SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Shand*, 2021 NSSC 263

Date: 20210706
Docket: CRH No. 494234
Registry: Halifax

Between:

Her Majesty the Queen

v.

Kyle Steven Shand

Sentence

Judge:	The Honourable Justice Denise Boudreau
Heard:	June 23, 2021, in Halifax, Nova Scotia
Oral Decision:	July 6, 2021, in Halifax, Nova Scotia
Written Release:	September 2, 2021
Counsel:	Scott Morrison, for the Crown Tony Amoud, for the Defence

By the Court (Orally):

[1] Mr. Shand pled guilty to one count of aggravated assault on Kyle Fancy occurring on or about February 21, 2019, in Dartmouth, Nova Scotia. The facts were captured in an Admissions of Fact (Exhibit 4) that were agreed to as being accurate by the Crown and defence. The facts are as follows:

ADMISSIONS OF FACT

Pursuant to Section 655 of the *Criminal Code*, Kyle Shand admits to the following facts for the purpose of dispensing with proof thereof in this proceeding:

1. On the evening of February 21, 2019 Kyle Fancy met Kyle Shand at the MacDonald Bridge bus terminal in Dartmouth, Nova Scotia. The parties were unknown to each other.

2. Mr. Fancy had worked that day and was on his way home. Fancy approached Shand, asking him if he could sell him marihuana, or if he could put him in touch with someone who could sell him marihuana.

3. Shand said he could put Fancy in touch with someone who could sell him marihuana.

4. The parties travelled together by bus to the Highfield Bus Terminal.

5. They left the bus and walked together to a vacant lot near 116 Pinecrest Drive.

6. At this point, the parties had an argument. That argument became physical.

7. Mr. Fancy tried to flee. He tripped on ice and fell to the ground, injuring his shoulder.

8. Mr. Shand produced a folding knife with a 3 ½ inch blade. Shand stabbed Fancy in the back multiple times. Only two of those stabs to his back penetrated his body.

9. Mr. Shand was not injured.

10. Shand had Fancy's cell phone for the purpose of facilitating the drug transaction. He also had $30 Fancy had given him to purchase the marihuana.

11. Shand left the vacant lot with Fancy's phone and cash.

12. Shand cut through a path leading to the parking lot of 47 Joseph Young Drive.

13. As he entered that parking lot, Shand disposed of the knife he had used to stab Fancy. He threw it into a green garbage dumpster.

14. Shand then entered 47 Joseph Young Drive. He was staying there off and on with his parents. He changed his clothing and called his cousin, Chris Findlay.

15. Fancy crawled out of the vacant lot and onto the sidewalk.

16. George Heard took his dog out for a walk that evening. Shortly after midnight, he located Mr. Fancy laying on the sidewalk near 120 Pinecrest Drive and calling for help.

17. Fancy only had one shoe on. He was shivering and very cold – it was well below zero.

18. Heard called 911.

19. Police arrived on scene. They contained the scene and called K9. The K9 tracked to the vacant lot at 116 Pinecrest and located Fancy's other shoe. Paramedics arrived on scene and began treating Fancy, who had a punctured lung, among other injuries.

20. Kyle Shand was on the phone with his cousin Chris Findlay and observing the police response from the balcony at 47 Joseph Young. He asked his cousin to pick him up.

21. Chris Findlay and his partner Kelsie Warnell picked up Shand in their vehicle.

22. Shand related the details of the incident to Findlay and Warnell.

23. Findlay told Shand he had to turn himself in to police. Shand agreed to do so.

24. Findlay drove to the officers working the scene at 120 Pinecrest. He told the officers that he had the young man they were looking for.

25. Officers arrested Shand and performed a search incident to arrest. They located Fancy's cell phone and the $30 cash.

26. Officers later located the knife Shand disposed of in the garbage dumpster at 47 Joseph Young. Officers sent the knife to the National Forensic Laboratory for analysis.

27. The lab identified blood at the bottom of the blade and on the tip of the blade. A DNA profile developed from this blood matched Kyle Fancy. The estimated probability of selecting an unrelated individual at random from the Canadian Caucasian population with the same profile is 1 in 38 quadrillion.

28. The lab also identified Kyle Shand's DNA on the exterior handle and belt clip of the knife. The estimated probability of selecting an unrelated individual at random from the Canadian Caucasian population with the same profile is 1 in 300 trillion.

29. Mr. Fancy was admitted to hospital. He had two stab wounds mid-back on either side of his spine.

30. One of these wounds resulted in a partial laceration of the spinal cord at the T10-11 level. He was examined by orthopedics.

31. An MRI showed he had a traumatic injury to the thecal sac (which is a tube surrounding the spinal cord) and the right side of the spinal cord. Injuries to this portion of the spinal cord often involve motor disturbances to one leg (i.e., weakness) and sensory disturbance that could affect either or both legs.

32. Mr. Fancy was experiencing complete motor and sensory paralysis of his right leg.

33. Orthopedics was not involved in follow up for Mr. Fancy's spinal injury. Typically, he would be transferred to the spinal cord injury rehab floor at the NS Rehab centre but was not accepted due to behaviour issues. Outpatient physiotherapy was arranged.

34. The pain and weakness caused by this type of injury to the spinal cord can either resolve or remain permanent. An MRI or other diagnostic test cannot confirm self-reported neuropathic pain. Doctors cannot predict whether Mr. Fancy's pain or weakness will fade over time.

35. Mr. Fancy was in hospital until March 19. By that point, he could stand unassisted and minimally advance his right foot and hip.

36. Mr. Fancy also suffered a dislocated right shoulder with associated fracture (a break of the upper part of the arm). He had surgery for this injury, which involved a rotator cuff repair, placing 13 staples in his shoulder.

37. Thoracic surgeons determined Mr. Fancy had a small right sided pneumothorax (or collapsed lung). No surgery was required for this injury.

38. Mr. Fancy has had serious mental illness for many years. He has been diagnosed with schizophrenia.

[2] The offence of aggravated assault carries a maximum of 14 years imprisonment and has no minimum. The Court has no power to impose a discharge or conditional sentence for that offence. From the caselaw which I will discuss in a moment, aggravated assault is an offence for which a wide range of sentences have been imposed in various circumstances.

[3] I note that I have reviewed the relevant sections of the *Criminal Code*, including in particular subsection 718, and those that follow, in relation to the purposes and principles of sentencing, which are listed as denunciation, deterrence, separation of offenders where necessary, rehabilitation, reparation, and the promotion of a sense of responsibility in offenders. I have also reviewed subsection 718.1 and subsection 718.2.

[4] In this case, it seems clear to me that the sentencing of Mr. Shand must emphasize denunciation and deterrence, as well as the rehabilitation of Mr. Shand.

[5] This is a case with a number of aggravating factors. The event as described in the agreed facts was shocking and unprovoked. The victim was, in fact, trying to escape an altercation when he was stabbed in the back by the defendant multiple

times, with two of those blows penetrating his back. Mr. Shand then left the victim there, injured and bleeding, on a very cold night in the middle of February.

[6] I note that the victim is a person who has had and continues to have significant mental health challenges, and was thereby a vulnerable person.

[7] The injuries to the victim were very severe, including a partial laceration of the victim's spinal cord, resulting in at least a temporary loss of the use of the victim's right leg. He was in hospital for about a month and, at the time of his discharge, his ability to walk was very severely impaired. He also suffered a dislocated shoulder with associated fracture, requiring surgery, and a small collapse in his right lung.

[8] I have reviewed the victim impact statements of both Mr. Fancy and his mother, and I have heard the Crown's comments in relation to the victim's current health situation. The victim describes being in a wheelchair for some period of time after his release from hospital. He describes all of the medical appointments and financial hardships and detrimental effects on his physical health, as well as his already compromised mental health due to his pre-existing schizophrenia.

[9] I am advised that now, over two years later, the victim continues to suffer greatly from the effects of that night. He has continued difficulty walking, he

experiences pain, he cannot work in his chosen field of construction and so must rely heavily on his family. We do not know what the future will hold for Mr. Fancy, but it seems reasonable to say that he may never fully recover to his previous state of physical health. It appears that, to a great extent, his life is permanently changed for the worse.

[10] The high degree of violence exhibited by Mr. Shand on the evening in question, the serious injuries to Mr. Fancy, and their long lasting and debilitating effect on Mr. Fancy's life, are clearly and very highly aggravating factors.

[11] Having said that, this case does have a number of significantly mitigating factors.

[12] Mr. Shand has pled guilty to the offence before the Court, which means he has taken responsibility for what he did. That bodes well, in my view, for his rehabilitative prospects. He has saved the justice system the time and effort that would have otherwise been needed.

[13] Mr. Shand is also a first time offender; he has no criminal record. He is also a very youthful offender. He was 18 years of age at the time of the incident, now just turned 21.

[14] According to the presentence report, Mr. Shand has not had an easy life. For example, he has not been the beneficiary of much parental guidance or support in his life. He has been estranged from his parents and without their support since he was approximately 12 or 13 years of age, when he says he was asked to leave his parents' home. At that time, he went to live with his cousin, Mr. Findlay, who is present this afternoon. Mr. Findlay has been very supportive of Mr. Shand and, in fact, seems to have acted in a somewhat parental capacity toward Mr. Shand during his teenage years.

[15] Mr. Shand stayed with Mr. Findlay until early 2019 when he decided to leave Mr. Findlay's home to "try to make it on his own". That did not work out well for Mr. Shand. The incident with Mr. Fancy occurred during this period when Mr. Shand was essentially homeless. Since the incident, he has returned to Mr. Findlay's home where, I understand, he has been ever since. Through extended family and friends, it would appear that Mr. Shand now has a good support network. I am in receipt of letters of support from persons who describe their affection for Mr. Shand and attest to his good character, kindness, and respectfulness.

[16] From both the presentence report and the letters, that appears to be a generally accepted opinion among those who know Mr. Shand. Mr. Findlay and

other contacts have described Mr. Shand as a good kid, not at all violent, for whom the actions of February 21, 2019 were completely out of character. It was suggested that what happened might have been an act of self-defence, or borne out of fear, panic, resulting in a terrible mistake.

[17] In relation to the circumstances of the offence, although the level of violence here was high, I note this does not appear to have been in any way premeditated, nor with a view to robbing Mr. Fancy. The facts disclose a somewhat impulsive and spontaneous act.

[18] As described in the Admissions of Fact, immediately after the incident Mr. Shand contacted Mr. Findlay, disclosed what he had done, and, after speaking to Mr. Findlay further, he agreed to turn himself in. He returned to the scene that same evening and acknowledged to police that he was the person they were looking for. As noted by defence counsel, and I agree, this certainly saved police a great deal of time and effort. The parties were not known to each other and the issue of identity very likely would have been an issue for both the police and prosecution.

[19] In the presentence report, Mr. Shand himself appeared to suggest that he was acting in self-defence on the evening in question. That defence is clearly not borne

out by the facts he agreed to. Mr. Shand has pled guilty, so he himself acknowledges that self-defence as a legal defence is not applicable here. I interpret his comment in the presentence report to suggest that he was experiencing a generalized fear for his safety on the evening in question. I remind myself that Mr. Shand was 18 years old that day, very newly on his own and homeless. I am prepared to accept that although he was not acting in self-defence, he was experiencing fear about the circumstances he was in. That in no way excuses his behaviour, but might explain it at least to some extent. As I said, the events of the evening, in my view, speak to an impulsive and unpremeditated act on the part of Mr. Shand.

[20] Mr. Shand has provided a letter of apology to the Court, taking responsibility for his actions and promising to improve himself and to never hurt anyone again.

[21] After he was arrested, Mr. Shand was in custody for five days in February 2019. He was also in custody from May 24 to July 24, 2019 when a surety rendered. Otherwise, Mr. Shand has been released on strict house arrest conditions. These conditions have now been in place for over two years, and Mr. Shand has committed no breaches of any of the conditions to the Court's knowledge, which is, again, to his credit.

[22] I accept from the case of *R. v. Knockwood*, 2009 NSCA 89 that while strict release conditions are a factor that might be considered "in the mix" when sentencing an offender, it should be shown that the accused suffered specific and substantial hardship as a result of those conditions before the Court considers them to be a mitigating factor.

[23] Here, while Mr. Shand has been subject to strict conditions for a lengthy period of time, and he is a youthful person, reference was only made to his having missed out on opportunities (with no specifics provided). I am not really aware of any specific hardship suffered by the Mr. Shand as a result of these conditions. I do not think that his situation meets the criteria of *Knockwood*.

[24] Having said that, what I find relevant for my purposes, is that Mr. Shand has been able to respect strict conditions for this lengthy period of time. This to me speaks to his demonstrated ability to respect court orders and bodes very well, in my view, for his continued and future rehabilitative prospects. I take that into account.

[25] Mr. Shand is presently unemployed. He has no significant health issues. He is in the process of completing his high school education through NSCC. If I have

any hopes for Mr. Shand, it is that this education continue and that he can put himself on a path towards a productive and happy future.

[26] It is often said that sentencing is an individual process; no two cases are alike. Sentencing is also a very difficult process. It is no easy task to balance all of the competing factors and craft a sentence which, in the view of the Court, accomplishes everything it needs to accomplish.

[27] I have started by reviewing the cases provided by defence counsel in relation to first time and youthful offenders, *R. v. Stein*, 1974 CanLII 1615 (ONCA) and *R. v. Priest*, 1996 CanLII 1381 (ONCA). These cases stand for the principle that first time offenders should not be sentenced to a period of custody unless the Court first considers non-custodial options and determines that because of the circumstances, or the gravity of the offence, that a non-custodial sentence would be inappropriate. I accept that principle and I keep it in mind as I consider the case of Mr. Shand.

[28] As I said earlier, the caselaw provides a very wide range of sentences for convictions for aggravated assault. In *R. v. Tourville*, 2011 ONSC 1677, the Court made reference this range. It noted that the bottom end would be cases such as *R. v. Peters*, 2010 ONCA 30, which was the case of an aboriginal 26 year old first time offender, who pled guilty to aggravated assault for having participated in a

barroom dispute and had used a broken beer bottle on the victim causing facial lacerations. Ms. Peters had a violent and abusive upbringing, but at the time of sentencing was making positive changes regarding employment and substance abuse issues. She was given a suspended sentence and three years probation.

[29] The middle range of 18 months to two years less a day would include first time offenders, or in cases of consensual fights where the accused had resorted to excessive force. The high end of four to six years would include recidivists with serious prior records, or unprovoked or premeditated assault containing no consent or self-defence issues.

[30] The Crown in the present case suggests that a sentence of four years minus time served is a fit and proper sentence for Mr. Shand.

[31] The caselaw provided by the Crown was the following.

[32] *R. v. Melvin*, 2015 NSSC 165. The accused was found guilty by a jury of aggravated assault. He had stabbed the victim leaving a scar, but no internal injuries. The victim had punched the accused and ran away. The accused then followed the victim and stabbed him at another location. The facts thereby showed provocation, but no self-defence elements, and the accused's response was completely out of proportion. The use of a knife was aggravating. The accused was

on a conditional sentence and on bail conditions at the time of offence, and had record with some violence. His presentence report was good with ongoing employment and family and community involvement. He was sentenced to 18 months custody.

[33] *R. v. Willis*, 2013 NSCA 78. The victim and the accused were consuming crack cocaine together and the accused demanded more money from the victim. They went to an ATM where the victim was unable to get the money and the accused struck the victim in the head repeatedly, causing a main artery in his head to sever. This caused extensive blood loss which would have been fatal without medical intervention, but had no lasting impact. The accused was 25 years old with a criminal record, including a few violent offences. He expressed remorse and was seeking educational options. The Court of Appeal determined that a three year sentence was appropriate.

[34] *R. v. Reddick*, 2017 NSSC 189. The accused struck the victim with a metal cane causing multiple lacerations to his face and head. At the time of sentencing, the victim had continued complaints of vision and pain issues. The accused was a 59 year old offender with a lengthy criminal record, including for crimes of violence. He was described by the Court, in fact, as having been "involved in criminal activity his whole life". The accused also had long standing addiction

issues, involving alcohol, painkillers, and an addiction to crack cocaine. He was sentenced to four years incarceration.

[35] *R. v. Ellison*, 2017 NSSC 202. The accused struck the victim in the head multiple times with a golf club causing multiple fractures and internal bleeding of the brain. The facts show an altercation between the victim and the accused which commenced over a trivial matter, but culminated in the accused aggressively chasing the victim down the street with the golf club and viciously beating him with it multiple times. The victim had lasting effects, including permanent disfigurement, pain, memory loss, as well as financial losses. The accused was 24 years old at the time of offence and was working as a maintenance person. He had a criminal record with two prior convictions for offences of violence. He was sentenced to four years imprisonment.

[36] Finally, in *R. v. Thomas*, 2015 NSCA 112, the accused stabbed the victim entirely unprovoked, which caused lacerated spleen, diaphragm and a fractured rib. Hospitalisation and surgery was required and there was some permanent damage. The accused had a very lengthy record, including for crimes of violence. He was sentenced to 66 months custody (five and a half years).

[37] I note that none of the cases provided by the Crown involve first time offenders; they all had criminal records. In my view, they are all to a greater or lesser extent, distinguishable. In particular, in my view, the *Thomas*, *Melvin*, and *Reddick* cases are entirely distinguishable and, in my view, not very helpful.

[38] The defence suggests that I sentence Mr. Shand to time served, and/or suspend the passing of sentence and release Mr. Shand on a three year probationary term (as made possible by subsection 731(1)(a) of the *Criminal Code*).

[39] Defence provided the following cases.

[40] *R. v. Moore*, 2018 NSJ No 513. An 18 year old aboriginal woman stabbed the victim in the abdomen. She was intoxicated despite an undertaking not to consume alcohol. She was on house arrest at the time of sentencing for one year. Her sentence was a two year suspended sentence.

[41] *R. v. Dicker*, 2013 NJ No 115. A 20 year old aboriginal male stabbed the victim in the chest. The victim spent two weeks in hospital. The accused had 16 prior convictions. He was sentenced to six months in custody.

[42] *R. v. Nakamura*, 2012 BCJ 437. An 18 year old with no criminal record. The conviction was for robbery and aggravated assault. The accused stabbed the victim

in the face and stomach, and the injuries were life threatening. He was sentenced to a two year suspended sentence with probation and 500 hours community service.

[43] *R. v. White*, 2014 OJ No 2344. Ms. White was a first time offender. She stabbed her domestic partner in his chest. He suffered a lung laceration and spent three days in the hospital. The accused had bail conditions for a period of four years, a suspended sentence of two years with a curfew for the first year of the probationary term.

[44] *R. v. Nicholls*, 2013 BCJ No 1369. The victim was stabbed multiple times, only causing wounds. The 21 year old aboriginal male had no record. The result was a suspended sentence 30 months probation.

[45] *R. v. Foreman*, 2015 BCJ No 866. The accused slashed the arm of a domestic partner with a knife. He was on conditions to stay away from her. He incurred nine more charges while awaiting sentencing. The result was a suspended sentence of two years.

[46] *R. v. Ross*, 2015 SJ No 290. The accused stabbed the victim in the face. It required 20 to 30 stitches. The accused was a 29 year old aboriginal woman with no priors. The result was a two year suspended sentence.

[47] *R v. Greenough*, 2013 BCJ No 1822. The accused threw a beer bottle in the victim's face causing serious facial injuries with permanent scarring. The accused was 21 years old and had no priors. The sentence was a suspended sentence for two years.

[48] *R. v. Gaudet*, 2009 NSJ No 489. The accused stabbed his brother three times. This only required stitches. There were many aggravating factors in this case and the sentence was for nine months of jail time followed by 12 months probation.

[49] I would agree with the Crown that the most relevant cases in that list for our purposes are the *Greenough* case and the *Nakamura* case.

[50] At the invitation of the defence, I have also reviewed the cases of *R. v. Barrons*, 2017 NSSC 261 and *R. v. Sutherland*, 2019 NSPC 17, wherein suspended sentences were ordered in cases of first time offenders convicted of very serious offences. The Court in *Barrons* ordered a suspended sentence for three years for the offence of break and enter into a dwelling house and commit assault. The defendant, in *Barrons*, was a first time offender with good prospects for rehabilitation. The Court in *Sutherland* also ordered a suspended sentence in the case of a youthful first time offender convicted of conspiracy to commit robbery.

[51] The Court in *Barrons*, in particular, made the point that our Court of Appeal has ruled that deterrence and denunciation can be achieved by way of a suspended sentence. I accept that such is the case. For example, in the case of *R. v. Scott*, 1996 NSCA 165, a sentence of two years less a day for a first-time offender convicted of robbery was overturned in favour of a suspended sentence with three years probation. The Court in *Scott* noted that the sentencing judge had erred in suggesting that deterrence could only be achieved by way of a custodial sentence, and had minimized the deterrent effect of a suspended sentence.

[52] The Court in *Scott* also referenced with approval the following passage from the Court of Appeal case of *R. v. Thompson* (1983), 58 N.S.R. (2d) 21, at page 24:

> "In my opinion when there is a strong chance of complete rehabilitation of the young offender the suspension of sentence with the imposition of controls to bring about that rehabilitation is a suitable method of protecting the public. Although the general deterrence of a period of imprisonment does not appear on the surface of this arrangement it must always be remembered that it is there. The offender who chooses to avoid the controls chosen for his rehabilitation may very well end up in prison, and as long as the public is assured of this then all the proper elements of sentencing are there."

[53] Similar comments were made by the Court in *R. v. George* (1992), 112 N.S.R. (2d) 183 (NSCA). In upholding a suspended sentence of two years for an accused convicted of threats and firearms offences, the Court noted:

> [14] The trial judge correctly identified the relevant principles and the only question is whether in balancing the importance of deterrence against the attempt to rehabilitate the respondent, she erred. On consideration, we have concluded

> that it was not shown that she did. Deterrence has not been totally overlooked. As the judge said, the sword of Damocles does, figuratively, hang over the respondent's head. Should there ever be a repetition of his dangerous behaviour during the period of suspension of sentence he not only will face punishment for that, but will face the very real risk of severe consequences flowing from these three convictions.

[54] In the face of all of the competing principles and issues I have mentioned, the case of Mr. Shand is a challenging one.

[55] I recognize the very serious level of violence that Mr. Shand exhibited on the evening in question. Mr. Shand took a knife and stabbed a person who had already fallen. He stabbed him in the back, with enough force to strike his spinal cord and lung, and left him bleeding on a city street at night in the middle of winter. That man has suffered greatly over the past number of years because of the actions of Mr. Shand. He has suffered physically, mentally, financially. He continues to suffer and may suffer his entire life. Everyone deserves to live free of violence and pain, and Mr. Shand’s actions took that away from Mr. Fancy. There are significant aggravating factors here.

[56] Having said that, there are also a number of mitigating factors here, which, in my view, are very significant and very much need to be factored into this assessment. Mr. Shand at the time of the offence was a young man with his own vulnerabilities, without parental involvement or support, newly living in a homeless situation which he had not previously experienced. I accept that what

happened that evening was unprovoked by Mr. Fancy and was not done in self-defence by Mr. Shand. Having said that, I also find that it was done spontaneously and without premeditation by Mr. Shand, in circumstances where he felt unsafe.

[57] Although he immediately left the scene, Mr. Shand did return that same evening and identify himself to police as the person they were looking for. He has pled guilty and has taken responsibility and expressed remorse for his actions.

[58] All have indicated that what Mr. Shand did that evening was out of character for him, and that he does not normally exhibit violent or anti-social tendencies. Since that evening, Mr. Shand has lived with strict release conditions and has managed to do so without incident. Those around him describe him as a nice young man, gentle with children, making efforts to better himself. All of that points to the events of February 21, 2019 as being a one time incident of violence, and speaks to Mr. Shand's ability to lead a pro-social life. In my view, he has very good prospects for rehabilitation.

[59] All of that is to say, Mr. Shand, that I do not minimize or forget what you did to Mr. Fancy, and nor should you. It was a horrific act. But I have also been convinced that you are not on a path of a life of crime. This is your first conviction, you are a very young man, and according to everyone this is not how you normally

act. You have experienced some challenges in your life, but luckily you have had the support and guidance of Mr. Findlay and his partner. I am sure you know how lucky you are to have him in your life. It is obvious to me that his good influence and consistent support of you has played an enormous part in helping you get to this point. I am sure it will continue to play a significant role. I hope you recognize that and that you will continue to seek support and guidance from him.

[60] Under all of the circumstances here, as I have described them, and in particular that Mr. Shand is a very youthful and first time offender, with good prospects for rehabilitation, I have considered the appropriateness of a non-custodial sentence. I have concluded that a custodial sentence is not required to achieve denunciation and deterrence here. I have concluded that a suspended sentence will achieve those goals, as it has both a deterrent and a denunciatory effect, it will ensure the protection of the public, and also that it leaves Mr. Shand with the reality that, should he again become embroiled in illegal activity, he could be re-sentenced for this offence.

[61] Therefore, for the conviction of aggravated assault, I am suspending the passing of sentence on Mr. Shand and directing that he be released on a probation order for a period of 36 months. The conditions of that probation order are as follows:

1. Keep the peace and be of good behaviour;

2. Appear before the Court when required to do so by the Court;

3. Reside at 24 Russell Lake Drive, Dartmouth, Nova Scotia, unless prior approval to reside elsewhere is obtained from the Court;

4. Notify your probation officer of any change of employment or occupation;

5. Report to the Probation office in Dartmouth within two working days of today;

6. Have no contact directly or indirectly with Kyle Fancy;

7. Do not attend any residence or place of employment or education of Kyle Fancy;

8. Possess no weapons as that term is defined by the *Criminal Code*;

9. Make reasonable efforts to locate and maintain education or employment;

10. Participate in counselling and/or programs as deemed appropriate by your probation officer;

11. For the first full year of this Order, from today up to July 6, 2022, Mr. Shand is to respect a curfew of 10:00 p.m. to 6:00 a.m., the only exception being a medical emergency for himself;

12. Within the first 18 months of the Order, you are to complete 180 hours of community service work;

13. You are to present yourself at the door of your residence if requested by a peace officer to prove compliance with this Order.

[62] As you have heard, Mr. Shand, sentence is suspended and you know what that means; in the event of a breach, you are liable to essentially being re-sentenced for this offence. You should clearly understand that if you are back here to be sentenced for this or any other offence, the Court will not likely be inclined to give you any breaks. Based on what I have been told about you, Mr. Shand, I am not expecting you back.

[63] The Crown had also sought a number of ancillary Orders which are not objected to by Mr. Shand. I find some of them are appropriate in the circumstances and I have signed them as is: the DNA Order (taking of samples for databank), as well as the 491 forfeiture Order for the folding knife. The 743.21 no-contact Order is no longer appropriate. The section 109 Order I have signed is a ten year weapons

prohibition with the commencement date being the date that his guilty plea was accepted, January 25, 2021.

[64] As requested by the Crown, the remaining charges on the indictment are dismissed for want of prosecution.

Boudreau, J.