

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. Shephard, 2014 NSSC 254

**Date:** 20140626

**Docket:** CRH 407765

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Jerrell Ervin Shephard

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DECISION ON SENTENCING

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**Restriction on publication: 486 CCC Publication Ban**

**486.6 (1) Every person who fails to comply with an order made under subsection 486.4(1), (2) or (3) or 486.5(1) or (2) is guilty of an offence punishable on summary conviction. (2) For greater certainty, an order referred to in subsection (1) applies to prohibit, in relation to proceedings taken against any person who fails to comply with the order, the publication in any document or the broadcasting or transmission in any way of information that could identify a victim, witness or justice system participant whose identity is protected by the order.**

**Judge:** The Honourable Justice Glen G. McDougall

**Heard:** June 26, 2014

**Oral Decision:** June 26, 2014

**Written Decision:** July 14, 2014

**Counsel:** Paul Carver and Scott Morrison, on behalf of the Crown  
Alfred Seaman, on behalf of Jerrell Ervin Shephard

**By the Court:**

[1] After trial lasting approximately seven day, the Court convicted Jerrell Ervin Shephard of:

1. The attempted murder of KG, contrary to section 239(1)(a) of the *Criminal Code*;
2. Possession of a prohibited or restricted firearm with ammunition while not having an authorization or license to possess such firearm contrary to section 95 of the *Criminal Code*; and
3. Possession of a firearm while prohibited by a section 109 Order of Prohibition, contrary to section 117.01(1) of the *Criminal Code*.

A conditional stay of conviction was entered on counts 2, 3, 4, 5, 7 and 9 of the Indictment based on the so-called “Kienapple” principal.

[2] Initially the Crown gave notice of application to have Mr. Shephard declared a dangerous offender. Mr. Shephard was remanded so that an assessment could be made for that purpose.

[3] On Monday, June 9, 2014 the dangerous offender application was abandoned. The hearing was then adjourned to allow Crown and Defence counsel time to put together a joint recommendation on sentence for this Court’s consideration.

[4] In its brief detailing the joint sentence recommendation, the Crown has provided a ‘Summary of the Facts’ found by the Court in arriving at its’ decision which was given orally on June 7, 2013. This led to the guilty verdicts on counts 1, 6 and 8 which were alluded to earlier.

[5] I am satisfied that the Crown’s Summary of the Facts accurately reflects the Court’s findings based on the evidence presented during the course of the trial. The Crown’s Summary of Facts are reproduced here as follows:

On the night of December 31, 2011 Jerrell Shephard was at home with three friends. One of his friends braided his hair into a distinctive checkerboard pattern. While she was doing this, Mr. Shephard was consuming alcohol.

Mr. Shephard and his friends decided to go to a New Year's Eve party at the Holiday Inn in Dartmouth. Before leaving for the hotel, he armed himself with a handgun for no apparent reason.

By the time Mr. Shephard and his friends arrived at the Holiday Inn, the party had been broken up. Mr. Shephard and his three friends crossed Wyse Road to the Metro Transit Bus Terminal.

KG was 16 years old on December 31, 2011. On that New Year's Eve, he joined several friends at an apartment in Dartmouth to celebrate. KG consumed alcohol. His friends consumed alcohol and perhaps some marijuana.

Close to midnight, KG and his friends left, intending to go to downtown Halifax. They walked toward the bus terminal on Wyse Road.

On the way, KG had a brief encounter with a young woman who knocked his ball cap off his head. The ball cap was placed back on K's head facing forward, which was not the way he normally wore it. Strangely, this seemingly insignificant act may have saved his life.

KG and his friends proceeded to the bus terminal on Wyse Road. The bus terminal was busy that evening – given that it was New Year's Eve, there was more pedestrian traffic than was customary.

KG stepped onto the platform of the bus terminal and almost immediately encountered Mr. Shephard.

After a brief exchange of words, Mr. Shephard drew a silver handgun and shot KG twice at point blank range. The first bullet entered KG's chest, missed his heart by the width of a finger and lodged near his spine.

KG did not immediately fall. Mr. Shephard raised the handgun, pointed it at KG's head and fired again. The second bullet impacted the lower portion of the brim of KG's ball cap, went through the hard plastic and exited the top of the brim, impacting the thick stitching of the cap. The bullet had lost sufficient velocity that it could not penetrate the cap [*sic*, skull]. The force of it caused a gash to KG's head.

KG staggered away. Mr. Shephard took a step towards him but noticed a security guard approaching and said “*oh shit, I gotta go.*”

Mr. Shephard fled the bus terminal on foot.

KG staggered several paces and collapsed. Paramedics transported him to hospital. En route, he was asked for his dying declaration.

Mr. Shephard fled the area, but within a few blocks he stopped at a stranger’s house to ask for directions to Highfield Park and had a beer. He showed the resident of the house a silver handgun and seemed to be bragging about it.

At the hospital, KG was assessed by the trauma team. He did not require immediate surgery because the bullet to his chest had missed his heart. Dr. Biddulh said that if the bullet had been even a few millimetres closer to his heart, there would have been a 99.9% chance that KG would be dead.

Ultimately, that bullet was surgically removed in the Spring of 2013.

[6] I have had the benefit of reading the comprehensive brief presented by Crown counsel, Mr. Paul Carver and Mr. Scott Morrison.

[7] In addition to providing a summary of the facts of this case it also refers to the results of the assessment report prepared by Dr. Christopher Murphy under the supervision of Dr. Aileen Brunet, a forensic psychiatrist.

[8] Some of the results of that assessment by Dr. Murphy indicates that he concluded that Mr. Shephard suffers from substance abuse disorder (cannabis, benzodiazepines, alcohol). He also suffers from attention deficit hyperactivity disorder (inattentive type). He suffers from antisocial personality disorder and also learning disorders (reading disorder, math disorder, written expression disorder).

[9] Some of the other relevant portions of Dr. Murphy’s report indicate that:

Mr. Shephard is a high risk to reoffend. Dr. Murphy concluded that Mr. Shephard has a history of rapid recidivism once released into the community. Dr. Murphy also concluded it is encouraging that Mr. Shephard has refrained from engaging in recurrent violent behaviour while in the correctional system. This is likely reflective

of the fact that he does not have significant anger management and emotion dyscontrol issues as many violent offenders do.

**THE COURT (TO Mr. Shephard):** I recall from the evidence of the taxi driver who transported Mr. Shephard and his female friends from their apartment to the Holiday Inn that, although Mr. Shephard initially seemed angry at the fact that the taxi driver would not allow him to smoke a cigarette in the cab and required that he either put it out or finish smoking it outside the cab before entering it, later, and on the ride to the Holiday Inn I recall that the taxi driver was concerned about Mr. Shephard's apparent anger, but after arriving at the Holiday Inn, I also recall the taxi driver saying that Mr. Shephard was apologetic which once again tells me that you're not all bad. That you at times fly off the handle, even though Dr. Murphy says you don't have an anger management problem, but you understand right from wrong and when you're wrong you're man enough to apologize for it. That may assist you down the road, Mr. Shephard. I can only hope it does.

[10] The Crown brief also looks at Mr. Shephard's history of criminal behaviour. It is, to say the least, quite an unenviable track record. Indeed, one can say it is alarming particularly when you think that Mr. Shephard is still such a young man, a young man who could resort to such acts of gratuitous violence without any apparent restraint or self-control. My understanding, Mr. Shephard, is you are not quite 22 years of age.

[11] I'm not going to go through the history. Mr. Carver in his submissions referred to several of the offences that you've been convicted of in the past or have pled guilty to as the case may be. All of which has culminated in the series of offences that now brings you before me.

[12] The Crown brief also refers to the principles of sentencing outlined in section 718 of the *Criminal Code*. I am satisfied that the recommended sentence properly factors in these sentencing principles which have the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;

- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

[13] In cases involving firearms the Courts have often emphasized the need for deterrence and denunciation when imposing a fit and proper sentence.

[14] Given the extreme danger firearms present and the often fatal results that occur when firearms are used, the message has to be sent that improper possession and use of such lethal objects cannot and will not be tolerated. The public has to be protected from the indiscriminate use of firearms by individuals who are not properly trained or licensed for their possession and use.

[15] It might not be possible to rid the streets of all illegal firearms but steps can be taken to clean up our neighbourhoods by incarcerating those who choose to carry them for unlawful purposes.

[16] The Crown brief also speaks to the aggravating and mitigating circumstances pertaining to this case. The Court must take into consideration these factors in order to comply with section 718.2 of the *Criminal Code*.

[17] The range of sentence for attempted murder as established by earlier decisions from the Ontario Court of Appeal, the Ontario Superior Court of Justice, the Manitoba Court of Appeal and our own Nova Scotia Court of Appeal which were referred to in the Crown brief, places the recommended sentence within the upper end of the range. The Crown suggests that the Ontario Court of Appeal decision in *R. v. Brown*, 2009 ONCA 563, which upheld the trial judge's sentence of life imprisonment for attempted murder presented a fact scenario closes to the one now before this Court. Quoting from the trial judge's decision, Justice Nordheimer, he had this to say at para. 19 [upheld by the Ontario Court of Appeal]:

One distinguishing factor on which the defence places great emphasis is that this was not a planned and deliberate act. I agree that it was not. I do not accept, however, that the fact that the act was not planned and deliberate is as distinguishing a factor as it might otherwise be when one considers how this shooting arose. This shooting did not occur in the heat of an argument or other circumstances which might be seen

as causing the accused to lose his or her senses. It occurred for what is, in essence, no real reason at all. The fact that someone would shoot another person multiple times because they did not like how they greeted them is so difficult to understand or comprehend that it is at least as unsettling, if not more so, to one's basic sense of morality as is the fact that someone would sit down and plan an attack on someone.

[18] In the case that is before me there does not appear to have been any advance planning to the assault by Mr. Shephard on KG. It might have been motivated simply by KG's refusal to give Mr. Shephard some cheap earrings that KG was wearing. What could be more trivial than this, if indeed, this was what motivated the attack! Any right-minded person would be shocked to think that one person could trivialize another young person's life to such an extent. It is almost beyond comprehension. It was a senseless act and totally devoid of reason and human compassion.

[19] I cannot adequately express the revulsion I have for this vile, uncaring and inconsiderate act. I hope the sentence I am about to impose on Mr. Shephard adequately reflects the Court's and also the public's condemnation of this type of behaviour.

[20] Mr. Shephard will have plenty of time to think about the harm he has inflicted on KG and KG's family and friends. And, as I said before, it has had a very significant impact on members of his own family and, I am sure, particularly on his mother.

[21] I can only hope that Mr. Shephard uses the time that will be made available to him while incarcerated to benefit or to participate and benefit in any counselling or treatment that might be offered, that might assist him to appreciate the gravity of his offences for which he is being sentenced here today.

**THE COURT:** Mr. Shephard, it will be left to you to decide how you will conduct yourself not only while incarcerated but, more importantly, after you are released from jail. I cannot tell you what you should do. I can only encourage you to begin the process of turning your life around. I hope you do.

You will still be a relatively young man when you are finally released. Continuing the path that you have been on over the past few years will guarantee just one thing – a return to a life behind bars and further separation from your family and from your two children.

My thoughts and best wishes go out to the G family and particularly to KG. I know it will be difficult to put these events behind, or he will have difficulty putting it behind him, but with the ongoing support of his family and by availing himself of treatment and counselling hopefully over time he will be able to put these events behind him so that he once more can see the good things life has to offer. I realize it will be a struggle but together I think you stand a better chance of overcoming the pain and suffering you have experienced and will continue to experience in the years to come.

Mr. Shephard, I have doing this job now for almost 13 years. Before coming here I did not practice criminal law - at least not to any great extent - and I often tell people that one of the most difficult things about my job as a Supreme Court Judge is to render the appropriate sentence in cases where people have either pled guilty to an offence charged or are found guilty either by me or by a Jury.

In your case, and I eluded to this before, it is very difficult for me to divorce myself from the fact that I am, like you, flesh and blood. I have feelings. I have emotions. I am a father. I have four kids. I have a son who is not much older than you and I cannot imagine what I would feel like or how I would feel if my son had shot someone else's son. I cannot image how I would feel if someone in my position was sentencing my son to a term of imprisonment of in excess of 19 years. It would break my heart. I do not take comfort in sending anyone to jail. I certainly do not take comfort in sending someone who is three weeks short of being 22 years old to jail for a period of upwards of 19 years and 9 months, but I must. I have to send the message. I have to indicate to you and to anybody who might be persuaded to do anything similar to what you have done that society, the public, cannot accept it and certainly cannot condone it. The public demands that I impose a sentence that sends you and others the message of deterrence and of denunciation.

Mr. Shephard, if you would please stand.

[The Court gives Mr. Shephard the opportunity to speak].



[22] I am prepared to accept the joint recommendation. On the first count, the offence that you were found guilty of, that being the attempted murder of KG, I sentence you to a period of incarceration of 19 years.

[23] On count 6, which is the offence of possessing a prohibited or restricted firearm with readily accessible ammunition without being a holder of an authorization or license and registration contrary to section 95 of the *Criminal Code* you are sentenced to a concurrent term of 6 years, concurrent to the period of incarceration for attempted murder.

[24] On count 8 of the Indictment, possession of a firearm while prohibited from doing so by Order dated July 15, 2010 which is contrary to section 117.01(1) of the *Criminal Code* I sentence you to a period of incarceration of 9 months to be served consecutive to the period of incarceration for attempted murder.

[25] In addition, I am prepared to accept the joint recommendation that you be given credit for the time you have been held on remand awaiting trial and subsequently awaiting sentence, at the rate of 1.5 days credit for every day spent on remand. That time on remand has been approximately 2 years and 6 months, which gives you a credit which will be deducted from the overall sentence of 19 years 9 months, of 3 years and 9 months leaving you with 16 years, on a go forward basis, left to be served.

[26] In terms of the section 109 firearms prohibition for life, I am granting that and I am also granting the DNA Order request so that a sample will be obtained from you so that a DNA analysis can be made as well.

**THE COURT:** Again, Mr. Shephard, is there anything that you wish to say before we adjourn?

**MR. SHEPHARD:** Just for the record I just want share with the Court that I accept entire responsibility for what took place that night.

**THE COURT:** Mr. Shephard, I usually tell people I hope I don't see you again in this courtroom. I hope I never hear of you being in a courtroom again. I hope that maybe the next time I see you it is in some public park in HRM where my wife and

I could be walking our dog and you'll be with your two children. That's what I hope for some day, but not in a courtroom. But that depends on what you decide to do with the rest of your life too. It's all on your shoulders now. Good luck with that.

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Justice Glen G. McDougall