SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Belisle-Taylor, 2011 NSSC 159

Date: 20110408
Docket: Cr. No. 326639
Registry: Halifax

Between:

Her Majesty The Queen

v.

Charles Andrew Belisle-Taylor

Judge:	The Honourable Justice Patrick Duncan
Heard:	April 7 and 8, 2011, in Halifax, Nova Scotia
Oral Decision:	April 8, 2011
Written Decision:	April 20, 2011
Counsel:	Richard Hartlen and Shauna MacDonald for the Crown Matthew Gibbon for the Defence

By the Court:

Introduction

[1] On December 4, 2008, James Bernard Melvin was shot and seriously wounded in a residential community in Halifax. Following investigation, Jeremy Alvin LeBlanc and Charles Andrew Belisle-Taylor were arrested and charged with a variety of criminal offences stemming from the incident.

[2] On September 9, 2010, Mr. LeBlanc was sentenced to a period of 16 years incarceration for the offence of attempted murder of Mr. Melvin. The sentence imposed was in addition to the period of pretrial custody that Mr. LeBlanc had served while remanded on the charges. That sentence is currently under appeal by Mr. LeBlanc. The sentencing decision is reported at 2010 NSSC 347.

[3] On February 17, 2011 Mr. Belisle-Taylor entered a guilty plea to a charge that he conspired with Mr. LeBlanc to murder Mr. Melvin contrary to section 465 (1)(c) of the **Criminal Code.**

[4] Following plea the sentencing was adjourned for the preparation of a pre-sentence report, which I have reviewed. I have also had the benefit of

comprehensive pre-hearing briefs submitted by the Crown and Defence counsel and a supplemental letter submitted by the offender's aunt, Diane Belisle.

[5] During the sentencing hearing, the Crown tendered audio and transcribed recordings of intercepted private communications to which Mr. Belisle-Taylor and/or his co-conspirator, Jeremy LeBlanc, were party. Photos of the area where the shooting occurred were also entered into evidence on the sentencing hearing.

Facts

[6] Counsel have submitted an agreed statement of facts which are:

> 1. On December 4, 2008 Jeremy LeBlanc (hereinafter "LEBLANC") and his associates, including Charles Taylor (hereinafter "TAYLOR"), made a planned (sic) to kill James Melvin Junior (hereinafter "MELVIN"). They were unaware that while they made this plan the police were listening.
>
> 2. Operation Intrude was a joint investigation by the RCMP and Halifax Regional Police into *Criminal Code* and *C.D.S.A.* offences being committed by a targeted group of individuals who were subject to surveillance of different varieties including phone intercepts, room probes and vehicle probes. LEBLANC was known to police to be a member of a group working in the illicit drug trade and referring to themselves as the "Spryfield M.O.B."

3. In addition to having his phone calls monitored on the date in question, LEBLANC was traveling in a Chevrolet Blazer license plate ENM 609, which contained a vehicle probe and a GPS Tracking Device. The conversations which took place within the vehicle were therefore recorded and its location was monitored. On December 4th 2008 the Blazer was being driven by TAYLOR, a known associate of LEBLANC.

4. Coincidentally, on December 4th, 2008 MELVIN was under overt surveillance by the Halifax Regional Police. He was not, however, subject to any covert electronic surveillance.

5. On this date LEBLANC was contacted by MELVIN. There was a long standing feud between MELVIN and his associates and LEBLANC and his associates. As the day progressed LEBLANC had multiple conversations with MELVIN via text messages and phone calls. MELVIN wanted to meet with LEBLANC apparently because he feared for his life.

6. While communicating with MELVIN via text messages, LEBLANC was driving with TAYLOR and, at certain points, others in the monitored Chevrolet Blazer. The conversations concerning MELVIN's overture and his planned response were therefore recorded.

7. Also recorded were subsequent telephone conversations between LEBLANC and MELVIN as well as conversations between LEBLANC and other associates, including TAYLOR. Transcripts of intercepts from the vehicle probe and from LEBLANC's cell phone are included in this package under separate cover. ("Transcripts of Intercepted Communications")

8. While texting back and forth with MELVIN, LEBLANC and his associates began making plans to shoot MELVIN. Over the next several hours enlisted help and strategized as to how to manipulate MELVIN into meeting in a location where they could ambush him and evade police.

9. As a result of his conversations with LEBLANC, MELVIN left Sackville and traveled to 30 Ridgevalley Road which is a large apartment complex located in a highly residential area of Spryfield. It houses a daycare facility and several floors of apartments. It is in close proximity to a local school and other single and multiple family dwellings.

10. Police officers who were conducting surveillance on MELVIN followed him to RIDGEVALLEY and positioned themselves at the front and back entrances to the building. MELVIN was aware that the police were following him. Margaret Murphy, a friend of MELVIN's mother, lived at RIDGEVALLEY and also worked at the daycare. She allowed MELVIN to come into the daycare where he borrowed the phone and contacted LEBLANC at 16:03:57. (See Transcripts tab 17)

11. MELVIN repeats his request to meet LEBLANC and appeared anxious about recent violence directed toward him. (See Transcripts tab 17, lines 97-100 and tab 19 lines 5-21). Children can be overheard in the background of this call.

13. (sic) Throughout his exchanges with MELVIN, LEBLANC stalled for time, lying to MELVIN about his whereabouts and means of transportation, claiming he had none when in fact he was travelling in the Chevrolet Blazer.

14. After getting off the phone with MELVIN the following exchange took place between LEBLANC and TAYLOR in the Blazer (Transcripts tab 18 Lines 21-37):

LEBLANC: Yeah, he wants me to call him up Ridgeway, right?

TAYLOR: Hmmm

LEBLANC: He's gonna run in the back, ___ let me in. He wants me to come in the buildin'

TAYLOR: Fuck that's dangerous though. He might have a __ in there.

LEBLANC: Yeah but if someone hides ___,soon as he opens the door, blast the shit out of him.

TAYLOR: Yeah, true.

LEBLANC: Fuck, he also, he said, well, do you want me to run up to that buildin'. He said, up to Elaine's buildin'. So I could say, when we were up there___ run out. That way we'll catch him running up.

TAYLOR: Um Hmmm

LEBLANC: Blap. Right up in ___ field blap

TAYLOR: Yeah, ___ could do that. Tell him yeah

LEBLANC: That's the plan right there

TAYLOR: Go up, go up through there. ___ blap him right in the fields.

LEBLANC: Blap him, right in the field When he walks up there, blap him.

15. And minutes later at Tab 19 lines 26-38:

LEBLANC: Oh that's a perfect plan. There ain't no plan better than what that plan I just made. Think of all ___scenarios and shit in their head, and then, you know what I mean? There ain't ____ no plan better than this ...

LEBLANC: 'Cause he told me, well, where do you want me to go up to that buildin'. Where God rest her soul ___ mama. That must be the ____

TAYLOR: ___ he was talking about. That's, that's the way your drive there, brother. It's bram, right when he's, when he's running through the field. But we'll, we'll tell him that while we're there.

LEBLANC: No, we gotta be hiding in the woods, can't let him see it all comin'. You ___ gotta jump out of the woods, right when he's right there.

16. As they are discussing the plan TAYLOR asked LEBLANC if he was taking the Blazer. LEBLANC told him it was going to be used as a decoy. TAYLOR was possessed with knowledge of the plan at this point and had agreed to play a role in it by getting LEBLANC to the chosen location and then aid is (sic) his escape by using the Blazer as a decoy.

17. LEBLANC and TAYLOR procured firearms through the assistance of other associates and TAYLOR drove to an area close to the building where LEBLANC had arranged to meet MELVIN. LEBLANC got out of the vehicle and TAYLOR waited in the vehicle.

18. Multiple shots were heard a short time later and MELVIN went back to the apartment of Margaret Murphy's at 30 Ridge Valley Road with a single gunshot wound. MELVIN suffered injuries to the jejunum (middle section of small intestine) at 2 points, an injury to his sigmoid colon (part of the large intestine that is closest to the rectum and anus) and a fracture of his sacrum (bone at the base of the spine). He received surgery and

developed a wound injury post-operatively. He wore a colostomy bag for at least a year.

19. There is no evidence to suggest that MELVIN was armed at any relevant time.

20. Subsequent investigation by police uncovered six .45 calibre shell casings in a wooded area that borders the field behind RIDGEVALLEY. One of the bullets also entered a vacant apartment in that complex. Another bullet was found in the back parking lot of RIDGEVALLEY having ricocheted off the building. (See photographs enclosed under separate cover.) It appears that the shooting took place on a basketball court between the two buildings, and on the opposite side of the building from where the daycare is located. From witness statements it appears the shooting devolved (sic) into a chase with several shots fired at MELVIN.

21. G.P.S. tracking of the Blazer showed that it stayed in the vicinity of the shooting until shortly after the shots were fired between 5:45 and 5:50 p.m. At 6:33 p.m. TAYLOR, then the lone occupant of the Blazer, was stopped on the Williams Lake Road. LEBLANC was arrested with a group of other people at the Bayers Lake Industrial Park. They were all released after being interrogated.

22. The H.R.P. subsequently completed gunshot residue tests on LEBLANC, TAYLOR and another individual Daniel Borden. LEBLANC tested positive for GSR, BORDEN had traces of GSR and TAYLOR was negative for GSR.

23. The various wiretap and vehicle probe evidence was later analysed by the H.R.P. LEBLANC and BORDEN were arrested. A warrant was issued for TAYLOR, who had left the jurisdiction with his wife and children shortly after this had all occurred. He was later arrested in Ontario and charged with the information currently before the court.

24. LEBLANC pled guilty to the attempted murder of MELVIN and was sentenced to 16 years in prison. BORDEN is now deceased.

Issues

[7] The Crown and Defence diverge in their views on certain key matters relevant to the calculation of sentence:

1st What the appropriate range of sentence is having regard to the circumstances of the offence and of the offender.

2nd The characterization of the involvement of the offender in the incident that gives rise to the charge, and the impact that his role should have on the assessment of penalty.

3rd Whether, and the extent to which, a period of incarceration is necessary to give effect to the principles of deterrence, both general and specific.

4th Whether there is sufficient evidence to support a conclusion that the offender will or can be rehabilitated, and if so, the impact that should have on the assessment of penalty.

5th What credit should be applied against the sentence to be imposed, by reason of time spent in pretrial custody and on remand in relation to the present offence.

Law

[8] The offence that Mr. Belisle-Taylor is to be sentenced upon is one of the most serious in the **Criminal Code**. It carries a maximum punishment of imprisonment for life.

[9] There is no minimum punishment prescribed by law. Any applicable range of sentence in this case will be identified by reference to precedent.

[10] I am instructed by the **Criminal Code** to have regard to certain purposes and principles of sentence. Those that are relevant to this matter are:

Purpose and Principles of Sentencing

Purpose

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.

[11] Section 718.1 of the *Criminal Code* reads:

Fundamental principle

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

[12] Section 718.2 says:

Other sentencing principles

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

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

That particular section then identifies 5 types of evidence that would be deemed to be aggravating circumstances, none of which in my view apply to this case.

[13] Section 718.2 continues that:

718.2

(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, with particular attention to the circumstances of aboriginal offenders.

Analysis

Circumstances of the Offence

[14] Mr. Melvin and Mr. LeBlanc, one time friends, headed competing groups of criminals engaged in the illicit drug trade. Shortly before the date of this offence Mr. Melvin was a target of a violent attack. On the day of this offence, he sought out Mr. LeBlanc, ostensibly for the purpose of trying to secure his own safety against further attacks. The inference that may be drawn is that Mr. Melvin saw Mr. LeBlanc as having influence in resolving whatever underlying disputes generated the attack and thus forestalling any further attacks on himself.

[15] Mr. LeBlanc, Mr. Melvin, Mr. Belisle-Taylor and an unidentified male variously engaged in a series of telephone, text and in person discussions over a period from approximately 3:05 p.m. to 5:58 p.m. and which were intercepted by police investigators. Mr. Belisle-Taylor's involvement can be assessed from that information.

[16] A plan was formulated to meet Mr. Melvin in Spryfield at which time he would be shot and killed. I conclude from my review of the evidence that Mr. LeBlanc was the prime mover behind this scheme and that it was developed over a relatively short time. In my view it was opportunistic. Whether Mr. LeBlanc or any of his associates were contemplating this action at an earlier date is not established on the evidence. While there was premeditation, the decision was made quickly and catalyzed by Mr. Melvin's request for a meeting.

[17] The only evidence of motive for the murder of Mr. Melvin comes from Mr. LeBlanc and relates to the suggestion that Mr. Melvin was holding Mr. LeBlanc's brother as a "hostage", a suggestion for which there was little apparent basis in reality. It is more likely that the motive related to the violent culture that had evolved around those competing in illegal activities associated with the illicit drug trade. There is no evidence upon which to conclude that Mr. Belisle-Taylor had a motive beyond assisting Mr. LeBlanc and perhaps, gaining whatever perceived advantage might be achieved by removing Mr. Melvin as a dangerous competitor.

[18] Ironically, Mr. LeBlanc and the offender are heard in the intercepts discussing the possibility that it is Mr. Melvin who is setting them up for an attack, such was the level of mutual distrust among these parties.

[19] It is admitted and the evidence makes it clear that the offender participated in the planning of the murder and was prepared to participate to further that conspiracy. The level of Mr. Belisle-Taylor's interest and complicity in the scheme grew over the 2 to 3 hours of intercepted communications. He is recorded discussing the merits of committing the murder in a wooded area and later about how Mr. Melvin could be and the word was "blapped" in the text, but how he could be "blapped" right in the field. He says: "It's bram, right when he's, when he's running through the field".

[20] The Crown submits that the offender should not be seen as any less culpable than Mr. LeBlanc. They say that he cannot be ruled out as the possible shooter, and that he was a trusted associate of Mr. LeBlanc so should be seen in a comparable light. It is acknowledged by the Crown that they could not prove beyond a reasonable doubt that Mr. LeBlanc was the shooter and although his

sentence was in relation to the offence of attempted murder, that they did not seek to prove that he in fact was the person who shot Mr. Melvin.

[21] The defence makes it clear that the plea was based on the agreed to facts which do not include an allegation that Mr. Belisle-Taylor was the shooter. Indeed, there would not have been a guilty plea on that basis, because, I am told, it was not true. I have been advised that post arrest testing showed Gun Shot Residue on Mr. LeBlanc, but not on Mr. Belisle- Taylor. The offender's role encompassed driving around with Mr. LeBlanc and conspiring with him as to the manner of committing the murder. He was, at the very least, to deliver Mr. LeBlanc to the scene and to drop him off, and there is reference in the materials that he was to act as a decoy.

[22] There are many aggravating factors in this matter, which Mr. Belisle-Taylor is as responsible for as Mr. LeBlanc:

- The plan was premeditated, even if only briefly beforehand;

- The recordings demonstrate that both individuals spoke as casually about committing a murder as if it were a totally unremarkable event;

- they demonstrated a callous disregard for human life;

- Both were aware of and indeed planned that this would occur in the immediate vicinity of a school, a daycare, a playground and multi unit residential dwellings around the supper hour, thus creating a high risk of injury to innocent bystanders;

- the evidence shows that several shots were fired at Mr. Melvin as he apparently tried to escape. Bullets pierced the window of an unoccupied apartment and also hit the exterior of the building. It is a miracle that no one else was injured, other than Mr. Melvin, of course.

- the defence says that as Mr. Belisle-Taylor was not the shooter that he is somewhat less culpable. I do not agree entirely. He was aware of the place that this was to occur and that there was a daycare there. In fact he commented in the intercepts on the fact that the workers there would not like

having Mr. Melvin present (this was said in the context of Mr. Melvin making calls to Mr. LeBlanc from that location.) When discussions were going on as to where this murder should take place, it was apparent that the area or the location was well known to all of the parties.

- there was a brazenness to Mr. Belisle-Taylor's assessment of the inability of the police to sufficiently control and monitor the proposed area of the shooting, notwithstanding his knowledge that Melvin and LeBlanc were under surveillance at the time.

- Mr. Melvin suffered serious injury that required a colostomy bag for a year.

[23] In summary, this was a conspiracy to commit first degree murder, where it was attempted and failed, but not without serious injury to the victim. Mr. Belisle-Taylor's culpability, if the plan had succeeded, would have been as an aider and abettor to first degree murder. This conspiracy brought a criminal's war into a peaceful community where people should not have to live in fear, that they or their loved ones will become victims or become prisoners of their own homes as they try to avoid getting caught out in such incidents of violence.

Circumstances of the Offender

[24] Mr. Belisle-Taylor reported a positive upbringing under the guidance of his mother and his sister, who is five years older than him. He does not have a relationship with his father who separated from his mother when the offender was very young. Overall, the offender reports a positive upbringing in a loving home and with appropriate guidance. He is the only one in his family to have conflict with the law.

[25] More detailed comments from his sister and his aunt are realistic. They recognize that he has led a life that has included bad choices but urge the court to understand that he is intelligent; that he understands the consequences of his actions, and regrets his behavior. They see this offense as out of character for him and comment on the negative peer associations he had made that contributed to his involvement. Both feel that he has the potential to rehabilitate with education and a move to a different part of the country to start his life anew.

[26] The offender is in a common-law relationship and together they have three children under the age of 10. The relationship is described as a positive and strong one.

[27] Mr. Belisle-Taylor was not successful as a student, having withdrawn from school after repeating grade 9. He is now working on obtaining his General Equivalency Diploma and anticipates that during an expected period of incarceration he may be able to access trades training.

[28] He enjoys relatively good health and has no addictions.

[29] The presentence report writer reported that Mr. Belisle-Taylor was polite and cooperative throughout the interview. In the report the offender expressed some insight to his misconduct and to the steps that he will have to undertake in order to rehabilitate himself and to lead a productive life as a member of the general public. I will add that he made similar comments in his statement to the court at the end of the sentencing submissions. There is no question that he demonstrates an understanding of his circumstances and what would be necessary to rehabilitate

himself. It is very difficult to assess his sincerity to pursue this path or his capacity to do so when his release ultimately does come.

[30] I conclude that he has the tools to rehabilitate if the will is there to do so. He has strong family support, which was evidenced by their attendance in court during the hearing and in the comments of his aunt and the sister which I have previously referred to. It is apparent that he loves his children, although he seems only now to be beginning to consider the example that he has set for them to this point. The oldest child is clearly at an age to understand that his father is a serious criminal, in jail for participating in the plan to kill another human being. I suspect that Mr. Belisle-Taylor will need a long time to earn the trust and confidence of his children. It may be one of the best motivators for him to change his ways.

[31] Mr. Belisle-Taylor has a record of criminal activity going back to the age of 15. I will outline it by sentence date. As a youth:

Youth Record

02 June 2003 - 266 (b) assault - 12 months probation (age 15)

19 June 2003 - 249(1)(a) dangerous driving - 18 months probation

14 July 2003- 177 trespass at night - a reprimand as a youth sentence option

13 August 2003 - 348(1)(c) B & E - 3 weeks open custody at Provincial Facility

04 March 2004 - 266 (b) assault - susp. sent. + 18 mos. Probation

23 April 2004 - 267(b) assault either with weapon/bodily harm(the record is not clear) - 1 yr. Probation

[32] I am going to interrupt my recitation here and point out that according to the presentence report it is after this last matter that I raised, it is some two years later in 2006 that his mother passed away. After his mother passes away:

28 February 2007 - 145(5) fail to attend court - $100 fine

02 April 2007 - 4(1) CDSA - $100 fine - for simple possession of a narcotic under the *Controlled Drugs & Substances Act*

02 April 2007 - 145(5) same date for sentencing - another fail to attend - 1 day sentence I think served by presence in court

[33] At that point, he is no longer a youth in the eyes of the criminal law, he turned 18 on the 25 of May 2007. So what happened after he became an adult? A few months after his 18th birthday:

24 October 2007 - There are 3 charges of failing to comply with court orders:
- 2 x 145(5) fail to attend - 1 day secure
- 145(3) fail to comply - 1 day secure

[34] On all of these it was one day secure concurrent one to the other. I take it that it was considered served by presence in court in each case.

16 January 2008 - 266 assault - 1 day secure and 18 mos. Probation

[35] That is the last of the offences for which he was sentenced before this matter took place. It demonstrates then that he was on probation for that last offence at the time that this one was committed. So the offence date was 04 December 2008. I am told that immediately after this he left the area, but was returned to Nova Scotia on 26 March 2009 and remanded.

[36] During the period of his remand, he appeared and was sentenced:

11 May 2009 - 733.1 breach of probation - 30 days custody

- 270(1) (a) assault police - 30 days custody concurrent
- 145(3) fail to comply - 1 day concurrent

[37] As I recite these sentences I have to observe that I am not aware of, whether or the extent of, any remand time that may have influenced the sentencing in these matters. I was advised that in relation to those May 2009 matters for which he was sentenced that there was time in custody that was considered and so that the 30 day sentence imposed was a sentence imposed after the consideration of remand time.

Summary

[38] Mr. Belisle-Taylor's criminal conduct started at age 15, some 3 years prior to his mother's death. By the time of her passing, he had been sentenced 6 times for 3 assaults, a B and E, a dangerous driving and a trespass at night - all of which are serious offences. This would suggest that he had committed to a criminal lifestyle well before he underwent the terrible trauma of losing his mother.

[39] Those 3 assaults were supplemented by 2 more assaults before he was put in custody on remand in relation to this matter. So his record includes 5 violence related offences. Mr. Belisle-Taylor has shown a persistent disregard for court orders, in that there are 7 convictions for failing to comply with conditions of release orders. As well, he was at large on the terms of a Probation Order at the

time of the offence that he is here for today. His commission of this offence would constitute a breach of that order as well.

[40] The offender acknowledges that he has had 2 periods of lawful employment for relatively short periods of times in that 8 year span between the age of 15 and the time of his remand. His real source of income over the years has been from trafficking in drugs, which he candidly admitted to in his pre-sentence report. I will say as an aside, I think it was the right thing to do, to acknowledge that, Sir. It is part of, in my view, showing some insight to your circumstances.

[41] In short he demonstrated a commitment to a criminal lifestyle from the time he was 15 until he was locked up on the charge that he is before the court on today.

Mitigating factors

[42] Mr. Belisle-Taylor has entered a guilty plea without trial which is a mitigating factor. His counsel says, and this has not been contested, that the delay in entering a guilty plea was generated by the potential for him to be branded as the shooter. Once Mr. LeBlanc entered his guilty plea to attempted murder, and having

regard to the statement of facts agreed to as between the Crown and the defense in this sentencing, this concern was eliminated and the plea followed shortly thereafter.

[43] He has expressed an understanding of the seriousness of his misconduct, accepted full responsibility for his crime and has shown insight to the impact that his behavior has on the community and upon his family. I did not get the sense that he has remorse for Mr. Melvin's misfortune in this matter. In fairness, such a statement at this point would likely leave Mr. Belisle-Taylor's credibility open to some reasonable skepticism.

[44] I agree that he is still a young man and most importantly he is, whatever sentencing recommendation I accept today, going to have another opportunity to return to the community. It is therefore, in the interests of society, that any disposition that I may arrive at recognizes this reality. There is some potential for rehabilitation, which if successful, will benefit not only him, but the community in which he lives. Whether he chooses the right path in the future, however, will be entirely up to him.

[45] He and his counsel have acknowledged that a period of incarceration in a federal institution is an appropriate disposition in this matter and that it will have the added potential for providing him opportunities for a better education and trades training.

[46] It is my view that denunciation and deterrence must be emphasized in passing sentence. In this regard I agree with the Crown submissions. However, I am not as quick, as the Crown would have it, to write off Mr. Belisle-Taylor as an incorrigible criminal for whom the possibility of rehabilitation should be accorded little weight.

[47] I disagree with the proposition though put forward by counsel for the offender when he says and I quote from the brief:

> … the sentence does not necessarily act as a greater general deterrent to those in the community by adding a few extra years to it. Once a sentence crosses the threshold beyond minimal federal time the message would be sent to the community that individuals who choose to involve themselves to any extent, in a plan to end someone's life shall face significant incarceration.

[48] In my view Parliament has elected to statutorily recognize the value of sentencing for its deterrent effects, not only on the offender, but also on the community.

[49] It is true that obtaining an empirical measure of the success of any particular sentence in generating deterrence is effectively impossible. The beginning premise is that most in the general community do not need to be deterred as they would not engage in criminal activity. But, for those who may be so inclined, there must be a statement that there are consequences to illegal conduct. A first offender, who commits a spontaneous offense is unlikely to consider how significant a penalty might result from their behavior.

[50] However, in cases such as this one, where the offender has been engaged in illegal activity over an extended period of time starting at an early age, with a regular contact with the police, repeated experiences in the criminal courts, and who operates with associates in the general culture of drugs and violence, then it is reasonable to expect them to have some greater awareness of what the specific consequences may be for any particular illegal conduct. The courts have often focused on how best to generally deter that group who would be of like mind and in similar circumstances. As such, it remains a significant factor to be considered in the imposition of sentence in a case such as this. While I agree that an incremental difference in the length of the sentence may not achieve the deterrent purposes, I do

not think that the purpose is achieved by virtue of crossing the two year threshold so that an individual is subject to federal incarceration.

[51] General deterrence is not offender focused, but has as its object the increase in the ability of the community to be safe and feel safe from crime. At the risk of seeming repetitive, this is the overarching concern in a case such as this that resulted in reckless gunfire in a densely populated area during the supper hour.

Range of sentence

[52] The Crown has submitted that the appropriate range of sentence for conspiring to commit murder in the circumstances of this case is between 10 years and life imprisonment. They rely on the following factors in support of this position:

- the plan to use a firearm to complete the objective of the conspiracy

- completely wanton disregard for public safety

- criminal background of the participants

- the lack of an immediate threat or provocation

- the professional nature of the actual execution of the plan

- serious injuries suffered by the victim

[53] After reviewing a number of authorities the Crown has recommended that I impose a sentence of 10 years imprisonment, after giving proper credit for the time spent on remand. The Crown acknowledges that because of the timing of the offense, Mr. Belisle-Taylor is eligible for consideration of credit at the ratio of 2 to 1, but urges instead that I give credit only for a ratio of one to one.

[54] Defense counsel has submitted that the range of sentence for conspiracy to commit murder is 3.5 years to 12 years and that in this case, it is between four years and eight years of incarceration.

[55] Counsel submits that having regard to the circumstances of this offense, and of this offender, that an appropriate sentence is six years imprisonment. Further the defence submits that this sentence should be reduced by the amount of time spent on remand credited at a rate of 2 to 1. Accepting this recommendation would result in a sentence being imposed on Mr. Belisle-Taylor in the total amount of 30 months in a federal penitentiary.

Credit for Remand time

[56] Counsel agree that the determination of the appropriate credit to be given for pre-sentence incarceration lies within the discretion of the sentencing judge.

[57] Prior to the implementation of now section 719 (3) of the **Code,** which creates a presumptive credit of no more than 1 to 1, it was a generally accepted starting point that an offender would get the benefit of a 2 to 1 credit. Typically this was seen as an appropriate response to the following conditions for remanded prisoners:

i) little or no access to rehabilitative programming;

ii) substantial periods of lockdown for 22 to 23 ½ hours per day;

iii) more crowded housing conditions;

iv) no credit of remand time is applicable to parole eligibility calculations.

[58] In this case, Mr. Belisle-Taylor, through his counsel, indicates that these factors were all present during his period of remand which has, by agreement of both counsel been for a period of (and counsel I have added a day to recognize yesterday and today) 655 days. For these reasons, I am urged by the offender to apply a ratio that would normally have been uncontroversial prior to the **Truth in Sentencing Act.**

[59] For its part, the Crown submits the aggravating circumstances of the offense should also impact on the pre-trial custody calculation. They suggest that the offender has had the benefits of probation and provincial incarceration, but

continued to re-offend. They have submitted, as I have indicated previously, that Mr. Belisle-Taylor is not a promising candidate for rehabilitation, and point out that he was subject to the terms of a probation order, a weapons prohibition and a judicial interim release order at the time of the commission of the subject offense.

[60] They say this is consistent with his overall history of offending while under supervision. They suggest as well that the delay in entering plea was not justified, and is therefore another factor weighing against the granting of any more than the 1to1 credit.

[61] The Crown allows only a credit of 655 days or approximately 1 year and 10 months. The offender seeks credit for 1310 days or approximately 3 years and 8 months. I have concluded that there is merit in both positions and the sentence will reflect that view.

Conclusion

[62] I have considered the many authorities provided by counsel. The facts of this case fall at the upper end of the range of fact situations in conspiracy to murder

cases. This went beyond talk, beyond preparation and to the actual execution of the plan, with serious resulting injury.

[63] I accept that Mr. LeBlanc may be differentiated by his greater role in initiating the plan, driving the plan forward through his conversations with Mr. Melvin and according to at least one of the intercepted conversations participating in acquiring the firearm. The presence of Gun Shot Residue on him and not on the offender offers some insight to their relative roles. In any event, it has not been alleged that Mr. Belisle-Taylor was the shooter or even at the scene at the time of the shooting, and so I cannot sentence him as if he was.

[64] Mr. LeBlanc was older than this offender, with a more serious history of criminal conduct. His plea of guilty was to the offence of attempted murder, and it represents a qualitative difference in his admitted role and that of Mr. Belisle - Taylor.

[65] Mr. LeBlanc had just completed a sentence in a federal institution of 29 months and was subject to court orders. The longest sentence Mr. Belisle-Taylor

had served is 30 days, until he encountered this period of remand, all of which has been served in a provincial institution.

[66] I turn now to a few of the cases submitted to me for review.

[67] In *R. v. Tran* 2000 NSCA 128, Saunders J.A. writes at paragraph 31:

> ... the offender was convicted of entering into a conspiracy to murder the principal witness against him while in custody awaiting trial on a charge of murder. Those features are unique and in themselves distinguish this case from any relied upon by the appellant. It would be difficult to imagine a more aggravating set of circumstances. The appellant's criminal conduct strikes at the very foundation of the administration of justice. His actions demand strict denunciation and various serious penal consequences. The sentence imposed by Justice Nunn is clearly not excessive. We would not disturb it.

[68] The sentence upheld in that decision was a period of incarceration in a federal institution for 7 ½ years. In that case the offender sought to employ an individual to kill a witness. The police were informed and there was no actual attempt on the person of the witness.

[69] *R. v. Hare and Singh* [1997] B.C.J. No. 2727; 37 W.C.B. (2d) 23, a man named Carter hired two of his employees to kill his wife through the use of explosives at the house she was staying in. They agreed and detonated explosives

in an area where they believed she was located, but they were unsuccessful as she was not there. There were no major injuries however, the house was destroyed. The two individuals contracted to carry out the murder entered pleas of guilty to conspiracy to commit murder and received sentences of six years and four years respectively for their roles. (Hare, I should point out, received four years, but a further 2 years consecutive to an explosives charge arising from the same facts, so in essence also received the six year sentence). Mr. Carter, the husband who initiated the plot received a sentence of eight years. His sentencing is reported at *R. v. Carter* 1998 CanLii 15093 (B.C.S.C).

[70] Romilly J. writing in *Hare* made references to two cases. At paragraph 36 of his decision, he refers to *R. v. Spack* and says:

> 36 *R. v. Spack*, [1984] O.J. No. 1149 (H.C.) was also a case where the hired killer was sentenced. There was a husband who was in the midst of a bitter divorce hired the accused for $4,500 to kill his wife. On a number of occasions, the accused tried to execute the plan but was unable to bring himself to do it. In considering the significance of deterrence to the length of the sentence, Rosenberg J. found that the fact that the accused was the hired killer rather than the instigator entitled him to be treated less severely than the instigator. Rosenberg J. found that the accused did not have "singleness of purpose" shown by his co-conspirator. Another mitigating factor was that the accused showed remorse first by confessing and then by helping to cause the arrest and conviction of his co-conspirator. The accused was sentenced to three years and three months.

> 37 In *R. v. Grewal*, [1987] B.C.J. No. 1143 (C.A.), the accused was an employee of the Liquor Distribution Branch who had been involved with a scheme to steal and sell liquor. The scheme was exposed by a co-worker and the accused was charged with various counts of theft. The accused then hired an under cover officer disguised as a hit-man to kill the co-worker. The trial judge noted the seriousness of attempting to kill a potential witness in a criminal case and found that it required a substantial deterrent. He said that it strikes at the heart of the administration of justice since potential witnesses should not have to be concerned for their life or safety. He sentenced the accused to twelve years.

[71] I do note that the maximum punishment for the offence of conspiracy to commit murder, I think altered but in 1984 was still 14 years.

[72] The Crown has referred me to a number of cases of attempted murder with serious and permanent disabling injuries to the victims who were shot by the offender. If I accept those they would certainly speak to the range that the Crown has urged on me of a period of between 10 years and life. The following are conspiracy to commit murder cases:

R. v. Michaels 2001 BCJ 11381 One of two co-accused, Toth, was convicted of conspiracy to commit murder where the victim was shot, stabbed and had his throat slashed by the other co-accused, Michaels. Toth had an "unblemished background" and positive comments from friends and associates. He participated in deciding the time and place of the shooting, negotiated the price for the hit and

provided a gun and a key to the victim's apartment. For this he received a sentence of 12 years less two years credit for time spent on remand. Mr. Michaels, was guilty of attempted murder, had a lengthy criminal record and was sentenced to life imprisonment.

R. v. Scaracella 2006 OJ 1555 There were five co-accused entered pleas of guilty on numerous charges including attempted murder and conspiracy to commit murder, arising from a shooting at a sandwich shop. One innocent bystander who was seriously injured in the shooting was rendered paraplegic. The accused received terms of imprisonment ranging from three years to 11 years. As you can appreciate all of these various cases together with the other ones presented to me which I have not specified, but I have reviewed, are simply instructive in terms of trying to determine where the circumstances of this offender and this offence fit.

[73] So having considered the circumstances of the offence, and of you Mr. Belisle-Taylor, the case law, the statutory and the common law sentencing principles that I have reviewed, I have concluded that a fit and proper sentence is 10 years imprisonment. I have also concluded that there will be a credit for time

served on remand of 30 months leaving the sentence remaining to be served at 7 years and 6 months.

[74] In addition to this sentence there will be ancillary Orders. There will be an Order of Prohibition pursuant to s. 109 of the *Criminal Code* for life in relation to paragraphs 1 (a) of that Order which will in turn be read to you, Sir. I am taking the short version now, and the provisions of that Order will be read to you. It is to prohibit you from possessing prohibited weapons, certain firearms, prohibited weapons, devices or ammunition for life and from possessing any other firearm or ammunition or any cross-bow, restricted weapon or explosive substance for a period beginning on today, April 8, 2011 and ending 10 years after your release from imprisonment.

[75] In addition, Sir, I am ordering you to provide a sample of a bodily substance for the purpose of forensic DNA analysis.

[76] There will be no Victims of Crime Fine Surcharge - that is waived.

J.