

Citation: ☀ R. v. Romero-Arata
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IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REX

v.

ALEXANDRE ROMERO-ARATA

**REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE R.P. HARRIS**

Counsel for the Crown:

M. Myhre

Counsel for the Defendant:

S. Leamon

Place of Hearing:

Vancouver, B.C.

Dates of Hearing:

October 4 and December 16, 2024

Date of Sentence:

December 20, 2024

[1] On June 19, 2022, Mr. Romero-Arata drove in a grossly dangerous manner and in doing so he demonstrated a callous and arrogant disregard for the lives of other motorists, pedestrians and his own passenger. In doing so, he struck and tragically killed Eoghan Byrne, a pedestrian who was crossing the road. Mr. Romero-Arata has pled guilty to criminal negligence causing death and a sentencing hearing was held. The Crown and the defense diverge on an appropriate sentence. The task for this Court is to impose a fair, fit and principled sentence.

CIRCUMSTANCES OF THE OFFENCE

Pre-collision events

[2] On the evening of June 19, 2022, Mr. Romero-Arata, who was 25 years old, went with Ms. Doredea to the Granville Street entertainment district where they had a few drinks with others. At about 10:10 p.m., Mr. Romero-Arata and Ms. Doredea left the Granville Street area and they travelled in Mr. Romero-Arata's vehicle to the West End where they went to a park and while there Mr. Romero-Arata continued drinking.

[3] The pair ultimately returned to Mr. Romero-Arata's vehicle, at which point Ms. Doredea told him that she felt he was not good to drive and Mr. Romero-Arata agreed. Ms. Doredea began driving to where she had parked her vehicle but she was directed by Mr. Romero-Arata to drive over the Burrard Street Bridge. Ms. Doredea complied and she drove over the bridge and into the Kitsilano area.

[4] Once in the Kitsilano area, Mr. Romero-Arata told Ms. Doredea to pull over and once stopped, Mr. Romero-Arata told her that he was going to drive. Ms. Doredea told him that she thought he shouldn't drive to which he stated, "Just trust me, I'm gonna drive, just get out." Ms. Doredea complied with the direction and Mr. Romero-Arata then began driving.

[5] Mr. Romero-Arata drove along Kitsilano beach at a high speed while playing music at a loud volume. Ms. Doredea asked on several occasions for Mr. Romero-Arata to take her back to her car. Ultimately, Mr. Romero-Arata agreed and he started heading east on West 4th Avenue toward downtown. At this stage, his speed varied

between 96 km/h and 152 km/h as he drove through red lights at Alma Street, Yew Street and Vine Street. The speed limit throughout was 50 km/h.

[6] Ms. Doredea recorded two video clips as Mr. Romero-Arata drove. These clips show him speeding through red lights without any effort to slow. They confirm other cars in the area and pedestrians on the sidewalks. On one occasion, Mr. Romero-Arata had to manoeuvre around a slower vehicle. One of the videos records Mr. Romero-Arata's speed as 140 km/h. The effect of the high speed caused the car to bounce as it hit slight road undulations. In fact, the bouncing was so pronounced that the video becomes shaky and when this occurred Ms. Doredea exclaimed, "oh fuck". On another occasion while the car is bouncing, Mr. Romero-Arata passes a slower vehicle prompting another verbal noise from Ms. Doredea. Shockingly, and prior to reaching a red light, Mr. Romero-Arata exclaims, "I ain't stopping for a red light" he then drives through the intersection against the red light without any effort to slow or stop.

[7] Shortly after going through the red light, and while still traveling at high speed, Mr. Romero-Arata removes both hands from the steering wheel and he gestures upwards while smiling. He next places his left hand on the steering wheel, turns his head toward Ms. Doredea, thus taking his eyes off of the road, and he gestures to her while smiling. Although it was dry outside, Mr. Romero-Arata's windshield wipers were on throughout.

[8] Mr. Lee, a transit bus operator, was traveling east on West 4th Avenue and he had pulled to the curb at West 4th and MacDonald. While there he saw Mr. Romero-Arata drive past. Mr. Lee originally thought that Mr. Romero-Arata was going to hit the bus. He estimated that Mr. Romero-Arata was travelling over 100 km/h.

The collision

[9] As Mr. Romero-Arata sped along 4th Avenue, Eoghan Byrne and Michael McGovern were walking home. On reaching the north/east corner of 4th Avenue and Arbutus Street, one of the men pressed the walk button and they started crossing southbound before the light changed.

[10] As the two men were crossing, Mr. McGovern noticed Mr. Romero-Arata speeding toward them from the right. Mr. McGovern came to a stop and extended his left arm in what appears to be an attempt to stop Mr. Byrne. At this stage, Mr. McGovern was slightly ahead of Mr. Byrne and to his right. Mr. Byrne was beyond Mr. McGovern's extended arm and he continued crossing. Then, and within a few steps of entering the eastbound lane, Mr. Romero-Arata's vehicle struck Mr. Byrne. The time between the extended arm and Mr. Byrne being struck was a fraction of a second.

[11] Ms. Doredea saw Mr. McGovern and Mr. Byrne crossing the street, she said, "Watch out! Watch out!" Mr. Romero-Arata did not slow, nor did he try and steer away from Mr. Byrne or Mr. McGovern, rather, and pursuant to the Agreed Statement of Facts, he sped up. Ms. Doredea briefly closed her eyes, she thought everything was ok but then she heard a bang and saw that the windshield was smashed and bloody.

[12] The front driver's portion of Mr. Romero-Arata's vehicle struck Mr. Byrne catapulting him upwards and into the windshield instantly killing him. He suffered catastrophic injuries including multiple fractures, near amputation of his leg, exposure of the internal viscera and extrusion of a portion of his bowels, and extensive disruption of his head with removal of his brain from within the skull. His body was found 80 metres from point of impact.

[13] Mr. Romero-Arata stopped for about 10 seconds, he then entered a nearby lane and parked. Ms. Doredea told Mr. Romero-Arata he had hit someone and he said, "No, no, no, you just need to get out". Ms. Doredea exited the car and ran down the lane. Mr. Romero-Arata exited a short time later and he walked away. These events were captured on CCTV.

Collision investigation

[14] A collision reconstructionist calculated that Mr. Romero-Arata was traveling between 96 and 130 km/h at the time of the collision. Pieces of his vehicle were scattered on the road surface. Also located on the roadway was extensive biological matter.

Mr. Romero-Arata's vehicle

[15] The police located Mr. Romero-Arata's vehicle with 45 minutes of the collision. The front driver's side was significantly damaged, the windshield was shattered, blood and biological matter was located on the "A" pillar and the hood. Inside the vehicle the police found two cans of alcohol and in the trunk they found a partially empty bottle of vodka.

[16] Photographs of the vehicle show significant body damage. The damage is so extreme that one could easily mistake it as having been caused by colliding with another vehicle. Lastly, the vehicle had no mechanical issues at the time of the collision.

Description of the area and traffic

[17] West 4th Avenue is a major east-west roadway with a 50 km/h speed limit. It contains a bus route with many stops that service the University of British Columbia. The roadway has two lanes in each direction with parallel parking on the north and south sides. There are several intersecting streets between Alma and Arbutus and the road is lined with multi-story buildings with businesses on the ground floors and businesses or residences on the upper floors. There are also many late night bars and restaurants in the area.

[18] As for the intersection of Arbutus and West 4th Avenue, east-west traffic is controlled by three-stage traffic lights that are situated on overhead wires and on poles located on each corner. There are marked crosswalks on all four sides of the intersection. Pedestrian traffic is controlled by alternating orange/white walk signals that are activated by press buttons located on each corner.

[19] At the time of the collision, the weather was clear and dry and the temperature was 16 degrees Celsius. Overhead streetlights were located along the north and south side of the roadway and placed at regular intervals. Intersections had lights mounted at each corner providing ample artificial lighting.

Mr. Romero-Arata's efforts to cover up his involvement

[20] The morning following the collision, Mr. Romero-Arata called 911 at 11:08 a.m. and reported his vehicle stolen. In doing so, he created a story of fantasy wherein he falsely alleged that he had been attacked by a person known to him and that the person had stolen his car keys and his car. The story was detailed, comprehensive and presented without hesitation. Mr. Romero-Arata's deceit was for the obvious sole reason of trying to avoid responsibility for having killed Mr. Bryne.

[21] After speaking with the 911 operator, Mr. Romero-Arata called Ms. Doredea multiple times. He told her he had called the police and reported his vehicle stolen. He told her he loved her platonically and that he wanted her to "stay solid."

Mr. Romero-Arata's arrest and evidence found

[22] Approximately five hours after his 911 call, Mr. Romero-Arata was arrested at his residence. When he was arrested the police noticed he had a number of small cuts on his left hand that were consistent with his hand being cut by glass from the windshield shattering during the collision.

[23] A search of Mr. Romero-Arata's residence resulted in the police locating clothes he had been wearing on the night in issue. The clothes were damp and hanging to dry. Cleaning products were in the immediate area and windshield glass was found in a right front pocket pant pocket. Mr. Byrne's blood was located on an interior wall and on Mr. Romero-Arata's wrist watch.

Conduct after arrest and before being charged

[24] The police released Mr. Romero-Arata without conditions within 6 hours of his arrest. Thereafter, he remained in the community and committed the following motor vehicle offences:

[25] June 27, 2022 – (7 days after the offence in issue) driving contrary to licence restriction and failing to display an "L".

[26] July 5, 2022 – No driver’s licence and failing to display an “L”.

[27] Aug. 29, 2022 – Drive while prohibited.

[28] Dec. 31, 2022 – Drive while prohibited.

[29] With respect to August 29, 2022, the Superintendent of Motor Vehicles had prohibited Mr. Romero-Arata from driving only six weeks earlier. Then, on August 29, 2022, he attended traffic court where he was convicted of speeding and driving contrary to his restriction. Knowing that Mr. Romero-Arata was a prohibited driver, the police followed him when he left the courthouse and they watched as he entered a vehicle and started driving contrary to his prohibition.

[30] On February 15, 2023, the charges related to the instant matter were sworn and a warrant was issued. The next day, Mr. Romero-Arata appeared in court in response to the warrant. He was taken into custody where remained until his release on March 10, 2023.

[31] As for his release, there were several terms and conditions, including the requirement that five thousand dollars be deposited. The release conditions required Mr. Romero-Arata to reside in North Vancouver, remain under house arrest, and to attend community corrections on March 13, 2023, in order to be fitted with an electronic monitoring bracelet.

[32] Within hours of his release from custody, the police attended the North Vancouver residence and Mr. Romero-Arata was not there. Over the next 24 hours, the police checked the residence and contrary to his release conditions, Mr. Romero-Arata was not there. Thereafter, he did not attend community corrections nor, did he attend on March 30, 2023, as required. This resulted in a warrant being issued for his arrest.

[33] Focussed on arresting Mr. Romero-Arata, the police commenced a significant investigation. During the investigation, they advised Mr. Romero-Arata’s mother, Ms. Arata, that he was wanted on a warrant and that she should not aide him. Thereafter the investigation revealed that Mr. Romero-Arata had taken an Uber to his

mother's residence and that on various occasions she had transferred money to him so he could purchase food and transportation. Ultimately, Mr. Romero-Arata was arrested near his father's residence. He has remained in custody since that time.

VICTIM IMPACT STATEMENTS

[34] The Byrne family and friends of Eoghan Byren read their victim impact statements in court and as they did I reflected on their courage, their pain and their loss. I have read and re-read every word. I have re-listened to their voices on the audio recording. I will touch on a few of the comments presented. I acknowledge my efforts will fall short in conveying their profound sorrow, pain and loss. That said, I truly understand.

[35] Susan Bryne, recalls the day the phone call came. Since then, she recalls details of visiting Vancouver and attending the funeral home. She has guilt over the slightest things such as sleep, and after two years, her daily routines are inexplicable scattered with memories associated with her brother's death. She describes it as follows:

The best way I can describe it is like if someone was in an accident and sustained an injury, and that injury gave them a new, acute pain every day after the accident

[36] She explains how her family will never be happy again and that everything that is good is tainted because it cannot be shared with Eoghan.

[37] James Byren, Eoghan's younger brother, speaks of his loss and how he expected his older brother to be there always. He finds it difficult when asked if he has siblings. He finds himself wondering what his relationship with his older brother would have become.

[38] Eoghan's father, Eugene Bryne, shared Eoghan's milestones and how the family embraced them. He explained how he will never forget the phone call he received from the police advising that Eoghan had passed. His words regarding the pain state:

The pain and personal toll it has taken on our family is horrific, there simply are no words to adequately explain, I see the pain everywhere, from his mum writing in her diary every night telling Eoghan what happened today, to his siblings Susan and James, how their lives have changed for ever, with daily visits to Eoghan's grave and new anniversaries to be marked, trying to come to terms with Eoghan's loss, the trauma that has been visited on us and, the effect of same on our bodies and our minds just too much to bear, and all the time there is the emptiness, the silence, where once there was Eoghan.

[39] Eoghan's mother, Mary Bryne, describes the events on learning about Eoghan's passing and the questions she has, such as, did he suffer, did people try and help. She is haunted with images and she express her efforts to preserve his memory, by touching his picture at night or smelling the clothes in his room. The pain she feels is described in the following way:

The void in our lives, the utter sadness at the realisation that no matter how much you want things to change, some things are forever broken and no amount of time will ever make them whole again.

[40] Micheal McGovern, Eoghan's close friend and who was with him on the night of Eoghan's passing, who based on medical advice chose not to read his statement. It was read by his mother. The statement describes the emotional decline that Mr. McGovern experienced months later, he could not cross streets, he became reclusive, he had flashbacks and his mind raced. He eventually was admitted to hospital and he had undergone a regime of medication and therapy. He still struggles and he misses his dear friend.

[41] Michel McGovern's mother provided an Impact Statement on behalf of her family. In the statement, she describes how she knew Eoghan, his many qualities. She expresses guilt for feeling relief that her son survived and she feels grief for Eoghan and his family. She also speaks to the mental decline of her son as he works through PTSD and the impact it has had on the family.

MR. ROMERO-ARATA'S PERSONAL CIRCUMSTANCES

Background

[42] Mr. Romero-Arata is 28 years old and by virtue of his maternal grandmother, he is Indigenous. He was born in Peru and when he was three years old he immigrated to Canada with his parents. He was raised in the Lower Mainland. His parents separated when he was 10 years old, and thereafter he lived with his mother who apparently abused alcohol and neglected him. As for his father, Mr. Romero-Arata, asserts he was emotionally and physically abusive. Lastly, and of significance is Mr. Romero-Arata recently disclosed he was sexually assaulted at five years old by a day care worker.

[43] In his teen years, Mr. Romero-Arata was using drugs and acting out. He left school when he was in grade 10 and his behaviour created tension between himself and his mother, and as a result, he voluntarily entered foster care at ages 16-17. Mr. Romero-Arata reported to the pre-sentence report writer that he primarily entered care due to conflicts with his mother and yet on other occasions he reported being in foster care because of neglect by his mother.

[44] According to Mr. Romero-Arata's foster father, Mr. Vaughan, Mr. Romero-Arata lived with him until he was 19, that he was a nice person and that there were few discipline issues. On aging out of foster care, Mr. Romero-Arata reconciled with his mother and, but for a brief period, he has largely lived with her since then.

[45] As for work, Mr. Romero-Arata occasionally worked as a cleaner with his mother and by 2022, he was working full-time for two hotels and he reports an income of \$85,000.00 per year. He denies any debt or owning any significant assets.

[46] In terms of substance use, Mr. Romero-Arata started using alcohol and marijuana at 14 and by the age of 16, he was using cocaine and marijuana daily. Mr. Romero-Arata stopped using cocaine in 2020. He still uses marijuana because it helps manage his anxiety and depression. As for alcohol, Mr. Romero-Arata informed the writer of his pre-sentence report that he consumed several alcoholic beverages prior to the index offence. Mr. Romero-Arata has previously attended a recovery house in

Chilliwack but he left shortly after his arrival. He is interested in attending treatment in the future.

[47] As for Mr. Romero-Arata's criminal history, he has convictions for evading police and sexual assault. These convictions occurred after the offence before the court. Accordingly, and by operation of law, Mr. Romero-Arata is to be treated as a first time offender and that his convictions are only to be used in assessing his character and in the identification of potential rehabilitative strategies.

[48] Mr. Romero-Arata has been in custody since May of 2023, during that time, he has completed some self-paced programming, he has participated in 12 counselling sessions and he voluntarily entered supported integrated placement in order to avoid negative peers. Simply, he has taken some rehabilitative steps.

[49] Several character letters were filed supporting Mr. Romero-Arata. In the letters he is described as loving, supportive and honest. Quilinas Solis expressed that Mr. Romero-Arata is always willing to help and that he would assist in putting away her groceries and taking out the garbage. Ana Gertin, wrote about Mr. Romero-Arata's humour and how he cares for other people. Mr. Romero-Arata's father provided the following:

... I was worried and surprised the day I received the news that he was charged with criminal negligence causing death. I could not believe it. He grew up with values and a lot of love from his parents and has demonstrated responsibility for what happened.

I have many pleasant memories with my son, going to different places like restaurants that he enjoyed and taking the opportunity to have hours of conversations. We have also gone for many walks on the beach and laughed a lot, having beautiful moments together, always positive.

[50] Mr. Romero-Arata's mother expressed how helpful he is and that he has always been there for her. In another letter, she offers him full time employment in her cleaning business.

[51] I approach the character letters with extreme caution. First, evidence from Mr. Romero-Arata's bail hearing supports a conclusion that his mother was supporting

him when she knew that he was wanted by the authorities for the offence before the court. Specifically, she gave him money for food and transportation and she visited with him even after being informed by the police that there was a warrant for his arrest. Her conduct suggests she would say whatever she felt would assist her son regardless of the truth.

[52] Second, all of the letters fail to mention Mr. Romero-Arata's convictions for sexual assault or flight from the police. While I appreciate counsel directed the writers to avoid mentioning the sexual assault conviction, this does not explain how they can then suggest that Mr. Romero-Arata cares about people, or that he has overall good qualities. In essence, their words, by omission, create a distorted impression of Mr. Romero-Arata's overall character and history.

[53] Third, Mr. Romero-Arata claims his father was emotionally and physically abusive and yet the letter his father prepared in support of Mr. Romero-Arata is suggestive of a long standing loving father/son relationship. Without further explanation, the court is left with the observation that either the letter is misleading or alternatively the comments regarding physical and emotional abuse are misleading.

[54] In summary, I do not reject the letters in totality, rather, I approach them with significant caution and I accept, Mr. Romero-Arata can be, caring at times, to those who are close to him.

[55] As for Mr. Romero-Arata's licence and his status before the courts, at the relevant time, Mr. Romero-Arata was bound by a release order related to his driving charge of evading police. As for his driver's licence, Mr. Romero-Arata had a learner's licence and therefore he committed his offence in violation of his restrictions by driving with alcohol in his system and failing to have an adult licenced passenger.

Mr. Romero-Arata's Indigenous heritage

[56] A Gladue letter filed at the sentencing hearing is of significant assistance. In this regard, the letter follows a timeline and assists in identifying systemic background factors and the intergenerational effects of the historical mistreatment on Indigenous

persons and the specific effects experienced by Mr. Romero-Arata. It also synthesizes relevant information and identifies culturally relevant sentencing considerations.

[57] As reported by Mr. Romero-Arata's mother, his maternal grandmother was Indigenous and from Ontario. In 1950, she fled her Indian Residential School and immigrated to Peru where Ms. Arata was born. According to Ms. Arata, she does not know her mother's First Nation. She advised her mother did not speak about her experiences in residential school and she observed that her mother suffered depression and abused alcohol.

[58] Ms. Arata also reported that she tried to learn about her mother's experiences but that her mother would not discuss them because she did not want to bring back memories. According to Ms. Arata, her mother could not effectively parent, and that she abused alcohol in order to escape memories.

[59] In terms of Mr. Romero-Arata's experiences, he reports his mother abused alcohol, that he witnessed domestic violence between his parents and that his father physically abused him. He also indicated that prior to his parents' separation that his father was often gone living or working in Peru.

[60] As for Mr. Romero-Arata's mother's alcohol use, Mr. Romero-Arata reported that she was drinking excessively and that he was using drugs and alcohol and that this led to him entering into foster care where he was exposed to criminally oriented youth.

[61] Mr. Romero-Arata also detailed for the Gladue Letter writer, that he was homeless when he was 19-20, that he lost friends due to alcohol and drug related deaths, and that he feels a loss of cultural connection.

[62] The letter concludes with a summary of available options to assist Mr. Romero-Arata with his healing. Options include, community and custody options, offence cycle support, Fraser Region Aboriginal Centre for cultural support, and the Metro Vancouver Indigenous Services Society: Mental Health Support.

SENTENCING POSITION OF THE PARTIES

[63] The Crown argues a fit sentence before credit for time served is imprisonment for five years followed by a 5 year driving prohibition.

[64] Counsel for Mr. Romero-Arata asks the court to consider imposing a custodial sentence in the range of two to three years with a 5 year driving prohibition.

PURPOSE AND PRINCIPLES OF SENTENCING

[65] Sections 718 – 718.2 of the *Code*, provides guidance on the principles that must be applied in order to achieve the stated objectives of sentencing. The relevant portions are as follows:

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

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

Fundamental principle of sentencing

[66] Section 718.1 of the *Code* mandates that a sentence must be proportionate. The section reads:

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

[67] In *R. v. Ipeelee*, 2012 SCC 13 at para. 37, proportionality is referenced as “the *sine qua non* of a just sanction.” It ensures the sentence adequately reflects the

seriousness of the offence without exceeding what is appropriate given the offender's moral blameworthiness.

Additional sentencing principles

[68] Section 718.2 of the *Code* outlines additional sentencing principles. Relevant to the instant matter are the following sections:

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

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

...

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

...

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

APPLICATION

Objective of the sentence – S. 718

[69] The authorities are clear that the offence of criminal negligence causing death involving the operation of a motor vehicle requires a sentence that strongly denounces and deters. Specifically, the sentence imposed must express society's condemnation of Mr. Romero-Arata's conduct and it must send a message to others that serious sanctions will be imposed on persons who are inclined to commit similar offences.

[70] As for rehabilitative prospects, there is nothing in the circumstances, despite Mr. Romero-Arata's slight progress, justifying a conclusion that he is at a point where rehabilitation would dampen the pressing need of denunciation and deterrence.

Seriousness of the offence and degree of responsibility – s. 718.1

[71] The offence of criminal negligence causing death has a maximum penalty of life imprisonment. The degree of immediate harm and collateral harm caused by Mr. Romero-Arata's actions are significant. Egohan Bryne, an innocent young person who was going about his evening, lost his life, solely because of Mr. Romero-Arata's actions. Further, family, friends and a large community has been forever altered because of Mr. Romero-Arata's actions.

[72] Turning to moral culpability, I accept that Mr. Romero-Arata's moral culpability is minimally reduced by virtue of his upbringing combined with the impact that the historical mistreatment of Indigenous persons. That said, and even after considering Mr. Romero-Arata's minimally reduced responsibility, his culpability is extremely high. In this regard, after drinking, and despite being told he should not drive, Mr. Romero-Arata engaged in a high speed wherein he endangered the lives of others who had absolutely no choice in the matter, nor were they even made aware of the potential danger. Throughout, Mr. Romero-Arata deliberately engaged in prolonged extremely dangerous conduct fully aware of what he was doing and the risk he was creating. In fact, his comment "I ain't stopping for red lights" as he approached a red light underscores this point.

Aggravating and mitigating circumstances 718.2 (a)

[73] In considering the matter, I find the following circumstances to be aggravating:

- Mr. Romero-Arata was a learner driver at the time of the offence and driving contrary to his restrictions.
- Mr. Romero-Arata was bound by a release order at the time of the offence for driving offences.
- The extreme speed within the city environment.
- Mr. Romero-Arata's dismissal of Ms. Doredea's efforts to prevent him from driving.
- Mr. Romero-Arata's deliberate and prolonged risk taking.
- Mr. Romero-Arata's acceleration when warned by Ms. Doredea.

- The flight from the scene.
- Mr. Romero-Arata's elaborate lie to the police wherein he blamed an innocent third party.
- Driving when Mr. Romero-Arata knew that he had consumed alcohol to such a degree that he should not have been driving.

[74] I find the following to be mitigating:

- Mr. Romero-Arata's guilty plea. Specifically, he saved witnesses from having to testify about horrific events. He saved the state from expending resources associated with a fulsome prosecution. Finally, the plea demonstrates some insight into his wrongful conduct.
- The rehabilitative steps that Mr. Romero-Arata has taken while in custody.
- Mr. Romero-Arata's personal circumstances, including his Indigenous hermitage, and his challenging upbringing including witnessing family violence and suffering abuse.

[75] As for Mr. Romero-Arata's level of remorse, and although he expressed some remorse in a letter to the court, I am unable to conclude that he is remorseful. My conclusion is based on the following:

- Mr. Romero-Arata fleeing the scene.
- Mr. Romero-Arata falsely reporting his car stolen.
- Mr. Romero-Arata telling Ms. Doradea to stay solid.
- Mr. Romero-Arata's deliberately not attending court after his release from custody.
- Mr. Romero-Arata's continued driving violations almost immediately after the offence.

[76] The above is the antithesis of demonstrating remorse.

Similar sentencing decisions – s. 718.2 (b)

[77] Counsel rely on a number of cases that provide guidance with respect to the applicable principles and the relevant sentencing range. When considering "comparative cases" and sentencing ranges, it must be remembered that ranges are not fixed, rather, there may be circumstances justifying going above or below the range.

This approach reflects the individualized nature of sentencing in that the imposition of a fit sentence requires that the unique circumstances of the offender and the offence are considered: *R. v. Nasogaluak*, 2010 SCC 6 at para. 44.

[78] Finally, and when reviewing the sentencing authorities, I am mindful that when looking at sentences imposed for similar offences, that a fit sentence will not be achieved, in the circumstances of an Indigenous offender, by relying on authorities involving non-Indigenous offenders: *Ipeelee* at para. 86. That said, the cases can still provide some guidance.

[79] The following cases were provided by Crown and defence for consideration:

In *R. v. Saboksayr*, 2006 BCPC 299, the offender pled guilty to criminal negligence causing death, and a custodial sentence of 15 months, one-year of probation, and a five-year driving prohibition was imposed. The offence involved the offender having an interaction with another vehicle wherein the offender made various lane changes, drove above the speed limit and on approaching a red light he pulled to the left of a stopped vehicle, entered the intersection and t-boned a vehicle, killing the driver. The offender was travelling at approximately 105 km/h in an area with a speed limit of 50 km/h. The offender was 40 years old, a professional, he did not have a criminal record or record for driving offences, he displayed remorse, he cooperated with the authorities, he tried to send a letter of apology to the family of the deceased, he had community support and he had a history of contributing to the community. In his reasons, Judge Fratkin recognized the need for a sentence that denounced and deterred and he rejected the Crown's theory that the events were triggered by "road rage". As for the circumstances, Judge Fratkin noted, at para. 153, "His dangerous conduct should be regarded as brief in duration."

In *R. v. Chan*, 2004 BCSC 1581, the offender pled guilty to criminal negligence causing death and leaving the scene of an accident. A custodial sentence of two years less a day reduced to 18 months less a day (in consideration of the onerous bail conditions) was imposed. For the offence of leaving the scene of an

accident, a six-month consecutive term of imprisonment, followed by two years' probation, and a three-year driving prohibition was imposed. The offence occurred at 2:30 a.m. on a major arterial road. The offender was following another vehicle and on reaching a red light he pulled around a stopped vehicle and into the left turn bay, at which point, he proceeded straight into the intersection where he collided with the side of a vehicle travelling through the intersection killing the driver. At the time of the collision, the offender was travelling 134 km/h in a 50 km/h zone. After the collision, the offender fled the scene and after approximately 10 hours he surrendered to the police. The offender was 19 at the time of the offence, he did not have a criminal record or driving record, he had community support, he was pursuing post-secondary education and he was involved with his church.

In ***R. v. Kashari*, 2021 BCPC 63**, the offender was sentenced to 25 and three quarter months of imprisonment after pleading guilty to criminal negligence causing death. The offence involved the offender passing vehicles at a high rate of speed and on approaching an intersection he failed to see a red light until he was almost at the intersection at which point he applied his brakes, then causing him to skid and lose control ultimately striking and killing a cyclist who was waiting in the median. Investigation revealed a bolt in one of the offender's tires. The offender, an Albanian citizen who had been in Canada since 2010, was removed from the country after the offence but prior to being charged. The offender was then extradited back to Canada once was charged. The offender had a foreign criminal record pre-dating and postdating his offence. Nevertheless, when he came to Canada, he made efforts to turn his life around. He stopped drinking, obtained a work permit, obtained employment and ceased all offending. The sentencing judge noted the offender's application of his brakes prior to the collision and held that he was negligent in not fully repairing his compromised tire prior to driving.

In ***R. v. Homer*, 2003 BCCA 15**, the appellant's appeal of a three year prison sentence that was imposed after pleading guilty to impaired driving causing

death was dismissed. The offence involved the appellant having a blood alcohol content of 230 and 224 milligrams approximately two hours after the offence. As for the driving, the appellant lost control of her vehicle, skidded sideways at which point she struck and killed a pedestrian. The appellant did not have a criminal record, she was Indigenous and she had three children. In considering the appeal, the Court concluded the sentencing judge did not overemphasize denunciation or deterrence, nor was the sentence unfit.

In ***R. v. Taylor, 2011 BCPC 0337***, the offender pled guilty to impaired driving causing death and bodily harm. The offence related to the offender drifting across the centre line and colliding with an oncoming vehicle. The driver of the other vehicle was injured and the offender's 18-month-old daughter was killed. The offender had a related criminal record and he had acquired driving offences post offence. The sentencing judge observed that were it not for mitigating factors and custodial time served, that a sentence of four years would have been proper. The offender received a sentence of three years and six months.

In ***R. v. McKnight, 2021 BCSC 2542***, the sentencing judge acceded to a joint submission and imposed a sentence of imprisonment of two years for dangerous driving and a one-year consecutive prison sentence for leaving the scene of an accident. The offence involved the offender failing to stop at a stop sign and colliding with a vehicle. Three occupants in the other vehicle were killed. After the collision, the offender fled on foot and was arrested the next day. At the time of the collision, the offender was driving 110 km/h in a 50 km/h zone. The offender was 33 years old, he had 16 years of exemplary military service, he was remorseful and he had support in the community.

In ***R. v. Aleksev, 2016 ONSC 6080***, the offender was convicted of a number of offences including dangerous driving causing death and criminal negligence causing death. The driver drove erratically at a high speed when he unlawfully entered an intersection colliding with a vehicle and losing control, at which point he struck and killed a cyclist. The driver was 20 years old, he did not have a

criminal record, he had a number of speeding infractions and he showed little insight. The offender was sentenced to two years less a day and probation for three years.

In ***R. v. Francisco, 2022 BCSC 420***, the offender pled guilty to criminal negligence causing death. The offender drove dangerously in various parts of the city. His driving included high speeds, travelling into oncoming traffic, spinning his vehicle 180 degrees, skidding into an intersection against a red light, speeding on an inside lane, cutting into traffic, striking a vehicle, losing control, and mounting the sidewalk where he struck and killed a pedestrian. The offender was travelling 165 km/h in a 50 km/h zone moments before the collision. Blood testing revealed the offender had 188 milligrams of alcohol per 100 millilitres of blood. The offender was 42 years old, he did not have a criminal record, he had a strong work history, he had the support of friends and he was genuinely remorseful. The sentencing justice imposed a four-year sentence and in doing so noted the offender's genuine remorse, his guilty plea and the traumatic brain injury he suffered in the accident. Specifically, the injury would make his sentence more onerous.

In ***R. v. Woloshyn, 2006 BCCA 228***, the Crown's appeal of two-year sentence for the offence of criminal negligence causing death was allowed and a four-year sentence was imposed. The offence involved the appellant mistakenly turning east into a westbound exit lane from Highway 1 and thereafter travelling east in the westbound fast lane where she almost collided with two vehicles who managed to avoid a collision. The appellant ultimately collided head on with a third vehicle killing the driver. The appellant was 26, she had a history of driving incidents involving alcohol and had previously been prohibited from driving. In considering the matter, the Court of Appeal held the sentencing judge erred by making rehabilitation the focus of the sentence and therefore failed to incorporate the objectives of denunciation and deterrence. On considering what sentence to impose, the court commented at para. 26:

... There is no issue that six years is at the upper end of the range that should be imposed in a case such as this. The high end of the range should be avoided so that we may pay deference to the finding of the sentencing judge that Ms. Woloshyn suffers genuine remorse and has a good chance for rehabilitation.

In ***R. v. Griffith*, 2017 BCSC 1615**, the offender was convicted of criminal negligence causing death and hit and run. The offender was parked in a parking lot when a hostile group approached his vehicle. The group was upset and making threatening motions toward the offender and his passenger. In an effort to dissuade the group, the offender repeatedly revved his engine and lurched forward and came to a stop. Ultimately, the offender suddenly drove forward into a vacant lot over a sidewalk and onto the street. In the process, he struck and killed an individual who was coming to investigate the disturbance. The offender fled the scene and was arrested a short time later. The offender was 35, he had a 14-year-old daughter, he was employed, he had a criminal record containing convictions for driving offences, he had several alcohol related driving prohibitions, and he was remorseful. The sentencing Justice considered the offender's driving history to be substantially aggravating and imposed a four-year sentence for criminal negligence and one-year concurrent for the hit and run.

In ***R. v. Combes*, 2009 BCSC 539**, the offender was convicted of criminal negligence causing death and failing to stop at an accident. The offence involved the offender trying to evade the police while driving a stolen car. He drove at high speeds and he failed to stop for stop signs. Ultimately, the offender entered an intersection, failing to stop for a stop sign, and thereafter he collided with a vehicle, killing the driver. The offender fled the scene and was arrested later. Investigation revealed the offender's average speed was 127 km/h in a 50 km/h zone. The offender was 27, he was Indigenous, he was exposed to substance abuse and violence as a child, he had a limited employment history and an extensive criminal record including a driving offence involving a stolen vehicle. The offender was sentenced to an effective six-year sentence and a 12-year driving prohibition. Noteworthy are Justice Joyce's observation at para. 73:

I accept that this case lacks a feature that was present in many of the authorities to which the Crown referred, namely, the presence of alcohol as a contributing factor. However, the very manner of driving in all the circumstances persuades me that the degree of moral culpability in this case is at the higher end. Mr. Combes made the choice to continue to drive at very high speeds even when his passenger was afraid and wanted him to stop so she could get out.

In ***R. v. Calder Berg, 2007 BCCA 343***, the appellant's appeal of a five-year-six-month sentence that was imposed after she was convicted of criminal negligence causing death was allowed on the basis that the sentencing judge failed to give pre-sentence custodial credit. Of note are the court's comments, specifically, that the sentence was fit and it was at the top end of sentences for similar offences and similarly situated offenders. With respect to the offence, the appellant rear-ended a vehicle and after exchanging information, she abruptly left the scene, driving recklessly and causing vehicles to take evasive action. At one point, she made a U-turn, crossing double solid lines dividing the north and south lanes, and as she did so she collided with a second vehicle which had to take evasive action and in doing so the second vehicle was involved in a collision with a third vehicle, killing the passenger therein. The appellant then tried to leave the scene but the damage to her vehicle and the actions of witnesses prevented her departure. The appellant had a dated criminal driving conviction, various traffic offences and two offences for driving while prohibited, including one offence that occurred when she attended court on the instant matter.

In ***R. v. Hughes, 2012 BCCA 87***, the appellant's appeal of a global six-year sentence to be served concurrently with an 18-month sentence was dismissed. The sentences were imposed after the appellant was convicted of four counts of criminal negligence causing death, one count of criminal negligence causing bodily harm, and five counts related to failing to stop and offer assistance. The offence involved the appellant driving at excessive speeds in bad weather. In doing so, he drove in the left lane and at some point he matched speeds with a BMW that was travelling in the middle lane. On reaching a merge point the BMW

attempted to manoeuvre around a slower vehicle that was to his right and in doing so he struck the slower vehicle. The BMW lost control and crashed killing the four occupants and injuring a passenger. The appellant returned to the scene but did not identify himself as being involved. A few days later he turned himself into the police and gave a statement to the police wherein he lied about his involvement. The appellant was 28 at the time of the accident, alcohol was not a factor, he did not have a criminal record, he had a relevant driving history of speeding, driving without due care and attention and leaving the scene of an accident. The Court concluded that the sentencing judge did not err and that the sentences were not unfit.

In ***R. v. Locke, 2016 BCSC 1540***, after being convicted for a number of driving offences, in addition to other concurrent sentences, the offender was sentenced two concurrent custodial terms of seven years and six months for two counts of criminal negligence causing death. After having consumed alcohol and marijuana the offender drove at excessive speeds (121 km/h – 140 km/h in an 80 km/h zone) past driveways to residential homes in an area frequented by vehicles, quads and pedestrians. He ignored requests to slow down and ultimately he lost control, causing his vehicle to leave the roadway and flip several times killing two teenagers and seriously injuring a third. The offender suffered a brain injury causing pronounced limitations. The offender had a grade 9 education, he suffered from ADHD, he had a sporadic work history, he was sentenced as a first time offender, and prior to sentencing he had completed programming. Of particular relevance are the Justice's comments and observations at paras. 105 and 106:

[105] The more the offender's driving conduct tends towards demonstrating deliberate endangerment of others, the more serious the offence and the more likely that a lengthy period of incarceration will be required.

[106] Keeping in mind the different legal tests for criminal negligence causing death or bodily harm and dangerous driving, the comments of Mr. Justice Romilly (made after observing the broad range of sentences imposed for the dangerous-driving type

of offences) in *R. v. Brewer*, 2014 BCSC 1075, are helpful in such cases:

[61] The cases also demonstrate that the age of the offender, circumstances of the incident, duration of the deficient driving, existence or not of a criminal record, degree of aberration of the driving from the norm, particulars of the highway and the usual use of it, and driving conditions are all factors that bear upon the question of moral culpability. Further, the use of alcohol or drugs, even if not to the point of intoxication or impairment, is a factor that the court will consider.

Least restrictive sanctions – 718.2 (d)

[80] Section 718.2 (d) and 718.2 (e) are often referenced as codifying the principle of restraint. Simply judges must exercise restraint and consider incarceration only as a last resort and then only of the shortest duration that is appropriate in all of the circumstances: *R. v. Bosco*, 2016 BCCA 55 at para. 35.

Particular attention to the circumstances of Aboriginal offenders – 718.2 (e)

[81] The purpose of the section is to reduce the over representation of aboriginal people in jails by recourse approaching sentencing from restorative perspective. Judges must take judicial notice of broad systemic background factors impacting aboriginal persons generally and how these factors have effected and contributed to bringing a particular offender before the court. Sentencing judges must then consider the types of sentencing procedures or sanctions that maybe appropriate in the instant case.

[82] Considering the above, I take judicial notice of the history of colonialism, displacement, residential schools, intergenerational trauma and how the historical mistreatment of aboriginal persons has resulted in lower education, low incomes, high unemployment, high rates of substance abuse, and extensive exposure to violence.

DECISION ON SENTENCE

[83] In reaching my decision, I acknowledge Mr. Romero-Arata's Indigenous heritage, his personal circumstances and the applicable legal principles. I also observe that while

under the influence of alcohol, he decided to pay Russian Roulette with the lives of many, the significance differences being, the others had no choice, the others did not know they were at risk and that the item of destruction was an automobile and not a firearm.

[84] In considering all of the above, I find that the sentence of two to three years, as suggested by counsel for Mr. Romero-Arata, would not be proportionate and not adequately address the sentencing objectives, thereby failing to protect the public.

[85] As for the sentence suggested by the Crown, were it not for the mitigating factors and the slight reduction of moral culpability, I would be inclined to impose a higher sentence. Nevertheless, and although the sentence suggested the Crown is at the lower end given all of the facts, I am unable to conclude that is inconsistent with all of the relevant principles. I therefore impose a custodial term of 5 years less time served of 608 days, which credited at 2 years 6 months of pre-sentence custody. Thus leaving a custodial balance of 2 years 6 months.

ANCILLARY ORDERS

DNA

Pursuant to section 487.051 of the *Code* the offence of criminal negligence causing death is a secondary designated offence and after considering the relevant principles including Mr. Romero-Arata's security of his person, his privacy, the circumstances of the offence and his background, I direct that a sample of Mr. Romero-Arata's DNA be taken.

Driving Prohibition

[86] Pursuant to section 98 of the *Motor Vehicle Act*, Mr. Romero-Arata is prohibited from driving for 8 years. This to ensure an approximate 5 year driving prohibition on his release from custody. I order that a copy of these reasons be delivered to the Superintendent of Motor Vehicles.

Victim Surcharge

[87] Mr. Romero-Arata will be in custody for a number of years, therefore, and pursuant to section 737(2.1)(a) the *Code*, I conclude it would cause undo hardship if the statutory surcharge of two hundred dollars was ordered. Accordingly, the victim surcharge is waived.

Closing comments

[88] The pain and suffering endured by the Brynes and the Mcgoverns is not lost on this court and their words will always resonate with Court. The Court appreciates your patience as this case navigated through the legal system. Please understand the sentence imposed does not reflect your pain, nor does it reflect the value of the precious and loved son you have lost. To do so would be impossible because even a life sentence would not properly reflect what has been lost or the pain suffered. As a judge, my task has been to apply the legal principles to all of the fact and impose a sentence that is fit, proportional and principled.

The Honourable Judge R.P. Harris
Provincial Court of British Columbia