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R. v. Schwalm, 2025 ONSC 864

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CITATION: R. v. Schwalm, 2025 ONSC 864
BARRIE COURT FILE NO.: CR-24-49
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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
HIS MAJESTY THE KING	)	Ms. L. Saunders, for the Crown
– and –	)	
JAMES WILLIAM SCHWALM	)	
Defendant	)	Ms. J. Klein, for the Defendant
	)	**HEARD:** June 20 and November 25, 2024

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REASONS FOR SENTENCE

FUERST J.:

Introduction

[1] James Schwalm contrived to murder the woman who was his wife of years and the mother of their two young children. On the evening of January 25 into the morning of January 26, 2023, he put his plan in motion. He strangled Ashley Schwalm to death in the family home. He then dressed her in hiking clothes, and put her lifeless body in the vehicle she normally used. He drove the vehicle to the area of a nearby skiing club. There, after dousing its interior and his wife's body with gasoline, he manoeuvred the vehicle off the road in a staged one car collision, and set it on fire. He returned home to rouse the children from sleep and ready them for school.

[2] In the hours and days that followed, he spun a web of lies and manufactured evidence to divert suspicion from himself.

[3] An exhaustive and complex police investigation ensued. The evidence gathered established that James Schwalm was not the grieving victim he painted himself to be, but rather his wife's murderer.

[4] Mr. Schwalm was charged with the first degree murder of Ashley Schwalm. He pleaded guilty, with Crown consent, to second degree murder. He will receive a sentence of life

imprisonment. The sole issue for me to decide is the number of years he must serve in the penitentiary before he becomes eligible for parole.

The Circumstances of the Offence

(a) Background

[5] In January 2023, 38 year old James Schwalm lived with his 40 year old wife Ashley Schwalm in Collingwood. They had been married for just over a decade. They were the parents of two young children, a son who was nine years old and a daughter who was six years of age. Mr. Schwalm was a fire captain with the Brampton Fire and Emergency Services. Ms. Schwalm worked at a local business.

[6] Mr. Schwalm was the sole beneficiary of an insurance policy on Ashley Schwalm's life, in the amount of one million dollars. There was a second insurance policy on her life in the amount of $250,000, of which the children were the beneficiaries.

[7] Regrettably, all was not well with the marriage. Ms. Schwalm had become involved in a relationship with another man in early 2022. The relationship was discovered in the spring of that year. The Schwalms decided they wanted to work to repair their marriage. They began seeing a counsellor. However, by the Christmas/New Year's period, Mr. Schwalm told his mother he was not sure they could make it work, and Ms. Schwalm told her family that she was contemplating leaving the relationship.

[8] On January 10, 2023, Mr. Schwalm told a friend that he could not imagine being a single parent, and could not imagine being without Ashley. He also spoke about not being able to get back on the "property ladder" if they divorced. When the police later examined Mr. Schwalm's cell phone, it showed that on January 16, 2023, he searched "alomony" on Google.

[9] In the months leading up to January 26th, Mr. Schwalm had been nurturing a relationship with the ex-wife of the man with whom Ashley Schwalm had been involved. I will refer to this woman as Ms. X. On January 17, 2023, Mr. Schwalm told Ms. X, via text, that he had feelings for her. She texted him later in the day, telling him that she had feelings for him as well, but understood if he wanted "distance".

[10] On January 21st, the two texted again. Mr. Schwalm told Ms. X that he had made a decision. He announced that he wanted to be happy, and he knew his relationship with his wife was no longer working for him. He resolved to do what would make him happy regardless of his wife still wanting to make their marriage work. On that same date, while at a social gathering, Mr. Schwalm spoke with a physician who was present. He asked the physician, in the context of attempting to settle a debate he was having with co-workers about the reality of Steven Segal movies, if it was possible to kill someone by snapping their neck.

(b) The Events of January 25-26, 2023

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[11] Later examination of Mr. Schwalm's cell phone by the police revealed that on January 19, 2023, he searched "can yoi see oiphone history after deleted" on Google. On January 24, 2023, he searched "does a road flare completely burn" and "throw road flare into fire" on Google. That day, he went to work in Brampton for his scheduled shift, from 7:00 a.m. on the 24th until 7:00 a.m. on the morning of the 25th. The home surveillance camera system recorded him loading a red gas can into the back of his vehicle before he left for work.

[12] At 7:52 a.m. on January 25th, while still in Brampton having finished his shift, Mr. Schwalm texted his wife. He told her that he was out of gas for the snowblower and that he had forgotten to bring with him two gas cans from the garage. He asked her to take the gas cans and purchase gas. He said it would be "a big help." She replied that she was busy, and added "If I am out I will but I won't be I'm in meetings all day." In fact, Mr. Schwalm did not need gas for the snowblower.

[13] At 9:17 a.m. Mr. Schwalm spoke to his mother by phone. He asked to borrow her Hyundai, saying that he was going on a lengthy hike the next morning and needed to have a vehicle at the other end of his route. She agreed to lend him her SUV.

[14] After work on the 25th, Mr. Schwalm went to downtown Toronto to run errands. He returned to Collingwood at approximately 1:45 p.m.

[15] Ms. Schwalm worked until approximately 4:30 p.m. that day. When she got home, she walked the family dog while Mr. Schwalm took the children to their daughter's riding lesson. While out, he drove to the Alpine Ski Club and into its parking lot. His son was with him.

[16] Mr. Schwalm also borrowed his mother's car as had been arranged, and left it parked at the Craigleith Ski Club North Lodge parking lot.

[17] After the riding lesson, Mr. Schwalm returned home with the children in his own vehicle.

[18] The Schwalms' daughter, who I will refer to as A, went to school on the morning of January 26th. When she arrived, her teacher asked if she had had a good night. A said that she did not because she had heard her parents fighting and had heard her mother fall down the stairs. She also said her father told her that her mother was fine, but that she had not actually seen her mother again before leaving for school. Her father told her that her mother was out on a long hike in the morning.

[19] The Schwalms' son, who I will refer to as B, would later describe that he woke up that night to the sounds of his parents arguing. When he opened his bedroom door, he saw his mother and father in the upstairs hallway. His mother asked B to get her cell phone for her so that she could call the police. He retrieved his mother's phone from her bedroom and provided it to her, but was then told by his father to return to bed. B did as he was told. Sometime later, he opened his bedroom door and saw his father crying in the area of the mudroom which connected the house to the garage. He heard his father say, "What time is it, Alexa", and believed that Alexa responded that it was 3 a.m.

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[20] Still later, B emerged from his bedroom again and saw his father putting his coat on. His father told B that he was going to take the dog for a walk, and instructed him again to go back to bed. B noticed that the dog was still in the sunroom at that time. When he next woke up, his father was back in the house having a shower. After B and his sister finished their breakfast and got dressed, their father walked them to school, telling them that their mother had gone for a hike.

[21] Neither child saw their mother on the morning of January 26th.

[22] Police investigation, including video camera footage, established that around 5:42 a.m. on the morning of January 26th, Mr. Schwalm drove the Mitsubishi normally used by his wife, with her body in it, into the parking lot of the Alpine Ski Club. There he doused the interior of the Mitsubishi with gasoline, just before driving it off an embankment on Arrowhead Road. After setting the vehicle on fire, he ran from the scene to the Craigleith Ski Club North Lodge parking lot, and used his mother's Hyundai to leave the area around 6:01 a.m. He drove the Hyundai to a school parking lot, and returned home on foot. A short time later, he called his mother to let her know that she could pick up her vehicle at the school.

(c) The Discovery of the Mitsubishi

[23] Two employees at the Alpine Ski Club were driving to work just before 6:00 a.m. on January 26th. They saw the burning Mitsubishi in the ditch on Arrowhead Road. Both called 911. One of them stood on the shoulder where the car had left the road. He observed tracks in the snow, leading from the driver's door up to the road. He photographed the tracks.

[24] The Blue Mountains Fire Services Department responded to the 911 call. The Mitsubishi was fully engulfed in fire, but they extinguished the blaze with the assistance of the Collingwood Fire Department. Ontario Provincial Police ("OPP") also responded.

[25] After the fire was extinguished, a badly burned body was discovered in the Mitsubishi. The body was located in the front passenger side footwell area of the vehicle.

[26] The vehicle was removed from the embankment where it was found. It was taken to the Centre of Forensic Sciences, where the body was removed for post-mortem examination. An overwhelming odour of gasoline was detected when the body was taken out of the vehicle.

(d) The Death Notification

[27] Police determined that the Mitsubishi was registered to James Schwalm. They went to the Schwalm residence, but found no-one home. They learned that Ms. Schwalm had not shown up at work that day, and that she normally drove the vehicle.

[28] On the afternoon of January 26th, police located Mr. Schwalm in Collingwood at his secondary place of employment. They notified him that his vehicle had been involved in a collision, and that a body was found in it. He told the police that his wife left their home early that morning in the Mitsubishi, saying that she was going for a hike at the Craigleith

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Ski Club. Mr. Schwalm showed the police his phone, which contained a series of text messages that he said he had exchanged with his wife that morning. It also contained a number of video clips from their home camera surveillance system.

[29] The messages and clips that Mr. Schwalm showed the police made up the following narrative:

- At 5:13 a.m., Mr. Schwalm sent his wife a message that read, *"ok leaving now see you soon*." He told police that he was leaving the house at that time to walk the family dog.

- At 5:14 a.m., a video clip showed him walking out of the front door of the house with the dog.

- At 5:23 a.m., a video clip showed the Mitsubishi backing out of the garage and backing down the driveway before leaving the residence. The driver could not be identified, but Mr. Schwalm explained that this was his wife leaving the house.

- Also at 5:23 a.m., he received a text message from her cell phone that said, "*Ok I'm going to zip out I think the kids will be fine their sleeping*."

- At 5:30 a.m., he received a message from her cell phone that said, *"Eww I left the gas cans in my car and it smells I have to drive with the windows open and it's so cold out."* Mr. Schwalm explained to police that he had asked his wife to pick up gas for the snowblower the previous day, and she must have left the gas cans in the car.

- At 5:38 a.m., he received a message from her cell phone that said, *"Sorry about yelling at you this morning. I guess I need understand. We both need our time your walks and my hikes are important."* He told the police they had argued that morning about him wanting to walk the dog and his wife wanting to hike at the same time.

- At 5:46 a.m., he received a message from her cell phone that said, *"Oh, I have vertigo. I'm gonna rush home and try to do it work out in the basement. I feel like crap I can't hike."* He explained that she had a condition called Meniere's Disease and had been seeing a specialist. He said she had collapsed in the grocery store on one occasion because of the condition.

[30] These messages were not, in fact, sent by Ms. Schwalm to her husband, but rather were sent by Mr. Schwalm to himself from her phone.

[31] After speaking with Mr. Schwalm, the police drove him home and left him in the care of his family and friends.

(e) Mr. Schwalm's Statement to the Police

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[32] Mr. Schwalm provided a formal, cautioned statement to police on January 28, 2023. The post-mortem examination of the body found in the car was underway at the time, but it had not yet been completed. The police did not have any evidence to suggest the incident was anything more than a tragic crash, but they cautioned Mr. Schwalm because several factors surrounding the incident were suspect. Among other things, based on the text messages Mr. Schwalm showed the police, Ashley Schwalm would have arrived at the Craigleith Ski Club for her hike around 5:45 a.m. It was dark, cold, and snowy at that time, and there were no lights at the location.

[33] In his statement, Mr. Schwalm reiterated that:

- He and his wife argued in the morning because he wanted to walk the dog and she wanted to go for a hike.
- He went on his walk with the dog.
- His wife left to go on her hike. He did not know she was going to leave the house, but she had left the children at home alone briefly in the past.
- She had vertigo issues.
- He ran out of gas for the snowblower, and asked his wife to purchase gasoline filling the containers he left. He thought she must have done that after work on January 25th based on her message.

[34] Mr. Schwalm said he did not have his phone with him on his walk because it was not charged overnight, and so he had left it plugged in at home. He described the route he took when he walked the dog, and then drew it on a map for the police. He reported that he came home after the walk, prepared the children for school, cleared the driveway, and then went to work around 9:30 a.m.

[35] Mr. Schwalm consented to the seizure and examination of his cell phone and the module for the home camera surveillance system.

(f) The Post-Mortem Examination

[36] The post-mortem examination of the body was conducted on January 28, 2023. The body was burned beyond recognition. Dental records were used to confirm the identity of the deceased as Ashley Schwalm. The pathologist concluded that the cause of Ms. Schwalm's death was neck compressions not related to the vehicle crash, and that she was dead before her exposure to the fire.

[37] A sock recovered from Ms. Schwalm's unburned left foot was sent to the Centre of Forensic Sciences Chemistry Section, where the presence of gasoline was detected.

(g) The Police Investigation

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[38] An OPP traffic reconstructionist determined that the vehicle collision occurred as a result of the Mitsubishi leaving the roadway. Its tires were still rotating, as opposed to skidding, at the time the vehicle headed down the embankment. Examination of the vehicle found no apparent defects that would have contributed to the crash.

[39] The Office of the Fire Marshall conducted an extensive examination of the Mitsubishi, and concluded that the fire originated within the passenger compartment ahead of the cargo compartment. In addition, they were able to determine that the driver's window had been left open. The air that entered the car through the open window fuelled the fire, resulting in near complete destruction of the interior of the vehicle.

[40] Samples of the debris from within the vehicle were collected by the police and submitted to the Chemistry Section of the Centre of Forensic Sciences for analysis. They revealed evidence of gasoline, and a lighter bearing the initials JWS. Mr. Schwalm's full name is James William Schwalm. According to the Fire Marshall's report, the fire was ignited in the fuel that was present in the passenger compartment of the vehicle.

[41] These findings led to the conclusion that James Schwalm poured gasoline throughout the interior of the Mitsubishi, manouevred it off the edge of the embankment, and after opening the driver's side window, lit the vehicle on fire using the lighter bearing his initials.

[42] Mr. Schwalm told police the home video camera surveillance system was on a schedule, and automatically turned off at 6:00 a.m. When the surveillance system was later examined, there were multiple recordings after 6:00 a.m.

[43] Mr. Schwalm's self-described dog walking route was canvassed by police. They discovered that multiple homes on the route had security cameras that would have captured people walking along it. Video footage from those locations on the early morning of January 26th was reviewed. Mr. Schwalm was not captured on any of the video footage. The police then walked the entire route. Their walk was captured on multiple video camera surveillance systems.

[44] In fact, Mr. Schwalm did not walk the family dog at 5:14 a.m. on January 26th. He manufactured the video clip that he showed police from the home video camera surveillance system, to support his lie that he was out with the dog when Ms. Schwalm left the house that morning to go hiking.

[45] On February 2, 2023, Mr. Schwalm was arrested and charged with the murder of Ashley Schwalm.

The Victim Impact Information

[46] Almost two dozen Victim Impact Statements were provided by family and friends of Ashley Schwalm. They detail the immense suffering her murder has caused them. Ms. Schwalm was "a beautiful soul", a loyal and supportive daughter, sister, aunt, niece, cousin, and friend. Most particularly, she was a devoted and loving mother to her children. Those

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close to her mourn the loss of "the love and light she shared with everyone she knew." Equally, they mourn the future she was denied, especially a future with and for her children.

[47] Family members and friends continue to struggle with profound grief, anger, an inability to find peace, and a hole in their lives that will never mend. Some have experienced and continue to deal with feelings of anxiety or depression so intense that they sought professional counselling. Ms. Schwalm's children have been traumatized, their innocence, happiness, and sense of security shattered.

[48] The devastating impact of Ashley Schwalm's death on those closest to her has been heightened by the fact she died at the hands of a man her family and friends thought they knew, and trusted. They struggle with the realization that they were deceived and betrayed by him.

The Circumstances of Mr. Schwalm

[49] Mr. Schwalm has no prior criminal record. He is now 40 years old.

[50] He grew up as the eldest of three children of supportive and loving parents. He graduated from high school, and then from a college firefighting program. After joining the Brampton Fire and Emergency Services, he became certified in various specialties including water rescue and building collapse. He was a certified instructor in those areas. He became a platoon captain. He also did volunteer work with different community organizations.

[51] Mr. Schwalm's parents wrote that their son's crime is completely counter to the beliefs and values with which he was raised. They are shattered by and at a loss to understand his actions, which they would never have expected. Nonetheless, they will continue to support him. In other letters, relatives, friends, and acquaintances described him as someone who was, in the past, a hardworking and responsible person.

[52] Mr. Schwalm has been in custody at Central North Correctional Centre since his arrest on February 2, 2023. He attempted suicide on three occasions in 2023, before coming to accept his situation. The circumstances of his pre-sentence incarceration have been harsher than usual. In particular, his unit has been locked down because of staffing shortages for all or part of a day on more than 150 occasions. However, because he is a server in the institution, he was able to be out of his cell on some lockdown days.

[53] Defence counsel provided several letters from inmates at Central North Correctional Centre who described Mr. Schwalm as modelling positive behaviour.

[54] In his remarks at the conclusion of the sentencing hearing, Mr. Schwalm said that he is ashamed of himself, he despises his actions, and he is haunted that they hurt others who loved him and were part of his life. He said that he is where he deserves to be.

The Positions of the Parties

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[55] On behalf of the Crown, Ms. Saunders submits that the aggravating factors in this case warrant an exemplary parole ineligibility period of 21 to 22 years. She contends that this is a case of second degree murder that is very close to being one of first degree murder. Further, the jurisprudence, especially from the Court of Appeal for Ontario, shows an upward trend in parole ineligibility periods for murder of a domestic partner. While she concedes that there are mitigating factors, including that Mr. Schwalm's guilty plea avoided a trial, she emphasizes the many aggravating features in addition to this being a case of intimate partner violence. It was a brutal murder of an unarmed victim; it occurred in the family home where the children were present; there were numerous elements of planning and/or deliberation; Mr. Schwalm engaged in after the fact conduct such as removing his wife's body from the home to dispose of it in a staged car collision and fire; he set the fire knowing as a firefighter what it would do to his wife's remains; he manufactured evidence to deflect suspicion from himself, including a text exchange with his wife; he cast himself as a grieving spouse and lied to his children, his wife's family, and others; his motivation was financial gain; and the impact on the victims, especially the children, who have lost their mother, is extreme.

[56] Ms. Saunders also seeks a DNA order, a s. 109 weapons prohibition order for life, a forfeiture order, and a s. 743.21 non-communication order with named persons including the children until they reach the age of 18 years.

[57] On behalf of Mr. Schwalm, Ms. Klein submits that his parole ineligibility should be set at 13 to 14 years. The defence accepts that there are many aggravating factors in this case, but the parole ineligibility sought by the Crown is outside the range having regard to the mitigating factors. They include that Mr. Schwalm showed remorse and a willingness to accept responsibility for his actions by pleading guilty at an early stage. He has no prior criminal record, there are no allegations of prior domestic abuse by him, and he was a person of good character who led a pro-social life. He has the support of his parents and others in the community, and his rehabilitative prospects are good. The conditions of his pre-sentence custody have been difficult.

[58] Ms. Klein does not object to the ancillary orders sought by Crown counsel, but she asks that the non-contact period with the children be until they reach the age of 16 years.

The Principles of Sentencing for Second Degree Murder

[59] Section 745(c) of the *Criminal Code* ("the *Code*") provides that on conviction for second degree murder, the offender must be sentenced to life imprisonment, with no eligibility for parole for a fixed period ranging from a minimum of 10 to a maximum of 25 years. Section 745.4 specifically empowers the sentencing judge to increase the parole ineligibility period from the minimum of 10 years to the period that the judge deems fit, up to the maximum of 25 years.

[60] In exercising their discretion under s. 745.4, the sentencing judge must have regard to the character of the offender, the nature of the offence and the circumstances surrounding its

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commission, and the recommendation of the jury, if any. As Mr. Schwalm pleaded guilty, there is no jury recommendation to be considered in this case.

[61] As a general rule, the period of parole ineligibility shall be for 10 years, but this can be ousted by the sentencing judge's determination that, according to the criteria set out in s. 745.4, the offender should wait a longer period before having their suitability for release assessed. The determination of the parole ineligibility period is "a very fact-sensitive process": see, *R. v. Shropshire,* [1995] 4 S.C.R. 227, at para. 18. The sliding scale of parole ineligibility reflects the fact that "within second degree murder there is both a range of seriousness and varying degrees of moral culpability": see, *Shropshire,* at para. 31.

[62] An increased parole ineligibility period does *not* require unusual circumstances: see, *Shropshire,* at paras. 26 to 27.

[63] In *R. v. McKnight* (1999), 135 C.C.C (3d) 41, the Court of Appeal for Ontario held that in assessing the s. 745.4 criteria and deciding whether to increase the period of parole ineligibility, all of the objectives of sentencing are relevant. Those objectives, as set out in s. 718, are denunciation of unlawful conduct and the harm done, deterrence both general and specific, the separation of offenders from society where necessary, rehabilitation, reparation for harm done to the victim or to the community, and promotion of a sense of responsibility in offenders and acknowledgment of the harm done to victims and to the community. The Court observed in *McKnight*, however, that the statutory 10 year minimum ineligibility period limits the weight that can be accorded to the offender's prospects of rehabilitation.

Parole Ineligibility and Intimate Partner Homicides

[64] Crown and defence counsel referred to a number of parole ineligibilty decisions in support of their respective submissions to me. I have reviewed and considered all of them, although I will refer to only some.

[65] In *McKnight* the Court of Appeal approved a range of parole ineligibility of 12 to 15 years in cases of the brutal second degree murder of an unarmed intimate partner. That range has been applied in many subsequent decisions. They include *R. v. Teske* (2005), 202 O.A.C. 239, and *R. v. Czibulka*, 2011 ONCA 82.

[66] In *Teske,* the offender killed his wife in their home. He hid her body overnight and made extensive efforts at clean-up. Over the following two days he incinerated her body in the yard, then reported her missing to the police. There was no suggestion that he set out to kill her. The offender had no prior criminal record, but had received a conditional discharge for a previous assault on the deceased. He was found guilty of second degree murder at trial. The Court of Appeal reduced the 16 year parole ineligibility period imposed by the trial judge to 13 years, finding that there was no reason to depart from the range identified in *McKnight*.

[67] In *Czibulka,* the offender beat his wife to death in their apartment. He did not call the authorities until two days later. At trial, the defence contended that the deceased was a

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prostitute and had been beaten not by the offender but by a customer. The offender was 64 years old, had been steadily employed for decades, and had a minor prior criminal record. There was no admissible evidence of previous domestic abuse. He was found guilty of second degree murder at trial. The Court of Appeal upheld a parole ineligibility period of 15 years.

[68] The Court was, however, very clear in *Czibulka* that the *McKnight* parole ineligibility range of 12 to 15 years is *not* cast in stone for all brutal intimate partner murders. This is consistent with the Supreme Court of Canada's more recent articulation in *R. v. Lacasse*, 2015 SCC 64, that sentencing ranges are primarily guidelines, and not straitjackets. The Court of Appeal stated n *Czibulka* that the parole ineligibility range can extend beyond 15 years in cases where the significant mitigating considerations noted in *McKnight* are absent, and/or where there are particularly aggravating factors.

[69] There are intimate partner homicide cases in which the Court of Appeal has upheld parole ineligibility periods exceeding 15 years.

[70] The offender in *R. v. Wristen* (1999), 47 O.R. (3d) 66 (C.A.), had a prior criminal record and was on probation for previously assaulting his wife. He killed her in their home, then hid her body. He used her credit and debit cards, and cashed cheques made out to her. Even after his arrest he refused to disclose the location of her remains. He was found guilty of second degree murder at trial. The Court of Appeal upheld a parole ineligibility period of 17 years.

[71] In *R. v. Borbely*, 2021 ONCA 17, after murdering his spouse the offender dismembered her body, and concealed her remains for three years. He propagated the falsehood that she had disappeared, and villainized her to others. He used the funds in her bank account for his personal benefit. He was found guilty of second degree murder at trial. The Court of Appeal upheld a parole ineligibility period of 17 years.

[72] A parole ineligibility period of 18 years was upheld in *R. v. Hindessa*, 2011 ONCA 477. The offender had assaulted his girlfriend on earlier occasions, and had a criminal record as a result. He was on probation and bound by a non-contact order when he killed her. He viciously attacked her in the bedroom of her apartment, after going to the kitchen to obtain a knife. He was found guilty of second degree murder at trial. He was professionally assessed as a moderate to high risk to reoffend, and his rehabilitative prospects were poor.

[73] In *R. v. Ching*, 2022 ONCA 183, the offender planned to kill his ex-wife, who was living with her uncle. There was a history of spousal abuse. The offender purchased a hatchet and a knife, rented a car, and went to the uncle's house. After the uncle told him the ex-wife did not wish to see him, the offender forced his way inside the home. He attacked and killed the uncle in front of the latter's family members. The offender was found guilty of first degree murder at trial, but the Court of Appeal substituted a conviction for second degree murder and referred the offender back to the trial judge for sentencing. Ultimately, the Court of Appeal upheld a parole ineligibility period of 21 years.

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[74] Even more recently, in *R. v. Owusuh-Ansah*, 2024 ONCA 192, the Court of Appeal upheld a parole ineligibility period of 22 years imposed on the offender after a trial. The offender had two prior convictions related to domestic abuse. After he assaulted his ex-girlfriend, he was released on bail with a non-contact condition. The ex-girlfriend went into hiding, but the offender found her. Early one morning, he lay in wait outside her mother's residence. When the ex-girlfriend came out, he viciously attacked her with a knife, and killed her. He then poured gasoline on her body and set it on fire. He fled, but called several people and told them that he had killed her.

[75] Ultimately, the fixing of the parole ineligibility period for second degree murder, as with all sentencing determinations, remains an individualized, case-specific process: see, *Czibulka*, at para. 67.

[76] It bears repeating that regardless of the period of parole ineligibility imposed, Mr. Schwalm's sentence will remain one of life imprisonment. A sentencing judge does not decide when the offender *should* be paroled, but merely the period the offender must serve before parole can even be *considered* by the Parole Board: see, *R. v. Trudeau* (1987), 24 O.A.C. 376. There is no guarantee that an offender will be granted release from jail at the date their parole ineligibility period expires: see, *Shropshire*, at para. 34.

Analysis

[77] Against that background, I turn first to the nature of the offence and the circumstances surrounding its commission.

[78] Most significantly, Mr. Schwalm murdered the woman who was his spouse for over a decade, and the mother of their young children. This is a case of intimate partner violence of the most extreme kind. It represents an egregious breach of the trust placed by one partner in the other to hold them safe and secure. Abuse of an intimate partner and abuse of a position of trust in the commission of an offence are both statutory aggravating factors on sentencing under ss. 718.2(a)(ii) and (iii) of the *Code*.

[79] Parliament's concern, reflecting that of Canadian society about violence perpetrated against women, is emphasized by s. 718.201. It requires judges to consider the increased vulnerability of female victims, when sentencing offenders for crimes involving the abuse of a domestic partner.

[80] While I appreciate that I am sentencing Mr. Schwalm for second and not first degree murder, his actions involved chilling elements of planning and deliberation. They include:

1. He had a clear financial motive to take his wife's life, in the form of both an anticipated insurance payout, and avoidance of a potentially costly divorce.

2. He sought out information that shaped the steps he took. Days before the murder, he queried a physician on the topic of killing by snapping the victim's neck. He conducted Google searches on matters including throwing a road flare into a fire.

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3. He devised a plan to cover-up his wife's murder by staging a single car collision. The incineration of her vehicle and her body within it in a gasoline-fueled blaze was an integral part of his plot.

4. With his innocent young son in his vehicle, he did advance reconnaissance to choose a location from where, after dousing the interior of the vehicle with gasoline, he would stage the collision and set the car alight.

5. He arranged to borrow his mother's vehicle, lying to her about his purpose, so that he had transportation away from the scene of the staged collision and fire.

6. As the hours of Ashley Schwalm's life counted down, he attempted to implicate her, unwittingly, in the arrangements for her own death, by asking her to purchase gasoline. He told her he needed it for the snowblower. She could not know that, in fact, he needed her to purchase gasoline in order to later explain its presence in the burned-out vehicle containing her incinerated remains.

[81] The manner in which Mr. Schwalm carried out his wife's murder reflects the determination with which he acted. Ms. Schwalm was attacked in her own home, a place where she was entitled to be secure regardless of the state of the marriage. She was unarmed. The means by which she was killed, strangulation, was especially cruel. It would have taken some measure of force on Mr. Schwalm's part to effect. He acted even though their two young children were in the home, and could have walked in to see him taking their mother's life. As it was, both children were aware that all was not right between their parents that night, with each witnessing pieces of the events by sight or sound.

[82] Mr. Schwalm took detailed steps after the murder to divert suspicion from himself. He actively misled the police. He made up a false narrative of events of the morning, asserting that his wife drove herself away from the family home to go hiking while he went for a walk with the dog. To support that false narrative, he dressed his wife's body in hiking clothes before placing it in the Mitsubishi, so it would appear that she had indeed gone out for a hike in the dark. He constructed a false, multi-entry text exchange between himself and his wife. He also manipulated the home surveillance camera video footage to create video clips that matched, rather than contradicted, his account of the events of the morning. He offered up the texts and the video clips to the police. He told them numerous lies.

[83] He also callously lied to his children. He explained to them that their mother had gone for a hike, leaving the impression that she would return to the home later. Then he took the children to school as if it were just another day for the Schwalm family. He did so, knowing what the children did not: that they would never see their mother again.

[84] As the Victim Impact Statements make clear, Ashley Schwalm's murder devastated her family and friends. Above all, Mr. Schwalm robbed his own children of their mother's love, companionship, and support. The life-long adverse impact on them of his actions was readily foreseeable. That did not stop him from carrying out his plan.

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[85] There is little, if anything, about the nature of the offence and the circumstances surrounding its commission that could be considered mitigating. I reject the suggestion that the absence of previous instances of domestic violence is mitigating. It is not. Rather, it is the absence of an additional aggravating factor.

[86] Turning to the character of Mr. Schwalm, he is a first offender who has no prior involvement with the criminal justice system. He pleaded guilty to second degree murder. I agree with Crown counsel that had the matter gone to trial, a compelling case of first degree murder could have been mounted against Mr. Schwalm. But, this does not strip his guilty plea of all value. Trials are dynamic processes, and outcomes are never assured. Mr. Schwalm's guilty plea provided certainty of outcome in this case. A multi-week jury trial was avoided, with a preliminary hearing having been waived. No-one, including family members, had to testify about matters that would have been difficult, if not painful, to relive. A guilty plea is an expression of remorse and acceptance of responsibility for the offence, and that is so in this case. Additionally, Mr. Schwalm expressed remorse in his remarks at the conclusion of the sentencing hearing.

[87] The letters provided in support of Mr. Schwalm's character indicate that he was an industrious person, and that he gave back to the community through volunteer activities. Some writers asserted that he excelled in his position as a firefighter. The positive impact of the information about his professional achievement is attenuated, however, by his actions on the morning of January 26th. They were completely and appallingly at odds with the responsibility he assumed when he became a firefighter, to save lives, not take them. Further, he relied to some extent on his knowledge as a firefighter to take steps to ensure that the fire he set burned, and burned well.

[88] Ms. Klein submitted that I should take into account in mitigation the difficult conditions of Mr. Schwalm's pre-trial custody, based on the decision of the Court of Appeal for Ontario in *R. v. Lamba*, 2024 ONCA 778. I am aware from other cases over which I have presided that since the pandemic, conditions in GTA area remand centres, including the one where Mr. Schwalm has been housed, have become harsher. Increasingly, and deplorably, they feature lockdowns, some degree of triple-bunking, lack of proper hygiene, and delays in accessing professional services including medical attention. I accept that Mr. Schwalm has experienced these conditions to some extent, particularly lockdowns due to staffing shortages. I note, however, that because he is a server, he has some opportunity to leave his cell even during lockdowns.

[89] Although it is a consideration of limited weight, I acknowledge that Mr. Schwalm has prospects of rehabilitation. He led a pro-social life in the past. His conduct while in custody overall has been positive. Despite his deception of them, he has the ongoing support of his parents.

Conclusion

[90] A review of the parole ineligibility jurisprudence confirms that no two cases are alike. Determining the appropriate period of parole ineligibility in cases of second degree murder

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is, and must be an individualized process. That said, the parole ineligibility period imposed in cases of second degree murder of an intimate partner must reflect the reality that despite years of jurisprudence condemning such acts, the problem has not abated.

[91] The killing of Ashley Schwalm was not spontaneous on Mr. Schwalm's part. He did not act in the heat of the moment. He did not act in circumstances where his ability to reason was impaired. To the contrary, Mr. Schwalm had resolved to do what would make *him* happy. And what would make *him* happy was to excise his wife from his life, by taking hers. There would be no "alimony" to be paid, no assets to be divided, no financial loss to bear, no impediment to leading the happy life to which he felt himself entitled.

[92] Mr. Schwalm egotistically extracted a price for his desired happiness. That price was Ashley Schwalm's life. That price was the children's loss of their mother, their family, and their sense of safety and security. And it was the enduring pain and suffering experienced by Ashley Schwalm's family and friends, and by Mr. Schwalm's own parents.

[93] Ashley Schwalm's murder was an act of egregious selfishness on Mr. Schwalm's part. It was cold, callous, and in many respects calculated. The seriousness of this murder and the degree of Mr. Schwalm's moral blameworthiness are both very high.

[94] The aggravating factors in this case render inadequate a parole ineligibility period falling within the parameters identified in *McKnight*. It would fail to reflect the manner by which Ms. Schwalm was murdered, the many aspects of planning and deliberation on Mr. Schwalm's part, and his calculated after the fact conduct.

[95] However, the parole ineligibility period sought by the Crown would be excessive for an offender who has no prior history of involvement in the criminal justice system and who pleaded guilty, and in circumstances where the additional aggravating factors of prior domestic abuse and blatant disregard of court orders are not present, as they were for example, in *Owusuh-Ansah.*

[96] Mr. Schwalm, please stand.

[97] For the second degree murder of Ashley Schwalm, I sentence you to life imprisonment with no eligibility for parole for 20 years. There is a DNA order, a s. 109(2)(a) and (b) order for life, a forfeiture order, and a s. 743.21 non-communication order with those persons identified by Crown counsel. That order will apply to the children until they individually reach the age of 18 years.

[98] The sentence of life imprisonment began to run on February 2, 2023. That date will be endorsed on the warrant of committal.

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Justice M. Fuerst

Released: February 10, 2025

NOTE: ***As noted in court, on the record, this written decision is to be considered the official version of the Reasons for Sentence and takes precedence over the oral Reasons read into the record in the event of any discrepancies between the oral and written versions.***

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ONTARIO

SUPERIOR COURT OF JUSTICE

HIS MAJESTY THE KING

– and –

JAMES WILLIAM SCHWALM

Defendant

REASONS FOR SENTENCE

Justice M. Fuerst

Released: February 10, 2025

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