SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Gowen*, 2011 NSSC 259

Date: 20110609
Docket: Ken No 339308
Registry: Kentville

Between:

Regina

v

Stephen Gowen

Judge:	The Honourable Justice Suzanne M. Hood
Heard:	June 9, 2011 at Kentville, Nova Scotia
Written Decision:	June 28, 2011 *(Written release of oral decision of June 9, 2011)*
Counsel:	**Jillian Ryan** and **Alison Brown**, Crown Attorneys
	Geoffrey Newton, counsel for the accused

By the Court:

[1] Steven Shaun Gowen has this morning plead guilty to being an accessory after the fact to the murder in the death of Dylan Jewett. He is the brother of Kyle Gowen who pleads guilty to second degree murder on Tuesday, June 7, 2011.

The Facts

[2] The facts have been read into the record by the Crown and I do not intend to repeat those. I will attach the Crown's written submission on the fact to my decision rather than repeat them. In addition, defence counsel referred to some additional facts so I will briefly refer to some of the facts.

[3] Steven knew that there would be an altercation between Kyle and Dylan but he did not know the details of that altercation. There are text messages between Steven and Kyle which indicate that he knew something was going to happen and that he may have wished to go with Kyle. The text messages also indicate that he did not know where the altercation was going to take place.

[4] After the killing, he helped his brother create an alibi respecting his whereabouts and he tried to get his friends to do so as well. There is some

indication that he may have tried to help his brother by giving him advice on how to dispose of the murder weapon and trying to arrange to deal with a bag left at the murder scene.

Principles of Sentencing

[5] The principles of sentencing are set out in ss. 718, 718.1 and 718.2 of the *Criminal Code* and the objectives under s. 718, which are relevant here are denunciation, specific and general deterrence, assisting in the rehabilitation of offenders and promoting sense of responsibility. Section 718.1 guides the Court in referring to a sentence being proportionate to the gravity of the offence and the degree of responsibility of the offender; that is, the offender's moral blameworthiness. Section 718.2 guides the Court to consider aggravating and mitigating factors as well as setting out the need for the sentence to be similar to sentences of similar offenders for similar offences in similar circumstances.

[6] Having said that, no two offences or offenders are the same, even where the *Criminal Code* section is the same.

Consideration

[7] I have heard emotional, grieving and angry voices of those who loved Dylan Jewett. No sentence I can impose today can lessen their pain.

[8] Stephen Gowen is a youthful offender. He is still aged 21; he has a grade twelve education and was employed at the time of the offence as well as actively pursuing a military career. He has a criminal record for assault causing bodily harm for which he received a conditional discharge.

[9] Stephen Gowen's role was a secondary role and, of course, that is by definition of the offence itself. He provided an alibi and he misled the police. In summary, he interfered with the administration of justice and that is a serious offence. He entered a guilty plea this morning.

[10] In the *R* v *Wisdom*, [1992] O.J. No. 3110, to which counsel referred this morning, Justice Watt, who is a well respected Judge in Ontario and now on the Ontario Court of Appeal, said the following in 1992:

> Accessoryship after the fact to a crime is an offence which constitutes an interference with the administration of justice. An offence has been committed by a principal offender, in this case the crime of murder. It is the purpose of the accessory, as it was of this accused, to enable, indeed to facilitate, the principal offender to escape detention and/or punishment for his or her criminal conduct. By the means adopted, whatever they may, the accessory interferes with the investigation of crime and the detention of the offenders.

[11] In that same decision, Justice Watt set out factors which should be considered. He began by saying in para 32:

> It would be idle to endeavour a complete catalogue of the factors whose presence or absence may inform a determination of the nature and/or the quantum of sentence to be imposed. Relevant factors or considerations may include, however,
>
> a) the nature, extent and duration of the accessory's involvement;
>
> b) the age and experience of the accessory;
>
> c) the nature, extent and duration of the relationship, if any, between the accessory and the relevant principal;
>
> d) the presence or absence of any coercion of or threat to the accessory or others to obtain the accessory's participation;
>
> e) the nature of the accessory's assistance; and,
>
> f) the antecedents, present status and realistic prospects of the accessory.

[12] That was a case where the sentence was five years and in that case Justice Watt said Mr. Wisdom had considerable participation in the events, he was the one who decided on retaliation; he helped clean and move the body and this was all to do with a drug transaction.

[13] One of the other cases cited, the case of *R v Dow*, [2003] NSJ 82, to which reference was made this morning, Mr. Dow had an extensive previous record and he hid the murder weapon which was, in fact, never recovered and the offence was

undetected for many years. The murder occurred in 1998 and Mr. Dow was sentenced in 2003. Mr. Dow received a five-year sentence.

[14] In *R v Stedman*, [2010] BCJ No. 1613, Mr. Stedman received a four-year sentence and his role was extensive, in my view. He helped get rid of the body and he chose the location where it would be buried. He helped the murdered cut off the head and hands of the victim and buried the head. He tried to burn the hands and he later threw away the rocks and ashes from the fire to get rid of any evidence. Later on he assisted the killer in moving the car in aid of the ruse to think that the victim had died in a hunting accident. He was also involved in getting rid of the rifle.

[15] It is true he had no record and he had the support of his friends, but he was a friend of both the victim and his wife. He did not plead guilty. Further, the crime went undetected for five years.

[16] In *R v Campbell*, [2001] NSJ No. 410, there was a joint recommendation for a three year sentence but Ms. Campbell knew that there was going to be a murder and she helped clean up the scene of the crime after the murder.

[17] From those cases, I conclude that there was a series of aggravating circumstances. In one case, Ms. Campbell knew of the plan to murder in advance.

The offenders in some cases helped disposing of the body or murder weapon or were at the scene of the crime and helped clean up the scene of the crime. In one case, there was an extensive previous record. In the case of the drug transaction, *R. v. Wisdom* was a case of someone being involved in a crime of greed.

[18] Also, in my view, there are aggravating factors in the *Dow* and *Stedman* cases, where the crime was kept hidden for many years. In the *Dow* case, as I have said, it was many years and in the *Stedman* case, it was five years.

[19] Here we have an offender who tried to help his older brother, perhaps understandable, but entirely misguided, wrong and, in fact, a criminal decision. The Court must denounce conduct such as this which interferes with the administration of justice and the investigation of a murder. The paramount principles for the Court are denunciation and deterrence.

[20] Those contemplating assisting a killer to elude capture and conviction must know that there are serious consequences. Parliament has set life imprisonment as the maximum sentence for this offence. Courts, however, as is indicated in the cases to which I have referred, have considered sentences below that depending on the circumstances.

[21] In a case like this, it is important not to lose sight of the principle of rehabilitation which is set out in the *Criminal Code*. I must consider the past conduct of, and future prospects for Steven Gowen.

[22] I cannot conclude that the cases cited to me do more than set out the general principles that should guide me and establish a range of sentence. I consider the role of Steven Gowen, although a serious offence, less than those where the offenders were sentenced to a four or five year sentence.

[23] A significant mitigating factor, in my view, in this case is the guilty plea at an early stage. The aggravating factors, to which I have referred to in those cases, were not present here.

[24] From the text messages, it is clear Steven did not know the details of the plan; he knew only generally that there was an intention for a beating to occur. There was no discussion of killing or even of a weapon. He was never at the scene. He had no involvement like in other cases where offenders were involved directly in hiding the body or weapons. And, because he was not at the scene, he was not involved in any clean up of the murder site. Furthermore, he does not have an extensive criminal record.

[25] This is a serious offence, as I have said, but it is not the most serious within the range of three to five years.

Sentencing

[26] In my view, the Court can denounce this conduct and provide for deterrence, both general and specific, with a penitentiary sentence. Yet, the Court can also hold out some hope for the rehabilitation for a youthful offender who expressed remorse, which I accept as sincere.

[27] In this case, the Crown seeks a DNA order under s. 487.051(3)(b). This is a secondary designated offence as defined in s. 287.04. Because it is a secondary designated offence, I can order a DNA Order. However, I conclude in this case, it is not in the best interests of the administration of justice weighed against the privacy and security interests of the offender. His previous record is of a conditional discharge and the present offence is interfering with the administration of justice by being an accessory after the fact to murder. I have concluded that the circumstances of that offence were at a low level involvement. Therefore, I do not make a DNA order.

[28] Steven Gowen, please stand.

[29] It is the sentence of this Court that you serve a sentence of three years for being an accessory after the fact to murder. You will have credit for time served that you have spent in remand on a one-for-one basis. Therefore, I have calculated that the remaining sentence is two years and four months.

[30] The Court also orders a lifetime weapons ban and I waive the victim fine surcharge.

Court Comments to Accused

[31] You may be seated and I have a few words I would like to speak to you directly.

[32] You interfered with the investigation into the murder of Dylan Jewett. You tried to give an alibi to your brother and the *Criminal Code* says this is a serious offence because of the way it interferes with the administration of justice. You no doubt did this to try to help your brother but that does not excuse what you did.

[33] You have spent approximately eight months in jail and you have been sentenced to a further two years and four months.

[34] Two families have been torn apart by the events of October 2nd. Your family still has two sons; the Jewett family does not and we have heard how horrible the effects on them have been.

[35] However, you are a young man and, if you use your time wisely in prison, you can, in my view, rehabilitate yourself. But that decision is yours and yours alone.

[36] That concludes the matter.

First Count

MS. RYAN: There would still be the first count to deal with Your Honour -

THE COURT: Yes.

MS. RYAN: as well.

THE COURT: Okay.

MS. RYAN: And, the first count would be withdrawn.

THE COURT: The Crown is withdrawing the first count –

MR. NEWTON: Motion for dismissal please . . .

THE COURT: Yes. The Crown's withdrawing the first count and motion for dismissal is granted. Thank you.

J.