IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Billard, 2006 NSPC 4

Date: 2006-01-11
Docket: 1474879, 1474893
Registry: Halifax

Between:

R.

v.

A.A.B.

Restriction on Publication: S.110(1) **Identity of offender not to be published**--Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.

(2)**Limitation**--Subsection (1) does not apply
(a) in a case where the information relates to a young person who has received an adult sentence

Judge: The Honourable Judge James H. Burrill

Heard: January 11, 2006, in Halifax, Nova Scotia

Written decision: February 23, 2006

Charge: 220(B) CC
249.1(4)(B) cc

Counsel: Gary Holt, Q.C. for the Crown
and Eric Taylor for the Crown
Warren Zimmer for the Defence

By the Court:

ORALLY

[1] Mr. Billard is before the Court this morning. It is the tragic and disturbing events of October 14th, 2004, that bring us here today. Mr. Billard is here to have sentence imposed on two charges that arise out of his actions that day.

INTRODUCTION

[2] The first charge is that he did,

> by criminal negligence in the operation of a motor vehicle, cause the death of Theresa McEvoy, contrary to section 220(b) of the **Criminal Code**;
>
> and the second is that he;
>
> while operating a motor vehicle on a street, to wit, Connaught Avenue, being pursued by a peace officer operating a motor vehicle, did, in order to evade the police officer, fail without lawful excuse to stop his vehicle as soon as was reasonable in the circumstances and did operate the said motor vehicle in a manner that was dangerous to the public and thereby caused death to Theresa McEvoy, contrary to section 249.1(4)(b) of the **Criminal Code**.

Mr. Billard had previously pled guilty to those offences and this Court had made section 36 findings of guilt in connection with those charges.

[3] Before proceeding with the sentencing hearing, I want to thank both Mr. Zimmer, counsel for the accused, Mr. Holt and Mr. Taylor, counsel for the Crown. Their assistance to this Court and their able representation of their parties' respective positions in this hearing has been exemplary. They have acted in accordance with the highest traditions of the Bar of this province and they have my thanks.

[4] In this case, the Crown has applied to have an adult sentence imposed on Mr. Billard, while the defence asks that, after taking into account time spent on remand awaiting sentence, that the maximum youth sentence of three years be imposed. As to length of sentence, the Crown has suggested that a six year sentence would be appropriate, less what time the Court considers appropriate to reduce that sentence for time spent on remand. Two issues, of course, arise:

(1) should an adult or youth sentence be imposed; and

(2) what is the appropriate length of the sentence.

FACTS

[5] The facts in this case have been agreed upon and are set out in Exhibit 1. They can summarized as follows. On October 14th, 2004, Mr. Billard was 16 years of age. Early that morning, he went to the community of Lower Sackville with two 15 year olds. While in the company of at least one of those youths, he stole a 1992 Chrysler LeBaron motor vehicle from the driveway of a residence. He got into the car. Within seconds he popped the ignition from the steering column. He started it quickly and drove away with his two 15 year old friends inside. Mr. Billard and his friends drove the car around for a while and went back to the residence of one of the friends. They stayed there for a few hours of sleep. After waking up, all three went back to the stolen car. They picked up two more individuals, 20 year old Cory Webb and his 15 year old girlfriend, whose initials are L.P. The five shared what was described as a small quantity of marijuana using a water pipe. They did this at a residence. They also shared and smoked a joint of marijuana in the car approximately one half hour prior to the collision. By his own admission, at the time of the offences Mr. Billard was high or under the influence of the drugs that he had smoked. As he was on his way to drop Cory Webb and Cory Webb's girlfriend off at the Halifax Shopping Centre, he came upon two

police officers that were on a routine patrol. Those officers noticed that Mr. Billard, while driving the motor vehicle, did not completely stop at a stop sign. It was near the end of the lunch hour that day. The officers, seeing this, sounded the horn of their motor vehicle, yet Mr. Billard did not stop. He went onto Oak Street, then turned onto Connaught Avenue without stopping at the stop sign there. In doing so, he cut off another vehicle travelling along that roadway. The police pursued him for a short distance. They engaged their siren. Mr. Billard increased his speed, went through the red light at Connaught and Chebucto Road. At that time, it's clear from the facts that were admitted that the situation was becoming extremely dangerous. Supervisors of the police officers, who were obviously in radio communication with the officers following Mr. Billard, told the officers not to pursue the car any further due to safety concerns. The siren was shut off. The officers continued to drive along and observe the car driven by Mr. Billard as it sped away. It reached the intersection of Connaught Avenue and Almon Street and proceed through another red light, and it was there that it collided with the vehicle driven by the victim in this case, Theresa McEvoy. The light had just turned green and Ms. McEvoy proceeded legally into the intersection when she was struck. The 52 year old mother of three boys had just finished her lunch. She was heading

back to the Westmount Elementary School where she worked as an educational program assistant.

[6] Various witnesses of Mr. Billard's vehicle estimated his speed at the time of the collision somewhere between 60 and 130 kilometres an hour. Obviously, the speed limit in the city was 50 kilometres per hour. One of the police officers estimated the speed of the vehicle at well over 100 kilometres per hour at the time of the collision. The accused himself didn't know how fast he was driving, didn't know how fast he was driving because he was trying to pay as much attention to the road as he could and drive as fast as he could to get away. In his statement to the police he commented that he didn't even know how hard he was pressing the accelerator because of his state of impairment by drugs. Connaught Avenue, of course, is a four-lane commuter route divided by a grass median. Almon Street is a two-lane roadway. The whole of the area can be described as residential. There was a tree and a raised lawn at the corner where the collision took place that would have obstructed the view not only of Theresa McEvoy but the view of Mr. Billard as he approached the intersection. Likely, Theresa McEvoy did not see Mr. Billard's car coming. This is likely because she took no evasive action to avoid the collision, because there was none she could take. Mr. Billard did brake just before

the collision, indicating that he did see Ms. McEvoy's vehicle at the last second. However, it's clear from the evidence that he T-boned or broadsided the vehicle, hitting the front of his vehicle at 90 degrees to Ms. McEvoy's vehicle.

[7] It's clear that Ms. McEvoy died instantly. Her injuries were massive, and although individuals were able to check her pulse within seconds of the collision, there was none. The four passengers in Mr. Billard's vehicle received minor injuries and it's likely that all four have fully recovered at this time.

[8] Other vehicles were in the area at the time. There were other vehicles at the intersection. There was a 13 year old boy on his way back to school. He saw Mr. Billard coming, driving that stolen vehicle, and ran the last few steps across the intersection as he saw Mr. Billard speeding toward him. It's clear that he was able to get well out of the way before the collision occurred.

After the impact, Mr. Billard continued his efforts to flee from the police officers. He ran from the car. He ignored commands to stop. He was chased through the back yards of homes, over several fences, and continued to run until he was tackled by a police officer on the soccer field at the Westmount Elementary School. Even

when tackled, he continued to struggle, but was finally cuffed and taken into custody. He later told police his plan was to try to get to the school and blend in with a crowd of students, shed his top layer of clothing and elude capture in that fashion.

[9] In giving his statement to the police later in the day, he said that he fled from the police when they noticed he had not stopped at the stop sign at Oak Street. He said he fled because he did not want to go back to jail. He figured that he could outrun them in the city, and once he lost them for a couple of minutes, he would get out and catch a bus. He agreed with the police that one problem with such a plan was that there was a lot of traffic in the city. He agreed by saying that that was especially so around 12:00, essentially the time that this took place. Those facts show an acknowledgement by the accused that it was to be expected that there would be traffic along the highways on which he drove at that time.

[10] During the interview, it's reported that he became emotional. He indicated that he wished it had been him that had died in the collision and not Ms. McEvoy. He took up a suggestion from the police and wrote a note of apology to Ms.

McEvoy's family, expressing his sorrow for their loss and wishing it had never occurred.

[11] At the time, Mr. Billard was not insured. He was not licensed. In fact, his privilege of obtaining a license had been revoked. At the time of the collision, he was at large in the community facing 36 **Criminal Code** charges, as well as two **Motor Vehicle Act** offences. Twenty-eight of those charges arose from the Halifax jurisdiction, along with the two **Motor Vehicle Act** offences. There were eight charges of theft over $5,000; nine charges of possession of stolen property, including three over $5,000; three counts of possession of break and enter instruments; one charge of taking a motor vehicle without the consent of the owner; and seven charges of failure to comply with conditions of his undertaking. The remainder of the charges were out of the Windsor jurisdiction. There was one charge of operating a motor vehicle in a dangerous manner while attempting to evade a police officer; there was one charge of break and enter with intent; three charges of theft; two charges of possession of stolen property; and one charge of breach of undertaking. Several of these offences, he was ultimately convicted of and sentenced for.

PRECONDITIONS TO LIABILITY FOR AN ADULT SENTENCE

[12] In this case, the Crown has applied under section 64 for an order that Mr. Billard be liable to an adult sentence. The preconditions applicable to this case in section 64(1) are that the individual committed the offence after his 14th birthday; and that the offences for which he is being sentenced are offences for which an adult would be liable to a term of imprisonment of more than two years.

[13] Clearly, Mr. Billard was 16 years of age at the time of this offence and meets that precondition. Criminal negligence causing death has a maximum sentence for an adult of life imprisonment. Flight from the police and driving dangerously and causing death is an offence that also carries a maximum penalty for an adult of life imprisonment.

When such an application is made, under section 71 of the **Youth Criminal Justice Act**, the Court is required, unless the application is not opposed, to hold a hearing, and obviously during the month of December for several days this Court did hold a hearing, giving both parties and the parents (in this case the mother of the young person) the opportunity to be heard.

CONSIDERATIONS PURSUANT TO SECTION 72

Section 72(1) of the **Youth Criminal Justice Act** says that, at such a hearing, the following:

> S. 72(1) "In making its decision on an application heard in accordance with section 71, the youth justice court shall consider the seriousness and circumstances of the offence, and the age, maturity, character, background and previous record of the young person and any other factors that the Court considers relevant, and
>
> (a) if it is of the opinion that a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and section 38 would have sufficient length to hold the young person accountable for his or her offending behaviour, it shall order that the young person is not liable to an adult sentence and that a youth sentence must be imposed; and
>
> (b) if it is of the opinion that a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and section 38 would not have sufficient length to hold the young person accountable for his or her offending behaviour, it shall order that an adult sentence be imposed."

[14] The Crown has acknowledged that it bears the burden of satisfying the Court that the adult sentence should be imposed. Section 72(2) says that the onus of satisfying the youth justice court as to the matters referred to in subsection (1) is with the applicant, and in this case the applicant is the Crown.

The focus is, therefore, a focus on the length of sentence necessary to hold Mr. Billard accountable for his offending behaviour. In considering what is meant by the term "accountable" in that section, I have considered and I would adopt the words of Justice Blacklock of the Ontario Court of Justice in the case of R. v. J.M., (2004) O.J. 2796, where at paragraphs 25 and 26 he says:

> "The meaning of what it is to hold a young person accountable within the meaning of section 72 is informed by how that concept is used in section 38 of the **Youth Criminal Justice Act**. The language used in section 38(1) reminds us that the purpose of the **Youth Criminal Justice Act** is to hold young persons accountable in a particular way. Namely, a young person is to be held accountable through the imposition of just sanctions that have meaningful consequences and that promote rehabilitation and reintegration into society. Thus, in my view, when one is considering whether or not a youth sentence would be sufficient to hold a young person accountable within the meaning of section 72, the youth sentence, to be acceptable, must not only be long enough to reflect the seriousness of the offence before the Court and the accused's role in it, but it must also be long enough to provide some reasonable assurance of the accused's rehabilitation to the point where he can be safely reintegrated into society."

A passage from the decision of Sundhu J. in the case of J.E.T., [2005] B.C.J. No. 206 (B.C.P.C.) is also of assistance in defining the task of this Court, where at paragraph 15, he says (quoting the words of an author that he does not identify) the following:

> "Would a youth sentence imposed in accordance with the principles of fair and proportionate accountability, that is consistent with the greater dependency of young persons and their reduced levels of maturity and the purpose and principles of sentencing in section 38, have sufficient length to hold the young person accountable?"

In making the decision, of course, the Court must consider those factors set out in section 72 of the **Youth Criminal Justice Act**. The court must consider: (1) the seriousness and circumstances of the offence; (2) the age, maturity, character, background and previous record of the young person; and (3) any other factors the Court considers relevant.

SERIOUSNESS AND CIRCUMSTANCES OF OFFENCE

Dealing first with the seriousness and circumstances of the offence, the circumstances have been outlined in the facts and it's clear that the offences are indeed serious. That seriousness is reflected in Parliament's expression of the maximum sentence of life that an adult could be liable to for the commission of such a crime. However, it's clear that in dealing with especially the charge of criminal negligence causing death that the range of conduct amounting to criminal liability for such a charge can be great, and it's perhaps best summarized by Nadeau J. in R. v. Holm (2003) O.J. No. 5385 (Ont. S.C.J.) where at paragraph 6 he says:

> "The result may be the same, a death, but the conduct causing the fatality may vary from mere inadvertence or thoughtlessness to gross negligence in the extreme." The various charges possible are structured to meet the gravity of the unlawful acts and conduct. The punishment imposed ought to reflect the level or measure of criminality in the commission of the offence. The consequence of bodily harm or death is an aggravating factor that, by virtue of the provisions of the **Code**, points to a more severe sentence, but ultimately the range of the sentence will be determined largely by the magnitude of an accused's culpability.

[15] Also, the Court, in the case of R. v. Pedersen [2004] B.C.J. No. 621, citing the Johnson case found at [1996] B.C.J. No. 2508, both decisions of the Court of Appeal, says this at paragraph 93 of the Pedersen decision:

> "To determine the level of moral culpability or blameworthiness, some factors to be considered are: the intentional risks taken by an offender; the harm that the offender has caused; and the degree of deviation from the acceptable standards of behaviour that the conduct represents." \

[16] In the case before me today, it is the finding of this Court that the moral culpability and moral blameworthiness of Mr. Billard is high. Two days after being released from custody on charges from the Windsor area, which included charges of theft over, possession of stolen property, break and enter, and, importantly, flight from police while being pursued, and while under the terms of court orders that required him to keep the peace, he engaged in the behaviour that brings him before the Court today. It's clear that the course of conduct that he engaged in that day was not impulsive.

[17] It is the finding of this Court that he acted in a premeditated and practised way. It was the premeditated and practised implementation of a plan that was designed to place innocent members of the public at risk so that he could escape. As he told the police, he ran so he wouldn't have to go back to jail. He believed, and with some justification, that if he made the situation dangerous enough, the police would back off. I call it the practised implementation of a plan because it's clear from his statements that he practised driving vehicles at high rates of speed and practised high speed manoeuvres with them. It's clear from the reports that he had been warned by his mother that he might kill someone doing this type of thing, but yet, on this day, he continued to engage in that activity.

[18] Speaking to the seriousness of his attitude and ultimately reflecting on his moral culpability are comments to the individuals conducting the psychological assessment for the Court that sometimes he looked for police officers to chase him and described an adrenaline rush that he got while he was engaged in such chases. At page 15 of the second assessment report, it says this:

> "He persisted in stealing cars despite repeated apprehensions. He admits practising high speed manoeuvres to prepare for high speed pursuits. He had first-hand experience with collisions. His mother predicted the tragic outcome of

> his recklessness. Despite all of the forewarning, he consistently engaged in high speed chases if the police attempted to stop him. Archie clearly indicated that these decisions were strategic and not impulsive. He knew that if the public were seen to be at risk the police would call off the pursuit. He was willing to put lives in danger to escape apprehension."

[19] When one considers the various examples of criminal negligence causing death in the cases, it is clear that when one compares those cases to this offence committed by Mr. Billard that Mr. Billard's moral blameworthiness is at the higher end of the scale.

AGE

I'm directed by section 72 to consider his age. Of course, at the time of the offence he was 16. He is now approximately 17 and a half years of age.

MATURITY

I must consider his level of maturity. I listened carefully to all that was said in court by the various witnesses. I took extensive notes, and during the time that I have retired to consider my decision in this case, I have reviewed those notes extensively, reflected upon them and the evidence. I read the pre-sentence report

that was prepared and the psychological reports. In the final analysis, I see an individual before me who has a marked lack of maturity, but yet I do see in him and in the evidence glimmers of hope that he has begun the maturation process. Steps in that regard have been described by some in evidence as baby steps but perhaps they are the most important steps that Mr. Billard needs to take. He has belatedly begun to engage in counselling for mental health, education and other programming at the Nova Scotia Youth Centre. He has been shunned at the centre, but I'm satisfied has, to a large extent, tried to avoid conflict within the centre, despite sometimes being in a catch-22 situation. However, at page 14 of the first report the authors say:

> "He presented as immature and impulsive during interviews, showing little appreciation of the seriousness of his situation. Archie presents as an immature young man with significant social, emotional and moral deficits."

I'm satisfied that description is still accurate today based on the evidence that I've heard and considered, yet as I say, I do see glimmers of hope that there will be change. The immaturity that he exhibited, and I'm satisfied that still exists to a marked degree, was perhaps best shown through a passage at page 10 of the presentence report where the author says:

> "He presented in an immature and somewhat cavalier manner which was displayed by his placing his feet on the table on which this writer was working, biting his nails and spitting them on the floor beside him."

Imagine how that speaks to his level of maturity on the date of that interview, which I'm satisfied has not changed markedly today. He's in the office of a probation officer who's writing a report for this Court. He's been charged with two extremely serious criminal offences, and he reacts by putting his feet up on the probation officer's desk, biting his nails and spitting those nails onto the floor. When one reflects on that, one can imagine how difficult a time it must have been for his mother, Ms. Lushman, to try to manage his behaviour.

[20] I listened carefully to the cross-examination in particular of the witnesses and of the witnesses on their reports by Mr. Zimmer, who did an admirable job of highlighting the positive. That cross-examination has convinced me that he has come some way since that date in the interview room with the probation officer, but the distance that he has come is not great yet. Perhaps just recently he has come to an understanding of his need to mature. His mother made a statement that he had just begun to deal with the death of his grandfather that occurred over two years ago and how since that time she had seen a great change in him, and I did

note in court that the only time that he appeared to show visible emotion, from my observations, was when his mother was talking about the death of his grandfather.

CHARACTER

[21] I must consider the character of Mr. Billard as well. Much of the individual's character is reflected by his actions on October 14th. The reports and the cross-examination and examination of the various witnesses paint a picture of a person who is lacking in the character that we would expect. At page 10 of the pre-sentence report under the heading of Offender Profile, Ms. Nadassi, the probation officer, writes when speaking about the offences for which this report is being prepared:

> "He displayed a fair amount of bravado, speaking freely and with a degree of pleasure about all the cars he has stolen and the chases following the theft. Although on a superficial level he took responsibility for his actions, he seemed to take pleasure in the amount of negative attention he has been receiving of late, asking if he could get a hold of the newspaper articles. Archie Billard appeared unaffected by the matters before the Court."

She also wrote in the presentence report update from December 7th, 2004, on page 2:

> "He seems to be proud of his behaviour over the last year while in the community."

[22] In the first assessment report, prepared by Steven Guthro and Dr. Johnston, they say:

> "Archie appeared to take pride in his criminal exploits. When discussing his ability to steal and drive cars he would become quite animated and speak at length. When discussing other areas of his life, including family and peer relationships, education and leisure interests, Archie's response were brief and less informative."

[23] Page 14 and 15 they went on to say:

> "The present psychiatric and psychological assessments identify areas of need and contributing factors. However, there is no clear indication that significant mental health issues, such as depression or a thought related disorder, are able to provide adequate explanation for Archie's behaviour. Finding little success or gratification in mainstream society, Archie appears to have embraced antisocial values and attitudes to the extent that he wears it on his arm, 'Newfie gangsta.' Stealing and driving cars allows him to capitalize on one of his true strengths, his visual spacial skills. He gains immediate gratification, in particular, achieves a sense of control and empowerment that he doesn't achieve in socially acceptable ways. He appears to see it as a means of stimulation and an escape from reality. Despite his denial, he also seems to take pride in his ability to steal cars. The nature of the activity does not require direct confrontation and he appears to have little appreciation of the financial, social or emotional hardship he inflicts."

[24] In the updated presentence report prepared by Ms. Nadassi for the Court in 2005, she wrote further:

> "When interviewed for this report, Archie Billard presented in a respectful manner in his interaction with this writer, more cooperative. However, the young

> person seemed to lack affect. When discussing the offences, the subject indicated that he 'had nothing to say.' Archie Billard states that he knows he has affected many people through his behaviour; however, informs that stealing cars was 'a thing I went through.' He states he does not think about the accident much and reports that it was a mistake."

[25] In addition, I've read carefully the progress reports and listened carefully to the oral testimony of Kerby Mockler and Trish Belland, his youth workers, who have interacted with him almost daily at the Reasoning and Rehabilitation Cottage at Waterville, and I'm satisfied that, in light of all the evidence, that there continue to be serious deficits in Mr. Billard's character that will take a long time to address. I note he's just begun, in August, mental health counselling, despite having been encouraged to do so. He has just begun dealing with substance abuse material, and Mr. Mockler indicates in his report that was prepared sometime in November that, as of late, he has begun completing substance abuse educational material and that it has been passed in well done and on time. So he has just begun to show some self motivation. He has just begun to take those baby steps towards his rehabilitation.

[26] Important in his assessment of character as well is the presence of any remorse for having committing these serious crimes. Much was said by Mr. Billard on the day of his arrest and much has been said since the offences by him at the institution about how he feels about the offences. This Court heard substantial

cross-examination of the witnesses on issues of remorse. The presence of remorse at a sentencing hearing will always be a mitigating factor but its absence will never be an aggravating factor. If it is not present, it is a neutral factor, the courts of appeal have told us.

[27] In this case, although it's hard to assess, and although on all that's been said it's easy to be sceptical, I am satisfied that there is at least some remorse on the part of Mr. Billard. I believe he's unable to express that in any detailed way without having his comments reflect back upon the situation that he finds himself in personally, but I am satisfied that he is genuinely remorseful to a degree for having killed Ms. McEvoy in the car that day.

BACKGROUND

[28] I must consider Mr. Billard's background as well. The background is set out in the reports. Mr. Billard was born in 1988 in Corner Brook, Newfoundland. His parents separated when he was almost two years of age, and shortly after that relationship ended his mother, Trudy, began a relationship with Mr. Lushman. They live now in Dartmouth. Mr. Lushman has two older children from a previous

relationship who live independently. They were married in 1996. Archie moved, along with the Lushmans, to Nova Scotia in 1991 from Newfoundland. They first settled in Whitehead near the Canso Causeway. A couple of years later, in 1993, they moved on to Prince Edward Island, where they remained for approximately six months before returning to Whitehead. They relocated several times throughout this province over the next several years. They moved to Bridgewater when he was seven years of age. they came to Halifax when he was ten, and then moved to Dartmouth when he was eleven years old. During the years following his family's departure from Newfoundland, he would go back to Newfoundland to spend summer vacations and Christmas holidays with his father and his stepmother. As well, he was sent to his father's home in Newfoundland on two occasions, first in 1997 when he was ten or eleven because of difficulties he was having in school. He remained there from March '97 to September '97. When he returned from Newfoundland at his mother's instance, she noticed a big change in him at that time. He became a more defiant person and a person more difficult to manage. He was again in 2004, at age 14, sent for a second time to live with his father because his mother was having trouble controlling his behaviour. He remained there from the beginning of the summer to the end of September, at which time it indicates in the report he was kicked out of his father's home. His

father had told him that if he was not attending school he would have to return to his mother's home. Again, his mother noted more negative behaviour upon his return from Newfoundland on that occasion. September 2003, when he was 15, his maternal grandfather became ill so Ms. Lushman had to return to Newfoundland with her son. He stayed with his father there for approximately two weeks. The arrangement broke down as the father, it's reported, kicked him out again and he went to the home of his maternal uncle and then returned to Dartmouth a short time after the death of his grandfather in October 2003. In the report it indicates the following:

> "By November 2003, Archie Billard's behaviour had become so uncontrollable the family sought the assistance of the Department of Community Services and he was placed at the Ray Allen Centre in Dartmouth, a short-term group home for troubled youth, for a couple of days. He was then returned home because this was a respite placement, and there were no placements at the time for longer periods of time. In February 2004, there were further problems at home which necessitated his return to the Ray Allen Centre, this time for one week. Archie Billard was transferred to Hawthorne House, which is a longer term group home for troubled youth. Then a bed became available at that time. He remained in Hawthorne House from late February until May 16th, 2004."

[29] Ms. Lushman notes she was telephoned one week prior to her son's departure from Hawthorne House and was told Hawthorne House was going to discharge her son because he was disrupting their program and causing problems for other residents there. She notes she and her husband took him out of

Hawthorne House before the scheduled meeting with Hawthorne House personnel, which, in effect, ended the voluntary agreement.

[30] Under the heading of Education and Training, it indicates that Archie Billard began school in 1992 and attended a number of schools over the year, as one might expect from all of the family moves. He attended grades primary and one at Fanning Memorial Elementary in Canso. He repeated grade one at Hebbville Elementary in Lunenburg County. He continued at Hebbville Elementary until March of grade two and transferred to Newcombville Elementary, where he stayed until the end of his grade three year in 1997. He first entered the Halifax school district for grade four and attended Fairview Heights before moving to Mary Lawson School in May 1999, where he completed grades five and six. He transferred to the Caledonia School in September of 2000. There he attended grade seven for two years. When Archie Billard was attending the second year of grade one in Hebbville, he was diagnosed with attention deficit hyperactivity disorder and was placed on medication. According to a later psycho-educational assessment, at the time the school reported an overall improvement in his classroom behaviour. However, according to his mother, he experienced adverse affects from the medication so she took him off the medication. He was also

diagnosed at the time with scotopic sensitivity syndrome, which creates perception problems that are easily remedied by placing a coloured overlay on reading material for the youth.

[31] While at Caledonia Junior High in Dartmouth, a psycho-educational assessment was completed in 2002 by a psychologist utilized by the school board. In the presentence report it says:

> "The summary of this assessment indicated that this youth was estimated as falling within the low/average to average range. Behaviour checklists completed by his mother and teacher indicated significant concerns in the home and school setting. The recommendations at that time were to continue to receive learning centre support. He was also recommended for individualized programming at school. His mother was unwilling to consider medication as recommended for ADHT. Therefore, the psychologist recommended a positive reinforcement program be implemented to increase his attention and assist him in staying on task in the classroom. The final recommendation was that he be instructed with clear direction using the techniques of rephrasing, questioning and repetition, to ensure he understood the materials presented."

[32] It's clear from the report that education has been a challenge for Mr. Billard, and it is likely that those recommendations by psychologist Laura Banks need to be paid particular attention to, to assist Mr. Billard on the task of rehabilitation. While his background is fully set out in the presentence report and I will not highlight it all, I would make reference to the following passage on page 10 of the report. It says this:

> "When questioned about his use of drugs or alcohol, Archie Billard states that he has been using marijuana since he was 14 years old. He also reports that he began using crack cocaine 'just before my 16th birthday.' He informs that he last used this drug in July 2004 and discontinued using it because it's too expensive. The subject also notes he continued using marijuana four or five times a day, if not more, when not in custody. Regarding alcohol, Archie Billard states he does not drink on regular basis anymore, but if it were available he would drink as much as he could. He reports that he was last drinking during a camping trip this past summer."

Referring to the summer of 2004. It says:

> "He reports that he attended a brief meeting with a person from the Choices Drug Dependency Program in Dartmouth. The youth notes that he left after 'telling her off.' This writer contacted Charmaine Nickerson, intake worker at Choices, an adolescent drug program in Dartmouth. She reports that Archie Billard self referred to their program on March 1st, 2004. She notes that he was then referred on March 6th, 2004, by Cheryl Osmond of Community Services in Dartmouth. She reports he arrived on March 18th, 2004, for an intake, became belligerent and left that meeting. Ms. Nickerson said she has not seen him since that time."

It's clear from the background contained in the presentence report, and of course that was amplified by the evidence, that this individual is an individual who, from his background, has serious challenges with regard to education, with regard to substance abuse and with regard to his general conduct.

PREVIOUS RECORD

[33] I am directed to consider by the **Youth Criminal Justice Act** as well any previous record. At the time of the offence, Mr. Billard was awaiting trial on 36 **Criminal Code** offences but he had not been convicted of any, nor had he received any prior dispositions.

OTHER FACTORS

Section 72 allows this Court to consider any other factors that the Court feels are relevant, and it is the fact that he was on bail for the 36 **Criminal Code** offences, many of which he ultimately was convicted of and sentenced for, and the fact that eight of these occurred on September 29th, just over two weeks before the commission of these offences, and included similar behaviour, and the fact that he was released two days before the commission of these offences, that the Court considers as other relevant factors, and to a large extent I've already reviewed the significance of those.

ADULT vs. YOUTH SENTENCE

[34] Considering all of this, would a youth sentence imposed in accordance with the purpose and principles set out in section 3(1)(b)(ii) and section 38 of the **Youth Criminal Justice Act** have sufficient length to hold Mr. Billard accountable for his offending behaviour? Section 3(1)(b)(ii) reads this way:

> "The following principles apply in this Act: The criminal justice system for young persons must be separate from that of adults and emphasize the following: fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity."

[35] While I have read and considered the full declaration of principle in the **Youth Criminal Justice Act**, section 72 requires that I specifically consider that fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity. There is a recognition in the Act that there is greater dependency, and I've said much about the maturity level of Mr. Billard, and in particular, there is an acknowledgement in the Act that generally young persons will have a reduced level of maturity.

[36] Section 38 sets out the purpose and principles of youth criminal justice sentencing and says this:

> S. 38 (1) **Purpose**--The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that

promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

(2) **Sentencing principles**--A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:

(a) the sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances;

(b) the sentence must be similar to sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances;

(c) the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence;

(d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons; and

(e) subject to paragraph (c) the sentence must

(i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1);

(ii) be the one that is most likely to rehabilitate the young person and reintegrate him or her into society; and

(iii) promote a sense of responsibility in the young person and an acknowledgement of the harm done to victims and the community. (3) **Factors to be considered--**In determining a youth sentence, the youth justice court shall take into account

(a) the degree of participation by the young person in the commission of the offence;

> (b) the harm done to victims and whether it was intentional or reasonably foreseeable;
>
> (c) any reparation made by the young person to the victim or the community;
>
> (d) the time spent in detention by the young person as a result of the offence;
>
> (e) the previous findings of guilt of the young person; and
>
> (f) any other aggravating and mitigating circumstances related to the young person or the offence that are relevant to the purpose and principles set out in this section."

[37] Since both counsel have agreed that a custodial term is appropriate and available, I make no reference to section 39 of the **Youth Criminal Justice Act** other than to indicate that I have reviewed it and am mindful of its terms.

[38] So to impose a youth sentence, it must be a sentence that holds the young person accountable for the offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or rehabilitation and reintegration into society, because there is an acknowledgement by the **Youth Criminal Justice Act** that it is through the imposition of such sanctions that the long-term protection of the public can best be achieved. The focus is on rehabilitation and reintegration into society. It only makes sense that that be the focus of a youth sentence, for whatever penalty is imposed at this

hearing, whether it be the penalty recommended by the defence or the Crown, it's evident that Mr. Billard will be released back into the community and spend the bulk of his remaining years at large, and it is hoped that when he is released back to the community that rehabilitation has been achieved and that he will no longer be the danger and menace that he was on October 14th, 2004.

I am directed by the Act to ensure that the penalty that the Court imposes would not be greater than the punishment that would be appropriate for an adult convicted of the same offences committed in similar circumstances. I will review a number of cases in a moment but suffice it to say that I am satisfied that, if this Court were to impose the sentence recommended by Mr. Zimmer of three years, that it would not be greater than what would be appropriate for an adult who committed the same offence in similar circumstances.

I am directed that the sentence must be similar to other sentences imposed in the region on similar young persons found guilty of the same offence. Thankfully, I was unable to find any similar cases in this region where the courts were called upon to impose sentences.

[39] The sentence must be proportionate to the seriousness of the offence and the degree of responsibility for the young person for that offence. I have already made substantial comments in that regard. I am directed to look at all available sanctions other than custody that are reasonable in the circumstances, and clearly, as both parties to the proceedings have acknowledged, there is no sanction other than custody that is appropriate in these circumstances.

The sentence must be the least restrictive sentence that is capable of achieving the purpose that I referred to earlier and set out in subsection (1), and it must be the one that's most likely to rehabilitate the young person and reintegrate them into society and to promote a sense of responsibility in the young person and an acknowledgement of the harm done.

In determining the sentence, if it is to be a youth sentence, the Court shall take into account the degree of participation by the young person in the commission of the offence, and I've already made substantial comment in that regard.

I must take into account the harm done to the victims and whether it was intentional or reasonably foreseeable. The harm done to the victim in this case, of

course, was the ultimate harm. Ms. McEvoy's life ended in an instant, and her loss sent shockwaves of harm through her immediate and extended family. Some of that harm was evidenced in a very poignant fashion by the victim impact statements that were read into the record at the sentencing hearing. The crime Mr. Billard is convicted of creates many more victims than the person whose life was taken.

I am directed to consider whether there has been any reparation to the victim or the community. It goes without saying that none has been made, nor could any be made in these circumstances.

I am directed to consider the time that he spent in detention as a result of these offences, and I heard substantial argument in that regard. In total, as I have calculated it, based on the submissions of counsel, Mr. Billard has now spent 276 actual days in the institution on remand. During a portion of that remand time he was not permitted access to programming within the youth facility, and during all of that remand time he was not able to gain any credit for time served which might assist him in an application for early release from the institution, and I am mindful of that in my assessment.

Much has been said in the cases presented by the defence and Crown about whether there should be a multiplier effect given to that remand time or whether it should be considered on a one-day-for-one-day basis. In an adult sentence, generally speaking, a simple multiplier effect is applied.

[40] In this particular case, having considered the various arguments, I'm satisfied that there should not be applied to this particular case any particular multiplier. Taking all facts into consider, I am satisfied, however, that he should be granted something more than a one-to-one basis, and I will give him, in the ultimate sentence, credit for having served one year in custody as a result of these offences.

There were no previous findings of guilt, and the aggravating and mitigating factors have been commented on to a degree. It's clear that his youth is a factor I must consider. It's clear that he pled guilty to the offences before the Court. He has shown, as I indicated earlier, an expression of remorse to a degree, and has shown to me that his rehabilitation is possible.

It is all those factors that I must consider, and then go back to determine whether or not a youth sentence would be of sufficient length to hold the young person accountable for his or her offending behaviour. In this case, would a sentence of three years, after taking into account the time that Mr. Billard spent in custody of one year, be of sufficient length to hold Mr. Billard accountable for his offending behaviour?

[41] With some regret, I have concluded that, given the seriousness of the offence and the circumstances of its commission, together with the various factors that I have just reviewed, that a sentence of three years imposed today, as recommended by the defence, and imposed in accordance with the principles set out in section 72, would be of insufficient length to hold the young person accountable for his offending behaviour. Therefore, I must order that an adult sentence be imposed, and I must consider what adult sentence would be appropriate.

ADULT SENTENCE

In that regard, the Crown has urged me to consider that the proper application of the law requires that I abandon the principles and purpose of sentencing set out in

the **Youth Criminal Justice Act** and move to the **Criminal Code** and consider the principles annunciated in section 718 through 718.2 of the **Criminal Code**, which are different for adult offenders and read thus:

> 718. **Purpose--**"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 reparation for harm done to victims or to the community; and
> >
> > (f) to promote a sense of responsibility in offenders and an acknowledgement of the harm done to victims and to the community."

718.1 says:

> 718.1" **Fundamental principle--**A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender."

718.2 says:

> 718.2 **"Other sentencing principles--**A Court that imposes a sentence shall also take into consideration the following principles:

> (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender; and without limiting the generality of the foregoing.
>
> > (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor, or
> >
> > (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner or child,
> >
> > (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
> >
> > (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or
> >
> > (v) evidence that the offence was a terrorism offence
>
> shall be deemed to be aggravating circumstances;"

Obviously, all of those annunciated aggravating factors are not in play at this sentencing hearing. Subsection (b) of 718.2 says:

> 718.2" (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> (d) an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances; and

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

One can see by my reading of 718 through 718.2 that there are some principles that are in common with youth sentencing, but there are many which are different. While I acknowledge that the Court in the J.E.T. case indicated that, essentially, when one reaches the stage of having decided that an adult sentence should be imposed, that 718 through 718.1 and 2 require that those principles govern. In fact, at paragraph 101 of that decision, it says:

> "I have concluded that the only reasonable alternative is the imposition of an adult sentence. The principles of sentencing are therefore predominantly in the **Criminal Code** sections following section 718."

In my view, when one decides that an adult sentence is appropriate, it does not mean and I am not directed by the **Youth Criminal Justice Act** to abandon the principles and purpose of sentencing set out in the **Youth Criminal Justice Act**. In my view, while I must acknowledge in imposing an adult sentence that 718 through 718.2 should be referred to, I am of the view that, predominantly, the principles and purpose of sentencing set out in the **Youth Criminal Justice Act** should be applicable, and that what I should be considering, essentially, is what just sanction will have meaningful consequences for Mr. Billard and will promote

his rehabilitation and reintegration into society and thereby contribute to the long-term protection of society, what just sanction will have that effect and hold him accountable for this serious crime that he has committed.

[42] In that regard, having consideration of what the appropriate sentence is, I have been referred to a number of adult cases and one youth case by counsel, and I know my remarks have been lengthy, but in my view it is important that I review and summarize those cases so that Mr. Billard and the public can understand the Court's reasoning process. Both the **Criminal Code** and the **Youth Criminal Justice Act** require that there be a consideration of similar offences, and it's difficult to find situations that are similar, although there are some that come close.

I'll summarize first the case of R. v. Persaud (2002), O.J. No. 1883 (Ont. C.A.). In that case, an accused of prior good character and unblemished record drove along a major thoroughfare at a very high rate of speed. He struck a victim with sufficient force that his legs were severed. He was impaled on the windshield. The accused fled the scene and left the victim, who fell off of the vehicle, ultimately, lying on the roadway. The Court of Appeal found that a conditional sentence, that is a

sentence served in the community, was manifestly unfit and imposed a 20 month period of imprisonment.

In the case of R. v. Lam (2003), 180 C.C.C. (3d) 127 (Ont. C.A.), a 26 year old accused was found guilty of driving at an estimated speed of 170 kilometres per hour in a 70 kilometre per hour zone. The accused was simply engaged in a show of speed that was of less than one minute in duration. There was a collision which resulted in the death of a 29 year old mother of two. In that case, there was a sentence of two years less a day plus three years' probation.

The next case is the case of R. v. Pushie (1996), O.J. No. 5120 (Ont. C.J. Gen. Div.). This decision was upheld on appeal by the Ontario Court of Appeal, (1997) O.J. No. 10. Mr. Pushie was convicted of impaired driving and criminal negligence causing death and bodily harm. His erratic driving attracted the attention of the police but he failed to pull over and eluded their pursuit. He eventually stopped after hitting another vehicle and two young pedestrians. The pedestrians were killed and the other drive suffered serious permanent injuries. His blood alcohol was twice the legal limit. He expressed remorse about the incident and entered a guilty plea. He had a criminal record which was minor but

related to alcohol abuse. He was sentenced to six years' imprisonment and a twelve year driving prohibition. The main sentencing principles to consider in that case were general and specific deterrence for that adult, it was necessary to protect the public from such crimes.

The case of R. v. T.Y. (2000), O.J. No. 4278, is a case where T.Y. faced a sentencing after being convicted of criminal negligence causing death, possession of property obtained by crime and obstructing a peace officer. He was a relatively young man of 21 years of age and had a criminal record which included 36 prior convictions, mostly property offences and failure to comply with court orders. On the day of the offences, he had stolen a car with a group of friends and drove to a neighbourhood where they intended to commit robberies. While his friends looked for a residence to break into, T.Y. went back to the stolen car. The police were alerted to the activity and pulled up to the car. He started the car and raced through the streets for 14 minutes at very high speeds, ignoring traffic lights, and at an intersection he struck another vehicle, killing the 20 year old driver. He had been involved in a similar incident six years earlier, although no one had been killed on that occasion. He pleaded guilty, expressed great remorse over the crime, and had

served 18 months in pretrial custody. T.Y. was sentenced to eight years in prison less double time served on remand.

The case of R. v. Caron (2000) S.J. No. 413, (S.K.Q.B.) where a 20 year old aboriginal offender pleaded guilty to two counts of criminal negligence causing death, one count of criminal negligence causing bodily harm, one count of possession of a stolen vehicle and one count of breach of a recognizance. He was pursued by police and had driven through downtown Saskatoon at speeds of up to 100 kilometres per hour. At least one of his three passengers had asked him to stop but he refused. After the car stalled in a snowbank he fled police again, nearly striking an officer with the stolen vehicle. He then struck another vehicle, killing its two occupants and injuring his passenger. His blood alcohol level was beyond the legal limit but there was no evidence that he was impaired. At the time of the arrest, he was subject to the terms of a recognizance that he keep the peace. He had a criminal record, mostly as a young offender and mostly for property crimes, although there was a record for violence, such as robbery, and he had spent 13 1/2 months in custody awaiting disposition. He received a sentence of seven years in prison in addition to the time that he had served on remand.

I'm going to refer to the case of R. v. Sweeney (1992), 71 C.C.C. (3d) 82 (B.C.C.A.). A sentence of four and a half years' imprisonment for criminal negligence causing death was reduced to two years less a day on appeal. The 20 year old accused with no prior criminal record but with a record for provincial **Motor Vehicle Act** offences was stopped by the police for erratic driving. He did not get out of the vehicle but instead drove away at a high speed. A high speed chase ensued. He collided with another vehicle, killing the driver. The Court found that the trial judge erred in giving insufficient weight to the principle of rehabilitation and in considering that there was a starting point for such sentences of five years.

R. v. Chan (2004), B.C.J. No. 2499 (B.C.S.C.), a total sentence of two years less a day was imposed on a 19 year old accused for criminal negligence causing death and leaving the scene of the accident. He drove his vehicle at a high speed through a turning lane and a red light. He struck a police car that killed a 32 year old police constable. He left the scene for a period of about five minutes. He had no prior record, was remorseful and was unlikely to reoffend.

The case of R. v. Pedersen [2004], B.C.J. No. 621 (B.C.C.A.), a total of four years was upheld for multiple offences, including criminal negligence causing death. A 33 year old accused with no prior record, while driving in an impaired state, drove through a red light and collided with two motorcycles. He did not stop, continued on, struck another vehicle. After pushing that aside, he continued on through a second red light, striking another vehicle and killing a passenger. He injured other persons in each of the collisions as well. As I say, a total sentence of four years was upheld in that case.

In R. v. Holm (2003) O.J. No. 5385, the Court imposed sentence on a 25 year old with a previous record for minor offences. He was at large on a court order to keep the peace and be of good behaviour. He became intoxicated, stole a bus. He drove negligently and caused a collision, killing one person and seriously injuring others. He was sentenced to six years, reduced to 52 months on double credit for time served.

In R. v. Anderson (1992), 74 C.C.C. (3d) 523 (B.C.C.A.), a 45 year old accused with a prior record for property offences as a teenager, and approximately 10 years prior a conviction for failing the breathalyzer, while drinking but under the legal

limit, drove in an erratic manner at high speed. He crossed into oncoming traffic and collided head on with another car, killing a mother, her child, and permanent disabling the father. He was sentenced to five years.

In the case of R. v. Shore (2001), O.J. No. 3801, the Ontario Court of Appeal upheld a sentence of nine years plus 211 days on charges of criminal negligence causing death, criminal negligence causing bodily harm, failing to stop a motor vehicle while being signalled by the police, and possession of a stolen car. While driving from Winnipeg to Toronto to sell a stolen car, the police began to pursue the vehicle. The accused had been spotted stealing gas a short time before and the police were looking for this individual. When the police began to pursue the individual, who was 20 years of age, the accused accelerated, passing other vehicles, swerved into oncoming an lane, and eventually collided head on with a 34 year old mother of two young children, killing her instantly. He had a criminal record but pled guilty and expressed great remorse. In that particular case, that accused had decided in advance that he would attempt to outrun the police if he were detected by them. He believed that the police would be inclined to back off if he caused as much mayhem as possible.

In the case of R. v. Mascarenhas (2002), 60 O.R. (3d) 465 (Ont. C.A.), a 46 year old with a 15 year history of serious alcohol abuse and three priors for drinking and driving, and while on bail for a drinking and driving offence and on a condition of bail that he not drink, struck and killed two pedestrians. He had a blood alcohol level of over four times the legal limit. He had spent 11 months in pretrial detention. After acknowledging that the appropriate sentence in total would have been ten years, the Court of Appeal reduced it to eight and a half years to take into account pretrial detention and indicated that on the criminal negligence causing death counts that an appropriate sentence for that offender, who obviously had a prior record for similar type behaviour, was a sentence of nine years.

In the case of R. v. Woodley (1993), B.C.J. No. 906 (B.C.C.A.), a 27 year old with no prior criminal record was driving a tow truck with little sleep and a blood alcohol content of .20, crossed the centre line, striking an oncoming vehicle, killing the driver and injuring a passenger. He was remorseful. The Court reviewed a number of criminal negligence cases and noted that a sentence of less than two years had been imposed on young people in cases where the moral blameworthiness was of a short duration or was otherwise minimal or where there

were mitigating circumstances. In that case, the sentence was reduced to two years less one day and two years probation.

R. v. Thornton (2000), B.C.J. No. 2019 (B.C.S.C.), a 24 year old with an extensive provincial driving record crossed an intersection at a high rate of speed and struck a left-turning vehicle, killing a passenger. He entered the intersection as the light was about to turn red. He was not remorseful. He was sentenced to an 18 month conditional sentence on a charge of dangerous driving causing death.

The case of R. v. Duchominsky (2003), M.J. No. 26 (MB C.A.), an accused ran a red lights, killing two occupants of a compact car and seriously injuring three others. He was convicted of two charges of dangerous driving causing death, three counts of dangerous driving causing bodily harm. The appeal was allowed and he was sentenced to two years less a day conditional. The Court found that the moral blameworthiness was less severe.

In the case of R. v. Ekherdt (2005), M.J. No. 356 (MB P.C.), a 25 year old member of the Canadian Armed Forces was operating a motorcycle in a reckless manner in

a residential area, killing a 52 year old in a collision. Two years less a day conditional sentence was imposed. Remorse had been expressed.

The case of R. v. S.S. is a decision of the Youth Justice Court, (2003) B.C.J. No. 2366, where a youth sentence was imposed on a young person who was drag racing in a residential area while intoxicated. He and the victim were both 17 years of age. The accused was not going to school. He had two prior speeding convictions. He had come from a privileged background and was planning on returning to his native country of Iran. He did not accept responsibility for the accident and denied being the driver at the time the accident occurred. He was sentenced to a one-year custody and supervision order. He was, the case says, between 19 and 20 at the time of sentence.

[43] I've been referred to a number of Nova Scotia cases. The first is R. v. Selig (1994), N.S.J. No. 436 (N.S.C.A.). In that case, a 34 year old with a lengthy criminal record, including five prior drinking and driving offences and a poor driving record, ran a red light at an excessive speed, killing the victim. He was impaired at the time. He had no driver's license. He had suffered from alcohol

abuse and he had poor eyesight. The Court of Appeal affirmed a six year sentence in that case.

The case of R. v. Shand (1997), N.S.J. No. 63 (N.S.C.A.), a 38 year old repeat offender with longstanding difficulties with substance abuse and with low prospects for reformation and rehabilitation was grossly impaired and caused the death of another driver and injured three passengers in the deceased's car. In that case, an eight year sentence for impaired driving causing death and the three charges of impaired causing bodily harm was imposed.

In the case of R. v. Parker (1997), N.S.J. No. 194 (N.S.C.A.), on two counts of dangerous driving causing death and two counts of dangerous driving causing bodily harm, the accused, who was an inexperienced driver of a high performance vehicle, while executing a passing manoeuvre, lost control of his vehicle and struck four teenagers on a church lawn, killing two. He was employed, he was remorseful, and the Court in that case upheld a conditional sentence of two years less a day.

The defence has also submitted the cases of R. v. Munroe and R. v. Corbin, decisions of the Nova Scotia Court of Appeal, Supreme Court Appeal Division as it was at that time, for the Court to consider at this sentencing hearing. Those cases I have found not to be particularly useful as they predate the case of R. v. MacEachern (1990), 96 N.S.R. (2d) 68 (N.S.C.A.).

[44] All of the cases that I have referred to -- and I appreciate everyone's patience during their review -- indicate that there is a wide range of penalty that is appropriate in cases of criminal negligence causing death in particular. A theme, however, tends to evolve from those cases, and the theme is this. When an offender is sentenced for an offence where the circumstances are serious and the moral blameworthiness and moral culpability of the offender is high, the sentence is generally increased. The more serious the circumstances, the more serious the penalty.

CONCLUSION

[45] I have considered all of those cases, all of the evidence that I have heard, and I have arrived at what I have determined would be a just sentence that would hold

Mr. Billard accountable for his crimes and provide meaningful consequences to him, and ultimately promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

Mr. Billard, would you please stand. Mr. Billard, you have caused great harm by the commission of your crimes. Your crime ended the life of Ms. McEvoy in an instant and caused immeasurable harm that can never be repaired to her loved ones. You've brought heartache to your mother and your family. Your offences were committed two days after you were released from custody and showed a total lack of respect for other members of your community, who you chose to intentionally and recklessly endanger.

The sentence that I impose on you is intended to hold you accountable for that behaviour and have meaningful consequences to you to assist you in your rehabilitation and reintegration into society. You didn't intend for Ms. McEvoy to die but her death was so easily foreseeable.

Early release from custody on parole is something that's out of my hands. I expect that that will depend on your motivation to take treatment and engage fully in

rehabilitation. I'm satisfied on the evidence that I've heard that you are capable of achieving this reformation if you choose. You've been described as taking baby steps forward. To complete that rehabilitation, you've got to continue taking those steps until those baby steps turn into giant leaps forward.

Neither counsel has recommended, and your mother certainly did not recommend, nor does anyone, I suspect, in this courtroom want that you have to spend one day in a federal prison unless it's necessary to achieve the protection of the public.

I am considering that, based on the reports that I have received, that I have received sufficient information -- counsel alluded to this in argument -- from the various parties referred to in section 77 such that I can make an order under 77, and I am ordering that you serve your sentence and as much as possible of it in a youth facility where you can take advantage of the excellent programs that I have heard exist at Waterville. In imposing sentence, I am mindful that, because of your age, that should you successfully complete the programs and show the motivation that your mother saw in the last couple of months before the sentencing hearing, that if you continue with that level of motivation and successfully complete that

programming, you will be well on the road to rehabilitation and likely be a good candidate for early release on parole.

Mr. Billard, the sentence of this Court is that you serve 54 months' incarceration. When combined with the one year that I have given you credit for, it would be equivalent to a five and one half years' sentence.

In addition, I am satisfied that section 109 of the **Criminal Code** is applicable and I will prohibit you from having in your possession firearms and those items annunciated in that section for a period of 10 years after your release from custody.

In addition, I am imposing an order upon you that you not operate a motor vehicle on any street, highway or other public place for a period of 10 years after your release from custody on these offences.

In addition, I am satisfied that this is an appropriate case for the imposition of a secondary DNA order and I impose that order upon you, sir, and order that you provide a sample of bodily substance suitable for forensic DNA analysis such that

your DNA profile can be obtained and maintained at the National Databank in accordance with the law.

The sentence that I impose is a concurrent sentence on each of the two offences before the Court. You may have a seat.

_____

Burrill, J.P.C.