

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Levy*, 2025 NSSC 371

Date: 20251126

Docket: Hfx No. 530419

Registry: Halifax

Between:

His Majesty the King

v.

Alexander Pishori Levy

DECISION

Judge: The Honourable Justice James L. Chipman

Heard: October 6, 7, 8, 9, 14, 15, and 20, 2025 in Halifax, Nova Scotia

Written Decision: November 26, 2025

Counsel: Robert Kennedy, K.C. and Melanie Perry, for the Provincial Crown
James Giacomantonio and Jack Bennet, for Mr. Levy

By the Court:

INTRODUCTION

[1] Alexander Pishori Levy stands charged:

That he, on or about the 24th day of December, 2022, at, or near, Halifax, Nova Scotia, did

1. Unlawfully kill Ryan Sawyer and thereby commit manslaughter, contrary to Section 236 of the *Criminal Code*;
2. AND FURTHER, that Alexander Pishori Levy, on or about the 24th day of December, 2022, at or near Halifax, Nova Scotia, did by criminal negligence, to wit., applying neck compression, cause the death of Ryan Sawyer, contrary to Section 220 of the *Criminal Code*.

[2] This case concerns the tragic death of Ryan Sawyer on Christmas Eve, 2022. Home for the holidays from his job with Nissan Canada in Toronto, Ryan and his twin brother, Kyle Sawyer, began the evening of December 23rd with their parents and their parents' friends at a downtown bar in Halifax. Following drinks and dinner at Durty Nelly's, the six attended an exhibition World Junior hockey game at Scotiabank Centre.

[3] After the game, the 31-year-old brothers stayed downtown and went to a number of bars, ending up at the Halifax Alehouse, where Mr. Levy was the head of security. Along the way, Ryan and Kyle met up with four others, including their second cousin, Madison "Madie" Brennan. Throughout the course of the evening, between approximately 5 p.m. and 1 a.m., the brothers consumed several alcoholic drinks and Ryan consumed some marijuana. Ryan's post death toxicology findings revealed a blood alcohol count of 0.231 and a THC level of 5.7 (Delta – 9 THC).

[4] After lining up at the Alehouse for perhaps 15 minutes, Ryan, Kyle and their group entered the bar at around 1 a.m. On the way in, Kyle thought he recognized Mr. Levy and greeted him; however, Mr. Levy did not acknowledge him.

[5] Once inside the very crowded Alehouse, Kyle and Ryan were in close proximity when Kyle bumped into another patron and spilled beer on him. Words were exchanged and there was some pushing. The brothers and their group then left the area and went to an upstairs booth.

[6] After a short time in the booth, security staff, including Mr. Levy, confronted the brothers and advised them that they would have to leave. Upon leaving through the Prince Street door, Ryan and Kyle exchanged words with security staff. Scuffling ensued, and Ryan and Kyle were ultimately each taken down outside. Kyle was subdued and sustained injuries. Ryan was placed in a chokehold by Mr. Levy and suffered a heart attack. Attempts to revive him were unsuccessful; he was taken off life support and pronounced dead at the hospital.

EVIDENCE

[7] The parties agreed to the admission of six exhibits. Exhibits 2 - 5 are photo books. Exhibit 1 contains the following Admissions of Fact:

Pursuant to Section 655 of the *Criminal Code*, Alexander Pishori Levy admits the following facts for the purpose of dispensing with proof thereof at the trial in this proceeding:

Identity of the Deceased

1. Ryan Michael Sawyer (DOB: March 21, 1991) died on December 24, 2022, at the Queen Elizabeth II Hospital in Halifax, Nova Scotia.

Identity of the Accused, Jurisdiction, Time and Date

2. Identity of the accused (Alexander Pishori Levy), jurisdiction, time and date are all admitted.

Cause of Death

3. On December 25, 2022, Dr. Erik Mont performed an autopsy on the deceased, Ryan Sawyer. The continuity of Ryan Sawyer's body is admitted.

Expert Evidence

4. Dr. Erik Mont is the Deputy Chief Medical Examiner for the Province of Nova Scotia and forensic pathologist. He can provide expert opinion evidence on the cause and manner of death, injuries to the human body, presence or absence of natural disease and effects of drugs and their significance. Dr. Mont's *curriculum vitae*, which is attached at **Appendix A**, is admissible in this proceeding and can be considered for the truth of its contents.
5. Dr. Mont conducted an autopsy on Ryan Michael Sawyer on December 25, 2022. Dr. Mont's autopsy report, which outlines his methodology and findings, as well as a toxicology report, is attached at **Appendix B**. These reports are admissible in this proceeding and can be considered for the truth of their contents.

6. Dr. Christopher Milroy is a Medical Examiner for the Province of Ontario and forensic pathologist. He can provide expert opinion evidence on the cause and manner of death, injuries to the human body, presence of natural disease and effects of drugs and their significance. Dr. Milroy's *curriculum vitae*, which is attached at **Appendix C**, is admissible in this proceeding and can be considered for the truth of its contents.
7. Dr. Milroy prepared a report in relation to this matter based upon a review of disclosure materials. The report, which is attached at Appendix D, is admissible in this proceeding and can be considered for the truth of its contents with the exception of the following text (located at Page 14, Opinion #6): "[w]hen used as law enforcement hold the idea is that person can then be handcuffed etc. once control is gained. This hold however is not approved by many law enforcement agencies."

Video and Photographic Evidence

8. On December 24, 2022, the Halifax Alehouse was equipped with a video surveillance camera facing its side entrance on Prince Street in Halifax, Nova Scotia, as well as one in the upstairs area of the Halifax Alehouse. A copy of these videos titled "Alehouse Video – Outside" and "Alehouse Video – Inside", respectively, is contained on the thumb drive attached at **Appendix E**. Stills from the outside camera are also contained on the thumb drive attached at **Appendix E** titled Screenshot 1 to 36. The accuracy, authenticity, continuity, and admissibility of these videos and stills are admitted.
9. Cobe Facey was standing on Prince Street outside the Halifax Alehouse during the early morning of December 24, 2022. Mr. Facey took a video recording with this cellular phone at approximately 1:16 a.m. A copy of this video titled "Cobe Facey Video" is contained on a thumb drive at **Appendix E**. Stills from this video are also contained on the thumb drive at **Appendix E** titled Screenshot 1 to 5. The accuracy, authenticity, continuity, and admissibility of this video and stills are admitted.
10. Nina Look was standing in the entry line on Prince Street outside the Halifax Alehouse during the early morning of December 24, 2022. Ms. Look took a video recording with her cellular phone beginning at approximately 1:17 a.m. A copy of this video titled "Nina Look Video" is contained on a thumb drive at **Appendix E**. Stills from this video are also contained on the thumb drive at **Appendix E** titled Screenshot 1" to "Screenshot 7". Zoomed-in screenshots and each still are titled "Screenshot 1a" to "Screenshot 7a", respectively. The accuracy, authenticity, continuity, and admissibility of this video and stills are admitted.
11. Ethan Densmore was standing in the entry line on Prince Street outside the Halifax Alehouse during the early morning of December 24, 2022. Mr. Densmore took a video recording with his cellular phone beginning at

approximately 1:17 a.m. A copy of this video titled “Ethan Densmore Video” is contained on a thumb drive at **Appendix E**. Stills from this video are also attached on the thumb drive at **Appendix E** titled “Screenshot 1” to “Screenshot 3”. The accuracy, authenticity, continuity, and admissibility of this video and stills are admitted.

12. Mitchell Caiger was standing on Prince Street outside the Halifax Alehouse during the early morning of December 214, 2022. Mr. Caiger took a photograph with his cellular phone at approximately 1:17 a.m. A copy of this photograph titled “Mitchell Caiger Photograph” is contained on the thumb drive attached at **Appendix E**. In the video titled “Alehouse Video – Outside”, Mitchell Caiger is the man wearing an orange jacket who enters the video frame at 1:15:01 a.m. The accuracy, authenticity, continuity, and admissibility of this photograph is admitted.
13. Clarie Reardon received a two second video clip from an unknown sender. The video depicts the area outside of the Halifax Alehouse on Prince Street during the morning of December 24, 2022. A copy of this video recording titled “Video Sent to Claire Reardon from Unknown Sender” is contained on a thumb drive attached at **Appendix E**. A still from this video is also attached on the thumb drive at **Appendix E** titled “Screenshot 1”. The admissibility of this video and still is admitted.
14. Malcolm Perkins was standing on Prince Street outside the Halifax Alehouse during the early morning of December 24, 2022. Mr. Perkins took four videos with his cellular phone between 1:14 and 1:20 a.m. Copies of these video recordings titled “Perkins – Kyle Sawyer Video 1 taken at 1:14 a.m.”, “Perkins – Kyle Sawyer Video 2 taken at 1:14 a.m.”, “Perkins – Ryan Sawyer Video 1 taken 1:19 a.m.”, and “Perkins – Ryan Sawyer Video 2 taken at 1:20 a.m.” are contained in the thumb drive at **Appendix E**.
15. The Nova Centre is located across the street from the Halifax Alehouse Prince Street entrance. On December 24, 2022, the Nova Centre was equipped with a video surveillance camera facing the Halifax Alehouse Prince Street entrance. A copy of a video recording from December 24, 2022 at approximately 1:13 to 1:25 a.m. titled “Nova Centre Video” is contained on a thumb drive attached at **Appendix E**. The accuracy, authenticity, continuity, and admissibility of this video is admitted.
16. Detective Constable Randy Wood is a peace officer with Halifax Regional Police Forensic Identification Section. On December 24, 2022, beginning at approximately 12:00 p.m., Detective Constable Wood photographed the scene located outside the Halifax Alehouse. The accuracy, authenticity, continuity and admissibility of these photographs is admitted.
17. Detective Constable Sherri Samson is a peace officer with the Halifax Regional Police Forensic Identification Section. On December 24, 2022 at approximately 12:30 p.m., Detective Constable Samson photographed

Alexander Pishori Levy and his clothing. The accuracy, authenticity, continuity, and admissibility of these photographs are admitted.

18. Special Constable Katelyn Cherwonick is a civilian member of the Halifax Regional Police Forensic Identification Section. On January 7, 2023 Special Constable Cherwonick removed the clothing that Ryan Sawyer was wearing on the morning of December 24, 2022, from a secure police drying cabinet and photographed these items. The authenticity, continuity and admissibility of these photographs is admitted.

19. Kelland Sundahl is a photographer for the Nova Scotia Medical Examiner's Office. On December 28, 2022, Ms. Sundahl photographed Ryan Sawyer's autopsy. The accuracy, authenticity, continuity and admissibility of these photographs is admitted.

[8] Twenty witnesses were called, 19 of them by the Crown, and Mr. Levy testified in his own defence. The Crown witnesses included four police officers. D/Cst. Randy Wood took many of the scene photos and spoke to these and other relevant photos. The other officers, Constables Jairus Lamphier, Stephen Pope and Lazar Cado, gave testimony regarding their attendance at the scene on Prince Street.

[9] Paramedics Glenn Sentner and Sarah Boudreau also testified about their attendance at the scene and their interactions with Ryan.

[10] The owners of the Alehouse, Marcel and Michel Khoury, testified, along with Jason Fraser, Simon Wheller and Greg White, three of the security personnel on duty during the evening of December 23 and 24, 2022. As well, Osman Barrie, a bouncer from Buck Ugly's, the bar next door to the Alehouse on Prince Street, gave evidence.

[11] Kyle and his second cousin, Madie Brennan, gave evidence about the evening. Nina Look, Cobe Facey and Ethan Densmore, the three individuals who took videos with their cell phones, also testified. Finally, the Crown called medical examiners / forensic pathologists Drs. Erik Mont and Christopher Milroy.

RELIABILITY AND CREDIBILITY

[12] In assessing the testimony of the witnesses, I must consider the reliability and credibility of their evidence. Reliability generally refers to the accuracy of evidence. Credibility refers to the honesty or veracity of a witness' testimony.

[13] In *R. v. H.C.*, 2009 ONCA 56, at para. 41, Justice Watt noted that reliability engages a witness' ability to accurately observe, recall and recount evidence. It may be affected by factors such as the circumstances in which observations were made,

the condition of the witness at the time of the observations, traumatic circumstances, and the general limitations and frailties of recollection.

[14] As the trial judge, I can rely on "reason and common sense", "life experience", and "logic" in making credibility assessments (*R. v. Delmas*, 2020 ABCA 152, at para. 31, affirmed 2020 SCC 39). It is rare for a witness' testimony to be flawless. As trier of fact, I may believe some, none or all of the testimony of any witness (*R. v. Stanton*, 2021 NSCA 57, at para. 67).

[15] In coming to my decision in this matter, I found the above referenced "Video and Photographic Evidence" (see Admissions of Fact, paras. 10 – 21) to be extremely (but not completely) helpful. I would add that none of the three people called who took videos with their phones (Ms. Look, Mr. Densmore and Mr. Facey) added any reliable evidence concerning the events in question. In this regard, their cross-examinations confirmed that they were not focussed on the fracas involving Ryan to the point that any one of them could add anything beyond what is depicted from their cell phone evidence.

[16] I make similar findings with regard to Ms. Brennan. While her evidence provided helpful context to the evening, she understandably "looked away" from the skirmish involving Ryan and Mr. Levy.

[17] As for Kyle, I generally found him to be credible; however, I have reliability concerns surrounding some of his evidence. In this regard, he consumed (by his own evidence) 8 – 10 beer and/or alcoholic drinks over the course of the evening.

[18] I found the first responders on the scene (three HRP officers and two EHS paramedics) provided reliable and credible evidence. These five individuals gave what I consider to be accurate and helpful testimony. Their observations, tested through vigorous cross-examination, were largely consistent with the video and photo evidence. When I examine the totality of the evidence, I conclude that Csts. Lamphier, Pope and Cado (along with D/Cst. Wood who was not cross-examined), together with paramedics Sentner and Boudreau, were all reliable and credible.

[19] As for the bouncers, Messrs. Fraser, Wheller, and White from the Alehouse and Mr. Barrie from Buck Ugly's, on balance, I found they offered some material reliable evidence surrounding the disturbances. Having said this, for reasons I will explain, I found Mr. Barrie, as well as the owners of the Alehouse, Marcel Khoury and Michel Khoury, demonstrated credibility flaws.

[20] In terms of the credibility and reliability of Mr. Levy, there were both internal and external inconsistencies with respect to significant issues that negatively impacted both his reliability and credibility. I will have more to say about this (and in the context of *R. v. W.D.*, [1991] 1 S.C.R. 742) later in this decision. I would add that the key question to be determined on all of the evidence is whether the Crown has proven the essential elements of each of the allegations beyond a reasonable doubt.

GENERAL PRINCIPLES

[21] The evidence is to be assessed in accordance with the three principles enunciated by the Supreme Court of Canada in *W.D.*, where Justice Cory stated at pp. 757-758:

...A trial judge might well instruct the jury on the question of credibility along these lines:

First, if you believe the evidence of the accused, obviously you must acquit

Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.

Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[22] The first and second steps must be addressed in the context of all of the evidence, not only the evidence called on behalf of the Defence. With the *W.D.* analysis in mind, I have carefully considered all of the evidence, including the evidence of the Defence and potential exculpatory evidence arising from the Crown's case.

[23] This is a criminal trial and Mr. Levy benefits from the presumption of innocence. The burden of proof for every essential element for each of the offences rests with the Crown. Mr. Levy does not bear the burden of establishing his innocence. I cannot convict Mr. Levy of either or both the offences unless the evidence I accept establishes his guilt to the high criminal standard of proof beyond a reasonable doubt. After assessing all of the evidence, I must determine whether or not the Crown has discharged its burden of proving the essential elements of the charges.

[24] There is no burden on Mr. Levy to prove that he acted in self-defence. Rather, given (as acknowledged by the parties) that there is an air of reality to that defence grounded in the evidentiary record, the Crown must prove beyond a reasonable doubt that the accused did not act in self-defence (*R. v. Cinous*, 2002 SCC 29; *R. v. Desmond*, 2024 NSSC 60).

[25] The Supreme Court of Canada discussed the Crown's burden of proof in *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1000. It held that if there are reasonable inferences other than the guilt of the accused, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt (at para. 35).

[26] The Crown's proof of an offence must arise from the whole of the evidence, based on reason and common sense, when the evidence or absence of evidence is considered. In *Villaroman*, the court added that a gap in the evidence may suggest inferences other than guilt, provided those inferences are reasonable when all the evidence, including any lack of evidence, is considered (at para. 36).

[27] Justice Cromwell in *Villaroman* clarified that while the Crown may need to counter "other reasonable possibilities" inconsistent with guilt, it need not "negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused" (at para. 37). In other words, the Crown is not obliged to disprove defence theories based on speculation.

SUMMARY OF THE EVIDENCE

Kyle Sawyer

[28] Kyle recalled the evening of December 23 and 24, 2022. After the hockey game, he and his brother went to a number of bars, ending up at the Alehouse around 1 a.m. He thought he would have consumed 8 – 10 beer/drinks throughout the evening and estimated Ryan had about the same and that he “might have had a joint”.

[29] After a 5 – 15-minute wait in the Alehouse line-up, Kyle noticed Mr. Levy on the door and thought he recognized him. This was met by a surly response from Mr. Levy, who said, “I don’t know who the fuck you are.”

[30] On cross-examination, Kyle described Mr. Levy’s response as “off putting.” Challenged on Mr. Levy’s exact words, Kyle held firm that what Mr. Levy said “was definitely” along the lines of what he said on direct examination. He was then reminded of his April 2023 statement to an alcohol and gaming official where he

said that after he said “hi”, Mr. Levy “didn’t really say anything, just kinda gave me a dirty look, he wouldn’t acknowledge me, that was it.” Kyle denied that he said, “that guy’s an asshole”, as he went by Mr. Levy.

[31] Kyle recalled that soon after going inside, he bumped into another patron, spilling some beer on the man. Following an exchange of words and shoving, Ryan and Kyle left the area and went to an upstairs booth where their cousin, Madie Brennan, and the others in their group were seated. Kyle recalled that soon after, a bouncer appeared and asked him and Ryan to leave. Kyle allowed that he was “a little upset” at this point, and that his protest to the effect that they’d “done nothing wrong” did not change the decision.

[32] On cross-examination, Kyle agreed that while in the booth, a bouncer or bouncers came up with the person whom he scuffled with, or a bartender, who identified him. He said that a bouncer with a “shaved head” asked him to leave. He acknowledged that “maybe” Madie and Sally Chedrawe (one of Madie’s friends) tried to calm him down. He agreed that it was a “possibility” that they told him to “stop being so angry.”

[33] Kyle described the doorman as being “verbally aggressive” when he asked him to leave. He did not recall threatening the bouncers but then agreed that “there might have been a verbal confrontation on the way down the stairs.”

[34] Kyle recounted that he was “grabbed” as he was leaving down the stairs. He did not observe his brother as Ryan descended the stairs ahead of him. Kyle did not hear if Ryan said anything. Ryan went outside first, followed by Kyle. Kyle testified that once outside (by the Alehouse Prince Street door), “he [Mr. Levy] said something to my brother, I came in and punched him in the chest with one arm, I was deterred right after ...Alex and the chubby dude [Brian Whalen] at the front door were on top of me.” Kyle recalled that a chokehold was attempted on him, and, at one point, he said that he “could not breathe.” He said that as he was trying to breathe, the bouncer “loosened up”, and “... the cops came and grabbed me and put me in the car.” While all of this was going on, Kyle was unaware of what was happening with Ryan.

[35] Kyle was taken to Dartmouth General Hospital as he sustained a broken nose and injuries to his knees. Initially charged, he was subsequently informed that the charges were dropped. Police then drove him to the Queen Elizabeth II Health Sciences Centre to be with his brother and family.

[36] Kyle was shown and testified regarding various segments of the video evidence. During cross-examination, the video of the Alehouse side entrance on Prince Street (“Alehouse Outside Video”) was replayed at 1:12:44 and Kyle was asked whether he was gearing up for a fight by taking his vest off. He replied, “I’m honestly not too sure.” He agreed that by pointing at the bouncers, he was possibly challenging them to a fight. Shown the clip at 1:13:10, he agreed that he lunged at Mr. Levy and punched him with his right hand. Kyle added that he believes Mr. Levy’s return punch connected and broke his nose. Shown the segment at 1:13:35, Kyle agreed that it was a “big guy”, and not Mr. Levy, who put his arm around Kyle’s neck.

Madison Brennan

[37] Ms. Brennan was 25 years old at the time of the matters in issue. She and Kyle were texting while the brothers were at the hockey game and planned to meet up downtown later. Ms. Brennan and three friends were at Boomers when the brothers joined them. On cross-examination, she agreed that at the time, Ryan and Kyle appeared to be drunk.

[38] Ms. Brennan recalled that the group of six left Boomers and went to the Alehouse where they waited in line for about 10 minutes. As they approached the door, she heard Kyle say something like, “hey buddy, I know you” to one of the bouncers. The bouncer (whom she came to know was Mr. Levy) did not respond and she perceived that Kyle was “shocked” by this.

[39] As they entered the first floor of the Alehouse, Ms. Brennan observed live music and dancing and that the bar was “very busy”. After buying a round of beer for her group, Ms. Brennan became separated from her cousins for a period of time. At one point, Ms. Brennan perceived a “commotion happening ...I really didn’t know what happened.” She ultimately got each of her cousins in an upstairs unoccupied booth.

[40] On cross-examination, Ms. Brennan said the booth was a “spot to re-group”, given that it was “hidden ...away from it.” She denied that she was of the view that Kyle and Ryan would “cause more trouble if the situation did not diffuse.” She was reminded of her December 24, 2022, statement to police and agreed that she said that her cousins were “heated from the commotion” and that she could have told them to “stop being so angry.” Ms. Brennan added that she was trying to make sure that no one would get into trouble.

[41] After being in the booth with her cousins and friends for a short time, Ms. Brennan went to the washroom. There was a line-up and by the time she returned, Ryan, Kyle and Ms. Chedrawe were gone. Upon being informed of what had happened by one of her other friends, they proceeded outside. Once outside, Ms. Brennan saw a “police officer on top of a man trying to resuscitate him and then I realized that it was Ryan, and I started spiraling.” She “looked away” from anything further.

[42] Ms. Brennan testified that she had four drinks and did not consume any drugs over the course of the evening. She did not consider herself drunk. She described Ryan’s mood as “fine” throughout the evening. As for Kyle, she noted that he “was going through a break-up, he seemed fine.”

Cst. Jairus Lamphier

[43] Cst. Lamphier was with his partner, Cst. Stephen Pope, when they received a call regarding a disturbance at the Alehouse. The uniformed officers arrived at 1:17 a.m., within seconds of receiving the call. After parking their marked police car on Brunswick Street, the officers went on foot down Prince Street to where a crowd was gathered.

[44] Cst. Lamphier saw two separate disturbances in the vicinity of the Prince Street Alehouse door. He directed Cst. Pope to attend to one of the disturbances and he went to the other. He came upon a “struggle on the ground”, between individuals whom he identified as “Alex Levy and Ryan Sawyer.”

[45] Cst. Lamphier said that Mr. Levy and Ryan were on the street and sidewalk area near the entrance to Buck Ugly’s, the bar next door and somewhat further down Prince Street. He estimated that the other disturbance (involving Kyle) was about 25 feet away.

[46] Cst. Lamphier testified as follows during his direct examination:

Ryan was basically being held in a chokehold by Mr. Levy. And it was a very peculiar position that he was seated in – it’s not one that I’ve ever seen bar staff do. It, you can think about it I guess Ryan’s head was facing up Prince Street so towards Citadel Hill. And then Alex was sort of ...Ryan was straddled in between Alex’s legs. And they were kind of like pulled back. Wasn’t like sitting up, he was pulled back and his full forearm was across his neck.

...

...you could see his forearm was completely compressed against his neck, like this, and his left arm or his forearm was sort of support on the back of his head, kind of performing a chokehold as I would describe it.

...

They're seated but he is laying down back as if to reef on or apply pressure. He wasn't seated up loosely, it was laying right back.

...

... his head was, his hand was on the back of Ryan's head and the forearm was pressed against his neck and he was pulling and then he was also leaning back.

...

I would say that he [Mr. Levy] was very focussed. He wasn't really paying attention to my commands. As soon as I approached, I knew that there was something wrong. Ryan was not moving. He was completely limp. His arms were to his sides. He wasn't fighting back. He wasn't struggling, his legs weren't kicking. He was laying limp. I saw that Ryan's eyes were rolled in the back of his head. His tongue sticking out of his mouth, swollen. His face was purple. It looked to me he was unconscious. He wasn't breathing and I grew very concerned. I had asked Mr. Levy to remove his arms verbally, a few times and he wasn't listening. I then had to reach down and grab his arm and start pulling it from Ryan's neck because he simply wasn't listening, so I did that and he finally I guess got the message and let go and I told him to get up and he did.

[47] Cst. Lamphier added that he commanded Mr. Levy to "stop, let go" three or four times. He continued:

I reached down and grabbed Alex's arm. His forearm and started removing it from Ryan's neck.

...

...He was limp in that there was no motion. He was not moving whatsoever. He was completely just laying flat. His arms were by his sides. He wasn't fighting back. ...his eyes were rolled, I could see the whites of his eyes. His tongue was very swollen, sticking out of his mouth. Like I could see his tongue. It was larger than normal. It was swollen. His face was purple. Lips beginning to turn like a, they weren't red, they were darker blue.

He didn't let go.

...

I just would have, with my right hand, I would have grabbed his arm to make physical contact and like pull away.

[48] Trained in CPR, Cst. Lamphier started compressions. He recalled that another officer, Cst. Lazar Cado, arrived on the scene. Cst. Lamphier was shown portions of the Alehouse Outside Video capturing the minutes leading up to and including his arrival at the scene at 1:17 a.m. He was also shown the video taken by Ethan Densmore on his cellphone at approximately 1:17 a.m. Finally, he was shown the Nova Centre video, from the Nova Centre camera located across the street from the Alehouse's Prince Street door.

[49] Cst. Lamphier did not observe Mr. Levy to have any injuries. He observed Mr. Levy pacing back and forth and thought that he "appeared worried." He did not see any weapons. He clarified that it was Cst. Cado who started the chest compressions, and an ambulance attendant took over about five minutes later.

[50] On cross-examination, Cst. Lamphier confirmed that he made notes of his observations later during the morning of December 24, 2022. He also prepared an initial officer's report (IO) and a "can say" statement. He agreed that none of these documents mention that he saw Mr. Levy's left hand on the back of Ryan's head.

[51] The cross-examination continued, as follows:

...

Perhaps it was just an oversight, but I can tell you that a lot of pressure was being put on Mr. Sawyer for him to be purple in the face and not breathing.

... I'm 100 percent sure of what I saw that night ...that his left hand was on the back of Mr. Sawyer's head"

[52] After Ct. Lamphier was reshown the Alehouse Outside Video, the cross-examination continued with this exchange:

Q. Okay. How about Mr. Levy? We've seen his face in the video a couple of times. He's clearly wearing one of those Alehouse staff jackets?

A. Yeah.

Q. Okay. So the point that I'm making is that you can't see the skin of Mr. Levy. The arm and the forearm and the bicep, you can't those parts?

A. I can't see his full arm but you could probably see his wrist and his hand.

Q. Right, but you couldn't see the forearm that you claim was across Mr. Sawyer's neck. You can't see the actual skin?

A. I can see his arm across his neck. Like his arm is in the jacket and I can see that his arm is across his neck.

- Q. But the question I'm asking Cst. isn't whether.
- A. I can't see his bare skin.
- Q. Right.
- A. Right.
- Q. And you can't see whether or not Mr. Levy is flexing his bicep or his forearm because it would be obscured by his jacket?
- A. No, I can't see his muscles contracting.
- Q. Right. So what you can say is that his forearm was across the top of his chest, near his neck?
- A. I can say that his forearm was completely across his neck, no part of his chest.
- Q. Right. And in terms of the way that you claim force was being exerted. Okay. Would you agree with me that it is possible that, at the time of your arrival – I'm not talking about the whole thing – you come at effectively then end. Correct? You intervene, at the point you intervene there's obviously been a, some kind of an altercation before you got there?
- A. Yes.
- Q. Okay. So, what I'm saying is from, from your vantage point – from the point that you are involved in watching this. Okay. You can't say whether the forearm is across his neck and pushing on his neck vs. some other part of his upper chest like his ribs or his collar bone? You can't say what he is pulling on?
- A. He's pulling on his neck.
- Q. How are you so sure?
- A. Well, he's laying back and applying pressure. Like, he's applying pressure laying back. It's clear to me that his arm was on his neck. It wasn't on his chest. I was certain about what I saw. It was on his neck.
- Q. So, but you can't say he was pulling on his neck?
- A. Well, he was pulling because he was leaning back and using his other arm to support it.
- Q. So, you disagree with me that it is possible that rather than pulling on his neck at the moment of your arrival, that he was in fact pulling on his chest to hold him down?
- A. Yeah. I'm disagreeing with that.
- ...
- Q. So, and so on your version the sequence of events is that you arrive, you see this, this sort of interaction between Mr. Levy and Mr. Sawyer, you believe

it lasted about ten seconds, you give three to four verbal warnings as you are making observations and then you feel compelled to pull

A. I wouldn't say it's a warning. Certainly not a warning, right – it's a demand – you need to remove your arm from this gentleman's neck.

Q. Okay. And you say he didn't comply?

A. That's right.

Q. You say three to four times you did that?

A. About, yeah.

Q. That's your evidence here today?

A. Yeah.

Q. Okay, and again I'm going to ask you to review, to review your notes or your IO or you can just agree with that those, that those warnings don't appear anywhere in your notes?

A. Okay.

Q. Do you agree?

A. Yeah, they're not there, yeah.

Cst. Stephen Pope

[53] Cst. Pope recalled that he and Cst. Lamphier arrived at the scene at 1:17 a.m. He dealt with the disturbance involving Kyle Sawyer. His notes confirmed that Kyle had “a swollen left hand and knuckles.” Cst. Pope concluded that Kyle was intoxicated on account of the “strong odor of alcohol, blood shot eyes and slurred speech.” He arrested Kyle at 1:23 a.m. but subsequently released him without charges.

[54] On cross-examination, Cst. Pope agreed that his notes refer to Kyle as being “highly intoxicated.”

Cst. Lazar Cado

[55] Cst. Cado was dispatched to the Alehouse, arriving shortly after Csts. Lamphier and Pope. He came upon the scene noting “two patrons on the ground.” He recognized Mr. Levy as one of the involved Alehouse staff members. He described Mr. Levy as “panting, out of breath as if he exerted himself.” He watched as Mr. Levy got up on his feet without assistance. The other person, whom he came to learn was Ryan, remained on Prince Street.

[56] Cst. Cado described Ryan's face as "blue and purple." There was no visible bruising. He observed Ryan's tongue protruding from his mouth with blood coagulating. He could not say if Ryan's jaw was clenched. He described Ryan's eyes as "glossy, bloodshot." Cst. Cado initiated CPR while Cst. Lamphier was beside him.

[57] On cross-examination, he confirmed his understanding that Cst. Lamphier was the first officer to observe Ryan on the ground. He agreed that by the time he arrived, Ryan was "disengaged from Mr. Levy." He did not see Cst. Lamphier with Ryan. He agreed that he noted that Ryan had a "slow, faint pulse."

[58] Cst. Cado observed that Ryan was facing down the street with his head towards Halifax harbour. The officer observed Ryan's hands to be "purple or blue" and remarked that his skin was "inflamed."

[59] Cst. Cado determined it would be best to turn Ryan 180 degrees. As he commenced CPR, "vomit was coming up", so, at intervals, he turned him on his side to clear. With chest compressions, "a larger amount of vomit" emerged. He did not observe any vomit with Ryan until the CPR started. On cross-examination, he said that his "can say" notes state Ryan had a "slow, faint pulse." He added, "My memory, I couldn't feel a pulse, there might have been a faint pulse."

[60] Cst. Cado recalled that ambulance attendants soon arrived and that they "got some form of reading on the AED [automated external defibrillator] machine."

[61] At approximately 2:00 a.m., Cst. Cado dealt with Kyle at cells in police headquarters. He recalled that Kyle had "a swollen right eye and a scrape on the right eyebrow, a swollen left knee." He felt that he had "some level of intoxication, nothing egregious." He noticed that Kyle was limping and thought that he had a painful left knee.

Glenn Sentner

[62] Mr. Sentner was the first paramedic on scene. As he arrived in an ambulance with his partner Katie West, he saw a police officer performing CPR on "a person on the road." He asked the officer to continue CPR while he got his monitor connected. Mr. Sentner determined "no pulse, no effective breathing, vomit oozing" from the person's mouth. Ryan was "asystole with occasional electric activity ...not a shockable rhythm."

[63] Mr. Sentner attempted suction for the vomit, but it was ineffective. He observed that Ryan's jaw was clenched as he attempted to place a tube in his nose. He could not pry Ryan's jaw open. He observed Ryan was blue of the lips and fingernails. He attributed this to a lack of oxygen. On cross-examination, Mr. Sentner agreed that he could not say if Ryan's jaw was clenched when he first encountered him or if his tongue was then sticking out. He then clarified he was "confident that his tongue was not between his teeth." He agreed that he could best observe Ryan's face when they were in the ambulance and that his face was pale and his lips were blue.

[64] Owing to Ryan's neck girth, Mr. Sentner encountered difficulty attempting to place a neck collar on him. He ultimately did not put the collar on.

[65] Mr. Sentner recalled fellow paramedic Anthony Delaney and advanced care paramedic Sarah Boudreau arriving. Ryan was placed on a stretcher and into an ambulance, accompanied by Mr. Sentner and three others. Ryan never returned to spontaneous breathing.

Sarah Boudreau

[66] Ms. Boudreau is an advanced care paramedic. She was alone in her EHS vehicle when she responded to a call and attended at the scene. The call was a "cardiac arrest" and her initial thought was, "this is going to be a crappy Christmas for somebody."

[67] Upon arriving, Ms. Boudreau observed a police officer doing chest compressions and Mr. Sentner and another paramedic, Katie West, attempting to put a defibrillator on Ryan. She learned of the asystole reading. On cross-examination, she said that shocking a patient is not advised when they are asystole.

[68] Ms. Boudreau took charge of Ryan and requested that a collar be placed on him; however, owing to "copious amounts of vomit" and given Ryan's large neck, this could not be done.

[69] Ms. Boudreau decided to have Ryan moved to the ambulance so that they could continue working on him. An IV was started and the police officer continued chest compressions. They unsuccessfully attempted to secure an airway. Ms. Boudreau tried to place an endotracheal tube in Ryan's mouth; however, "I couldn't get past his teeth." She observed that "vomit kept coming up" and that suctioning

kept up. Ms. Boudreau noted that Ryan's jaw did not become unclenched until he was given medication at the hospital.

[70] When Ms. Boudreau observed Ryan, she noted that his face was "cyanotic, bluish, purple" in colour. She did not observe any physical injuries. She testified that despite various efforts, "we could not get his heart rate back, no spontaneous breathing."

The Alehouse Owners

[71] Marcel and Michel Khoury owned the Alehouse at the material time. The brothers provided similar testimony surrounding the family ownership of the property encompassing the Alehouse and HFX Sports Bar (and previous iterations) dating back to 1997, when their late father purchased the businesses.

[72] Earlier I stated that I had concerns with the credibility of both Marcel and Michel Khoury. These concerns arise from their respective testimonies in the area of training for security staff. For example, even though Marcel described himself and his brother as "hands on" owners and he could name most of the bouncers working in 2022, he said that he was "not aware of the latest" Alehouse security training. Further, he professed to know nothing of "use of force training" and, perhaps incredibly, said that he had "never attended" Alehouse security training up until the date of the incident. Later in this direct testimony, Marcel allowed that "use of force" was dealt with in a security manual. He added, "in a general sense we try not to use it [force]...if they're attacked, they have to [use force]."

[73] Marcel did recall "my former security head and general manager", Peter Martel and was aware that he provided training to staff. Nevertheless, when asked if Alehouse security staff had any training (at the material time), he replied, "I'm not aware ...no." He then allowed that there was an "in-house security staff manual" which "many years ago I would have reviewed." Marcel could not say if the manual was provided to Alehouse security staff. Further, even though he said that Mr. Martel "modified" the original manual, he later said, "I recall nothing of the security manual." He similarly could not recall security policies, albeit he then testified, "we had a policy of de-escalation if someone had too much to drink ...the priority to de-escalate and get patrons outside."

[74] Marcel agreed that "whenever there was a situation", police would be called. At the time of the incident, Marcel was away on vacation, so his brother was on site.

[75] On cross-examination, Marcel said that Mr. Levy was laid off shortly after the incident.

[76] Michel Khoury confirmed that Mr. Levy started working in security for the Khoury establishments when he was 19 or 20 years of age. Mr. Levy was head of security at the relevant time and Michel thought he had been head of security for half a year or so. He identified Mr. Levy, Greg White and Brian Whalen as the most experienced security staff.

[77] Like his brother, Michel testified that he was an on-site owner. Indeed, he was at the neighbouring HFX Sports Bar on December 23 and 24, 2022. He gave the same answer as his brother regarding security training, maintaining that he was never present when this took place. Specifically asked about “use of force” training, Michel (unbelievably in my view) said, “I’m not aware, I wasn’t present for that.”

[78] Michel said he was closing HFX around 1 – 1:30 a.m. on December 24, 2022, when he was called to come outside as police were on Prince Street. As Michel came around the corner of Brunswick Street on to Prince Street, he noticed “police presence pushing people back.” He said he went “straight to Alex, ‘what’s up?’,” and that Mr. Levy replied with words to the effect: *“I didn’t do anything, I didn’t sign up for this. They jumped me. They were upstairs, got in a fight, were asked to leave. They walked out on their own, turned around and 2 or 3 attacked me, we were wrestling around, rolling around, the man I was with spit and threw up on me. Then as soon as he stopped resisting, I let up and let my arms off.”*

[79] Michel added that Mr. Levy did not inform him of the person’s condition. Michel did not observe any vomit on Mr. Levy but then added that he did not look. He said their conversation was “short, quick.”

[80] When Michel’s memory was refreshed with his January 27, 2023, statement to an alcohol and gaming officer, Michel said that Mr. Levy told him that he was on top of Ryan, that he “went limp” and that “he threw his arms up and let go.” On cross-examination, Michel said he did not know exactly what Mr. Levy meant when he said that he was on top. He agreed that by the time of his January 27, 2023, statement, he had spoken with many people about the incident (including police) and watched videos. He agreed that his memory was influenced by all of this and that his memory might not be accurate.

**THE ALEHOUSE AND BUCK UGLY’S SECURITY STAFF ON DUTY
DECEMBER 23 AND 24, 2022**

[81] Below I have provided bullet summaries of the evidence of these four individuals.

Jason Fraser

- Mr. Levy was security supervisor at the Alehouse in 2022.
- Mr. Fraser received “use of force” training from Mr. Levy and Greg White.
- It was a “common thing” to assist patrons from the Alehouse and “normal” for those being evicted to argue.
- It was also common for these people to make threats.
- Mr. Fraser directed the 19 – 20-year-old male patron involved in the incident with Kyle out of the Alehouse without incident.
- He observed the interaction between Mr. Levy and the brothers at the booth on the second floor.
- He witnessed Kyle say to Mr. Levy that he recognized him and Mr. Levy saying something like he did not know who he was. This interaction “ramped up” Kyle’s agitation.
- Mr. Fraser assessed the threat level with the brothers, especially Kyle, as “serious”, as he had a concern about escalation.
- There was nothing unusual about the escort out of the brothers; it was “practically textbook.”
- Mr. Fraser observed that, once outside, the brothers were both “verbally aggressive” but noted that Kyle was more so.
- Upon returning outside (after a short time back inside), he observed two struggles on Prince Street.

Simon Wheller

- Duties as a doorman included ensuring nobody is overly intoxicated while in the Alehouse.
- Security duties do not extend to “the asphalt ...not our area of responsibility because we’re hired by the bar, not the city.”
- Mr. Wheller estimated that patrons are asked to leave at least five times a week.

- He estimated that patrons are physically escorted out about once a month.
- The designated head of security at the time was Mr. Levy.
- When Mr. Wheller started at the Alehouse in 2022, he received training from Mr. Levy.
- The training provided by Mr. Levy included “how to approach a person using a glass as a weapon.”
- Security communicated through eye contact, walkie talkie radios (with ear pieces) and through responding to the light system (on each floor) – solid lights on “assistance required” and flicking lights on “emergency.”
- The most experienced bouncers were Mr. Levy, Brian Whalen and Greg White and they worked mainly at the Prince Street door.
- Mr. Wheller thought that 11 security personnel worked December 23/24, 2022, and named 10 of them.
- The 22-year-old male “partially responsible” for the incident with Kyle was instructed to leave and did without issue.
- After this, Mr. Wheller went upstairs where he saw Mr. Levy and Jason Fraser interacting with the Sawyer brothers who were in a booth.
- The Alehouse was busy and loud with live music and a DJ while the band was on break.
- Sometimes the bar is so loud that it is impossible to hear what is being said on the radios.
- The brothers were asked to leave.
- Ryan was the first to leave and walked out on his own but then “yelled meet me outside ...swearing, agitated and put his jacket on upside down.”
- Mr. Wheller gave Ryan a “wide birth” as he “didn’t want him in swinging range.” He did not have to use physical force to remove Ryan (with the aid of the Alehouse Outside Video, he confirms this to be so).
- Once outside, Ryan “shouted past” Mr. Whalen to “Jason or Alex.”
- Mr. Wheller described Ryan as having an “aggressive demeanor, he was shouting threats at Alex or Jason Fraser ...come outside, come outside.”

- Mr. Levy asked him to call 911 later (with the aid of the Alehouse Outside Video he confirms he called at 1:16:21 a.m.), which he did. The police “arrived in less than two minutes.”
- While calling 911, Mr. Wheller appears to be looking down at the skirmish involving Mr. Levy and Ryan but testified, “I only remember seeing one of the groups on the ground,” referring to Kyle and the bouncers.
- Brian Whalen and Greg White had Kyle in a “control position.”
- Mr. Wheller said there was “a lot of movement down toward Buck Ugly’s, I couldn’t exactly see what’s going on.”

Greg White

- Over his 24 years in security, Mr. White has “many times” seen patrons turn on door staff. These episodes sometimes occur “out of nowhere”; there are risks.
- He has received “mostly minor” injuries over the course of his (past) career in security.
- He’s used chokeholds “many times, potentially hundreds of times.”
- He has never put a chokehold on for very long, perhaps a few seconds. He said, “I may be holding without squeezing for quite awhile and then squeeze for short durations, typically.”
- Until this incident, Mr. White had never seen a situation where a person put in a correct chokehold needed medical attention.
- Given the situation, he determines how much pressure – “as soon as they go limp, you let them go.”
- Mr. White worked with Mr. Levy dating back to the early 2000s.
- It was common to remove patrons – this happened a few times a night owing to (over) intoxication.
- “Probably half or more” of the patrons who were asked to leave were belligerent and “it was fairly common they’d swear.”
- An altercation would arise from an ejection perhaps every week or so.

- Mr. White was trained along with Mr. Levy in Brazilian Jujitsu by Peter Martel between 1997 and 2000 when Mr. Martel was the general manager of the Palace (then connected to the Alehouse).
- Mr. Martel also provided training between 2001 and 2013.
- This was training in the classroom, involving sparring with Mr. Martel, who was also trained in mixed martial arts (MMA). Many attended, including Mr. Levy.
- The training included “how to speak with and approach people.” For example, a person holding a drink should be approached from the sides.
- The training included how to eject intoxicated patrons.
- The training included “how to apply a choke if necessary” – this was deployed “when you felt you might not be able to keep control” – it was a “last resort.”
- Mr. Martel discussed the “mechanisms” of the choke, to “squeeze to apply pressure” to the carotid artery.
- The duration of a chokehold was not stipulated, but if the person lost consciousness, one would “let go, you don’t have to put them to sleep.”
- The chokehold was to be used “to calm down” and to “put people down if you had to.”
- There were “fight lights” at the Alehouse, meaning if the bartender “flicked” the lights, it would alert staff to a situation.
- At the time of the incident, the most experienced Alehouse bouncers were himself, Mr. Levy, Brian Whalen and Matt Day.
- Mr. White recalled that he, Mr. Levy and Mr. Whalen worked the Prince Street door on December 23 and 24, 2022.
- Mr. Levy was the security head and approximately 8 – 9 others were on duty for the “very busy” night.
- Mr. White received a radio call requesting him to assist with asking someone to leave.
- Mr. Levy asked the Sawyer brothers to leave and “Kyle was mouthing off to Alex on the way out saying ‘I’ll see you outside’ a couple of times.”

- Mr. White described Kyle as taller, with Ryan being “shorter, stockier” than his brother.
- Once outside, “Kyle was arguing and punching at his [Mr. Levy’s] face ...Kyle lunged toward Alex and took a swing ...Alex and Kyle were throwing punches back and forth.”
- He is not sure if Ryan made contact with Alex.
- Mr. White described his one to two minute “struggle” with Ryan.
- Mr. White agreed that on the Alehouse Outside Video, just after 1:13 a.m., Mr. White “grabbed a hold of Ryan” with his left hand around Ryan’s head and neck area.
- He agreed that on the video at close to 1:14 a.m., a woman [Sally Chedrawe] asked him if she could “take him [Ryan] away.”
- Mr. White said that when he was holding him, Ryan did not say much other than “let me go”, and Ryan was not striking him. Mr. White did not sustain any injuries.
- Shown the video at approximately 1:15 a.m., Mr. White said, “Ryan hasn’t stopped, he said let go of me as he tried to break free, he’s still a concern ...Ryan seemed to be lunging, as soon as I said Kyle’s going to jail.”
- He noted that Ryan is on his knees in the street – “I don’t have full control over him, he’s struggling really hard with me.”
- He elaborated, “I’m mostly forward on Ryan, there was a little struggle with pauses, we were on a bit of an incline, it caused us to lose balance a bit ...”
- Mr. White testified that while this was going on, he tried to use “verbal de-escalation ...he’d be calm and then start to turn toward me.”
- Referring to Ryan at the time, Mr. White said, “I felt he was pretty drunk.”
- He agreed that Ryan was a “fairly large man”, bigger than himself. He added, “he’s quite strong.”
- Mr. White viewed Ryan as a “threat, concern.”

- Brian Whalen was restraining Kyle “a meter or two from where Alex and Ryan were.” “Kyle was being held on the ground by BrianBrian had control of Kyle.”
- Mr. White learned that Kyle was going to jail and at the same time, “that’s when Ryan grunted, leaned forward, I was losing control of him, I tripped him down, Alex hopped onto his back and pulled him back. I had Ryan’s coat collar and bicep ...there was no force [applied] to his neck.” Mr. White “went inside and waved the inside guys to go outside.”
- Mr. White said, “Alex jumped on Ryan’s back ...over top of us and pulled back, I pulled myself out.”
- Mr. White recalled that he and Ryan “are up against the staff rail” [located to the right of the Prince Street door going into the Alehouse]. “This is where I tried to trip Ryan, Alex jumped Ryan’s back, I remember Oz [Osman Barrie] standing around.”
- From observing the video at approximately 1:15 a.m., Mr. White noted that Mr. Levy throws a coat into the street.
- With the aid of the Alehouse Outside Video and Cobe Facey video, Mr. White testified that “Alex had a hold of Ryan and pulled him back” at approximately 1:16 a.m. ...Alex had Ryan on the ground ...under control to the point he’s not an imminent threat, plus Oz is standing over.”
- After extracting himself and going inside the Alehouse, Mr. White returned outside and, at this point, “Alex had him [Ryan] on his back and I believe had a choke on him.”
- Alex was holding onto Ryan with what Mr. White described as a “rear naked choke, I thought.”
- Shown the Cobe Facey video, Mr. White said he could not tell if Mr. Levy was squeezing, and, “I do not think he could have applied much pressure cause I got my hand out.”
- Mr. White described a chokehold as a “last resort ...only if you’re being punched or kicked.”
- Mr. White came back outside and watched the crowd. Other doormen were outside and police arrived – “they separated Alex and Ryan and

started doing CPR ... Alex still had a hold of Ryan, the police went up and separated, they started CPR, I didn't get to see much else."

- Once Brian had Kyle restrained, "that's why Alex came over to help with Ryan."

Osman Barrie

- Mr. Barrie was working at Buck Ugly's during the early morning hours of December 24, 2022, a "very busy night."
- He is 6' 10" and weighed 240 pounds at the time.
- Mr. Barrie described himself as "taller than him [Ryan] but he's bigger than me."
- While doing rounds, Mr. Barrie saw someone "swing at" Mr. Levy. He described the man as having "long hair and slim" [Kyle].
- Mr. Barrie said, "I came over to try to help Alex." As Mr. Levy became embroiled, Mr. Barrie said, "make sure you don't choke him."
- Mr. Barrie discerned two skirmishes and by approximately 1:15 a.m., "Alex had [the fight involving Kyle] under control."
- Focussing on the "wrestling" involving Ryan, he said, "I'm on the side when they're going down, I'm trying to break it up, 'break it up, break it up.'" At this point, Mr. Barrie did not think that Mr. Levy had "full control of him [Ryan]."
- Mr. Barrie was not paying attention to the skirmish for the entire time. At one point, he observed Mr. Levy holding Ryan in a chokehold in the face and neck area. He thought Ryan could breathe and noted that "he was talking a lot of shit."
- Shown the various videos, Mr. Barrie could not remember Alex having had his arm around Ryan's neck "because everything happened so quickly."
- Mr. Levy told Mr. Barrie that he had Ryan under control and Mr. Barrie was not asked to assist.
- He recalled Ryan "gasping for air" when police arrived. When his memory was refreshed with his December 14, 2022, statement he agreed that "Alex released Ryan when the cops came."
- He does not know how long Alex held Ryan.

EXPERT EVIDENCE

[82] Both Dr. Mont and Dr. Milroy were qualified to testify as forensic pathologists, capable of providing opinion evidence on the cause and manner of death, injuries to the human body, presence or absence of natural disease and the effects of drugs, when present, and their significance. I found both doctors to be objective, balanced, knowledgeable witnesses who provided helpful written and oral expert opinion. The experts were both of assistance to the Court in understanding medical concepts and opining as to Ryan's cause of death.

Dr. Erik K. Mont

[83] Dr. Mont has been Deputy Chief Medical Examiner in Nova Scotia since 2009. He authored the report of postmortem examination of Ryan Michael Sawyer completed April 14, 2023, referable to his December 24, 2022, external examination and autopsy of the next day.

[84] With the aid of Exhibits 5 and 6, the postmortem photographs of Ryan, Dr. Mont provided background in support of his opinion of the cause and manner of death. He set out his opinion at p. 3 of his report:

The history and autopsy findings are consistent with a chain of events that was set in motion by the application of the neck hold, resulting in cardiopulmonary arrest, oxygen deprivation of the brain, and irreversible brain insult. Therefore, the cause of death is certified as "hypoxic-ischemic encephalopathy due to neck compression", and the manner of death classified as homicide.

[85] Dr. Mont addressed key questions at pp. 4 – 7 of his report and then concluded:

Although the precise mechanism by which the cardiorespiratory arrest occurred is not definitively determined, the history and autopsy findings clearly demonstrate an unbroken chain of events, initiated by neck compression during an altercation with another individual, that led to irreversible brain insult and death.

[86] Earlier, at p. 5, Dr. Mont addressed how long it would have taken for Ryan to have become unconscious after the neck hold was applied:

Complete occlusion of the carotid arteries by external pressure usually results in loss of consciousness in under 15 seconds, often considerably less. The time to unconsciousness associated with respiratory obstruction is substantially longer.

The factors mentioned above can greatly extend this duration or even render the neck hold entirely incapable of causing loss of consciousness.

In this case, the point at which the decedent became unconscious cannot be definitively determined. ...

[87] As to how long the neck hold would need to be applied to result in irreversible brain injury, Dr. Mont stated:

Irreversible brain damage is usually sustained only after several minutes of complete oxygen deprivation. In the context of a neck hold, the duration is subject to wide variability based on factors discussed above.

...

Pathologically, it cannot be determined whether any irreversible brain damage was sustained during the period in which the hold was applied, or the entire irreversible brain insult resulted from the prolonged period of cardiorespiratory compromise after the hold was released.

[88] Dr. Mont ruled out blunt trauma and drugs or toxins as causing or contributing to the chain of events that led to Ryan's death. Further, Dr. Mont stated that genetic testing was carried out, and the results ruled out any anatomical pre-existing conditions. On cross-examination, he agreed that although Ryan had no pre-existing abnormalities, the tests pertained to the "known, knowns" and that the tests are "not one hundred percent comprehensive." He added that the genetic testing "is seventy-five percent or so comprehensive", noting that "because science evolves", one cannot be completely sure.

[89] Dr. Mont confirmed that he reviewed videos prior to providing his opinion and his report states as follows at p. 4:

...Although the altercation outside the establishment was partially captured on surveillance and bystander videos, none of the videos viewed prior to this report clearly depict the initiation of the neck hold or the entire course of its application. Whatever type of neck restraint was intended, the hold may have been imperfectly applied and may have been changed during the course of the struggle.

[90] On cross-examination, Dr. Mont agreed that the presence of vomit did not factor into his opinion on manner of death; "it doesn't change what initiated the chain of events." He reiterated his view that there was "no severe injury of the neck that was independently life threatening."

[91] On cross-examination, Dr. Mont could not recall when he first watched the videos. He reiterated that his cause and manner of death opinion is based on the “totality of the evidence.”

[92] Dr. Mont noted that he is not an expert in MMA; however, he is familiar with two main neck holds:

- 1) respiratory neck restraint – this cut off the airways to the trachea; and,
- 2) vascular neck restraint – this can be done by more than one technique, “the person putting the victim in this hold uses their forearm and bicep to compress the carotid arteries ...this places less direct pressure on the middle, if its well executed.”

[93] Dr. Mont noted that Ryan “did experience some lack of oxygen, his heart stopped as it was deprived of oxygen.” He elaborated that “his heart stopped pumping blood to the brain.” He said that “some people who are deprived of oxygen for up to 100 seconds recover with no sequelae.” He agreed that one MMA neck restraint, the “rear naked chokehold”, involves placing a person in a hold such that once they are released, they return to consciousness. He further agreed that this hold “doesn’t have direct effect on the heart but can affect heart rate.” Dr. Mont elaborated that a “vascular neck restraint ...shouldn’t cause the heart to stop, in the vast majority of cases.” He agreed that it was “rare” for people to die after being in a neck restraint.

[94] Dr. Mont said that there has been “debate about this [the use of neck restraints] in law enforcement as they are thought to have inherent risk. We know from MMA ...most people [placed in proper neck restraints] don’t suffer fatal arrhythmias.” Dr. Mont agreed that a fatal outcome would be “extremely rare”, adding that he had “not encountered a case specific like this in the past.”

[95] Dr. Mont agreed that when Ryan is seen waving his hand in the Nina Look video that “he is not yet in asystole.” Dr. Mont was asked about the point in the video when Ryan’s body shifts and his left knee rotates before it returns to the side position. With the caveat that he is not a neurologist, he responded, “when a person is unconscious they may have involuntary movements, you can’t say with one hundred percent certainty, but it suggests to me he is not unconscious at this point, these appear to me to be voluntary movements.” Dr. Mont added, “this suggests to me he is conscious, not in asystole yet ...or it just happened.”

[96] On re-direct examination, Dr. Mont said that the rear naked chokehold times for rendering a person unconscious are “variable”, based on whether or not they are correctly applied.

Dr. Christopher M. Milroy

[97] Dr. Milroy has been a registered forensic pathologist with the Ontario Forensic Pathology Service and Director of the Eastern Ontario Regional Forensic Pathology Unit in Ottawa since 2008. Excluding inquests, he has testified as an expert approximately 800 times. Dr. Milroy was asked to review materials and provide an opinion on the mechanism and cause of death. He reiterated his opinion found in his September 18, 2024, report at p. 8:

The history and autopsy findings are consistent with a chain of events that was set in motion by the application of the neck hold, resulting in cardiopulmonary arrest, oxygen deprivation of the brain, and irreversible brain insult. Therefore, the cause of death is certified as “hypoxic-ischemic encephalopathy due to neck compression”, and the manner of death classified as homicide.

[98] Dr. Milroy confirmed that he concurs with Dr. Mont’s opinion on cause of death.

[99] At p. 10 of his report, Dr. Milroy elaborated regarding the neck hold:

Narratives in both the police report and medical records refer to a “chokehold”. However, these references may represent a general description of any restraint employing an arm around the neck, rather than an intentional depiction of the specific type of hold. Although the altercation outside the establishment was partially captured on surveillance and bystander videos, none of the videos reviewed prior to this report clearly depict the initiation of the neck hold or the entire course of its application. Whatever type of neck restraint was intended, the hold may have been imperfectly applied and may have changed during the course of the struggle.

The type of neck restraint may be relevant to consideration of physiologic mechanisms and chronology. However, it is important to emphasize that, regardless of the mechanics of the hold, the neck restraint initiated the succession of physiologic derangements that resulted in death.

[100] He continued at p. 11:

Complete occlusion of the carotid arteries by external pressure usually results in loss of consciousness in under 15 seconds, often considerably less. The time to unconsciousness associated with respiratory obstruction is substantially longer.

The factors mentioned above can greatly extend this duration or even render the neck hold entirely incapable of causing loss of consciousness.

In this case, the point at which the decedent became unconscious cannot be definitively determined. He was conscious and combative at the time the neck hold was initially applied. Surveillance video shows some movement of his limbs during the course of the hold. However, whether this represents purposeful movement or involuntary/reflexive neuromuscular activity after loss of consciousness is not clear. The decedent was unconscious by the time police arrived.

[101] Dr. Milroy provided this conclusion at p. 13:

Although the precise mechanism by which the cardiorespiratory arrest occurred is not definitively determined, the history and autopsy findings clearly demonstrate an unbroken chain of events, initiated by neck compression during an altercation with another individual, that led to irreversible brain insult and death.

[102] Dr. Milroy enumerated 12 points (pp. 14 – 15) which are in evidence (albeit, with the parties' consent, the last sentence of number 6 is redacted).

[103] According to Dr. Milroy, a properly applied "carotid sleeper or vascular hold" whereby the neck is placed in the crook of one's elbow and then compressed, will result in the person losing consciousness in 10 – 15 seconds. He added that it is "relatively easy to obstruct the blood flow in the neck."

[104] Dr. Milroy noted that a bar hold (involving one's arm or an object) will take longer to render a person unconscious. He said that if a person is not released, this hold will cause "irreparable harm or the person will die."

[105] The expert examined photos (Exhibits 5 and 6) and, consistent with Dr. Mont, concluded that there was "an absence of significant external injury" to Ryan's neck. Dr. Milroy determined that there was bruising of the internal structures, "typical of an arm lock or carotid sleeper." Having viewed the videos, he formed the view that "the arm was compressing the neck ...in a struggle you may get an element of an arm hold and a carotid sleeper." He added that, based on his review, he was of the view that there was "a combination of both with predominately the carotid sleeper."

[106] Dr. Milroy reviewed several more photos, noting that Ryan's tongue appeared bitten and was protruding from his teeth. He noted extensive tongue bruising. Dr. Milroy stated that a person can vomit as they go into cardiac arrest and when they are unconscious. He testified that when a person who is not in hospital sustains a cardiac arrest, their survival rate is less than 10 percent.

[107] Shown the Ethan Densmore video, and screen shot number one, Dr. Milroy agreed that Ryan's face is a "purply colour", attributing this to a "congested face and head ...the principal reason because the neck is being compressed."

[108] Referred in cross-examination to the same video, Dr. Milroy again described Ryan's face as "purple." He noted the contrast between Ryan's face and paler hands. Dr. Milroy said at this point, "I think there is congestion of the head." He then conceded that the congestion could have resulted from an earlier moment and that, from the still frame alone, one cannot tell if any force is exerted in the exact moment.

[109] Dr. Milroy stated that "the dangerousness of Ryan being held in a neck restraint is self evident from the cause of death."

[110] Dr. Milroy was shown the Alehouse Outside Video beginning at 1:15:49 and concluding when Mr. Levy gets up from being on the ground with Ryan at 1:17:50. He noted that if a compressed neck hold was applied for this amount of time (two minutes and one second) it would be "a hold beyond transient, potentially dangerous." He added that he would regard a hold of around two minutes to be "significant."

[111] Dr. Milroy confirmed his view that a neck hold can render someone unconscious within 10 – 15 seconds. In this case, Dr. Milroy conceded that he could not say exactly how long the neck was held. On cross-examination, he added that he could not precisely say at what point Ryan's heart stopped. He agreed that when Ryan is moving his arms on the Nina Look video, "if purposeful movement, his heart is still beating." He agreed that the arms moving would not represent seizure activity.

[112] On cross-examination, Dr. Milroy agreed that neck compressions can sometimes cause "vagus carotid sinus reflex" which leads to sudden cardiac arrest. He agreed that in this case, he could not exclude this possibility.

[113] Dr. Milroy also agreed that the genetic testing could not rule out an "unknown, unknown", adding, "we are still learning but [here] I have no evidence for an encephalopathy, the genetic science is limited ...assuming a neck compression, you could conclude a channel encephalopathy contributed to death."

[114] Dr. Milroy agreed that given what we "know about police training, judo or MMA properly applied sleeper holds, adverse outcomes like this are very unexpected." He agreed that the "theory" is for those placed in a properly applied

sleeper hold to regain consciousness. He acknowledged that sudden deaths are not common outcomes in MMA or police training.

[115] Dr. Milroy testified that the known upper limits for chokeholds are that if “more than 4 minutes – brain damage, in people whose blood supply has not been obstructed.” He added that there is no expert data to definitively assign time periods. He acknowledged that when a sleeper hold is properly applied, the heart should keep beating.

[116] On cross-examination, Dr. Milroy was shown the Alehouse Outside Video from 1:12:50 to 1:13:22 and he agreed that it is “possible” that “some significant pressure is being put on Ryan’s neck.” If this occurred, then Dr. Milroy agreed that some internal bruising could arise.

Alexander Pishori Levy

[117] Mr. Levy is 40 years of age and presently unemployed. He did not graduate high school; however, at age 31, he obtained his GED. He testified that his reading level is “not great, I don’t always understand”, and that in the course of his lifetime, he has read only two to three novels. He added that he has a hard time spelling and that he finds it difficult to express his thoughts.

[118] In 2006, Mr. Levy began working in security. By August of that year, he was hired to work at the Palace where he described his duties as including “keeping people safe in the bar ...keep order, make sure people are not too intoxicated, causing problems.”

[119] By 2009, Mr. Levy was working fulltime at the Alehouse. His responsibilities included working the door “to make sure of age, not too intoxicated.” He added that his work included dealing with “unruly patrons.” He continued in this position (but for a period of time between 2009 and 2011 when he was let go) up until just after the subject incident.

[120] Mr. Levy received training in the use of force when he began working at the Palace. This involved “scenarios on how to talk to and approach patrons.” As well, the training included “restraints, mainly for one-on-one situations.” He added that he learned to apply “if need be, chokeholds.” He elaborated about learning the “rear naked chokehold, when behind us, try to get them off balance, put your arm around the neck, grab with bicep to lock it in place.”

[121] Mr. Levy said the rear naked chokehold “could be used to control a person, more like a hug, to gain control, if need be, squeeze to cut the blood flow off ...put them to sleep, causes them to pass out, I don’t know the science behind it.” He explained that he is right-handed, so he uses his right arm when squeezing the neck.

[122] Between 2006 and 2011, Mr. Levy received monthly training with manager Peter Martel. He recalled “almost every day we trained, we used the [rear naked chokehold] manoeuvre” during grapple sparring. Over the years, Mr. Levy noted that “a lot of times people didn’t try to get out of the manoeuvre.” He added that the hold is “a last resort, if there’s no other choice. It has to be on correctly or you could break the trachea with your forearm; if too long, the person goes brain dead, doesn’t wake up.”

[123] Mr. Levy recalled that the training included “sparring sessions to get a feel for what its like in an altercation.” He said that he was “usually the test dummy ...I’ve been put in chokeholds during training sessions.”

[124] Mr. Levy recalled through his training that a chokehold “might take about 10 seconds, it could take longer.” He then said that if correctly applied, “most people pass out within 10 seconds.” He noted the risks involved “breaking the trachea from holding too long.” He added that he had “never heard of anyone being hurt” and that you “know when to stop using if you apply it properly – the person may go limp, the person sinks, the body drops ...let go.”

[125] Mr. Levy said that “when in a fight, it comes down to survival, want you to go home at the end of the night.” He described an “intense situation” if being attacked “...you do what you have to do to get the person restrained.”

[126] During the time he was let go from the Khoury establishments, Mr. Levy worked at other downtown Halifax bars (the Dome and Cheers) and received security training sessions at Ravensburg College. Once back at the Alehouse, he trained a number of the new security hires “in the techniques I learned from Peter [Martel].” This included “showing people how to do the rear naked chokehold properly and that you can’t do it too long.” He noted that the hold was “always safer than to punch somebody.” Mr. Levy allowed that he had watched videos of rear naked chokeholds on many occasions. Further, on the “close to 150 times” applying the rear naked chokehold, he said, “I’ve never had any problems ...every time I used it, the person woke up.” He continued by saying that the manoeuvre usually calmed people down and that no one who had a chokehold on them ever had to go to hospital.

[127] Mr. Levy said that applying a rear naked chokehold “takes a lot out of you” and that the training helped with endurance.

[128] Mr. Levy noted that when dealing with problem patrons that there were “a lot of risks ...you don’t know what to expect.” He said he would “try to talk, you have to be assertive, you’re telling people to leave, not asking, its not up for debate. You could get bottled or sucker punched.” He recalled being “punched to the point when I was dazed.” Mr. Levy elaborated with examples involving himself and colleagues over the years.

[129] Mr. Levy was working at the Alehouse as head of security on December 23/24, 2022. He started his shift at around 9 p.m. Cover charge began at 10 p.m. and he worked the door. Sometime “later on”, he recalled a group in the line up. One man [Kyle] said to him, “hey, I know you.” Mr. Levy did not recognize him, and he responded by saying, “okay, I have to check ID’s.” He heard someone laughing and remembers Kyle speaking with his brother and next saying, “all good man, I don’t really care.”

[130] Mr. Levy discerned that Kyle was “kind of upset” and asked him about not caring, but “he cut me off and went inside ...I felt maybe like I came off as rude, I wasn’t trying to upset them.” He added that Kyle tried to shake his hand and when he declined, tried to “fist bump” him. When Mr. Levy did not reciprocate, he heard Kyle say, “that guy’s an asshole.” Mr. Levy recalled asking a co-worker why he would have said this and then “tried to forget” about it.

[131] The next interaction came following the “quick flicker” of the Alehouse upstairs emergency light. Mr. Levy hurried upstairs and made his way to the middle of the bar where he saw security employee Brandon Kennedy with his hand on a patron. Mr. Levy removed his hand, and Mr. Kennedy informed him that the man had been in a fight. The man was told to leave and he complied.

[132] Mr. Levy next heard his name called “three times.” He was told of the Sawyer brothers’ involvement and encountered them sitting next to one another in a booth. He recalled “their eyes were wide, I thought there might have been drugs, the bigger one said, ‘come talk to me outside’ ...he appeared much bigger.”

[133] Mr. Levy said that the brothers protested and blamed the other party. As Ryan was “getting up and out”, Kyle said, “how could you do this to me”, referring to their past relationship. Later he added, “he told me he sold me drugs in high school, he

threatened me again.” Mr. Levy said that he replied, “I don’t know you, I don’t know what you’re talking about.”

[134] Mr. Levy said that as Ryan was walked out by Jason Fraser, Kyle threatened him, saying, “you’re gonna get it, you’ll see.” At this point, Greg White “got in between us and Kyle directed his attention towards me.”

[135] Mr. Levy said that while Kyle was leaving, “he [Kyle] was looking up and shouting.” Once outside, Mr. Levy saw Kyle “signal with his hand” another threat, and heard him say, “you’re the one talking shit inside.”

[136] Next, Mr. Levy said that Ryan came at him and that he responded by touching his stomach “and punched him a bit.” He noted that Ryan was off balance but pulled himself back up. Meanwhile, Kyle was scuffling with Brian Whalen. Mr. Levy stated that at this point, “I assumed we were under attack.”

[137] Mr. Levy described in great detail his ensuing scuffle with Kyle, including the number of times he kicked him (“twice”). Towards the end of Mr. Levy’s involvement with Kyle, he said that he called to Mr. Whalen, “I can’t hold this guy anymore.” He stated that Mr. Whalen took over and said to him, “go help Whitey [Greg White].” Mr. Levy then recalled going back to the door to make a radio call for more security personnel to come outside. Mr. Levy said that at this point, a “VIP” patron agreed to watch the door and said, “I’ll watch the door, just go help your buddy.”

[138] Mr. Levy also recalled Mr. Wheller coming outside and asking him to “hold the door and call police.” He instructed Mr. Wheller to call “because we were involved in a fight ...we just needed help ...we don’t want to fight them; we want to be safe ...a better course of action ‘til someone is dead or injured.”

[139] Mr. Levy “walked around people in my way ...I saw Greg White engaged with Ryan ...Ryan kept slamming Greg into the rail, people were getting crushed ...I went to the side of Ryan and put my arm behind the back of his neck. I approached Ryan’s left side. I reached my right arm around the back of his neck and grabbed his left collar of his jacket. I tried to extend my arms to get him off Greg, not applying enough pressure to choke him. Greg said, ‘my hands are stuck’.”

[140] Mr. Levy continued by saying Ryan moved toward him, causing him [Mr. Levy] to lose his balance and fall to the ground. At this point, Ryan was on his knees, and Mr. Levy held on to Ryan’s left collar with his right hand, “like I’m riding him

like a bull.” Mr. White was situated to his right. Mr. Levy further recalled that “Mr. Barrie assisted and maybe grabbed his left arm.” As Mr. Levy fell backwards, “I remember getting my arm fully around his neck.”

[141] Mr. Levy provided his rationale for applying the chokehold: “...at this moment I believed if he gets a good hit, he could over-power me, I decided I would squeeze to try to make him stop.” He said he squeezed for what he “believed to be 10 – 15 seconds.” He remembered that after he stopped squeezing, “20 seconds maybe went by” and “Oz was over me, ‘you good?’.” He said he could not immediately answer because he was out of breath, but then “I informed Oz I wasn’t even squeezing.”

[142] Mr. Levy recalled feeling “grateful” when the police soon arrived. He acknowledged hearing an officer say, “let him go”; however, his arm was “trapped” so he said, “I’m stuck.” He stated that the officer then “pulled Ryan off of me, Oz pulled me out.” Mr. Levy recalled that he had no energy or strength to move his body; “I felt paralyzed.” He said that Mr. Barrie picked him up. Once on his feet, Mr. Levy observed an officer starting to perform chest compressions on Ryan.

[143] Mr. Levy told Michel Khoury what happened; “...they attacked me, I put him in a chokehold.” He could not say if Ryan spat or vomited on him.

[144] Mr. Levy specifically denied that he was ever “reefing on” Ryan. He said that he began squeezing Ryan’s neck when they were down on the street. At the time, “he was swinging back at me. I don’t remember other doormen being close enough or right next to me ...I squeezed Ryan Sawyer’s neck as he was attempting to punch.” He added that he “assumed he passed out or gave up trying to struggle, maybe calmed down.” Mr. Levy said that he continued to hold Ryan “because some people wake up after a few seconds, I’ve had past incidences where I’ve put someone to sleep – they woke up and started punching me in the face.” He said he kept his arm around Ryan but “didn’t squeeze his neck” and was planning on holding him until someone came to assist him.

[145] I will have much more to say about Mr. Levy’s evidence later in this decision, when I make specific findings of fact. At this juncture, I wish to set forth the offences charged and the defence of self-defence.

THE OFFENCE OF CRIMINAL NEGLIGENCE CAUSING DEATH

[146] Sections 219 and 220 of the *Criminal Code* state:

Criminal negligence

219 (1) Every one is criminally negligent who
(a) in doing anything, or
(b) in omitting to do anything that it is his duty to do,
shows wanton or reckless disregard for the lives or safety of other persons.

Definition of duty

(2) For the purposes of this section, duty means a duty imposed by law.

Causing death by criminal negligence

220 Every person who by criminal negligence causes death to another person is guilty of an indictable offence and liable

- (a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and
- (b) in any other case, to imprisonment for life.

[147] In *R. v. Gardner*, 2021 NSCA 52, Justice Beveridge provided background surrounding the offence of criminal negligence causing death (see paras. 20 – 61). At para. 50, Justice Beveridge endorsed the Manitoba Court of Appeal’s earlier treatment of the offence in *R. v. Tayfel*, 2009 MBCA 124, where Justice Hamilton stated at para. 81:

81 Thus, to prove the actus reus of criminal negligence the Crown had to prove beyond a reasonable doubt that: 1) the accused was under a legal duty to do something; 2) he failed to fulfil that duty by his omissions, and 3) in failing to fulfil the duty he showed a wanton or reckless disregard for the lives or safety of other persons.

[148] In *Gardner*, Justice Beveridge stated as follows at para. 51:

51 I respectfully agree with Hamilton J.A. where she reasons that at this stage of the analysis, the *mens rea* or fault element (whether the conduct was a marked and substantial departure) is not relevant (para. 82).

[149] Later in the decision, Justice Beveridge addressed the standard of care to be applied:

73 How then is a trier of fact to determine what the content of the standard of care is and whether it was breached? These are quintessentially questions of fact. They can be determined, as described above, by credible expert opinion evidence or other evidence that permits the trier to draw the necessary inferences. That

evidence may include what others do or should do in similar circumstances and any policies or directives relevant to the conduct.

THE OFFENCE OF MANSLAUGHTER

[150] Section 222 of the *Criminal Code* states:

222 (1) A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.

(2) Homicide is culpable or not culpable.

(3) Homicide that is not culpable is not an offence.

(4) Culpable homicide is murder or manslaughter or infanticide.

(5) A person commits culpable homicide when he causes the death of a human being,

(a) by means of an unlawful act,

(b) by criminal negligence,

(c) by causing that human being, by threats or fear of violence or by deception, to do anything that causes his death, or

(d) by willfully frightening that human being, in the case of a child or sick person.

(6) Notwithstanding anything in this section, a person does not commit homicide within the meaning of this Act by reason only that he causes the death of a human being by procuring, by false evidence, the conviction and death of that human being by sentence of law.

[151] Section 234 of the *Criminal Code* distinguishes manslaughter from other types of homicides:

234 Culpable homicide that is not murder or infanticide is manslaughter.

[152] Not all homicides are culpable in law. The word "culpable" is not defined in the *Criminal Code*; however, its ordinary definition means "deserving of blame." If a homicide is not culpable, it is not blameworthy and does not amount to an offence in law.

[153] In this case, the Crown alleges that Mr. Levy caused the death of Ryan Sawyer by an unlawful act: placing him in a chokehold of prolonged duration.

[154] Whether Mr. Levy caused Ryan's death is the central issue in this trial. In considering whether the Crown has proven beyond a reasonable doubt that he caused

his death, I must consider the *factual* cause of death and apply the *legal definition* for causation.

[155] The Supreme Court of Canada discussed "legal causation" in the leading cases of *R. v. Smithers*, [1978] 1 S.C.R. 506, *R. v. Nette*, 2001 SCC 78, [2001] 3 S.C.R. 488, and in *R. v. Maybin*, 2012 SCC 24, where the standards for legal causation were summarized.

[156] The mental element or *mens rea* for manslaughter requires proof that the risk of non-trivial bodily harm is "foreseeable at the time of the dangerous and unlawful acts" (*Maybin*, at para. 36).

[157] At para. 14 of *Maybin*, Justice Karakatsanis described the *Smithers* test for causation in manslaughter as "a contributing cause of death, outside of the *de minimis* range."

[158] In *Nette*, at para. 71, the Supreme Court clarified the test for causation as "a significant contributing cause." Justice L'Heureux-Dubé, in para. 2 of her concurring judgment, adopted the lower court's description of the causal standard as "a contributing cause that is not trivial or insignificant."

[159] Legal causation requires finding that the actions of an accused person are sufficiently tied to the death to make him morally responsible. As Justice Arbour noted at para. 45 of *Nette*, it is a fundamental principle of criminal justice that "the morally innocent should not be punished."

[160] The *Criminal Code* expressly preserves the causal connection between an accused person's unlawful act and a victim's death in three specific circumstances. Section 224 states:

224 Where a person, by an act or omission, does any thing that results in the death of a human being, he causes the death of that human being notwithstanding that death from that cause might have been prevented by resorting to proper means.

[161] Section 225 deals with death from the treatment of an injury. It states:

225 Where a person causes to a human being a bodily injury that is of itself of a dangerous nature and from which death results, he causes the death of that human being notwithstanding that the immediate cause of death is proper or improper treatment that is applied in good faith.

[162] Finally, s. 226 of the *Criminal Code* deals with acceleration of death. It states:

226 Where a person causes to a human being a bodily injury that results in death, he causes the death of that human being notwithstanding that the effect of the bodily injury is only to accelerate his death from a disease or disorder arising from some other cause.

[163] In evaluating the evidence in this case, the court is not restricted to the medical evidence. As with all evidence, the court may accept all, part, or none of the expert medical opinion.

SELF-DEFENCE

[164] The statutory provisions governing self-defence are found in s. 34 of the *Criminal Code*. Section 34(1) states:

A person is not guilty of an offence if

- (a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
- (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
- (c) the act committed is reasonable in the circumstances.

[165] The Supreme Court of Canada adopted the following abbreviated terminology to describe these three lines of inquiry in *R. v. Khill*, 2021 SCC 37, at para. 51:

- the catalyst (s. 34(1)(a));
- the motive (s. 34(1)(b)); and
- the response (s. 34(1)(c)).

[166] With respect to the factors for assessing the reasonableness of Mr. Levy's "response", s. 34(2) states:

In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
- (c) the person's role in the incident;

- (d) whether any party to the incident used or threatened to use a weapon;
- (e) the size, age, gender and physical capabilities of the parties to the incident;
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
- (f.1) any history of interaction or communication between the parties to the incident;
- (g) the nature and proportionality of the person's response to the use or threat of force; and
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

[167] Drawing upon *Khill*, Justice Hoskins in *Desmond* provided the following helpful guidance at para. 355:

...The catalyst focusses on the accused's state of mind and asks whether the accused subjectively believed on objectively reasonable grounds that force was being used or threatened against them or another person (s.34(1)(a)). The motive asks whether the accused did something for the subjective purpose of defending or protecting themselves or another (s. 34(1)(b)). The response asks whether the conduct of the accused was reasonable in the circumstances (s. 34(1)(c)) by having regard to the non-exhaustive list of factors in s. 34(2).

[168] Given that self-defence contains three necessary requirements, the Crown only needs to disprove one of these three elements beyond a reasonable doubt to persuade the Court that the defence does not apply.

[169] When assessing a claim of self-defence, it is necessary to consider the full context of an altercation, including how the assessment of such a claim may change as an incident progresses. As stated in *Khill*, with respect to “the motive”, at para. 61:

An accused's purpose for acting may evolve as an incident progresses or escalates. ...separate defences may rightly apply to distinct offences or phases of an incident (*Cormier*, at para. 67). At the same time, great care is needed to properly articulate the threat or use of force that existed at a particular point in time so that the assessment of the accused's action can be properly aligned to their stated purpose. Clarity of purpose is not meant to categorize the accused's conduct in discrete silos, but instead appreciate the full context of a confrontation, how it evolved and the accused's role, if any, in bringing that evolution about. ...

[Emphasis added.]

[170] The enumerated factors in s. 34(2) must be considered in this determination. However, the factors listed are not exhaustive: *Khill*, at para. 68. The majority in *Khill* stated at paras. 69-70:

Once a factor meets the appropriate legal and factual standards, it is for the trier of fact to assess and weigh factors and determine whether or not the act was reasonable. This is a global, holistic exercise. No single factor is necessarily determinative of the outcome.

As previously explained, Parliament's choice of a global assessment of the reasonableness of the accused's otherwise unlawful actions represents the most significant modification to the law of self-defence.

[171] In *R. v. Hodgson*, 2024 SCC 25, in which the Court considered the defence of self-defence to a charge of manslaughter, Justices Martin and Moreau summarized the requirement of s. 34(1)(c) at para. 76:

Third, s. 34(1)(c) requires that "the act committed is reasonable in the circumstances" and s. 34(2) provides a list of nine non-exhaustive factors for the court to consider in making this determination. Parliament expressly structured how a decision maker ought to determine whether an act of self-defence was reasonable in the circumstances. What is called for is an assessment of the overall reasonableness of the accused's conduct according to the statutory factors. Reasonableness is measured according to "the relevant circumstances of the person, the other parties and the act" (*Criminal Code*, s. 34(2); see also *Khill*, at para. 64). When a factor is relevant it becomes a mandatory consideration, as s. 34(2) provides that the fact finder "shall" consider all factors set out in paras. (a) to (h) that are relevant in the circumstances of the case (*Khill*, at para. 68). This objective determination, with its focus on what a reasonable person would have done in comparable circumstances, strikes the appropriate balance between respecting the security of the person who acts and the security of the person acted upon. It also underscores that the law of self-defence "cannot rest exclusively on the accused's perception of the need to act" (*Khill*, at para. 2; see also paras. 62 and 65)".

[172] *Hodgson* concerned the use of a chokehold and in *R. v. Campbell*, 2025 ONSC 3756, Justice Dineen nicely summarized how the Supreme Court of Canada said to assess the dangerousness of chokeholds in a case such as this:

65 The Supreme Court of Canada has very recently considered how to assess the dangerousness of chokeholds when considering the issue of self-defence in a manslaughter prosecution with significant factual similarities to this case. The

Court found that there is no generally applicable legal rule that a trier of fact must apply about the dangerousness of chokeholds. Each case must be assessed on its own facts and the dangerousness of a chokehold may vary based on factors such as its nature, force, and length. See *R. v. Hodgson*, 2024 SCC 25 at paras. 59-64.

DISCUSSION OF THE DEFENCE ARGUMENTS

[173] The Defence referred the Court to *R. v. Plein*, 2018 ONCA 748. I now refer to Justice Paciocco's discussion at paras. 24 – 28:

24 The parties agree that, in this case, the criminal negligence causing death charge and the manslaughter charge are indistinguishable. They agree that the acquittal on one and conviction on the other means that the verdicts are inconsistent. That proposition is correct, but not immediately obvious.

25 As McLachlin J. (as she then was) said in *R. v. Creighton*, [1993] 3 S.C.R. 3, p. 42, the offence of manslaughter "covers a wide variety of circumstances." It encompasses all forms of culpable homicide other than murder or infanticide: *Criminal Code*, s. 234. "Culpable homicide", as defined in *Criminal Code*, s. 222(5), includes death caused "(a) by means of an unlawful act" and "(b) by criminal negligence".

26 Had Mr. Plein been prosecuted for criminal negligence based manslaughter, the complete overlap with the criminal negligence causing death charge would have been patent. As Trotter J. (as he then was) observed in *R. v. Aleksev*, 2016 ONSC 1834, [2016] O.J. No. 1962, at para. 57, "manslaughter based on criminal negligence is indistinguishable from criminal negligence causing death."

27 But Mr. Plein was not prosecuted for manslaughter based on criminal negligence. He was prosecuted instead for unlawful act manslaughter.

28 Still, the circle is closed because both the criminal negligence causing death charge, and the unlawful act manslaughter charge, are based on the same underlying unlawful omission. And the elements of the two offences, while articulated differently, are materially the same. Moreover, close examination of the trial judge's reasons for judgment and court record provides no rational or logical basis that can reconcile the verdicts: *R. v. Pittman*, 2006 SCC 9, [2006] 1 S.C.R. 381, at para. 8; and *R. v. McShannock*, 55 C.C.C. (2d) 53 (Ont. C.A.), [1980] O.J. No. 1289, at pp. 55-56.

[174] The Ontario Court of Appeal further clarified the law in *Plein* at paras. 35 and 36:

35 First, the proper question is not what the subject, Mr. Plein, knew. The *mens rea* for manslaughter is not subjective, but rather objective. As McLachlin J. explained in *Creighton*, at p. 58, "objective *mens rea* is not concerned with what

was actually in the accused's mind, but with what should have been there, had the accused proceeded reasonably".

36 Second, death does not have to be foreseeable in a manslaughter prosecution. "[F]oreseeability of the risk of bodily harm alone will properly result in a conviction for manslaughter": *Creighton*, at p. 50.

[175] Referencing *Creighton*, the Defence says that what should have been in Mr. Levy's mind was indeed in his mind when he proceeded reasonably with the chokehold. With respect to foreseeability, even with the above in mind (ie, that foreseeability of the risk of bodily harm alone is sufficient for a manslaughter conviction), the Defence says that Mr. Levy's evidence that he applied the chokehold for a matter of seconds establishes that the risk to the person was minimal.

[176] The Defence points to the evidence of the medical experts, neither of whom can speak to how precisely the death occurred. Further, they argue that neither expert can rule out other factors contributing to the death. The Defence reminds the Court of Dr. Milroy's testimony concerning Ryan's movements as shown on the Nina Look video; ie, that they were volitional with no evidence of seizure.

[177] The Defence emphasizes *Villaroman* and the requirement for the Court to acquit if there are reasonable inferences other than the guilt of the accused to account for Ryan's death.

[178] Mr. Levy also points to *W.D.* and emphasizes that his evidence (and any of the exculpatory Crown evidence) must be assessed through this lens. On the critical question of how long he placed Ryan in a chokehold, Mr. Levy says that his testimony of 10 – 15 seconds is to be believed. In any event, the Defence submits that the facts do not establish that the hold was anywhere near the approximate four minutes normally equated with death. The Defence adds that there is compelling evidence that Mr. Levy held the manoeuvre to effect a proper neck restraint, given his experience of around 100 previous applications.

[179] Mr. Levy invokes self-defence and with reference to *Hodgson* says that his was not an irrational conclusion.

[180] Mr. Levy emphasizes that he was dealing with aggressive, intoxicated patrons in the Sawyer brothers. He argues that verbal de-escalation did not work and that Ryan and Kyle aggressively lunged and threw punches. Later, when he was solely with Ryan, Mr. Levy says that Ryan was being physical, scratching and punching. He points to Mr. White's evidence that Ryan was given an opportunity to extract

himself from the fracas (through Ms. Chedrawe), but he declined. Mr. Levy adds that on account of Ryan's actions, he and others were being smashed against the outside railing to the Alehouse, such that he was defending himself and others when he opted to place the neck restraint on Ryan.

[181] Mr. Levy reminds the Court of the circumstances of the fracas initiated by Kyle inside the Alehouse. He argues that throughout the process of eviction, the brothers were aggressive and threatening. By Kyle's own evidence, he was possibly inviting Mr. Levy to fight him. According to Mr. Levy, Ryan also said, "do you want to see someone freak out?"

[182] Mr. Levy emphasizes that he initially attempted to subdue Ryan through other means, recalling his evidence that he was "riding him like a bull" at one point.

[183] The Defence argues that in all of the circumstances, Ryan's death was not foreseeable, comparing it to death from a lightning strike or from a heart attack while shovelling.

[184] The Defence refers to *R. v. Gooch*, 2024 NSSC 4, and Justice Gabriel's treatment of *Gardner* at paras. 177 – 178:

177 In *R v. Gardner*, 2021 NSCA 52, Beveridge, J. explained:

[65] Various terms have been used to describe what is meant by "wanton or reckless disregard". Cory J.A., in *R. v. Waite*, *supra*, whose decision was adopted as a correct statement of the law by three members of the Supreme Court, described the term:

[62] ... The word "wanton" means "heedlessly". "Wanton" coupled as it is with the word "reckless", must mean heedless of the consequences or without regard for the consequences. If this is correct, then it is immaterial whether an accused subjectively considered the risks involved in his conduct as the section itself may render culpable an act done which shows a wanton or reckless disregard of consequences. ...

[66] The Ontario Court of Appeal in *R. v. L.(J.)* (2006), 2006 CanLII 805 (ON CA), 204 C.C.C. (3d) 324 referred, with approval, to the comments of Hill J. in *R. v. Menezes*, 2002 CanLII 49654 (ON SC), [2002] O.J. No. 551 (QL), where he wrote:

[72] Criminal negligence amounts to a wanton and reckless disregard for the lives and safety of others: *Criminal Code*, s. 219(1). This is a higher degree of moral blameworthiness than dangerous driving: *Anderson v. The Queen* (1990), 1990 CanLII 128 (SCC), 53

C.C.C. (3d) 481 (S.C.C.) at 486 per Sopinka J.; *Regina v. Fortier* (1998), 1998 CanLII 12917 (QC CA), 127 C.C.C. (3d) 217 (Que. C.A.) at 223 per LeBel J.A. (as he then was). This is a marked and substantial departure in all of the circumstances from the standard of care of a reasonable person: *Waite v. The Queen* (1989), 1989 CanLII 104 (SCC), 48 C.C.C. (3d) 1 (S.C.C.) at 5 per McIntyre J.; *Regina v. Barron* (1985), 1985 CanLII 3546 (ON CA), 48 C.R. (3d) 334 (Ont. C.A.) at 340 per Goodman J.A. **The term wanton means "heedlessly" (*Regina v. Waite* (1996), 1986 CanLII 4698 (ON CA), 28 C.C.C. (3d) 326 (Ont. C.A.) at 341 per Cory J.A. (as he then was)) or "ungoverned" and "undisciplined" (as approved in *Regina v. Sharp* (1984), 1984 CanLII 3487 (ON CA), 12 C.C.C. (3d) 428 (Ont. C.A.) at 430 per Morden J.A.)) or an "unrestrained disregard for consequences" (*Regina v. Pinske* (1988), 1988 CanLII 3118 (BC CA), 6 M.V.R. (2d) 19 (B.C.C.A.) at 33 per Craig J.A. (affirmed on a different basis 1989 CanLII 47 (SCC), [1989] 2 S.C.R. 979 at 979 per Lamer J. (as he then was)). The word "reckless" means "heedless of consequences, headlong, irresponsible": *Regina v. Sharp, supra* at 30.**

[Emphasis added]

178 At the risk of further repetition, even if I had concluded that the accused had failed to perform an act or been guilty of an omission which he was under a legal duty to observe in the circumstances, and even if I had concluded that that act or omission had caused Mr. Alcorn's death, I would not have concluded that the "act or omission" was a marked and substantial departure from the conduct of a reasonable person in Mr. Gooch's circumstances.

[185] Mr. Levy notes that just as in *Gooch*, where there was no statutory requirement for tie up while working on a roof (which they argue helped to drive Justice Gabriel's decision), here there were no regulations governing bar security staff in 2022. Further, Mr. Levy references *Gardner* at para. 73:

73 How then is a trier of fact to determine what the content of the standard of care is and whether it was breached? These are quintessentially questions of fact. They can be determined, as described above, by credible expert opinion evidence or other evidence that permits the trier to draw the necessary inferences. That evidence may include what others do or should do in similar circumstances and any policies or directives relevant to the conduct.

[186] With the above in mind, the Defence asserts that there is no expert or other evidence to conclude that Mr. Levy's conduct amounted to a marked departure because there is no credible evidence of the standard. In any case, Mr. Levy

maintains that his actions represent what reasonably prudent security staff would do if attacked.

[187] Again, Mr. Levy emphasizes the medical experts' evidence and Dr. Mont's characterization of the outcome as "extremely rare", given his 25-year career. As for Dr. Milroy, the Defence says that with the benefit of his 35 years of experience, he considered such an outcome as "quite rare." They add that Dr. Milroy spoke of possible neck damage (as seen in the photos in Exhibits 5 and 6) to Ryan caused by Greg White.

[188] The Defence argues that Mr. Levy "is a very credible witness" who answered all questions clearly. Of the Crown witnesses, they take most issue with Cst. Lamphier, who, while "generally honest", had "significant reliability issues" in relation to how hard Mr. Levy had a hold of Ryan when Cst. Lamphier came on the scene. Accordingly, the Defence invites the Court to prefer Mr. Levy's evidence.

[189] Overall, the Defence argues that there were significant periods of time when Mr. Levy was holding Ryan, but not squeezing.

MR. LEVY'S CREDIBILITY

[190] Earlier in this decision, I referred to the *W.D.* principle. With this principle in mind, and given Mr. Levy's evidence, I have to say that I do not believe him in virtually every critical area. Indeed, his testimony does nothing to leave me with a reasonable doubt. Overall, for the reasons that I will now explain, I am left to conclude that his evidence (taken together with all of the evidence) has convinced me beyond a reasonable doubt of his guilt of the charged crimes.

[191] While it may be true that Mr. Levy has learning difficulties, having observed him through the course of his testimony over the course of a day in Court, I found him to be quite articulate. He was certainly able to provide detailed descriptions of the matters in issue. He understood all of the direct questions and asked for clarification only occasionally during cross-examination.

[192] Mr. Levy's direct evidence came across as over-rehearsed, rather like he was attempting to give a perfect recollection (including precise time estimates) of various events. His recapitulation of the events of December 24, 2022, went beyond the time stamped videos from the Alehouse and elsewhere. For example, he testified that when he had Ryan in a hold around Ryan's neck (not entirely captured in the videos), "I decided I would squeeze and try to put him to sleep, I squeezed for 10 – 15

seconds, I believed to be.” He then said he stopped and after “20 seconds maybe went by, Oz came over to me, ‘you good?’.” He went on to say that after Oz said, “you can let up on him”, that “I informed Oz I wasn’t even squeezing.”

[193] I found the above alleged rendition of what was happening (timed to the second with direct, precise quotes of what both he and Mr. Barrie said) to be incredibly contrived and self-serving. It defies common sense that, in the midst of his interactions with Ryan in this chaotic context, Mr. Levy would recall his actions and the dialogue with such clarity and definitiveness.

[194] Concerning Mr. Barrie, I reiterate that some of his evidence demonstrated credibility flaws. I make this finding primarily owing to his failure to remember Mr. Levy having his arm around Ryan’s neck, and for allegedly not paying attention to the skirmish for the entire duration.

[195] Whereas Mr. Barrie testified to these gaps in memory, the videos show him looking down on the men. It is indeed curious to me that he would say to Mr. Levy, “make sure you don’t choke him”, and then not pay full attention.

[196] In any case, given the totality of the evidence of Messrs. Levy and Barrie along with the videos and still photos, I do not believe Mr. Levy when he says he informed Mr. Barrie that he was not squeezing. To the contrary, I make the specific finding that Mr. Levy said no such thing as he continued to squeeze, keeping his arm around Ryan’s neck for a period far exceeding 10 – 15 seconds, and much closer to approximately two minutes.

[197] Mr. Levy elaborated as to the exact point when he began to squeeze Ryan’s neck “on the street after we’d fallen.” He added that Ryan was “swinging back at me.” Notwithstanding these alleged vivid recollections, Mr. Levy then stated that he had no recollection of “other doormen” being “close enough, right next to me”, even though he (earlier in his testimony) had significant recollections of Mr. Barrie being nearby. At this juncture, Mr. Levy added as justification for his squeezing that “he [Ryan] was attempting to punch me.”

[198] The video evidence confirms that there were several bouncers in relatively close proximity to Mr. Levy while he maintained otherwise. Further, Mr. White testified to his interactions with Ryan, including how he held Ryan back (at this stage) without applying force to his neck.

[199] Furthermore, whereas Mr. Levy said that Ryan was banging against the rail and a threat to others, Mr. White only referenced (at one point) he and Ryan being up against the staff rail and said nothing about other patrons or staff being in potential harm's way. Mr. White testified that at this juncture, Mr. Levy became involved with Ryan by initially jumping him. On all of the evidence, I prefer Mr. White's testimony in this area and specifically reject Mr. Levy's stated justification for becoming involved with Ryan.

[200] Mr. Levy was very confident in asserting that Cst. Lamphier had it wrong when he recalled Mr. Levy "reefing" on Ryan's neck. I categorically reject Mr. Levy's denial of reefing on Ryan's neck. In this regard, I find his evidence about his interactions with Ryan on the cusp of, and at the time of, Cst. Lamphier's arrival to be fanciful and very self-serving. I absolutely reject Mr. Levy's version of events in these critical areas.

[201] With respect to Cst. Lamphier, I previously stated my view that he provided credible and reliable evidence. In the specific area where Mr. Levy takes issue with Cst. Lamphier, I reproduced verbatim portions of the officer's direct and cross-examination answers. I found Cst. Lamphier provided compelling, credible and reliable evidence in this vital area. On balance, I completely accept his recollection of events and outright reject Mr. Levy's.

[202] On cross-examination, Mr. Levy agreed that Ryan did not say "anything that I can think of" to him and that Ryan made no threats. He agreed that neither Ryan nor Kyle had any weapons.

[203] Mr. Levy agreed on cross-examination that as he went over the sequence of his interactions on the street with Ryan, he made no mention of Kyle because Kyle was under control and no longer a threat.

KEY FINDINGS OF FACT

[204] Based on my review, analysis and synthesis of all of the evidence, I make the following critical findings of fact.

[205] When the Sawyer brothers and their group entered the Alehouse at approximately 1 a.m. on December 24, 2022, there was a verbal exchange between Kyle and Mr. Levy. I do not believe that the conversation was verbatim as either witness testified, but more along the lines of what Ms. Brennan said. I find that this

verbal exchange bothered Mr. Levy. Indeed, by his own evidence, he “tried to forget” about it.

[206] As they entered the Alehouse, Ryan and Kyle were intoxicated. They had been drinking (mostly beer and some hard liquor) steadily over the course of approximately eight hours. Ryan was also under the influence of THC (as confirmed by the toxicology report).

[207] Once inside, the brothers and their group became part of a crowded, loud bar atmosphere involving “wall to wall” patrons, such that bodily contact was commonplace. I find that within minutes, Kyle spilled part of his glass of beer on another patron and this led to pushing and shoving involving the brothers, the young man (who had the beer spilled on him) and multiple other patrons.

[208] After a short period of time the pushing and shoving dissipated. I find that the brothers then went to a booth with their friends. I find, as Ms. Brennan said, that her cousins were “heated from the commotion.” I find that shortly after Ms. Brennan left the booth to use the washroom, Mr. Levy, Mr. Fraser and Mr. Wheller attended at the booth. I find that the brothers were (justifiably) told that they had to leave and that Kyle challenged the decision. Kyle was upset and became verbally aggressive.

[209] I find that Kyle and Mr. Levy became engaged in a heated conversation and that Mr. Levy reiterated essentially what he said to Kyle when he entered the Alehouse, ie., that he did not know him. I find Mr. Fraser’s evidence to be the most reliable on the details of the exchange between Kyle and Mr. Levy. I accept, for example, that the interaction “ramped up” Kyle’s agitation. At the same time, I specifically reject Mr. Levy’s evidence (in this area as in numerous others) that he could recall the Sawyers’ eyes “were wide”, that drugs might have been involved and that he was challenged to “come outside.” I further reject Mr. Levy’s assertion that Kyle told him that he sold drugs to him in high school. Indeed, there was no other reference to this, and I find that Mr. Levy injected this lie in his testimony in an attempt to cast aspersions on Kyle.

[210] I find that the escort of the brothers out of the bar was, as Mr. Fraser testified, not unusual and “practically textbook” in the context of the Alehouse.

[211] I draw primarily on the Alehouse Outside Video and stills to make my findings as to what initially occurred upon the brothers exiting. Indeed, I make the perhaps obvious point that the video offers a time-specific video recording of the area around the side Alehouse door on Prince Street. Further, almost all the witnesses

reviewed this evidence before coming to court and various segments were played during their testimony.

[212] I find that Ryan initially exited the Alehouse without incident, ahead of his brother. He was unsteady on his feet, fumbled with his coat and smiled as he took out his phone. These observations cause me to find that he was clearly impaired. The toxicology report confirms this fact, and I note that his blood-alcohol reading was almost three times the legal limit for driving.

[213] Kyle's exit precipitated the physical violence, as he can be seen aggressively gesturing to Alehouse security staff, including Mr. Levy. I find that Kyle threw the first punch in what escalated into a take down of him and his brother.

[214] Earlier I remarked that the video evidence is incomplete. I say this owing to the fact that there is no audio (except on the cell phone videos and this audio does not overly assist the Court).

[215] Furthermore, as both experts remarked, the Alehouse and bystander videos do not completely capture the altercation outside. As Dr. Milroy stated at p. 10 of his report, "...none of the videos reviewed prior to this report clearly depict the initiation of the neck hold or the entire course of its application." Accordingly, my findings of fact concerning the critical struggle between Mr. Levy and Ryan are based on the direct and circumstantial evidence, including all reasonable inferences (per *Villaroman*) arising from all of the testimony and exhibits.

[216] I find as a fact that after the initial skirmishing at the Prince Street door of the Alehouse involving the brothers and security staff, the brothers were quickly separated and taken down.

[217] I find that Mr. Levy and Brian Whalen initially dealt with Kyle and, in the beginning, Greg White handled Ryan. Mr. White testified regarding his interaction with Ryan. I find that this began at close to 1:13 a.m., with Mr. White briefly putting his arm around Ryan's neck. This was not a chokehold; however, I find that the manoeuvre caused some pressure on Ryan's neck for approximately 30 seconds. Mr. White next brought Ryan to the ground, and I find that throughout their struggle, Ryan said nothing other than when he asked to be let go. It is my finding that throughout his dealings with Ryan, Mr. White did not sustain any injuries.

[218] I find that by 1:15 a.m., Ryan was making some resistance to Mr. White, but that by 1:16 a.m., Ryan was on his knees on Prince Street with Mr. White draped over him.

[219] I find that at approximately the same time Mr. Levy had extracted himself from the Kyle fracas involving Mr. Whalen.

[220] At this juncture, Mr. Levy was back from the street and on the sidewalk by the Alehouse Prince Street door at 1:15:51 (per the Alehouse Outside Video). The video reveals from here that Mr. Levy shoved (without provocation) a young man (wearing a white shirt) and then threw Kyle's vest from the sidewalk into the middle of Prince Street. The Nova Centre video provides another view of where the vest landed, confirming that he threw the vest while a car was coming up the street. Given these actions as captured on video, and based on Mr. Levy's cross-examination evidence concerning this, I find that Mr. Levy was extremely agitated and emotional.

[221] The video also shows Mr. White with his hands on Ryan's collar. Although the videos do not show all of the area by the staff railing, what little can be seen of the railing shows that it was not moving. In any case, having carefully viewed the video evidence and considered the testimony of Messrs. White and Levy, I make the specific finding that it was when Mr. White and Ryan were up against the staff rail (but not causing any danger or threat to those who may have been behind the rail) that Mr. Levy entered the fray, jumping on Ryan's back. In this regard, I specifically reject Mr. Levy's evidence that Ryan was slamming Mr. White into the rail and that people were getting crushed.

[222] I reject Mr. Levy's analogy that once on Ryan's back, he was riding him like a bull because Ryan does not appear from the videos to be offering at this point (or at anytime further) any significant resistance. Further, Mr. White, whose evidence I prefer over Mr. Levy's, said that at this juncture, Mr. Levy had control over Ryan.

[223] Scrutiny of all of the videos at this critical juncture causes me to readily conclude (in the context of all of the evidence) that within seconds of jumping on Ryan, Mr. Levy placed his right arm around Ryan's neck and effected a rear naked chokehold. I find that during this time (and afterwards), Mr. Barrie was in very close proximity, with his large frame clearly standing over Mr. Levy and Ryan. I further find that there were several other security personnel nearby.

[224] I find that at the moment Ryan can be observed on his knees (1:15:49), Mr. Levy applied the rear naked chokehold. Here, I specifically reject Mr. Levy's

evidence that he was not (yet) choking Ryan. I make this finding given the totality of the evidence, with special regard to the *viva voce* evidence of Messrs. Levy, White and Barrie and Cst. Lamphier, coupled with the videos. In this respect, Mr. White said that he believed Mr. Levy had a chokehold on Ryan when Mr. White returned outside. Although he agreed when shown the Cobe Facey video that he could extract his hand (and therefore could not have been applying much pressure) this would have been slightly earlier in the piece. As for Mr. Barrie, he ultimately conceded at one point to witnessing Mr. Levy holding Ryan in a chokehold. With respect to Cst. Lamphier, recall his evidence that as soon as he came upon the two, Mr. Levy was reefing on Ryan.

[225] On all of the evidence, I cannot accept Mr. Levy's rationale for applying the chokehold and specifically reject that he could have rationally believed that Ryan could have overpowered him at that moment in time. I should add that a reasonable person, in the same circumstances, would realize that a prolonged chokehold would likely put Ryan at risk of bodily harm.

[226] I make the collateral finding that at the material time, Ryan was not providing any physical resistance or making any verbal threats. Exhibit 3 (the December 24, 2022, photos of Mr. Levy) confirm that he had no injuries whatsoever (save a mark on one of his hands which the Defence conceded to be pre-existing).

[227] Given all of the evidence, I make the finding that Mr. Levy squeezed and pulled back on Ryan's neck for approximately two minutes. I find that throughout this time, Mr. Levy applied pressure such that he was out of breath (as seen subsequently on the Alehouse Outside Video) and required Mr. Barrie's assistance getting up. I would add that when Mr. Levy initially extracted himself from the fracas with Kyle, whom he did not place in a chokehold, he can be seen by the Alehouse door and was not gasping for air.

[228] I find that while he was with Ryan on the ground, Mr. Levy was aware that Mr. Barrie was right beside them, as both he and Mr. Barrie acknowledged. This fact provides further support for my ultimate conclusion that Mr. Levy's decision to engage with Ryan was entirely unwarranted and that his decision to deploy the rear naked chokehold was completely without justification.

[229] With respect to training and experience, I find that at the time of the matters in issue, Mr. Levy had approximately 17 years in the bar security business. He was trained in de-escalation and, if necessary, use of force techniques. The latter included

the rear naked chokehold. Indeed, he served as a test dummy in simulations and, in addition to training, he watched MMA videos on the technique.

[230] By late 2022, Mr. Levy had been the Alehouse head bouncer for at least six months. He trained new hires and considered himself, and was regarded by other Alehouse security staff as, one of the senior security personnel. In addition to his security education and experience, Mr. Levy was trained in CPR.

[231] Given the above backdrop, I find Mr. Levy's actions when dealing with the Sawyers showed no regard to de-escalation techniques. Beginning with his initial doorway interaction with Kyle, Mr. Levy displayed emotional responses and feelings which belied his many years of training and on-the-job experience. Indeed, I find that at virtually every moment beginning with his encounter at the door with Kyle, Mr. Levy exhibited no effort to use words to de-escalate the situation. Rather, I make the finding of fact that Mr. Levy's actions throughout demonstrate that he precipitated the physical violence and deployed the last resort rear naked chokehold when the manoeuvre was entirely unwarranted.

[232] I find that Mr. Levy lacked professionalism on the early morning in question. I say this having regard to the entirety of his behaviour with Ryan and Kyle, and especially when he chose to re-enter the fray and jump on Ryan's back. This was not at all warranted in the circumstances where I find that Ryan had already been sufficiently subdued by Mr. White. I would add that although Mr. Levy instructed Mr. Wheller to call 911, this instruction came later than it should have. In any case, knowing that the police station was mere blocks away and that they regularly patrolled the area, Mr. Levy made the decision to go back on to Prince Street and physically engage with Ryan.

[233] We know from the video evidence that the 911 call was made at approximately 1:16 a.m., and that police arrived about a minute later (with their sirens clearly audible slightly earlier on the Nina Look video).

[234] Again, I make the finding on all of the evidence that once Mr. Levy applied the chokehold on Ryan, he did not let up for almost two minutes. Despite his training and experience, he continued to apply pressure while Ryan was not moving (for a good portion of this time as reflected on the videos). In the face of this, he obviously did not stop to seek medical help or initiate CPR. This failure to act proactively came in the face of knowing (by his own evidence) that Ryan would likely have gone to sleep within 10 – 15 seconds. I find on all of the evidence that Mr. Levy's stated

justification – that Ryan could wake up and become aggressive –lacks any credible foundation and I specifically reject it.

[235] I would add that I am not at all swayed by Mr. Levy's evidence that when he employed the rear naked chokehold in the past, the victims always woke up and medical attention was never required. Firstly, I discount the experience related to a controlled gym environment and as seen on MMA videos. Secondly, as Mr. Levy and the bouncers who testified agreed, this is a hold of last resort. As the medical experts testified, there are inherent risks with neck holds applied for minutes. As Mr. Levy himself acknowledged from being a test dummy, being held in a chokehold beyond 5 – 10 seconds can become very dangerous.

[236] With respect to the medical evidence, I find that Ryan died of hypoxic-ischemic encephalopathy due to neck compression. The neck restraint initiated the succession of physiological derangements (leading to cardiac arrest) that resulted in death. Ryan was pronounced deceased at approximately 7:50 a.m. on December 24, 2022.

[237] The point at which Ryan became unconscious cannot be definitively determined. Similarly, one cannot say with precision when Ryan's heart stopped. With reference to the Alehouse Outside Video, coupled with Dr. Milroy's testimony, I find that Mr. Levy applied a compression neck hold for close to two minutes (ie., within most of the span of 1:15:49 – 1:17:50 a.m.). On all of the evidence, I find that this was a beyond-transient hold that was significant and dangerous such that it caused Ryan's death.

[238] The cross-examination of Dr. Milroy caused me to carefully consider the inexactitude of science and other potential causes of death. On balance, I found these to be remote hypotheses which do not persuade me to deviate from my overriding, beyond a reasonable doubt, conclusion that Ryan died from a heart attack caused by the chokehold deployed on him by Mr. Levy.

[239] On all of the evidence, I find that Mr. Levy was overzealous and deployed a disproportionate, violent mechanism to subdue Ryan Sawyer and ultimately cause him to go into cardiac arrest and die. What began as a rather minor disturbance inside the Alehouse quickly escalated, primarily owing to Mr. Levy's disproportionate response. Rather than de-escalating the situation, Mr. Levy ramped things up and used extreme violence to ultimately subdue Ryan.

[240] In finding Mr. Levy guilty of manslaughter, I have determined that the Crown has proven each of these essential elements beyond a reasonable doubt:

- i. that Mr. Levy caused Ryan Sawyer's death; and
- ii. that Mr. Levy caused Ryan Sawyer's death unlawfully by placing him in the chokehold.

[241] In proving that Mr. Levy's conduct caused Ryan's death, the Crown has proven beyond a reasonable doubt that Mr. Levy's conduct contributed significantly to Ryan's death.

[242] I am satisfied beyond a reasonable doubt that a reasonable person, in the same circumstances as Mr. Levy, would realize that deploying the chokehold would likely put another person at risk of bodily harm. By "bodily harm", I mean any hurt or injury that interferes with another person's health or comfort in something more than a brief or minor way. In coming to this determination, I note that the Crown does not have to prove that a reasonable person (or Mr. Levy) would realize that the unlawful act would likely cause the precise bodily harm that Ryan suffered or would likely cause his death. In deciding what a reasonable person would realize in similar circumstances, I have not considered Mr. Levy's individual characteristics or experiences.

[243] In deciding this question, I have considered all the circumstances of Mr. Levy's conduct. I have taken into account not only the nature of the act alleged, but what was said at or about the same time. I have instructed myself to decide not what Mr. Levy would realize as a likely result of his conduct (unlawful act). The issue is whether a reasonable person in the same circumstances as Mr. Levy would realize that their unlawful act would likely put another person at risk of bodily harm of the nature and extent as here.

[244] In finding Mr. Levy guilty of criminal negligence causing death, I have determined that the Crown has proven each of these essential elements beyond a reasonable doubt:

- i. that Mr. Levy did not attend to Ryan (with CPR) or seek medical assistance after he knew that Ryan went limp;

- ii. that by failing to assist or seek medical attention for Ryan, Mr. Levy showed wanton or reckless disregard for the lives or safety of others; and
- iii. that Mr. Levy's conduct caused Ryan's death.

DEFENCE OF SELF-DEFENCE

[245] Regarding Count 1, I am satisfied that the elements of the offence of manslaughter are established. However, Mr. Levy submits that he should be found not guilty of by virtue of s. 34 of the *Criminal Code*.

[246] Once again, the parties agree, and I find on the evidence, that Mr. Levy has established an air of reality to all three requirements of s. 34(1). Accordingly, the Crown must disprove the defence, which it can do by disproving any one of the three elements beyond a reasonable doubt (*Khill*, at para. 125). The Crown has the burden of proving beyond a reasonable doubt that the accused did not satisfy the elements of self-defence under s. 34(1) of the *Criminal Code* (*Khill*, at para. 166).

[247] In terms of self-defence, I have also considered s. 34 of the *Criminal Code*, as well as recent case law including the Supreme Court of Canada decisions of *Khill* and *Hodgson*. As established in s. 34, clarified in *Khill* and affirmed in *Hodgson*, the three requirements for self-defence under s. 34(1) are (1) the catalyst; (2) the motive; and (3) the response.

[248] Once there is an air of reality to the defence, the Crown must disprove at least one of the three requirements beyond a reasonable doubt, or the Accused is entitled to an acquittal on the charge of manslaughter. I will address each of the three requirements in turn.

Catalyst: s 34(1)(a) of the *Criminal Code*

[249] The 'catalyst' in s. 34(1)(a) considers the accused's subjective state of mind and perception of the event that led them to act. The belief regarding force or a threat must be based on reasonable grounds. The standard is a modified objective one, considering what a reasonable person with the relevant characteristics and experiences of the accused would perceive (*Khill*, at para. 52).

[250] *Hodgson* states as follows at para. 74:

First, under s. 34(1)(a), the accused must have subjectively believed that force or a threat thereof was being used against their person or against that of another (*Khill*, at para. 52). However, the accused's belief must also be held on reasonable grounds. In order to assess the reasonableness of the accused's belief, the trier of fact will apply a modified objective standard that takes into account what a reasonable person with the relevant characteristics and experiences of the accused would perceive (*Khill*, at para 57).

[251] After reviewing all of the evidence, it is clear that shortly after Kyle was ejected, both he and Ryan initiated the physical contact. However, they were quickly separated and subdued. A careful review of the Alehouse Outside Video and other videos, together with the oral evidence of the bouncers and Mr. Levy, confirms that it was Mr. Levy who was the aggressor, initiating and continuing the interaction between himself and Ryan.

[252] I do not accept Mr. Levy's subjective expression of intent, his subjective assertion of motivation. In his testimony, Mr. Levy claimed he was acting in self-defence when he placed Ryan in a chokehold. Mr. Levy's state of mind can be inferred from his actions, measured against the surrounding circumstances along with his testimony. All of the circumstances are relevant, including that Mr. Levy was a bouncer and Ryan was a patron.

[253] I have found that by the time Mr. Levy jumped on Ryan's back, and shortly thereafter placed him in a chokehold, Mr. Levy could not have genuinely believed he was in peril. Indeed, this inference cannot reasonably be drawn from all the evidence. I find beyond a reasonable doubt that Mr. Levy did not have the requisite subjective belief that Ryan was using force or threatening to use force against him. I cannot accept that he was acting in self-defence when he chose to become involved with Ryan on Prince Street.

[254] The Crown has disproven the catalyst as set out in s. 34(1)(a) of the *Criminal Code* beyond a reasonable doubt.

Motive: s 34(1)(b) of the *Criminal Code*

[255] The 'motive' set out in s. 34(1)(b) of the *Criminal Code* considers the accused's personal purpose in committing the act that constitutes the offence. It must be to defend or protect oneself or others from the use or threat of force. The inquiry is subjective considering the whole of the circumstances (*Khill*, at para. 59).

[256] In *Hodgson*, at para. 75, the Supreme Court of Canada set out:

Second, under s. 34(1)(b), whether the accused committed the act that constitutes the offence for the purpose of defending or protecting themselves or others from the use or threat of force depends upon the accused's subjective state of mind; if the purpose is not to defend or protect, then the whole basis of self-defence falls away. Indeed, for this second element, a failure to consider the accused's personal purpose, a subjective inquiry which goes to the root of self-defence, would have been an error of law (*Khill*, at para 59).

[257] Based on Mr. Levy's testimony and actions on the videos, I am persuaded beyond a reasonable doubt that Mr. Levy did not have a defensive purpose as required by s. 34(1)(b) of the *Criminal Code* when he placed Ryan in a chokehold. In making this finding, I am cognizant that an accused is not precluded from a defence of self-defence because he is also angry or has an aggressive purpose, if he also has a defensive purpose. In all of the circumstances, I am convinced beyond a reasonable doubt that the requisite defensive purpose did not exist for Mr. Levy.

[258] Mr. Levy's actions, as depicted in the videos, by Mr. Levy's testimony and through the testimony of the bouncers and Cst. Lamphier, taken in totality, are wholly inconsistent with him employing force for the purpose of defending or protecting himself.

[259] Having considered the whole of the evidence, the Crown has disproved that Mr. Levy's subjective motive was to defend or protect himself beyond a reasonable doubt. Taken together, Mr. Levy's motive was based on anger, not self-defence or protection. I have reasonable doubt that his motive was self-defence; his purpose was not for a defensive or protective purpose.

Response: s 34(1)(c) of the *Criminal Code*

[260] The 'response' in s. 34(1)(c) considers the conduct and the accused's response, in terms of what would be expected of a reasonable person in the circumstances of Mr. Levy. Reasonableness involves a context-specific assessment of the relevant circumstances of the person, the other party, and the act to achieve "an appropriate balance ... between respecting the security of the person who acts and security of the person acted upon" (*Khill*, at para. 62).

[261] It is not the reasonableness of each factor in s. 34(2) of the *Criminal Code* individually, but the relevance of the factor to the ultimate question of the reasonableness of the act. No single factor is determinative, and the exercise is "global and holistic" (*Khill*, at para. 69).

[262] In *Hodgson* at para. 76 the Supreme Court of Canada had this to say about the third factor:

Third, s. 34(1)(c) requires that "the act committed is reasonable in the circumstances", and s. 34(2) provides a list of nine non-exhaustive factors for the court to consider in making this determination. Parliament expressly structured how a decision maker ought to determine whether an act of self-defence was reasonable in the circumstances. What is called for is an assessment of the overall reasonableness of the accused's conduct according to the statutory factors. Reasonableness is measured according to "the relevant circumstances of the person, the other parties and the act" (*Criminal Code*, s. 34(2); see also *Khill*, at para. 64). When a factor is relevant it becomes a mandatory consideration, as s. 34(2) provides that the fact finder "shall" consider all factors set out in paras. (a) to (h) that are relevant in the circumstances of the case (*Khill*, at para. 68). This objective determination, with its focus on what a reasonable person would have done in comparable circumstances, strikes the appropriate balance between respecting the security of the person who acts and the security of the person acted upon. It also underscores that the law of self-defence "cannot rest exclusively on the accused's perception of the need to act" (*Khill*, at para 2; see also paras 62 and 65).

[Emphasis added]

[263] I now move to consider the nine enumerated factors:

- (a) The nature of the threat: Mr. Levy testified that immediately after Kyle was ejected and the brothers became physical, "I assumed we were under attack." Nevertheless, the evidence confirms that both men were quickly subdued. None of the bouncers discerned that the Sawyers had weapons and they did not. I reiterate here my finding that once Mr. Whalen put down Kyle, and Mr. White dealt with Ryan, they (collectively) and Ryan (individually) were no longer a threat.
- (b) The extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force: There was no imminent threat and there were several other means available to respond to the alleged use of force. There is no evidence that anyone had a weapon. After his initial involvement on Prince Street with Kyle, Mr. Levy could have called the police and, in any event, it was clearly a viable option for him to remain away from and not choose to become involved with Ryan, who was not then a viable threat.

- (c) The person's role in the incident: Mr. Levy was the aggressor. After shoving the man in the white shirt and throwing Kyle's vest into the street, he chose to leave the sidewalk area by the Alehouse Prince Street door and go back on to the street, jumping on Ryan's back.
- (d) The use or threatened use of a weapon: Again, there is no evidence that either party possessed a weapon. Once he was taken to the ground by Mr. White, Ryan made no verbal threats.
- (e) The size, age, gender and physical capabilities of the parties to the incident: Thirty-one-year-old Ryan was 192 cm and weighed 122.7 kg, making him considerably larger than Mr. Levy. Nevertheless, he was considerably intoxicated and had consumed cannabis. He was unsteady on his feet, as shown on the video and as Mr. Levy acknowledged. At 37, Mr. Levy was a smaller man but had 17 years experience as a bouncer and was trained in the use of force.
- (f) The nature, duration and history of any relationship between the parties to the incident and any history of interaction or communication between the parties to the incident: This is irrelevant as the two men were strangers to each other.
- (g) The nature and proportionality of the person's response to the use or threat of force: As discussed, Mr. Levy's response was not temporally connected, and not reasonable nor proportionate to what was going on with Ryan on Prince Street after Mr. White dealt with him.
- (h) Response to use or threat of force that the person knew was lawful: This is not applicable.

[264] Having considered the relevant factors in s. 34(2) of the *Criminal Code* in a global and holistic way, I find that the Crown has proven beyond a reasonable doubt that Mr. Levy's response was unreasonable.

[265] In conclusion, having carefully considered the whole of the evidence, in the circumstances facing Mr. Levy when he made the decision to become involved with Ryan on Prince Street, the defence of self-defence is not available to Mr. Levy. There is strong evidence that disproves all three of the factors in s. 34 of the *Criminal Code*; the Crown has proven beyond reasonable doubt that Mr. Levy did not act in self-defence.

CONCLUSION

[266] Given the evidence, I find that this case is readily distinguishable from *Campbell*, where the defendants were justified in using force (including a chokehold by one of them) to subdue the patron (Mr. Harbalis) who was acting very erratically, including coming into contact with female staff, punching staff and swinging a chair at staff. Rather, I find this case has parallels with *R. v. Merasty*, 2014 SKQB 268, and *R. v. Hutchison*, 2024 BCSC 704.

[267] In *Hutchison*, Justice Murray spoke of how, as time passed, the incident changed:

33 However, as time went on, the nature of the incident changed. A number of witnesses, including Joel Dyck and Abigail Thompson, heard Mr. Hill tell Mr. Hutchison three to four times that he could not breathe. Mr. Hutchison testified that he did not hear him say that. I find that he did. I further accept that at some point, Mr. Hill stopped moving. Taylor Dickau recognized that Mr. Hill had stopped moving. At that point, Mr. Dickau got off of Mr. Hill's legs and sat on the grass beside Mr. Hill to hold his legs. He then stopped assisting with holding Mr. Hill down as Mr. Hutchison had instructed him to do. Several witnesses that were watching from a distance, including Skyler Huber and Abigail Thompson, also saw that Mr. Hill was no longer moving.

34 At some point, it was clear that Mr. Hill was no longer a threat to anyone. Therefore, I cannot accept that there continued to be reasonable grounds to believe that Mr. Hill was using force or threatening force against Mr. Hutchison or others once he stopped moving.

[268] Similarly, to the extent that Kyle and Ryan posed a threat immediately after they were ejected, this soon changed when they were each brought to the ground. Furthermore, at the point after he had been subdued by Mr. White, Ryan was no longer a threat to anyone.

[269] As for *Gooch*, relied on by the Defence, I am of the view that Justice Gabriel's decision is readily distinguishable from this case. Here, the Court received evidence regarding the standard of care for bar staff from Mr. Levy, the four other bouncers called and to a lesser degree, the Khoury brothers. I hasten to add that there are legions of Canadian criminal cases involving bouncers and experts in the area of security are rarely called.

[270] In addition, the lack of regulations in this area should hardly, as the Crown has argued, give a "green light to excessive force." Staying with the Crown's argument, it was stated that "Mr. Levy is not the warden of Prince Street." I find the Crown's submissions here to be compelling, particularly given my findings that Mr.

Levy inflicted the chokehold after proactively deciding to assault Ryan when he was not a threat and largely defenceless on the street, outside the bounds of the Alehouse. Indeed, rather than verbally de-escalating the situation and then retreating back to the Alehouse, Mr. Levy took it upon himself to overtly go to Ryan and place him in a prolonged chokehold.

[271] In conclusion, I find Alexander Pishori Levy guilty as charged on the two-count Indictment.

Chipman, J.