NOVA SCOTIA COURT OF APPEAL
Citation: ***R. v. Bryan***, 2008 NSCA 119

Date: 20081217
Docket: CAC 293214
Registry: Halifax

Between:

Alan Clayton Bryan

Appellant

v.

Her Majesty the Queen

Respondent

Judge(s):	Roscoe, Saunders & Oland, JJ.A.
Appeal Heard:	November 21, 2008, in Halifax, Nova Scotia
Held:	Leave to appeal sentence granted, but appeal dismissed, per reasons for judgment of Saunders, J.A.; Roscoe and Oland, JJ.A. concurring
Counsel:	Luke A. Craggs, for the appellant Dana Giovannetti, Q.C., for the respondent

Reasons for judgment:

Introduction

[1] The appellant, Alan Bryan was charged with attempted murder and three associated offences after he used a sword to attack his common-law spouse, Charlene Marie Knapp, who was pregnant with their child.

[2] The appellant plead guilty to the attempted murder charge. The other offences were not pursued.

[3] Nova Scotia Provincial Court Judge M. Alanna Murphy sentenced the appellant to a period of 15 years' incarceration, less a 2:1 remand credit of a year, resulting in a global sentence of 14 years' imprisonment.

[4] The appellant now seeks our leave to appeal on the basis that the sentence is harsh and excessive, in that it overemphasizes denunciation and deterrence and fails to give proper weight to certain mitigating factors. Mr. Bryan asks that the sentence be reduced to something in the range of 6 to 7 years less remand credit, resulting in a global sentence of between 5 to 6 years.

[5] For the reasons that follow I would grant leave but dismiss the appeal.

Background

[6] On July 31, 2007 Alan Bryan and Charlene Knapp resided together in a common-law relationship in an apartment in Dartmouth, Nova Scotia. Ms. Knapp was 4 months pregnant with Mr. Bryan's child.

[7] Ms. Knapp had a 5 year old daughter from a previous relationship. The child had lived with both Ms. Knapp and Mr. Bryan for the previous few months.

[8] The appellant kept a diary which recorded that he ". . . wanted the baby to die and wanted to stab her . . . then he was going to stab himself," essentially a murder–suicide plan.

[9] Their relationship had been tumultuous. On the day in question Ms. Knapp and Mr. Bryan had been arguing over various things. The argument had escalated to the point where Ms. Knapp arranged for her daughter to be picked up by her biological father. After the child had gone to her father's, Ms. Knapp returned to the apartment and was sitting on the couch in the living room reading a book entitled *What to Expect When You Are Expecting*. She looked up and saw Mr. Bryan advancing towards her with his hands by his sides, almost behind his back. Suddenly he raised a 2 ½ foot decorative sword above his head and started slashing her with it and thrusting the blade into her abdomen.

[10] The appellant continued stabbing and slashing the victim as she was crying and begging him to stop. Ms. Knapp could feel her intestines coming out of her abdomen. She pleaded with the appellant to call 911. He ignored her. A neighbour peering through the window had witnessed the assault and called the police. The appellant later admitted that he stopped the attack only after seeing the neighbour.

[11] The police found Ms. Knapp covered in blood with multiple stab wounds all over her body. She was conscious but critically injured and had difficulty speaking and breathing.

[12] Paramedics arrived and treated Ms. Knapp. She was able to tell the paramedics that she was 4 months pregnant. She identified Mr. Bryan as her attacker. During transport to the hospital Ms. Knapp had to be revived twice. She suffered mild brain damage as well as the loss of the unborn child. Immediate and repeated emergency surgeries at the hospital saved her life.

[13] Ms. Knapp was wounded in 15 places. She bled profusely. She sustained serious injuries to her lungs, spleen, diaphragm, and bowel. She now has profound permanent disabilities.

[14] The police located and arrested the appellant after a brief struggle outside the apartment building. Within 24 hours of his arrest the appellant provided a warned

cautioned statement to the police in which he acknowledged his responsibility for the attack, and confirmed that on the day of the offence he and the victim had been arguing and that she had announced her intention to leave the relationship.

[15] When assessed at the East Coast Forensic Hospital Mr. Bryan was found fit to stand trial. His psychiatric diagnoses were cannabis abuse, and narcissistic personality disorder, with antisocial and personality traits. When describing his actions to attending staff Mr. Bryan admitted that he attacked his pregnant spouse in a state of rage after she threatened to leave him and abort their child. He said he started to hit her with the flat of the sword but that he didn't feel anything and so he began stabbing her with it, later commenting on the strange sensation or "texture" as the sword passed through the victim's body. He said he continued to stab her until he was interrupted by the sounds of a witness coming to the window of their apartment. Mr. Bryan said he later returned to the scene hoping to provoke the police into shooting him because he saw no way out of his predicament. In a videotaped interview with the police he said the one thing they could do for him would be to allow him to walk out of the interview room and then shoot him in the back of the head.

[16] At the sentencing hearing Charlene Knapp and her sister Stephanie Humber read their victim impact statements into the record. Ms. Knapp's mother was not present but a representative from victim's services read her statement into the record.

[17] In assessing the long term effects of Ms. Knapp's injuries Judge Murphy made the following comments:

> Her road to recovery has been a long and arduous one with certainly a long further way to go. She has lost mobility and function, and has been told she will never be able to work in her field again. She has been required to move out-of-province so that family members can take care of her.
>
> She has lost a great deal of what she worked very hard to achieve in terms of her personal development and future and this has all been taken away from her by this vicious act. I do not think I can overstate the grievous effect this crime has had on Ms. Knapp and her family.

[18] Crown counsel asked that Mr. Bryan be incarcerated in a federal institution for a term of between 15 years and life imprisonment saying that such a sentence was necessary in order to send:

> . . . a clear message to Mr. Bryan and others in his position that this is a situation which the Court and the community will not stand for.
>
> It involved the loss of life . . . in terms of Ms. Knapp and her career and her ability to function as a productive member of society. It also involved the loss of her unborn child. It has affected not only Ms. Knapp, but her mother, her sister, and others. It continues to affect them today and will continue to affect them in the future.
>
> The Crown would submit that Ms. Knapp has been handed a slow and painful death. And as such, Mr. Bryan should be sentenced accordingly. . . .

[19] Counsel for Mr. Bryan argued that the Crown's recommendation was excessive and did not find support in either judicial precedent or the statutory framework of the **Criminal Code**. He asked the court to impose a sentence "in the federal range . . . a period in the range of five to six years which is inclusive of the remand time, so basically six or seven years minus remand time."

Issues

[20] The appellant has applied for leave to appeal and if leave is granted, appeals on the following grounds:

1. That the Honourable Provincial Court Judge imposed a sentence that was demonstrably harsh and excessive.

2. That the Honourable Provincial Court Judge overemphasized the principles of denunciation and deterrence.

3. Such other grounds of appeal as may appear from the transcript of the proceedings under appeal.

Analysis

[21] Mr. Bryan was being sentenced for one count of attempted murder which is an offence contrary to Section 239 of the **Criminal Code**. The relevant section states:

> 239.(1) Every person who attempts by any means to commit murder is guilty of an indictable offence and liable
>
> (a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years;
>
> (b) in any other case to imprisonment for life.

[22] Section 718, 718.1 and 718.2 of the **Criminal Code** set out the purpose and principles of sentencing which govern judges imposing sentences for any offence under the **Criminal Code**.

[23] Section 687 of the **Criminal Code** gives this court the authority to either vary the sentence within the limits prescribed by law for the offence of which the accused was convicted or to dismiss the appeal.

[24] In **R. v. L.M.**, 2008 SCC 31, the Supreme Court of Canada recently reaffirmed the high level of deference paid to sentencing decisions. Crafting a sentencing order is a profoundly subjective process. The broad authority of a sentencing judge should not be interfered with lightly. We who sit on appeal are not to vary a sentence simply because we might have ordered a different one. Absent error in principle, failure to consider a relevant factor, or overemphasis of the appropriate factors, this court will only intervene to vary a sentence if we are convinced that it is not a fit sentence, in other words that it is clearly excessive or inadequate. See as well, **R. v. Pepin** (1990), 98 N.S.R. (2d) 238 (C.A.); **R. v. Muise** (1994), 94 C.C.C. (3d) 119 (C.A.); **R.v. Shropshire**, [1995] 4 S.C.R. 227; **R. v. M.(C.A.)**, [1996] 1 S.C.R. 500; and **R. v. McDonnell**, [1997] 1 S.C.R. 948.

[25] In oral argument before this court the appellant's counsel conceded that Murphy, Prov. Ct. J. made no error in principle, and that therefore the single issue on appeal was the fitness of the sentence she imposed. Counsel also conceded that the facts are not disputed. In attacking the fitness of sentence Mr. Bryan makes

two arguments. First, the appellant says his sentence is outside the range, relying upon the decision of the British Columbia Court of Appeal in **Cuthbert**, [2007] B.C.J. No. 2523 (BCCA). This argument is cast as a plea for parity. Second, he says the judge arrived at a demonstrably unfit sentence because she overemphasized the principles of denunciation and deterrence, and underemphasized mitigating circumstances, those being the absence of any criminal record, his early guilty plea, and the assertion that his declared inability to feel or express remorse reflects honesty and candour on his part. I do not consider any of the appellant's submissions to be persuasive.

Parity

[26] I will begin by considering the appellant's "parity" argument and then deal with the assertion that the sentence ought to be reduced because it is demonstrably unfit.

[27] In challenging the fitness of the sentence imposed against the appellant, his counsel refers to the so-called "parity" section of the **Criminal Code**. Section 718.2(b) provides:

> A court that imposes a sentence shall also take into consideration the following principles: . . .
>
> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; . . .

[28] While acknowledging that the offence was "incredibly horrible" and "a cruel act of brutal violence" counsel for the appellant urged at the sentence hearing that the appropriate range of sentence ought to be between 6 and 7 years. In oral argument before this court Mr. Bryan's same counsel suggested that a sentence of close to 10 years, less a credit for time spent on remand would be suitable.

[29] In advancing this submission the appellant relies upon the decision of the British Columbia Court of Appeal in **Cuthbert**, supra. In that case after a trial by judge and jury the appellant was convicted of multiple charges: the attempted

murder of his ex-spouse C.R., discharging a firearm with intent to wound C.R.'s common-law husband D.C., and possession of a sawed-off shotgun for a purpose dangerous to the public peace. During the incident the appellant forced his way into their residence and threatened C.R. A commotion ensued prompting D.C. to come into the room. As he entered, the appellant turned a pump action shotgun on him and fired. The shotgun blast caused D.C. severe personal injuries leaving him with a permanent residual disability. The appellant then turned the shotgun on his former wife. He attempted to fire the weapon but was unable to rechamber a fresh round. Upon conviction, and after taking into account the 14 months spent in pre-trial custody, the appellant was sentenced to 10 years' imprisonment on the count of discharging a firearm into D.C., 10 years' imprisonment on the count of attempted murder of C.R. (who had not been physically harmed); and 3 years' imprisonment on the count of possessing a sawed-off shotgun for a purpose dangerous to the public peace, all sentences to run concurrently. Accordingly, with the 2 year credit for time spent on remand, the trial judge effectively imposed a global sentence of 12 years' imprisonment. Mr. Cuthbert appealed. Leave to appeal was granted but the appeal was dismissed. Chief Justice Finch writing for a unanimous court, concluded that a global sentence of 12 years was not unfit.

[30] In the case before us here counsel for Mr. Bryan supports his plea for parity by emphasizing this passage from Chief Justice Finch's judgment where at ¶ 54 he said:

> A sentence of seven to 12 years would not have been unfit for the attempted murder offence: **R. v. Bagga**, [1991] B.C.J. No. 2387 (QL) (C.A.); **R. v. Burton**, [1994] B.C.J. No. 2540 (QL) (C.A.); **R. v. Jiany-Yaghooby**, [1998] B.C.J. No. 2389 (QL) (C.A.); **R. v. Siu**, [1998] B.C.J. No. 2627 (QL) (C.A.); **R. v. McLeod**, [2002] B.C.J. No. 1140 (QL) (C.A.); **R. v. Joseph**, [2003] B.C.J. No. 1526 (QL) (C.A.); **R. v. Dennis**, 2005 BCCA 475, [2005] B.C.J. No. 2330 (QL) (C.A.).

[31] I would reject the appellant's submission for several reasons. First, in **Cuthbert**, the British Columbia Court of Appeal upheld *an effective sentence* (intended to indicate the sentence that was imposed, augmented by the remand credit) of *12 years* for an attempted murder of an ex-spouse *who was not physically injured*. The circumstances in **Cuthbert** bear no relation to the crime and sentence we are asked to adjudicate here.

[32] Second, the 7–12 year range described in **Cuthbert** is much broader than the 6–7 year range initially sought by the appellant, (revised in oral argument at the appeal hearing to 10 years). Yet the appellant has not offered any reasons to place his case at the bottom of the range he proposes.

[33] Third, the court of appeal in **Cuthbert** did not say that a 7–12 year range was justified for *all* cases of attempted murder. It appears more likely that the court identified a sentence of between 7–12 years as being appropriate for the factual type of case before it; not for all convictions for attempted murder.

[34] Finally, and with great respect, the cases cited by the court in **Cuthbert** do not appear to support the 7–12 year range, as described. **R. v. Siu**, [1998] B.C.J. No. 2627 (B.C.C.A.) upheld a 15 year sentence for the attempted murder conviction. **R. v. Bagga**, [1991] B.C.J. No. 2387 (B.C.C.A.) upheld a sentence of 14 years. The lowest in the grouping of cases was **R. v. Burton**, [1994] B.C.J. No. 2540 (B.C.C.A.). There a sentence of 7 years for attempted murder and 3 years consecutive for the use of a weapon in the same incident against the same victim was imposed resulting, in effect, in a sentence of 10 years for attempted murder using a weapon. Therefore the effective range of sentence in the cases cited by the court in **Cuthbert** is not the 7–12 years relied upon by the appellant, but rather 10–15 years.

[35] I am not persuaded that the other cases relied upon by the appellant are relevant to the disposition here. Some are dated. Many involve convictions for aggravated assault. I do not consider those decisions to be appropriate or helpful precedents in a case such as this where we are dealing with a conviction for attempted spousal homicide.

[36] Both counsel for the Crown and the appellant say that this court has not yet declared an appropriate range for attempted domestic homicide in Nova Scotia. In my view this is an appropriate case to provide such direction.

[37] I would agree that historically, this court has not identified any sentencing range for attempted murder cases, particularly for spousal homicide cases similar to this one. While there were a few cases in the 1990's there have not been any cases in recent years. In **R. v. Gould**, [1990] N.S.J. No. 109, Matthews, J.A. noted the wide range of sentences for this offence where the circumstances surrounding its commission vary considerably. Neither **Gould**, supra, nor **R. v. Fleming**, [1993) N.S.J. No. 469 (C.A.) involved a spousal victim, which I regard as a critical feature of this case. The case of **R. v. Wessell**, [1994] N.S.J. No. 74 did involve a vicious attack on an estranged wife leaving her with grievous and permanent injuries. There, this court upheld a 10 year sentence. However, that decision did not establish a range for the offence. Pugsley, J.A. writing for the court stated:

> [26] The circumstances are similar to those in **R. v. Nippard** (1993), 83 C.C.C. (3d) 410, where the Newfoundland Court of Appeal upheld a sentence of life imprisonment imposed on a man who attempted to murder his wife.
>
> [27] I note, however, that the Crown has not filed a cross-appeal.

[38] Obviously in **Wessell** this court thought it significant that the Crown had chosen not to cross-appeal. It is also interesting to note that the **Nippard** case referred to by Justice Pugsley is similar to this matter involving Mr. Bryan. There the accused, after seeing his wife in the presence of another man, stabbed him and then his wife some 33 times. He pled guilty to attempted murder. He appealed from a sentence of life imprisonment with ineligibility for parole for 12 years. The Newfoundland Court of Appeal allowed the appeal in part but only to the extent that the condition as to ineligibility for parole for 12 years imposed by the trial judge was set aside. In all other respects the sentence of life imprisonment was affirmed.

[39] The offence of attempted murder is punishable by a maximum sentence of imprisonment for life (s. 239(1)(d) of the **Criminal Code**). Clearly the offence, in all cases, is considered to be an inherently serious crime. This reality reflects not the *actus reus* of the offence which may vary from modest acts of preparation with no resulting physical injury, to an egregious life threatening assault where it is simply fortuitous that the victim survived at all.

[40] What is inherently serious in all cases of attempted murder is the requirement of a *mens rea* of a specific intent to kill (**R. v. Ancio**, [1984] 1 S.C.R. 225). Discussing the importance of the *mens rea* component, Chief Justice Lamer observed in **R. v. Logan**, [1990] 2 S.C.R. 731 at ¶ 20:

> The stigma associated with a conviction for attempted murder is the same as it is for murder. Such a conviction reveals that although no death ensued from the actions of the accused, the intent to kill was still present in his or her mind. The attempted murderer is no less a killer than a murderer: he may be lucky—the ambulance arrived early, or some other fortuitous circumstance—but he still has the same killer instinct. Secondly, while a conviction for attempted murder does not automatically result in a life sentence, the offence is punishable by life and the usual penalty is very severe. (Underlining mine)

[41] In my view the appellant in this case is a "lucky murderer" in the sense defined by Chief Justice Lamer. Consequently I think it entirely inappropriate to refer analogously to cases of aggravated assault as providing helpful sentencing precedents for attempted murder. The *mens rea* in all cases of attempted murder is a specific intent to kill. The *mens rea* for the offence of aggravated assault is in all cases not a specific intent to kill. Whatever the resulting damage in the commission of either offence, there is simply no *mens rea* link between these different crimes.

[42] For these reasons I reject the appellant's submission that Murphy, Prov. Ct. J. was limited by either the principle of parity or authoritative judicial precedent to a range of 7–12 years, or that she erred by sentencing the appellant to a term of imprisonment beyond that range.

[43] In any event the principle of parity will never trump the high level of deference paid to the proper exercise of a trial judge’s broad discretion in fashioning a proper sentence. (**R. v. L.M.**, [2008] S.C.J. No. 31, at ¶ 35-36).

[44] I will now consider the fitness of the sentence imposed by Judge Murphy.

Fitness

[45] In sentencing the appellant the judge began her analysis by acknowledging that a lengthy term of imprisonment was called for; the only real question was how long? She said:

> The case law does establish, without question, that there will be a significant period of incarceration as a starting point for offences of this type.

The judge's premise was correct.

[46] In a thoughtful and comprehensive oral decision Judge Murphy gave careful consideration to the circumstances of this offence, and this offender. She noted the appellant's psychiatric assessments and that he had been found to suffer from axis one mood disorder and axis two anti-social personality disorder. Attending psychiatrists had observed that the appellant "lacks the capacity to predict other incidents which therefore presents a problem for treatment to reduce his risk to re-offend." Staff had also reported that Mr. Bryan appeared to lack the ability to connect with his own internal emotions. He was diagnosed with cannabis dependence adjustment disorder, and narcissistic personality disorder. Based on these medical assessments the judge noted the significant challenges that would present in Mr. Bryan's long term treatment and rehabilitation.

[47] The judge then considered the facts put forward by the appellant's counsel as mitigating circumstances. She recognized that Mr. Bryan had no prior criminal record; that he had pleaded guilty at an early opportunity; and that he had acknowledged and accepted responsibility without delay, thus sparing the victim and other witnesses having to endure the anguish of a trial. However, I agree with Judge Murphy that in this case those factors should not materially affect the appropriate sentence. This court has already declared that an early guilty plea in situations such as this "should be of minor significance when considering mitigation." **R. v. Gould**, [1990] N.S.J. No. 109 (C.A.).

[48] Any casual review of case law across Canada involving sentences imposed for attempted murder in the context of a domestic relationship will typically involve an offender who has no previous criminal record. Whether that fits a "profile" for such offences is not before us on appeal, but where it is so often reflected in such precedents, it hardly impresses me as deserving special consideration as a significant mitigating feature following conviction for attempting to kill another human being.

[49] The judge properly instructed herself that a lack of remorse could not be taken as an aggravating factor in fashioning a sentence for Mr. Bryan. Whether this declared inability to express emotion reflects – as his counsel urged on appeal – "candour" on the part of Mr. Bryan, or something quite different, it is not something to which I attach any weight when considering the fitness of this sentence on appeal.

[50] For all of these reasons I would dismiss the appellant's complaint that the sentencing judge undervalued what he asserted as being "mitigating" circumstances.

[51] I would also reject the appellant's submission that the sentencing judge overemphasized the principles of denunciation and deterrence. There should no longer be any doubt that in serious crimes involving violence arising out of an existing or failed domestic relationship, the paramount sentencing objectives must be denunciation and deterrence.

[52] There were a host of aggravating factors present in this case. I agree with the very able submission made to this court by Mr. Giovannetti for the Crown that this case is an extreme incidence of "attempted first degree murder." While the **Criminal Code** does not specify degrees of attempted murder, a sentencing judge is certainly entitled to take into account the features which led to its occurrence.

[53] The most obvious aggravating factor is the manner in which this crime was executed. Mr. Bryan planned to kill his wife. He kept a diary in which he described his intention to kill Ms. Knapp and their unborn child. He ruminated

about it. He carried it out in a calculated, calm and deliberate manner. He told the police that he retrieved a decorative sword approximately two and one-half feet long from their master bedroom closet. He placed the sword behind the door in the master bedroom. He went back into the living room and continued to argue with Ms. Knapp. Then he went back into the bedroom, retrieved the sword, and returned to the living room. Ms. Knapp, pregnant with their child, was sitting composed on a couch in their living room reading a book on childbirth, when she was suddenly confronted by the appellant wielding a sword. Without warning he stabbed and hacked at her repeatedly, to the point where her life could only miraculously be saved by the speed and skill of medical personnel. One could hardly imagine a more vicious, planned and deliberate attempted murder committed in the context of a domestic relationship. He set out to kill his common law wife and came within a hair's breadth of doing so.

[54] This crime is horrifying, not only because of the brutality associated with its commission, but also the many tragic consequences that followed. It is difficult to describe the life Ms. Knapp is now forced to live. She suffered terrible, devastating and permanent injuries leaving her in perpetual pain and depending on others to supply round the clock care in virtually every aspect of her existence. The effects of the appellant's callous and cowardly actions upon the lives of Ms. Knapp and her family are reflected in their victim impact statements. My attempt to paraphrase Ms. Knapp's feelings would not do justice to those sentiments. I prefer to quote her own words.

> . . . I received at least 15 sword wounds, few went straight through my body. Every major organ aside from my heart was punctured, some many times. I flatlined at the hospital once more, and again was resuscitated. I received 14 surgeries to repair the damage done to my body, some of my stomach was removed. I have more disabilities, too many to mention. I have a lifetime of surgeries, specialists and pain ahead of me. I now walk with a cane, have little use of my left arm due to nerve damage. Doctors are now testing me for cognitive impairments. When I died twice, there is a good possibility that I was deprived of oxygen. I suffer every day, all day long I feel pain, sometimes it gets to the point I have to lay still, afraid to move for fear the pain will get worse. Despite the numerous pills I must take for the rest of my life, nothing helps.
>
> . . .

> I used to be a strong, happy independent woman. Not anymore, I can barely open a bottle of water my arm and hands are so weak from the nerve damage, I need help walking, so I use a cane. Day to day living I just can't do on my own. I need a full time care giver and of course I can't afford it so my mother has dedicated herself to caring for me. She stays with me 24 hours a day to help me, not caring that looking after me has taken over her life. Mornings are the worst for me, when I get up, if I'm lucky enough to have gotten some sleep. I'm in so much pain. I cannot move, if not for my mother I would be stuck in my bed all day unable to get up. So my mom has to physically pick me up out of bed, help me to the chair, then she actually puts my pain pills in my mouth for me. After about 20 mins. I can begin to move without screaming. That's the way my day usually starts, and the rest I couldn't do without her help, I can no longer cut a piece of meat, get dressed alone. My whole life requires assistance. Thank God I have her. If not for my mom . . . I could not get through the day. . . .

[55] The appellant's actions have condemned Ms. Knapp to a life of pain and disability. Once a happy, vital and hard working young mother, happy in her career and looking forward to a future with the appellant and their child she was expecting, has now had life as she knew it effectively destroyed.

[56] Compounding this tragedy is the obvious trauma suffered by Ms. Knapp's little girl, following her mother's near death, her lengthy hospitalization, the forced unexplained separation they shared, and the permanent impact Ms. Knapp's pain and suffering will have on their quality of life together.

[57] As well, Ms. Knapp's 57 year old mother has been forced to give up her own future so as to provide round the clock care for Ms. Knapp. The emotional, physical and financial toll all of this has taken on Ms. Knapp's mother and her sister were all vividly described in the impact statements read into the record at the sentence hearing.

[58] One must also recall what appears to have been a primary target area when the appellant attacked his defenseless spouse. Having written in his diary that he "wanted the baby to die" Mr. Bryan repeatedly thrust the sword into Ms. Knapp's abdomen, without regard for the life of their unborn child, resulting in the

termination of that pregnancy. I see this as an especially egregious feature of the case.

[59] Finally, and as recognized by Judge Murphy, this crime was committed against a spouse. The appellant's actions violated the element of trust that is implicit in such a relationship. Persons who live together in a domestic context deserve the community's protection from violence and abuse in their homes. Similarly, individuals who leave such romantic relationships should be free to get on with their lives without fear of violence, abuse or subjection at the hands of jealous ex-lovers. The law must do its best to provide such protection. Accordingly, sentences imposed in cases involving domestic violence must reflect the seriousness of the offence, the community's unequivocal denunciation of such conduct, and lead to a sufficiently lengthy period of imprisonment as will provide a specific deterrent to the offender and a general deterrent to other persons who may be similarly disposed.

[60] For all of these reasons I would direct that for a planned and deliberate attempted murder committed in the context of a domestic relationship, the proper sentence should result in a term of imprisonment ranging from 8 years to life. Unless there are truly exceptional circumstances, the sentencing starting point upon conviction for attempted murder in a domestic relationship will be 8 years.

[61] This direction would appear to conform with similar sentences imposed in other regions of the country. See for example **R. v. Lysak**, [2006] A.J. No. 1369; **R. v. Tan**, [2008] O.J. No. 3044; **R. v. Nippard**, supra; and **R. v. Young**, [2004] M.J. No. 188.

[62] Before concluding my analysis I do wish to comment upon a brief remark made by the trial judge during the course of her comprehensive decision. She said:

> Maximum sentences are reserved for the most blame worthy of offenders . . . but I don't view Mr. Bryan as the most blame worthy of offenders, though the offence itself is particularly grave. . . .

While nothing turns on the trial judge's statement for the purposes of this appeal, I do wish to point out that subsequent to the trial judge's decision the Supreme Court of Canada firmly rejected the "worst offender, worst offence" principle. In **R. v. Solowan**, [2008] S.C.J. No. 55, Fish, J., in writing for the Court declared:

> [3] The "worst offender, worst offence" principle invoked by the appellant in the Court of Appeal has been laid to rest. It no longer operates as a constraint on the imposition of a maximum sentence where a maximum sentence is otherwise appropriate, bearing in mind the principles of sentencing set out in Part XXIII of the *Criminal Code*, R.S.C. 1985, c. C-46: *R. v. Cheddesingh*, [2004] 1 S.C.R. 433, 2004 SCC 16; *R. v. L.M.*, [2008] 2 S.C.R. 163, 2008 SCC 31. . . .

Conclusion

[63] Provincial Court Judges serve on the front lines of our criminal justice system. They are the face most often seen by the public. They might handle more matters in a week than other levels of court might hear in a month. They are uniquely positioned to judge the consequences of both crime and sentencing in their communities.

[64] Judge Murphy had a preferred seat in fashioning a sentence which adhered to the codified principles of sentencing and best suited the circumstances of this offence and this offender. Considering the many aggravating features already described, I would find that the appellant's sentence of 15 years (less one year credit for time spent on remand) is a fit and proper sentence. I see nothing in this record which would cause me to intervene.

[65] I would grant leave to appeal sentence, but would dismiss the appeal.

Saunders, J. A.

Concurred in:

Roscoe, J.A.

Oland, J.A.