
CANADA / JUDGMENT

R. v. Sanghera

2020 BCSC 1622

COURT

Supreme Court of British Columbia

DECIDED

18 September 2020

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2020 BCSC 1622 R. v. Sanghera

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Sanghera,

2020 BCSC 1622

Date: 20200918

Docket: 27808

Registry: Vancouver

Regina

v.

Aneil Sanghera

Before: The Honourable Madam Justice Fleming

Oral Reasons for Sentencing

Counsel for the Crown:

J.P. Hermanson

Counsel for the Accused:

J. Narwal

M. Gartner, Articled Student

Place and Date of Trial/Hearing:

Vancouver, B.C.

August 20 and 21, 2020

Place and Date of Judgment:

Vancouver, B.C.

September 18, 2020

- [1] THE COURT: Before I begin, I note for the record that if a transcript of my reasons is ordered, I will edit them but my meaning and the result will not change. I do not propose to read case citations and several quotations from cases in the interest of time.

Introduction

- [2] Aneil Sanghera has pleaded guilty to manslaughter in the death of Pardeep Singh Terry Dulay. The offence occurred on April 15, 2017 in the context of a physical altercation between the two men at a large wedding reception in Vancouver.
- [3] The task now is to determine a just and appropriate sentence in this terrible, tragic, and most difficult of cases.
- [4] The parties agree that Mr. Sanghera must be sentenced to imprisonment, but disagree about the length of the term. The Crown takes the position a four-year jail sentence is appropriate and any lower sentence would be unfit. The defence seeks a provincial jail sentence of one to two years less one day.
- [5] Underlying their disagreement are disputes about Mr. Sanghera's moral blameworthiness, the mitigating and aggravating circumstances, and the significance of collateral consequences.
- [6] The collateral consequences involve and arise from a shooting that occurred on May 4, 2018. Mr. Sanghera was the intended target of an armed gunman who pointed the gun at his wife and shot his father-in-law and a friend.
- [7] A considerable body of evidence was introduced by consent at the sentencing hearing, including:
- an agreed statement of facts appended to which is a video recording that was played during the sentencing hearing;
 - 12 victim impact statements from Mr. Dulay's family members and friends, several of whom attended the hearing and read their statements in court;
 - 80 letters of support for Mr. Sanghera;
 - letters from Mr. Dulay's wife and his oldest daughter that express their support Mr. Sanghera but also address the impact of Mr. Dulay's death; and

- several expert reports that Mr. Sanghera relies on, including a psychological report from his treating psychologist James Browning, an assessment report by psychologist Robert Ley, a report by psychiatrist Stuart Grassian regarding the psychiatric impact of protective custody or solitary confinement, and a report from Dr. Tracy Ann Pickett, a specialist in emergency medicine and clinical forensic medicine, regarding the specific risks of COVID-19 for inmates.
- [8] Additional materials include, most significantly, a letter from the Delta Police to Mr. Sanghera's counsel regarding the shooting in May 2018.
- [9] Finally, when invited to do so, Mr. Sanghera spoke at the sentencing hearing.

The Circumstances of the Offence

- [10] The circumstances of the offence are outlined in the agreed statement of facts but the parties encourage me to make further findings based on the video recording, which I have done to a limited extent. I have also made additional findings based on Dr. Browning and Dr. Ley's accounts of what Mr. Sanghera told each of them.
- [11] To provide context, Mr. Sanghera and Mr. Dulay are from large and related families. Cousins, they were also related by marriage. Mr. Dulay's wife is Mr. Sanghera's mother's cousin. The two families were also closely connected; and their family homes were located on the same street in Richmond. Sometime prior to the offence, Mr. Dulay and his wife separated. She and their three daughters moved into the Sanghera home, resulting in some tension between the two families.
- [12] The wedding reception on April 17, 2017 was the last event in a week-long celebration of the wedding of Harvey Dhaliwal and Celina Bains.
- [13] Held at Fraserview Hall, I am told hundreds of people were present. Mr. Sanghera attended with his father and his friend, Vishal Dhensaw. Mr. Dulay was there along with his mother, his sisters, and perhaps some other members of his family.
- [14] The physical altercation between Mr. Sanghera and Mr. Dulay occurred on a balcony located at one corner of the hall shortly after 9:30 p.m. It was dark outside. Mr. Sanghera's friend, Mr. Dhensaw, was present on the balcony at the time of the altercation. Some of the admissions contained in the agreed statement of facts are based on Mr. Dhensaw's evidence at the preliminary inquiry. A security camera equipped with an infrared function allowed it to record in no-to low-light conditions known as "night mode". The images depicted in a video therefore appear in black and white.
- [15] Infrared light is not visible to the naked eye. It is agreed, therefore, that the video recording may depict images that may not have been visible or visible in the same way to those present at the time.

- [16] The agreed statement of facts also provides however that the video recording accurately records a portion of the physical altercation between Mr. Dulay and Mr. Sanghera.
- [17] As I have said, the video recording was played during the sentencing hearing. Since then, I have reviewed it again a number of times.
- [18] The recording provides a view of the balcony facing outward from the hall. A parking lot behind and below the balcony is visible. Overhead lights located some distance away illuminate portions of the parking lot. In general, the balcony appears much darker and quite dark. Every few seconds bands of light emanate from inside the hall, casting more light on part of the balcony very briefly. The right side of the screen is very poorly lit and in near darkness.
- [19] Mr. Dhensaw described the lighting conditions on the balcony during the altercation as quite dark and his perception as different from what the video showed, because it was very dark. He further stated that in the video, the balcony appeared larger than it was.
- [20] The video recording is "time stamped" based on a 24-hour clock.
- [21] At 21:34:26, Mr. Dulay entered the balcony from the hall and lit a cigarette.
- [22] Mr. Sanghera told the psychologists he went to the balcony to speak with Mr. Dulay, not to fight, and two weeks earlier they had engaged in a civil conversation.
- [23] Almost 50 seconds after Mr. Dulay, at 21:35:14, Mr. Sanghera entered the balcony and the two men walked towards each other, coming face to face quickly. According to Mr. Sanghera, Mr. Dulay began swearing at him and threatening him. The physical altercation began with Mr. Dulay making a two-handed pushing motion into Mr. Sanghera's upper chest area which pushed him backwards. Mr. Sanghera responded with a punch. Mr. Dulay then grabbed at him. They continued to punch and grab at, or grapple with each other as they moved about the balcony.
- [24] Mr. Sanghera appears tall and slim, and I accept was very fit. Mr. Dulay appears very large, but also powerful and agile.
- [25] At 21:35:36, Mr. Dhensaw stepped between Mr. Sanghera and Mr. Dulay. Mr. Dulay then turned and appeared to walk back toward the hall, but Mr. Sanghera "closed the distance" and he and Mr. Dulay started fighting again.
- [26] At 21:35:41, their fight moved "off screen". During this time, Mr. Dhensaw observed Mr. Dulay slamming Mr. Sanghera against the glass and "eventually placing him in a headlock".
- [27] Almost one minute later at 21:36:37, the two men can be seen again on the balcony with both of them falling to the ground. Mr. Sanghera began to straddle Mr. Dulay's upper body with him on his back.

- [28] Nine seconds later at 21:36:46, Mr. Dhensaw took Mr. Sanghera by the arm as he continued to straddle Mr. Dulay.
- [29] The parties agree that Mr. Sanghera's unlawful conduct started at this point.
- [30] Mr. Sanghera threw multiple punches at Mr. Dulay's head and face.
- [31] Twenty-seven seconds later, at 21:37:13, Mr. Dhensaw began pulling Mr. Sanghera off of Mr. Dulay.
- [32] Eighteen seconds later, at 21:37:31, Mr. Sanghera kicked Mr. Dulay in the mid-section as he lay on the ground moving.
- [33] At 21:37:38, Mr. Sanghera kicked in the direction of Mr. Dulay's upper back/neck/head area, making contact with one or more of those areas. Although the Crown suggests Mr. Dulay was motionless by then, the video recording leaves me uncertain about whether he was still moving or not. Satisfied Mr. Sanghera was able to see even less than I could in watching it, I am not able to find he did or ought to have observed that Mr. Dulay had stopped moving by that point.
- [34] After moving off screen, Mr. Sanghera returned, put on a jacket, moved off screen again, and at about 21:38:07 kicked at a small object lying near Mr. Dulay's side that I accept was his cellphone, sending it across the balcony.
- [35] Before leaving, Mr. Sanghera did not attempt to assist Mr. Dulay or call for help.
- [36] Despite the hundreds of people in attendance at the reception, it was not until 25 minutes later that Mr. Dulay was found on the balcony unresponsive. Attempts to revive him were unsuccessful and he was pronounced dead on the balcony.
- [37] The opinion of a forensic pathologist establishes the direct cause of Mr. Dulay's death was cardiac arrest. Antecedent causes include "the combined effects of cardiomegaly or an enlarged heart, likely related to obesity and cocaine usage, multiple blunt force injuries, and exertion/stress." Mr. Dulay's injuries are otherwise unspecified.
- [38] The Crown has not suggested I should find that Mr. Sanghera was impaired at the time of the offence. Dr. Browning notes he reported consuming several beers and two drinks over three hours, but not feeling intoxicated. Dr. Browning also writes that Mr. Sanghera indicated he tried to end the fight several times, but Mr. Dulay kept grabbing for his throat and trying to choke him. Although the video recording does not depict Mr. Sanghera attempting to stop the fight, the fight lasted for about 90 seconds and almost one minute of it occurred off screen. Further, it was during this time that Mr. Dulay slammed Mr. Sanghera into the glass and placed him in a headlock.
- [39] I turn now to address the expert evidence and some of the issues relating to it, including the role fear may have played in Mr. Sanghera's response.

- [40] Mr. Sanghera suffers from epilepsy. Both Dr. Browning and Dr. Ley opine that seizures are often triggered by stress and fatigue and that this was true for Mr. Sanghera, although his seizures were rare, which I accept. Dr. Browning writes that Mr. Sanghera reported experiencing prodromal or pre-seizure symptoms, including tunnel vision, light-headedness, and bright flashes during the fight with Mr. Dulay. Mr. Sanghera was afraid of having a seizure and losing consciousness, leaving him vulnerable to Mr. Dulay.
- [41] Dr. Ley also writes Mr. Sanghera was also very fearful during the fight because he understood Mr. Dulay had a history of violence and cocaine use. Mr. Sanghera was concerned that if Mr. Dulay had been using cocaine, he would be more ferocious. Mr. Sanghera told Dr. Ley that Mr. Dulay repeatedly threatened to kill him during the fight. Mr. Sanghera perceived him to have the upper hand and dominating at various points. Dr. Ley underscored, "Mr. Sanghera stated emphatically to me that he believed Mr. Dulay would kill him."
- [42] Without challenging his reasons for being afraid, the Crown suggests Mr. Sanghera's "slightly different" explanations, that is fearing a seizure, and fear based on Mr. Dulay's history and threats at the time, along with his re-engagement in the fight and the violence of his unlawful acts, in particular the kicks inflicted as Mr. Dulay lay prone, align with anger not fear.
- [43] As I have indicated, the video recording depicts events in poor lighting and therefore specific features of the fight and Mr. Sanghera's assault of Mr. Dulay cannot be made out. It is not possible, for example, to see their facial expressions.
- [44] Leaving that aside, in my view, it is not uncommon for acts of violence to be motivated or accompanied by fear. Further, I am not persuaded that Mr. Sanghera provided different explanations for being afraid. Nor are they inconsistent. Dr. Ley reviewed Dr. Browning's report in preparing his own. Dr. Ley notes that his description of Mr. Sanghera's account of the offence is not detailed and focused instead on Mr. Sanghera's psychological state at the time of the altercation.
- [45] Absent a dispute about his epilepsy, his symptoms, his understanding of Mr. Dulay's history or the threats made at the time, all objective bases for being fearful, I accept that Mr. Sanghera was afraid, if not very afraid, during the physical altercation with Mr. Dulay for the reasons he identified.
- [46] Both Dr. Browning and Dr. Ley express opinions based on Mr. Sanghera's fear. Dr. Browning opines that his fear likely contributed to his adrenaline reaction during the fight, which in turn likely increased the intensity of his responses.
- [47] Dr. Ley is of the view that given Mr. Sanghera's fear and perception the altercation was life threatening, he very likely experienced "a flight or fight reaction" ("FFR"), during the altercation. Dr. Ley defines FFR as an acute stress response involving hyperarousal and heightened physiological reactivity to a perceived harmful event, attack, or threat to one's

survival. Dr. Ley goes on to identify the physiological, perceptual, and cognitive changes that occur in the context of an FFR, culminating essentially in a hyperaroused individual who is more likely to overestimate risk, threat, and danger.

- [48] Instead of disputing the admissibility of Dr. Ley's opinion on this issue, the Crown argues it should be given no weight based on the Court of Appeal's review of his expert evidence in *R. v. Wu*, 2020 BCCA 128. In that case, a jury convicted Mr. Wu of second degree murder for the stabbing death of his wife. Dr. Ley opined that an altercation Mr. Wu had with his wife triggered an FFR. During cross-examination however, Dr. Ley testified the "fight, flight, or freeze concept" is not recognized in psychiatric literature, and acknowledged its force fades as an altercation carries on.
- [49] Mr. Sanghera's counsel suggests that Dr. Ley's opinion provides a fulsome explanation for a human experience that is recognized in the jurisprudence, namely that adrenaline-fuelled fights skew perceptions, along with the notion that when the victim is the aggressor and there are elements of self-defence and provocation, the responsibility of the offender is diminished (see for example: *R v. Alphonse*, 2018 BCSC 2045). He also argues Dr. Browning's opinion which is much the same can be accepted because Mr. Sanghera's acts of violence were entirely out of character.
- [50] Had the point been argued, I may have found that Dr. Ley's opinion about FFR inadmissible for failing to meet the criteria of necessity. Dr. Ley's opinion also includes a technical amplification that his evidence in *Wu* suggests may involve novel science, although I make no findings on this point. Instead, I simply give his opinion and Dr. Browning's no weight. They accord, in my view, with common sense and a reality that is recognized in the cases. In other words, the underlying facts, absent expert evidence, allow me to draw an inference about how Mr. Sanghera was effected by his physical altercation with Mr. Dulay.

Victim Impact

- [51] I turn to the impact of Mr. Sanghera's offence on the family and friends of Mr. Dulay.
- [52] Mr. Dulay grew up in Richmond, the eldest child of three and the only son, surrounded, much like Mr. Sanghera by extended family.
- [53] Mr. Dulay's life ended violently and abruptly in the prime of his life, when he was 41 years old. He was a beloved and adored son, brother, cousin, nephew, father, and husband.
- [54] As I have said, 12 victim impact statements are in evidence. Statements from Mr. Dulay's eldest daughter and his wife describe the impact of the offence and the loss of Mr. Dulay, as well as their support for Mr. Sanghera. I have read each of the statements more than once. All of them, particularly those from Mr. Dulay's close family members, are compelling and very poignant.

- [55] Mr. Dulay's family remember him as a very kind, caring, mischievous, fun-loving person. Although he was big and rough-looking on the outside, his sister Aman states, inside he was one of the gentlest of souls and someone who would go out of his way to help others. Mr. Dulay had struggled with drug addiction and worked hard to overcome it. Aman and their sister Sandy describe how extremely proud the family was of Mr. Dulay's recovery and his desire to open a rehabilitation facility that would help other people at the lowest point in their lives.
- [56] Mr. Dulay's mother, Aman, Sandy, and some others read their statements to the court. The grief, anguish, and rage of his mother and sisters overwhelms them. I recognize and sympathize with the enormity of their suffering. They are devastated by not only the pain of their own loss, but endless sorrow for Mr. Dulay's children, and for Aman and Sandy, from watching and feeling their mother's pain.
- [57] It is important to recognize not only their suffering on behalf of Mr. Dulay's children but also the direct impact on them. All three have been robbed of ever again experiencing being loved and cherished by their father, as only a parent can, among the most foundational of life experiences. But Mr. Dulay's youngest child, who was only three when he died, has also likely been robbed of remembering ever having that experience.
- [58] With all of this in mind, I acknowledge what I regard as the statement of Mr. Dulay's eldest daughter, now 14. As I have said, she writes, remarkably in my view, both of her support for Mr. Sanghera, someone she knows as a caring, thoughtful person that would never wish to harm anyone, and her devastation over the loss of her father:

My father is no longer with us, and this devastates me [she writes] no one could possibly take the place of or replace him

- [59] The victim impact statements include statements from Mr. Dhaliwal and Ms. Bains, the couple whose wedding reception ended with the violent death of Mr. Dulay. They suffer both the loss of him and the destruction of what was meant to be the most joyous of occasions.
- [60] Sadly, nothing I can say and no sentence I impose will relieve the terrible pain that has resulted from the offence and the loss of Mr. Dulay, but I wish his family members and friends to know I take into account the devastating impact for them in sentencing Mr. Sanghera.

Circumstances of the Offender

- [61] Mr. Sanghera is now 31 years old. He also grew up in Richmond in a home that included his immediate and some extended family. He is the eldest child and cousin and also a part of a much larger extended family. The many, many letters of support show Mr. Sanghera has always shared close, loving relationships with a multitude of family members of all generations. They consistently describe him as happy, outgoing, and very active, but more importantly, devoted to the well-being of his family and others.

- [62] For example, one of his sisters describes Mr. Sanghera as extremely protective and very caring while they were growing up, ensuring they did their homework and stayed on the right track. He also took on the responsibility of guiding and supporting his younger cousins, enrolling them in sports, and going as far as to attend parent-teacher conferences for one of them to ensure he completed his schoolwork, his parents having limited English. As a teen, Mr. Sanghera spent summers in California to caring for other cousins while their parents worked six or seven days a week. One of those cousins describes Mr. Sanghera as his guiding light, the only family member who pushed him to follow his own dreams, and his "emotional rock" after he dropped out of law school and his immediate family cut off all communication.
- [63] Mr. Sanghera reported no physical or substance abuse in his family.
- [64] At a young age, he became very involved in sports, which his mother observes kept him busy and taught him about real friendship and teamwork. An elite soccer player, after graduating from high school, he attended a college in California for two years where he played on the soccer team and studied to become an X-ray technician.
- [65] Mr. Sanghera left the college when he was 21 before completing his studies, because his father was seriously injured in a workplace accident that left him paralyzed and confined to a wheelchair. The family relied on Mr. Sanghera to assist his father with many aspects of his daily care. His father writes that Mr. Sanghera basically acted like his hands and legs, giving him a piece of himself back, sacrificing time with his girlfriend, now his wife, and friends.
- [66] In 2014, after attending Vancouver Community College where Mr. Sanghera took some paramedic training, he began working as a longshoreman.
- [67] He and his wife Camille became friends in high school. They married about one year before Mr. Dulay's death. Their marriage has remained especially close and loving. Many of his wife's family members describe Mr. Sanghera as a respectful and highly-committed person.
- [68] Before the offence, Mr. Sanghera was mentally and physically healthy, apart from epilepsy. Diagnosed at 15, he experienced one or two grand mal seizures each year triggered by over-exertion or poor sleep. Witnessing a fight could also be a trigger. His seizures escalated at college. At that point, he was prescribed medication and made other changes to prevent them, although he continued to experience pre-seizure auras.
- [69] Mr. Sanghera has no criminal record and no history of any violence or involvement in antisocial activities.
- [70] He was arrested on June 28, 2017, and released on agreed upon terms the following day.

[71] When he spoke during the sentencing hearing, Mr. Sanghera apologized to the Dulay family, both individually and collectively. Based on his apology, the letters of support, and the reports of Drs. Browning and Ley, it is clear to me he felt immediate and profound remorse when he learned that Mr. Dulay had died. In fact, his feelings of remorse overwhelmed him. His wife writes:

Aneil lost himself. The guilt and remorse he carries, even to this very day, debilitated him to the point where he was letting his body shut down. He was suffering terrifying grand mal seizures and he had lost around 30 pounds in just over a month. Whenever I would present him with food, he would throw up immediately and start sobbing hysterically over the shock and guilt at what had occurred. He refused to get out of bed and didn't feel as though he was worthy of life.

Very slowly, as time passed, and with the help of our family, friends, and Aneil's therapist, he was able to force himself to become a functioning member of society, again. Deep down, I know that his attempts at living were more-so for my sake than his. To this very day, Aneil still holds guilt and strong remorse for what happened in April of 2017. Frequently there are nights where I still have to hold him tight while he cries himself to sleep. When he finally does fall asleep, he is woken distraught by dreams where he mentions that he is apologizing to Pardeep Dulay.

[72] Also overwhelmed by his condition, his wife arranged for the two of them to move into her parents' home, needing their support to convince Mr. Sanghera to shower, eat, get out of bed, and that he was not a monster.

[73] Dr. Browning began treating Mr. Sanghera about nine months after Mr. Dulay's death. Their first six sessions were in person. Dr. Browning's impression of Mr. Sanghera during that time is consistent with his wife's description. Dr. Browning writes that Mr. Sanghera appeared to have a low mood, and described depression, worry, and guilty, regret, as well as fear of reprisals. He had trouble sleeping, reported the same dreams of Mr. Dulay his wife referred to, and had low motivation and stayed in bed a lot.

[74] Dr. Browning opines that Mr. Sanghera likely suffered from an adjustment disorder with mixed anxiety and depression, and depressed mood at that point, which I accept and find resulted from the commission of the offence.

[75] As I have indicated, on May 4, 2018, Mr. Sanghera was the intended target of a shooting at his wife's parent's home where he and his wife were living. Mr. Sanghera had arrived there with a friend when a masked gunman asked for him by name. Mr. Sanghera was not shot, but his friend was shot twice. The gunman entered the house and shot Mr. Sanghera's father-in-law in the shoulder. He also pointed the gun at Mr. Sanghera's wife.

[76] In a letter to Mr. Sanghera's counsel dated July 25, 2018, then Superintendent Pike not only confirmed Mr. Sanghera was the intended target, but also stated there was evidence to suggest the shooting was sparked by the manslaughter charge.

- [77] Significantly, Superintendent Pike outlined that two separate risk assessments "clearly established" that it would be unsafe for Mr. Sanghera or his wife to return to the home in Delta or to remain in B.C.; and described the threat of violence and/or death as extremely high should they remain in B.C.
- [78] For their protection, Mr. Sanghera and his wife were taken into the custody of the Delta Police and moved out of the province. For obvious reasons, their whereabouts and the security arrangements since then have not been specified. I have been told and accept that they have been required to move often and take other safety measures, and that their protection has been managed by a variety of police or state agencies.
- [79] The shooting was investigated by Delta Police but it remains unsolved.
- [80] Before the shooting, Mr. Sanghera had returned to working as a longshoreman. His wife was operating her own business. Since then, they have been unable to work at all. Although the Crown queried the extent of their isolation, I accept, apart from remote contact with family and friends, it has been near complete.
- [81] There is no evidence suggesting the serious risk to Mr. Sanghera and his wife has changed. I will not discuss nor do I know where Mr. Sanghera has resided since his guilty plea. But, I accept he and his wife have remained in hiding and their lives enormously constrained by both the serious risk and Mr. Sanghera's mental health, which I will discuss in a moment. I also accept their isolation has had a negative impact on the rest of the family. Most significantly, Mr. Sanghera's father has been without him as a caregiver.
- [82] Dr. Browning writes that following the shooting, Mr. Sanghera developed symptoms that met the DSM-5 diagnosis of PTSD. Specifically, he had regular nightmares about the shooting, and he experienced flashbacks during which he relived it if startled by a loud noise. He avoided going out, except to the grocery store or to the gym, although he lived in secret locations. He generally became afraid of the dark and avoided going out at night ever. He was hypervigilant and never felt safe. He had difficulty sleeping. His concentration diminished. He lost interest in his usual activities, and he was unable to fly on a plane without his dog.
- [83] Similarly, Dr. Ley describes Mr. Sanghera as rarely leaving his home, extremely guarded, vigilant, and suspicious. He interacts with very few people apart from his wife and, at a distance, a few family members.
- [84] Mr. Sanghera also conveyed to the psychologists significant concerns about the mental health of his wife given the shooting, his own condition, and their confinement. I make no findings about his wife, except to accept that Mr. Sanghera's concerns about her have an impact on his condition.

- [85] Dr. Browning writes that when they last met on July 21, 2020, Mr. Sanghera continued to meet the full criteria for PTSD. He also scored in the severe range on the Beck Depression Inventory, a standardized self-report measure of depression symptoms. Dr. Browning concludes that Mr. Sanghera further meets the criteria for major depression disorder, all of which I accept.
- [86] Dr. Ley concurs in Dr. Browning's diagnosis of PTSD, although he states incorrectly that Dr. Browning found it was triggered by both his commission of the offence and the shooting.
- [87] Although not what Dr. Browning said, it may well be true. I note there is some indication Mr. Sanghera experienced some of the same symptoms before the shooting. The letter from Mr. Sanghera's wife describes, for example, his extreme discomfort with loud voices or angry tones began after the offence.
- [88] Dr. Ley also opines on the nature of PTSD, describing it as a very aversive psychological disorder comprised of symptoms of anxiety, depression, dissociation, and hyperarousal. He specifies that:

Mr. Sanghera displays the four "clusters" of symptoms which occurs when a person is exposed to actual or threatened death or witnesses/experiences serious injury. These Clusters of PTSD features [he writes] include symptoms associated with re-experiencing the trauma (via nightmares, "flashbacks" or distressing memories), "psychological numbing". or avoidance of stimuli associated with the traumatic event, negative alterations in cognition and mood, and increased psychophysiological arousal and reactivity (e.g., sleep disturbance, poor attention, anger, hypervigilance, et cetera).

- [89] Certainly, the serious depressive symptoms Dr. Browning, Dr. Ley, and family members describe in their support letters accord with my observations of Mr. Sanghera in the courtroom. At both the guilty plea and the sentencing hearing, he seemed very much the "broken man" his counsel portrayed. It is difficult to capture in words the devastation he conveyed, not only when he spoke, but as he sat through the proceedings. When he spoke, his feelings of profound shame, guilt, regret, and sorrow were palpable. Apologizing, as I have said, individually and collectively to the members of the Dulay family, Mr. Sanghera also displayed a deep understanding and empathy for their suffering. Among the many consequences, he acknowledged for his actions were their feelings of hatred. "I understand", he said, "Why you hate me. I hate me too." He also said more than once he wished he was dead and not Mr. Dulay.
- [90] I have no doubt this is true.
- [91] Mr. Sanghera continued treatment with Dr. Browning after the shooting, although remotely and more intermittently, attending a total of 21 sessions. Dr. Browning writes the treatment has been complicated by Mr. Sanghera's continued experience of realistic fears of another shooting triggered also by threats, questions about his whereabouts reported by friends, and vulnerabilities that accompany the legal process. Dr. Browning explains and I accept:

These realistic fears have been a barrier to significant recovery from his PTSD symptoms. Significant recovery can only take place once his court process and sentence are completed and he and his wife are able to live anonymously outside the Lower Mainland. Therefore, some of our approach in the later stages of treatment have been on future projection to that time and how he will cope with the immediate future in the meantime.

- [92] Dr. Browning writes that Mr. Sanghera has concerns about his safety from reprisals while in jail and he will be stressed by the potential for violence in jail generally. He will also have trouble dealing with unique isolation due to COVID-19. These factors, Dr. Browning opines, create the risk of aggravating his PTSD symptoms and the risk of epileptic seizures.
- [93] Dr. Browning also opines that incarcerating Mr. Sanghera in a facility geographically out of reach of his wife, who has been his main support for the last three years, would have a strongly deleterious effect on his mental and physical health.
- [94] Dr. Browning offers to continue treating Mr. Sanghera, as long as he remains in B.C. and can be accessed remotely. Dr. Browning specifies that Mr. Sanghera will require ongoing psychological support and treatment to deal with his anxiety about going to jail and his wife's welfare, as well as future treatment to actually address his PTSD symptoms. He suggests it is also important that Mr. Sanghera be offered psychological treatment as part of the decisions related to his institutional placement, so his psychological and medical vulnerabilities can be taken into account, and as part of his rehabilitation program.
- [95] The defence also relies upon opinion evidence from Dr. Pickett and Dr. Grassian regarding the risk posed by COVID-19 and solitary confinement respectively.
- [96] Dr. Pickett's report indicates that Mr. Sanghera was diagnosed with asthma some time ago and in January 2020, prescribed a puffer to be used as needed, which by August 2020 was about twice daily.
- [97] Dr. Pickett observes that evidence continues to accumulate that COVID-19 is a highly-transmissible virus, and asymptomatic as well as pre-symptomatic transmission has been estimated to occur in up to 50% of cases. Currently there is no specific treatment other than symptom management.
- [98] Regarding the general risk of infection associated with incarceration, she notes particular risk to any individual, or at any specific correctional centre, is highly dependent on a multitude of factors. Current evidence suggests, however, there is increased transmission risk in correctional centres. They have a limited ability to address infection control through physical distancing, fettered access to sanitization, adequate testing, and isolation, as well as potentially limited access to healthcare. Dr. Pickett also writes that current data "would seem to suggest" a person with asthma is at greater risk of severe complications or death from a COVID-19 infection. However, the increased risk is relatively small when compared to other known risk factors, including comorbidities, ethnicity, age, and social circumstances, including incarceration.

- [99] A COVID-19 update for federal corrections as of June 19, 2020 is included with the defence materials. At that time, there was only one known active case among federally-sentenced inmates. Since the start of the pandemic, there have been 360 confirmed cases, representing about 2.7% of the total inmate population. Incident data also indicates the total number of confirmed cases appear to have stabilized.
- [100] Dr. Grassian is an American psychiatrist with extensive experience in evaluating the psychiatric effects of solitary confinement on inmates. His opinion is based on the assumption that Mr. Sanghera would be held in solitary confinement or protective custody for upwards of 22 to 23 hours per day with minimal opportunity for any kind of stimulation, due to COVID-19 lockdown and Mr. Sanghera's PTSD and epilepsy.
- [101] Writing generally, and consistent with the views expressed by Dr. Browning and Dr. Ley, Dr. Grassian opines, and I accept, that those with serious mental illness such as PTSD have less resilience to psychological stress, become symptomatic more readily, become more symptomatic and have fewer means of coping. As a result, their functioning and behaviour becomes more impaired by stress. He also explains that serious mental illness tends to be progressive, meaning with each episode it tends to get worse and over time the individual becomes more symptomatic and their functioning more impaired.
- [102] Dr. Grassian goes on to identify obstacles to accessing and participating in effective treatment created by solitary confinement that make it very unlikely for those suffering the serious mental illness to receive treatment that will maintain their psychiatric stability while incarcerated.
- [103] The Crown suggests Dr. Grassian's opinions are entitled to no weight, largely because they are based on a hypothetical about solitary confinement.
- [104] There is no dispute that Mr. Sanghera will be placed in protective custody. Absent any specific information, I am not able to find that he will face conditions as harsh and isolating as the solitary confinement assumed by Dr. Grassian. I am not able to make findings that are any more specific than in protective custody Mr. Sanghera will be subjected to a higher level of confinement and isolation. The same is true with respect to the risk of COVID-19, the circumstances surrounding the virus and the public health response to it being ever-changing and evolving.
- [105] Based on the opinion evidence, however, I make the following additional findings.
- [106] After learning of Mr. Dulay's death, Mr. Sanghera was essentially overcome emotionally and psychologically. His mental health symptoms disabled him for a period of time. With the support of his wife, family members, and the start of Dr. Browning's treatment, his day-to-day functioning improved, but he had not recovered by the time the shooting occurred. After the shooting his mental health worsened significantly. He developed PTSD, a serious mental illness that tends to be progressive, as well as major depression. His ongoing symptoms are multiple, serious if not severe, and as described by Drs. Browning

and Ley. Although he has participated in ongoing psychological treatment and is fully committed to improving himself and his mental health, the focus has necessarily been on managing his symptoms and realistic fears. Similarly, while he is incarcerated, even with psychological treatment, his PTSD can only be managed at best, for the reasons explained by Dr. Browning. Significant recovery can only occur with the benefit of treatment received after he is released from jail and living anonymously with his wife. In the meantime, there is a risk his PTSD and epilepsy will be aggravated.

Legal Framework

[107] The offence of manslaughter carries a maximum penalty of life imprisonment. There is no minimum sentence. Therefore, the range of sentence is from a suspended sentence to life in prison.

[108] The principles that govern the determination of a sentence within this vast range are expressed in s. 718 of the Criminal Code, R.S.C. 1985, c. C-46, and the surrounding sections, as discussed and developed in the case law.

[109] Section 718 identifies the fundamental purpose of sentencing as follows:

718 The fundamental purpose of sentencing is to protect society and 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 and the harm done to victims or to the community that is caused by 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 or to the community.

[110] The fundamental principle of sentencing, found in s. 718.1, is proportionality. It requires sentences to be proportionate to the gravity or seriousness of the offence and the degree of responsibility of the offender.

[111] In *R. v. Ipeelee*, 2012 SCC 13, Justice LeBel explained proportionality as follows:

[37] Proportionality is the sine qua non of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system .

Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender.

- [112] Codified as a secondary sentencing principle, the parity principle requires similar offenders who commit similar offences in similar circumstances to receive similar sentences: s. 718.2.
- [113] The non-exhaustive list of additional secondary principles set out in s. 718.2 include the requirement to increase or reduce a sentence to account for relevant aggravating and mitigating circumstances related to the offence or the offender. Other secondary principles emphasize the need for restraint in the use of imprisonment. They require that an offender not be deprived of liberty if less-restrictive sanctions are appropriate in the circumstances, and that all available sanctions other than imprisonment that are reasonable in the circumstances, and consistent with the harm done, should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.
- [114] The Supreme Court of Canada has repeatedly stated that determining a fit sentence is a highly individualized process that requires a delicate balancing of the multiple principles and objectives.
- [115] In *R. v. Pham*, 2013 SCC 15, Justice Wagner, as he then was, described the parity principle as a corollary to an individualized sentence. Noting the emphasis on the value of individualization, he remarked, "if the personal circumstances of the offender are different, different sentences will be justified."
- [116] Justice Wagner returned to the principles of proportionality and parity, in *R. v. Lacasse*, 2015 SCC 64, where he explained proportionality as determined both on an individual basis, that is in relation to the offender and the offence, but also by comparison with sentences imposed for similar offences committed in similar circumstances. In other words, he concluded the concepts of individualization and parity of sentences must be reconciled for a sentence to be proportionate.
- [117] Because manslaughter encompasses conduct that has caused the death of another person in circumstances that range from a near accident to a near murder, the cases recognize an offender's degree of moral blameworthiness or their degree of responsibility, plays an integral role in determining a fit sentence.
- [118] Along with the emphasis on individualization and the proportionality principle, the Supreme Court of Canada has reiterated time and again that sentencing ranges are guidelines only. In other words, they serve as guides for the application of the relevant principles and objectives. The court has also stated they are just one tool among others intended to aid trial judges in their work: *Lacasse* at para. 69, cited in *R v. Suter*, [2018] 2 S.C.R. 496 at para. 25. In *Lacasse* the reasons of Wagner J. include:

- [57] Sentencing ranges are nothing more than summaries of the minimum and maximum sentences imposed in the past, [T]hey should not be considered "averages", let alone straightjackets, but should instead be seen as historical portraits for the use of sentencing judges, who must still exercise their discretion in each case.
- [119] However, there remains the notion that exceptional or special circumstances are required to justify a sentence above or below the range.
- [120] Many years ago in *R. v. Gillies*, [1998] B.C.J. No. 1153, the Court of Appeal identified the "usual range for most manslaughter cases" as four to six years. Since then, the general range for manslaughter, absent unusual or special circumstances, has been described as between four and 15 years' imprisonment: *R. v. Engebretsen*, 2016 BCCA 182; *R. v. Plowman*, 2015 BCCA 423 at paras. 52 and 53. Although, more recently in *R. v. Auckland*, 2018 BCCA 171, the Court of Appeal concurred with the Crown's suggestion that a range of two to five years was not uncommon for manslaughter offences involving intoxicated persons with little or no criminal record who killed their spouses with knives.
- [121] In this case, collateral consequences are at issue which, in principle, affect the application of the principles of individualization and parity. In *Suter*, the Supreme Court of Canada recognized that collateral consequences can include any consequences that impact an offender arising from the commission of an offence, the conviction for the offence, or the sentence imposed. Writing for the majority, at para. 48, Justice Moldaver explained:

The question is not whether collateral consequences diminish the offender's moral blameworthiness or render the offence less serious, but whether the effect of those consequences means that a particular sentence would have a more significant impact on the offender because of his circumstances.

- [122] At issue in *Suter* was a brutal vigilante attack that followed the commission of the offence. The offences involved the offender causing an accident that resulted in the death of a young child and then refusing to provide a breath sample. The offender was not impaired however and his refusal to provide a breath sample was based on poor advice from a lawyer.
- [123] Justice Moldaver concluded that violent actions against an offender for committing the offence, necessarily form part of their personal circumstances, and therefore should be taken into account when determining an appropriate sentence. He also stated that vigilantism should only be considered to a limited extent because giving it too much weight allows it to gain undue legitimacy in the judicial process, but as Mr. Sanghera's counsel notes, ultimately the 26 month sentence imposed by the Court of Appeal was reduced to 15 to 18 months. Further, Moldaver J. observed that but for the collateral consequences and the attenuating or mitigating circumstances which included a mistake of law and non-impairment, a three- to five-year jail sentence "would not have been out of line".

Position of the Parties

- [124] As I have indicated, the Crown takes the position the appropriate sentence is four years' imprisonment, giving full credit for all of the mitigating circumstances and collateral consequences, as well as the prolonged period of bail, submitting that deterring and denouncing violence and reactions of excessive violence are the critical objectives in this case. The Crown submits the unique circumstances, mitigating factors, and the need for rehabilitation permit the imposition of a sentence at the low end of the range of four to six years but there are no exceptional circumstances that would justify a sentence below the range.
- [125] Arguing Mr. Sanghera's offence did not include "any significant elements of self-defence" and far from a near accident, the Crown describes Mr. Sanghera's assaultive conduct as continuing after Mr. Dulay was on his back without the ability to defend himself, and including a last kick administered when Mr. Dulay was vulnerable in the extreme and motionless, a particular fact I have not found.
- [126] In support of the proposed four-year sentence, the Crown suggests that lower jail sentences are predominantly imposed in cases involving "one-punch" manslaughters, where the level of moral blameworthiness is less and Gladue factors are often present, citing several. In *R. v. Huth*, 2014 BCSC 570, for example, a 24-year-old offender with no criminal record was sentenced to two years less a day for manslaughter. During an argument, but unprovoked, he struck the victim with a single blow to the head rendering him unconscious. The victim fell backwards and struck his head on the sidewalk. Intoxication was found to play a significant role. Like Mr. Sanghera, the offender was remorseful, gainfully employed, and had many admirable personal qualities. The Crown in that case sought a sentence of two to three years and the defence a suspended sentence. In discussing the offender's moral blameworthiness, Justice Macaulay characterized his assault as an intentional act involving a powerful blow. The aggravating factors included him striking another person first to get at the victim.
- [127] The Crown also relies on a number of other cases which imposed jail sentences ranging from three to 10 years, as demonstrating a similar level of moral blameworthiness. Most, in my view, involved much more serious circumstances, either due to the nature of the attack or the use of a weapon, and more serious and severe injuries, as well as aggravating factors such as significant criminal records. In *R. v. Andrew*, 2008 BCCA 141, for example, the offender responded to being punched by the victim by stabbing him with a fishing knife twice in the chest. One of the stabs was fatal. Charged with second degree murder, the jury convicted the offender of manslaughter. There were a number of mitigating factors. Before the sentencing judge, the Crown sought a sentence of three to six years, and a conditional sentence of two years less a day was imposed. In overturning the sentence, the Court of Appeal questioned whether the mitigating factors constituted unusual circumstances and a sentence of less than four years appropriate. In view of the Crown's earlier position, however, a three-year sentence was imposed.

- [128] Here the Crown recognizes as mitigating Mr. Sanghera's guilty plea and the fact he is a first-time offender. Although Mr. Sanghera's remorse is not denied, the Crown suggests there is some minimization in the accounts he gave to Dr. Browning and Dr. Ley. For reasons I have already given, I firmly reject that suggestion. I have found Mr. Sanghera's remorse to be immediate, profound, and ongoing. To put it plainly, in my view, his remorse could not be greater.
- [129] The Crown urges me to find a multitude of aggravating factors, some of which are duplicative. I summarize them as follows:
- a) Mr. Sanghera was younger and much fitter than Mr. Dulay and the medical vulnerabilities that contributed to Mr. Dulay's death would have been obvious to him;
 - b) Mr. Sanghera followed Mr. Dulay out onto the balcony seeking a verbal confrontation at a minimum;
 - c) His assault was intentional, with significant bodily harm being foreseeable, given he delivered multiple, significant blows to Mr. Dulay's head and face from a dominant position using considerable force and strength;
 - d) While not prolonged, the assault was not brief or reactionary, and there was a high degree of violence;
 - e) Mr. Dhensaw had to physically pull Mr. Sanghera off of Mr. Dulay and Mr. Sanghera had more than one opportunity to end his assaultive behaviour;
 - f) Despite Mr. Dhensaw's intervention, Mr. Sanghera continued his assaultive behaviour with a kick to Mr. Dulay's mid-section and many seconds later another forceful kick to his upper back/neck/head; and
 - g) Mr. Sanghera kicked Mr. Dulay's phone from a position close to him as he lay prone across the balcony in an attempt to prevent him from getting help before leaving him alone there in obvious medical distress.
- [130] Regarding the impact of the shooting as a collateral consequence, the Crown argues the evidence does not support a finding that the attempt on Mr. Sanghera's life was an extrajudicial sanction for his offence. I strongly disagree. Firstly, Suter did not impose a threshold and referred only to the vigilante attack there as "linked" to the role of the accused and his wife in the circumstances giving rise to the criminal charges. Here the only plausible explanation for the shooting is Mr. Sanghera's involvement in the death of Mr. Dulay. There is no suggestion, let alone evidence, of any other explanation.

- [131] In any event, accepting that Mr. Sanghera genuinely believes the shooting was related, the Crown acknowledges it is a factor that can be considered as part of his personal circumstances. The Crown also suggests the shooting and its consequences have likely acted to deter Mr. Sanghera and, as a result, the sentencing objective of specific deterrence has already been met "to a certain degree". In my view, based on the evidence it appears this objective was never engaged.
- [132] Noting the shooting may have a negative impact on the conditions of Mr. Sanghera's incarceration, meaning protective custody, the Crown argues whether he will do "hard time" is not a factor that can be considered in determining his sentence, relying on *R v. Chand*, 1994 CanLII 1445 (B.C.C.A.). The Crown also says the future risk or the emotional consequences of the shooting cannot be used to justify a sentence that is inconsistent with the fundamental purpose and principles of sentencing. Similarly, when considering personal factors and consequences already faced, they will not justify a sentence that is otherwise unfit.
- [133] Mr. Sanghera's counsel takes the position, given the particular circumstances of the offence and Mr. Sanghera's unique circumstances, that a provincial jail sentence is appropriate. Accepting that denunciation and deterrence are important objectives, he submits the principle of restraint operates to shift the focus toward rehabilitation, because Mr. Sanghera is a first-time offender. Arguing also his moral blameworthiness is reduced because his actions took place in the context of a consensual fight and the direct cause of death was cardiac arrest, not the injuries Mr. Sanghera inflicted, his counsel takes issue with many of the aggravating factors identified by the Crown and the characterization of various manslaughter cases as comparable.
- [134] In addition, he relies on a number of other manslaughter cases as supporting a sentence within the provincial range, emphasizing, in particular, *R. v. Morris*, 2018 BCSC 803, which involved a 28-year-old offender who pleaded guilty to manslaughter. During an altercation between two groups of friends, the offender repeatedly punched the victim in the head and neck, rendering him unconscious. The first blow to the victim's head caused him to fall to the ground. The offender struck him once or twice more as he was lying on the ground. After a difficult upbringing, the offender had led a prosocial life and had the support of many community members. A 12-month jail sentence was imposed. The reasons indicate however, the parties had agreed the "normal range" for similar manslaughter offences was six to 36 months, and the Crown sought a sentence of two years less a day and the defence a suspended sentence.
- [135] Mr. Sanghera's counsel also relies on *R. v. Doolan*, 2018 BCPC 28. There the offender pleaded guilty and the circumstances of the manslaughter included a violent assault on the victim after an argument. After pushing or punching the victim to the ground, she repeatedly punched her in the head, and after being pulled away by the bouncer, kicked the victim in the head causing her death. The sentencing judge determined the offender's moral blameworthiness was reduced by the profound effects of her history as an Aboriginal

person and considered a number of mitigating factors, as well as some aggravating factors that were significant; namely, a lack of insight into her alcohol addiction and a callous disregard for the harm she caused to the victim. The Court concluded the four-and-a-half-year sentence proposed by the Crown would be excessive, and while a three-year sentence would be appropriate, a two-year federal sentence followed by a two-year probation order was more fit.

- [136] Addressing the collateral consequences, Mr. Sanghera's counsel notes that a wide range of collateral consequences such as poor age, health, and immigration status are routinely considered in sentencing. Describing the effects of the shooting as complex and multifaceted, he characterizes the collateral consequences for Mr. Sanghera and his family as deep, longstanding, and in some respects irreparable. Further, Mr. Sanghera's epilepsy and PTSD, his expected placement in protective custody, and further isolation due to COVID-19, will combine, he submits, to create a unique degree of hardship for him while in prison.

Analysis

- [137] I begin by recognizing the fundamental principle of sentencing, proportionality, requires that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [138] I must also consider and balance the objectives of sentencing. Denunciation and general deterrence must be given primacy but rehabilitation plays an important role here. Specific deterrence, as I have said, is not a consideration. Further, leaving aside the need to denounce and deter Mr. Sanghera's violent conduct, it is unnecessary to separate him from society. The evidence does not suggest he poses any risk.
- [139] In addition, the principle of restraint is particularly important here because Mr. Sanghera is a first-time offender. Given the acknowledgement he must be sentenced to imprisonment, the restraint principle requires me to impose a term that is as short as possible and tailored to his individual circumstances: see: *R v. Bosco*, 2016 BCCA 55 at para. 35.
- [140] Turning to the application of the proportionality principle, there is no question Mr. Sanghera committed a very violent, serious offence that contributed to Mr. Dulay's death. The unlawful acts included multiple punches to Mr. Dulay's face and head, a kick to his midsection, and a kick in the direction of Mr. Dulay's upper back/neck/head that made contact with one or more of those areas, all as he lay on the ground.
- [141] Mr. Sanghera's degree of responsibility requires separate consideration, although it overlaps with the seriousness of the offence. Recently in *R. v. Badhesa*, 2019 BCCA 70, Justice Fenlon of our Court of Appeal described the assessment of moral blameworthiness, citing the earlier case of *R. v. Stone*, [1999] 2 S.C.R. 290, as well as *Plowman*. She writes:

A sentencing judge assesses moral culpability for manslaughter by considering the offender's mental state in the context of the unlawful act itself and [his] personal characteristics, blending and balancing [them] in combination. Factors that weigh in the balance include intentional risk-taking, the harm caused, the normative character of the offender's conduct, the degree of deliberation involved, the existence of provocation and the element of chance involved in the resulting death

- [142] I note the factors identified in *Stone* also include the choice of weapon used, degree of force, the extent of the victim's injuries, the degree of violence or brutality, the existence of any additional gratuitous violence, the extent to which the act reflected forethought or planning, the complexity of the act, and the time taken to perpetrate the act (at para. 247).
- [143] Applying these factors pulls the level of Mr. Sanghera's moral blameworthiness in different directions.
- [144] After a fight of 90 seconds, his assault on Mr. Dulay lasted about 52 seconds, a relatively brief period of time. There was no planning, deliberation, or weapon involved. I accept Mr. Sanghera did not follow Mr. Dulay onto the balcony intending to fight. Instead, his unlawful violence was provoked, occurring as it did in the context of a fight started by Mr. Dulay. Also, I have found Mr. Sanghera was significantly afraid during the altercation, in part because he was being threatened and experiencing pre-seizure symptoms, and therefore fearful of losing consciousness. At the same time, Mr. Sanghera had the opportunity to walk away when Mr. Dhensaw intervened early on in the fight. Instead, Mr. Sanghera re-engaged Mr. Dulay. On the other hand, it was after this that Mr. Dulay slammed him into the glass and had him in a headlock, shortly before Mr. Sanghera's unlawful assault began.
- [145] During the assault itself, Mr. Sanghera's punches were forceful and intense. Mr. Dhensaw intervened again and physically pulled Mr. Sanghera off of Mr. Dulay. This is when Mr. Sanghera's first kick occurred, followed 13 seconds later by the second one, both of them gratuitous and dangerous. While I do not accept Mr. Sanghera ought to have known that Mr. Dulay was particularly vulnerable from a medical standpoint, the assault occurred while he lay on the ground, a very vulnerable position, and I agree with the Crown that significant injury was reasonably foreseeable. As a result of his assault, Mr. Dulay suffered unspecified but multiple blunt force injuries, although they did not cause his death directly.
- [146] Considered together, these circumstances lead me to conclude that Mr. Sanghera's level of moral blameworthiness was meaningful or significant, but not so high that a substantial period of imprisonment is inevitably required to properly reflect it.
- [147] Turning next to the aggravating factors. In addition to kicking Mr. Dulay as Mr. Dhensaw tried to pull him away and then again, in my view it was aggravating that Mr. Sanghera did not take steps to obtain help for Mr. Dulay, although I have not found Mr. Sanghera ought to have known that his assault was life threatening. Further, the delay in others finding him on the balcony, as I have said, is surprising given its location off the reception hall, the hundreds of people in attendance, and the fact that a good portion of the physical

altercation occurred near the entrance. Given these same circumstances, I am not satisfied that kicking Mr. Dulay's cellphone away from him was an attempt by Mr. Sanghera to prevent him from calling for help.

[148] There are many significant mitigating factors to consider:

- Mr. Sanghera has no criminal record.
- Mr. Sanghera also has no history of violence or antisocial behaviour.
- Mr. Sanghera consistently led an especially prosocial life during which he was devoted to the needs of his immediate and extended family members, including the considerable needs of his disabled father.
- Mr. Sanghera's involvement in the physical altercation with Mr. Dulay and his violent assault were entirely out of character.
- Mr. Sanghera is extremely remorseful and has been since he learned of Mr. Dulay's death.
- Mr. Sanghera entered a guilty plea which spared the witnesses and the family and friends of Mr. Dulay the painful experience of a trial.
- There is no suggestion of a risk Mr. Sanghera will reoffend.
- Until the offence and the shooting, Mr. Sanghera worked full-time.
- On his own initiative, Mr. Sanghera has participated in a significant amount of psychological treatment to ensure he never behaves violently again, and to address the profound emotional and psychological impact of his offence and the shooting on his now very compromised mental health. In other words, Mr. Sanghera has taken significant steps to rehabilitate himself and he has demonstrated significant insight into his responsibility for the offence.
- Mr. Sanghera has enormous support from his immediate and extended family and long-term friends.
- Finally, Mr. Sanghera and his wife have formulated a plan for his release that will involve ongoing psychological treatment and establishing themselves in an undisclosed community.

[149] I have also considered that Mr. Sanghera spent a prolonged period on bail.

[150] Turning to the collateral consequences, Mr. Sanghera's personal circumstances include the development of serious mental health issues which began in response to the commission of the offence and became severe due to the May 2018 shooting, as well as the consequences that have and will continue to flow from serious ongoing risk to he and his wife.

- [151] In addition to facing a serious attempt on his life, Mr. Sanghera experienced his father-in-law and wife being shot and his wife having a gun pointed at her, all related to his role in the death of Mr. Dulay. Since then, he and his wife have been forced to live in various secret locations outside of B.C. protected by state actors, together but otherwise isolated, and unable to work. The Crown has not disputed that Mr. Sanghera and his wife face an ongoing serious risk that will require them to live anonymously for the foreseeable future.
- [152] As I have indicated, the impact on Mr. Sanghera's mental health has been severe and ongoing. After the offence, his mental health was significantly impaired for many months. After the shooting, he developed PTSD and serious depression. Despite participating in ongoing psychological treatment, only symptom management has been possible and will be possible until after his release from prison. While in jail, he faces the risk his PTSD will worsen. I accept the separation from his wife, who he both depends on and fears for, the isolation of protective custody, his ongoing fears for his own safety, and the nature of his mental illness will all play a role.
- [153] Without intending to minimize the brutality of the vigilante violence in Suter, the impact and anticipated duration of the collateral consequences in this case are far greater.
- [154] Although, I am well aware of the concern expressed in Suter about not allowing vigilante violence to gain undue legitimacy by giving it too much weight in sentencing, in my view it must be acknowledged that the isolation, disruption and fear that has accompanied living in hiding in the face of a serious risk of harm or death, have been severely punishing.
- [155] In my view, it is clear that the effects of the collateral consequences, let alone the combined effect of all of the mitigating factors and the collateral consequences, make this case exceptional.
- [156] The principle of restraint operates in tandem with the objective of rehabilitation. Although, Mr. Sanghera does not pose a risk of reoffending and he has made every effort to rehabilitate himself, he will require ongoing treatment once he is released from jail, if he is to recover from his serious mental health issues.
- [157] I have considered all of the cases the parties rely upon as both similar and dissimilar to the circumstances here. More than anything, they serve to demonstrate how difficult it is to find a case that is similar enough to meaningfully apply the parity principle.
- [158] Recognizing that ranges are guidelines, but a sentence of four years' imprisonment represents the low end of the general range for manslaughter, absent unique or special circumstances, had I shared the Crown's view of the circumstances of the offence, the mitigating and aggravating factors, and the nature of the collateral consequences and their impact, I may well have agreed it was appropriate.

- [159] However, based on my own view, my consideration of the proportionality principle, and balancing the primary objectives of denunciation and general deterrence with rehabilitation, giving meaningful effect to the restraint principle, and taking into account the significance and breadth of the mitigating factors, and the profound effect of collateral consequences, all of which contribute to the truly exceptional circumstances in this case, I have concluded that a sentence of four years' imprisonment would be excessive.
- [160] Put another way, the particular circumstances of this offence and offender satisfy me that a sentence below the range is proportionate. For the same reasons, I have concluded that a shorter prison sentence of two years less a day, followed by a probation order of 18 months with a term that significantly constrains Mr. Sanghera's liberty, is just and most appropriate.
- [161] In reaching this conclusion, I have considered a longer but less than four year jail sentence but determined it would not be nearly as just or appropriate. I have already found the expert evidence establishes that until Mr. Sanghera is released from jail and his realistic fears abate, psychological treatment can only assist in managing what have remained serious, if not severe, symptoms of PTSD as well as depression. Along with postponing his engagement in the treatment necessary to facilitate his recovery, the longer Mr. Sanghera remains in jail, the greater the risk of aggravating his mental health condition, which in turn risks compromising his return to being a productive and contributing member of the community. While some measure of greater denunciation and general deterrence may be achieved by keeping Mr. Sanghera in jail for longer, weighed against the risk of harm to him and therefore society, it cannot be justified, particularly given the shorter jail sentence I am imposing allows for the imposition of a probation order with a confinement term.
- [162] Optional conditions in a probation order may be imposed if they are reasonable in the circumstances and for the very purpose I have in mind, to facilitate the offender's successful reintegration into the community, as well as to protect society: *R v. Shoker*, 2006 SCC 44 at para. 13. Although conditions cannot be imposed for purely punitive purposes, conditions do not have to be purely punitive to achieve deterrence and denunciation: *R v. Voong*, 2015 BCCA 285, at para. 43. In *Voong*, the Court of Appeal concluded the phrase "protection of the public" in the Criminal Code gives a broad discretion to sentencing judges to impose conditions: see *Shoker* at para. 3. The public is protected when an offender is rehabilitated and other offenders are deterred by the sentence imposed. Justice Bennett observed that in previous cases, home confinement had been found to be an appropriate condition in very special circumstances for the purpose of maintaining rehabilitation, citing *R. v. D.E.S.M.* (1992), 80 C.C.C. (3d) 371 (B.C.C.A.):

It should not be thought that home confinement, if we may call it that, should readily be substituted for regular imprisonment. Such a disposition is suitable, in our judgment, only where very special circumstances are present such as where the accused demonstrates that he has rehabilitated himself prior to arrest, where he is not a danger to anyone, where others are dependent upon him, and where there are no factors that make it necessary in the public interest that punishment should be by conventional imprisonment.

[Emphasis added in Voong p. 381.]

[163] The evidence establishes that very special conditions exist here. Mr. Sanghera is not a danger to others. Early on, he made and he has continued to make ongoing efforts to rehabilitate himself by engaging in psychological treatment, constrained since May 2018 by the shooting which limited him to receiving treatment from Dr. Browning remotely. Given the risk to him and therefore society from ongoing imprisonment, in my view, the public interest is not served by conventional imprisonment beyond two years less a day. Further a jail of sentence of more than two years removes the availability of a probation order.

[164] Accordingly, the probation order of 18 months that I will impose, in addition to the mandatory statutory conditions, will include: a house-arrest condition, except to attend employment, medical, and psychological treatment, and other specific activities approved of by the probation officer; a requirement to attend psychological treatment provided by Dr. Browning or as directed by the probation officer with Mr. Sanghera's consent; a requirement to report to the probation officer to ensure compliance with treatment; and a no-contact condition related to most of the members of Mr. Dulay's family.

[165] Before imposing sentence, I invite counsel to make submissions about the optional conditions that I am suggesting, and any others they view as appropriate.

[166] THE CLERK: Order in court. This Court is adjourned for the morning recess.

[PROCEEDINGS ADJOURNED]

[PROCEEDINGS RECONVENED]

[SUBMISSIONS BY COUNSEL RE PROBATION CONDITIONS AT 3:18:54 P.M. TO 3:24:18 P.M.]

[167] THE COURT: Mr. Sanghera, I would just ask you to stand for a moment.

[168] Mr. Sanghera, I sentence you to a term of incarceration for two years less a day, to be followed by a probation order for a period of 18 months, and that probation order, as you have heard, will include the following terms:

1. You must appear before the court when required to do so by the court.

2. You must report in person to a probation officer at 375 East Cordova Street, Vancouver, British Columbia, within two business days after your release from custody, unless you have obtained, prior to your release, written permission from the probation officer to report elsewhere or by phone or within a different timeframe. After that, you must report as directed by your probation officer.
3. When first reporting to the probation officer, you must inform him or her of your residential address and a phone number for a landline at that residence. You must not change your residence or phone number without written permission from the probation officer.
4. You must notify the court or your probation officer in advance of any change of name or address, and promptly notify the court or the officer of any change of employment or occupation.
5. You must obey house arrest by being inside your residence, or on its lot, 24 hours a day, every day, subject to the terms below.
6. You must present yourself immediately at the door to your residence or answer the phone when any peace officer or probation officer attends or calls to check on you during your house arrest.
7. You may be away from your residence during the house arrest with the written permission of your probation officer. Such permission is to be given only for employment or other compelling reasons. You must carry the permission, which can be in electronic format, with you when you are outside your residence.
8. You may also be away from your residence during house arrest:
 - a) to attend and participate in treatment by Dr. Browning or other treatment as directed by your probation officer;
 - b) while at or going directly to or returning directly from a healthcare facility because of a medical emergency. If asked, you must provide your probation officer with proof of your attendance at the facility;
 - c) to attend at prearranged appointments for medical, dental, counselling services, lawyers, and other professional advisors, or when travelling directly to or returning directly from such appointments. You must provide in advance to your probation officer the details of the appointment, including the nature, time, and location of the appointment;
 - d) while in the course of your employment or when driving directly to or returning directly from your place of employment. You must provide your probation officer with details of your employment, including location and hours of work;
 - e) for two hours each week that must be prearranged with and approved by your probation officer to attend the necessities of life; and

- f) if necessary, due to a threat to you or your immediate family's safety, in which case you must notify a police agency and your probation officer as soon as practicable, but within 24 hours.
9. You are to attend and participate in treatment by Dr. Browning or other treatment as directed by your probation officer with your consent.
10. You must have no contact or communication, directly or indirectly, with the following individuals: Kulbir Dulay, Aman Dulay, Sandy Dulay, Bob Mahal, Raspal Mahal, Satwant Mahal, Harvey Dhaliwal, Celina Bains, Kashmir Dhaliwal, Suman Mahal Gill, Sonia Dhaliwal, and Rhonda Dulay.

[169] Do you have any questions about those terms?

[170] THE ACCUSED: No questions, My Lady.

[171] THE COURT: Thank you. You may have a seat, Mr. Sanghera.

[172] Lastly, I impose the following ancillary orders:

1. The DNA order sought by the Crown: Manslaughter is a primary designated offence under s. 487.04(a) of the Criminal Code. As a result, I grant the mandatory order.
2. A firearms prohibition: Having been convicted of an indictable offence where violence was used and the maximum sentence is greater than 10 years, under s. 109(1) of the Criminal Code, Mr. Sanghera will be prohibited from possessing any firearm, other than a prohibited firearm or restricted firearm, cross-bow, restricted weapon, ammunition, and explosive substance for 10 years from the date of his release from custody, and prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
3. Pursuant to s. 743.21(1): While in custody Mr. Sanghera is prohibited from communicating with, either directly or indirectly, all of those same persons named in the probation order, and I do not propose to repeat their names, I think we know who they are.

"Fleming J."

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