IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Brown, 2010 NSPC 38

Date: April 30, 2010

Docket: 1975323, 1975325, 1975327, 1975329, 1975331, 1975333, 1975335, 1975337, 1975339, 1975341, 1975343, 1975345, 1975347, 1975349, 1975351, 1975353, 1975355, 1975357, 1975359, 1975361, 1975363, 1975365, 1975367, 1975369, 1975371

Registry: Halifax

Her Majesty the Queen

v.

Shawn Michael Brown

DECISION

Judge:	The Honourable Judge Anne S. Derrick
Heard:	April 19, 2010
Decision:	April 30, 2010
Charges:	Section 355(a) of the *Criminal Code*
Counsel:	Mark Heerema - Crown Attorney Scott Hughes - Defence Counsel

By the Court:

Facts

[1] On December 22, 2009, Shawn Brown pleaded guilty to an offence under section 355(a) of the *Criminal Code* of unlawfully having in his possession, between April 5 and May 15, 2008, motor vehicles or components of motor vehicles, the total value of which exceeded $5000, the property of a number of named individuals, knowing that the motor vehicles, or the components, were obtained by theft. Mr. Brown's guilty plea was entered pursuant to section 606(4) of the *Criminal Code* and relates to an Information containing six counts of theft and nineteen counts of possession of stolen property.

[2] Mr. Brown's activities came to the attention of police when they received information from a confidential source. This led to the execution of a search warrant by Halifax Regional Police, in conjunction with the R.C.M.P., at locations identified as Unit 14A and Unit 12 on the Old Sambro Road in Harrietsfield, Nova Scotia. Mr. Brown sub-leased these units. According to the facts presented by the Crown at Mr. Brown's sentencing, and not disputed by Mr. Brown, stolen vehicles and parts of stolen vehicles were found at these two locations.

[3] Unit 14A was a small garage. When the police executed the search warrant they found a number of items relevant to their investigation in the garage, including: tools necessary for disassembling vehicles, various parts from stolen vehicles, and numerous personal items that had at one point been in stolen vehicles – keys, bank cards, flowers, a toolbox etc.

[4] Unit 12 was located close to Unit 14A and consisted of a storage trailer. The trailer contained stolen vehicle parts, such as: seats, hoods, steering columns, air filters, airbags, headlights, etc. The principle investigator on the case, Cst. Morgan, testified that approximately ninety percent of the car parts in Unit 12 belonged to stolen vehicles.

[5] Stolen vehicles and larger components of the stolen vehicles, such as motors, frames, windshields, etc., were also located by police in lots adjacent to Units 12 and 14A. The police seized vehicles and parts of vehicles in relation to a total of 19 stolen trucks and cars: 12 with the majority of their parts stored at Mr. Brown's units and 6 that were represented by only a few components, e.g., just headlights, or airbags or motors. In the case of one vehicle, all that was located were its documents. The police were able to accurately identify stolen vehicles or the component parts of stolen vehicles by locating etched manufacturers' numbers or security identification codes and matching them to manufacturers' VIN numbers for stolen vehicles. Some vehicles had been reconfigured with original parts removed and replaced by parts from other stolen vehicles with the effect of concealing the reconfigured vehicle's original identity.

[6] Although Mr. Brown emphasized in comments to the Court at his sentencing hearing on April 19 that he had never directed or requested anyone steal vehicles for him, he has admitted by his guilty plea that he knowingly received stolen vehicles at his leased premises, disassembled them for their parts, and stored them for the purposes of re-sale. (Undisputed facts read into the record on December 22, 2009)

[7] Mr. Brown's central role in the operation of what is colloquially referred to as a "chop-shop", was confirmed by the evidence of Cst. Morgan, a veteran member of the R.C.M.P., holding the position of Provincial Auto Theft Coordinator. He spent days viewing video surveillance that had been obtained from the neighbouring business to Unit 14A. These neighbours had flipped their video surveillance cameras around so that they were trained on Units 12 and 14A for the period of April 24 to May 7, 2008. Cst. Morgan commented on the pristine quality of the images recorded. The surveillance footage very clearly captured Mr. Brown at the property exercising the controlling role in accessing the garage, using a key to unlock it, and operating some of the stolen vehicles. Cst. Morgan observed that Mr. Brown appeared to be the main operator at the site. He handled stolen vehicles that appeared at Unit 14A in undamaged condition. He was seen on the video surveillance showing people the contents of Unit 12 and meeting with car thieves who are known to police.

[8] Referring to what he had seen on the video surveillance, Cst. Morgan testified that there did not seem to be much work being done at Unit 14A other than in relation to the stolen vehicles. He did not see any vehicles coming to the site to be repaired. Cst. Morgan acknowledged there was no video surveillance of the inside of Unit 14A so that if Mr. Brown had been doing any legitimate bodywork in the garage there would be no video record of it.

[9] It is not suggested by the Crown that Mr. Brown was masterminding a car-theft ring. Mr. Brown was charged on the basis that he was the main operator of the "chop-shop", an operation that Cst. Morgan described as the biggest one ever investigated in Nova Scotia. I have included in this decision a chart prepared from

the Crown's sentencing brief and Cst. Morgan's testimony that itemizes the 19 stolen vehicles. The estimated total value of the vehicles that were stolen and located later in whole or in part at Mr. Brown's leased premises, and including a stolen truck whose documents were discovered at the property, is $400,800.

The Stolen Vehicles and Their Owners

[10] The following chart indicates the vehicle and owner/victim, the date it was reported stolen, the date it was last seen, and the estimated pre-"chopped" value:

[1][2][3]ctim Impact Statements

Vehicle - Owner/Vehicle	Date Reported Stolen	Date Last Seen	Estimated Pre-chopped Value [1]
2003 Chevrolet Silverado - Robert MacEachern	May 1, 2008	May 1, 2008	$20,000
1995 Chevrolet Truck - Corey MacDonald	April 26, 2008	April 26, 2008	$15,000
2004 GMC Sierra Truck - Dan Doiron	April 25, 2008	April 18, 2008	$20,000
1989 Toyota 4 Runner Truck - Shawney Brown	April 24, 2008	April 24, 2008	$12,000
2000 Honda Civic - Brenda Grant	April 23, 2008	April 12, 2008	$5,000
2005 Chevrolet Truck - Richard Leblanc	April 7, 2008	April 6, 2008	$30,000
2006 Chevrolet Truck - Matthew Webb	March 25, 2008	Unknown	$49,000
2003 Chevrolet Truck - Paul Parnell	March 22, 2008	March 22, 2008	$18,000
1998 Chevrolet Truck - Matthew Yetman	March 10, 2008	March 9, 2008	$10,000
2006 GMC Sierra Crew Cab - Darren MacPherson	February 18, 2008	February 18, 2008	$40,000
2007 Chevrolet Silverado - Paul Gray	February 18, 2008	February 18, 2008	$49,500
2003 Chevrolet Silverado - Paul Thibault	December 2, 2007	December 2, 2007	$27,000
2003 GMC Pick-up Truck - Jared Glazebrook	November 2, 2007	November 2, 2007	$21,000
2003 Honda Civic - David Wheeler	October 2, 2007	October 2, 2007	$8,500
2001 Nissan Maxima SE - Scott Morrison	September 26, 2007	September 26, 2007	$7,000
1996 Acura TL - Judy Harnish	October 2, 2006	October 2, 2006	$5,800 [2]
1991 Honda Civic - Robert Whittier	August 30, 2003	August 29, 2003	$3,000
1999 Ford F250 - Bernard Tallard	September 13, 2001	Unknown	$25,000
2003 Chevrolet Silverado - Memorial University	August 30, 2007	Unknown	$35,000 [3]
TOTAL ESTIMATED VALUE OF PRE-CHOPPED VEHICLES:			$400,800

[1] Evidence of Cst. Morgan, primarily from owners

[2] Paid by Insurance

[3] Including fire rescue equipment in truck

[11] Victim impact statements were filed by Matthew Webb, Shawny Bruhm, Corey MacDonald and Darren MacPherson. Mr. Webb, Mr. Bruhm and Mr. MacDonald also filed requests for restitution as did Paul Thibault and Royal and Sun Alliance Insurance Company.

[12] The victim impact statements illustrate how the theft of a vehicle can be experienced as much more than just the loss of a material possession. Mr. Webb, who read his victim impact statement to the Court, described how he had paid for his truck from his earnings in Alberta. The theft of his truck on March 25, 2008 meant the loss of his Alberta employment which he depended on to pay for his studies at Saint Mary's University. He not only lost the money he had paid on his truck and the personal items that were in it, he reported that he has also had to borrow thousands of dollars from family members to pay his bills and continue his education. The benefits of independence, mobility and pure enjoyment imparted by vehicle ownership were eloquently described by Mr. Webb: "My truck was everything I had, I drove it across Canada and the United States, used it to acquire work, and had lots of fun with it. Due to the theft of my truck, I've lost my independence. I still have no vehicle, I ask for rides from family members and I've bicycled to work the last two summers in Halifax. If there was anything I could ask for, it would be to have my truck back…"

[13] Mr. Bruhm's victim impact statement talks about the importance of his truck in many dimensions of his life; his use of it for recreational purposes and to get him back and forth to work and the pleasure he took from customizing it. The theft on April 24, 2008 left Mr. Bruhm feeling "victimized and violated" and he found it

very upsetting, after all the time and money he had invested, to see his recovered truck again in its “chopped” condition with all its customizing details gone. He too lost possessions, including tools, that had been in the truck.

[14] Mr. MacDonald also experienced his truck as more than just a mode of transportation. In his victim impact statement he describes how he loved customizing it, investing thousands of dollars. He was “crushed” when his prize hobby was stolen. Seeing it again, stripped of its detailing and virtually unrecognizable to him, was devastating.

[15] Mr. MacPherson was another victim whose truck was the object of hours of work and attention. The theft of the truck deprived him of the ability to enjoy snowmobiling, a significant leisure activity, as he no longer had the ability to pull a snowmobile trailer. He lost personal possessions from the truck, including irreplaceable items that had belonged to his sister, killed in a car accident a few years ago. He described the theft as “emotionally devastating.”

[16] I have provided some details from the victim impact statements because I believe it is important to acknowledge the pain and loss experienced by the victims whose vehicles or their parts were amongst those found at Mr. Brown’s leased premises. However I must make it clear that I am not sentencing Mr. Brown for stealing these vehicles as there is no evidence to suggest that he had anything to do with the actual thefts. Indeed I believe him when he says, as he did at his sentencing hearing, that he did not. The relevance of the relationship between car theft and “chop-shops” is an issue I will address in due course. Mr. Brown’s guilty plea is an admission that he knew he was working on stolen vehicles: it is

instructive for him and the community in general to appreciate that behind each vehicle being stripped and disassembled at a chop-shop there is a person who experiences a loss that cannot be measured solely in financial terms.

Requests for Restitution

[17] At the sentencing hearing, requests for restitution were submitted by Matthew Webb, Shawny Bruhm, Corey MacDonald, Paul Thibault and Royal and Sun Alliance Insurance. The claims sought compensation for loan payments, personal and vehicle-related items that were stolen with the vehicles, and, in the case of the insurance company, the loss payout it made to one of the theft victims for the depreciated value of the truck.

[18] In the course of reviewing the filed restitution requests as I was preparing this decision, I concluded that I needed clarification of the Crown's position on the issue of restitution. To obtain this I sent an email to the Crown on April 25 which was responded to on April 26. This exchange of correspondence was copied to Mr. Brown's lawyer. The Crown explained in its April 26 email that $400,800 figure supplied by Cst. Morgan of "pre-chopped" value for the vehicles was intended to indicate the magnitude of Mr. Brown's operation. I will note that a third of the vehicles found in whole or in part at Units 14A and 12 had a pre-chopped value of over $30,000. The scope of the operation is measured by the number of vehicles implicated, a total of 19.

[19] To return to the restitution issue, the Crown clarified for me in its email that at the sentencing hearing on April 19 it had been seeking restitution orders for each

of the victims in the full amount of their claims. However, the Crown went on to advise, since those submissions, it had become aware of the Nova Scotia Court of Appeal decision in *R.v Debay, [2001] N.S.J. No. 105*. The Court considering restitution orders in *Debay* relating to losses resulting from the original theft of the vehicle, held as follows:

> [The sentencing judge] erred in ordering restitution of losses caused by theft of the vehicles. An order under s. 738(1)(a) of the Criminal Code of Canada, R.S.C. 1985, c. C-46 may only be made where property has been lost "as a result of the commission of the offence…" [Mr. Debay] was not convicted of theft of these vehicles and no evidence was put before the Court that he was involved in the thefts or that the theft losses resulted from his acts of possession or fraud. The theft losses, therefore, could not be compensated under s. 738.

[20] There is no direct evidence of Mr. Brown having a role in the theft of the vehicles and the Crown is conceding that without evidence of his involvement beyond the "handling" evidence, its original submission on the appropriateness of restitution orders in this case is on shaky ground. I agree. I had been intending to research the restitution issue more fully before deciding it, and had started to do so prior to receiving the Crown's April 26 response to my email. There would also have been the issue of Mr. Brown's ability to pay for me to carefully consider. *(R. v. Spellacy, [1995] N.J. No. 215 (Nfld. C.A.) at paragraph 79; Debay, at paragraph 3)*

[21] The *Debay* decision draws a bright line that the Crown has appropriately acknowledged, stating in its April 26 email that Cst. Morgan's evidence about the vehicles and Mr. Brown's activities at his leased premises "may be insufficient" to draw the connection between Mr. Brown and the theft of the vehicles for the purpose of restitution under section 738(1)(a). There will be no restitution ordered against Mr. Brown as the evidence does not establish that the theft of the vehicles occurred due to any involvement on the part of Mr. Brown. The property in issue here, the stolen vehicles, were lost due to theft, which is not what Mr. Brown pleaded guilty to.

The Pre-Sentence Report

[22] Mr. Brown's pre-sentence report is essentially positive. He is 35 years old with a Grade 12 GED. He has a criminal record that, for the purposes of this sentencing, is not significant. He has a dated conviction under section 5(1) of the *Controlled Drugs and Substances Act* from November 2000 and a mischief conviction from June 2008. Often a criminal record will have some relevance at sentencing; in this case it does not. The Crown acknowledged that its position was not influenced by Mr. Brown's record and that it would be making the same submissions on sentencing if Mr. Brown had no criminal record at all. Effectively, Mr. Brown's record is a neutral factor in these proceedings.

[23] Mr. Brown has five children and has fostered a loving connection with all of them. They are a seven year-old daughter, O., a eleven year-old son, A., a 17 year-old son, C., and a teenage daughter and son, H. and J. He has O. and A. with him most weekends, enjoys a close relationship with C., and sees H. and J. during the

summer when they visit from Ontario and stay at his mother's home. Mr. Brown provides financial support for O. and A. and underwrites the expenses of H.'s and J.'s summer visits. Mr. Brown lives part of the week with his parents and brother which makes it easier for him when he is working with his father and provides a better environment for meeting his children's needs and supervising them on their weekend visits.

[24] Mr. Brown has been working with his father for the past 10 years, first at a demolition company and recently repairing machinery for his father, cutting trees, clearing lots and restoring old cars. According to the information he provided for the pre-sentence report, Mr. Brown has, at the same time, operated his own motor vehicle repair shop, doing repairs and body work. In the last three years he has been in the business of rendering cars into scrap and selling salvageable vehicle parts. In the past he has also worked as a mechanic.

[25] Adjectives used by Mr. Brown's mother and a friend to describe Mr. Brown include: "very kind, caring, hard-working and gifted in the vocational trades, respectful, eager to work and always gainfully employed." There is no indication that Mr. Brown has any substance abuse or anger issues.

[26] Remuneration from Mr. Brown's employment has been low. He indicates an annual income of around $20,000. I was informed at the sentencing hearing that Mr. Brown has been offered the opportunity of full-time work as a farm labourer earning $13 per hour. In the pre-sentence report it is indicated that Mr. Brown mentioned an interest in taking a heavy equipment licensing course offered in Falmouth, Nova Scotia.

[27] Although the Crown submits that Mr. Brown has not shown any real remorse for his actions, he did advise in the pre-sentence report interview that he accepts responsibility and added: “I was associating with people [who] were doing illegal activities and I take the blame for the offence committed.”

Position of the Crown

[28] The Crown is seeking a sentence of two to four years of penitentiary time for Mr. Brown. It submits that denunciation and general deterrence must be emphasized, given the aggravating features of the offence committed. The Crown describes those aggravating features as being: (1) the relationship between profit-motivated auto theft and “chop shops”; (2) the number and value of stolen vehicles; (3) the number of victims; and (4) the planned, deliberate and active nature of the crime.

[29] The Crown’s position is essentially that the scope of the operation, as noted by Cst. Morgan, the largest one he has investigated in Nova Scotia, and the nature of such operations - their relationship to organized car thieves, merits nothing less than a prison sentence. The Crown notes that if a prison sentence is identified as fit and proper in this case that eliminates consideration of a conditional sentence, and that furthermore, even if a sentence less than two years was ordered, a conditional sentence would not be consistent with the fundamental purpose and principles of sentencing as required by section 742.1 (4) of the *Criminal Code*. In other words, in the Crown’s submission, a conditional sentence does not, on these facts, represent a sufficient degree of denunciation and deterrence.

The Position of the Defence

[30] The Defence submits that this is a case where the proper balancing of the sentencing principles of denunciation, deterrence and rehabilitation is achieved by a sentence of less than two years and that Mr. Brown satisfies the requirements for a conditional sentence. The Defence notes that the offence of possession of stolen goods over $5000 is not punishable by a mandatory minimum period of imprisonment and points to the Crown having conceded that sentencing Mr. Brown to serve his sentence as a conditional sentence would not endanger the safety of the community. In the submission of the Defence therefore, all the requirements for a conditional sentence as set out in section 742.1 of the *Criminal Code* are met in this case.

[31] The Defence has argued that Mr. Brown's sentence should be moderated to reflect a plea of guilty to only one charge of possession of stolen property over $5000, not multiple counts as is seen in some of the cases I will discuss shortly. This submission is unpersuasive. Mr. Brown, who was originally charged in relation to each of the victims separately, has pleaded guilty to a single count that includes all the individual victims. As the Crown observed, this framing of the charge for the purposes of Mr. Brown's guilty plea does not diminish the degree of his culpability.

The Offender and the Offence

[32] Sentencing has been explicitly recognized as an individualized process. (*R. v. C.A.M., [1996] S.C.J. No. 28*) It is a process requiring an examination of the

facts of the offence and the circumstances of the offender and an assessment and weighing of the relevant sentencing principles to arrive at a fit and proper disposition. The courts have long rejected a "cookie-cutter" approach to sentencing. This was reinforced in the 1996 amendments to the *Criminal Code* which are reflected in sections 718 and 718.2.

[33] In this case I am sentencing a 35 year old man with a limited education who has consistently sought out work and been gainfully employed, although his employment has earned him little better than a marginal living. The information he provided for the pre-sentence report indicates that over the last three years he has been working in auto repair and salvage as an adjunct to the vehicle repair and body work business he has operated for some time. This was not disputed by the Crown and, taken with the facts about Mr. Brown's "chop-shop" activities, indicates that Mr. Brown had a legitimate motor vehicle repair and salvage business that started to take in and disassemble stolen vehicles. Mr. Brown was the sole operator of the business and retained control of the operation once the stolen vehicles began to arrive. There is no information to tell me whether Mr. Brown continued to do legitimate repair and bodywork in his garage during the period indicated in the Information – April 5 to May 15, 2008, but I do know from Cst. Morgan's testimony about the video surveillance footage he studied for the period of April 24 to May 7, 2008 that he saw no damaged vehicles being brought to the property, there did not seem to be much work being done other than on the "chopped" vehicles, and there was not much left at the property once the police seized the vehicles and vehicle parts.

[34] This indicates to me that Mr. Brown became increasingly involved with dismantling stolen vehicles at his garage, to the exclusion of the legitimate work that was the focus of his business originally. He turned his autobody and mechanic skills to the illegal enterprise of "chopping" stolen vehicles for profit, although how much profit is unknown. Cst. Morgan did confirm that the values he provided for the stolen vehicles do not represent the more modest gain Mr. Brown would have realized from his work as the "chop-shop" operator.

[35] Although no comment was made at the sentencing hearing to explain why Mr. Brown became embroiled in this illegal activity, it seems reasonable to assume that the prospect of improving his financial situation would have been the attraction. How he benefitted was also not explained: did he simply get paid for the disassembly work or did he receive any share of the profits from the sale of the vehicle parts? The "chop-shop" does not appear to have made a substantial difference to Mr. Brown's financial situation: at the time the pre-sentence report was prepared in April 2010, Mr. Brown was still living between his apartment and his parents' home, pegged his annual income at approximately $20,000, and owed $5000 to his lawyer. Of course he could have money from his criminal enterprise salted away, but I am not prepared to assume that he made himself wealthy even though it is reasonable to infer that money was the motivation for his involvement.

[36] As I have noted earlier, Mr. Brown is charged for possession of the stolen vehicles and parts for the period April 5 to May 15, 2008. Referring to the Crown's chart, of the eighteen vehicles that were found in whole or in part at Mr. Brown's leased premises, six were stolen during this period and five were stolen shortly before, from February 18 through to March 25, 2008. Four of the vehicles or parts

found were stolen in the latter part of 2007, and parts were found that belonged to three vehicles that had been stolen in 2006, 2003 and 2001. The vehicle whose documents only were found at the site was stolen in August 2007. I have no information about where the vehicles were between when they were stolen and when they were identified intact or by their components at Units 14A or 12 on May 7 and 8, 2008 during the police search. What the evidence does tell me is that eleven of the stolen vehicles or their parts found their way to Mr. Brown quite quickly after they were taken. However gradual Mr. Brown's involvement may have been at first, the relationship between the dates on the Information and the volume of vehicles stolen during or in close proximity to this period show that his operation had become quite active by the time of the police "take-down".

[37] In its sentencing submissions, the Crown has discussed this aspect of the criminal activity represented by a "chop-shop". There is, in such cases, as described by the Crown, a symbiotic relationship between the car thieves and the individual or individuals who take possession of the stolen vehicles and break them down to facilitate the sale of their parts. As happened here, the cannibalized vehicles are re-assembled with other stolen parts to disguise their identity. Notwithstanding that Mr. Brown had no direct involvement in the theft of any vehicles, his skills enabled the auto-thieves to realize the benefits of their activities: the vehicles they stole could be rendered into a state that made them difficult to identify and the parts obtained from disassembly could be sold at a profit. This means that car thieves could improve the return on their criminal enterprise: as Cst. Morgan testified, the money in a "chop-shop" is in the sale of the parts as the parts are worth more than the car as a whole.

[38] The evidence establishes that Mr. Brown's "chop-shop" facilitated the work of known car thieves, was an active enterprise, and "processed" a significant number of vehicles. It is significant that it has been described as the largest operation investigated by Cst. Morgan in Nova Scotia.

[39] This brings me to the point of examining the purpose and principles of sentencing and then considering how they have been applied in other cases involving activities related to car theft. Following that I will focus on what constitutes a fit and proper sentence for Mr. Brown.

Principles of Sentencing

[40] Parliament has articulated the fundamental purpose and principles of sentencing in sections 718 and 718.1 of the *Criminal Code*.

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

> (a) to denounce unlawful conduct;
>
> (b) to deter the offender and other persons from committing offences;

(c) to separate offenders from society, where necessary;

(d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[42] Section 718.1 provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[43] Section 718.2 recites the other sentencing principles that the sentencing court is mandated to take into consideration, which for the purposes of this case are:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender ...

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

(c) ...

(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 ...

…

Sentencing Cases Relied on By the Crown

[44] There are no Nova Scotia cases to assist in the sentencing of Mr. Brown. His case represents the first "chop-shop" sentencing in this Province. The Crown wants a strong message sent that "chop-shop" operations will net their operators federal terms of imprisonment.

[45] The Crown has referred me to a number of English cases that discuss what is described there as "car ringing." The "flavour" of an English "car ringing" case is found in the evidence of "cars being lost, stolen, found missing, and then the car or parts of the car found at or through [the premises of the offender.]" The English courts have commented on the sustenance car ringing operations provide to car thieves:

> There would not be so much car theft, which is a great nuisance to people – indeed worse than a nuisance – if there were not people like this [offender] and his colleagues who are prepared to set up houses for disposal of stolen cars. Deterrent sentences are required in order to make sure, as far as the courts can, that this activity is kept to a

minimum." *(Regina v. Burton, [1998] E.W.J. No. 2939 (C.C.A.) at paragraph 31)*

[46] As noted by the Crown, this passage has been expressly endorsed by Canadian courts in the decisions of *R. v. Smith, [2009] A.J. No. 742 (P.C.) at paragraph 13* and *R. v. Khan, [2006] O.J. No. 144 (S.C.J.) at paragraph 36.* In *Regina v. Geary, [1997] E.W.J. No. 281 (C.C.A.),* the English Court of Appeal, Criminal Division, noted the trial court's comments about the considerable amount of car theft and how it is "encouraged by those who are known to be prepared to accept stolen vehicles." Mr. Geary, described as "the main mover, the procurer of thefts of cars and a man of bad character" [with previous convictions for dishonesty, "not least" counterfeiting] was given a sentence of three years on each of four counts of handling [possession] of stolen motor cars.

[47] The Crown also provided me with seven Canadian sentencing cases, four from Alberta and three from Ontario. They all involve charges related to stolen motor vehicles and are relied on to support the Crown's position on the range of sentence for Mr. Brown. The Crown also emphasizes, as illustrated by these cases, that there is no precedent in Canada for a conditional sentence in a "chop shop" case.

[48] In some of the cases cited by the Crown, the offenders were intimately involved in acquiring the stolen vehicles. For example, in *R. v. Risley, [1986] A.J. No. 20 (Alta. C.A.),* the facts revealed an "extensive stolen car ring that acquired motor vehicles by street and dealership thefts in Ontario, Quebec and Alberta." Mr. Risley received vehicles "from other members of the conspiracy", altered their

vehicle identification numbers and re-sold them. In some instances custom thefts were involved: “an order for a particular vehicle would be taken from an accomplice purchaser, and the particular vehicle then [was] stolen and delivered, all through Risley.” The “nationwide automobile theft ring to which Risley had attached himself” produced an average of two stolen vehicles per week during the three to four years it was in existence, although the Court noted that not all these vehicles were handled by Mr. Risley. Mr. Risley made a profit of about $20,000. Mr. Risley’s dated record did not seem to be a factor in the Court’s decision to increase Mr. Risley’s sentence from 3 years to 4.5 years. Referring to the “national scourge” of organized car theft, the Court emphasized deterrence in determining that the 3 year sentence had been inadequate.

[49] Another Alberta case that attracted a lengthy prison term, *R. v. Banks, [2005] A.J. No. 310 (Alta. C.A.)*, also appears to have involved a direct role by the offender in acquiring the stolen vehicles. The decision is not entirely clear on this fact but says: “[Banks] brought whole vehicles onto the lot of a co-accused (Harness), stripped them for parts to sell, and altered their vehicle identification numbers.” While awaiting sentence, Mr. Banks stole a motor vehicle and absconded which points to him having skills as a car thief. His sentence of 3.5 years for 8 counts of possession of stolen property over $5000 was upheld with note being made of his related record and an abuse of trust dimension to his role as he had advanced his criminal activities by somehow obtaining vehicle identification numbers through his employer. An accomplice, Mr. Harness *(R. v. Harness, [2005] A.J. No. 1377 (Alta. C.A.))* was sentenced to two years less a day on 7 counts of possession of stolen property. He owned a legitimate business that dealt in used car parts as well as buying and selling vehicles to the public. The

illegal aspect of the operation was described as “a reasonably sophisticated “chop-shop” operation.” *(Banks, at paragraph 3)* The Alberta Court of Appeal found no error in the sentencing judge’s decision to refuse to grant a conditional sentence order despite Mr. Harness arguing that denunciation and deterrence had been over-emphasized and the least restrictive option appropriate in the circumstances had not been considered.

[50] A conditional sentence for possession of stolen motor vehicles (six stolen motorcycles) was most recently rejected in Alberta in *R. v. Smith, [2009] A.J. No. 742 (Alta. P.C.)* Mr. Smith, 28 years old with a related and recent record, was sentenced to 10 months in jail for taking possession of the stolen motorcycles, replacing the VIN numbers with false ones, entering the motorcycles into the Alberta motor vehicle registry and selling them to a local business that in turn sold them to unsuspecting victims. Mr. Smith admitted to making a profit of $12,000.

[51] The Alberta Provincial Court decided a conditional sentence was not appropriate in Mr. Smith’s case, in part because he had previously committed an offence while bound by a probation order, but also on the grounds of the following factors: Mr. Smith’s involvement in the “laundering” of stolen motorcycles and “foisting them on innocent third parties for profit”; the financial losses of the victims; the losses of reputation (for the local business) and transportation (by the original owners); the fact that there were multiple victims; the duration of the criminal activity, stretching over 10 months; and the fact that Mr. Smith was neither a youthful nor a first offender, coupled with the level of sophistication involved in his crimes. *(Smith, paragraph 13)*

[52] The Court concluded that the principles of denunciation and deterrence must be emphasized in cases of "a prevalent crime involving sophisticated stolen property marketing." Imprisonment was viewed as "the only just sanction" in Mr. Smith's case and a period of incarceration was held to "carry a greater degree of denunciation than a conditional sentence" and be more likely to achieve general deterrence.

[53] According to the cases provided by the Crown, in Ontario, "chop-shop" cases have attracted sentences from 18 months to 2.5 years. In *R. v. Rai, [1996] O.J. No. 697*, the Ontario Court of Justice imposed sentences ranging from 18 – 24 months on three brothers convicted of conspiracy to possess stolen automobiles and automobile parts. Over a two year period the brothers had participated in a general conspiracy that involved "chop shop" activities, including switching VIN plates from wrecked to stolen cars and insurance fraud. The Court found there was a "great deal of evidence" to indicate extensive planning and premeditation by the Rai brothers at their garage during the period of the conspiracy. In passing sentence, the Court spoke of emphasizing general and specific deterrence "and the need to uphold public confidence in the administration of justice."

[54] Ten years after *Rai*, the Ontario Superior Court of Justice sentenced the Khan brothers for being "ringleaders in a professional, stolen vehicle/parts operation carried out on a massive scale." *(R. v. Khan, [2006] O.J. No. 144)* The Agreed Statement of Facts included the following admission: "…70 motor vehicles have been identified as stolen re-vinned motor vehicles that have passed through the shops operated by the accused men and parts from a further 20 stolen vehicles have been located on their business premises. The period of criminality spans

seven years…" The duration and sophistication of the operation were identified as aggravating factors. Mitigating factors included the guilty pleas and expressions of remorse, the motivation to engage in criminality coming from the financial pressures associated with trying to maintain a legitimate business that was struggling, the first offender status of one of the brothers, successful compliance with strict bail conditions, and the fact that both offenders were gainfully employed with family support obligations.

[55] In *Khan* the emphasis was again on denunciation and deterrence, given the considerable planning, skill and daring involved. They were sentenced to penitentiary terms of 2 years and 2.5 years, the brother with no prior record receiving the lesser sentence.

[56] The Crown also referred me to the case of *R. v. Toulouse, [2005] O.J. No. 123 (Ont. C.J.)* Mr. Toulouse was licensed to deal in the trading of motor vehicles and ran a business that, dealt, amongst other things, with damaged and salvaged vehicles. Like Mr. Brown, Mr. Toulouse was not involved in the planning or execution of car thefts. The following description of a more sophisticated Mr. Toulouse somewhat evokes Mr. Brown: "He started rubbing shoulders with persons connected to the auto theft industry" and "dabbled too deeply into the world of illegal behaviour", allowing himself "to become indifferent to the contaminated business circumstances he found himself in…"

[57] As an aside, I will note that it is not a defence to claim ignorance of the origins of the stolen motor vehicles where that ignorance is deliberate: criminal liability cannot be avoided by offenders shutting their eyes to avoid being "fixed

with knowledge." (*R. v. Jorgensen, [1995] 4 S.C.R. 55 at paragraph 103; R. v. Briscoe, [2010] S.C.J. No. 13)*

[58] Mr. Toulouse did not operate a "chop-shop" but facilitated another aspect of the stolen car industry, the sale of stolen and re-identified vehicles. As noted by the Court: "He closed his eyes to the obvious, for profit." He did so for a period of approximately two years, using his knowledge of the automotive industry to further his illegal activities. At 36, with an unrelated record, Mr. Toulouse had never been incarcerated. He received a total sentence of 15 months imprisonment on 4 counts of possession of stolen property of a value exceeding $5000, 2 counts of possession of stolen property of a value less than $5000, and 4 counts of fraud in amounts exceeding $5000. The Court emphasized denunciation and deterrence, and made special mention of Mr. Toulouse's covert, fraudulent conduct and breach of trust. The sentence was crafted to send a strong message that "these types of crimes will be dealt with very seriously by the court." A conditional sentence was found to be inappropriate.

Sentencing Shawn Brown

Aggravating and Mitigating Factors

[59] In Mr. Brown's case it is aggravating that there were 19 vehicles implicated in Mr. Brown's "chop shop", and that the evidence indicates he was primarily working on stolen vehicles at his garage and not engaged in much, if any, lawful business over the time referenced in the Information. Cst. Morgan's evidence indicates no lawful business being conducted during the period of video

surveillance of April 24 to May 7. I suppose it is possible that Mr. Brown had some legitimate work underway in the time prior to the video footage, although Cst. Morgan indicated that after the execution of the search warrant and the seizure of stolen vehicles and parts, there was little left at the property.

[60] Mr. Brown's operation however, although extensive in scope especially by Nova Scotia standards according to Cst. Morgan, did not involve the degree of sophistication and scope of execution demonstrated by some of the offenders whose cases I reviewed earlier. It was not as robust an operation as those of Mr. Risley, the Rai brothers, the Khan brothers, or even Mr. Toulouse. And even though Mr. Smith traded in fewer vehicles, his criminal enterprise involved a greater range of dishonest activities to accomplish his profit-motivated ends. The duration of some of the auto-theft related operations I have examined was also much longer: the Rai brothers engaged in their criminal activities for 2 years as did Mr. Toulouse. The Khan brothers ran their operation, described as "planned and sophisticated", for 6 years. As noted, in some cases breach of trust was involved.

[61] In Mr. Brown's case there are mitigating factors that must be considered in determining an appropriate sentence. He pleaded guilty, accepting responsibility and avoiding a prosecution that was described in *Toulouse* as "tedious, difficult and costly" in these kinds of cases. Mr. Brown is effectively a first offender: his record is inconsequential for the purposes of this sentencing and he has never served a custodial term. Treating him as though he were a first offender is consistent with the Nova Scotia Court of Appeal decision in *R. v. Riley, [1996] N.S.J. No. 183* which, at paragraph 26, commented approvingly of the statement in *Ruby on Sentencing (4th ed.)*: "One may be treated as if one were a first offender, in

appropriate circumstances if a custodial sentence has never been imposed…" This was reiterated in the Court's later decision in *R. v. Butler, [2008] N.S.J. No. 478.* Mr. Brown is working, he has family support obligations and as far as I am aware, has complied with his release conditions, all factors which were cited as mitigating in the sentencing of the Khans.

The Appropriateness of a Custodial Sentence

[62] The issue in this sentencing is not whether a custodial term of imprisonment is warranted: the Defence has conceded that by arguing for a conditional sentence. A statement from the *Toulouse* decision captures the essence of why a custodial sentence is appropriate: "…a sanction other than custody would not sufficiently reflect the gravity of the offences or the repeated nature of the criminal conduct. To impose anything less would fail to preserve the integrity of the administration of justice." (*Toulouse, at paragraph 26*)

[63] The issue then is what kind of custodial sentence Mr. Brown should receive: a penitentiary term as urged by the Crown (which would exclude any consideration of a conditional sentence) or a sentence of less than two years in which event, the Defence argues, a conditional sentence should be ordered. Addressing the question of the kind of custodial sentence and crafting a fit sentence for Mr. Brown requires me to assess the gravity of his offence and the degree of his responsibility. (*section 718.1, Criminal Code*) The evidence establishes that Mr. Brown deliberately immersed himself in the unlawful business of receiving and "chopping" stolen vehicles, an enterprise that facilitated profit-making automobile thieves. This was not a casual, occasional operation: the Information refers to the period of April 5 to

May 15, 2008 and nine of the subject vehicles were stolen either just before or during that time frame. When the police searched the property on May 7 and 8, for seven of those vehicles they found only parts. Two stolen trucks were intact but had been stripped and modified. It is reasonable for me to infer from the evidence that Mr. Brown was not working sporadically, that he was in fact rendering recently stolen vehicles into saleable and it was hoped, untraceable, parts with as little delay as possible. Mr. Brown was the principal operator in a type of enterprise that, according to the evidence and the cases, makes stealing vehicles more profitable: the identity of the vehicles can quickly be disguised or obscured and the stripped components sold individually for more than the intact vehicle would bring. Car theft is a serious crime and Mr. Brown used his skills to assist those committing it.

[64] The Crown is looking for an emphatic message of deterrence for would-be “chop-shop” operators in Nova Scotia. Relying on the cases I reviewed earlier, the Crown submits that Mr. Brown should receive a sentence in the range of 2 – 4 years in prison to deter others. This submission encapsulates what is intended by the concept of general deterrence. General deterrence supposes that others, with similar inclinations to the offender will be deterred, once they learn about the sentence, from committing a comparable offence. The purpose of general deterrence is to "discourage potential offenders from becoming actual offenders." It has been referred to as the "punishment of the offender for what others might do." *(R. v. McGinn, [1989] S.J. No. 718 (Sask. C.A.).)*

[65] Mr. Brown’s involvement in “chopping” stolen vehicles was serious and significant. I have concluded that a fit and proper sentence for Mr. Brown, given

the seriousness of the offence and the degree of his culpability, is a custodial period of twelve months, not served as a conditional sentence. It is my view that the principles of denunciation, deterrence and rehabilitation are properly balanced in this case by a sentence of one year in jail. A custodial sentence is the ultimate denunciatory sentence but, in Mr. Brown's case, it would be unduly punitive to remove him for a lengthy period from society, his children and his ability to be gainfully employed or retrained. Holding Mr. Brown to account must not overwhelm his ability to rehabilitate himself.

[66] As for deterrence, there is no reason to think that potential "chop shop" operators in Nova Scotia will calculate a one-year sentence as a risk worth taking but not a two-year sentence. For someone like Mr. Brown who has had very limited involvement with the criminal justice system and has never received a custodial sentence, one year in jail is a significant sanction. General deterrence is a principle I am required to factor into the mix of this sentence but it should not be given inordinate prominence, especially where its effectiveness is speculative. *(R. v. Wismayer, [1997] O.J. No. 1380 (Ont. C.A.))*

[67] I will say that notwithstanding my decision that a penitentiary term would not be appropriate in Mr. Brown's case, in the right circumstances, prison remains a risk for "chop-shop" operators in Nova Scotia. The cases from Alberta and Ontario, discussed previously in this decision, leave no question about that.

The Conditional Sentence Option

[68] I have carefully considered, and decided against, ordering a conditional sentence in this case. Arriving at this conclusion was not easy. I am declining to order a conditional sentence because I am not satisfied that such a sentence would be consistent with the fundamental purpose and principles of sentencing as required by section 742.1 of the *Criminal Code*. While I fully accept that conditional sentences can satisfy the sentencing objectives of denunciation and deterrence, the suitability of a conditional sentence in any particular case must be assessed on the basis of the facts of the case.

[69] A conditional sentence must achieve both punitive and restorative objectives. *(R. v. Proulx, [2000] S.C.J. No. 6, at paragraph 100)* As noted in *Proulx*, "Incarceration will usually provide more denunciation than a conditional sentence, as a conditional sentence is generally a more lenient sentence than a jail term of equivalent duration." Setting onerous conditions and extending the duration of the conditional sentence to make it longer than the jail sentence that would have ordinarily have been imposed are typically required to satisfy the denunciatory goals of sentencing. "Sufficiently punitive conditions" and public awareness of "the severity of these sentences" will be necessary for the general deterrence purposes of sentencing, however uncertain is the effectiveness of those purposes. *(Proulx, at paragraphs 102, 107)* With those principles in mind, I have not been persuaded that permitting Mr. Brown to serve his sentence in the community under conditions, whatever those might be as none were proposed, can achieve what is required under the law.

[70] However skeptical I am about the effectiveness of general deterrence, Parliament has mandated it as an aim of sentencing. *(R. v. McKinnon, [2005] A.J. No. 12 (Alta. C.A.) "Canadian judges differ about the effectiveness of general deterrence in many situations, though none can now quarrel about the principle, because s. 718 of the Code lists it as the third aim of sentencing (s. 718(b)).")* In light of the aggravating factors here and the need to give due emphasis to the principles of denunciation and deterrence, as between incarceration or a conditional sentence, incarceration is the more appropriate sanction. *(R. v. Proulx, [2000] S.C.J. No. 6, at paragraph 114)*

[71] It is not without misgivings that I have decided against a conditional sentence for Mr. Brown. My misgivings are related to the issue of effective rehabilitation and the risks associated with sending a man to jail where he will associate with offenders who have longer and more serious records. As noted in *Wismayer*, the LeDain Commission: Final Report of the Commission of Inquiry into the Non-Medical Use of Drugs (1973) warned of this when it said:

> Perhaps the chief objection to imprisonment is that it tends to achieve the opposite of the result it purports to seek. Instead of curing offenders of criminal inclinations it tends to reinforce them. This results from confining offenders together in a closed society in which a criminal subculture develops. *(Wismayer, at paragraph 48)*

[72] Although stated almost forty years ago, this observation is no less valid today. A similar comment was made in 1977 in the report of the Solicitor General

of Canada. A Summary and Analysis of Some Major Inquiries on Corrections -- 1938 to 1977:

> Growing evidence exists that, as educational centres, our prisons have been most effective in educating less experienced, less hardened offenders to be more difficult and professional criminals. *(Wismayer, at paragraph 48)*

[73] Mr. Brown will have to be resilient and while in jail, resist any pressure or temptation that would turn his life in a counter-productive direction. He will also have to recognize the extent of the harm his actions gave support to and commit himself to law-abiding choices when he returns to the community.

[74] In the final analysis, I concluded that a conditional sentence was made an unsuitable option by the scope of Mr. Brown's operation as indicated by the presence of 18 vehicles or their parts (and the discovery of another vehicle's documents on the premises), the level of activity described by Cst. Morgan, the fact that a number of vehicles must have been taken relatively directly to Mr. Brown after being stolen, and the degree of facilitation his participation afforded the car thieves using his services. Mr. Brown will service his sentence as a conventional jail sentence. I will not order a Victim Surcharge as it would, in the circumstances, impose an undue hardship on Mr. Brown.