

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. LeBlanc, 2011 NSSC 245

Date: 20110621

Docket: CRH 329528

Registry: Halifax

Between:

Her Majesty the Queen

v.

Jeremy Alvin LeBlanc, and
Matthew James Murphy

DECISION

Judge: The Honourable Justice Kevin Coady

Heard: April 26, 2011 - May 5, 2011, in Halifax, Nova Scotia

Decision: June 21, 2011

Counsel: Denise Smith, for the Provincial Crown
Lance Scaravelli, for Defendant Matthew Murphy
Peter Planetta, for Defendant Jeremy LeBlanc

By the Court:

[1] Jeremy LeBlanc and Matthew Murphy stand charged:

that they on or about the 18th day of November, 2008, at or near Halifax, in the Halifax Regional Municipality, in the Province of Nova Scotia, did conspire together to murder Jason William Hallett, contrary to Section 465(1)(c) of the *Criminal Code*.

AND FURTHER AT THE SAME TIME AND PLACE AFORESAID, that they, did attempt to murder Jason William Hallett while using a firearm by discharging a firearm at Jason William Hallett contrary to Section 239(a) of the *Criminal Code*.

[2] These charges arose from an incident at the entrance to the IWK Hospital in Halifax. Jason Hallett was shot in the wrist while seated in the front passenger seat of his Jeep Cherokee. Mr. Hallett survived this attempt on his life and has since entered the Witness Protection Program. He testified for the Crown in the trial of Messrs. LeBlanc and Murphy.

BACKGROUND:

[3] The Crown initially charged four (4) persons with conspiracy to commit murder and attempted murder. In addition to Messrs. LeBlanc and Murphy, the

Crown charged Aaron Marriott and Shaun Smith. All four elected to be tried by judge and jury and all four were committed to stand trial after a May 3-18, 2010 preliminary inquiry. On the first day of trial all four re-elected trial by judge alone. The Crown consented to the re-elections.

[4] On the same day Mr. Smith plead guilty to the conspiracy to commit murder charge. He has since been sentenced to 10 years in prison with credit for remand time. Also on that day Aaron Marriott plead guilty to attempted murder. He has since been sentenced to 15 years in prison without credit for remand time. Mr. Marriott has acknowledged that he was the shooter and that it was his intention to kill Jason Hallett. Neither Mr. Marriott nor Mr. Smith testified in the trial of Messrs. LeBlanc and Murphy.

THE EVENT:

[5] On November 18, 2008 Jason Hallett was at the IWK maternity hospital visiting his partner and their new infant. He was accompanied by three or four associates. He was in possession of a concealed and loaded .32 calibre revolver. Mr. Hallett testified that he kept this weapon on his person as a result of two earlier

attempts on his life. At that time Mr. LeBlanc's common law partner, Jennifer Hachey, was working on the same unit and was obviously spooked by the Jason Hallett group. She phoned Mr. LeBlanc and informed him of Mr. Hallett's attendance at the hospital. Mr. LeBlanc allayed Ms. Hachey's concerns.

[6] Within minutes of this call Mr. LeBlanc phoned Aaron Marriott and informed him of Jason Hallett's presence in the hospital. Messrs. LeBlanc and Murphy proceeded to the hospital in a white Mustang. The evidence establishes that shortly thereafter Messrs. Marriott and Smith drove to the hospital in a Chevrolet Blazer. All four individuals were in ongoing phone contact discussing the whereabouts of each vehicle and the location of Mr. Hallett and his vehicle. These phone contacts continued up to the moment when Aaron Marriott ran up to Mr. Hallett's vehicle and fired several shots into that vehicle injuring Mr. Hallett. Mr. Marriott then fled the scene. The Crown contends that he got into the Blazer and Mr. Smith drove away. The Crown also contends that Messrs. LeBlanc and Murphy left the scene in the white Mustang. Mr. Hallett was treated at a local hospital and released.

[7] The Crown considers this to be a settling of scores between two rival gangs involved in the local drug trade. It is their theory that Mr. Hallett was a target because he abandoned Mr. LeBlanc's team and joined team Melvin. Mr. Hallett testified to this effect although Mr. LeBlanc denied that this was the case. The evidence, as a whole, clearly established that Messrs. LeBlanc and Marriott were viewed by police as players in the local drug trade.

[8] On November 18, 2008 the local integrated drug unit was involved in an operation termed "Intrude." This operation was focused on the drug trade, and associated violence, in the Spryfield area of Halifax. The police obtained an authorization to intercept private communications. Messrs. LeBlanc and Marriott were considered primary targets. Messrs. Smith and Murphy were not considered primary targets. The authorizations were partially in place on November 18, 2008. At approximately 6:09pm they picked up the call from Ms. Hachey to Mr. LeBlanc reporting Mr. Hallett's presence at the hospital. Further calls between Mr. LeBlanc and Mr. Marriott indicated that the two vehicles were headed to the hospital. The police were aware that Mr. Hallett was not any ally of Mr. LeBlanc's team. They concluded that it would not be a good thing for Mr. Hallett if Messrs. LeBlanc and Marriott went to the hospital. The police concluded that there could be a violent

incident at the IWK and they instructed their officers to make a quick response to the area. The shooting of Mr. Hallett took place before the quick response team could respond.

[9] The Crown relies heavily on the intercepts to establish the four accused were involved in a conspiracy to murder Jason Hallett as well as the attempt to murder. The Crown also relies on the video from several cameras that were focused on the scene. These cameras depict the actual shooting as well as the minutes before the shooting. The video and audio evidence clearly establish what went down on that evening so that aspect of the evidence is not disputed. The question for this court is whether the Crown has proven that there was a conspiracy and whether Messrs. LeBlanc and Murphy were part of that plan. The Crown contends that the audio and video evidence answers those questions in the affirmative. The Defendants advance the position that there was no plan to kill Mr. Hallett, that they went to the hospital to assess Ms. Hachey's concerns and, as such, Messrs. Marriott and Smith were on their own.

[10] The Crown and the Defence have agreed that the transcripts of the intercepts are accurate. They have also agreed as to the identity of the voices on the taped intercepts.

THE INTERCEPTS:

[11] At 6:09pm on November 18, 2008 the police picked up a call from Jennifer Hachey to Jeremy LeBlanc. Ms. Hachey expressed her concern that Mr. Hallett was at the hospital. Mr. LeBlanc quizzed her as to the identity of the person and she answered in the affirmative when Mr. LeBlanc said “who, Hallett?” Mr. LeBlanc allayed her concern by saying, “if he says somethin’, call me back. He ain’t gonna say nothin.”

[12] Approximately four minutes later Mr. LeBlanc calls Mr. Marriott and said “fuckin eyebrows there.” There is no dispute that “eyebrows” was a nick name for Jason Hallett. Mr. LeBlanc goes on to say “him and like, five other guys are down the hospital right now my, they’re all on the floor right where my womans workin.” Mr. Marriott replies “what floor?” In the midst of this conversation Mr. LeBlanc takes a call from Shaun Smith.

[13] Approximately three minutes later Mr. LeBlanc takes a call from Shaun Smith and says “right, right on Jen’s floor. She’s like sittin’ right _____.” Mr. Smith asks “what floor is that?” and Mr. LeBlanc replies “I don’t know, I’m waitin for her to call me back.” Mr. LeBlanc tells Mr. Smith “I’m headed down that way though, right now” to which Mr. Smith replies “all right, cool.”

[14] One minute later Mr. Smith is picked up calling one Dawn Ann Bremner, an associate of Aaron Marriott. Prior to conversation Mr. Smith is heard to say “the people that rolled somewhere, man. I’ll let momma know you’re bringing _____ back. (sighs) Aaron, have you been to Momma’s?” When Ms. Bremner comes on the line Mr. Smith says “can they come bump into ya? Smitty.” Ms. Bremner replied “yeah” to which Mr. Smith says “all right, I’ll be out.”

[15] Approximately nine minutes later Ms. Bremner takes a call from Aaron Marriott. Mr. Marriott says “hi Momma, how you doin?” He then says “thank you could ah, meet me outside? I’ll be there in like, ten seconds.”

[16] Approximately four minutes later Mr. LeBlanc texts Ms. Hachey “what floor?”

[17] One minute later Mr. Marriott called Mr. LeBlanc and said “what’s up buddy _____ . Ah where was, where were they at again? I don’t know what ... what one it is. What one she’s at.” Mr. LeBlanc replies “the same place we were lookin’ before, tell him.” Mr. Marriott is heard in the background saying “what’s the same place we were looking before?” Mr. Smith is heard in the background saying “yeah, I know where it’s at.” Obviously Mr. Smith and Mr. Marriott were together at the time of this call. Mr. Marriott is heard to say “should we go there” and Mr. LeBlanc replies “Jus’, you can’t like, run right in or nothin’ man, like, she’s workin’ and shit they might fuck around with her later.” Mr. LeBlanc then says “I’ll just see ya when you get down there.” Mr. Marriott then said “Oh, you’re down there?” and Mr. LeBlanc replied “pretty darn close.”

[18] Some nine minutes later Mr. LeBlanc calls Mr. Smith. The following represents the conversation:

Smith: Hello

LeBlanc: I’m watchin’ Hallett, his cousin, _____

Smith: Say what?

LeBlanc: _____

Smith: Say what?

LeBlanc: I'm watchin' them right now, I'm lookin' at them walkin' right past me

Smith: Where at, I'm on, I'm right on Robie Street

LeBlanc: Just come down here

Smith: Say what?

LeBlanc: _____ down here

Smith: Where you at parked though, watchin' them?

LeBlanc: Right there, like around, how you go around the loop

Smith: What, they're sittin' right there?

LeBlanc: Hmm

Smith: Where you sittin' at, so we can come to you and see?

LeBlanc: You'll see me

Smith: What, so, do I, you don't wanna pull right in the hospital, do I?

LeBlanc: Fuck, they're goin' in the underground parking lot actually

Smith: They're goin' to the underground parking lot?

LeBlanc: As if they're gonna pull out

Smith: So is there any way I can block 'em?

LeBlanc: Just ah, just sec. Just come down, you'll see me

Smith: Yeah, I won't see ya buddy, I'll stay on the phone right with ya

Murphy: (Background: _____)

LeBlanc: Hold up

Murphy: Hello

Smith: Hello

Murphy: Hey, what's up?

Smith: What's up buddy?

Murphy: Yeah, You know where we're at. Hello?

Smith: Yeah, I know where you're at, but

Murphy: Ah, well, they're right there. In that loop around

Smith: Right in the loop?

Murphy: Yeah

LeBlanc: (Background: Walking ___ underground)

Smith: But does the underground gonna come that way?

Murphy: Yeah, they're goin, that's where they're goin' now

Smith: Do they, do they gotta come out on Robie?

Murphy: They gotta come, I don't know what street they gotta come out on, but they're lookin'. We see them right now. _____

Smith: We're right around the corner bud, we're just at a

LeBlanc: (Background: You go on the straight street and just _____)

Murphy: Go on, go one the straight street and you'll pull over

LeBlanc: (Background: Like, don't pull into the hospital)

Murphy: Don't pull into the hospital

LeBlanc: (Background: Pass like, all the universities)

Murphy: Go past all the universities

Smith: So, take a left right at the. Hey, we're right at the top of the place. I see you guys right now

Murphy: _____

Smith: You're in front of me

Murphy: All right, well we're, we're stopped (Background: Yeah, they see us right now)

Smith: What?

Murphy: Do you see us loopin' around?

Smith: Yeah

Murphy: Yeah, they're well, they're right there on the right

Smith: Right there on the right?

Murphy: Yeah

Smith: (Background: _____ right here)

Murphy: _____

Smith: (Background: Gimme, gimme the gat)

[19] This intercept establishes that Messrs. Smith, LeBlanc and Murphy were at the IWK Hospital at 6:40pm. It also establishes that Mr. Murphy was in a vehicle with Mr. LeBlanc. These facts are confirmed by the video evidence and the

testimony of Messrs. LeBlanc and Murphy. It is obvious that they had located Mr. Hallett in front of the hospital.

[20] Four minutes later the following exchange took place between Messrs.

LeBlanc, Smith and Murphy:

LeBlanc: (Background: ____ they're back in front)

Murphy: (Background: Pick up his fuckin' phone)

Smith: Hello

Murphy: Yeah, they're back in front

Smith: What?

LeBlanc: (Background: ____ at Tim Horton's)

Murphy: Tim Horton's there

Smith: Turn around?

Murphy: Yeah

LeBlanc: (Background: Actually Hallett's right outside)

Murphy: Right in the loop

Smith: Stay on the phone with me

Murphy: Yeah

LeBlanc: (Background: They're talkin' to someone in a truck)

Murphy: Hello

Smith: Yo

Murphy: Yeah

LeBlanc: (Background: Hey, tell them they're jumpin' in the Cherokee)

Murphy: They're jumpin' in the Cherokee

LeBlanc: (Background: They're jumpin' in the Cherokee)

Smith: So, are they going to be pullin' out on Robie, ask him

Murphy: Yeah, they're gonna be pullin' right out on that street that we were just on

Smith: They're gonna be pulling out here, on the street we were just on?

LeBlanc: (Background: Tell him to come into the hospital _____)

Murphy: Come in, come in

LeBlanc: (Background: _____ we're goin' into Tim Horton's _____)

Murphy: Come in, yeah we're goin' in Tim Horton's come in

[21] This intercept establishes that Mr. Murphy was using Mr. LeBlanc's phone in the vehicle. It also establishes that Mr. Murphy and Mr. LeBlanc spotted Jason Hallett entering the Jeep Cherokee and were conveying that information to Mr. Smith.

[22] Further conversation continued between Messrs. LeBlanc, Smith and Murphy as follows:

Smith: (Background: _____ Cherokee)

Murphy: Hello

Smith: Hello

Murphy: Yeah, is that you guys pulling in or?

Smith: Yeah, where's the Cherokee? Is that the Cherokee?

LeBlanc: ___in the Cherokee right in front. See it over to the right?

Smith: (Background: here, get out and blaze the Cherokee. Get out and blaze that Cherokee)

Marriott: (Background: That one right there?)

Smith: (Background: Go, yeah)

Marriott: (Background: _____)

Smith: (Background: I don't give a fuck. Go)

LeBlanc: Blaze the Cherokee, the Cherokee

[23] This intercept establishes that Mr. Marriott was with Mr. Smith and all four were at the IWK Hospital at 6:45pm.

[24] Fifteen minutes later the police intercept a call from Mr. Smith to one Shawn Shea. Mr. Shea was connected to the Blazer that was seen quickly leaving the IWK after Mr. Hallett was shot. Mr. Smith directed Mr. Shea to report the Blazer stolen.

THE VIDEO EVIDENCE:

[25] The IWK Hospital entrance is equipped with three surveillance cameras. On November 18, 2008 they captured the events that led to the shooting of Jason Hallett. The Crown filed an exhibit that blended the video evidence with the intercept evidence. That exhibit allowed the court to observe the accused's actions while listening to their words.

[26] The video shows Jason Hallett and several other persons exiting the hospital at 6:40pm. At 6:43pm the mustang pulls into the area and parks some distance from the hospital entrance. At 6:44pm the Cherokee can be observed arriving at the hospital and parking at the curb just outside the entrance. Jason Hallett and his cousin Tyler Lang can be seen getting into the Cherokee. Mr. Hallett got in the front passenger seat. The female driver remained in the driver's seat. The mustang

then drives by the parked Cherokee. At 6:49pm Aaron Marriott can be seen approaching the Cherokee and firing several shots into the Cherokee. Mr. Marriott can then be seen running back from where he came. A minute before the shooting one camera captures the Blazer and Mr. Marriott exiting, running to the Cherokee and returning to the Blazer. Independent evidence confirms the Blazer leaving the area squealing tires and speeding north on Robie Street going away from the IWK Hospital.

[27] The totality of the evidence, including Mr. LeBlanc's testimony, confirms that Messrs. LeBlanc and Murphy occupied the Mustang. The evidence also establishes that Messrs. Smith and Marriott occupied the Blazer. These facts are not in dispute as neither Mr. LeBlanc nor Mr. Murphy suggested anything different. The real issue in this trial was not whether they were at the scene but rather why they were there.

[28] I am satisfied that the exhibit that blends the video and the intercept evidence is accurately timed. For example at 6:40pm Mr. Murphy, when speaking to Mr. Smith, says "do you see us loopin' around?" He later says "they're right there on the right" and Mr. Smith says "right there on the right." While listening to those

exchanges the court can see the Mustang driving through the loop and passing the Cherokee on the right. On another exchange Mr. Murphy tells Mr. Smith “they’re jumpin’ in the Cherokee.” At that moment the court was able to view Jason Hallett and friends getting into the Cherokee. At 6:45pm Mr. LeBlanc is heard to say “blaze the Cherokee, the Cherokee” and shortly after that the video shows Mr. Marriott approaching the Cherokee and firing several shots into that vehicle.

[29] The exhibit that blended the video and intercept evidence makes for very compelling evidence about what happened at the IWK Hospital on November 18, 2008. I suspect that it influenced Messrs. Smith and Marriott to plead guilty as it did not allow for any kind of an explanation. Messrs. LeBlanc and Murphy have offered explanations that refute any plan or intention to shoot Mr. Hallett. In other words they suggest that Messrs. Marriott and Smith were on an escapade of their own.

THE LAW ON CONSPIRACY:

[30] The essence of a conspiracy is an agreement. *R. v. Cotroni* (1979), 45 C.C.C. (2d) 1 (S.C.C.). Knowledge of the existence of a plan to commit a crime,

and acts in furtherance of the plan, provide evidence from which the existence of an agreement may be inferred. *R. v. Alexander* (2005), 2006 C.C.C. (3d) 233 (Ont.C.A.).

[31] The seminal case respecting conspiracy is *R. v. Carter* (1982), 67 C.C.C. (2d) 568 (S.C.C.). The Court stated, as a fundamental principle, that to establish the guilt of an accused the Crown must prove not only the unlawful agreement alleged, but equally the accused's participation or membership in it.

[32] The first step in conspiracy prosecutions involves proof of the existence of the conspiracy alleged. A determination of the adequacy of the Crown's proof on this issue is to be made on all the evidence including what the alleged conspirators have said and done in furtherance of the common purpose. The agreement may be established in a number of ways including by inference from the manner in which the substantive offence was committed. If there is a reasonable doubt about the fact of the agreement, or the object of the agreement, the issue of the accused's membership does not come into play.

[33] Proof of an individual's membership in a conspiracy involves two steps. The first step, probable membership, is determined on the basis of an individual's own words and conduct. Put another way, proof of an individual's probable membership in a conspiracy must be made exclusively on the basis of evidence directly admissible against that person. The second step, actual membership, permits recourse to acts and declarations of other conspirators in furtherance of the common design. The purpose of this evidence is to convert direct proof of probable participation into completed proof of actual participation. *R. v. Yumnu*, [2010] O.J. No. 4163.

[34] In *R. v. Cotroni* and *R. v. Papalia*, *supra*, the Supreme Court of Canada refined the operative definition of the crime of conspiracy. In describing the essential elements of the offence, Dickson J stated on behalf of the majority:

The word "conspire" derives from two Latin words, "con" and "spirare," meaning to "breathe together." To conspire is to agree. The essence of criminal conspiracy is proof of agreement. On a charge of conspiracy the agreement itself is the gist of the offence. ... The *actus reus* is the fact of agreement. ... The agreement reached by the co-conspirators may contemplate a number of acts or offences. Any number of persons may be privy to it. Additional persons may join the ongoing scheme while others may drop out. So long as there is a continuing overall, dominant plan, there may be changes in methods of operation, personnel or victims without bringing the conspiracy to an end. The important inquiry is not as to the acts done in pursuance of the agreement, but whether there

was, in fact, a common agreement to which the acts are referable and to which all of the alleged offenders were privy.

The offence of conspiracy is entirely complete upon the formation of the agreement.

[35] In *R. v. Alexander, supra*, Justice Doherty commented on the *actus reus* as follows:

The *actus reus* of the crime of conspiracy lies in the formation of an agreement, tacit or express, between two or more individuals, to act together in pursuit of a mutual criminal objective. Co-conspirators share a common goal borne out of a meeting of the minds whereby each agrees to act together with the other to achieve a common goal.

It follows from the mutuality of objective requirement of the *actus reus* that a conspiracy is not established merely by proof of knowledge of the existence of a scheme to commit a crime or by the doing of acts in furtherance of that scheme. Neither knowledge of nor participation in a criminal scheme can be equated with the *actus reus* of a conspiracy. ... Knowledge and acts in furtherance of a criminal scheme do, however, provide evidence particularly where they co-exist, from which the existence of an agreement may be inferred.

[36] In *R. v. Nova Scotia Pharmaceutical Society* (1992), 74 C.C.C. (3d) 289 (S.C.C.) the Supreme Court of Canada confirmed that the *mens rea* of conspiracy consists of, essentially, two states of mind, namely: (1) an intention to achieve the

object of the agreement; and (2) knowledge of the facts which constitute the object of the conspiracy. With respect to the first element of the *mens rea* component of conspiracy, the Crown proves an actual intention on the part of the accused to agree to pursue a common unlawful object. This must be an honest and genuine intention to participate in the agreement. With respect to the second element of the *mens rea* of conspiracy, the Crown must establish that the accused had knowledge of the terms of the conspiratorial agreement. While this does not mean the Crown is required to prove that the accused were completely aware of all the detailed nuances of the agreement, it does mean that the Crown must at least establish that the accused possessed knowledge as to the general nature and scope of the agreement.

[37] The Crown may rely on inferences to prove the existence of a conspiracy. In *R. v. Paradis* (1993), 61 C.C.C. 184 (S.C.C.) the Court commented as follows at page 186:

Conspiracy like all other crimes, may be established by inference from the conduct of the parties. No doubt the agreement between them is the gist of the offence, but only in very rare cases will it be possible to prove it by direct evidence. Ordinarily the evidence must proceed by steps. The actual agreement must be gathered from “several isolated doings” ... having possibly little or no value taken by themselves, but the bearing of which one upon the other must be interpreted; and their cumulative effect, properly estimated in the light of all

surrounding circumstances, may raise a presumption of concerted purpose entitling the jury to find the existence of an unlawful agreement.

THE EXISTENCE OF A CONSPIRACY:

[38] I find that the Crown has proven, beyond a reasonable doubt, the existence of a conspiracy to murder Jason Hallett. In many conspiracy prosecutions the Crown must patch together various pieces of evidence that individually are inconclusive of a plan. In those cases the Crown relies on inferences drawn from scattered facts. The prosecution of Messrs. LeBlanc and Murphy is different in that the evidence covers a short period of time and all of the accused are present at the scene. Additionally, the Court has the words of the accused which were captured surreptitiously as well as the video evidence covering the same period of time. This prosecution is also different from some in that there was an attempt to implement the plan. This is not a difficult conclusion and it would be impossible to interpret the evidence otherwise.

[39] The Crown argues that the events at the IWK on November 18, 2008 were part of an ongoing conspiracy to kill Mr. Hallett. The 6:31pm intercept catches

Mr. LeBlanc telling Mr. Murphy to tell Mr. Smith “the same place we were lookin’ before, tell him” to which Mr. Smith responds “yeah, I know where it’s at.”

[40] Jason Hallett testified that he observed the Blazer following him in the days leading up to the shooting. He also testified that he was shot in the face two weeks earlier and as a result carried a gun on him all the time. He testified that he has known Mr. LeBlanc “all of his life” and that they were no longer friends because “he was hanging with someone else.” The evidence establishes that the someone else was Jimmy Melvin Jr.. Mr. Hallett testified that Aaron Marriott was also “hangin with Jimmy Melvin.” I accept Mr. Hallett’s evidence on these points.

[41] Cst. Peplar conducted the intercept process. He testified that he knew that Jason Hallett was on the other side of Mr. LeBlanc. He stated that he knew that if Messrs. LeBlanc and Marriott came into contact with Mr. Hallett that it was not going to be a good thing for Jason Hallett. When he heard that this was going to happen he believed “there would be a violent incident at the IWK.”

[42] The intercepts indicate that Cst. Peplar’s conclusions were accurate. Once Mr. LeBlanc is alerted to Mr. Hallett’s location, he phones Mr. Marriott to advise

him of same. During that phone call Mr. Smith calls in to Mr. Marriott. Mr. Marriott inquires “what floor?” Later Mr. Smith is heard to ask “what was that, the QEII” to which Mr. LeBlanc replies “no, ah, where the kids are.” Mr. Smith is later heard to call Ms. Bremner requesting, what I conclude, to be a gun (“Smitty”). A few minutes later Mr. Marriott calls Ms. Bremner requesting they meet “out at the front door.” Not long after that Mr. LeBlanc texts Ms. Hachey asking “what floor?” Subsequent conversations indicate an effort to locate Jason Hallett’s vehicle in front of the hospital. Once that location is ascertained Mr. Marriott is seen shooting at Jason Hallett and then running away. Messrs. LeBlanc and Murphy then leave the scene. As I stated earlier, I am satisfied that there existed a conspiracy to murder Jason Hallett on November 18, 2008.

MEMBERSHIP - MR. LEBLANC:

[43] I find, on a balance of probabilities, that Mr. LeBlanc was a probable member of the conspiracy to kill Jason Hallett. To arrive at this conclusion I am relying on Mr. LeBlanc’s words on the intercepts and the video evidence putting him at the IWK when Mr. Marriott shot Mr. Hallett.

[44] It was Mr. LeBlanc who took the call from Ms. Hachey and immediately contacted Messrs. Marriott and Smith. It was Mr. LeBlanc who changed his plan of getting something to eat and went to the IWK. It was Mr. LeBlanc who texted Ms. Hachey to determine from which floor she was calling. It was Mr. LeBlanc who alerted Mr. Smith that he had Mr. Hallett in view and said “just come down here.” It was Mr. LeBlanc who then told Mr. Smith “actually Hallett’s right outside.” He then said to Mr. Smith “hey, tell them they’re jumpin’ in the Cherokee.” Shortly thereafter he tells the approaching Smith Marriott vehicle “in the Cherokee right in front. See it over to the right.” This is followed by Mr. LeBlanc shouting “blaze the Cherokee, the Cherokee” just before Mr. Marriott shoots Jason Hallett.

[45] The next step is to determine on all of the evidence, including the statement of the co-conspirators, whether there is proof beyond a reasonable doubt that Mr. LeBlanc was a member of the conspiracy to kill Jason Hallett. I conclude that he was and, in fact, I find that he drove the conspiracy. The conversations among all four conspirators lead to no other conclusion. The shooting of Jason Hallett supports this conclusion as well as the post offence conduct of Mr. LeBlanc and Mr. Smith, Mr. Marriott and Mr. Murphy.

[46] The only evidence that disputes this conclusion is the evidence of Mr. LeBlanc. He testified that Messrs. Marriott and Smith were friends and that Mr. Murphy was a person he knew from ball hockey. He did not acknowledge any animosity towards Mr. Hallett. He testified that on November 18, 2008 he met Mr. Murphy while looking for pot. Mr. LeBlanc acknowledged the call from Ms. Hachey. He testified that he went down to the IWK to see who was with Mr. Hallett. He admits calling Mr. Marriott and telling him where he was headed. He acknowledged the call from Mr. Smith inquiring as to which hospital but stated that he did not know that Messrs. Marriott and Smith were coming to the hospital. He testified that his directing words were not intended to target Mr. Hallett but rather to explain what he and Mr. Murphy were observing. Mr. LeBlanc acknowledged the “blaze the Cherokee” comments but explained that he was repeating what he heard Mr. Smith say over the phone. It is his evidence that he did not see or hear of the shooting until he later spoke to Ms. Hachey. In essence he suggests that Messrs. Marriott and Smith were on a conspiracy of their own and that he had no knowledge of their intention to kill Mr. Hallett.

[47] Given Mr. LeBlanc’s testimony, I am required to apply *R. v. W.D.*, [1991] 1 S.C.R. 742. I can state that I do not believe his testimony. It is not credible

because it is completely contradicted by the intercepts and the video surveillance evidence. Mr. LeBlanc's evidence was evasive and in some cases entirely untrue. I further state that his evidence does not leave me in a state of reasonable doubt. On all of the evidence I am satisfied that the Crown has proven beyond a reasonable doubt that Mr. LeBlanc was a member of the conspiracy to kill Jason Hallett. I am satisfied that Mr. LeBlanc wanted Mr. Hallett dead for a number of gang related reasons. When he got the call from Ms. Hachey he saw an opportunity, if not another opportunity, to take out Mr. Hallett. He called in his troops and directed them to Mr. Hallett. Mr. LeBlanc was at the IWK because he wanted to see the plan go down.

MEMBERSHIP - MR. MURPHY:

[48] I find, on a balance of probabilities, that Mr. Murphy was a probable member of the conspiracy to kill Jason Hallett. To arrive at this conclusion I am

relying on Mr. Murphy's words on the intercepts and the video evidence putting him at the IWK when Mr. Marriott shot Mr. Hallett.

[49] The evidence clearly establishes that Mr. Murphy was with Mr. LeBlanc when he took the call from Ms. Hachey. He then travelled to the IWK with Mr. LeBlanc when contact was made with Messrs. Marriott and Smith. He was with Mr. LeBlanc at the hospital and left with him after the shooting.

[50] The 6:40pm intercept establishes that Mr. LeBlanc handed his phone to Mr. Murphy who continued the conversation with Mr. Smith. He made the following comments:

“Ah, well, they're right there. In that loop around”

“Yeah, they're goin' that's where they're goin' now”

“They gotta come, I don't know what street they gotta come out on, but they're lookin'. We see them right now.”

“Go on, go on the straight street and you'll pull over”

“Don't pull into the hospital”

“Yeah, they're well, they're right there on the right”

[51] The 6:44pm intercept indicates that Mr. Murphy continued to instruct Mr. Smith as Mr. Hallett approached the Cherokee. The following are Mr. Murphy's words:

“Yeah, they're back in front”

“Right in the loop”

“They're jumpin' in the Cherokee”

“Yeah, they're gonna be pullin' right out on that street that we were just on”

This language supports my conclusion that Mr. Murphy was a probable member of this conspiracy. The next step is to determine, on all of the evidence, whether the Crown has proven beyond a reasonable doubt that he was a member.

[52] There is no evidence that Mr. Murphy was a member of this conspiracy before getting into Mr. LeBlanc's Mustang. There is no evidence that he did anything in furtherance of the conspiracy after leaving the scene with Mr. LeBlanc. The critical question is whether he was part of the conspiracy while he was at the scene.

[53] Mr. Murphy testified in this trial. He testified that he knew nothing of a plan to kill Mr. Hallett at any time. He testified that Mr. LeBlanc invited him to get in the Mustang, smoke some weed and get something to eat. He testified that while on that drive Mr. LeBlanc gets a call but says nothing about it. Another call happens and Mr. LeBlanc tells him that he has to go to the hospital as his “woman” is concerned. Mr. Murphy stated that Mr. LeBlanc said that it would only take a second to check out his girlfriend.

[54] Mr. Murphy testified that he took the phone from Mr. LeBlanc because Mr. LeBlanc was rolling a joint. He stated that he was told to take the call from Mr. Smith. Mr. Murphy acknowledged hearing Mr. LeBlanc say “blaze the Cherokee” but stated that at the time he understood him to say “Blazer or Cherokee.” He testified he did not hear any shots. He testified that he left the scene with Mr. LeBlanc and was dropped off at a bus stop where he took a bus home.

[55] Mr. Murphy denied hearing Mr. LeBlanc’s side of the intercepted communications because he was not listening and could not care less what he was talking about. He insisted that when they got to the hospital he had no idea anything was coming and that the only reason for the stop was to check on Ms.

Hachey. Mr. Murphy testified that the words he spoke to Mr. Smith were at the direction of Mr. LeBlanc. He testified that he did not hear about the shooting until three days later.

[56] On the final step of the analysis I have considered the intercepted words of all four accused. I find that they represent an ongoing, unguarded conversation. The words of Messrs. Smith and LeBlanc put Mr. Murphy's words in perspective.

[57] Mr. Murphy has offered an explanation for his words and actions on November 18, 2008. Consequently I must apply the principles set forth in *R. v. W.D., supra*. I do not believe Mr. Murphy as his story is entirely inconsistent with the undisputed facts. Also, much of his evidence just does not make any sense. The totality of the evidence indicates a quickly formed, highly charged event that would be impossible to ignore. If I were to believe Mr. Murphy, I would have to find that he was sitting in the midst of a timebomb oblivious of its existence. The actions of Messrs. LeBlanc, Marriott and Smith make this highly improbable. The words of Mr. Murphy make this impossible to believe. I also find that Mr. Murphy's evidence does not leave me in a state of reasonable doubt.

[58] I find, on all of the evidence, that it has been proven beyond a reasonable doubt that Mr. Murphy was a member of the conspiracy to kill Mr. Hallett. I find that his involvement was short and that he was swept up in the activities of Messrs. LeBlanc, Smith and Marriott. Mr. Murphy's words to Mr. Smith betray his testimony.

[59] In light of the above conclusions I convict Mr. LeBlanc and Mr. Murphy of count one; conspiracy to murder Jason Hallett.

ATTEMPTED MURDER CHARGE:

[60] Messrs. LeBlanc and Murphy are also charged with the attempted murder of Jason Hallett on November 18, 2008. The evidence establishes that Aaron Marriott was the shooter. Consequently any culpability for Messrs. LeBlanc and Murphy must rely on being a party to that offence.

[61] Section 21 of the **Criminal Code** states as follows:

21 (1) Parties to offence - Every one is a party to an offence who

(a) actually commits it;

(b) does or omits to do anything for the purpose of aiding any person to commit it; or

(c) abets any person in committing it.

(2) Common intention - Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence, would be a probable consequence of carrying out the common purpose is a party to that offence.

[62] Section 21 (1)(a) holds an accused liable for the role as principal if the accused personally committed the offence. Section 21(1)(b) makes an accused liable as a party for acts or omissions which are done for the purpose of aiding to commit an offence. Section 21(1)(c) makes an accused liable as a party to an offence if that accused abetted the principle. Abetting simply means encouraging. Just being present is not enough unless that presence is accompanied by such additional factors as the prior knowledge that the principle was going to commit the offence. In its simplest form, aiding and abetting means any act or omission to act, that occurs before or during the commission of the crime which somehow furthers, facilitates, promotes, assists or encourages the perpetrator in the commission of the offence.

[63] The terms “aiding” and “abetting” are often used interchangeably, but each has its own meaning. In *R. v. Greyeyes* (1997), 2 S.C.R. 826 Cory J stated that although these terms refer to similar concepts, they are in fact separate. To “aid” means to assist or help the actual perpetrator while “abet” means to encourage, instigate, promote or procure the crime to be committed. In *R. v. Dooley*, [2009] O.J. No. 5483 (Ont. C.A.) Doherty J.A. commented on the conduct component at paragraph 121:

While I am satisfied that in order to find liability there must be a connection between the offence and the acts of alleged aiding or abetting, I would not use the language of causation to describe that connection. The connection required in the context of accessorial liability varies. Some kinds of culpable assistance have no causative link to the crime committed. If “A” holds the victim down while the perpetrator kills the victim, “A” could not escape liability if, before “A” held him down, the victim had been rendered defenceless by the acts of others. Similarly, if “A” encouraged the perpetrator to commit a homicide and the perpetrator did so after receiving that encouragement, “A” could not escape liability even if the perpetrator would have killed the individual irrespective of the encouragement. The varying nature of the causal link between the accessorial act and the substantive crime renders a description of accessorial liability in terms of causation difficult and unhelpful: see J.C. Smith, “Aid, Abet, Counsel, or Procure” in P.R. Glazebrook, ed., *Reshaping the Criminal Law: Essays in honour of Glanville Williams* (London: Steven & Sons, 1978), at p. 120; K.J.M. Smith, “Complicity and Causation”, [1986] *Crim.L.Rev.*663.

Justice Doherty made it clear that mere presence at the scene of the crime is not, in itself, sufficient to ground liability.

[64] *R. v. Dunlop and Sylvester* (1979), 2 S.C.R. 881 is authority that presence at the scene of the crime can constitute aiding or abetting if it is accompanied by other factors such as prior knowledge of the perpetrator's plan or attendance at the scene for the purpose of encouragement.

[65] With respect to the mental component, an accused cannot be convicted as an aider or abettor unless he/she intended that their words or acts would encourage the perpetrator. In *R. v. Maciel*, [2007] O.J. No. 1034 (Ont. C.A.) (Leave to Supreme Court of Canada refused) that court stated at paragraph 88:

The knowledge component of the fault requirement flows from the intention component. An aider can only intend to assist the perpetrator in the commission of the crime if the aider knows the crime that the perpetrator intends to commit. While the aider must know the crime the perpetrator intends to commit, the aider need not know the details of that crime: *Dunlop and Sylvester v. The Queen* (1979), 47 C.C.C. (2d) 93 at 110 (S.C.C.); *Regina v. Yanover and Gerol* (1985), 20 C.C.C. (3d) 300 at 329-30 (Ont. C.A.); *V. Gordon Rose, Parties to an Offence* (Toronto: Carswell, 1982) at 11. Consequently, a person who is said to have aided another in the commission of an attempted murder must know that the perpetrator intended to kill the victim: *R. v. Adams* (1989), 49 C.C.C. (3d) 100 at 110 (Ont. C.A.). Similarly, a person who is alleged to have aided in a murder must be shown to have known that the perpetrator had the intent required for murder under s. 229(a): *R. v. Kirkness* (1990), 60 C.C.C. (3d) at 127 (S.C.C.).

The *mens rea* required is proof of actual knowledge, or wilful blindness, but does not include recklessness. *R. v. Roach* (2004), 192 C.C.C. (3d) 557 (Ont. C.A.)

[66] In the case of Mr. LeBlanc there is ample evidence that he was both an aider and abettor. The evidence referenced in the conspiracy part of this decision supports this conclusion. Mr. LeBlanc's intercepted words support this conclusion. It was Mr. LeBlanc who contacted Messrs. Smith and Marriott and directed them to the IWK Hospital. It was Mr. LeBlanc who inquired of Ms. Hachey "what floor?" It was Mr. LeBlanc who said to Mr. Marriott at 6:31pm "jus', you can't like run right in or nothin' man, like, she's workin' and shit they might fuck around with her later." It was he who told Mr. Smith at 6:40pm "just come down here" and "like don't pull into the hospital." It was Mr. LeBlanc who stated at 6:44pm "they're back in front" and "actually Hallett's right outside" and "hey tell them they're jumpin' in the Cherokee." I concluded that these words were meant to assist either Mr. Marriott or Mr. Smith in locating Mr. Hallett. I further conclude that this assistance was provided knowing that either Mr. Marriott or Mr. Smith would then kill Mr. Hallett. The evidence allows for no other conclusion.

[67] These same words establish that Mr. LeBlanc was an "abettor" in that he was encouraging either Mr. Marriott or Mr. Smith to kill Jason Hallett. Mr. LeBlanc's words at 6:45pm "in the Cherokee in front. See it over to the right"

immediately followed by “blaze the Cherokee, the Cherokee” can mean nothing else. I find that the import of these words was a direction to either Mr. Smith or Mr. Marriott to go over to the Cherokee and shoot Mr. Hallett.

[68] In the case of Mr. Murphy there is ample evidence that he was an abettor. The intercepted words and his attendance at the scene, support this conclusion. I cannot find that when he got into Mr. LeBlanc’s Mustang he knew what was coming. I further cannot conclude that when Mr. LeBlanc took the call from Ms. Hachey he knew what was coming. I do find that when he learned that Messrs. Smith and Marriott were on the way to the hospital that he knew something bad was going to happen to Mr. Hallett should he be located. Things changed for Mr. Murphy when, at 6:40pm, Mr. LeBlanc handed him the phone. The words he spoke to Mr. Smith amounted to a targeting of Mr. Hallett for either Mr. Marriott or Mr. Smith. The comments of Mr. LeBlanc prior to the phone exchange, as well as the arrival of Messrs. Smith and Marriott, were a clear indication that murder was in the air. The words of Mr. Smith saying “gimme, gimme the gat” was a clear indication to Mr. Murphy that a gun was in play. Notwithstanding, he continued to direct Mr. Smith about Mr. Hallett’s location as observed and commented upon by

Mr. LeBlanc. It was in these short minutes that Mr. Murphy became a party to the attempted murder of Jason Hallett.

[69] In light of the above conclusions, I convict both Mr. LeBlanc and Mr. Murphy of count two; the attempted murder of Jason Hallett.

J.