

SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Souvannarath*, 2018 NSSC 96

Date: 2018-04-20

Docket: CRH No. 441654

Registry: Halifax

Between:

Her Majesty the Queen

v.

Lindsay Kanitha Souvannarath

Judge: The Honourable Justice Peter P. Rosinski

Heard: April 16, 2018, in Halifax, Nova Scotia

Counsel: Shauna MacDonald and Mark Heerema, for the Crown
Luke Craggs for the Defence

By the Court:

Introduction

[1] “I’ve purchased the plane ticket. I’m leaving for Canada tomorrow, and the only way I’m coming back is in a body bag... This is what I was meant to do my whole life... I’ve had so many revelations this past month and a half... I’ve been keeping a lot of things just between him [James Gamble] and me... So I don’t expect it to make much sense right now... But it goes like this: I want to kill, he wants to die. Just like Eric [Harris] and Dylan [Klebold].”

(February 11, 2015 online conversation between Lindsay Souvannarath and a friend)

[2] On April 11, 2017, Ms. Souvannarath pleaded guilty to having conspired with James Gamble, between December 21, 2014 and February 14, 2015, to murder unnamed members of the public, contrary to section 465(1)(a) of the Criminal Code of Canada.

[3] These are my reasons for the sentence I am imposing upon her.

Background

[4] Three young adults, with no previous criminal records, over seven weeks of intensive communications, made a plan dedicating themselves to the wanton murder of random members of the public present in the Halifax Shopping Centre on February 14, 2015.¹

[5] Lindsay Souvannarath, James Gamble, and Randall Shepherd, had each become very socially isolated, and despondent.

[6] After meeting in high school, Gamble and Shepherd bonded over heavy metal music, gore/horror movies, marijuana and a shared fascination with death, often focusing on school shootings and mass murders. Gamble had a Tumblr blog “shallow -existences”, the main image of which is a short repeating video footage taken from the Columbine High School cafeteria while Eric Harris and Dylan

¹Attached hereto as Appendix “A” is the lengthy Agreed Statement of Facts filed pursuant to Section 724 of the Criminal Code of Canada.

Klebold were committing their massacre in 1999. Shepherd had a similar Tumblr blog “GenesistoGenocide”.

[7] Ms. Souvannarath had a Tumblr blog entitled: “Cockswastika” showing a swastika emblem along with the subtitle “School Shooter Chic”. She specifically had an interest in Nazi-ism, glorified violence and death, and a fascination with the Columbine High School massacre. Her admiration thereof quickly became a powerfully unifying factor between her and James Gamble, after they connected on the Internet on or about December 21, 2014.

[8] As with dripping water on a stone, the repeated Internet messages and imagery justifying and glorifying extreme violence, left an indelible mark on each of them.

[9] On February 12, 2015, each of them were making final preparations for the execution of the plan, and the ending of their own lives.

[10] On February 12, 2015, James Gamble was at his parent’s home, preparing to kill them before Ms. Souvannarath arrived at his home. Ms. Souvannarath flew on a one-way ticket from the Chicago airport to Halifax. Randy Shepherd was there to pick her up at the airport in the early morning hours of February 13, 2015.

[11] Their planned attack was imminent.

[12] But, someone else had become aware of their plan. Thankfully, that anonymous individual placed a timely call to the Nova Scotian Crime Stoppers tip line.

[13] The tipster identified James Gamble and a “Lindsay S.”, who was flying to Canada from the United States, as the persons who are going to go on a shooting spree at the Halifax Shopping Centre on February 14, 2015.

[14] As a result of this information, Ms. Souvannarath, who had been detained as “suspicious” in secondary inspections by Canadian Border Services Agency (CBSA) officers, was arrested by Halifax Regional Police officers at the airport; Randy Shepherd was also arrested there.

[15] Halifax Regional Police officers attended James Gamble’s residence in Timberlea, Nova Scotia. He was alone inside the home. They called him by telephone, and requested that he leave the home and speak with police. He agreed

to do so, but did not. Instead, he committed suicide – he shot himself in the head with a single bullet from a hunting rifle.

[16] Mr. Shepherd pleaded guilty to committing the offence of conspiracy to commit murder. On November 22, 2016, he was sentenced to 10 years in prison based on a joint recommendation by counsel - *R. v. Shepherd*, 2016 NSSC 329, per Duncan J.

The sentencing recommendations of the Crown and Ms. Souvannarath

[17] The Crown counsel has argued that the range of appropriate jail sentence applicable to Ms. Souvannarath is from 20 years to life imprisonment. They say that no less than 20 years in jail is a reasonable sentence. Their position is based on sentencing decisions in Canada involving “terrorism offences”. In their written materials, they stated: “the sole meaningfully comparable crime in Canadian law is terrorism. Crimes of terrorism share the pith and substance of the case at bar: the desire to deeply destabilize society through the infliction of mass, random casualties for the sake of some irrational cause”. They say the planned murders and maiming of innocents was only narrowly averted because of the Crime Stoppers tip received on February 12, 2015.

[18] Ms. Souvannarath’s counsel counters that it would be an error of law for this court “to sentence Ms. Souvannarath as a terrorist”. He urges the court not to sentence Ms. Souvannarath for her motivation (to emulate the Columbine shooters and gain infamy for herself – *R. v. Hamilton*, [2005] 2 S.C.R. 432, at para. 42-43) or her beliefs (that she is a superior human entitled to kill those that she deems inferior). He characterizes the plan as “big talk” but very short on real planning – e.g., Ms. Souvannarath had never fired a gun before, yet was planning to brandish a single action 16 gauge shotgun which had to be repeatedly loaded before firing; that when she arrived she did not even know where James Gamble lived, arrived on a one-way ticket, and had virtually no luggage, raising suspicions among the CBSA agents at the airport. He suggested the justification for criminalizing plans to commit a crime, is the public interest in deterring such persons from even planning to commit crimes, and that ultimately the goal is to avoid the likelihood of an actual crime being committed. Therefore, he says the likelihood that the crime would have occurred, is a factor the court can properly consider in determining the sentence for Ms. Souvannarath, who has pled guilty to planning a crime – *R. v. Hamilton*, [2005] 2 S.C.R. 432, at paras. 65-66. In his view, this plan

to kill did not evolve to the point that it could be legally characterized as “an attempted murder(s)”.

[19] He has argued for a sentence between 12 and 14 years in jail, with pre-sentence remand custody credit of approximately 57 months (1.5 day for each 1 day in custody). The Crown does not disagree with the proposed 57 months’ pre-sentence custody credit.

Conspiracy to commit murder – Section 465(1)(a) Criminal Code of Canada

[20] The criminal law in Canada is contained in federal legislation, which governs throughout the country. The relevant legislation is the Criminal Code of Canada.

[21] Therein, section 465(1) reads:

Except where otherwise expressly provided by law, the following provisions apply in respect of conspiracy:

- (a) everyone who conspires with anyone to commit murder or to cause another person to be murdered, whether in Canada or not, is guilty of an indictable offence and liable to the maximum term of imprisonment for life;

[22] As the Crown counsel noted, there is no specific offence in the Criminal Code of Canada for planning to commit the simultaneous killing of multiple people.²

The framework of legal principles applicable to sentencings of offenders under the Criminal Code of Canada

[23] Sentencings of offenders are governed by the procedure, and more specifically the principles, stated in the Criminal Code of Canada. Court decisions are also relevant in relation to the interpretation of those statutory principles, and what are the appropriate range of sentences to be imposed on a specific offender, given the circumstances of the offence, and the circumstances of the offender.

² In a slightly different context, a conviction was upheld for making threats to kill (unnamed) police officers, based on them being a readily identifiable group of persons- *R. v. Rémy*, (1993) 82 CCC (3d) 176 (Que. CA); leave to appeal to Supreme Court of Canada, refused: 84 CCC (3d) vi.

[24] An appropriate sentence is a function of various components: the factual findings I have made, or matters of which I may take judicial notice; counsel's undisputed factual representations which I accept; and those facts which the Crown and Ms. Souvannarath have agreed to in their Agreed Statement of Facts; and my application of the law to those facts. I must consider the law arising from the provisions of the Criminal Code of Canada, and relevant jurisprudence.

[25] (i) Let me first turn to the provisions of the Criminal Code of Canada.

Section 718 of the *Criminal Code* reads [as amended July 22, 2015]:

The fundamental purpose of sentencing is to protect society and 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:**

- (1) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (2) to deter the offender and other persons from committing offences;
- (3) to separate offenders from society, where necessary;
- (4) to assist in rehabilitating offenders;
- (5) to provide reparations for harm done to victims or to the community; and
- (6) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims or to the community.

[26] Section 718.1 reads:

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

[27] The arguably relevant portions of s.718.2 read:

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

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing;
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex,

age, mental or physical disability, sexual orientation or any other similar factor,

(ii)...

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation;

...

shall be deemed to be aggravating circumstances;

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

...

(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 and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[28] (ii) The jurisprudence provides guidance regarding the application of general principles of sentencing to an individual sentencing.

[29] Justice Wagner speaking for the majority, in *R. v. Lacasse*, 2015 SCC 64 , observed that:

Sentencing remains one of the most delicate stages of the criminal justice process in Canada. Although this task is governed by sections 718 et seq. of the *Criminal Code*, RSC 1985, c. C -- 46, and although the objectives set out in those sections guide the courts and are clearly defined, it nonetheless involves, by definition, the exercise of a broad discretion by the courts in balancing all the relevant factors in order to meet the objectives being pursued in sentencing. [para. 1]

[30] Justice Wagner reiterated that:

... proportionality is the cardinal principle that must guide appellate courts in considering the fitness of a sentence imposed on an offender. The more serious the crime and its consequences, or the greater the offender's degree of responsibility, the heavier the sentence will be. In other words, the severity of a sentence depends not only on the seriousness of the crime's

consequences, but also on the moral blameworthiness of the offender.
[para. 12]

...

This inquiry must be focused on the fundamental principle of proportionality stated in section 718.1 of the *Criminal Code*, which provides that a sentence must be 'proportionate to the gravity of the offence and the degree of responsibility of the offender'. A sentence will therefore be demonstrably unfit if it constitutes an unreasonable departure from this principle. *Proportionality is determined both on an individual basis, that is, in relation to the accused him or herself and to the offence committed by the accused, and by comparison with sentences imposed for similar offences committed in similar circumstances. Individualization and parity of sentences must be reconciled for a sentence to be proportionate:* ss. (718.2) and (b) of the *Criminal Code*.

The determination of whether a sentence is fit also requires that the sentencing objectives set out in section 718 of the *Criminal Code* and the other sentencing principles set out in section 718.2 be taken into account... *The principle of parity of sentences ...is secondary to the fundamental principle of proportionality.* This Court explained this as follows in *M (CA)*:

It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime... Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction [para 92]

[paras. 53 - 54 *Lacasse*]

...

Where sentencing ranges are concerned, although they are used mainly to ensure the parity of sentences, they reflect all the principles and objectives of sentencing. *Sentencing ranges are nothing more than summaries of the minimum and maximum sentences imposed in the past, which serve in any given case as guides for the application of all the relevant principles and objectives.* However, they should not be considered "averages", let alone straitjackets, but should instead be seen as historical portraits for the use of sentencing judges, who must still exercise their discretion in each case... *There will always be situations that call for a sentence outside a particular range: although in ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded...* This is why it may happen that a sentence that, on its face, falls outside a particular range, and that may never have been imposed in the past for similar crime, is not demonstrably unfit. [Paras. 57 - 58 *Lacasse*]

[my italicization added]

[31] Fundamentally, Ms. Souvannarath's sentence must be proportionate to, the crime committed, and her degree of responsibility or moral blameworthiness for the nature and circumstances of the crime committed.

[32] What is moral blameworthiness? In *R. v. Ruzic* [2001] 1 S.C.R. 687, Justice LeBel framed the discussion as follows:

As we will see below, this Court has recognized on a number of occasions that moral blameworthiness is an essential component of criminal liability which is protected under s. 7 [of the *Charter of Rights and Freedoms*] as a "principle of fundamental justice". [at para. 32]

[33] He continued:

What underpins both these conceptions of voluntariness is the critical importance of autonomy in the attribution of criminal liability, [citations omitted]. *The treatment of criminal offenders as rational, autonomous and choosing agents is a fundamental organizing principle of our criminal law.* Its importance is reflected not only in the requirement that an act must be voluntary, but also in the condition that a wrongful act must be intentional to ground a conviction. Like voluntariness, the requirement of a guilty mind is rooted in respect for individual autonomy and free will and acknowledges the importance of those values to a free and democratic society: [*Martineau*, [1990] 2 S.C.R. 633, at pp. 645 to 46]. *Criminal liability also depends on the capacity to choose -- the ability to reason right from wrong.* As McLachlin J. observed in *Chaulk*, [1990] 3 S.C.R. 1303 ... at p. 1396, in the context of the insanity provisions of the *Criminal Code*, this assumption of the rationality and autonomy of human beings forms part of the essential premises of Canadian criminal law:

At the heart of our criminal law system is the cardinal assumption that human beings are rational and autonomous: ... This is the fundamental condition upon which criminal responsibility reposes. Individuals have the capacity to reason right from wrong, and thus choose between right and wrong. Ferguson continues (at p. 140):

It is these dual capacities -- reason and choice -- which give moral justification to imposing criminal responsibility and punishment on offenders. If a person can reason right from wrong and has the ability to choose right or wrong, then attribution or responsibility and punishment is morally justified or deserved when that person consciously chooses wrong.

[My italicization added]

[34] Earlier, Justice Sopinka, in dissent, in *R. v. Daviault*, [1994] 3 S.C.R. 63, reiterated the court's consensus that:

The first requirement of the principles of fundamental justice is that a blameworthy or culpable state of mind be an essential element of every criminal offence that is punishable by imprisonment. This principle reflects the fact that our criminal justice system refuses to condone the punishment of the morally innocent ...

The second requirement of the principles of fundamental justice is that punishment must be proportionate to the moral blameworthiness of the offender....

[paras. 104 and 106]

[my italicization added]

[35] In summary, to assign responsibility for criminal actions on a proportionate basis, we look to the circumstances of the offender and of the crime committed to individualize a sentence in any given case, while considering what “range of sentences” have been imposed on similar offenders who have committed similar crimes in similar circumstances (the parity principle).

[36] However, the circumstances of this sentencing are unique. There is no “range of sentences” in decided cases for conspiracies to commit mass murder such as the case is here, other than the extent to which comparables might be drawn from the sentencings in terrorism cases.

[37] Because the Crown is recommending a sentence between 20 years’ imprisonment and including the maximum life imprisonment, it is therefore of interest to consider what our Supreme Court of Canada has said about the imposition of maximum sentences.

[38] In *R. v. LM*, 2008 SCC 31, Justice Lebel stated his reasons for the court:

Maximum Sentences

(1) General Sentencing Principles

Determining the Appropriate Sentence

17 Far from being an exact science or an inflexible predetermined procedure, sentencing is primarily a matter for the trial judge's competence and expertise. The trial judge enjoys considerable discretion because of the individualized nature of the process (s. 718.3 *Cr. C.*; *R. v. Johnson*, [2003] 2 S.C.R. 357, 2003 SCC 46,

at para. 22; *R. v. Proulx*, [2000] 1 S.C.R. 61, 2000 SCC 5, at para. 82). To arrive at an appropriate sentence in light of the complexity of the factors related to the nature of the offence and the personal characteristics of the offender, the judge must weigh the normative principles set out by Parliament in the *Criminal Code*:

The objectives of denunciation, deterrence, separation of offenders from society, rehabilitation of offenders, and acknowledgement of and reparations for the harm they have done (s. 718 *Cr. C.*);

The fundamental principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender (s. 718.1 *Cr. C.*); and

The principles that a sentence should be increased or reduced to account for aggravating or mitigating circumstances, that a sentence should be similar to other sentences imposed in similar circumstances, that the least restrictive sanctions should be identified and that available sanctions other than imprisonment should be considered (s. 718.2 *Cr. C.*).

(2) Maximum Sentences and *Cheddesingh*

18 This individualized sentencing process is part of a system in which Parliament has established a very broad range of sentences that can in some cases extend from a suspended sentence to life imprisonment. *The Criminal Code provides for a maximum sentence for each offence. However, it seems that the maximum sentence is not always imposed where it could or should be, as judges are influenced by an idea or viewpoint to the effect that maximum sentences should be reserved for the worst cases involving the worst circumstances and the worst criminals.* As can be seen in the case at bar, the influence of this notion is such that it sometimes leads judges to write horror stories that are always worse than the cases before them. As a result, maximum sentences become almost theoretical:

In the end the difficulty with maximums is that they may be seen as almost theoretical rather than as an indication of how seriously an offence is to be treated in the "ordinary" case.

(T.W. Ferris, *Sentencing: Practical Approaches* (2005), at p. 292)

19 As Morin J.A. noted in his dissenting reasons, human nature is such that it will always be possible for a court to imagine a worse case than the one before it. Morin J.A. rightly pointed out that it is important for a judge, when deciding whether the maximum sentence can or should be imposed for a given offence, to avoid contemplating fictitious situations in this way. This approach is consistent with this Court's recent case law.

20 In *R. v. Cheddesingh*, [2004] 1 S.C.R. 433, 2004 SCC 16, *the Court acknowledged the exceptional nature of the maximum sentence, but firmly rejected the argument that it must be reserved for the worst crimes committed in*

the worst circumstances. Instead, all the relevant factors provided for in the *Criminal Code* must be considered on a case-by-case basis, and if the circumstances warrant imposing the maximum sentence, the judge must impose it and must, in so doing, avoid drawing comparisons with hypothetical cases.

... terms such as "stark horror", "worst offence" and "worst offender" add nothing to the analysis and should be avoided. All relevant factors under the *Criminal Code* ... must be considered. *A maximum penalty of any kind will by its very nature be imposed only rarely ... and is only appropriate if the offence is of sufficient gravity and the offender displays sufficient blameworthiness. As is always the case with sentencing, the inquiry must proceed on a case-by-case basis. [para. 1]*

21 Even where a maximum sentence is imposed, therefore, regard must be had to the trial judge's discretion, the individualized nature of sentencing and the normative principles set out by Parliament in ss. 718, 718.1 and 718.2 *Cr. C.* There is still a place in criminal law for maximum sentences in appropriate circumstances.

22 *Thus, the maximum sentence cannot be reserved for the abstract case of the worst crime committed in the worst circumstances.* The trial judge's decision will continue to be dictated by the fundamental principle that a "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender" (s. 718.1 *Cr. C.*). Proportionality will be achieved by means of a "complicated calculus" whose elements the trier of fact understands better than anyone. The trial judge's position in the sentencing process justifies the respect owed to the reasoned exercise of his or her discretion and the deferential approach that appellate courts should take in such matters (see Manson, at p. 86). As is noted in one commentary on sentencing principles:

[TRANSLATION] [The] objectives of denunciation, deterrence, separation from society, rehabilitation, reparations and retribution are all quite general, and there is no precise standard that can be applied to rank them. At first glance, this is desirable, since the sentencing process is fundamentally an individualized one in that sentences will necessarily vary from one offender to another in light of the particular emphasis that will be placed on one or the other of the objectives in order to arrive at the appropriate sentence, having regard to all the circumstances, in each case. [Dadour, at p. 17.]

23 In the case at bar, the Court of Appeal should have asked whether, in light of Judge Wilhelmy's findings of fact, imposing the maximum sentence was reasonable having regard to the circumstances and the objectives of sentencing rather than digging deeper to find something horrible. A review of the Court of Québec's judgment in light of the principles stated above confirms that the sentence imposed was lawful and reasonable. This is clear from the reasons given by Judge Wilhelmy for her sentencing decision.

[My italicization added]

[39] In *LM*, the maximum sentence available for the sexual assault offence was 10 years in a federal penitentiary.

[40] One might ask what is really meant by “life imprisonment”?

[41] The answer is that an offender is potentially required to spend the remainder of their life in prison. The duration actually spent in prison is based upon whether, and when, an offender becomes eligible for parole. Most relevant is section 120 of the *Corrections and Conditional Release Act*, SC 1992, c. 20, as amended:³

Time when eligible for full parole

120 (1) Subject to sections 746.1 and 761 of the *Criminal Code* and to any order made under section 743.6 of that Act, to subsection 226.1(2) of the *National Defence Act* and to any order made under section 226.2 of that Act, and to subsection 15(2) of the *Crimes Against Humanity and War Crimes Act*, an offender is not eligible for full parole until the day on which the offender has served a period of ineligibility of the lesser of one third of the sentence and seven years.

Life sentence

(2) Subject to any order made under section 743.6 of the *Criminal Code* or section 226.2 of the *National Defence Act*, an offender who is serving a life sentence, imposed otherwise than as a minimum punishment, is not eligible for full parole until the day on which the offender has served a period of ineligibility of seven years less any time spent in custody between the day on which the offender was arrested and taken into custody, in respect of the offence for which the sentence was imposed, and the day on which the sentence was imposed.

[42] In the earlier decision *Cheddesingh*, the maximum sentence available for the manslaughter offence at issue there was life imprisonment. In that case, the offender broke into the residence of a 76-year-old woman living alone, and over a prolonged period sexually assaulted her in virtually all manner possible, which ultimately resulted in her death sometime later. He received a sentence of life imprisonment, with no eligibility for parole for 10 years pursuant to section 746.3 of the *Criminal Code*.

[43] The Crown recommends that life imprisonment is an appropriate sentence in Ms. Souvannarath’s case. Section 743.6 of the *Criminal Code* is therefore implicated. It provides when the court *may* and *must* set parole ineligibility

³ As well as, whether parole ineligibility has been affected by Section 743.6 of the *Criminal Code* of Canada

periods, overriding the presumptive eligibility of parole periods flowing from section 120 of the federal *Corrections and Conditional Release Act*.

[44] For the offence of conspiracy to commit murder, which carries a maximum life imprisonment sentence, subsection (1) of section 743.6 provides that “the court *may*, if satisfied, having regard to the circumstances of the commission of the offence and the character and circumstances of the offender, that the expression of society’s denunciation of the offence *or* the objective of specific or general deterrence so requires, *order* that the portion of the sentence that must be served before the offender may be released on full parole is one half of the sentence or 10 years, whichever is less.”

[45] In contrast, for “terrorism offences”, and for most criminal organization offences, as defined in section 2 of the Criminal Code, which carry a maximum life imprisonment sentence, subsection (1.2) of Section 743.6 provides that “the court *shall order* that the portion of the sentence that must be served before the offender may be released on full parole is one half of the sentence or 10 years, whichever is less, *unless the court is satisfied*, having regard to the circumstances of the commission of the offence and the character and circumstances of the offender, that the expression of society’s denunciation of the offence *and* the objectives of specific and general deterrence would be adequately served by a period of parole ineligibility determined in accordance with the *Corrections and Conditional Release Act*.”

[46] These differences in legislative drafting, highlight Parliament’s intention to *presumptively* treat “terrorism offences” as requiring greater denunciation than conspiracy to commit murder.

[47] In my view, this distinction is relevant to the Crown’s argument that the circumstances of the offence committed by Ms. Souvannarath are equivalent to, and should be governed by the same *common law* sentencing principles that are applied to, “terrorism offences”.

[48] “Terrorism offence” is defined in section 2 of the Criminal Code as:

Means

- (a) an offence under any of sections 83.02 to 83.04 [financing of terrorism] or 83.18 to 83.23 [participating in, facilitating, instructing, advocating terrorist activities, and harbouring terrorists; as well as committing a hoax regarding terrorist activity],

- (b) an indictable offence under this or any other Act of Parliament committed for the benefit of, at the direction of or in association with a terrorist group,
- (c) an indictable offence under this or any other Act of Parliament where the act or omission constituting the offence also constitutes a terrorist activity, or
- (d) a conspiracy or an attempt to commit, or being an accessory after the fact in relation to, or any counselling in relation to, and offense referred to in paragraph (a), (b) or (c).

[49] “Terrorist activity” is defined in section 83.01, and is specifically restricted to *motivations* and *intentions* respectively, to commit the relevant offences, as follows:

(A) in whole or in part for a political, religious or ideological purpose, objective or cause, and

(B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada.

[50] Regarding the relevance of sentencings in “terrorism” cases to Ms. Souvannarath’s sentencing, I agree with Justice Duncan’s sentiments in *Shepherd*, when he stated:

28 However, I would agree with the Crown’s comment that while this offence does not fall within the definition set out in the Criminal Code of a “terrorism offence”, the consequences to the victims are the same, and to society as well.

33 The closest comparables to draw upon are set out in the materials and largely consist of cases that are rooted in terrorism-motivated conspiracies, such as the so-called “Toronto 18”... [para 35] While these cases are not perfectly comparable, they certainly provide guidance as to the range of sentences that have been given out in cases of intended mass of murder.

[51] In my opinion, while this conspiracy to commit murders at the Halifax Shopping Centre does not have the precise motivations and specific intentions associated with “terrorist activity”, this crime similarly requires that the court send a clear message that those who choose to pursue planned multiple killings should pay a very heavy price.

[52] In support of its sentencing recommendation, in addition to *Shepherd*, the Crown relied upon the following terrorism cases:

1. *R. v. Ahmed*, 2017 ONCA 76- 12 years upheld;
2. *R. v. Gaya*, 2010 ONCA 860- 12 years increased to 18 years including a parole ineligibility order that he serve ½ of his sentence;
3. *R. v. Khawaja*, 2012 SCC 69- 10 years at trial- Appeal Court imposed life imprisonment and 24 years concurrently with parole ineligibility for 10 years-upheld by SCC;
4. *R. v. Khalid*, 2010 ONCA 861- 14 years at trial- Appeal Court imposed 20 years;
5. *R. v. Abdelhaleem*, 2011 ONSC 1428- life imprisonment – parole ineligibility order that he serve at least 10 years;
6. *R. v. Amara*, 2010 ONCA 858 – life imprisonment at trial – upheld by Court of Appeal; and
7. *R. v. Esseghaier*, 2015 ONSC 5855- 18 years at trial – parole ineligibility order that he serve at least 10 years.

[53] Ms. Souvannarath argues that the appropriate range of sentence for a conspiracy to commit murder is contained within of the following cases:

1. *R. v. Van Buskirk*, 2007 BCSC 1925 – An 18-year-old offender who had committed first-degree murder as a youth, and pled guilty to that offence, as well as two counts of conspiracy to commit two separate murders committed while an adult, in the young man’s chosen career as a hitman. One of the murders was contemplated to be by way of a detonation of explosives in a nightclub which would necessarily kill persons beyond the targeted individual. He was sentenced to a youth sentence for the first-degree murder, and two consecutive sentences of eight and six years (to be served concurrently to each other) for the adult offences. The Crown had sought a sentence of 18 years on the adult offences. The adult co-accused Mr. Abu-Sharife had been sentenced to eight years for his involvement in one of the conspiracies to commit murder. On appeal the sentences were upheld – 2013 BCCA 452. That decision has not been cited by any other court to date;
2. *R. v. LeBlanc*, 2011 NSSC 412 - On September 9, 2010 Mr. LeBlanc received a 16 year sentence for the attempted murder of Jimmy Melvin Jr., by firing six shots at him, and seriously injuring him. On September 22, 2011 Justice Coady sentenced Mr. LeBlanc to 10

years' imprisonment for the attempted murder of Jason Hallett and 10 years concurrent for conspiracy to commit the murder of Jason Hallett, but consecutive to the 16 year sentence earlier imposed. The circumstances were that Mr. LeBlanc wanted Mr. Hallett dead for a number of gang-related reasons and called in his troops and directed them to repeatedly fire at Mr. Hallett while he was seated in a car outside the Children's Hospital in Halifax. The decision was not appealed;

3. *R. v. Marriott*, 2014 NSCA 28 - Mr. Marriott pled guilty to the same attempted murder of Jason Hallett. He was 20 years old at the time of his sentencing and had a significant criminal record. He was sentenced to 15 years based on a joint recommendation from counsel. The sentence appeal was dismissed;
4. *R. v. Scarcella*, [2006] O.J. No. 1555 (Ont. Sup. Ct) per Watt J (as he then was) - After his guilty plea, an 11 year sentence was imposed for his involvement in the attempted murder and conspiracy to commit the murder of Michele Modica, a man with an extensive history of crime in Italy and elsewhere.

[54] Justice Duncan commented upon *Scarcella* in *R. v. Belisle-Taylor*, 2011 NSSC 159, where he sentenced the offender to 10 years in custody, for conspiracy to commit the murder of Jimmy Melvin, Jr., in association with Mr. LeBlanc (see above).

[55] While the cases cited by Ms. Souvannarath's counsel involve conspiracies to commit murder, in my view their offenders and circumstances are quite distinguishable from the circumstances before the court.

[56] Next, let me then turn firstly, to the circumstances of the offence, and secondly to the circumstances of the offender.

The circumstances of the offence

[57] The entire relationship and contact between Ms. Souvannarath and Mr. Gamble is captured by their Facebook communications.⁴

⁴ Redacted versions were filed with the court as Exhibits 1, 2 and 3 ("Facebook communications"); also relevant is Exhibit 4 – the Columbine High School connections with this case.

[58] Before meeting Mr. Gamble, Ms. Souvannarath was unemployed, living at home, and spent much of her time on the Internet. She frequently posted or shared materials that were racist in nature, promoted Nazi-ism or glorified violence and death.

[59] According to the Facebook communications, Ms. Souvannarath told Gamble:

1. “It was just about two years ago that I attempted suicide, but I lived. A year later, nearly succumbed to alcohol poisoning – twice.... Now I’m realizing that I didn’t die then because there is a different way I was meant to die, and with us together, it can happen... I came out of my years-long depression at just about the same time I started posting all that Columbine stuff. I think it’s a sign (pp.76-7);
2. Hell, I only started browsing the Columbine tag like a month ago because I wanted to do research for my novel... then things escalated...” (p. 224);
3. “I wasn’t even into Columbine until like these past few months... Though I had friends who were... I only started seriously researching it after when, for some reason, I felt the need to put a school-shooting into my novel” (p. 317).

[60] Before meeting Ms. Souvannarath, Mr. Gamble considered committing a mass killing in Halifax, and asked Mr. Shepherd to be his partner in such a crime. Mr. Shepherd resisted, but offered a receptive audience to Gamble’s plans.

[61] Ms. Souvannarath and Mr. Gamble almost immediately discovered a shared interest and admiration for the perpetrators and circumstances of the Columbine High School massacre. It became a powerfully unifying factor between her and Mr. Gamble.

[62] Gamble and Ms. Souvannarath said in the Facebook communications:

Ms. Souvannarath – “[regarding buying school shooter chic clothing] then we can coordinate outfits and look bad-ass.

Gamble – That’d be sick

Ms. Souvannarath – And just sort of terrify everyone

Gamble – One of my favourite hobbies.

Ms. Souvannarath – Where do you usually scare people?

Gamble – Just in public... in general

Ms. Souvannarath – Because I was just thinking if you had a usual hangout or something I'd show up there too, and then people would be like "oh God, there's two of them now"

Gamble – That would be perfect, ha ha

Ms. Souvannarath – And we just sort of exchange conspiratorial glances before staring at them

Gamble – hopefully sending them running

Ms. Souvannarath – what a great way to spend a day, just terrorizing the normal/inferior people

Gamble- *I hope to do that on a major scale someday.*

Ms. Souvannarath – *same*

Gamble – *I have everything I need as well*

Ms. Souvannarath – Do tell

Gamble – *Rifle, shotgun, outfit, ammo, knife...* I only have 13 bullets for the rifle though... So I will have to make them count. It's also a single shotgun, can only fit one shell at a time. [p 126-7, Gamble confirms that the shotgun shells are birdshot, not buckshot] But it's better than nothing. *I just wish I had a partner, that could take the shotgun, while I take the hunting rifle....* Way less chance of getting attacked/jumped if I had a partner

Ms. Souvannarath-*I've never fired a gun before.* I've lived such a pitifully sheltered existence. Though it's something I like to think about.

Gamble – I haven't either. Which is why I'd have to be extra precise." (pp 44-6)

...

Gamble - [I am] not close enough with anybody.

Ms. Souvannarath- Hell, neither am I, really. Like, I never made any friends in college, ever. All of my friends are online basically.

Gamble – I only have one friend in real life, he isn't down for the whole "mass murder" thing. But he'd be Dylan [Klebold], no doubt. He's taller than me and he has long blond hair. [A reference to Shepherd]." (p 59)

...

[And on December 25, 2014]

Ms. Souvannarath – And my mom doesn't know it, but she's bought me the perfect outfit to go NBK [reference to the movie "Natural Born Killers"] in

Gamble – I have my outfit ready... You'd make a great partner

Ms. Souvannarath – we could kick so much ass together

Gamble- ... Too bad you live far away

Ms. Souvannarath – Not that far, I’m in Illinois after all

Gamble – *NBK could be only a plane ride away... You’d have to come here though, because I’m the one with the guns...*

Ms. Souvannarath – Right. I’ll just need to scrounge up some money for that, then

Gamble – *would you actually be down for that*

Ms. Souvannarath – *Absolutely*

[63] Generally speaking, Ms. Souvannarath assumed a position of dominance in the relationship – e.g. from the Facebook communications:

Ms. Souvannarath – I was going to go to China and teach English

Gamble – but you’d rather do this? ... At no point do I want to think that I’m prohibiting you from doing something else if you wanted to

Ms. Souvannarath – I would much rather do this, no doubt about it.

Gamble – Good

Ms. Souvannarath – This is so much more meaningful to me than whatever “future” I’d had before

Gamble – I’m a person without a future. Wasn’t born with the ability to operate on my own, talk to people, motivation to work towards success... Some people aren’t mean[t] for this work. It’s sad but true.

Ms. Souvannarath – I’m your future now.

Gamble – I’m still thinking about the location. A mall would be great, but should we risk it when the security guards potentially have pistols? ... The hospital would likely give us a bigger body count because of the immobile targets, but there won’t be as much of a “mass panic” as say a mall

Ms. Souvannarath – The mall sounds like more fun overall... I’ve always thought that the absolute best way to die is to die in battle. But as I’ve said before, I won’t let myself be stuck fighting someone else’s war. It’s kind of why I tried to network with all these fascists and Nazis and other Third Positionists – I imagined myself dying in the revolution. But I lost faith in them. And now, I’m going to die fighting a battle that’s practically all mine.” (pp. 224-7)

...

Ms. Souvannarath – Feeling like gods with power over life and death

Gamble – people will respect me once I have a gun pointed at them... fucking pathetic that that’s what it has to take to be respected.” (p. 267)

...

Mr. Gamble – Exactly. I’ll be the one being admired for ONCE. (p. 339)

[64] In summary, they agreed that Gamble would kill his own parents in their house, in anticipation of Ms. Souvannarath coming to spend the night of February 13, 2015. Gamble would also assist Shepherd’s suicide by shooting him that day. On February 14, 2015, they would go to the area of the food court of the Halifax Shopping Centre, and throw Molotov cocktails. Next, Gamble and Ms. Souvannarath would indiscriminately shoot whoever was there, with a lever action .308 hunting rifle, and a single action 16 gauge shotgun respectively. Gamble would kill any wounded persons with a hunting knife. Their intention was to inflict as many casualties as their ammunition would allow. In a photo among the Facebook communications Gamble shows Ms. Souvannarath what he had: thirteen .308 calibre rifle cartridges, and twenty-three shotgun shells (p. 1176).

[65] During their last Facebook communications, they said:

Mr. Gamble – “I’m sitting here with the shotgun in my lap and three shells in my pocket... It makes me think about just how fragile life really is... I have in my lap the power to end somebody’s life instantly... I loaded it... Waiting to be unleashed... I feel amazing... How are you feeling?

Ms. Souvannarath – Eager... I’m about to get on my last flight.”(pp 1196-1204)

[66] Ms. Souvannarath penned her own epitaph (Tab 3, Exhibit 4), written February 11, which was queued for release on February 15, 2015:

Der Untergang

Perhaps you have already heard the news of a mass shooting in Halifax.... It has always been my greatest dream to die in battle. But I do so not as a soldier, but as a murderer.... modern world... has forced me to bury these heroic longings deep beneath my surfaces where they have since festered at my core and metamorphosed into hate.

Hate. It’s a strong word, but I’d rather let a strong word define me than a weak one. “Love”, for example, is a weak word, for one who loves is not nearly as strong as one who hates... Hate is the drive to exterminate all weakness... Hate sharpens the mind to where it becomes a weapon against all others... Free from empathy, free from manipulation, the isolated man sees the world for what it truly is. The result, of course, is hatred.

My hate is beyond good and evil... I do not consider myself evil, not even for committing murder. Murder makes no difference. All living creatures die. There is no such thing as dying “before one’s time”.

[67] A word about the Halifax Shopping Centre. This three-level mall, with upwards of 100 retailers, sits in the midst of a heavily populated Halifax Peninsula. On a typical Saturday, such as February 14, 2015, it is teeming with people.

[68] If Gamble and Ms. Souvannarath had been there that day with their weaponry and ammunition, I am satisfied that it is reasonable to infer that they would have inflicted multiple serious casualties, including death(s).

[69] Based on the evidence presented, I am satisfied beyond a reasonable doubt that, had their plans not been interrupted by the quick police response, Ms. Souvannarath and Gamble would have attended at the Halifax Shopping Centre, and carried out their plan.

The circumstances of Ms. Souvannarath

[70] In addition to the Agreed Statement of Facts, I also have the benefit of a Pre-Sentence Report ordered by the court, the content of which Ms. Souvannarath's counsel confirms remains accurate.

[71] Ms. Souvannarath would appear to come from a stable and supportive home – there is no family history of substance abuse, domestic abuse, or conflict with the law. She completed a post-secondary degree in 2014. Thereafter, she remained unemployed and living with her parents.

[72] Her parents both agree that Ms. Souvannarath has always had difficulties relating to and interacting with other people. She did not have many friends growing up, or as an adult. She was not openly rebellious – in fact she would “obey rules to a fault sometimes”.

[73] She had been diagnosed with having depression prior to the commission of this offence. Dr. Risk Kronfli, a highly-respected psychiatrist who is well known to this court, has been meeting with her monthly. In his opinion, Ms. Souvannarath has severe depression which they have been treating since her incarceration. His preliminary opinion is that Ms. Souvannarath may have Asperger Syndrome, which he described as a pervasive developmental disorder, noting her flat affect. In his view, it will be important for her to continue with medication as well as engage in structured daily activity, as if she is left to her own will, she will isolate herself.

[74] She has no previous criminal record, or demonstrated antisocial behavior. She is described as a quiet prisoner who keeps to herself. She busies herself by

participating in the program's "Books behind bars" and "Creative writing" as well as taking part in a humanities course offered by Dalhousie University in Halifax.

[75] Ms. Souvannarath advised the probation officer that she accepted full responsibility for her actions, but did not express remorse for her actions saying she had "ideological reasons" for making the plan, which were too "complicated" to explain further. She did, however, express remorse that Mr. Gamble died.

What are the rehabilitative prospects for Ms. Souvannarath?

[76] I have considered the letters filed by her mother and her parents. They suggest that Ms. Souvannarath was not capable of the kind of violence that the evidence suggests. The "Lindsay" they have known and loved could not be responsible for this crime. Ms. Souvannarath was 23 years old at the time, well into adulthood. She had been hardened by social rejection and inspired by an internet echo chamber for the disaffected, which glorified violence and death. She was not the Lindsay they had known anymore.

[77] The court has insufficient expert evidence to come to any reliable conclusions about Ms. Souvannarath's psychiatric status. I acknowledge that her psychiatric status will be further investigated while she is serving her sentence, and that I should not rule out the possibility that effective treatments or therapy may significantly improve her rehabilitative prospects.

[78] However, a review of the Facebook communications, other materials and evidence, including Ms. Souvannarath's refusal to renounce the so-called "ideological" motivations for committing this offence, permit a reasonable inference that it is more likely than not that she continues to maintain her intended actions were justifiable. She has not expressed remorse for her involvement in this conspiracy to murder multiple persons.

[79] On March 13, 2015 she wrote on the back of some paper in her cell:

... At first we were casual acquaintances having discovered each other's Tumblr blogs through mutual interest in the Columbine shooting and in National Socialism... I was to be his Eric Harris, and he would be my Dylan Klebold... Eventually I realized that *we really were Eric and Dillon, their minds having taken refuge in our bodies sometimes after their demise in 1997.*

(para. 49, Agreed Statement of Facts)

[80] Her ongoing dangerousness, present and reasonably expected to persist for an indefinite period, lead me to conclude that her prospects for rehabilitation are very guarded.

[81] Moreover, in addition, I find that the following reference from *R. v. Khawaja*, 2012 SCC 69, a terrorism case, which though quite factually distinguishable, is nevertheless applicable to my assessment of her prospects for rehabilitation:

122 The second error identified by the Court of Appeal is that the trial judge failed to treat the absence of evidence of the appellant's rehabilitative prospects as an important factor in sentencing. I agree that the absence of information on the likelihood of the appellant re-offending was relevant to sentencing, particularly in regard to s. 718(c) and to the need to separate offenders from society, where necessary. Indeed, as O'Connor J. wrote in *R. v. Downey*, 2010 ONSC 1531 (CanLII), at para. 31:

Where it is apparent that the offender is a dangerous person, who is likely to compromise public safety if released, he should be detained for a period of time sufficient to reasonably conclude that such danger has subsided. The duration of the sentence must be sufficient to give the correctional authorities the necessary time to properly treat the offender and for the National Parole Board to assess the risk of his reoffending.

123 The absence of evidence on the appellant's likelihood of re-offending gave the trial judge no assurance that he was no longer committed to violent *jihad* and terrorism, or that there was any chance that, over time, he could change and be released from state control without undue risk of harm to the population. The lack of information on a person's probability of re-offending, in the face of compelling evidence of dangerousness, is sufficient to justify a stiffer sentence.

124 I cannot accept the broad proposition that "the import of rehabilitation as a mitigating circumstance is significantly reduced in [the] context [of terrorism] given the unique nature of the crime and the grave and far-reaching threat that it poses to the foundations of our democratic society": (C.A. *Khawaja*, at para. 201). The terrorism provisions catch a very wide variety of conduct, suggesting that the weight to be given to rehabilitation in a given case is best left to the reasoned discretion of trial judges on a case-by-case basis. This does not, however, negate the fact that on the evidence in this case, the absence of evidence on rehabilitation prospects justified a stiffer sentence than otherwise might have been appropriate.

The aggravating factors

[82] Ms. Souvannarath's counsel argued that it should not be an aggravating factor that Ms. Souvannarath has Nazi sympathies, racist beliefs, or callous views

regarding the value of the lives of other humans. He says her motivations should not be considered as aggravating factors on sentencing. I agree that her motivations are not aggravating factors *per se*, unless they can also be said to be her intentions in carrying out the plan.

[83] The Crown’s position was bluntly stated as, “everything about this offence is aggravating”. They noted that the Facebook communications reveal that the plan was *intended to* inspire other mass killings in pursuit of a new world order:

Also, I just came up with a name for our plan. *Der Untergang*. Another Nietzsche reference. See, the *Ueberschensch* creates the *Untergang*, the downfall, the destruction, before *Uebergang* (creation, overcoming humanity) is possible. The idea being that our massacre speeds the downfall of society so something better will one day take its place.

Mr. Gamble – Do you think that will happen?

I don’t know. But what I do know is, whatever utopia is, it wasn’t meant for me, but I was meant to die for it all the same. (p. 416).

[84] They *intended to* create mass panic, and thereby undermine the sense of security and peace of mind the community had at that time. It is a common-sense inference that, had they carried out their plan, to some extent they would have undermined the level of security and peace of mind in the community. That is an aggravating factor on sentencing, though its proper impact on the sentence is difficult to precisely articulate.

[85] I observe that although our Criminal Code permits the presentation into evidence of a “statement made by an individual on a community’s behalf”,⁵ none were filed.

[86] The nature and extent of the planned attack, is an aggravating factor. They *intended to* maximize dead and wounded casualties.

[87] In my opinion, it is an aggravating factor that Ms. Souvannarath, an American resident and citizen, travelled to Canada exclusively for the reason to commit a serious crime.

[88] That they *intended to* be mocking, callous and brutal in their treatment of potential victims they encountered is an aggravating factor.

⁵ E.g. - See a discussion thereof in *R. v. Denny*, 2016 NSSC 76, at paras. 106-123

[89] That Ms. Souvannarath was deluded about her inherent “superiority” and the purported justification for carrying out the plan, are not aggravating factors on sentence, but are relevant to her rehabilitative potential.

The mitigating factors

[90] Generally speaking, for first-time youthful offenders, courts will focus on specific deterrence and rehabilitation.

[91] While the circumstances of this offender and offence are extremely troubling, and deserving of significant denunciation, specific and general deterrence, the court must in all cases impose a sentence that is proportionate to the gravity of the offence and degree of responsibility of the offender, and seriously consider the least restrictive sanctions that are just and appropriate.

[92] Ms. Souvannarath is still a young adult. She is presumptively therefore considered capable of some level of rehabilitation.⁶ However, while youthful, her decisions were not the result of impulsiveness or immaturity – they were taken after much time and deliberation.⁷ She flew to Canada to commit the offence. She was dedicated to dying here.

[93] Ms. Souvannarath was charged on or about February 13, 2015. She pled guilty on April 11, 2017. It has been over three years since her arrest. She has not renounced her purported justifications or enthusiasm for the plan to simultaneously kill multiple random members of the public on February 14, 2015.

[94] In the Pre-Sentence Report dated June 30, 2017, the probation officer’s assessment was as follows:

... Ms. Souvannarath accepted full responsibility for her actions... Ms. Souvannarath expressed remorse that Mr. Gamble died, however expressed no further remorse for her actions.

[95] Typically, a guilty plea is seen to be an expression of the acceptance of responsibility, and beyond that, remorse for commission of the offence, which in turn is seen as a positive indicator for rehabilitation. That is not the case here.

⁶ See in the case of youths under the age of 18, references to a presumption of diminished moral blameworthiness- *R. v. DB*, 2008 SCC 25, at paras. 62-4

⁷ See the court’s comments in *R. v. Khalid*, 2010 ONCA 861 at paras 48-50.

[96] Moreover, I cannot overlook the timing of Ms. Souvannarath's guilty plea. On April 11, 2017, I decided that the Facebook communications (in unredacted form at that time) were admissible as against Ms. Souvannarath at trial.⁸ As has become evident, once those communications were admissible, they provided insurmountable proof beyond a reasonable doubt of the offence of conspiracy to commit murders of persons at the Halifax Shopping Centre on February 14, 2015. Later that same day, with that knowledge, Ms. Souvannarath pleaded guilty.

[97] Thus, while a guilty plea is generally seen to be a mitigating factor on sentence, the extent of that mitigation is largely attenuated by the arguable inevitability of her being found guilty of this offence.

[98] There is a suggestion that she may suffer from Asperger syndrome or similar condition. To the extent that it is suggested that Asperger syndrome, or the like, predisposed her to participation in this conspiracy, and is therefore a mitigating factor in sentencing, I disagree.

[99] Courts have wrestled with this question. However, I agree with Justice O'Connor, when he stated for the court in *R. v. Prioriello*, 2012 ONCA 63 [with supplementary reasons [2012] O.J. No. 4113], at paras. 11 - 12:

In order for a mental illness to be considered as a mitigating factor in sentencing, the offender must show a causal link between his illness and his criminal conduct, that is, the illness is an underlying reason for his aberrant conduct: *R. v. Robinson* [1974] O.J. No. 545 (CA).

Further, there must be evidence that a lengthy sentence would have a severe negative effect on the offender such that it should be reduced on compassionate grounds.

[100] Nevertheless, I must recognize that the availability of intensive treatment and therapy during her incarceration, may have significant rehabilitative potential.

[101] On the other hand, as I noted earlier, citing from *Khawaja*, in my opinion, the absence of evidence regarding her rehabilitation prospects and her probability of re-offending, in the face of what I find is compelling evidence of ongoing dangerousness, does not allow me to reasonably conclude if, or when that danger will subside.

⁸ *R. v. Souvannarath*, 2017 NSSC 107

[102] Ms. Souvannarath’s counsel argued that I should consider the likelihood of the plan being executed, and find the likelihood was low, considering the lack of training and detailed preparation undertaken, particularly by Ms. Souvannarath. He cited that she had never fired a gun before, and is a physically small statured person, with no experience with carrying out violence of any kind, much less of the kind called for in the plan. Moreover, he suggested that the planning was at such an early stage that it could not be considered an “attempt to commit murders”.

[103] Regarding the latter point, section 24 of the Criminal Code reads:

- (1) Everyone who, having an intent to commit an offence, does or omits to do anything for the purpose of carrying out his intention is guilty of an attempt to commit the offence whether or not it was possible under the circumstances to commit the offence.
- (2) The question whether an act or omission by a person who has an intent to commit an offence is or is not mere preparation to commit the offence, and too remote to constitute an attempt to commit the offence, is a question of law.

[104] When the preparation to commit an offence passes beyond “mere preparation” - is fully complete and ended - and the next step to be done is taken by an accused for the purpose of, and with the intention of, committing the crime, this will generally establish a criminal “attempt to commit” that offence - *R. v. Deutsch*, [1986] 2 S.C.R. 2.⁹

[105] I conclude that, Ms. Souvannarath’s travel from the United States to Halifax, is properly characterized as passing beyond planning or “mere preparation” to commit murder, and constitutes the beginning of an “attempt to murder”. The plan had been set in motion. Within 36 hours of her arrival at 12:10 a.m. on February 13, 2015, she intended to go on a killing spree, as planned.

[106] Nevertheless, in my opinion, little turns on the nomenclature used. The facts, as is said, “speak for themselves”.

Conclusion

[107] The paramount sentencing considerations here are denunciation, specific and general deterrence, and separating Ms. Souvannarath from society. These

⁹ Presuming that there is proof beyond a reasonable doubt that Ms. Souvannarath intended to kill one or more persons on February 14, 2015 – which I find there is here.

considerations will inform what is a “just sanction” specifically in relation to Ms. Souvannarath’s role in the creation, planning, and intended execution of the murders of random members of the public present at the Halifax Shopping Centre on February 14, 2015.

[108] Had the plan not been interrupted, I am satisfied that Mr. Gamble and Ms. Souvannarath would have carried it out. Coming upon unsuspecting members of the public at the mall that day, what carnage would they have inflicted with a 16 gauge shotgun with 23 shells; a .308 calibre lever action rifle with 13 shells; and a knife to finish off the wounded? One can readily infer multiple serious casualties would follow.

[109] Ms. Souvannarath’s prospects for rehabilitation are very questionable. She is an ongoing danger to public safety, which danger will persist for an indefinite period of time.

The appropriate sentence

[110] I am very satisfied that the ancillary orders requested here, should be granted: Ms. Souvannarath will therefore be required to provide a sample of her DNA pursuant to section 487.051(1) of the Criminal Code; and be subject to a firearms/weapons prohibition order pursuant to section 109 of the Criminal Code of Canada which starts today and ends 10 years after her release from imprisonment.

[111] I bear in mind that Mr. Shepherd, on a joint recommendation by counsel upon his guilty plea, was sentenced to 10 years imprisonment. He had a very much less significant role than Ms. Souvannarath, who I characterize as essential to the conspiracy to commit multiple murders on February 14, 2015.

[112] Ms. Souvannarath provided the much needed “partner” that James Gamble sought to carry out such a mass killing. Mr. Shepherd had declined Mr. Gamble’s invitation. She enthusiastically took up the cause, and reinforced Mr. Gamble’s violent tendencies with antisocial rationalizations for the plan, and with sexual allure.

[113] Mr. Gamble took his own life. For that tragedy, Ms. Souvannarath carries moral responsibility. However, to be clear, she is not being sentenced for that outcome.

[114] Ms. Souvannarath, and others, must be sent the message that those who choose to pursue such deadly plans will pay a very heavy price.

[115] The most comparable of the terrorist cases are:¹⁰

1. *R. v. Gaya*, 2010 ONCA 860 - an 18 year old at the time of the offences, who pled guilty to offences contrary to sections 81(1)(a)-[intent to cause an explosion likely to cause serious bodily harm or death to persons] and 83.2 [for the benefit of, or at the direction of, or in association with, a terrorist group]. As the Court of Appeal (Doherty, Cronk and Moldaver JJA) noted, he “played an essential role in a scheme which, if implemented, could have killed countless people and left the entire country changed very much for the worse.” The sentencing judge was satisfied that he was “genuinely remorseful” for his actions and that he did not present a “significant risk to himself or others in the short term”; although the Court of Appeal noted that his “risk over the long-term period cannot be ruled out”. His 12 year sentence was increased by the Court of Appeal to 18 years in custody and that he serve one half before being eligible for parole pursuant to section 743.6(1.2) of the Criminal Code;
2. *R. v. Khalid*, 2010 ONCA 861 - a 19 year old at the time of the offences, who pled guilty to the same offences as Mr Gaya. He was involved in the plot to detonate bombs at the Toronto Stock Exchange Tower, the CSIS [Canadian Security and Intelligence Services] headquarters on Front Street in Toronto, and an unspecified military based East of Toronto. The buildings were to be blown up during the morning rush hour. His primary task was to rent an industrial storage unit for storing the three tons of ammonium nitrate that another co-conspirator had arranged to purchase, and to offload and store it there once it was delivered. He did this. Upon arrest police found step-by-step instructions to him and Mr. Gaya outlining what they were to do at the industrial unit. He also had further involvement in the plan including recruiting a third member. The sentencing judge concluded

¹⁰ I note that in *R. v. Ahmed*, 2017 ONCA 76, the court upheld a 12 year sentence, imposed for terrorism related offences. He was found guilty of offences of conspiracy to facilitate terrorist activity Section 83.19(1) and participation in the activities of a terrorist group, s 83.18(1), which have maximums of 14 and 10 years imprisonment respectively. As Justice Code noted in *Esseghaier*, at para. 102, *Ahmed* is not a useful comparator – he was not being sentenced for a conspiracy to indiscriminately kill.

that his prospects for rehabilitation were very good; and that he was “truly remorseful” and had been “specifically deterred and learned a significant lesson”, and that he did not represent “a continuing danger to the public”. The Court of Appeal identified the appropriate range of sentence at 20 to 25 years. His 14 year sentence was increased by the Court of Appeal to 20 years in custody, and that he serve one half of the sentence pursuant to section 743.6 (1.2) of the Criminal Code;

3. *R. v. Esseghaier*, 2015 ONSC 5855, per Code J. (Esseghaier was involved in the so-called “train plot” – it was a conspiracy to damage transportation infrastructure with intent to wound or kill passengers by derailing a VIA passenger train for the benefit of a terrorist group contrary to sections 83.2, 248 and 465(1)(c) of the Criminal Code. He was found guilty of that offence which has a maximum life imprisonment. The expert evidence suggested that he was mentally ill (likely schizophrenia), but the trial judge did not find a causal link between that illness and the commission of his offences, or alternatively, even if there is a link, concluded that it is not a mitigating factor because he was adamantly opposed to treatment and denied the existence of any mental illness. Justice Code concluded:

... “like *Khawaja*, he is remorseless and dangerous and continues to hold the same views that led to the present offences. I found as a fact that any present mental illness is not causally connected to the 2012 offences. Finally, [he] bears no resemblance to *Khalid* or *Gaya*, as noted previously. In these circumstances, life imprisonment is the presumptively appropriate sentence.” (para. 105). On that count alone he sentenced him to life imprisonment.

[116] Had Ms. Souvannarath participated in her role as she planned it, and between them they only succeeded in killing two individuals on February 14, 2015, she would have been guilty of two counts of first-degree murder. Presumptively, on each she would have had no chance of parole for 25 years, being sentenced to the minimum sentence of life imprisonment – section 745(a) Criminal Code. It should be borne in mind as well that section 745.51 permits a judge to sentence an offender convicted of murder, who has already been convicted of one or more other murders, to consecutive periods of parole ineligibility.

[117] Ms. Souvannarath's intention was to kill more than the 13 people who suffered that fate at the Columbine High School shooting, where 21 further people were seriously injured.

[118] Ms. Souvannarath is presently, and will remain an ongoing threat to public safety. It is therefore important that she be separated from society until that concern can be satisfactorily addressed.

[119] In my opinion, nothing less than the following sentence will address the primary sentencing objectives here: denunciation of this most serious criminal behaviour; deterrence of Ms. Souvannarath specifically, and others who become inclined to such criminal behaviour; and separating her from society.

[120] A life sentence is the appropriate and just sanction to address the unique circumstances of this offence and offender.

[121] Pursuant to section 743.6, of the Criminal Code, I am satisfied that the principles cited therein justify me ordering that the portion of the sentence that you must serve before you may be released on full parole is one half of the sentence or 10 years, whichever is the lesser. In this case that is 10 years. Ms. Souvannarath has been in custody since February 13, 2015. Had a lesser fixed sentence duration been imposed, I would have credited her 1.5 days for each day of the pre-sentence custody. I impose the mandatory \$200 Victim Surcharge. I allow Ms. Souvannarath until December 31, 2020 to pay it – time in default to be calculated by reference to the applicable regulations.

[122] I will include the following recommendations in the Warrant of Committal:

- i. That Ms. Souvannarath receive intensive psychological and psychiatric counselling and treatment;
- ii. That she be permitted only supervised access to the internet.

Rosinski, J.

APPENDIX "A"

CANADA
NOVA SCOTIA
COUNTY OF HALIFAX

C.R. 441654

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

HER MAJESTY THE QUEEN

-and-

LINDSAY KANITHA SOUVANNARATH

AGREED STATEMENT OF FACTS

Pursuant to section 724 of the *Criminal Code*, the parties agree to the following facts:

[1] Lindsay Souvannarath was born in Chicago, Illinois on January 9, 1992. She is a citizen of the United States of America. She is currently 26 years old. She has been in custody awaiting disposition of these charges since her arrest on February 13, 2015.

[2] At the time of her arrest, she was 23 years old. She lived with her mother and father in their family home located in Geneva, Illinois, a suburb of Chicago. She graduated from college in 2014, and was unemployed at the time of the events in question.

[3] Souvannarath spent much of her time on the internet. She was active on a variety of social media platforms including Tumblr, Facebook, and Skype. While online, she frequently posted or shared materials that were racist in nature, promoted Nazism, and/or glorified violence and death. Souvannarath had a Tumblr blog, entitled "Cockswastika", showing a Swastika emblem along with a sub-title, "School Shooter Chic".

[4] She developed a fascination with the Columbine high school massacre. Her admiration of Columbine quickly became a powerfully unifying factor between her and James Gamble.

[5] James Gamble was born in Halifax, Nova Scotia on August 6, 1995.

[6] At the time of his death on February 12, 2015, he was 19 years old. Gamble also lived at home with his parents, was unemployed, and spent much of his time on the internet. He too was active on a variety of social media platforms including Facebook, Tumblr and Reddit. Like Souvannarath, much of the material he shared or posted online glorified death and violence. Gamble had a Tumblr blog entitled, "Shallow-existences", the main image of which is a short repeating video of footage taken from the Columbine high-school cafeteria while Harris and Klebold were committing their massacre.

[7] Randall (aka Randy) Shepherd was born in Victoria, British Columbia on July 4, 1994.

[8] At the time of his arrest on February 13, 2015, Shepherd was 20 years old. Shortly after his birth, he and his family moved to Halifax, Nova Scotia. He experienced a strained relationship with his family in the years prior to the events in question, had poor employment options, and had several failed romantic relationships. Shepherd had a Tumblr blog entitled, "Genesis to Genocide", a blog which featured mostly the glorification of heavy metal music, serial/mass killers, gore and pornography.

[9] Gamble attended Sir John A. MacDonald High School in Tantallon, Nova Scotia, located a short distance outside of Halifax, Nova Scotia. It is there he met Shepherd.

[10] Gamble and Shepherd had few other friends in high school. Shepherd, who had been home-schooled, found it hard to socially-integrate. Gamble struggled with a diagnosed social anxiety disorder. The two bonded over heavy metal music, gore/horror movies, marijuana and

a shared fascination with death and morbidity, often focusing on school shootings and mass murders.

[11] In the time leading up to the events in question, both Gamble and Shepherd were having increasing difficulties. Shepherd became more despondent and suicidal. Gamble too was spiraling, first into suicidal thoughts, and then towards homicidal ideation. He became increasingly obsessed with school shootings and other mass killing sprees. He shared these thoughts and ideas with Shepherd.

[12] As time passed, Gamble considered committing a mass killing in Halifax. Gamble asked Shepherd to be his partner in such a crime. Shepherd resisted, but offered a receptive audience to Gamble's plans.

[13] In December of 2014, Gamble began to "follow" Souvannarath's Tumblr blog, "Cockswastika" from his own "shallow-existences" Tumblr blog. It is unclear how exactly Gamble came to know of the existence of Souvannarath's blog.

[14] Quickly thereafter, Souvannarath and Gamble began to communicate over Facebook, a conversation which began on December 21, 2014.

(a) The Facebook Messages between Souvannarath and Gamble: December 21, 2014 to February 13, 2015.

[15] After Ms. Souvannarath's arrest on February 13, 2015, the Kane County Court in the state of Illinois ordered Facebook Inc. to produce the chatlogs from Ms. Souvannarath's Facebook account.

[16] The electronically formatted chatlogs submitted to this Court by the Crown is a true and accurate representation of the chat logs produced by Facebook as a result of the Kane County Court Order.

[17] The bound paper volumes marked “Facebook Chat Logs” exhibited by the Crown were prepared by the Crown for ease of review. They are copied from the original electronic format and are believed to be accurate, but are not certified.

[18] Apart from some postings on each other’s Tumblr blogs, the Facebook messages appear to be the sole means of communication between Souvannarath and Gamble, and thus is a near complete capture of their relationship. There is no evidence suggesting they communicated over the telephone or through other electronic means such as Skype or FaceTime.

[19] The Facebook conversation reflects approximately 7.5 weeks of communication that occurred every day during this time-period, often for hours at a time.

(b) The Evolution of the Relationship between Souvannarath and Gamble

[20] Gamble and Souvannarath bonded quickly.

[21] They immediately discovered a shared interest and admiration for the Columbine massacre.

[22] Souvannarath and Gamble repeatedly stated that they were adopting the personas of Eric Harris and Dylan Klebold, respectively. They would often refer to each other by the nicknames of Harris (Reb) and Klebold (VoDKa). Like Harris and Klebold, Souvannarath and Gamble would speak of going “NBK” – a short-hand for “natural born killers” – which, as used by the Columbine shooters, was used to describe their intended massacre. They would quote passages to each other from the publicly-accessible journals of Harris and Klebold.

[23] Apart from Columbine, a review of the Facebook conversation reveals the following about the relationship between Gamble and Souvannarath which is non-exhaustive:

- Their relationship was sexual and the pair often exchanged explicit intimate photographs of each other while 'sexting'. They confided in each other that they were both virgins. They desired to have sex the night before the massacre.
- They expressed a shared connection to one another, a connection they had not felt before. They felt deeply fated to one another.
- The pair perceived Souvannarath as more intelligent, more well read, and more easily able to expound upon her views and collection of ideologies.
- They idolized past mass/serial killers, in addition to Klebold and Harris.
- They both wanted to commit a mass or spree-killing and quickly agreed to be partners.
- They believed their destiny was to commit this massacre.
- They both expressed enthusiasm for the pain/death they were going to cause.
- They both deeply desired to achieve infamy and notoriety through the mass killing of others.
- They enjoyed speculating at the shock, wondering, pain, and confusion their event would bring.
- They reveled in thinking about the pain and anguish their families would feel at their horrendous acts.
- They hoped their massacre would inspire others to do the same.
- They, especially Souvannarath, believed they were racially and intellectually superior.
- They, especially Souvannarath, endorsed Nazism.

- They both were content to die. They both expressed being at peace with their life ending together in suicide.
- Souvannarath's motivations were many and various. Souvannarath expressed her belief that she is a sex goddess with superior intellect who is entitled to cull the inferior. She also commented that she is a warrior in a world in which racial and ethnic realities must be righted through violence. She commented that committing a mass killing would punish the popular and hurt those who never understood her. She expressed the desire to be infamous.

(c) The Nature and Details of the Intended "Valentine's Day Massacre"

[24] After agreeing to commit a mass-killing, preparations began. This entailed careful consideration and discussions which are thoroughly revealed in their Facebook messages. In the end, the plan, which the pair nicknamed "Der Untergang" (The Downfall), was settled upon as follows:

- The mass-killing was to take place on February 14th, "Valentine's Day" in the food court at the Halifax Shooting Centre.
- The mall was ultimately chosen as they felt it would result in "mass panic."
- Souvannarath was to travel by air to Halifax to meet with Gamble on February 13th.
- Gamble planned to shoot both of his parents before Souvannarath arrived.
- Gamble and Souvannarath would spend the night in the Gamble residence and sexually consummate their relationship.
- Randy Shepherd hoped to be shot and killed by Gamble on the 13th as a form of assisted-suicide that same evening. Souvannarath was not a part of this aspect of the plan.
- The following day the massacre was to begin in the food court, an area they believed would provide them the best cover.

- The pair intended to precede the shooting by throwing Molotov cocktails.
- Gamble intended to arm himself with his father's lever-action hunting rifle as well as a hunting knife.
- Souvannarath would be armed with Gamble's father's single-action 16-gauge shotgun.
- Each was to wear their previously selected "death outfits"; outfits chosen in many ways to pay tribute to Harris and Klebold. These outfits included masks.
- The pair intended to shoot as many people as their ammunition allowed.
- The pair intended to reserve their final bullets for themselves, as a means of ensuring their joint-suicides.
- They planned to kneel facing each other, killing themselves on the count of three.
- They planned to have queued social media posts on Tumblr, scheduled to go live on February 15, boasting about a "mass shooting in Halifax".

(d) The Involvement of Randy Shepherd

[25] Shepherd was kept informed of the evolving plan between Souvannarath and Gamble. He encouraged it. In February of 2015, Shepherd and Gamble went to the Halifax Shopping Centre and filmed videos of where the attack was to occur.

[26] These videos were noted by the pair to be "basement tapes", a reference to the preparatory video recordings made by the two Columbine shooters designed to memorialize the planning of the attack and enhance its notoriety.

[27] While Shepherd was not agreeable to raising a weapon alongside Gamble and Souvannarath, he did purchase a hacksaw and materials needed to make the Molotov cocktails for use in the massacre. Additionally, he offered to pick-up Souvannarath from the airport.

(e) February 12, 2015

[28] In the days leading up to February 12, 2015, Souvannarath obtained sufficient funds to enable her to purchase a one-way ticket from Chicago to Halifax. On the morning of February 12, 2015, she snuck out of her family home and took a train to Chicago O'Hare Airport before boarding her flight to Halifax.

[29] On the same day, Gamble faced delays in his plan to murder his parents. He sent a Facebook message to Souvannarath that "I'm going to have to wait until tomorrow to kill them" and "you'll have to stay at Randy's for the night".

[30] On this same day, an anonymous tip was received by Crime Stoppers. Detective/Constable Kristopher Barr of the Halifax Regional Police was assigned to investigate.

[31] The following is a summary of the tip:

- a. Two suspects are posting on different social media sights that they plan to shoot up the mall in Halifax, Nova Scotia on 02-14-15;
- b. The two suspects are obsessed with school shootings;
- c. The female suspect is to leave Chicago, Illinois on 02-12-15, on a Delta Airlines flight to Halifax International Airport, Nova Scotia, Canada, and meet up with the male suspect who has weapons for them to use;
- d. The first suspect is an Asian female, known as Lindsay, last name unknown but begins with "S", she is approximately twenty-three years old, born 01 -16-92 and is 5'3" tall and weighs 90 lbs. Lindsay has black shoulder length hair, which is dyed red right now and she wears brown framed glasses;

- e. Lindsay is friends with the male suspect James Gamble;
- f. Lindsay has several social media names under a Facebook account under the name of "Lindsay Shub-Niggurath", Tumbler account under 'Cockswastika" and Skype account under "thenewheresy";
- g. The male subject is known as James Gamble, a Caucasian male, nineteen years old, born 08-06-95, and is described as very skinny with dark brown hair parted to one side;
- h. James Gamble lives in Halifax, Nova Scotia;
- i. The anonymous source has not met James Gamble in person;
- j. James Gamble is Lindsay's friend from online;
- k. James Gamble has several social media names under a Facebook account under the name "James Gamble" and a Tumbler account under the name of "shallowexistences";

[32] Investigators contacted the Canadian Border Services Agency ("CBSA") who issued a national lookout to their agents to identify anyone who may match the description of the "Lindsay S" spoken of in the tip.

(f) The Suicide of James Gamble

[33] The investigation quickly led officers to attend the Gamble residence in Timberlea, Nova Scotia. Officers surrounded the home and sought to make contact with Gamble. His parents confirmed that he was inside the residence. Officers called Gamble by telephone and requested that he exit the home to speak with police. Gamble agreed, but failed to do so. Instead, he committed suicide by shooting himself in the head with a single bullet from his father's hunting rifle, one of the two firearms intended for use in the attack at the Halifax Shopping Centre.

(g) Souvannarath Arrives in Halifax

[34] At the time Gamble killed himself, Souvannarath was on the last leg of her journey into Halifax.

[35] Prior to leaving for Halifax, she had an online conversation with a friend from Skype which included the following exchange:

Lindsay Souvannarath: *"I've purchased the plane ticket. I'm leaving for Canada tomorrow, and the only way I'm coming back is in a body bag. Wish me luck."*

Skype Friend: *"Christ...Are you 100% sure"*

Lindsay Souvannarath: *"Yes"*

Friend: *"well... I'll be honest and say that I hope you dont do it but I guess you do whatever you want you're not going to listen to me or anything"*

Lindsay Souvannarath: *"This is what I was meant to do my whole life...I've had so many revelations this past month and a half"*

Friend: *"I guess...I dunno man"*

Lindsay Souvannarath: *"it's hard to understand, I know. But once it happens, once the chatlogs and the videos we're going to record have been released, everything will be explained. How much sense it'll all make, I don't know, but whatever happens happens"*

...

Friend: *"but I just hope you reconsider I guess though I highly doubt it"*

Lindsay Souvannarath: *"Yeah, I've been keeping a lot of things just between him and me in the first place, so I don't expect it to make much sense right now...But it goes like this: I want to kill, he wants to die. Just like Eric and Dylan."*

(h) Shepherd Goes to Pick-Up Souvannarath at the Airport

[36] As previously offered by him, Shepherd attended the Stanfield International Airport by city bus to pick up Souvannarath.

[37] Shepherd communicated with Souvannarath and advised that Gamble was behind schedule (referring to the fact that Gamble had not yet had an opportunity to kill his parents) and that she would have to stay with him for the night.

(i) Souvannarath Detained by the CBSA

[38] Souvannarath landed at midnight in Halifax. At 12:10am on February 13, 2015, she presented herself to primary immigration and spoke to a CBSA agent. For unknown reasons, the national lookout, previously put in place by the CBSA, did not raise a flag at that time.

[39] Nevertheless, the CBSA agent who processed Souvannarath was concerned by her.

[40] The officer was concerned that Souvannarath may have been attempting to bring drugs into Canada. His concerns revolved around the fact that she advised him that she flew to Canada on a one-way ticket, had only \$33.00, and did not know where her boyfriend, James Gamble, lived. The officer noted *“she had very bad teeth and her complexion was very bad with sores on her face. This made me think she may be on drugs (crystal meth/crack cocaine).”*

[41] The officer directed Souvannarath to a secondary Immigration examination as well as a secondary Customs inspection.

[42] Souvannarath was questioned at secondary Immigration by Tracey Eisener. Ms. Eisener questioned Ms. Souvannarath and confirmed that she did not know where she was going, had a small amount of money, and did not have a return ticket to Chicago. Ms. Souvannarath indicated that she was in Halifax to spend a “memorable” Valentine’s weekend with her

boyfriend, James Gamble, who she had previously met online. She further advised that Randy Shepherd was at the Airport to pick her up, this was subsequently confirmed by CBSA officials.

[43] The contents of Souvannarath's luggage were subjected to inspection. Ms. Souvannarath had little with her, aside from some make-up, her "death outfit", and two books on serial killers.

(j) CBSA Notify the Police that they have "Lindsay S" in Custody

[44] While Souvannarath was being dealt with by CBSA agents, officials reviewed the previously issued national lookout. They determined that Souvannarath may be the person of interest. The police were contacted and advised that Souvannarath was in the custody of the CBSA and that Randy Shepherd was in the waiting area.

[45] Upon arrival at the Airport, police quickly arrested both Shepherd and Souvannarath without incident. Souvannarath was arrested at 1:25 a.m. on February 13, 2015.

[46] Souvannarath was detained and held for Court.

(k) Post-Arrest

[47] Since her arrest, Souvannarath has affirmed that it was her intention to commit a "Valentine's Day Massacre" in Halifax.

[48] On February 17, 2015, while being transported for court purposes, Souvannarath had the following exchange with an undercover officer posing as a fellow prisoner in a transport van:

Lindsay Souvannarath: I love that shirt so much 'cause it looks like something Eric Harris would wear.

Undercover Officer: (laughs)

Lindsay Souvannarath: And - yeah, we were - .

Undercover Officer: And Eric Harris is?

Lindsay Souvannarath: Uh, one of the Columbine shooters.

Undercover Officer: Okay, that's what I thought. I didn't know his last name, but I thought I remembered Eric.

Lindsay Souvannarath: Yeah. And so I would be Eric, and he would be Dylan.

Undercover Officer: (laughs) You had that all figured out, huh?

Lindsay Souvannarath: Yeah. We'd planned this a long time ago. (laughs)

Undercover Officer: Oh yeah?

Lindsay Souvannarath: Mmm.

Undercover Officer: How long ago?

Lindsay Souvannarath: Urn, we started planning things in, like, December. Like, somewhere around Christmas. Oh yeah, and I also had a skull mask that I was going to wear, and he had his scream mask.

Undercover Officer: (laughs) You guys were going to wear masks?

Lindsay Souvannarath: Yeah!

Undercover Officer: Hey, go big or go home, eh?

Lindsay Souvannarath: Yeah. We would have looked so perfect.

...

Lindsay Souvannarath: Uh-huh. 'Cause I have no idea how I'm going to go home and tell my parents, hey mom and dad, me and this guy I met on the internet - we had plans to shoot up a mall and then kill ourselves.

Undercover Officer: (laughs) Oh shit!

Lindsay Souvannarath: Yeah.

Undercover Officer: You mean you were going to do something like that?

Lindsay Souvannarath: Yeah!

Undercover Officer: Oh!

Lindsay Souvannarath: That's what we were planning.

Undercover Officer: Fuck, I thought you just wanted to kill yourself.
Lindsay Souvannarath: No, more than that.
Undercover Officer: Holy shit.
Lindsay Souvannarath: Yeah. It was going to be a Valentine's Day massacre.
Undercover Officer: Yeah, I guess, huh? Fuck. You guys really thought about everything.
Lindsay Souvannarath: Yeah.

[49] On March 13, 2015, an officer at the Central Nova Scotia Correctional Facility found the following note written on the back of a Sudoku puzzle in the cell of Lindsay Souvannarath:

It is a strange feeling to meet someone and almost immediately know that you ought to die with them. To James and I, it happened simultaneously. At first we were casual acquaintances having discovered each other's Tumblr blogs through a mutual interest in the Columbine shooting and in National Socialism. Less than a month later, we were planning our deaths. I was to be his Eric Harris, and He would be my Dylan Klebold. We trusted each other instantly, behaving as if we'd known each other for years. "We must have known each other in a past life," I said, half-jokingly. Eventually I realized that we really were Eric and Dylan, their minds having taken refuge in our bodies some time after their demise in 1997"

SIGNED at Halifax Nova Scotia on April , 2018.

Luke Craggs, counsel for Lindsay Souvannarath

Mark Heerema, Crown Counsel

Shauna MacDonald, Crown Counsel