

 **R. v. Corbett**

Ontario Judgments

Ontario Superior Court of Justice

P.B. Hambly J.

Heard: September 24 and 25, 2015.

Judgment: October 2, 2015.

Court File No.: 14-4585

[2015] O.J. No. 5125 | 2015 ONSC 6118

Between Her Majesty the Queen, and Steven Corbett

(33 paras.)

Case Summary

Criminal law — Sentencing — Criminal Code offences — Offences against person and reputation — Homicide — Manslaughter — Particular sanctions — Imprisonment — Sentencing considerations — Deterrence — Denunciation — Rehabilitation — Accused sentenced to five years' imprisonment less 14 months' credit for pre-sentence custody for manslaughter — Accused and victim were in a confrontation — Accused then stabbed victim once — Aggravating in this case that accused used a knife in a shoving, grabbing and grappling encounter — Accused had good prospects to be a useful citizen — Sentence must be a blend of the sentencing principles of general deterrence, individual deterrence, denunciation, restraint and rehabilitation.

Sentencing of the accused for manslaughter. The accused stabbed the victim to death. He made no effort to assist the victim after the stabbing. The victim and the accused had resided together for some time. At the time of the stabbing, the victim had moved out and had come to the apartment uninvited to retrieve a TV. He had confronted the accused. The accused, 28, had a difficult childhood. He had a minor criminal record mostly as a young offender. The accused had always been employed.

HELD: The accused was sentenced to five years' imprisonment less 14 months' credit for pre-sentence custody.

It was particularly aggravating in this case that the accused used a knife in a shoving, grabbing and grappling encounter. The accused was not justified in trying to defend himself with a knife that he possessed unknown to the victim. He had good prospects to be a useful citizen. The sentence must be a blend of the sentencing principles of general deterrence, individual deterrence, denunciation, restraint and rehabilitation. Sentence: Three years' and 10 months' imprisonment.

Statutes, Regulations and Rules Cited:

Criminal Code, [R.S.C. 1985, c. C-46, s. 37\(1\)](#), s. 724

Counsel

V. Reid, for the Crown.

J. Goldlist, for the Defendant.

REASONS FOR SENTENCE**P.B. HAMBLY J.**

1 Steven Corbett was charged with the second degree murder of Shawn McCann on December 6, 2012. He was convicted by a jury of manslaughter on July 7, 2015. I remanded him out of custody. He appeared before me to be sentenced on the dates shown above. I sentenced him on September 25 at which time I gave oral reasons and reserved my right to supplement my oral reason with written reasons. These are my written reasons.

The Facts

2 The Criminal Code states the following:

- 724.(1) In determining a sentence, a court may accept as proved any information disclosed at the trial or at the sentencing proceedings and any facts agreed on by the prosecutor and the offender.
- (2) Where the court is composed of a judge and jury, the court
- (a) shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty; and
- (b) may find any other relevant fact that was disclosed by evidence at the trial to be proven, or hear evidence presented by either party with respect to that fact.

3 Steven Corbett and Shawn McCann were friends. In October, 2012 Shawn McCann moved from Cambridge to Hamilton. He took up residence with his girlfriend, Brianna Timmins, at a residence at 193 Sherman Ave. in the City of Hamilton. She resided there with Theresa Geroux who was the main tenant of that residence. A short time after this he began residing with Steven Corbett in an apartment at 51 Blake Street. He moved his possessions there including a TV set. In early December Steven Corbett asked Shawn McCann to leave his residence because Steven Corbett believed that Shawn McCann was not paying his fair share of the rent. Shawn McCann moved back to 193 Sherman Avenue. He left his TV and some of his other possessions at 51 Blake.

4 At about mid-day on December 6 Shawn McCann and Steven Corbett spoke by phone about the TV set. Steven Corbett also spoke with Theresa Geroux by phone. Steven Corbett was taking the position that he would only surrender the TV to Shawn McCann if he paid to him what he believed that he was owed for rent. There is no evidence of any amount being discussed. Steven Corbett testified that Shawn McCann said that if Steven Corbett would not give him his TV he was going to kick his teeth in. Theresa Geroux said that when she spoke with Steven Corbett as Shawn McCann was leaving 193 Sherman that Steven Corbett said that if Shawn McCann came there to get the TV that he would kill him. Steven Corbett denied saying this. Steven Corbett also said that in these conversations that he did not want Shawn McCann coming there and causing trouble because he had his daughter Lilly, age 3, there. He shared custody of Lilly with her mother Ashley Schmidt. Clearly when Shawn McCann came to 51 Blake there was much anger between the 2 men.

5 Shawn McCann arrived on foot at 51 Blake at about 2:30 p.m. 51 Blake is located at the corner of Blake Street and Maplewood Ave. Steven Corbett's apartment was on the ground floor. There was a porch leading out of the kitchen of the apartment with a single flight of steps to the ground adjacent to Maplewood Avenue.

6 Shawn McCann came in the door of the kitchen leading off the porch without knocking. In the apartment were Steven Corbett, Shawn McCann's girlfriend, Kathleen McKenna and Lilly. Shawn McCann went into the bedroom where the TV was located. He took the TV out onto the porch, walked down the steps to the ground with it and placed the TV on the grass a short distance from the bottom of the stairs. Steven Corbett followed Shawn McCann down the stairs and struck him from behind. He also called him a goof. Steven Corbett went back up the steps and onto the porch. Shawn McCann followed him up the stairs.

7 There was a confrontation on the steps and the porch between the 2 men. They pushed, shoved and grabbed at each other. In the course of this grappling Shawn McCann was stabbed in the neck with a knife. He stumbled down the steps and onto Maplewood Avenue where he died.

8 The police arrived at the scene on Maplewood Avenue shortly after the stabbing where they found Shawn McCann dead in the street. He had no identifying documents on his person. They were unable to determine his identity until the following day and hence unable to notify his family immediately of his death. Lisa McCann, Shawn McCann's mother, did not learn of his death until the evening of December 7 when the police attended at her work place.

9 There were several passersby on Maplewood who saw parts of the struggle on the porch who testified. I reviewed the evidence of each for the jury and I summarized their evidence as follows:

Significant Evidence Observed by Passersby

- (1) None of the witnesses observe either of the men confronting each other on the porch and the stairs leading up the porch with a knife.
- (2) Most of the witnesses observe shoving between the 2 men but none of them observe grappling although Louise Brouillard observed grabbing which she could not describe in detail.
- (3) GeorgeAnn Simmons sees a man carrying a TV come down the steps of the porch. She sees a man come down the steps behind him and hit the man carrying the TV on the back of the head. The man who did the striking was the more aggressive of the 2. She saw pushing and shoving between the 2 men. She saw the man who had been carrying the TV with his back against the railing of the porch.
- (4) Sherri Patriquin saw a man at the top of the stairs say "Get the fuck out" to a man on the stairs below him who said "let me the fuck in". She saw the man at the top of the stairs strike the man below him in an overhead motion with his left fist "somewhere above the chest area, above the shoulder area".

10 I instructed the jury as follows:

Doctor J. Fernandes is a pathologist of great training and experience from Hamilton General Hospital. He performed an autopsy on Shaun McCann. He testified that the cause of death of Shaun McCann was a stab wound to his right neck. He stated at p. 11 of his report the following:

The cause of death was due to the stab wound of the right neck. The presence of a hilt mark on the skin surface would support that the weapon blade was pushed for its entire length into the tissues. No boney tissue was damaged so the degree of force required would be considered at the lower end of the spectrum of required forces.

The report of Dr. Fernandes was filed with the jury. He stated on p. 10 of the report the following:

At autopsy there was a lethal stab wound to the right side of the neck which resulted in complete transection of the external right carotid artery and partial transection of the right internal carotid artery.

11 Steven Corbett went into the apartment after the stabbing. He and Kathleen McKenna and Lilly left the apartment. They went out through the inner door of the apartment and onto Blake Street. They walked downtown where they got a taxi. Steven Corbett and Lilly got out of the taxi at 554 Dunsmuir where Ashley Schmitt lived with Lilly in an apartment beside an apartment where her parents lived. Steven Corbett left Lilly with her mother. Kathleen McKenna continued on in the taxi. Late in the evening he surrendered himself to the police.

12 The crown's position was that Steven Corbett armed himself with a knife when he followed Shawn McCann onto the porch. This was likely a knife that he had as part of his scuba diving equipment. He took this knife out of a sheath which he left on the kitchen counter. The police searched the apartment in the afternoon of December 6. They found a sheath for a knife on the counter of the kitchen. They found a knife in a cupboard of the washroom with Shawn McCann's blood on it. It is the crown's position that that Steven Corbett put the knife in the drawer after he stabbed Shawn McCann with it and that he left the sheath on the counter.

13 Steven Corbett testified that he never had a knife. His evidence was that Shawn McCann pulled out a knife from

a sheath when they were struggling on the porch. Shawn McCann was stabbed by accident. He took the knife and the sheath inside the apartment. He did not know what he did with them. He then left the apartment.

14 By finding Steven Corbett guilty of manslaughter in the death of Shawn McCann the members of the jury must have found beyond a reasonable doubt that Shawn McCann died as a result of Steven Corbett stabbing hm. They must also have rejected the defences of self-defence and defence of property on which I instructed the jury. By acquitting Steven Corbett of second degree murder they must have also rejected the theory of the crown that Steven Corbett meant to cause the death of Shawn McCann or meant to cause him bodily harm and was reckless whether death ensued.

15 I find that Steven Corbett had a knife in a sheath in his apartment. Before following Shawn McCann onto the porch he took the knife out of the sheath, left the sheath on the kitchen counter and put the knife in a pocket of his clothes. In the struggle with Shawn McCann he took the knife out of his pocket and stabbed Shawn McCann in the neck causing the wound described by Dr. Fernandes from which he died.

16 Clearly by stabbing Shawn McCann in the neck Steven Corbett placed Shawn McCann's life in jeopardy. A finding that Steven Corbett intentionally stabbed Shawn McCann in the neck could only be consistent with an intention to cause his death or an intention to cause him bodily harm knowing that he is likely to cause death and being reckless as to whether death ensued or not. By acquitting Steven Corbett of second degree murder the jury rejected this conclusion.

17 In considering the defence of self-defence I also left with the jury the proportionality section of the Criminal Code which states the following:

37. (1) Every one is justified in using force to defend himself or any one under his protection from assault, if he uses no more force than is necessary to prevent the assault or the repetition of it.

There was evidence from passersby that the man who must have been Shawn McCann was bigger than the man who must have been Steven Corbett. The autopsy report of Dr. Fernandes states that Shawn McCann was 5'10" and 168 lbs. There was no evidence adduced of the height and weight of Steven Corbett. I have observed the demeanor of Shawn McCann at the trial. I find that Shawn McCann was bigger than Steven Corbett to some degree.

18 I find that consistent with the jury's verdict and consistent with the evidence of Steven Corbett that Steven Corbett did not intend to cause the death of Shawn McCann nor did he intend to cause him bodily harm that he knew was likely to cause his death and was reckless whether death ensued. Sherri Patriquin testified as I summarized for the jury that "She saw the man at the top of the stairs strike the man below him in an overhead motion with his left fist "somewhere above the chest area, above the shoulder area". The man at the top of the stairs was clearly Steven Corbett and the man below him was clearly Shawn McCann. She did not observe that Steven Corbett had a knife. This is not surprising since the handle of the knife would have been concealed in Steven Corbett's hand, events were moving quickly and she was observing the events from the south side of Maplewood across the street from the porch.

19 I have found that Steven Corbett did not intend to stab Shawn McCann in the neck. I find that he did intend to cause him bodily harm in the upper body area. Steven Corbett was engaging in an act of self-defence against a man who was bigger than he was. In stabbing at him with a knife directed toward his upper body he was using more force than was necessary. This finding is consistent with the evidence, my instruction to the jury on self-defence and in particular with s. 37(1) of the Criminal Code which I left with the jury.

The Accused

20 Shawn McCann is 28. He grew up in deprived circumstances and had a troubled childhood. He is the youngest of 3 children of his mother. His father abandoned the family when he was 2. His mother had 2 daughters from 2

different men before he was born. One of these men sexually abused the 2 girls which Steven Corbett witnessed when he was 5. His mother was frequently absent from the home. His mother refused to let him live in her home when he was 13. He lived for a time in foster homes. He also lived with his grandmother, Patricia Corbett. She was his surety when he was released on bail. He is living with her at present. Patricia Corbett is now over 90 and is in poor health. She is much to be commended for the support of her grandson in the past and in this matter. In his teen age years Steven Corbett became friends with Shawn McCann. Lisa McCann, Shawn McCann's mother provided support to him. Steven Corbett did not do well in school. He was frequently in trouble for aggressive acting out behavior. He has a learning disability. He was expelled from school. Protective Services arranged for him to attend an alternative school which he attended until he was in Grade 10. By this time he had resumed contact with his mother. She died when he was 16. He left school permanently at this time. He has worked steadily as a roofer and a fork lift driver. He worked as a fork lift driver between August, 2014 and the trial in June and July, 2015.

21 On the evidence that I heard Steven Corbett had a good relationship with Lilly, has much affection for her and has much to offer her. He paid support to her mother. In addition he bought her clothing which he did on December 6 before the incident. He communicated with her mother about her care as revealed in the text messages that were filed. He stated that he and Ashley Schmidt were co-parenting Lilly. I accept this. It is consistent with the evidence. He was protective of her as revealed by his undisputed statements to Shawn McCann that he did not want him coming to his apartment and causing trouble when his daughter was there. He was obviously horrified by what happened when she was with him. He took immediate steps to get her back to her mother. He has had little contact with Lilly since December 6, 2012. He did see her several times in the year after he was released on bail. He has not seen her for about 1 year. This can be understood but it is to be regretted.

Bail

22 He was released on bail on May 27, 2013 on strict terms. He had 2 sureties, namely his uncle in the amount of \$25,000 and his grandmother in the amount of \$1,000 each without deposit. He was required to be under house arrest at 1250 Dunsmuir Road where his sureties lived. He was unable to leave this residence for any purpose unless he was accompanied by one of them. In August, 2014 he obtained employment with Spar-Marathon Roofing Supplies as a fork lift driver. He had to be driven to work and picked up from work by one of his sureties. This person was by necessity his uncle. He also is to be commended for the support of his nephew. He was required to report to the police station every Monday. He lost his employment as a result of the requirement that he attend at his trial commencing June 8, 2015. Although he was remanded out of custody he was not able to resume his employment after the trial ended on July 7, 2015. The sentence hearing was set for September 17. It could not proceed at that time because of the illness of counsel. The sentencing hearing took place on September 24, 2015. I remanded him in custody and undertook to deliver reasons the following day on September 25, 2015.

The Victim Impact Statements

23 I received victim impact statements from Lisa McCann, Shawn McCann's mother; Tim McDaniel, his biological father; Jesilee McCann, his sister; Angel McCann, also a sister; John E. McCann, a nephew; John McCann, a cousin; Cody McCann, a cousin and Eric Ferguson, his stepfather. Lisa McCann read her statement to the court. She is deeply hurt by what Steven Corbett has done. Her son's death is a great loss to her. She wrote a moving poem about the effect of his death on her. She had to take a leave of absence from her work after his death and she has felt suicidal. She has attended every day of the trial. She hopes that Steven Corbett will receive a harsh sentence. She wants no contact with him. The others all spoke of the deep loss they feel at the death of Shawn McCann.

Aggravating Factors

1. Steven Corbett armed himself with a knife in his confrontation with Shawn McCann.
2. He caused the death of another human being.
3. He could have let Shawn McCann take the TV. He could have sued Shawn McCann in Small Claims Court or taken the matter before the Landlord and Tennant board on the issue of rent arrears.

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4. He struck at Shawn McCann toward the upper body which would of necessity resulted in serious bodily harm.
5. He tried to hide the knife albeit clumsily.
6. He made no effort to assist the victim after the stabbing.
7. He fled the scene. He was not there when the police arrived and hence unable to assist the police in identifying the victim.
8. He disposed of his clothing and clothing of his daughter on which there would have been blood and hence evidence.
9. He encouraged Ashley and her mother to lie to the police to direct suspicion away from himself.

Mitigating Factors

1. Although some hours after the event Steven Corbett did surrender himself to the police.
2. He was 25 at the time of the offence, is 28 now and is young.
3. He has a minor criminal record mostly as a young offender, no convictions for crimes of violence and no involvement with the police since 2008.
4. He has always been gainfully employed.
5. There was an element of self-defence in his confrontation with Shawn McCann which the jury rejected as a defence to the charge of second degree murder but which in my view mitigates the moral blameworthiness of the accused to a degree.
6. He had a positive relationship with his daughter Lilly. Although the evidence is that Steven Corbett was a good father to Lilly in many ways this must be tempered by his having her in an environment in which his girlfriend, Kathleen McKenna, was trafficking in drugs. Also he could have let Shawn McCann take the TV and dealt with the issue in the forums that are available to the public for resolving this kind of dispute. This would have avoided exposing Lilly to the terrible events which occurred outside his residence while she was there. I offer the opinion that I do not think that this should foreclose him having involvement with Lilly for all time.

Remorse

24 The crown submits that the accused has shown no remorse. Lack of remorse is not an aggravating factor. Remorse can be a mitigating factor. The accused gave evidence in which he took the position that Shawn McCann produced the knife and he was at all times acting in self-defence. He could not now be expected to show remorse for a stabbing that he stated under oath was an accident which happened when he was defending himself. However he has consistently expressed remorse from the moment that he left the scene for the incident happening and the death of a man whom he described as his best friend.

Position of the Parties

25 The crown's position is that the appropriate range of sentence is 8 - 12 years and a fit sentence is 10 years. The defence position is that the appropriate range of sentence is 4 to 5 years. Counsel agree that there needs to be a credit given to the accused for pre-sentence custody in the amount of 260 days for 123 days of pre-sentence custody in the ratio of 1:1.5 for a total of 260 days or 9 months rounded upward. The defence submits that the accused should be credited for stringent bail conditions over 16 months in the amount of 5 months for a total credit of 14 months.

The Law

26 In *R. v. Clarke*, [\[2003\] O.J. No. 1966](#) the accused stabbed an elderly vulnerable victim 7 times in her own home.

He was charged with second degree murder. The jury convicted him of manslaughter. The Court of Appeal reduced a sentence of 14 years imposed by the trial judge to 9 years. The Court of Appeal referred to the case being one of "aggravated manslaughter". It suggested that the range of sentence for this kind of case was 8 to 12 years.

27 In *R. v. Cleyndert*, [\[2006\] O.J. No. 4038](#) the accused was charged with second degree murder. The jury convicted him of manslaughter. In a fist fight the 19 year old accused stabbed the victim 8 times with a butterfly knife in the torso. The accused advanced the defence of self-defence. He expressed remorse for what had happened at the sentencing hearing but maintained that he had acted in self-defence. The trial judge imposed a sentence of 12 years and after giving credit for pre-sentence custody imposed sentenced the accused to 8 1/2 years. The Court of Appeal confirmed the range of sentence of 8 to 12 years for aggravated manslaughter. It upheld the sentence.

28 In *R. v. Hermiz*, [\[2007\] O.J. No. 1589](#) the accused was charged with second degree murder. The crown permitted him to plead guilty to manslaughter. In a fight between 2 groups of youths the ultimate victim broke a beer bottle over the head of the accused. The accused got to his feet and stabbed the victim through his vital organs with a knife causing his death. In his usual thorough manner Justice Hill reviewed the principles of sentencing on a charge of manslaughter. He stated the following:

10 ... "The taking of a life is always a terrible tragedy and a most serious offence no matter the circumstances": *R. v. Simcoe*, [\[2002\] O.J. No. 884](#) (C.A.) at para. 24.

11 It has long been recognized that the crime of manslaughter attracts a broad range of sentence depending on the circumstances of the offence and offender: *R. v. Stone* ([1999](#)), [134 C.C.C. \(3d\) 353](#) (S.C.C.) at 446 (the "broad sentencing range for manslaughter"); *R. v. Clarke*, [\[2003\] O.J. No. 1966](#) (C.A.) at para. 7 ("The range of sentence for the offence of manslaughter can vary immensely"); *R. v. Clemons*, [\[2003\] M.J. No. 101](#), [2003 MBCA 51](#) at para. 7 ("The sentencing options available to a sentencing court for this offence are like no other"); *R. v. Dasilva*, [\[1988\] B.C.J. No. 1744](#) (C.A.) at 2 ("It is clear enough that sentences for manslaughter vary from a suspended sentence to sentences of life imprisonment"); *R. v. E.H.*, [\[2005\] B.C.J. No. 4](#) (C.A.) at para. 20 ("... the well-established spectrum of culpability in manslaughter cases ranging from near accident' to near murder"); *R. v. Jones*, [2005] EWCA Crim 3115 ("manslaughter cases vary greatly from one end of the scale to another"); *D.P.P. v. Kelly*, [2004] IECCA 14 at 14 ("The very wide range of facts which a manslaughter case may feature make it difficult to establish any very precise range of sentencing"); *Attorney General's Reference No. 33 of 96 (Latham)*, [1996] EWCA Crim 1308 at 7 (manslaughter "covers a wide field").

12 At para. 6 of the *Clemons* decision, the court observed that:

It has often been stated by sentencing courts and by appellate tribunals that the imposition of the correct sentence in a case of manslaughter is one of the most difficult tasks that a court faces. There is a reduced blameworthiness to be attributed to an offender because of a lack of intent or because of provocation, but the result of the offender's actions still culminate in a death in circumstances that absent that lack of intent or because that provocation would otherwise result in murder.

13 An appropriate sentence for manslaughter "must reflect our society's concern for the sanctity of life" and ordinarily "a lengthy sentence must be imposed having in mind the gravity" of the crime: *R. v. Head*, [\[1985\] O.J. No. 153](#) (C.A.) at 2. As a general rule, severe sentences are imposed proportionate to the gravity of the offence of manslaughter: *R. v. Turcotte* ([2000](#)), [48 O.R. \(3d\) 97](#) (C.A.) at para. 19 ("... many, if not most, sentences for manslaughter, are in the penitentiary range"); *D.P.P. v. Cooney*, [2004] IECCA 19 at 10 ("Manslaughter is ... an extremely serious offence, which in the majority of cases must result in a substantial custodial sentence").

14 Recognizing that there is no subcategory of "aggravated manslaughter" within the crime (*R. v. Devaney*, [\[2006\] O.J. No. 3996](#) (C.A.) at para. 33-4), the sentencing court is nevertheless obliged to scrutinize the case-specific circumstances of the offence and the offender: *R. v. Simcoe*, at para. 24 ("courts have viewed the offence of manslaughter in the context in which it occurred, including the relationship between the victim and the accused, together with the personal characteristics of the accused, in order to determine the appropriate sentence"); *R. v. Cleyndert*, [\[2006\] O.J. No. 4038](#) (C.A.) at para. 13 ("each case must be

decided on its own facts"); *R. v. Dasilva*, at 2 (in manslaughter cases, the fit disposition "[v]ery much depends upon the circumstances of the offence, and, of course, the circumstances of the offender"); *Attorney General's References (Nos 19, 20 and 21 of 2001)*, [2001] EWCA Crim 1432 at 7 (in "any case of manslaughter the court inevitably looks at a number of factors to determine the appropriate sentence" including "the context in which the death was caused").

17 Denunciation and general deterrence are ordinarily the predominant sentencing principles in sentencing for manslaughter: *R. v. E.H.*, at para. 43.

29 In *R. v. Devaney* [2006] O.J. No. 3996 (C.A.) the accused was charged with second degree murder. The jury convicted him of manslaughter. The accused stabbed a woman in her 60's 107 times all over her body. The trial judge imposed a sentence of 11 years less pre-sentence custody. The crown sought a sentence of 18 to 20 years. The Court of Appeal in the judgment of Justice Feldman clarified what it meant by aggravated manslaughter in *Clarke*. Justice Feldman stated the following:

33 The first question is whether it is appropriate to label a subcategory of manslaughter as "aggravated manslaughter" for the purpose of sentencing. In my view, it is not useful to attach a label to a subcategory of the offence, then to try to pigeonhole the facts of any case into the label. Adding a descriptive label to a set of facts within the defined offence adds a level of complexity to the sentencing exercise that is both unnecessary and potentially diverting for the court and could lead to errors. Nor do I read this court's decision in *Clarke* as adopting that approach. In that case, after considering all of the aggravating factors, the court concluded:

In light of these aggravating factors, we agree that the proper range for this offence and this offender is 8 to 12 years imprisonment.

34 The exercise in each case is to impose a sentence that fits the facts and circumstances of the particular case and the particular offender. Part of that exercise is to impose similar sentences for similar offences and offenders. However, I would reject the concept of naming subcategories of manslaughter for the purpose of comparing cases and imposing similar sentences, and instead compare the circumstances of each situation on a case-by-case basis.

30 Of all the decisions that have been cited to me I find that the judgment of Justice Hill in *R. v. Morgante*, [1998] O.J. No. 5088 is the most similar on the facts to the case before me. There was a dispute between 2 groups of young men over the victim's refusal to pay a debt and to engage in arm wrestling. The accused stabbed the victim once through his vital organs causing his death. Justice Hill referred to the decision of the Court of Appeal in *R. v. Head* (1985), 10 O.A.C. 87 in the judgment of Justice Dubin as follows:

27 In *R. v. Head* (1985), 10 O.A.C. 87 (Ont. C.A.), Dubin J.A. (as he then was) said this at paragraph 14:

"An appropriate sentence for this type of case must reflect our society's concern for the sanctity of life and its revulsion that anyone in a state of self-induced intoxication would take an innocent life, and thus a lengthy sentence must be imposed having in mind the gravity of such an offence. But regard is also to be had for the extreme remorse of the appellant and to his prospects for rehabilitation. In the end result, society is best served in cases of this nature by a sentence which will reflect the gravity of the offence, but not be so lengthy as to inhibit reasonable prospects for rehabilitation, with a view that on release the appellant will become a useful citizen."

He held that the appropriate range of sentence was 5 1/2 to 6 years less credit for pre-sentence custody. He imposed a sentence of 3 years and 9 months.

Decision

31 In my view it is particularly aggravating in this case that the accused used a knife in a shoving, grabbing and grappling encounter. There was an element of self-defence in Steven Corbett's actions. Shawn McCann was not justified in entering the apartment at 51 Blake without notice and ignoring Steven Corbett, his girlfriend and Lilly. Steven Corbett struck him in the back of the head as he was going down the stairs. It was Shawn McCann, a man

bigger than Steven Corbett, who came up the stairs and confronted Steven Corbett. I infer from the evidence that Shawn McCann believed that he could overpower an unarmed Steven Corbett. However Steven Corbett was not justified in trying to defend himself with a knife that he possessed unknown to Shawn McCann. The jury verdict reflects a community rejection of the concept of "stand your ground" adopted in some other common law jurisdictions. There was a single stab wound in contrast to the multiple stab wounds inflicted by an accused for no reason in some of the cases that have attracted heavy sentences.

32 Steven Corbett has good prospects to be a useful citizen and a good father to Lilly. Although he has been no angel these events would seem to be out of character for him. He must be punished for what he has done. The sentence must be a blend of the sentencing principles of general deterrence, individual deterrence, denunciation, restraint and rehabilitation.

Result

33 Applying the case law to the facts as the jury and I have found them to be as best I can in my view a fit sentence is 5 years less a 14 month credit for pre-sentence custody and stringent bail terms for a net sentence of 3 years and 10 months.

P.B. HAMBLBY J.

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