

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Levy*, 2026 NSSC 129

Date: 20260424

Docket: CRH 530419

Registry: Halifax

Between:

His Majesty the King

v.

Alexander Pishori Levy

SENTENCE DECISION

Judge: The Honourable Justice James L. Chipman

Heard: April 24, 2026

Written Decision: April 24, 2026

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

By the Court (Orally):

INTRODUCTION

[1] In *R. v. Levy*, 2025 NSSC 371, I convicted Alexander Pishori Levy of criminal negligence causing death and the unlawful act of manslaughter. The sentencing was set for today's date. In advance of today's sentencing hearing, I received:

- Fourteen Victim Impact Statements (VIS)
- Crown's sentencing brief
- Defence sentencing brief
- April 20, 2026, Pre-Sentence Report (PSR)
- PSR addendum
- Three support letters on behalf of Mr. Levy

[2] Included with the Crown's brief were these cases:

- *R. v. Landry*, 2016 NSCA 53
- *R. v. Henry*, 2002 NSCA 33
- *R. v. MacDonald*, 2024 SKKB 198
- *R. v. Whynder*, 2024 NSSC 196
- *R. v. Shevaley*, 2021 BCSC 2050
- *R. v. Whitehead*, 2014 NSSC 439
- *R. v. Hickey*, 2011 NSSC 186
- *R. v. Doherty*, 1999 NBJ No. 534 (Q.B.)
- *R. v. Burt*, 2018 BCPC 233
- *R. v. Burgess*, 2016 NSPC 1
- *R. v. Isenor*, 2007 NSPC 70

[3] As for the Defence, these authorities were submitted:

- *R. v. Stone*, [1999] 2 SCR 290

- *R. v. Creighton*, [1993] 3 SCR 3
- *R. v. Knockwood*, 2026 NSCA 11
- *R. v. K.K.L.*, 1995 ABCA 196
- *R. v. Sproule*, 2025 ABKB 707
- *R. v. Levy*, 2025 NSSC 371
- *R. v. Hutchison*, 2024 BCSC 878
- *R. v. Hutchison*, 2024 BCSC 704
- *R. v. Brisson*, 2009 BCSC 1606

[4] In advance of passing sentence, I reviewed all of the above referenced materials and cases. Today I heard oral submissions from the parties. I also heard from Mr. Levy who said a number of things including that he “is very sorry to the family of Ryan Sawyer for what has happened.”

BACKGROUND

[5] In terms of background, I refer to paras. 2 – 6 of my introduction in my decision of five months ago:

[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 Dirty 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.

KEY FINDINGS OF FACT

[6] At paras. 205 – 244, I set forth my key findings of fact. For purposes of sentencing, I wish to highlight and reproduce these paras.:

[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.

...

[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.

...

[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.

...

[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.

...

[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.

SENTENCE RECOMMENDATIONS

Crown

[7] The Crown asks for the following sentence for the crime of manslaughter: a period of custody for the term of five years, a DNA Order (mandatory-

primary/compulsory) and a s. 109(1)(a) weapons prohibition Order for a term of 10 years (mandatory).

[8] With respect to the crime of criminal negligence causing death, the Crown submits that as the charge arises out of the same delict, a conditional stay should be entered by the Court, pursuant to the Supreme Court of Canada's decision in *R. v. Kineapple*, [1975] 1 SCR 729.

Defence

[9] Mr. Levy submits that the appropriate sentence for the manslaughter conviction is the imposition of an 18-month conditional sentence order, to be followed by a two-year probation order. He submits that the appropriate sentence for the criminal negligence conviction is a concurrent conditional sentence of six months.

[10] It is Mr. Levy's submission that the sentences should be concurrent (rather than the Crown-sought conditional stay) as the offences do not share overlapping criminal offence elements.

PRE-SENTENCE REPORT

[11] The PSR is authored by probation officer Melissa Dodge. In preparation of the report she interviewed Mr. Levy, one of his cousins and a former supervisor of Mr. Levy. The parties submit and I agree that Mr. Levy's former supervisor's comments should be excised from the PSR as they are dated and he is not in a position to comment on Mr. Levy's training or psychological state. As well, the parties submit and I agree that Mr. Levy's cousin's comments concerning her speculated diagnosis of Mr. Levy should excised.

[12] There are two errors in the PSR which counsel submits and I agree shall be excised; one pertains to a reference to Mr. Levy having a criminal record and the other is with respect to him pleading guilty to the charges (which he was convicted of). The PSR addendum corrects the latter noting "that the subject was found guilty ...on November 26, 2025."

[13] Mr. Levy described his upbringing as "seemingly normal." He resided with his mother and grandparents in Halifax. He attended Queen Elizabeth High School but did not graduate. He received a diagnosis of Attention Deficit Disorder.

[14] Mr. Levy completed his high school equivalency approximately 10 years ago. He has an extensive work history as a bouncer in bars in downtown Halifax. After a period of unemployment, Mr. Levy was recently hired as a labourer with a local construction company.

[15] Mr. Levy resides with his mother and is financially independent. He is 40 years of age and has some health issues. He reports suffering with anxiety and depression for most of his adult life. He uses cannabis daily for his mental health issues and for pain management.

[16] The PSR concludes as follows (as noted above, I have disregarded the obvious errors that he has a prior adult criminal record and that he pled guilty to the offences):

Appearing before the Court for sentencing is 40-year-old first time offender Alexander Pishori Levy, having pled guilty to one count of Manslaughter contrary to Section 236 as well as one count of Criminal Negligence-Causing Death contrary to Section 220 of the *Criminal Code of Canada*.

Mr. Levy has taken accountability for the offence and has pled guilty. When recounting the events of that evening the subject became emotional. He advised his intentions were to keep people safe and he feels bad that someone lost their life.

Should the Court impose a non-custodial disposition as any part of this sentence, it appears the subject may benefit from services with Mental Health and Additions, specifically to address the grief and trauma Mr. Levy has experienced in his life. There are various community offices within the Halifax Regional Municipality that are free of charge. There are waitlists, and services are voluntary for individuals wanting to receive support.

SUPPORT LETTERS

[17] Three letters of support were filed by two of Mr. Levy's cousins and a next-door neighbour. Tracy Levy (the cousin interviewed for the PSR) discussed the impact of the events of December 24, 2022 on Mr. Levy:

The events of December 24, 2022, have had a profound impact on Alex. Since that time, I have seen a noticeable change in him. This is not something he has been able to simply move past. When he eventually came to speak with our family after his release, he was visibly emotional and deeply affected as he tried to explain what had happened. It was clear to me that he continues to carry the weight of that night and is struggling to process it.

[18] Amelia Levy also addressed Mr. Levy's response to the situation:

He has expressed genuine remorse and demonstrated a level of self awareness that speaks to his character. He has taken meaningful action by seeking support and attending relevant programmes to address this. My cousin is a strong man who tries to remain composed around me, however the first time I personally witnessed him cry was the day he came to my house following this incident. I was truly heartbroken. In that moment I saw the depth of his remorse and the weight of sadness he carried, and I can say with certainty that this incident is not a reflection of the person I know.

[19] Natalie Angelucci spoke of her neighbour's character:

Alex has always been a considerate and supportive neighbor. Whenever assistance has been needed – whether with property matters, errands, or unexpected situations – he has willingly stepped forward without hesitation. He has also gone out of his way to help my elderly parents, who live across the street, offering support and assistance whenever they required it. His actions have consistently reflected empathy, responsibility, and genuine care for those around him.

VICTIM IMPACT STATEMENTS

[20] Fourteen VIS were filed by Ryan's family and friends. Ryan's mother, Lee Sawyer provided a heartfelt account, noting at the outset:

I have struggled to find words that adequately express the depth of my pain and the profound sadness I have lived with since losing him. There are no words that can fully capture this kind of loss, but I will try to help you understand who Ryan was-and what has been taken from us.

[21] Towards the end of her VIS, Lee Sawyer spoke of the permanent changes owing to the death of Ryan:

This crime has permanently changed every part of our lives-emotionally, mentally, and physically-and that impact will never end.

[22] Ryan's father, Scott Sawyer provided an equally compelling account, including this passage:

I have never been a religious person, but I would give everything I have to see Ryan again. Holding onto the hope of that possibility is now part of how I cope.

Even after today, this does not end. Our lives have been permanently altered. There are ongoing struggles – depression, anxiety, sleepless nights. As a family, we know this loss has shortened our lives in ways that cannot be measured. There are still nights even now that I awake and hear my wife crying in the middle of the night.

There is also anger. Because this did not have to happen. A choice was made – a choice that took my son’s life. That is something I will never be able to accept.

[23] Kyle Sawyer, Ryan’s twin brother provided a thoughtful account of his loss, typified by this para.:

Ryan was a loving son, a loyal friend, and the best brother I could have ever asked for. He guided me, supported me and grounded me. Even though he was only three minutes older, he felt like a big brother in every way. I lost my Twin, my best friend and a part of myself. I don’t know how you’re supposed to move forward when your other half since birth, is suddenly gone.

[24] The Court also received VIS from Ryan’s uncle, John Lidstone, his first cousin, Pearleen Mofford and Pearleen’s daughter, Madison Brennan.

[25] It is clear to the Court that Ryan had a great number of dear friends, eight of whom submitted VIS. As Ryan’s friend Carly Henderson said:

The impact of this loss is not confined to one day or one courtroom. It is carried into every future moment he should have been part of. It lives in empty seats, in group photos with someone missing, in toasts made through tears.

Ryan was deeply loved. And the violence that took him did not just end his life, it permanently altered mine, and the lives of so many others.

...the consequences of this act did not end that day. We carry them every single day.

[26] Another friend, Laura Taglioni who knew Ryan since they met in grade one, captured the loss of Ryan with these words:

Ryan had the biggest heart. He loved his family and friends deeply and never took life too seriously. He brought lightness and warmth wherever he went, and he never hurt anyone. That is what makes this loss so difficult to understand.

Life has continued on without him, but it is not the same. There are so many moments, big milestones, celebrations, and even quiet, everyday experiences where his absence is deeply felt. He should be here for all of it.

Since having my son, I have come to understand love in a completely different way. And because of that, I cannot begin to imagine the depth of pain his parents feel every single day. My heart aches for them.

[27] Beyond these women, the Court received VIS from Ryan’s friends Sally Chedrawe, James Duguid, Laura Turner (Farrell), Karlie Doucette, Shawn Lalach along with Anne and Kenneth Brand (who together signed their VIS).

[28] The VIS candidly and eloquently portray the suffering endured as a result of the tragic death of Ryan.

[29] In passing sentence today, I must acknowledge that there is very little that the Court can do to relieve the constant anguish felt by Ryan’s family and friends.

MITIGATING AND AGGRAVATING CIRCUMSTANCES

Mitigating

[30] Prior to these convictions, Mr. Levy had no criminal record. He is ordinarily a pro-social person of generally good character and with a lengthy work history.

[31] Mr. Levy has expressed remorse. In the PSR he said that he “feels bad that someone lost their life.” Before the court today, Mr. Levy said that he is very sorry for what happened.

Aggravating

[32] Mr. Levy was the head of security at The Halifax Alehouse at the material time. His training and experience ought to have equipped him to properly deal with intoxicated patrons such as Ryan.

THE STATUTORY FRAMEWORK

[33] The statutory framework that Parliament provides relating to the sentencing in this case is as set out herein. Section 234 of the *Criminal Code* lays out the definition of manslaughter and s. 236, the punishment for manslaughter:

Manslaughter

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

...

236 Every person who commits manslaughter is guilty of an indictable offence and liable

...

(b) in any other case, to imprisonment for life.

[34] Since culpable homicide can arise in an extensive range of circumstances, the *Criminal Code* provides a broad range of available sentences for the crime of manslaughter.

[35] Section 718 of the *Criminal Code* provides guidelines to judges as to what principles must be kept in mind when imposing a sentence. The purposes and principles of sentencing that the Court should take into consideration are laid out in ss. 718, 718.1, 718.2 as follows:

Purpose

718 The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

Fundamental Principle

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

Other Sentencing Principles

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,
 - (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,
 - (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
 - (ii.2) evidence that the offender involved a person under the age of 18 years in the commission of the offence,

- (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
- (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
- (iii.2) evidence that the offence was committed against a person who, in the performance of their duties or functions, was providing health services, including personal care services,
- (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,
- (v) evidence that the offence was a terrorism offence,
- ...
- (viii) evidence that the commission of the offence had the effect of impeding another person from obtaining health services, including personal care services,

shall be deemed to be aggravating circumstances;

- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

DISCUSSION, ANALYSIS AND DISPOSITION

[36] The authorities confirm that in the case of manslaughter, it is important to consider what the unlawful act involved. The nature and quality of the unlawful act itself, the method by which it was committed and the manner in which it was committed in terms of the degree of planning and deliberation are relevant to this inquiry. In *R. v. K.K.L.*, the majority decision of the Alberta Court of Appeal nicely summarized how a sentencing court should consider the offender's degree of fault at para. 9:

[9] Unlawful acts may be divided into three broad groups: those which are likely to put the victim at risk of, or cause, bodily injury; those which are likely to put the victim at risk of, or cause, serious bodily injury and those which are likely

to put the victim at risk of, or cause, life-threatening injuries. Only when the offender's proven mental state at the time of commission of the offence is evaluated in the context of the crime itself, in other words in terms of its relative degree of seriousness, is it possible to classify for sentencing purposes the degree of fault inherent in the crime committed.

[37] At paras. 10 and 11, Chief Justice Fraser (Justice Veit concurring) continued:

[10] To complete the moral blameworthiness picture and to ensure that an offender is properly situated in terms of sentencing *vis a vis* others convicted of the same offence, the court must also have regard to those personal characteristics of the offender which would mitigate or aggravate culpability.

[11] It will be apparent that numerous permutations and combinations of these relevant factors will be possible. In an individual case, all must be blended and balanced as part of the court's assessment of the offender's degree of moral culpability for the crime committed.

[38] In arriving at a just and fit sentence for Mr. Levy, I am mindful that he possessed the necessary capacity to appreciate the risk flowing from his conduct. In this respect, I refer to my findings (excerpted herein at para. 6) with particular reference to paras. 229, 230, 234 and 235. Mr. Levy acknowledged in his testimony that being held in a chokehold for more than 10 – 15 seconds can become very dangerous. In my conviction decision, I found on all of the evidence that he applied the chokehold on Ryan for approximately two minutes.

[39] In his submissions, Mr. Levy acknowledges that the neck restraint “was a prolonged hold.” He goes on to submit that there was no evidence of planning or pre-meditation, nor motive or profit. I agree with these submissions. I also agree that the expert medical evidence established that what befell Ryan – cardiac arrest and death arising from the chokehold – was a relatively rare consequence.

[40] The Defence continues in their submissions to equate the chokehold deployed with a “near accident” and goes on to argue that “Mr. Levy’s conduct falls below the moral gravity of the so-called ‘one punch’ cases.” I disagree. In this regard I am mindful of Mr. Levy’s admission that even in the face of knowing (from his own experience) that the hold beyond 15 seconds can become very dangerous, he kept applying pressure for approximately eight times that length of time when he must have appreciated that Ryan was not a threat.

[41] In relation to the conviction for criminal negligence causing death the critical error was for Mr. Levy to fail to seek or apply medical intervention once Ryan ‘went

limp'. The failure to perform CPR and seek medical attention took place after the neck restraint was employed – which showed a wanton or reckless disregard to Ryan's life and safety.

[42] In all of the circumstances, I am not persuaded that this case lines up with *Hutchison*. For example, in that case the judge found that the offender "...acted in the heat of the moment, motivated only to protect himself and others as was his duty as a security guard." To the contrary, I found that Mr. Levy took it upon himself to "enter the fray" and upon doing so "had control over Ryan" and that at this time, "Ryan was not providing any physical resistance or making any verbal threats."

[43] Additionally, unlike other cases wherein a perpetrator might make a split-second decision to strike another person, Mr. Levy perpetrated a sustained attack against Ryan that was not over in a split-second but rather went on for approximately two minutes. Mr. Levy, despite being aware from his training that Ryan would have been unconscious after 10 – 15 seconds, continued to choke him right up until the time that the police arrived and Cst. Lamphier repeatedly commanded that Mr. Levy release Ryan.

The Principle of Denunciation

[44] In *Henry*, the Nova Scotia Court of Appeal concluded that a conditional sentence of two years less a day imposed following Mr. Henry's guilty plea was not a "fit" sentence because it failed to adequately emphasize deterrence and denunciation and was "excessively and manifestly lenient." Justice Roscoe held that it was a case where the "need for denunciation was so pressing that incarceration [was] the only suitable way in which to express society's condemnation of the offender's conduct." Mr. Henry received a four year prison sentence.

[45] In *Isenor*, Judge Derrick (as she then was) had this to say at para. 34:

[34] Denunciation in sentencing has been described as the means by which the criminal law's system of values is communicated. A sentence with a denunciatory element "represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law." Judicial sentences are also intended to "positively instill the basic set of communal values shared by all Canadians as expressed by the *Criminal Code*." (*C.A.M., supra*, at paragraph 81) It is a function of the sentencing process to maintain and affirm central societal values. Respect for the lives of other human beings and the entitlement of a person not to be deprived of their life are fundamental societal values. Whereas

denunciation, through the imposition of a just and proportionate sentence, of conduct that takes a life is a legitimate objective in sentencing, vengeance has no role in our sentencing processes. (*C.A.M., supra*, at paragraph 80)

The Principle of General Deterrence

[46] In *R. v. King*, [1999] N.S.J. No. 318, the Nova Scotia Supreme Court sentencing Mr. King for manslaughter as a result of a drunken assault, spoke of the need to deter others "who might find themselves in a similar circumstance ..." The Court expressed hope that the sentence "might cause others to reflect before they proceed to get involved in assaulting others." This decision was upheld by our Court of Appeal (1999 NSCA 103).

[47] The role of just sentencing in maintaining public confidence in the system of justice is reflected in s. 718 *Criminal Code* where it is stated that the fundamental purpose of sentencing, amongst other objectives, is to contribute to "respect for the law."

The Principle of Restraint

[48] Mr. Levy's sentence must reflect the degree of his moral blameworthiness. That has to be fixed before the issue of whether the sentence can be served in the community even becomes relevant. If Mr. Levy's moral blameworthiness justifies a sentence of two years or more, then under s. 742.1(a) of the *Criminal Code* a conditional sentence is not an option. The sentencing provisions of the *Criminal Code* that emphasize the principles of restraint in sentencing, ss. 718.2(d) and (e) are qualified. These provisions require that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances (s. 718.2(d)) and that all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders. (s. 718.2(e)) These provisions have been interpreted to mean that imprisonment should be resorted to only where no other sentencing option is reasonable in the circumstances. (*R. v. Gladue* (1993), 133 C.C.C. (3d) 385 (S.C.C.) at para. 40. When considering the principle of restraint in this case, I must ask myself if it is reasonable to impose a custodial sentence of less than two years in all the circumstances. On all of the evidence and authorities, I must conclude that it is not. To the contrary, in all of the circumstances, I am of the view that a custodial sentence is the proper, fit sentence for Mr. Levy.

CONCLUSION

[49] Keeping in mind the authorities, competing submissions and sentencing principles, inclusive of the parity principle, I have fashioned a sentence that takes into account the facts of this case and the purpose and principles of sentencing, along with the mitigating and aggravating circumstances. Alexander Pishori Levy, you are hereby sentenced for the crime of manslaughter to:

- a period of custody for the term of four years
- a DNA Order (mandatory – primary / compulsory)
- a s. 109(1)(a) weapons prohibition Order for a term of 10 years (mandatory)

[50] With respect to the crime of criminal negligence causing death, on all of the evidence I am of the view that the offence arises out of the same delict. Accordingly, in keeping with the *Kienapple* principle, a conditional stay is hereby entered.

[51] In closing, I wish to repeat what has been said innumerable times to describe this case; that it is tragic. Mr. Levy will no doubt bear the emotional burden of these events for the rest of his life. Ryan Sawyer was a loving, loved young man taken down in the prime of his life. I know that this sentence will do little to ease the terrible suffering of Ryan's family and friends who must continue to go on with their lives without him.

Chipman, J.