

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Shepherd*, 2016 NSSC 329

Date: 20161122

Docket: CRH 441654

Registry: Halifax

Between:

Her Majesty the Queen

v.

Randall Steven Thomas Shepherd

Judge: The Honourable Justice Patrick J. Duncan

Heard: November 22, 2016, in Halifax, Nova Scotia

Written Decision: December 2, 2016

Counsel: Mark Heerema and Shauna MacDonald, for the Crown
Roger Burrill and Lee Seshagiri, for the Defence

By the Court:

The Charge

[1] Mr. Shepherd has entered a plea of guilty to the offence that he, together with Lindsay Kanitha Souvannarath did, between the 21st day of December, 2014 and the 14th day of February 2015 at or near Halifax Nova Scotia conspire with James Gamble to murder unnamed members of the public, contrary to section 465(1)(a) of the **Criminal Code**. It is an offence which carries a maximum sentence of life imprisonment.

[2] I want to begin by thanking counsel for their demonstration of a very professional and insightful approach to this very difficult case, and for the assistance provided to the court in properly assessing the circumstances relevant to the imposition of sentence.

Circumstances of the offence

[3] Counsel for the Crown and for Mr. Shepherd have prepared and filed an Agreed Statement of Facts which has been read into the record. It states:

Randall Shepherd met James Gamble in a high school. Mr. Shepherd came from a background home-schooling, and found himself socially outcast as did Mr. Gamble. The pair became best friends and remained close after graduation, spending time together in person and communicating frequently over social media. They bonded over heavy metal music, gore/horror movies, marijuana and a shared fascination with death and morbidity, including school shootings and mass murders. Both Mr. Gamble and Mr. Shepherd maintained social media blogs on Tumblr which glorified these topics.

Mr. Shepherd sought employment in Halifax after graduating high school in 2013. He worked briefly in retail, and then at a call centre. Disaffected with poor employment options, and feeling despondent over failed romantic relationships, Mr. Shepherd became increasingly depressed and suicidal.

Meanwhile, according to social media posts authored by him, Mr. Gamble 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 Mr. Shepherd. As time passed, Mr. Gamble considered committing a mass killing in Halifax. Mr. Gamble asked Mr. Shepherd

to be his partner in such a crime. Mr. Shepherd resisted the offer but offered a receptive audience to Mr. Gamble's plans.

In late December of 2014, Mr. Gamble began an online relationship with a woman from Geneva, Illinois, named Lindsay Kannittha Souvannarath. Ms. Souvannarath had a pre-existing interest in school shootings and Nazism. The two quickly bonded over their shared interest in Columbine and other mass-shootings. They began exchanging explicit intimate photographs of each other and communicated at length over Facebook and other online social networking platforms. Within days Mr. Gamble revealed his desire to commit a mass shooting to Ms. Souvannarath. He explained: "I only have one friend in real life, he isn't down for the whole 'mass murder' thing." Mr. Gamble inquired whether she would be interested instead.

Ms. Souvannarath was interested in being his partner and was eager to participate. They planned their attack in great detail throughout January and early February of 2015. Considerations included, but were not limited to:

- When the attack would take place;
- Where the attack should take place;
- The pros and cons of the different locations;
- Weapons to be used, limitations of each, and the possibility of acquiring more;
- How to use the weapons;
- How much ammunition they had; whether they could obtain more; and where the ammunition would be stored on their bodies during the attack;
- Whether explosive devices should be used;
- The anticipated and hoped for number of victims;
- Whether they would taunt the victims;
- Whether they would photograph and upload pictures of the victims to the internet during the massacre;
- What clothes they would wear;
- Whether they would conceal their faces;
- How the police would tactically respond to the attack;

Ms. Souvannarath was to travel by air to Halifax to meet with Mr. Gamble on February 13th. Mr. Gamble planned to shoot both of his parents before she arrived. After hosting Ms. Souvannarath for the night in the family home, the pair would carry out the planned attack the following day at the Halifax Shopping Centre. This location was selected after consideration of other locations, including the new Halifax Central Library. The mall was chosen because it would result in "mass

panic”. The shooting was to begin within the food court, an area they believed would provide them the best cover. Mr. Gamble obtained his father’s firearms: a lever-action hunting rifle and a single-action 16-gauge shotgun, which the pair planned to use. Links to Youtube videos were shared which depicted how to discharge these particular weapons. Mr. Gamble also intended to carry and use a knife. They lamented that their plan would be improved if they had more effective and deadly weaponry. They unsuccessfully explored the possibility of obtaining additional ammunition. A determination was made that Molotov cocktails would be an asset in the massacre. The two often discussed how many people would be killed, what they hoped for, and what body count they would be “happy with”. Both carefully selected “death outfits” to be worn during the shooting, which included wearing masks. They were unsure whether the police would attempt to stop them first, or save possible victims instead. A musical soundtrack was created and they agreed to post a video of the shooting on the internet to document the massacre and solidify their place of fame amongst the world’s mass-murderers. Ms. Souvannarath also prepared a “queued post” on the social media site Tumblr, scheduled to go live February 15 boasting about a “mass shooting in Halifax”. The pair nicknamed their plan “Der Untergang” (The Downfall). The massacre was to end with their own suicides.

Mr. Shepherd was not a party to the social media conversations between Mr. Gamble and Ms. Souvannarath. However, he was kept informed of the evolving plan by Mr. Gamble, who continued to request that Mr. Shepherd accompany he and Ms. Souvannarath in the conduct of the actual shooting. Mr. Shepherd resisted his friend’s suggestion. In one Facebook exchange on February 9, 2015 Mr. Gamble queried: *“is there nothing I could say to convince you to join me with my plan{?}”* The following day, Mr. Shepherd maintained his refusal, responding: *“sorry james...the answer is no...If I had more time to mentally prepare myself, perhaps...but I am going to die. I’m not going to hurt”*.

In February of 2015, Mr. Shepherd and Mr. Gamble went to the Halifax Shopping Centre and filmed videos of where the attack was to occur. In these videos Mr. Shepherd and Mr. Gamble discussed:

- That the location of the attack was to be the food court of the Halifax Shopping Centre;
- How the temporary walls within the renovated food court blocked more open spaces for long-distance gun shots;
- How the attack would create pandemonium;
- Who they hoped would, or would not be, present at the mall that day, with Mr. Shepherd indicating that if at least one person from his high school was killed the attack would be worth it;

- Their final words to various people in their lives, words often infused with anger and hate; and
- When asked by Mr. Shepherd if he had any final words, Mr. Gamble calmly stared into the camera and said, “You’re lucky I couldn’t get any more bullets”, to which Mr. Shepherd laughed.

These videos were noted by the pair to be “basement tapes”, a reference to the preparatory video recordings made by the two Columbine shooters (Eric Harris and Dylan Klebold) designed to memorialize the planning of the attack and enhance its notoriety.

On February 12, 2015, as Mr. Gamble’s enthusiasm intensified, Mr. Shepherd sent Facebook messages to Mr. Gamble that said: “I don’t know what I am james. I’ve been through so much shit in my life and yet still I could not raise my hand to another....I’m sorry I couldn’t be your dylan (sic) Klebold...Your Stu”. These are references to Mr. Shepherd’s inability to act as an assisting murderous participant like “Dylan Klebold” in the Columbine school shooting and “Stu” in the Scream horror movie series.

While Mr. Shepherd was not agreeable to raising a weapon alongside Mr. Gamble and Ms. Souvannarath, he indicated in a message to Mr. Gamble: “*I’ll supply the bottles, the cloth, the gas, and I will document the days leading up. But I will die on the 13th.*” Additionally, Mr. Shepherd offered to pick-up Ms. Souvannarath from the airport. On February 12th, the following exchange occurred over Facebook:

Mr. Gamble:	thanks for offering to go meet my partner at the airport btw, that makes things a lot easier
Mr. Shepherd:	No worries. Basically we could take care of almost everything at once. The partner, the hacksaw, the gasoline
Mr. Shepherd:	Do you have any bottles yet btw?
Mr. Gamble:	a few full wine bottles
Mr. Shepherd:	I have about 6 bottles I can donate to the cause, of varying sizes
Mr. Gamble:	sweet
Mr. Shepherd:	Idk I figure that’s about as much as you could fit in your bag anyway

Mr. Shepherd did in fact purchase a hacksaw and materials needed to make Molotov cocktails for use in the massacre.

Mr. Shepherd's reference to his death on the 13th reflected his developing plan to kill himself the day before the massacre. He prepared a series of goodbye videos. In a video made on February 11, 2015 he stated:

"I was never a good son, I never was. I fucked up so many times, I know you're...I can't tell if you will be inconsolable or hate me forever, I meant what I said, I deserved every fucking word that you said to me, I got no one to blame but myself, I really don't, that's why I am not going to take part, that's why I'm, that's why my last fuck you to the world is not stopping it, standing back and let, someone else put Halifax on the map, someone else like, be somebody."

- Mr. Gamble: gunshot is a much more effective way then hanging
- Mr. Gamble: plus you'd get to be a part of this whole thing without actually being involved
- Mr. Shepherd: True. But wouldn't it seem more confusing if I was dead alongside your parents or something?
- Mr. Shepherd: This is what is going down. Confusion. How could young kids do something like this?
- Mr. Gamble: 2 gunshots will be going off in my house as it is, 3 might be enough to draw attention from other people.
- Mr. Shepherd: Oh yeah. For your mom, use a pillow. Will muffle the sound and less bloodspatter for you to wash off yourself after
- Mr. Gamble: I don't see how a pillow will muffle a gunshot
- Mr. Shepherd: I'll just walk into her room while she's sleeping and shoot her in the head

On February 13, 2015, Ms. Souvannarath arrived in Halifax from Chicago, having purchased a one-way plane ticket. In her luggage was her "death outfit" along with two books on serial killers.

Meanwhile, Mr. Gamble faced delays in his plan to murder his parents. He sent a Facebook message to Ms. 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"*.

At approximately this time, Halifax Regional Police followed up on a Crime Stoppers tip that a male and female were posting a plan on social media to conduct a mass shooting at a mall in Halifax. The investigation led officers to attend the Gamble residence in Timberlea, Nova Scotia. Officers surrounded the home and sought to make contact with Mr. Gamble. His parents confirmed that he was inside the residence. Officers called Mr. Gamble by telephone and requested that he exit the home and speak with police. Mr. Gamble agreed to this, 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.

As this was happening, Mr. Shepherd was traveling to the Stanfield International Airport by city bus to pick up Ms. Souvannarath. Mr. Shepherd communicated with Ms. Souvannarath and advised her that James was behind schedule (referring to the fact that Mr. Gamble had not yet had an opportunity to kill his parents) and that she would have to stay with him for the night. In their messages, Mr. Shepherd indicated to Ms. Souvannarath that he would have made a movie of the videos he had taken, as "*Something to remember this whole thing by*", except that his internet was not working. Additionally, Mr. Shepherd advised Ms. Souvannarath to be careful at customs. While en route to the airport, Mr. Shepherd was notified by friends over social media that a gunshot had been heard in the vicinity of the Gamble residence. Mr. Shepherd's attempts to reach Mr. Gamble over Facebook were met with silence. Mr. Shepherd continued on to the airport and was arrested by police while waiting for Ms. Souvannarath at International Arrivals.

[4] There are certain aspects of the offence which bear comment. This conspiracy intended to indiscriminately kill or injure a large number of people in a shopping centre on Valentine's Day of 2015. There was a significant degree of premeditation and but for a Crime Stoppers tip and a quick and effective response from the members of the Halifax Regional Police Mr. Shepherd's co-conspirators may very well have accomplished their goals.

[5] Mr. Shepherd's role was limited, relative to the intended roles of the co-conspirators. I accept that he was not the initiator, the leader, nor the driving force behind the conspiracy. I also accept that he joined a pre-existing conspiracy on the urging of Mr. Gamble who was his closest and perhaps his only real friend. I will discuss this again in the context of Dr. Bloom's assessment.

[6] I also accept that Mr. Shepherd did not intend to personally commit the murders at issue despite repeated requests to participate in the plan. His role was to offer personal and material support and advice to the co-conspirators. He did this having knowledge of the conspiracy and understanding the significance of what would take place with his assistance, even without his direct participation.

[7] It is not necessary that all members of a conspiracy play equal roles in the ultimate commission of the unlawful object of the conspiracy. When Mr. Shepherd, knowing of the plan, became part of the preparation for the execution of the plan, and consented to participate in it then he became liable to the same punishment as those who would have carried out the crime.

[8] Mr. Shepherd's crime was apparently born out of his depression, despondency, and a complete disaffection for society at large and, in particular, for the members of this community. His feelings have been expressed in different ways through the materials, for example, in the Agreed Statement of Facts where he expressed a view that the attack would be worth it if at least one person from his former high school was killed. His state of mind was also reflected in the video made February 11, 2015 and intended for his parents to view after he had committed suicide. In it, he tells his parents that he was "never a good son" and takes responsibility for what he perceived to be his mistakes in life.

[9] The ultimate intention of the conspiracy was to achieve notoriety through the act of mass murder, but with no particular ideology or political agenda as we find in acts of terrorism. It is difficult though to conceive of a crime that has the potential to strike more strongly at the community's general sense of security. This was intended as a strike at our shared hopes for peaceful, secure and happy lives for ourselves, our families and our neighbours.

Circumstances of the offender

[10] I have had the benefit of comments by counsel as well as the extensive report prepared by Dr. Hy Bloom, a forensic psychiatrist who assessed Mr. Shepherd. Dr. Bloom had access to a significant amount of materials, as well as to a number of persons familiar with the accused and who provided information for the purposes of his assessment and report. I note as well that in the preparation of that report that Mr. Shepherd cooperated, even speaking to items that would probably have been very uncomfortable for him.

[11] Mr. Shepherd was born in 1994. He was 20 at the time of the offence and he is now 22 years of age. He is a first offender – that is he has no prior criminal record.

[12] When apprehended, he cooperated with the police in describing his role in the commission of this offence. He instructed counsel at an early stage of the process to enter into discussions which have now resulted in his guilty plea. He has expressed remorse and today stated his regret, and that he is not the same person who he was

at the time when he committed this offence. On this latter point I am told by his counsel that he has been under medical care for his mental health issues since his incarceration, care which he did not have prior to his period in custody on remand.

[13] The offender has spent time on remand since his arrest on February 13, 2015 which he will be given credit for in the calculation of sentence.

[14] Mr. Shepherd was homeschooled for a number years, largely it seems out of a fear of bullying that might take place in school. He eventually, though, did complete his grade 12 education with a good academic average at a local high school. The effect of being homeschooled was, it appears, to have seriously limited his social interactions with his peer group. Going to public school did not offer him any greater degree of positive social interactions.

[15] Generally, his upbringing was positive although admittedly with some complexities that are described by Dr. Bloom in his report.

[16] Mr. Shepherd exhibited no particular conduct disorder behaviours in his growing up years. His family were quite religious. It appears that there was no past history by him of violent behaviour. In fact, as has been noted, he did refuse to participate in carrying out the actual attack in this case, instead his preference would have been to commit suicide in advance. There had, apparently, been no prior psychiatric history.

[17] By the time Mr. Shepherd finished school he found that he was not particularly career-oriented, and ruled out a number of possible paths for employment or further education due to a variety of factors, including, by his assessment, a lack of adequate financial support to pursue further studies.

[18] He was employed for a short time in retail and for a while at a local call centre. He had some personal relationships but I am told that they were not particularly successful.

[19] As has been described, he became very close to the now deceased co-conspirator James Gamble. He became entangled in a world fed by the darker places of the internet, and was strongly influenced by his only true friend, Mr. Gamble.

[20] Dr. Bloom's assessment is that his participation was deeply rooted in his history of feeling marginalized. There are other factors as well, including the dynamics of the relationship with Mr. Gamble who was himself troubled but also a

leader. Dr. Bloom has a view that the offender had an inability to deal with his own deep-seated feelings.

[21] Dr. Bloom identified a constellation of 5 factors that together underpinned Mr. Shepherd's involvement in this conspiracy: peer pressure, loyalty to Mr. Gamble, notoriety that might be achieved by this act, a form of self-gratification and a desire to see a "payback" to the society that he saw as unaccepting of him.

[22] Ultimately, it is Dr. Bloom's opinion that it seems unlikely that the factors which contributed collectively to Mr. Shepherd's participation in this conspiracy would intersect again in such a way so as to cause Mr. Shepherd to be a risk to others. Dr. Bloom does not, however, go so far as to say that the accused will not one day become a risk to the community again.

The Position of the Crown and the offender

[23] The parties have jointly recommended a sentence of 10 years imprisonment less credit for time served which is to be calculated at a ratio of 1.5 to 1. They also agree on the so-called ancillary orders that would follow upon the sentence of imprisonment. The parties take the position that the proposed sentence is an accurate reflection of what courts in Canada have done in circumstances that approximate those of this offence, although it has been conceded that there are none that are identical and which we could draw examples from.

Principles of Sentencing

[24] Parliament has statutorily defined a set of principles of sentencing which the courts are required to consider in achieving an appropriate sentence for criminal wrongdoing. Those principles are set out in ss. 718 - 718.2 of the **Criminal Code**.

[25] The provisions in s. 718 address the fundamental purpose of sentencing which is: "to contribute to respect for the law and the maintenance of a just, peaceful and safe society." In fulfilling this purpose the court is told to impose sentences that speak to a balancing of the objectives of denunciation, general deterrence, specific deterrence, rehabilitation of the offender, the need for reparations to victims or the community and the role that sentencing plays in promoting a sense of responsibility in offenders and the acknowledgement of the harm caused.

[26] Section 718.1 requires that a sentence be proportionate to the gravity of the offence and the offender's degree of responsibility. Section 718.2(b) states that

sentences “should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.” Section 718.2(d) requires that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances.

[27] Finally, section 718.2(a) sets out “deemed aggravating circumstances” that, if present, should be reflected in an increased sentence. None of those apply in this situation.

[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.

Range of Sentences

[29] The Nova Scotia Court of Appeal in *R. v. MacIvor* (2003), 215 N.S.R. (2d) 344 (C.A.) provides the following direction with regard to joint recommendations, such as I have here, at p. 351:

... It is not doubted that the joint submission resulting from a plea bargain, while not binding on the court, should be given very serious consideration. This requires the sentencing judge to do more than assess whether it is a sentence he or she would have imposed absent the joint submission: see, e.g., *R. v. Thomas* (O.) (2000), 153 Man. R. (2d) 98; 238 W.A.C. 98 C.A. at para. 6. It requires the sentencing judge to assess whether the jointly submitted sentence is within the acceptable range - in other words, whether it is a fit sentence. If it is, there must be sound reasons for departing from it ...

[30] When we speak of an acceptable range of sentence, we are trying to determine where, between the extremes that may be permitted in imposing a sentence, the circumstances of the offender and of the offence fall relative to other cases of a similar nature. For example, this offence carries a maximum punishment of life imprisonment but no minimum punishment is mandated. The issue, and what counsel struggled with throughout, is this: Where should Mr. Shepherd’s punishment fall within that range so as to be consistent with the general approach that courts take to sentencing for this offence?

[31] The parties have reviewed the circumstances of the offence, and of the offender, and assessed the position of this offender relative to others who have been sentenced in approximately similar circumstances. The parties have both undertaken an extensive search of cases in Canada from which to draw a range of sentences

having regard to the circumstances here. In saying this, counsel candidly acknowledged that they have not been able to find cases that are identical.

[32] In my view, Counsel have presented a reasonable compilation of precedents for the court to draw on.

[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”. Reference has also been made to the sentences for manslaughter given to accomplices of the man who killed four RCMP officers in the Mayerthorpe, Alberta.

[34] I have reviewed those cases and I do not intend to go into them at length. There is a summary of these cases set out in *R v. Ahmed* 2014 ONSC 6153. Within that decision the court discusses the sentences imposed on persons who were generally assisting or otherwise facilitating in planned terrorist attacks.

[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 murder.

[36] In the case of Mr. Dirie he received a sentence of 7 years. Mr. Chand received a sentence of 10 years for setting up and attending a terrorist camp in Ontario. Mr. Durrani and Mr. James each received sentences of 7 ½ years. Finally, Mr. Ansari received a sentence of 6 ½ years plus 3 years of probation.

[37] At the other end of the spectrum are sentences imposed of 16 to 24 years for persons who were the leaders and seriously engaged in the preparation for a mass murder attack.

[38] I have also considered the decisions in *R. v. Khawaja* 2010 ONCA 862, *R. v. Khalid* 2010 ONCA 861 and *R. v. Esseghaier* 2015 ONSC 5855.

Conclusion

[39] I conclude that the recommended sentence is fit as being within an acceptable range of sentences for this offence, having regard to the totality of the circumstances and the treatment of other offenders in similar circumstances. There is no sound reason to depart from the recommendations.

[40] Counsel are all well experienced in criminal law and have achieved an agreement that, in my view, properly reflects the principles of sentencing. In particular, denunciation and general deterrence stand out above all other aspects of the factors considered in achieving an appropriate sentence. A lengthy period of incarceration, in my view, fulfils these objectives.

[41] At the same time, there are aspects of Mr. Shepherd's personal character and intelligence that gives cause to believe that with appropriate psychological and employment counselling he may be released from an institution at some point as a person who can live in a law-abiding and contributing way in society.

[42] He is young, and he has not been involved with the criminal law before. There is some hope for the future although obviously, it is not something that can be predicted today. It will fall to Correctional Service Canada to identify and provide appropriate programs to assist Mr. Shepherd to return to society in a manner that is both law-abiding and contributing to our society in a positive way.

[43] For all of these reasons I impose a sentence of 10 years imprisonment. He is to be given credit for 974 days calculated as the time in custody multiplied by 1.5, which leaves the remaining portion of his sentence at 7 years plus 121 days.

Ancillary Orders

[44] I order that the offender be subject to a Firearms Prohibition Order made pursuant to s.109(1)(a) of the **Criminal Code**. The period will be for life. I have the draft order. I will execute it after court is closed.

[45] Pursuant to s. 487.051 of the **Criminal Code** the offender will comply with the terms of a DNA Order. Again, I have the draft order. I will execute it following court.

[46] Section 737(2)(b) mandates that the court impose a "Victim Surcharge" of \$200 per indictable offence. Section 737(4) says that it is:

... payable within the time established by the lieutenant governor in council of the province in which the surcharge is imposed. If no time has been so established, the surcharge is payable within a reasonable time after its imposition.

[47] In this case the offender has been sentenced to a lengthy period of incarceration. I have no information to suggest he has a current income or an ability to pay a surcharge even a relatively modest one. I have no means of assessing when he will be able to earn an income that would allow him to pay this.

[48] In my estimation and having regard to the comments of counsel a reasonable time within which to pay this surcharge reflects the time in which he could try to earn these monies following his term of imprisonment. As a result he has until November 22, 2023 by which to pay.

[49] I have also been provided with a copy of a Forfeiture Order with respect to certain items that were seized by the police during their investigation. Again, I will review that following court and execute it accordingly.

Duncan, J.