

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

R. v. Beals 2011 NSPC 93

**Date:** December 1, 2011

**Docket:** 2129346

**Registry:** Halifax

Her Majesty the Queen

v.

Germaine Lemar Beals

**DECISION**

**Editorial Notice**

Some information has been removed from this electronic version of the judgment.

**Judge:** The Honourable Judge Anne S. Derrick

**Heard:** November 25, 2011

**Decision:** December 1, 2011

**Charges:** *Criminal Code* section 239

**Counsel:** Shauna MacDonald and Kimberley McOnie, for the Crown  
Kevin Burke, Q.C., for Germaine Beals

By the Court:

### **Introduction**

[1] On September 19, 2011, Germaine Beals pleaded guilty to the attempted murder of Devlin Glasgow. The shooting of Mr. Glasgow occurred on December 22, 2009 in a barber shop during afternoon business hours. There were patrons present, including a young child. Mr. Glasgow was shot in the face.

[2] Mr. Beals has a significant criminal record, and in February 2007 received a penitentiary sentence for aggravated assault. Mr. Beals had been released from prison in April 2009, just eight months before the shooting of Mr. Glasgow.

### **The Crown's Position**

[3] The Crown is looking for a sentence of 15 – 18 years for Mr. Beals to emphasize denunciation and deterrence. The Crown points to this shooting as another example in a profoundly disturbing trend of young men arming themselves with guns in public and resolving disputes with lethal force.

[4] Mr. Beals has spent 23 months in pre-sentence custody. The Crown submits that this should be credited, on a one-for-one basis, against his sentence. Applied to the sentencing range being proposed by the Crown, a one-for-one remand credit would result in Mr. Beals' go-forward sentence being 13 – 16 years.

### **The Defence Position**

[5] Mr. Burke, for Mr. Beals, submits that a sentence of 12 years is appropriate. He is seeking pre-sentence custody credit for Mr. Beals of 46 months and therefore a go-forward sentence of 8 years, 2 months. He argues that Mr. Beals' prospects

for rehabilitation must not be ignored. In Mr. Burke's submission, too long a sentence will extinguish any chance of a successful reintegration back to the community and will remove any likelihood of promoting a sense of responsibility in Mr. Beals. Mr. Burke advocates against a sentence that will create an offender who is irretrievably alienated from society.

### **The Shooting on December 22, 2009**

[6] On the afternoon of December 22, 2009, Devlin Glasgow was shot in the face. He told police he did not know the identity of the shooter and was uncooperative in their investigation. Under his jacket and sweatshirt he was wearing a bullet proof vest. The police searched him and found that he was carrying 2 cellphones and \$1930 in cash.

[7] Neither Mr. Glasgow nor Mr. Beals ever cooperated with the police investigation. The reasons for the shooting remain unknown.

### **Devlin Glasgow's Injuries**

[8] Mr. Glasgow's injuries were seen to at the Queen Elizabeth II Hospital and do not appear to have been life-threatening.

[9] Mr. Glasgow experienced some facial numbness from the gunshot wound and could not close his molars together. The bullet had entered his left cheekbone with the largest fragment lodging in the left parapharyngeal space, an area between the head and the neck. About 15 – 20 other bullet fragments ended up in the maxillary sinus wall - the largest sinus space which is located below the eye. There was no exit wound.

[10] Mr. Glasgow was treated with pain killers but the decision was made by medical professionals not to attempt a removal of the bullet fragments given their proximity to his carotid artery.

[11] On December 23, Mr. Glasgow left the hospital before being discharged by the medical staff. There is no information about whether he is experiencing any ongoing problems as a result of the shooting.

### **The Videotape from the Barber Shop**

[12] The police investigation led to Cousins Barber Shop in the area of apartment buildings at 6967 and 6969 Bayers Road. A security video was seized by police from the barber shop. Upon viewing it the police saw that it had recorded the shooting of Mr. Glasgow.

[13] The barber shop's security video shows the shop to be comprised of an outer area where clients can wait and an inner area where the barbering is done. Clients wait in the inner area too. The front door opens into the outer area.

[14] The Crown advises that the security video is off by an hour; the actual times are an hour later than shown on the video. The time references I make in these reasons are the adjusted times. There is no sound recording of the events that occurred.

[15] The video depicts Germaine Beals entering the barber shop at approximately 1:16 p.m. with another man who is taller and heavy-set. Mr. Beals goes off screen. There are already other people at the shop: a client can be seen sitting in the inner area and there is someone sitting in an armchair in the outer area, facing the door. At the bottom of the screen a man in a ball cap is working on a client, although the client is never visible. A couple of other people wander through the shop. The heavy-set man remains standing in the outer area, moving around slightly.

[16] Mr. Beals is off-screen for about four minutes and then walks into the inner area and sits in a patron's chair nearest the outer area. He appears to feel at home. He swivels in the chair. The heavy-set man continues to stand, now just inside the inner area until he strolls out of the camera's range. Around this time, a little more than a minute after sitting down, Mr. Beals gets up and uses one of the shop's hair brushes to brush his hair while he examines himself in the mirror. The heavy-set

man returns and stands near Mr. Beals, looking at something on the wall. Mr. Beals replaces the brush and sits back down, leaning back in the chair. In this position, his view of the door into the barber shop is obscured by the partial wall that separates the inner area from the outer area.

[17] Another patron walks through the inner area, heading for the door. It is 1:23:14. He doubles back to retrieve his coat and then leaves the shop. Mr. Beals has been sitting down for about three minutes; he has not been looking at the door during this time. At 1:23:58 Mr. Beals becomes focused on a cell phone he has taken out, perhaps to check or send text messages as he does not put it to his ear. Shortly after this he leans forward but does not seem to be paying much attention to the door to the shop. At this point it looks as though Mr. Beals and the heavy-set man are having a conversation. Although during this conversation Mr. Beals is leaning forward and has his head turned toward the outer area of the shop, he does not appear to be watching the door so much as looking at the heavy-set man while he talks to him. This particular conversation, with Mr. Beals leaning forward in his chair, lasts from 1:25:23 to 1:25:45.

[18] Another man comes into the shop at 1:25:43. Mr. Beals appears to glance at him casually and then leans back into his chair. He swivels the chair toward the mirror, turning himself away from the direction of the door. The heavy-set man shifts himself and casually leans against the partial wall, blocking a view of the door. A patron leaves the inner area and the barber seen at the bottom of the screen appears to be readying himself for another client. Two other individuals come into view in the outer area. Mr. Beals is not paying attention to that area and has turned himself around to face the mirror again. At 1:26:50 a young child can be seen in the background, crossing through the outer area. The Crown advises that the boy was eight years old and at the barber shop with his parents. This has not been disputed.

[19] By this time, Mr. Beals has been sitting in the inner area for about seven minutes. The heavy-set man is still standing near him, leaning against the partial wall with his back to the door. At 1:27:20, Mr. Beals points something out to him, which he looks at, across from where they are situated, not in the direction of the door. With the heavy-set man in this position, leaning against the partial wall next

to where Mr. Beals is sitting, Mr. Beals would not have had a view of the door into the barber shop.

[20] The first time Mr. Beals looks directly toward the door into the shop is at 1:28:21. Someone in the outer area had got up and gone into what may have been a washroom. The door to what may have been the washroom is located next to the door into the shop. It is impossible to know whether this is what Mr. Beals was looking at. Mr. Beals then leans back in his chair and assumes the posture he has had for most of the time he has been sitting there. Another patron comes into the inner area and sits down.

[21] At 1:28:49, the heavy-set man, having moved away from the partial wall a couple of minutes earlier, is now standing with his back to the outer area of the shop. He turns his head to look at the door. This movement seems to cause Mr. Beals to lean forward in his chair to look around the partial wall at the door himself. At 1:28:51, Mr. Glasgow walks through the door. Mr. Beals watches him as he crosses the outer area. He takes about ten steps before stopping. Mr. Beals gets out of his chair and goes to meet him. He does this by walking around the heavy-set man who is still standing near him. Mr. Beals goes up to Mr. Glasgow and they stand together in the outer area. About 17 seconds have passed since Mr. Glasgow walked into the shop.

[22] The two men – Mr. Beals and Mr. Glasgow – appear to be speaking to each other. They are standing still. The heavy-set man has partially turned his body and is watching them. Something sparks in the interaction and Mr. Glasgow takes a step back. Mr. Beals moves toward him, brings his hand up and shoots Mr. Glasgow in the face. It is only now that a gun is visible in Mr. Beals' hand. The time is 1:29:13 - Mr. Glasgow has been in the shop for 22 seconds. He and Mr. Beals were face-to-face for about 5 seconds.

[23] The shop erupts. People scramble about. Mr. Beals can be seen running out of the shop at about 1:29:20. The small boy appears from the outer area and walks quickly through the inner area at about 1:29:33.

### **Finding the Facts**

[24] The facts of the shooting are indisputable. It occurred in the plain view of the security camera. This is not a case that has proceeded on the basis of an agreed statement of facts. What happened is what can be seen in the security video. Indeed, there is no other source of information about the shooting before me. It is my responsibility to determine what reasonable inferences I should draw from the video footage. (*R. v. Nikolovski*, [1996] S.C.J. No. 122, paragraphs 28 and 29) The Crown has asked me to draw the inference that Mr. Beals was lying in wait for Mr. Glasgow having planned and deliberated his murder. In other words, the Crown has asked me to infer that this was an attempt at committing a first degree murder. (*Crown Brief*, paragraph 9) Is this a reasonable inference for me to draw from what the security video depicts?

### **Characterizing Attempted Murder**

[25] A planned and deliberate murder is first degree murder. (*section 231(2), Criminal Code*) All other murders are second degree murders. The key element in second degree murder is the intention to kill. The moral culpability for attempted murder is the same as that for murder. The range of penalty is different because the *Criminal Code* does not impose an automatic life sentence for attempted murder as it does for murder. The length of parole ineligibility is what differentiates the penalty for first degree murder from that for second degree murder. (*section 745(a) and (c), Criminal Code*) In the case of first degree murder, parole ineligibility is set at 25 years. For second degree murder the range is 10 – 25 years.

[26] The *Criminal Code* does not specify degrees of attempted murder, however a sentencing judge “is certainly entitled to take into account the features which led to its occurrence.” (*R. v. Bryan*, [2008] N.S.J. No. 569 (C.A.))

### **The Shooting of Devlin Glasgow**

[27] In the Crown’s submission, the fact of Mr. Beals being armed with a concealed handgun, “the lack of time for any dispute or provocation to occur”, and the brief lapse of time between when Mr. Glasgow entered the barber shop and when he was shot, establish that Mr. Beals “had planned to shoot Glasgow upon

his arrival.” The Crown submits that this was therefore “an unsuccessful ‘first degree’ murder.” (*Crown Brief, paragraph 9*) This has not been conceded by the Defence. In his oral submissions, Mr. Burke specifically acknowledged the aggravating factors in Mr. Beals’ case as being his criminal record and the fact that his record includes violence. At no point did he describe the shooting as planned and deliberate, in other words, a ‘first degree’ attempted murder.

[28] The Crown’s characterization of the shooting was challenged by Mr. Beals himself. This occurred when, in accordance with section 726 of the *Criminal Code*, I asked Mr. Beals if he had anything he wished to say. He made a statement I will refer to later in these reasons, about his intentions and plans for rehabilitating himself, but he also emphasized that, contrary to the Crown’s description of the shooting, “it definitely wasn’t a planned act.” He then went on to describe that he acted out of “fear, impulse, anger, mixed emotions” but not because he had been planning to kill Mr. Glasgow. Mr. Beals acknowledged that when he fired the single shot into Mr. Glasgow’s face, he had intended to kill him.

### **Mr. Beals’ Dock Statement**

[29] Section 726.1 of the *Code* mandates that the sentencing court is to consider “any relevant information placed before it, including representations made by or on behalf of the prosecutor or the offender.” An offender’s dock statement however can only be considered for limited purposes. (*R. v. Nur, [2011] O.J. 3878 (Ont.S.C.J.), paragraphs 63 - 66*) It cannot be used to establish a disputed mitigating factor that would normally have to be proven on a balance of probabilities by the offender. (*section 724(3)(d), Criminal Code*) Therefore I have not relied on Mr. Beals’ dock statement in my determination of whether the shooting was, as the Crown submits, a ‘first degree’ attempted murder. However what Mr. Beals’ dock statement does tell me is that he does not concede the Crown’s characterization of the shooting. This is relevant information that I am required to consider by section 726.1 of the *Code*.

### **Was The Shooting of Devlin Glasgow A “First Degree” Attempted Murder?**



[30] As I noted earlier, the issue of whether the shooting of Mr. Glasgow was a ‘first degree’ attempted murder is relevant to Mr. Beals’ sentencing because the Crown advances this as an aggravating factor. Various cases referred to by the Crown are of this character, including the Nova Scotia cases of *R. v. Jeremy LeBlanc*, [2011] N.S.J. No. 600 (S.C) and *R. v. Aaron Marriott*, [2011] N.S.J. No. 602 (S.C.) which I will discuss later in these reasons. In the *LeBlanc* case the Crown sought a sentence in the same range as here, 15 – 18 years. The Crown has tendered the security video as the evidence establishing the facts they rely on for this sentencing. In order to treat the Glasgow shooting as a failed ‘first degree’ murder, I must be satisfied beyond a reasonable doubt that this inference can be drawn from what is seen in the security video.

[31] After reviewing the security video a number of times carefully, I am not satisfied it establishes that Mr. Beals was lying in wait for Mr. Glasgow with a premeditated plan to kill him. The following are my reasons for concluding this.

[32] The video depicts Mr. Beals at the barber shop for about 12 minutes before Mr. Glasgow arrives. He does appear to be waiting for someone to come: there is no other apparent reason for him to be at the barber shop as he is not socializing there or having his hair cut. It is reasonable to infer that he is simply waiting and that the person he is waiting for is Mr. Glasgow. When Mr. Glasgow does arrive, Mr. Beals doesn’t seem surprised. Once Mr. Glasgow has walked through the outer area of the barber shop, Mr. Beals gets up and goes over to him.

[33] There is no way for me to know when Mr. Beals may have expected Mr. Glasgow to arrive but the video does not show him to be waiting anxiously. Mr. Beals does not watch the door during the 12 minutes he is waiting other than on the one occasion when the heavy-set man looks toward the door, a movement that seems to draw Mr. Beals’ attention in that direction. Otherwise Mr. Beals seems content to lean back in his chair, or turn himself away from the direction of the door so he has his back to it, or sit while the heavy-set man casually blocks his sight-line to the door. If this was a planned ambush I would expect Mr. Beals to have been vigilant about watching the door. If his plan had been to shoot Mr. Glasgow when he walked in, he would not have been simply waiting in what

appears to be the relatively relaxed fashion shown in the video. He would have been poised for the kill.

[34] I infer from Mr. Beals' demeanor in the video that he was expecting Mr. Glasgow. I do not find that the video permits the inference that Mr. Beals was planning on shooting him upon his arrival.

[35] And that is not what happened. When Mr. Glasgow arrived, Mr. Beals did not rush up to him and shoot him. He also did not saunter up to him and shoot him. The video shows Mr. Beals noticing that Mr. Glasgow has entered the shop. He does not get up right away. When he does, he does not take the shortest route to Mr. Glasgow, but goes around the heavy-set man and up to Mr. Glasgow who is stationary. It is apparent from the video that he and Mr. Glasgow engage in some conversation. Something then sparks movement. It is during this movement that Mr. Beals pulls out a gun and shoots Mr. Glasgow in the face.

[36] It is reasonable to infer that the split-second before he was shot, Mr. Glasgow sensed something bad was about to happen. That would explain why he takes a step back from Mr. Beals. But it is obvious that at first the two men were able to converse standing close together. Neither of them display a threatening or threatened posture during their brief, stationary conversation. They are still and then, in what is not more than a split-second, Mr. Glasgow is shot.

[37] I do not know what happened in the 5 seconds that Mr. Beals and Mr. Glasgow were face-to-face. They were calm. Something triggered a violent reaction in Mr. Beals. But whatever "went down", as the expression goes, in that brief exchange between the two men, the sequence of events does not support the inference that Mr. Beals had formulated a plan to assassinate Mr. Glasgow when he arrived at the barber shop. The facts of this case do not suggest a "hit" and are unlike the facts in *R. v. M.C.S., 2010 NSPC 26*, for example, where "M.C.S. came to the door. Their eyes met for a few moments. No words were exchanged...At very close range the gun was fired directly into the victim's chest." (*paragraph 104*) I mention this only as an example, it is not the only scenario for a planned execution.

[38] The only reasonable inference based on what the video depicts is that Mr. Beals fired at Mr. Glasgow intending to kill him. Shooting a person in the face indicates an intent to kill. (*R. v. Bains*, [1985] O.J. No. 41 (Ont.C.A.), page 5; *R. v. Rajanayagam*, [2001] O.J. No. 393 (Ont. S.C.J.), paragraph 20) Mr. Beals has admitted that when he fired at Mr. Glasgow his intention was to kill him. As the Crown has noted, the reason remains a mystery.

[39] I find therefore that “the features which led to [the] occurrence” of this shooting, which I am to take into account, do not include this having been an unsuccessful ‘first degree’ murder.

### **Mr. Glasgow’s Injuries and the Lack of Evidence of Any Long-Term Effects**

[40] Shortly I will discuss the significant aggravating factors in this case and what there is that is mitigating, which isn’t much. What does not qualify as mitigating is the fact that there is no evidence Mr. Glasgow suffered any permanent, disabling injuries.

[41] I do not have any current medical information about the state of Mr. Glasgow’s health now nearly two years since the shooting. Presumably he still has bullet fragments in his head as the doctors decided against trying to remove them.

[42] Usually attempted murder sentencing decisions refer to the victim’s injuries. There are plenty of examples of this in the case law. It is quite natural for sentencing judges to do so and I would have as well, if there had been any pertinent medical information provided. But such information does not drive the result. If Mr. Beals deserves no credit for Mr. Glasgow’s survival, he equally deserves no credit for Mr. Glasgow avoiding grave or permanent injury. (*R. v. Siu*, [1998] B.C.J. No. 2627 (C.A.), paragraph 38) Both outcomes are due to luck. Mr. Beals’ intent was to kill. The fact that he succeeded in neither killing Mr. Glasgow nor apparently in seriously injuring him makes him no less morally culpable. The crime of attempted murder requires no physical injury to the victim as an essential element. (*R. v. Gordon*, [2009] O.J. No. 724 (C.A.), paragraph 50) Where the

intent is to kill, the failure to even do serious harm is simply a matter of chance. As Lamer, C.J. remarked in *R. v. Logan*, [1990] S.C.J. No. 89:

The attempted murderer is no less a killer than a murderer: he may just be lucky – the ambulance arrived early, or some other fortuitous circumstance – but he still has the same killer instinct.  
(*paragraph 20*)

### **Aggravating Factors**

[43] Mr. Beals' criminal record is an obvious aggravating factor in this case. [*Editorial Note- rest of the paragraph has been removed.*]

[44] Just after his 19<sup>th</sup> birthday in July 2003, Mr. Beals was charged with assaulting a peace officer and resisting arrest. When he was sentenced in June 2004 for these offences, he received a fine and a suspended sentence with 18 months probation.

[45] Mr. Beals was 20 when he was arrested and charged for his most serious offence to date, an aggravated assault that occurred on March 19, 2005. He was sentenced in February 2007 at the age of 22 to 72 months in prison but given credit for 44 months for the time he spent on remand.

[46] The aggravated assault conviction followed a trial of Mr. Beals and two co-accused where it was found that the plan had been to “engage [the victim] in a fight the outcome of which was unplanned and unknown.” The judge was not satisfied beyond a reasonable doubt that Mr. Beals and his co-accused had confronted the victim with the intention of wounding him and endangering his life. (*R. v. Sparks*, [2006] N.S.J. No. 392 (N.S.P.C.), *paragraphs 81 and 82*) The aggravated assault conviction alone shows that Mr. Beals has been impulsively violent in the past.

[47] In addition to Mr. Beals' criminal record, additional aggravating factors include the proximity of other people in the barber shop to the shooting and the use

of a handgun, a deadly weapon that is easily concealed and transported. (*R. v. Johnston*, [2009] N.S.J. No. 349 (S.C.), paragraphs 32, 38)

[48] Shooting someone in a public place has consistently been treated as aggravating in sentencing for attempted murder. (*R. v. Chanda*, [1997] O.J. No. 6315 (Ont. C. J., paragraphs 6 and 7; *R. v. Melanson*, [1998] N.B. J. No. 140 (C.A.), paragraph 11; *R. v. Currie*, [2002] O.J. No. 2191 (C.A.), paragraph 83; *R. v. T.H.*, [2005] O.J. No. 5849 (Ont. C.J.), paragraph 31; *R. v. Gordon*, [2009] O.J. No. 724 (C.A.), paragraph 86; *R. v. Thompson*, [2009] O.J. No. 1109(C.A.), paragraph 26; *R. v. Guedez-Infante*, [2009] O.J. No. 4351(C.A.), paragraph 5; *R. v. Clarke*, [2010] O.J. No. 325 (S.C.J.), paragraph 29; *R. v. Kipp*, [2010] B.C.J. No. 762 (S.C.), paragraph 81; *R. v. LeBlanc*, [2010] N.S.J. No. 490 (S.C.), paragraphs 5, 24)

### **Mitigating Factors**

[49] The mitigating factors in this case are modest. At 27, Mr. Beals is not what would typically be described as a youthful offender, although in *R. v. Johnston*, [2009] N.S.J. No. 349, a 27 year old being sentenced for attempted murder was described as “relatively youthful.” (paragraph 32)

[50] According to his pre-sentence report, Mr. Beals has a very supportive family. He has close relationships with each of his parents. They both emphasized that their son needs vocational training and employment in order to make progress in his life. Mr. Beals’ mother feels Mr. Beals could benefit from further anger management programming. Mr. Beals’ father believes Mr. Beals has matured and is proud of him for taking responsibility for his actions. He feels Mr. Beals has been subject to the negative influences of family members involved in criminal activities. According to Mr. Beals’ father, these influences have been “detrimental to [Mr. Beals’] prosocial development.” (pre-sentence report dated October 27, 2011)

[51] Mr. Beals has a common-law partner and an eighteen month old daughter. He referred to his daughter in his statement to the court at sentencing, saying that

he wanted to change his life for the better for his daughter and wanted “to be a better person and a father someday to my daughter.”

[52] Mr. Beals has his Grade 10. As he indicated to me at the sentencing hearing, he wants to complete his General Equivalency Diploma and eventually become a carpenter. While in prison serving his sentence for aggravated assault, Mr. Beals continued his education but was paroled just before taking his GED. Mr. Beals has never had consistent, full-time employment and has always been dependent on family members to financially support him.

[53] Mr. Beals acknowledged in the pre-sentence report that he has a bad temper. He indicated that he has learned what triggers his temper. He advised the author of the pre-sentence report that he is motivated to make changes in his life and participated in programs while on remand. Two certificates of completion were tendered as exhibits at the sentencing: Respectful Relationships (October 2, 2010) and Options to Anger (January 3, 2011).

[54] Mr. Beals’ latest programs are not his first. While on remand for the aggravated assault charge, Mr. Beals completed the “Peoples Skills Self Discovery Program” and “Options to Anger Program”. He and his co-accused were described in that sentencing as recognizing “the need to improve their education level to become more productive citizens...” (*R. v. Sparks, [2007] N.S.J. No. 50 (N.S.P.C.), paragraphs 31 and 32*) Mr. Beals was described then in much the same way he is seen by his family now:

...sources consider Mr. Beals as caring, easy-going, friendly and kind and he cares a lot about his family and his future. He could benefit from educational upgrade and has an interest in applying for a trade through the Nova Scotia Community Colleges. (*Sparks, paragraph 39*)

[55] Mr. Burke submits that Mr. Beals’ completion of programs during this remand demonstrates a renewed effort on his part to deal with his anger management issues. He notes that Mr. Beals undertook these programs on his own initiative because he is motivated to address his problems.

[56] The Crown submits that the courses Mr. Beals took in the past have done nothing to prevent him tipping into violence again. I do not know whether Mr. Beals was able to constructively apply the lessons he may have learned from the programs to his life in the community after his release from prison in April 2009. The fact is that in December 2009 he committed an extremely serious violent crime. The programming he had taken did not stop this from happening. This is an indictment of Mr. Beals' ability to avoid violence but it also shows that his prison sentence failed to rehabilitate him.

[57] In mitigation Mr. Beals also points to his guilty plea. The Crown submits that this should not be afforded much significance in light of the security video. The Crown's point is that it would have been difficult for Mr. Beals to mount a defence in the face of this evidence. However, a guilty plea is routinely treated as mitigating, even, I note, in a case such as *LeBlanc* which was a clear case of a failed 'first degree' murder. Notwithstanding the intercept evidence that recorded the planning of that attempted murder, our Court of Appeal identified Mr. LeBlanc's guilty plea as a mitigating factor, indeed, the only one. (*R. v. LeBlanc*, [2011] N.S.J. 345, paragraph 15)

[58] Other cases where a guilty plea has been treated as mitigating in sentencing for attempted murder are: *R. v. Melanson*, [1998] N.B. J. No. 140 (C.A.), paragraph 16; *R. v. Chanda*, [1997] O.J. No. 6315 (S.C.J.), paragraphs 5 and 10; *R. v. D'Souza*, [2004] O.J. No. 4277 (S.C.J.), paragraph 11; *R. v. Kipp*, [2010] B.C.J. No. 762 (C.A.), paragraph 35. In Mr. Beals' case, the pre-sentence report indicates as did Mr. Beals' statement in court at his sentencing hearing that he is taking full responsibility for his wrongful actions. That unqualified acceptance of responsibility is a mitigating factor.

### **Denunciation and Deterrence for Gun Violence**

[59] The primary emphasis in a sentencing for attempted murder using a handgun is denunciation and deterrence. (*R. v. T.H.*, [2005] O.J. No. 5849 (S.C.J.), paragraph 24; *R. v. Situ*, [2006] O.J. No. 1990 (C.J.), paragraph 12; *R. v. Thompson*, [2009] O.J. No. 1109, (C.A.), paragraph 26); *R. v. Johnston*, [2009] N.S.J. No. 349 (S.C.), paragraph 46); *R. v. Clarke*, [2010] O.J. No. 325 (S.C.J.),

*paragraph 63*) Everyone, including Mr. Beals recognizes this. Grave concerns about public safety are raised by a shooting in a public place using a handgun. The presence of volatile, aggressive young men in public with loaded handguns hidden in their pockets is a serious social issue. When those guns are used to try and kill someone, protection of the public has to be the court's foremost concern.

[60] What issue or dispute led to Mr. Beals shooting Mr. Glasgow is unknown. What is known is that Mr. Beals chose to meet Mr. Glasgow in a public place, carrying a concealed handgun. He evidently did not give much thought to his propensity for anger and violence. He was equipped to deal violently with whatever transpired between him and Mr. Glasgow without consideration for the other people who might be directly affected.

[61] A lengthy prison sentence reflects the sentencing principles of denunciation and deterrence. It is a lengthy prison sentence that Mr. Beals is going to receive. The issue is what length of sentence is appropriate in the circumstances of this case and this offender and how should Mr. Beals' pre-sentence custody be calculated? I will examine both of these issues next.

### **Determining the Length of Mr. Beals' Sentence**

[62] As I mentioned earlier, the Crown has recommended I impose a sentence of 15 – 18 years in this case. Two very recent sentencings in Nova Scotia for attempted murder fall within this continuum and I will discuss those cases now. They are the *LeBlanc* decision I mentioned earlier in these reasons and *R. v. Aaron Marriott*, [2011] N.S.J. No. 602 (S.C.).

[63] I view both of these decisions as distinguishable. Each of them was an attempt to commit a planned and deliberate murder which I have found the shooting of Mr. Glasgow was not. Mr. Marriott was sentenced on May 16, 2011 to a jointly recommended 15 years on a single count of attempted murder to which he pleaded guilty. (*paragraph 8*) Mr. Marriott was 18 years old when he shot Jason Hallett outside the local children's hospital. Mr. Burke, who acted for Mr. Marriott, described this as having been a complicated resolution. Although he made no mention of this in his submissions, it is a matter of public record that



following the sentencing of Mr. Marriott on the basis of the joint recommendation, the Crown withdrew two other charges of attempted murder against Mr. Marriott involving the same victim, that had been scheduled for trial.

[64] Jeremy LeBlanc was sentenced on September 9, 2010 to a 16 year go-forward prison sentence for what was a planned shooting with a handgun in a densely populated residential area. Intercepts recorded Mr. LeBlanc driving around planning the luring and shooting of the victim. (*paragraph 3*) He was an offender with a lengthy criminal record that included violence. (*paragraph 24*)

[65] Although the sentencing judge in *LeBlanc* indicated he was “not looking at the 18 years that Crown counsel was looking for as a maximum” (*paragraph 28*), the sentence he imposed was effectively close to that maximum. Mr. LeBlanc’s 16 year go-forward penitentiary term was imposed on top of the 574 days of custody he had served on remand, for which he received a one-for-one credit. This is apparent on the plain reading of the judge’s reasons. (*paragraphs 32,34*) The sentence was upheld on appeal with Fichaud, J. of the Court of Appeal finding that:

My interpretation of the sentencing decision is that the judge applied a 1 for 1 credit before fixing the sixteen year sentence. Mr. LeBlanc received that credit for his 574 days of pre-sentence custody, leaving “[s]ixteen years go forward” to be served...A sentencing judge’s “go forward” term of incarceration is not erroneous merely because the judge applies the appropriate credit for remand before he pronounces the ultimate term of incarceration...(R. v. *LeBlanc*, [2011] N.S.J. No. 345 (C.A.), *paragraph 24*)

[66] It is a fundamental principle of sentencing that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. (*section 718.1, Criminal Code; R. v. Naugle*, [2011] N.S.J. No. 165 (N.S.C.A.), *paragraph 31*) A sentence should also be “similar to sentences imposed

on similar offenders for similar offences committed in similar circumstances.”  
(*section 718.2(b), Criminal Code*)

[67] The critical dissimilarity between the attempted murder by Mr. Beals and the attempted murders by Mr. LeBlanc and Mr. Marriott is that, as I have found, it was not planned and deliberate. It is still an extremely grave offence - a shooting in a confined space in the presence of ordinary citizens, including a child, all going about their everyday business - but it lacked the significant additional characteristic of premeditation.

[68] Mr. Beals, you have shown yourself to be a very dangerous man. Nearly five years ago you were sentenced for aggravated assault. Now you are being sentenced for attempted murder. You would have been looking at a life sentence if the bullet you fired into Mr. Glasgow’s face had done the damage you intended it to. A life sentence awaits you if you do not fundamentally change your values, your coping strategies, your associates, and your activities. This may be particularly challenging in prison but you will have to be resolute and disciplined about rehabilitating yourself. It is one thing to talk about your goals; it takes real commitment to achieve them.

[69] I believe Mr. Beals is sincere when he says he wants to be a better person, with a trade and a role as a father. I expect he was sincere at the time of his sentencing for aggravated assault when he spoke of making changes in his life. In sentencing him I cannot place too much emphasis on his statements but rehabilitation is a substantial objective of sentencing and a sentence should not be so onerous as to stifle its aspirations. (*R. v. Kipp, [2010] B.C.J. No. 762 (S.C.), paragraph 83*) This time Mr. Beals has someone other than himself to think of: he speaks of wanting to be a better person for his daughter than he has been to this point in her life. He has to thoroughly rehabilitate himself to achieve that.

[70] A daughter is a precious gift, Mr. Beals, and your daughter deserves a father who can make a sustained, positive contribution to her life.

### **Mr. Beals’ Sentence**

[71] There are two components to Mr. Beals' sentence – the total sentence and the pre-sentence custody credit to be applied to it. Taking into account all the circumstances of this case, Mr. Beals' criminal record, most notably his conviction for aggravated assault, the fact that he is still a relatively young man and the mitigating effect of his acceptance of responsibility, I find the appropriate sentence to be 13.5 years. The credit to be applied to that will be 46 months leaving Mr. Beals with 9 years and 7 months to serve on a go-forward basis. Thirteen and a half years is a heavy sentence carrying an emphatically denunciatory message and is proportionate to the nature of the crime Mr. Beals has committed.

### **Credit for Pre-Sentencing Custody**

[72] I am now going to address the issue of Mr. Beals' time in pre-sentence custody and why I have concluded he should receive a 2 for 1 credit – 46 months credit for the 23 months he has spent on remand. Mr. Beals was arrested on December 22, 2009. Consenting to remand, his show cause hearing proceeded on January 8, 2010. Bail was denied under sections 515(10) (b) and (c). On March 24, 2010, after requesting various adjournments, Mr. Beals elected Provincial Court and pleaded not guilty. Trial dates were set on June 29, 2010 for dates at the end of February and early March 2011. In January Mr. Beals discharged his lawyer. He retained Mr. Burke but new trial dates had to be found. The dates of September 19 – 23, 2011 were set. On September 19, Mr. Beals pleaded guilty to attempted murder. Mr. Beals has now served 23 months in pre-sentence custody.

[73] I will note there is no evidence that Mr. Beals was, at any time, attempting to protract his remand. He was entitled to plead not guilty and it would be improper to speculate on his reasons for discharging his first lawyer. There is simply no indication that Mr. Beals was trying to drag out these proceedings.

[74] Mr. Beals does not fall under the new statutory regime for calculating remand credit and I decline the Crown's invitation to reference that regime in his case. In my view it would be unfair to do so. The recent amendments to the *Criminal Code*, sections 719(3) and 719(3.1), are inapplicable. The amount of credit for Mr. Beals' pre-sentence custody is a matter that remains exclusively within my discretion.

[75] Two months of credit for every month spent on remand is an “entirely appropriate” calculation, especially where an accused did not have “full access to educational, vocational and rehabilitation programs.” (*R. v. Wust*, [2000] 1 S.C.R. 455, paragraph 45) As stated in *Wust*:

The often applied ratio of 2:1 reflects not only the harshness of the detention due to the absence of programs, which may be more severe in some cases than in others, but reflects also the fact that none of the remission mechanisms contained in the Corrections and Conditional Release Act apply to that period of detention. “Dead time” is “real time.” (paragraph 45)

[76] *Wust* recognized that the sentencing judge is best positioned to “carefully weigh all the factors which go toward the determination of the appropriate sentence, including the decision to credit the offender for any time spent in pre-sentencing custody.” (paragraph 45)

[77] While in pre-sentence custody, Mr. Beals did not have access to educational, vocational and rehabilitation programs. By his own initiative he took a couple of courses dealing with anger and relationships. I consider that it would be unfair to treat his having done so as a basis for denying him the “often-applied” ratio of 2 for 1 credit. These two courses hardly represent a breadth of “educational, vocational and rehabilitation” programs.

[78] As for his denial of bail, this was likely due to the seriousness of the charge, and the nature and extent of his record, particularly the aggravated assault conviction. It does not tell me however that Mr. Beals would not be a candidate for rehabilitative programs and parole. In upholding a sentencing judge’s decision to only give “straight time credit”, the British Columbia Court of Appeal noted in *Tschritter* that if the offender continued on “the path he has set for himself, [he] will not benefit from parole or from programs in place to assist in rehabilitation.” (*R. v. Tschritter*, [2006] B.C.J. No. 910, paragraph 15) That offender was described by the Court as having “a tenuous commitment to rehabilitation.” (paragraph 14)

[79] Mr. Beals has a plan for his rehabilitation. It builds on a plan he had in 2007 when he was sentenced for aggravated assault. Although that suggests he is no further ahead than he was, he indicated in his statement to the court that this plan now includes re-locating from the Province and focusing on being a responsible father. It may be that he has also refined his career goals as he refers to acquiring a trade as a carpenter which was not specifically mentioned in his previous sentencing. I am not prepared to find that Mr. Beals is a doubtful candidate for rehabilitation.

[80] There is a consensus that Mr. Beals' time in custody already should be seen as part of the punishment for his offence. Giving a 2 for 1 credit acknowledges the absence of parole eligibility and the less favourable conditions he has experienced than apply in post-sentencing custody. What he has been serving is "dead time" and, in my view, that should be reflected in his sentence by a double credit.

[81] I will conclude by saying that I agree with the comments of the Manitoba Court of Appeal in *R. v. Pangman*, [2001] M.J. No. 217 which held that "too much emphasis" should not be placed on the manner in which credit for pre-sentencing custody is calculated. The ultimate focus, said the Court, is whether at the end of the day the sentence is a fit one. (*paragraph 66*) I am satisfied 13.5 years is a fit sentence given the facts and circumstances of this case and represents a just sanction for Mr. Beals' very serious crime.