moral culpability. On that issue, the sentencing judge further confirmed that stabbing with a knife falls at the high end of moral blameworthiness. (at paragraphs 40 – 41) The sentencing judge confirmed the offender's criminal record as an aggravating factor but observed that they was relatively minor and did not involve violence (at paragraph 60). Mitigating factors included a troubled past and the offender's indigenous status. The offender was sentenced to 6 years imprisonment.

6. R v Gordon, 2020 ONSC 7395 – A dispute over drugs escalated into a physical altercation during which the offender stabbed the victim with a knife. The knife wound penetrated the victim's lung and pierced his heart. The offender left the scene, making no effort to assist the victim. He also discarded evidence to avoid arrest and prosecution. At paragraph 31, the sentencing judge adopted the following quote from the Alberta Court of Appeal in R v Ferguson, 2006 ABCA 261 (affirmed by the Supreme Court of Canada regarding an issue of mandatory minimum sentences at 2008 SCC 6), the sentencing judge adopted the statement that: An assessment of moral culpability involves a consideration of the particular circumstances of the case including: the nature, quality and gravity of the act; the method and manner by which the act was committed; the offender's awareness of the risk; and what should have been in the offender's mind, had he or she acted reasonably." The sentencing judge went on to find that aggravating circumstances included the use of a knife causing multiple stab wounds. The vulnerability of the victim who was unarmed. The fact that the offence occurred in the context of a drug transaction and at a time when the offender was on bail. And the significant impact of the crime on the victim's family (at paragraph 32). Mitigating factors included the offender's youth and lack of a criminal record. In addition, the offender expressed remorse and demonstrated rehabilitative progress (at paragraph 33). The offender was sentenced to 8 years imprisonment.

7. R v Larson, 2017 ABQB 79 – In the course of a fight, the offender stabbed the victim in the side of his chest with a kitchen knife. The wound cut an artery causing death. The offender was charged with second degree murder but pleaded guilty to manslaughter. The offender's criminal record was relatively minor, by comparison to manslaughter. It consisted largely of crimes against the administration of justice and not crimes of violence. He also wrote a letter of apology to the victim's family. The sentencing judge determined that the stabbing fell into the "higher-culpability groups of unlawful acts." (at paragraph 53) And the stabbing action reflected an intent not to deter or scare off, but to harm (at paragraph 72) That said, the sentencing judge equally recognized that the act was impulsive - "not planned, deliberate, or complex; his swinging of the knife was in a flailing motion"

(at paragraph 116) The fact that the offender struck first was deemed an aggravating factor; as was the fact that the victim was unarmed. In addition, the offender made not attempt to assist after inflicting fatal wounds. Mitigating circumstances included the fact that the use of the knife was sudden and spontaneous, without planning. In addition, the offender found the weapon, he did not carry it with him. The offender did not inflict multiple wounds and did not attempt to flee. (at paragraph 82) The offender was also relatively young. The sentencing judge considered cases in the 4- 8 year range (at paragraphs 101 – 104). He concluded that 6 – 6.5 years imprisonment represented "the true upper limit of the range of sentence" in the circumstances; and he ultimately sentenced the offender to imprisonment for 5 years and 5 months.

8. R v Corbett, 2015 ONSC 6118 – The offender was charged with second degree murder but convicted of the lesser offence of manslaughter. The offender and the victim were friend and, for a time, lived together in the same apartment. The offender asked the victim to leave the apartment, believe he was not paying a fair share of rent. The victim moved out but left some of his possessions, including a television. The offender subsequently threatened to keep the television until the victim paid an additional amount for rent. Physical threats were exchanged and it was within this atmosphere of animosity that the victim returned to the apartment to reclaim the television. A physical confrontation occurred on the porch leading to the apartment. In the course of grappling, the offender stabbed the victim a single time in the neck with a knife while the victim was unarmed. The victim died of his neck wound. In sentencing, the aggravating factors included the fact that the offender armed himself prior to the confrontation occurring; the decision to engage in violence as opposed to simply relinquishing the television; the manner in which the offender struck at the victim's upper body; after the stabbing, the offender made no effort to assist the victim but, rather, fled and attempted to dispose of evidence and have others lie for him (at paragraph 23). Mitigating factors including the offender turning himself into police; the relative youth of the offender; a minor criminal record which did not include violence; an element of self-defence as which mitigated blameworthiness and a positive relationship with his daughter (at paragraph 23; see also paragraph 31). The offender also had a troubled childhood. There was no evidence of remorse although the judge noted that this simply meant this could not be an aggravating factor. Remorse may be a mitigating factor such that the lack of remorse simply precluding that finding. The judge sentenced the offender to 5 years imprisonment.

9. R v Commanda, 2007 ABPC 51 – The offender and the victim were best friends. They were drinking at a local bar. The victim was intoxicated and became angry when the victim left the bar with two women. He understood they were all to leave together. The victim was driven to the offender's condominium where a fight ensued. The victim punched the offender first. A relatively minor exchange of punches escalated when the victim grabbed a knife. The offender did the same. The offender managed to overpower the victim, but stabbed him in the process. The victim died of the knife wound. The offender then

dismembered the victim's corpse and attempted to dispose of his body. The sentencing judge found that the offender's actions placed him in a category described as creating a "risk of life-threatening injuries" which resulted in a higher degree of moral culpability. (at paragraphs 27 – 28) The sentencing judge considered the offender's relative youth and paid particular attention to his status as an indigenous person (at paragraphs 33 and 35). The sentencing judge also considered the offender's criminal record which consisted of petty offences although we was also convicted of assault with a weapon, but as a youth (at paragraph 34). Victim impact statements spoke to the pain caused by the victim's death (at paragraph 36). The judge imposed a term of 6 years imprisonment for the manslaughter charge.

Cases referred to and relied upon by both the Crown and the Defendant

1. R v MacNeil, 2009 NSSC 310 – The victim and the offender were drinking together. An argument ensued which morphed into a fight. The offender grabbed a knife in the kitchen and stabbed the victim, causing death. The offender was charged with second degree murder but convicted of the lesser offence of manslaughter. The aggravating factors included the extreme nature of knife violence and a criminal record which included 7 common assaults but not involving weapons. (at paragraph 26) Mitigating factors included the victim's own aggression and the offender's sense of remorse (at paragraph 27) The accused also had an alcohol problem. Warner, J. concluded that the crime was not "near murder" but rather "done in the heat of the moment without any thinking of the consequences of his actions and death for which he must be sentenced to jail." (at paragraph 33) Warner, J imposed a prison sentence of 7 years.

2. R v Landry, 2021 NSSC 179 – The offender was charged with second degree murder but pleaded guilty to manslaughter. The offender was 71 years old at the time of the offence. He was visiting the victim, who was a friend. The offender was intoxicated. The victim was smoking a small amount of crack cocaine. The offender said something to upset the victim. The victim moved towards the offender in an aggressive manner and shoved or pushed him. The offender responded suddenly by stabbing the victim in the neck. The victim was unarmed. The offender attempt to provide basic medical assistance including and asked that someone call 911 for urgent help. The aggravating factors included the use of knife to inflict a wound to the neck; the offender was older and had a broken foot but was also physical larger than the victim. Mitigating factors included the apparent impulsiveness of the act; the offender's guilty plea; acceptance of responsibility and remorse; providing aid immediately after the stabbing; and no criminal record for violence. The sentencing judge accepted a joint recommendation of 7 years imprisonment.