

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Durley*, 2025 NSSC 271

Date: 20250825

Docket: CRAT No. 539664

Registry: Antigonish

Between:

His Majesty the King

v.

Francis Scott Durley

DECISION

Judge: The Honourable Justice Peter P. Rosinski

Heard: July 9, 2025, in Antigonish, Nova Scotia

Counsel: Tracey Sturmy for the Crown
Adam Rodgers for Mr. Durley

By the Court:

Introduction

[1] This is the matter of sentencing of Francis Scott Durley for having committed a number of offences, including an aggravated assault, by having shot the mother of their child, Shauna Timmons, in the stomach area with the .22 calibre rifle, on September 19, 2024.

[2] In totality, he will be sentenced to 6 years in custody less pre-sentence custody credit.

[3] A number of ancillary Orders will also be ordered.

Background

[4] Mr. Durley has been in custody since the date of the offences charged, namely on or about September 20, 2024.

[5] The Crown and Defence have jointly recommended a total sentence of 6 years' imprisonment, from which will be deducted a pre-sentence custody credit of 1.5 days for each day served on remand (340 days) or 510 days credit per s. 719(3) *Criminal Code*.

[6] The Indictment, attached hereto as Appendix "1", lists the charges that were to be heard in a trial scheduled for December 1-5, 2025.

[7] A lengthy and successful resolution conference was held on July 9, 2025.

[8] Mr. Durley's counsel indicated that, although he was charged with attempted murder per s. 239, as against Shauna Timmons, his position remains that "he did the act" but the Crown would not be able to show he subjectively intended to kill Ms. Timmons.

[9] However, he was prepared to plead guilty to aggravated assault (s. 268)¹ and other offences which I reference below - leaving any remaining charges to be dismissed for want of prosecution.

¹ The essential elements of this offence, when involving a discharged firearm are set out in *R. v. Foti*, 2002 MBCA 122.

[10] The Indictment was amended to reflect his guilty plea to aggravated assault in place of the attempted murder charge.

[11] In summary, he pled guilty as follows, and the joint recommendations are:

1. s. 268 on Shauna Timmons - 5 years' custody;
2. s. 87(1) pointing a firearm at Shauna Timmons - 1 year custody, concurrent;
3. s. 87(1) pointing a firearm at Chandra Timmons - 1 year custody, consecutive;
4. s. 91(1) possession of a firearm without a license - 6 months' custody, concurrent;
5. s. 88(2) possession of a weapon for a dangerous purpose - 6 months' custody, concurrent;
6. s. 264.1(1)(a) uttering threats to Shauna Timmons - 12 months' custody, concurrent to count 1; and
7. s. 264.1(1)(a) uttering threats to Chandra Timmons - 12 months' custody, concurrent to count 3.

[12] The Crown seeks the following ancillary orders:

1. DNA - s. 487.051;
2. Weapons prohibition - s. 109 for life;
3. Non-communication Order - s. 743.21;
4. Forfeiture of seized firearm/accessories - s. 491; and
5. Victim surcharge - s. 737.

[13] Pursuant to s. 606 (1.1) of the *Criminal Code*, I was satisfied to accept his guilty pleas since I concluded he was making the plea voluntarily; he understood that the plea is an admission of the essential elements of the offence and the nature and consequences of the plea; that he understood the Court is not necessarily bound by any agreement made between the accused and the prosecutor; and that the facts support the charges.

[14] Sentencing was set over to August 25, 2025, with the expectation that Victim Impact Statement(s) may be filed. Attached hereto as Appendix “2”, is an Agreed

Statement of Facts pursuant to s. 655 of the *Criminal Code* (see also Justice Beveridge's reasons in *R. v. Falconer*, 2016 NSCA 22).

A true "joint recommendation"

[15] Counsel advised that they would be presenting a true joint recommendation on sentence to the Court. I agree it certainly is that.

[16] When a true joint recommendation is presented to the Court, generally, it should be accepted by a Court unless, as Justice Moldaver stated in *R. v. Anthony-Cook*, 2016 SCC 43: "[5] ...the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest."

[17] He elaborated:

[32] Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. But, what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.

[33] In *Druken*, at para. 29, the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system". And, as stated by the same court in *R. v. B.O.2*, 2010 NLCA 19, at para. 56 (CanLII), when assessing a joint submission, trial judges should "avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts".

[34] In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold - and for good reason, as I shall explain.

[18] The joint recommendation proposing that Mr. Durley be sentenced to 6 years' imprisonment (less pre-sentence credits) meets those standards, and I accept it.

Considerations on sentencing

[19] The circumstances of the offender and the offences, examined in light of the general and specific principles of sentencing in the *Criminal Code* and with reference to precedent sentencing decisions, will frame what would be a fit sentence in this case.

[20] There are many aggravating factors here arising from the commission of the offences themselves, as well as that Mr. Durley has a prior record for domestic violence and his prior criminal record. The Nova Scotia Public Prosecution Service "Bail Report" will be made Exhibit 1 at the sentencing hearing.

[21] Mr. Durley has pled guilty which is a mitigating factor.

[22] The Crown notes that Mr. Durley faces a maximum term of imprisonment "not exceeding 14 years" per s. 268(2) of the *Criminal Code*, but that that has been increased pursuant to s. 718.3(8) of the *Criminal Code* to life imprisonment, because he has previously been convicted of "an indictable offences in the commission of which violence was used, threatened or attempted against an intimate partner"².

[23] The previous incident of intimate partner violence can be found in the filed Public Prosecution Service - Bail Report current as of August 12, 2025 at page 13 of 21 which shows him having been sentenced June 9, 2017 to 12 months probation in relation to offences committed on January 1, 2017, under sections 266(b) and 264.1 regarding Brittany Thompson. One of the conditions included "undergo and successfully complete any counselling or program regarding domestic violence and anger management directed by your Probation Officer" (see pp. 1-2 and 5 of 21 Bail Report).

[24] His only other conviction for violence arose on June 8, 2017 - s. 267 (b) (assault causing bodily harm) for which he was sentenced to 30 days in custody on June 9, 2017.

[25] General and specific deterrence to Mr. Durley, and denunciation, are the paramount sentencing considerations, although his rehabilitation is a significant factor as well.

² It would appear that the previous intimate partner offences occurred in 2017, and that the amendment which led to the addition of the present s. 718.3(8) only came into force as of September 19, 2019. Thus, Mr. Durley is effectively a first-time offender insofar as that s. 718.3(8) is concerned.

[26] Ranges of sentences can be helpful to ensure some parity of sentencing outcomes in this case as compared with similar ones, so long as the proportionality of the sentence remains the primary focus. Cases which offer useful insights include:

- *R. v. Mac Evoy*, 2023 NSPC 30, 2023 NSPC 35 and 2023 NSPC 59 (paras. 20-31: 4 years' custody) written by the very highly regarded Judge Peter Ross;
- *R. v. Whebby*, 2017 NSPC 83 (para. 82) Hoskins PCJ (as he then was); and
- *R. v. Brown*, 2024 NBKB 137 (para. 59) per Justice Kathryn Gregory.

Victim Impact Statements

[27] Even without Impact Statements from the victims, I am prepared to infer from the Agreed Statement of Facts that Shauna and Chandra at the time experienced a very traumatic event on September 19, 2024, and that those traumas remain with them to the date of sentencing - and will likely continue to remain with them.

[28] I am satisfied that the children present, in accordance with their age at the time, also experienced significant trauma, as a result of Mr. Durley's actions that day.³

[29] The Agreed Statement of Facts confirms that:

... When Shauna went back into the home, she says Mr. Durley "lost it". Mr. Durley went down to the end of the hall and came up the hall with the 22 calibre rifle gun. Mr. Durley said if Shauna did not get out of the house he would shoot her. Mr. Durley said "you're not making it out of this driveway". ... Mr. Durley pointed the gun out the window at her sister's car and said he would blow all the windows out of the car. ... Chandra told Mr. Durley she would take the child back the next day. Mr. Durley then pointed the gun at Chandra and said words to the effect of "I will shoot you right in the fucking head, you bitch." Mr. Durley had the gun pointed at Chandra's head at this time. ... Chandra responded "do it" or "I dare you" not really thinking he would shoot her. ... Shauna stepped out backward and pulled the door shut behind her. They could hear the footsteps and Mr. Durley ripped the door open, pointed the gun and shot Shauna, at close range, in the stomach. ...the gun had been pointed directly at her stomach. She notes she exclaimed "you fucking shot me" and he replied "the safety was off". ... Ms. Timmons lost her whole spleen, half her pancreas, a piece of her small intestine

³ See also my reasons in *R. v. LKM*, 2024 NSSC 189.

and the bullet remains lodged in her spine. The doctors were able to save her liver and reattach her bowel.

[30] If Victim Impact Statements are filed, I shall have read them carefully and take them into consideration.

Conclusion

[31] The moral blameworthiness associated with Mr. Durley's actions, particularly in relation to his handling and use of the .22 calibre rifle, is very high, especially as they had life endangering and enduring consequences for Shauna Timmons - see also, *inter alia*, s. 718.2(a).

[32] On the other hand, the proposed sentence here is one that meets the criteria of a true joint recommendation.

[33] I sentence Mr. Durley to 6 years' imprisonment less pre-sentence custody credit (510 days).

[34] The sentence will be broken down as follows:

Charge	Sentence
s. 268	5 years
s. 87(1) – Shauna Timmons	1 year concurrent
s. 87(1) – Chandra Timmons	1 year consecutive
s. 91(1)	6 months' concurrent
s. 88(2)	6 months' concurrent
s. 264.1(1)(a) – Shauna Timmons	12 months' concurrent to Count 1 - s. 268
s. 264.1(1)(a) – Chandra Timmons	12 months' concurrent to Count 3 - s. 87

[35] I grant the Crown's requested ancillary Orders:

1. DNA s. 487.051(1) - by virtue of the s. 268 offence being a "primary designated offence" per section 487.04(a);
2. Weapons prohibition - s. 109(1)(a.1) - for life;
3. Non-communication Order per s. 743.21 regarding Shauna Timmons, her children (excepting the child that she and Mr. Durley are parents to, and then only as permitted in accordance with an Order of a Court having civil/family jurisdiction or by unequivocal agreement between Shauna Timmons and Mr. Durley), any of her immediate family

members; Chandra Timmons, her children and any of her immediate family members; and

4. Forfeiture per s. 491 of seized firearms/accessories.

[36] Regarding a Victim Surcharge, I order none to be paid as I conclude that it would tend to take monies away from Mr. Durley's paying his "financial obligations" towards his child with Shauna Timmons, per s. 737(2.1).

Rosinski, J.

Appendix "1"

CANADA
PROVINCE OF NOVA SCOTIA
PROVINCE DE LA NOUVELLE-ÉCOSSE

C. R. No.
CRAT-539664

IN THE SUPREME COURT OF NOVA SCOTIA,
DANS LA COUR SUPRÊME DE LA NOUVELLE-ÉCOSSE

HIS MAJESTY THE KING

SA MAJESTÉ LE ROI

against
contre

FRANCIS SCOTT DURLEY

of 1104 Harve Boucher Road, Frankville, Nova Scotia
de dans le comté de

stands charged
est inculpé(d) d'avoir

COUNT #1

THAT on or about September 19, 2024, at or near Frankville, Nova Scotia, did attempt to murder Shauna Timmons while using a firearm by discharging a .22 Cal Rifle at Shauna Timmons, contrary to section 238(1) of the Criminal Code;
(268 (Amended July 9, 2025))

COUNT #2

AND FURTHERMORE, on or about September 19, 2024, at or near Frankville, Nova Scotia did without lawful excuse, point a firearm to wit: a .22 Cal Rifle at Shauna Timmons, contrary to Section 87(1) of the Criminal Code;

COUNT#3

AND FURTHERMORE, on or about September 19, 2024, at or near Frankville, Nova Scotia did without lawful excuse, point a firearm to wit: a .22 Cal Rifle at Chandra Timmons, contrary to Section 87(1) of the Criminal Code;

SEE APPENDIX A FOR FURTHER COUNTS

DATED this 11 day of January A.D. 2025, at Antigonish, Nova Scotia.

FAIT LE 11 jour de en l'an de grâce 2025, à ,
Nouvelle-Écosse.

Agent of the Attorney General
Agent(e) du Procureur général

Une traduction en français des détails de ce document peut être obtenue sur demande.
A translation into french of the details contained in this document may be obtained upon request

APPENDIX A

COUNT #4

AND FURTHERMORE, on or about September 19, 2024, at or near Frankville, Nova Scotia did without lawful excuse point a firearm to wit: a .22 Cal Rifle at McKenna Durley, contrary to section 87(1)(Criminal Code;

COUNT #5

AND FURTHERMORE, on or about September 19, 2024, at or near Frankville, Nova Scotia did without lawful excuse point a firearm to wit: a .22 Cal Rifle at Sierra MacDonald, contrary to section 87(1)(Criminal Code;

COUNT #6

AND FURTHERMORE, on or about September 19, 2024, at or near Frankville, Nova Scotia did possess a firearm, to wit . 22 Cal Rifle without being the holder of a licence under which he may possess it contrary to Section 91(1) of the Criminal Code;

COUNT #7

AND FURTHERMORE, on or about September 19, 2024, at or Frankville, Nova Scotia did possess a weapon, to wit .22 Cal Rifle for a purpose dangerous to the public peace contrary to Section 88(2) of the Criminal Code;

COUNT #8

AND FURTHERMORE, on or about September 19, 2024, at or Frankville, Nova Scotia did knowingly utter, convey or cause Shauna Timmons, to receive a threat to cause death or bodily harm to Shauna Timmons, contrary to Section 264.1(1)(a) of the Criminal Code;

COUNT #9

AND FURTHERMORE, on or about September 19, 2024, at or Frankville, Nova Scotia did knowingly utter, convey or cause Chandra Timmons, to receive a threat to cause death or bodily harm to Chandra Timmons, contrary to Section 264.1(1)(a) of the Criminal Code;

Appendix "2"

In the Supreme Court of Nova Scotia

BETWEEN:

His Majesty the King

-and-

Francis Durley

RECEIVED ANTIGONISH

AUG 07 2025

SUPREME COURT

AGREED STATEMENT OF FACTS

In accordance with section 655 of the Criminal Code, Francis Durley and His Majesty the King agree and admit the following facts for the purpose of dispensing with proof of them in these proceedings:

1. Shauna Timmons (hereinafter "Shauna") had been communicating with Mr. Durley about dropping their child off earlier in the day on September 19, 2024 but he was not responding to her.
2. Shauna repeatedly contacted her sister, Chandra (hereinafter "Chandra", to please drive her and the child to Mr. Durley's.
3. Chandra's partner does not want her at Mr. Durley's home and she reluctantly agreed to take Shauna.
4. Shauna's eczema was flared up and painful.
5. Mr. Durley acted surprised when they arrived.
6. Mr. Durley was arguing that he did not want to keep the child.
7. And, then he would argue that he did want the child.

8. Shauna walked out of the home and discussed concerns with her sister over liquor bottles and concerns about drugs. Her sister said to go back in and get the child and that she would take the child back the next day.
9. The door to the home does not close properly and Shauna pushed it open.
10. When Shauna went back into the home, she says Mr. Durley "lost it".
11. Mr. Durley went down to the end of the hall and came up the hall with a 22 calibre rifle gun.
12. Mr. Durley said if Shauna did not get out of the house he would shoot her.
13. Mr. Durley said "you're not making it out of this driveway".
14. Shauna called for the child "Kenna come with Mommy" and she told Mr. Durley they were getting ready to go.
15. Mr. Durley pointed the gun out the window at her sister's car and said he would blow all the windows out of the car. Her sister's child was in the car but this may not have been visible to Mr. Durley.
16. Chandra had been in the process of entering the home and standing behind the half wall. She could not see Mr. Durley coming down the hall but heard her sister say "oh shit" and she took a step or two ahead and looked around the corner.
17. Chandra could then see the rifle in his hands and the rifle had a scope.
18. Chandra told Mr. Durley she would take the child back the next day.

19. Mr. Durley then pointed the gun at Chandra and said words to the effect of "I will shoot you right in the fucking head, you bitch".
20. Mr. Durley had the gun pointed at Chandra's head at this time. Chandra was about to pick the child up.
21. Chandra responded "do it" or "I dare you" not really thinking he would shoot her.
22. Shauna said something and the moment Mr. Durley looked at Shauna, Chandra wrapped her arms around the child and "booked'er for the car" thinking "please don't fall" as she went down the stairs.
23. Chandra put the child in the car and went to return to Shauna to make sure she got out and her child said "no, no, no".
24. Chandra told Shauna not to turn her back on him.
25. Shauna stepped out backward and pulled the door shut behind her.
26. They could hear the footsteps and Mr. Durley ripped the door open, pointed the gun and shot Shauna, at close range, in the stomach.
27. Shauna notes the gun had been pointed directly at her stomach.
28. She notes she exclaimed "you fucking shot me" and he replied "the safety was off".
29. Mr. Durley closed the door.
30. Chandra called 911.
31. Mr. Durley and Ms. DeCoste also called 911.

32. While was on 911, Mr. Durley opened the door again and yelled words to the effect of "well, you came running in my house. You guys came running into my fucking house" and these words can be heard on the 911 audio.

33. Jed DeCoste and Ash Pelly arrived.

34. They walked over Shauna (lying on the step) and said words to the effect of "Frank didn't do it right and if he would have done it right then she wouldn't be breathing" and she "got what she deserved".


35. The sisters could hear running around inside the minihome.

36. Mr. DeCoste and Ms. Pelly left before RCMP arrived and turned the opposite way at the end of the driveway.

37. Chandra Timmons was able to walk Shauna and the two children down the driveway to the RCMP at the direction of 911 after the RCMP staging was set up.

38. Ms. Timmons lost her whole spleen, half her pancreas, a piece of her small intestine and the bullet remains lodged in her spine. The doctors were able to save her liver and reattach her bowel.

Agreeing as to content:


Adam Rodgers
Solicitor for Francis Durley

Francis Durley


Tracey Sturmy
Crown Attorney