

Court of Queen's Bench of Alberta

Citation: R v Byron, 2021 ABQB 884

Date: 20211108
Docket: 200160786Q1
Registry: Edmonton

Between:

Her Majesty the Queen

Crown

- and -

Justin David Byron

Accused

**Reasons for Sentence
of the
Honourable Madam Justice Tamara L. Friesen**

[1] The following is an edited version of an oral decision delivered on October 22, 2021. As counsel were advised on that date, citations, quotations, as well as a summary of “Facts” and jurisprudence have been added to the written version. This decision replaces the oral decision.

BACKGROUND

[2] On May 18, 2021, Justin David Byron pleaded guilty to six criminal charges arising from one attempted bank robbery and one completed bank robbery. In both instances, explosive devices were detonated in an effort to rob security guards while they were in the process of loading large amounts of cash into ATM banking machines.

[3] The first two charges relate to the attempted robbery which took place on September 19, 2019: one charge of attempted robbery contrary to ss 463/344(1)(B) and possession of an explosive substance contrary to s 82(1) of the *Criminal Code of Canada*, RSC 1985, c C-46 (the *Code*).

[4] The next four charges relate to the completed robbery which took place on December 18, 2019: robbery while using a firearm contrary to s 344(1)(A.1), aggravated assault contrary to s

268, causing an explosion with intent to cause bodily harm to armoured car personnel contrary to s 81(1)(B), and committing an indictable offence while masked or disguised contrary to s 351(B) of the *Code*.

[5] Mr. Byron was arrested on March 4, 2019 and has been incarcerated since that time. On January 4, 2021, he filed an application alleging that his rights guaranteed under *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK), 1982, c 11* (the *Charter*) had been breached in numerous different ways during the investigation, his arrest, and while he has been in custody. After entering his guilty pleas, he moved forward with the aspect of the *Charter* application alleging breaches of his s 7 and s 12 rights while in custody. He argued that he should be entitled to either a stay of proceedings, or a reduction in sentence as a remedy for those breaches, which included, but were not limited to, the overly restrictive and harsh conditions imposed as a result of the COVID-19 pandemic.

[6] The Crown opposed the *Charter* application, arguing that Mr. Byron's *Charter* rights had not been breached at any point during his time in custody, and he was therefore not entitled to a stay, or to any reduction in sentence above and beyond the 1.5 to 1 allowable remand credit set out in s 719(3.1) of the *Code*. The Crown argued that if the Court saw fit, the severe restrictions put on Mr. Byron during his pre-trial detention as a result of COVID-19 could be addressed by granting a small, global reduction in overall sentence, in excess of the 1.5 to 1 credit.

[7] The blended *Charter voir dire* and sentencing hearing took place over the course of 8 days: June 28 – 30, July 2, and July 7 – 9, and September 13, 2021. My full decision with respect to the *voir dire* application, released together with these reasons, can be found at 2021 ABQB 883.

[8] I concluded that while no *Charter* breach had been proven, the evidence before me demonstrated that while held in remand, prior to entry of his guilty plea, Mr. Byron was subjected to severe restrictions, at times akin to what prisoners experienced when held in administrative segregation. The conditions he and other prisoners experienced during that time period resulted from actions taken by the institutional authorities in response to the COVID-19 pandemic, on advice and direction from the Chief Medical Officer of Health for the Province of Alberta. I concluded that I have the discretion to account for the severe restrictions experienced by Mr. Byron by way of a reduction to the overall sentence imposed.

CIRCUMSTANCES OF THE OFFENCE

[9] The parties provided the Court with a lengthy and detailed "Agreed Statement of Facts," Exhibit S-1, which referenced and included several pieces of video evidence, including CCTV footage from the crime scenes, which were entered into evidence as part of the guilty plea as Exhibit S-2.

[10] The evidence outlined in the Agreed Statement of Facts illustrates that Mr. Byron put significant effort and planning into the commission of the offences in this case. What follows is a summary of the facts and evidence entered in support of his guilty plea.

[11] At the time of the offences, Mr. Byron regularly resided in British Columbia with his wife, Kristin Driesen, and their children. From September 2018 to March 2019, the family did not have any significant sources of income.

[12] For just over 6 months, beginning in June, 2010, Mr. Byron was employed by G4S Security, which was an armoured car security company. G4S was responsible for, among other things, delivering cash to banks throughout Alberta. In January of 2014, GardaWorld took over G4S Security and its related business contracts, including bank deliveries in Alberta.

The First Bombing and Attempted Robbery

[13] In September of 2018, Mr. Byron attended at a Staples store in Edmonton wearing distinctive clothing. CCTV footage captured from that day shows him purchasing a plastic capped mailing tube. He returned a few days later to the same store wearing the same clothing and purchased a cardboard mailing box.

[14] Sometime on September 18, 2021, Mr. Byron constructed an improvised explosive device (IED #1) comprised of the Staples-brand box containing various components and an explosive substance. The explosive substance was contained in the Staples-brand mailing tube. The IED was built to be detonated using a remote-control ignition system (Ignition System 31) that would work within a 100 m radius of the receiver, which was attached to the IED.

[15] On September 18, 2018, Mr. Byron drove to the area of 141 Street and 27 Avenue in Edmonton, which was close to an RBC Bank branch. He parked his vehicle in the residential area a few hundred meters to the east of the RBC Bank.

[16] At approximately 1:15 AM, Mr. Byron entered the bank's ATM vestibule. He was heavily disguised, wearing an "old-man" face mask, a hooded jacket with the hood over his head and pulled tightly around his mask, baggy cargo-style pants, and gloves. RBC CCTV footage shows Mr. Byron carrying a cardboard box (IED #1). Once inside the vestibule, Mr. Byron placed the IED on top of the entry door mechanism, immediately above the head of anyone who walked into the vestibule through that door.

[17] With IED #1 in place, Mr. Byron exited the vestibule, and went to sit on a nearby ETS bus bench to wait for the armoured car guards to arrive. The bench was located within 100 meters of the RBC building and gave him a clear view of the well-lit vestibule.

[18] At approximately 1:30 AM, a GardaWorld armored cash delivery truck arrived just outside of the bank. Two GardaWorld employees, Boris Goldyrev (31 years) and Nabil Sassine (48 years), both carrying service firearms, exited the truck and retrieved a cash bag from the back to be dropped off inside the bank. Sassine entered the vestibule ahead of Goldyrev. Neither of them noticed the IED. Once inside, the pair proceeded away from the entry door toward a set of interior doors about 15-feet from the IED. Once at the interior door, the IED detonated, causing a loud bang and sending smoke and debris throughout the vestibule.

[19] The guards initially believed that they had been shot at and took defensive positions, drawing their service firearms. After exiting the bank, Goldyrev noticed a large male, later determined to be Mr. Byron, walking away from the nearby ETS bench eastward toward his vehicle. Within moments, Goldyrev observed a light-colored pickup truck leaving the area, later determined to be Mr. Byron's Toyota Tacoma.

[20] Having failed to disarm the guards, Mr. Byron abandoned the robbery and left without the cash bag. Cell phone records show that Mr. Byron left the vicinity immediately, drove to the Calgary International Airport where he parked his Tacoma, and flew back to B.C.

[21] In the meantime, the guards called for back-up and assistance. Edmonton Police Service (EPS) and emergency medical services arrived on scene, where they encountered Goldyrev and Sassine, who were experiencing minor respiratory distress at the time. First responders also experienced breathing difficulties, consistent with a respiratory irritant diffused through the air. Mr. Byron, however, does not admit that he added such an irritant to the IED.

[22] EMS took Goldyrev and Sassine to the hospital. Both were treated for chemical exposure and were found to have minor soft-tissue injuries, tinnitus, and temporary hearing impairment. Goldyrev and Sassine suffered no long-term physical injuries and were off work for a short time. Both eventually returned to work for GardaWorld.

[23] Members of EPS' Crime Scene Investigation Unit (CSIU) and Bomb Squad conducted a thorough investigation of the crime scene and collected evidence and exhibits, including fragments of the items Mr. Byron had purchased at Staples. Staples conducted a search of their records and were able to pinpoint the sales to Mr. Byron and retrieve the related CCTV footage. While they had discovered the bomber, his identity was still unknown.

[24] Members of the EPS Bomb Squad were able to re-construct a replica of IED #1 after the fact, and created a video explaining their process, which I viewed when the guilty plea was entered. EPS Bomb Squad members speculated that the "charge" contained in IED #1 was relatively small compared to the size of the box, which suggested to them that it was either a "test" or an attempt at distraction, rather than injury.

The Second Bombing and Completed Robbery

[25] Following the first attempted robbery, Mr. Byron returned to his home in Salmon Arm, B.C. On November 2, 2018, he purchased two remote-controlled ignition systems from the same online retailer. He had them delivered to Sumas, and picked them up on November 20, 2018, travelling back to his home in Salmon Arm.

[26] Cell phone records show that in early December 2018, Mr. Byron drove from B.C. to Leduc, Alberta. On December 7, 2018, Mr. Byron spent several minutes in the Lago Lindo area of north Edmonton, near the Scotiabank branch at 8140 160 Avenue, soon to be the site of the second bombing.

[27] Between December 8 and December 12, 2018, Mr. Byron built two more IEDs. This time, the IEDs were each housed in an 8½ x 10 x 2½" shadowbox. Shadowboxes are three-dimensional picture frames used to house small objects for display on a wall. The shadowboxes were later determined to have been purchased by Mr. Byron at a Michaels craft store. Each shadowbox contained an ignition system connected to a charge containing an explosive substance. One of the IEDs also contained a hot chili powder based respiratory irritant.

[28] Once the IEDs were built, Mr. Byron used photo printing paper to print what appeared to be Scotiabank-branded promotional ads. He placed the printed ads over the front of the shadow boxes in order to disguise the IEDs and conceal their contents.

[29] Members of the EPS Bomb Squad later re-constructed replicas of the IEDs and created a video explaining their process. In that video, an EPS Bomb Squad member observed that the clear plastic had been removed from the shadowboxes and likely replaced with a sheet of cardboard. In his opinion, that was done in order to decrease the risk of injury when the bombs were detonated.

[30] Mr. Byron loaded the new IEDs into his Tacoma, together with a pair of military-style boots, a gas mask, a Santa-style beard, bulky clothing, body armor and a Beretta CX4 9mm semi-automatic rifle, and travelled back to Edmonton. He arrived in the St. Albert area on December 12, 2018 just before 10:30 PM.

[31] Mr. Byron then drove to the Lago Lindo area, arriving in the vicinity of the Scotiabank sometime around 1:45 AM on December 13, 2018, and parked in a residential area a few hundred meters to the southeast of the bank.

[32] Scotiabank CCTV footage shows a heavily disguised man of large-stature entering the ATM vestibule. Mr. Byron was wearing a Santa Claus-like mask, hoodie, large jacket, black cargo-style pants, boots, and gloves. Once inside the vestibule, he affixed the IEDs onto the glass wall next to a set of interior doors and exited the vestibule.

[33] Mr. Byron then hid in an area to the east of the Scotiabank parking lot where he had a clear view of the vestibule and was within radio range of the IEDs. He secured his gas mask and collected his Beretta Semi-Automatic Rifle, which he strapped across his shoulder.

[34] Mr. Byron waited with his detonator ready for the scheduled GardaWorld armored delivery. His intention at the time was to detonate the IEDs, causing sufficient injury to the guards, to incapacitate them, and to rob them of their cash bag.

[35] The CCTV footage, which I reviewed, shows that at approximately 2:06 AM a GardaWorld armored delivery truck arrived outside of the bank. Two GardaWorld employees, Daniel Evans (44 years) and Harjinder Khaira (43 years), both armed with service firearms, exited the truck. Mr. Evans retrieved a cash bag containing \$130,000 CAD in \$20 denominations from the truck. The pair entered the vestibule unaware of the danger posed by the IEDs that were affixed to the interior glass walls just feet from their heads. Mr. Evans approached the interior doors, at which point Mr. Byron detonated the first IED, knocking Mr. Evans to the ground and filling the vestibule with smoke.

[36] Within a few seconds, and while Mr. Evans was incapacitated on the ground, Mr. Byron detonated the second IED, further injuring Mr. Evans and blowing the respiratory irritant throughout the vestibule. These close-range explosions inflicted shrapnel injuries and abrasions to Mr. Evans, which caused a considerable amount of bleeding.

[37] Believing she and Mr. Evans were under armed attack, and had been shot at, Ms. Khaira retreated southbound across the parking lot and drew her firearm. From there she observed a large-statured male, later determined to be Mr. Byron, approaching the vestibule from the east, carrying a firearm.

[38] After the explosions, Mr. Evans managed to exit the vestibule and was kneeling by the armored truck as Mr. Byron approached. Mr. Evans stood up and was repeatedly struck by Mr. Byron, who Mr. Evans noted was wearing a gas mask. Mr. Evans also felt a hard object slung around his attacker's torso, later determined to be the Beretta Semi-Automatic Rifle. Mr. Evans was bleeding profusely and left a considerable amount of blood on Mr. Byron's rifle, which was later recovered from his Salmon Arm property, and swabbed for DNA.

[39] The Scotiabank CCTV footage shows Mr. Byron re-entering the vestibule about 25 seconds after the second explosion, where he collected Mr. Evans' cash bag containing \$130,000 before leaving the scene. From her position, Ms. Khaira observed Mr. Byron exit the vestibule with the cash bag and run toward some bushes to the east of Scotiabank, disappearing from view.

Ms. Khaira then ran toward the vestibule calling for Mr. Evans to get back into the armored truck. Eventually, Ms. Khaira and Mr. Evans made it back into the truck where Ms. Khaira radioed for assistance.

[40] EMS and EPS members responded within minutes. EPS members secured the area while EMS attended to Mr. Evans and Ms. Khaira. Mr. Evans was bleeding profusely from his scalp and was holding a jacket to his head in an effort to stop the bleeding. First responders encountered breathing difficulties, including coughing and mild inhalation distress, due to the presence of the respiratory irritant lingering in the area.

[41] Meanwhile, Mr. Byron drove eastbound from the area in his Tacoma, and then drove north toward Morinville, and then eventually west toward interior B.C.

Mr. Byron's Discovery and Arrest

[42] Based upon images of the Tacoma that had been seized from CCTV footage in the area of the Scotiabank, a diligent and creative EPS Detective was able to identify certain key features unique to that particular vehicle, and reverse-engineered the first six digits of the Tacoma's VIN. Using that information, investigators conducted a vehicle registry search, which resulted in a shortlist of names. By comparing the names on that shortlist with information obtained from cell tower data records taken from the area near both bombings, investigators identified Mr. Byron. He became the primary suspect after comparing his photograph to the images captured in the Staples CCTV footage.

[43] While the further details of the EPS' investigation into the bombings are fascinating, they are not overly relevant to the sentencing process. Suffice it to say, using a good deal of ingenuity, some intuition, and a lot of hard work, EPS investigators were quite quickly able to gather incriminating evidence, and to identify and track Mr. Byron to his home in Salmon Arm, B.C. The RCMP confirmed his location on February 26, 2019 when surveillance revealed that the Tacoma, which had been sighted at both crime scenes, was parked at the Mr. Byron's residence on the Salmon Arm property. Investigators began preparing to execute a search warrant and to arrest Mr. Byron.

[44] Before the arrest could be affected, on March 3, 2019, Telus alerted the EPS that Mr. Byron's cell phone had just transmitted from a cell phone tower at the Edmonton International Airport. EPS determined that Mr. Byron had flown from Kelowna to Edmonton, rented a white Nissan Armada, and was scheduled to return to Kelowna the following day.

[45] Relying on cell phone data, EPS were able to locate Mr. Byron seated in the rented Armada, parked at a parking lot on Calgary Trail. At 4:20 AM, surveillance units followed Mr. Byron to an industrial park at 93rd Avenue and 50th Street where he pulled into a restaurant parking lot at 9303 50 Street. Of note, GardaWorld's Edmonton depot is located a few blocks to the East, at 9373 47 St NW. Armored trucks would pass by that location as they left the depot to make deliveries, although none drove by during the 7 minute timeframe Mr. Byron spent sitting in the parking lot.

[46] At 4:50 AM, Mr. Byron travelled to Grassland, Alberta and parked at the Husky gas station where he watched the highway until 9:00 AM. While EPS surveillance did not observe any armored trucks passing through Grassland during the time Mr. Byron was parked there, GardaWorld confirms that its armored trucks typically pass through Grassland on their way to Fort McMurray around that time of day.

[47] At approximately 9:00 AM, Mr. Byron refueled the Armada and began driving back toward Edmonton. He stopped near the Skeleton Lake turnout at one point, but did not meet with or speak to anyone at that time. Eventually, he returned to the Edmonton International Airport where he returned the car and entered the airport in order to catch his scheduled flight home.

[48] Mr. Byron was arrested at the airport on March 4, 2019, without incident, after passing through security. After being informed of the reasons for his arrest and his right to counsel, Mr. Byron was taken to EPS' Downtown Division.

Statements to the Police

[49] Mr. Byron was interviewed by an EPS Detective in an interview room. During the video-recorded interview, the EPS Detective laid out the evidence obtained by the EPS during the course of their investigations into the bombings at the RBC Bank and the Scotiabank. During the interview, Mr. Byron made several admissions, including that he was the individual who placed and detonated the IEDs, and that he stole the cash bag during the Scotiabank robbery. He told the Detective that he did not intend for anyone to get hurt and claimed that his motivation for the bombings was to obtain money in order to pay off debts relating to medical treatment expenses for his wife and mother.

[50] The next morning, Mr. Byron participated in a second video-recorded interview. During that second interview, he attempted to mislead police by falsely telling EPS that a second individual by the name of "Kelly McCormack" was actually the principal in the manufacture and detonation of the IEDs. He claimed that he had only provided cursory assistance to McCormack and that McCormack gave him \$70,000 for his assistance during the Scotiabank bombing. He said he had covered for McCormack in the first interview because he was fearful of him and feared for the safety of his family. Mr. Byron falsely claimed that McCormack, who allegedly was driving a large black F-150, caught up to him and pulled him over at the Skeleton Lake turnout. He went on to state that he and McCormack got out of their vehicles to talk and he told McCormack that he was not interested in being involved in any more bombings.

[51] At that point in the interview, the interviewing Detective revealed that Mr. Byron had been under covert surveillance during his trip to Grassland and police knew he did not meet with anyone. Mr. Byron admitted he was lying about meeting McCormack. He then changed his story again, maintaining that McCormack was real and that he had disposed of McCormack's cell phone in the Cabela's washroom.

Search of the Tacoma and Salmon Arm Property

[52] Among the items seized from Mr. Byron's Tacoma were various receipts, border crossing declarations, a bill of lading, and other incriminating documents. There were also various knives, six rounds of loose .22 calibre ammunition, and a notebook made in 2010 when Mr. Byron was completing his G4S training program.

[53] The items seized from the Salmon Arm property included: various semi-automatic and long-range firearms and associated devices including silencers/suppressors (prohibited devices); rifle scopes; a night vision ballistic helmet; and many different types of ammunition stored unsafely in various parts of the home. With the exception of the prohibited devices and prohibited weapons, all of the firearms and ammunition were lawfully owned by Mr. Byron who had a valid and subsisting PAL at the time.

[54] Investigators also located three remote ignition systems similar to those built into the IEDs used in the bombings at the RBC Bank and the Scotiabank, as well as a bag containing IED components. In the basement, another complete IED similar to those used in the RBC Bank and the Scotiabank bombings was located, which was confirmed to contain a live explosive substance and which subsequently needed to be disabled by members of EPS' Bomb Squad.

[55] A box labelled "Justin Books" containing 52 "how-to" style books involving subject matters such as explosives recipes, instructions on building IEDs and other incendiary devices, weaponry, trap-building, disguise methods, survivalism, living off the grid, surveillance, obtaining new identities, and a how-to guide on committing murder was located.

[56] In the laundry room, in a black canvas bag, investigators discovered the Beretta Semi-Automatic Rifle with sling that had been used by Mr. Byron during the Scotiabank bombing. Notably, when EPS located the rifle it was found loaded with 14 rounds in its magazine. The rifle was wrapped in a black garbage bag containing blood. The rifle itself was still covered in blood, which was swabbed and later sent to the RCMP forensics lab in Ottawa and found to be the blood DNA of the complainant, Mr. Evans.

[57] Other items found in and around the home included: assorted fireworks components, some of which had been disassembled; a Staples-brand cardboard shipping tube, similar to that used in the IEDs; military-style boots similar to the boots worn by Mr. Byron in the bombings at the RBC Bank and the Scotiabank; one set of body armour, which Mr. Byron had a licence to possess; two cans containing explosive substances, being 800g of potassium chlorate and 450g of aluminum powder (dark German); tasers and taser cartridges; a smoke bomb; and trail cameras and SD memory cards.

[58] A member of the EPS' Technological Crimes Unit later examined various electronic devices located in the house and found additional incriminating evidence including: from a computer, several searches for suspicious items, including natural powder-based irritants, pepper and pepper spray, and fireworks ignitions systems; from an SD memory card recovered from the trail cameras, videos and still images from the trail camera, including a video created on September 3, 2018, showing a camera being set up in a bushy area of a TD Bank parking lot and a GardaWorld armored truck pulling up to the bank, and a video created on September 16, 2018 showing the front of a CIBC branch and parts of a silver Toyota Tacoma; from a hard drive, a large cache of anarchist and bomb making information, with contents similar to the 52 books found at the Salmon Arm property; and from an iPhone, a note that appears to contain surveillance information regarding a "guard" and an "abm room" at a bank.

The Stolen Cash

[59] During the search, investigators located \$11,520 CAD in \$20 denominations, in bundles secured with two rubber bands, which is consistent with the way in which GardaWorld would have prepared cash bundles.

[60] Further investigation confirmed that between December 14, 2018 and February 28, 2019, deposits were made totaling \$30,420 CAD cash in \$20 CAD denominations into Ms. Driesen's TD Canada Trust account at branches in Vernon and Kamloops, B.C., sometimes multiple deposits in a single day.

[61] Between December 14, 2018 and February 18, 2019, Mr. Byron also deposited a total of \$30,115 into his Scotiabank accounts and a pre-paid Visa card. Following the robbery, he

purchased thousands of dollars of Milwaukee-brand power tools, firearms (including a long-range .50 caliber Cadex Tremor sniper rifle for which he paid \$7,500 cash in \$20 CAD denominations) and other items, many of which were later recovered from the Salmon Arm property during the execution of a search warrant.

[62] The balance of the stolen funds have not been accounted for.

VICTIM IMPACT STATEMENTS

[63] Information with respect to the impact of these crimes on specific victims is taken from the Agreed Statement of Facts as well as from the Community Impact Statement of Bruno Beaudoin on behalf of GardaWorld, and Mr. Evans' Victim Impact Statement, which were made Exhibits in the hearing.

[64] Immediately following the second bombing, EMS personnel checked Mr. Evans and Ms. Khaira and took them to the University of Alberta Hospital where Ms. Khaira was treated for minor injuries, including slight abrasions to her arm and smoke inhalation. She was released from the hospital the following day. As a result of the incident, Ms. Khaira was off work for approximately one year. Upon returning, Ms. Khaira decided that she could no longer work for GardaWorld and left her employment.

[65] Mr. Evans was treated for serious, but not life-threatening injuries, including lacerations to his scalp and right thigh and abrasions to his head, arms, and hands. He received eleven staples as well as stitches to close a laceration to his scalp. He required three stitches to close the laceration on his right thigh. Cardboard shrapnel had to be removed from his arms. He also suffered bruising of the abdomen and damage to his hearing, including ringing in his ears and hearing loss. Mr. Evans has permanent scarring on his scalp.

[66] In his Victim Impact Statement, Mr. Evans indicated that in addition to permanent scarring on his scalp, he also has permanent scarring to his face, arms, and one leg. He occasionally still has glass and metal shards work their way to the surface of his scalp. Mr. Evans wrote that while he feels fortunate not to have developed PTSD, he has suffered emotionally as a result of the physical injuries he sustained in the course of the robbery. He indicated that he suffers stress in his day-to-day relationships and activities as a result of hearing loss and the fact that his ears ring incessantly. His tinnitus and hearing loss have also contributed to feelings of depression.

[67] Mr. Evans was off work for several months after the robbery, and suffered short-term financial loss for a period of about 6 months related to his inability to work overtime. Upon returning to work, he was assigned to modified duties to accommodate his injuries. He later left GardaWorld to work in corrections. Mr. Evans indicated in his Statement that he had previously wanted to become a police officer, but withdrew his application due to the uncertainties about possible long-term hearing loss.

[68] Defence counsel submitted that with respect to the impact on Mr. Evans, the injuries that were admitted to, or proven, were the ones set out in the Agreed Statement of Facts, not the additional injuries Mr. Evans describes in his Victim Impact Statement and that his injuries "should not be overstated."

[69] Subsections 722(1) and (8) of the *Code* entitle the Court to consider any Victim Impact Statement that has been prepared and filed with the Court describing the physical or emotional

harm, property damage, or economic loss suffered by the victim as the result of the commission of the offence. The injuries suffered by Mr. Evans described in the Agreed Statement of Facts fall under s 722(9) of the *Code*, being “any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender.” I am therefore entitled to consider both the Victim Impact Statement and the Agreed Statement of Facts as it relates to Mr. Evans’ injuries. By either account, he was seriously injured in the bombing.

[70] Mr. Beaudoin stated that GardaWorld Edmonton Branch employees, as well as the entire Canadian team, were negatively impacted by the robbery and attempted robbery. It affected their sense of security and caused them to question themselves and their ability to defend themselves. They were completing their daily routes “with much more fear.” This resulted in some medical leaves of absence and resignations, which impacted the company financially.

[71] Mr. Beaudoin observed that GardaWorld customers were also affected. They questioned the security of their locations and their own employees and were afraid of being targeted. He noted that the citizens of Edmonton were also impacted, and may have suffered “virtual trauma” as the events were well publicized. Their once-secure community now seemed untrustworthy and much less safe.

CIRCUMSTANCES OF THE OFFENDER

[72] Mr. Byron’s circumstances were set out in a Pre-Sentence Report (PSR) authored by Probation Officer, Ms. Audrey Morton, and elaborated on by his counsel as well as in the course of his own testimony.

[73] Ms. Morton spoke with Mr. Byron, Mr. Byron’s wife, and his father in preparing the PSR. At Mr. Byron’s request, Ms. Morton testified in person at the sentencing hearing so that she could be cross-examined with respect to some of the conclusions she had drawn, primarily on the subject of his expression of insight and remorse, which Mr. Byron disagreed with.

[74] Mr. Byron, who was born in Edmonton, is 41 years old. He has no criminal record. He is married to Kristina Driesen and they have two children. His second child was 16 days old at the time of the first offence. As a result of his incarceration, his wife and children have no fixed address and have been moving between his parents’ home in Saskatchewan and his sister’s home in Alberta since that time. She has been forced to rely on income assistance in order to provide for herself and her children.

[75] Mr. Byron’s relationship with his wife is very good and they speak on the phone as often as he is able to do so while in custody, which is generally on a daily basis. He provided the Court with two letters, one from Ms. Driesen and one from her doctor. The letters describe Ms. Driesen’s struggles with her mental health and suicidal thoughts, and how much she relies on her phone calls with Mr. Byron to help her feel supported so she can stay safe. Ms. Driesen expressed her gratitude that she has a spouse “that cares so much about his family and their well being above his own needs.”

[76] Mr. Byron has one younger sister who has health issues, and one younger brother who recently died as a result of kidney failure. He has always been close with his siblings. The family moved around a lot while Mr. Byron was growing up and he experienced difficulties fitting in at school as well as bullying.

[77] Mr. Byron alleged that his father has mental health issues and had fairly significant mental health breakdown in 1993/1994, when Mr. Byron was 13 or 14 years old, which led to his father being diagnosed as bipolar. Mr. Byron indicated that he suffered from fairly significant physical and emotional abuse by his father when he was growing up. He said his father regularly spanked him with a belt and a switch, but that he did not abuse his mom. He said he could not do anything right in his dad's eyes.

[78] Ms. Morton interviewed Mr. Byron's father, and he said that Mr. Byron had very few behavioural issues growing up and the disciplining used was grounding, time-outs, and spanking. His father agreed that he struggles with depression, but indicated he has no other mental health issues.

[79] Mr. Byron has a high school education and received good grades in school. He trained as an emergency medical technician, and has a diploma in Environmental Conservation and Reclamation. He has worked for various environmental consulting projects in various countries and generally enjoys learning and research. He worked with his father for some period of time in New Zealand on a project that involved "planting" rain in clouds. His father indicated Mr. Byron is smart, honest, and has a good work ethic, but that he needs to work on thinking things through before making decisions.

[80] Mr. Byron's younger brother Jeff had severe kidney problems and was placed on a kidney donation list and told the wait for a kidney would be at least 4 years. Mr. Byron asserted that his brother's health challenges contributed to his reasons for committing the offences in question. One of his goals was to obtain enough money to be able to privately pay for a transplant surgery in the United States, which would not involve the same wait time. Ultimately, his brother died while Mr. Byron was in custody.

[81] Mr. Byron has a good relationship with his mother. Sadly, Mr. Byron's mother is currently suffering from cancer and she was in the hospital with an infection at the time the PSR was prepared; Ms. Morton chose not to speak with her.

[82] Mr. Byron is not in touch with his extended family and has no close friends locally, although he has maintained some friendships with people he worked with overseas. He has numerous hobbies including hunting, blacksmithing, hiking, and reading. He has no issues with abuse of drugs or alcohol.

[83] Ms. Morton, in the PSR and in her oral testimony, expressed concerns with what she perceived to be Mr. Byron's rationalization and minimization of his actions. For example, he provided her with a "laundry list" of reasons why he needed the money he stole, and he repeatedly observed that the explosives were designed to "minimize harm." I note that both of these explanations were also repeated numerous times during the taking of the guilty pleas and during the course of the sentencing hearing.

[84] Ms. Morton concluded Mr. Byron lacked insight into how his actions affected the victims and their families, instead concerning himself primarily with the impact on his own family. She also expressed concern with his plans upon release. She did not think he had any realistic employment or housing prospects, having indicated he wants to start a farm, but having no financial capital to do so.

[85] Counsel for Mr. Byron submitted that the explanations and justifications Mr. Byron gave to Ms. Morton were not meant to be contemporaneous rationalizations of his behaviour; rather,

they should be considered as his attempt to explain what was going through his mind at the time. He was trying to explain to her the errors in judgment that led to his offences.

[86] Whatever he may have expressed to Ms. Morton, and however she may have interpreted what he said, Mr. Byron very clearly indicated in his personal remarks to the Court that he feels remorse for his actions. He said he is sorry for the pain, grief, and suffering he has caused and wishes he could take it all back. He expressed his confidence that he can become prosocial in the future. He wants to become a productive member of society for his family.

PRINCIPLES OF SENTENCING

[87] While sentencing is a highly individualized process, I am guided by the general principles set out in s 718 of the *Code*:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- a) to denounce unlawful conduct
- b) to deter the offender and other persons from committing offences;
- c) to separate the offender from society, where necessary;
- d) to assist in rehabilitating offenders;
- e) to provide reparation for harm done to victims; and
- f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to the victim and to the community.

[88] In addition to fulfilling the purpose of sentencing set out in s 718, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: the punishment must fit the crime. The Court must therefore have regard to all relevant circumstances, including aggravating and mitigating factors. Some aggravating factors are described in s 718.2 of the *Code*, including “evidence that the offence has a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation.”

[89] Pursuant to s 718.2(b), in determining a fit and proper sentence the Court must also strive for parity: similar sentences should be imposed “on similar offenders for similar offences committed in similar circumstances.” That said, an offender should not be deprived of liberty if less restrictive sanctions would be appropriate under the circumstances; all available sanctions other than imprisonment that are reasonable should be considered for all offenders.

Starting point sentences and parity

[90] Starting point sentences and sentencing ranges reflect the principles and objectives of sentencing, specifically, the goals of parity and proportionality. They are not simply the result of averaging over time, nor do they bind the court to any particular outcome. The determination of a just and appropriate sentence is a highly individualized exercise beyond a simple mathematical calculation and “[i]n practice, parity gives meaning to proportionality”: *R v Friesen*, 2020 SCC 9 at para 33.

[91] Crown counsel provided a survey of relevant sentencing jurisprudence from Alberta and other provinces, dealing with the offence of armed robbery, as well as a few cases dealing with use or planned use of explosives. Defence counsel agreed that the cases were appropriate ones for the Court to consider in attempting to grapple with the issue of parity for an offence that is (thankfully), quite rare: the use of explosives in the commission of an armed robbery.

[92] Cases reviewed dealing with armed robbery included: *R v Morasse*, 1983 ABCA 203 [*Morasse*]; *R v Hung*, 1990 ABCA 347 [*Hung*]; *R v Monias*, 2004 CarswellAlta 1966 (QB) [*Monias*], varied by 2005 ABCA 407; *R v Kim*, 2007 ABQB 445 [*Kim*]; *R v Trapasso*, 2014 ABCA 66 [*Trapasso*]; *R v Peyachew*, 2016 SKCA 21 [*Peyachew*]; *R v Belakiz*, 2018 ABQB 55; *R v Clarke*, 2018 ONSC 612 [*Clarke*]; and *R v Penzes*, 2021 ONCA 7.

[93] *Morasse* involved a sophisticated, well-planned robbery of a Brinks truck, in which the offenders struck one of the guards with a gun, and made off with \$140,000.00 in cash. The offenders refused to cooperate in locating some of the stolen funds. The trial judge sentenced Mr. Morasse to 20 years for the robbery and 5 years consecutive for using a firearm in commission of the offence. Mr. Paquin received a sentence of 10 years on the robbery charge and 2 years consecutive for the use of a firearm. Mr. Morasse had a lengthy and significant related criminal record, while Mr. Paquin did not.

[94] On Appeal, the Court upheld both sentences, remarking that the offenders displayed “a blatant criminal attitude” and a remarkable refusal “to co-operate on the matter of restitution” (para 9). The Court held that armed robberies involving “sophistication and seriousness” would normally attract a sentence of 12 to 14 years (para 7).

[95] The Court of Appeal in the subsequent case of *Hung* confirmed that the starting point sentence for armed robbery of a financial institution is 5 years, observing that the *Morasse* case was an example of the “guideline in operation” (paras 7 - 10):

Five years is, however, just the starting point. The sentence can increase, and increase dramatically, with aggravating circumstances. We will not attempt to offer here a complete catalogue of possibilities. But they include possession of a firearm, display of a firearm, use of a firearm, and possession, use or display of another weapon; they include also evidence of planning, of an organized gang attack, of the use of sophisticated means; and taking and hiding large sums of money.

[96] In *Hung*, a group of men used guns in order to rob a jewelry store. As the robbery involved the threat of violence, and a moderate amount of sophistication, the Court considered 10 years to be an appropriate starting point sentence (para 13). After considering the significant mitigating factors including entry of guilty pleas, return of all stolen goods, and no prior criminal convictions for any of the offenders, the Court found that the appropriate sentence for the robbery charge was 6 years. Some of the offenders were sentenced to an additional 1 year for use of a firearm in commission of the offence, and 1 year for possession of stolen property, to be served consecutively for a combined sentence of 8 years.

[97] Relying on the Court of Appeal’s decision in *Hung*, Marceau J in *Monias* determined that 10 years was the appropriate starting point for three bank robberies involving some amount of organization, planning, threats, and threatened use of a knife (para 26). After taking into account time spent in custody prior to sentencing, Marceau J ultimately imposed a global

sentence of 9 years: 6 years for the first robbery, 1 year consecutive for the second robbery, and 2 years consecutive for the third robbery.

[98] The conviction for the first robbery was reversed on appeal. The Court of Appeal concluded, in view of the length of pre-trial custody (approximately 16 months), a fit and proper sentence was five (5) years for each of the second and third bank robberies, the sentences to be concurrent to each other.

[99] *Kim* involved factual circumstances which are quite similar to the present case. The bank robbers used smoke grenades and replica handguns to make off with over \$200,000.00 in cash. There were multiple accomplices and bank employees were tied up during the robbery. Relying on *Hung*, Hughes J, as she then was, imposed a sentence of 6.5 years for the charge of robbery with no credit for pre-sentence custody (para 16). While there were significant aggravating factors present, she found it mitigating that Mr. Kim had no prior criminal record, was relatively youthful, had entered a guilty plea and cooperated with the police, and that some of the stolen money had been recovered (para 12).

[100] In *Trapasso*, the offender committed robberies, two days apart. First, he robbed a convenience store, and then, a CIBC Bank, while wearing a bandana over the lower part of his face. The trial judge accepted that the crimes were the result of a drug-fueled “spree” and sentenced him to 5 years in jail on each robbery charge, to be served concurrently, as well as 1 year concurrent for the offence of wearing a mask in the commission of an offence. The Crown successfully appealed the sentence. The Court of Appeal found that the Court had erred by relying on the “spree” as a mitigating factor (para 17). The Court imposed a global sentence of 7 years: 3 years for the first robbery, 4 years consecutive for the second, and 1 year concurrent for the offence of masking (para 23)

[101] *Clarke*, which is a relatively recent decision from the Ontario Superior Court, involved an 18-year old offender who participated in two armored truck robberies. One robbery attempt was abandoned and one was completed when Clarke’s accomplice used a handgun to shoot one of the guards 6 times, almost killing him. Mr. Clarke, who was a youthful first offender, received a 7 year sentence: 2 years for the attempted robbery and 5.5 years consecutive for the armed robbery.

[102] In *Peyachew*, the offender used verbal threats and confinement of 10 victims to commit a bank robbery; however, he did not use a weapon. The sentencing judge considered *Gladue* factors in mitigation, as well as the offender’s mental health status, and sentenced him to 5 years’ jail (para 16). The Saskatchewan Court of Appeal observed that the sentencing range for a violent robbery was between 4 and 9 years (para 28). While acknowledging that other courts might have reached a different conclusion on the same facts, the Court ultimately found that the sentence was not disproportionate (para 52).

[103] Cases reviewed dealing with explosives include: *R v JLE*, 2001 ABPC 90 [*JLE*]; *R c Daigle*, 2015 QCCQ 8489 [*Daigle*].

[104] *JLE* involved a group of young people throwing Molotov cocktails into a home in order to “send a message” to one of the occupants. The 19-year old accused pleaded guilty to a number of offences, including possession of an explosive substance under s 82 of the *Code*. She received a sentence of 27 months for the s 82 charge.

[105] In *Daigle*, a 37-year old accused was convicted of possessing explosives with intent to cause bodily harm under s 81(1)(d) of the *Code*. Police found explosives in Daigle's home after his psychiatrist reported to them that Daigle had expressed during a therapy session an intention to harm or kill his co-workers. He received a sentence of 2 years' jail.

The Crown's Position

[106] Relying primarily on the *Morassee* decision, which set the sentencing range for sophisticated armed robberies in which violence was used at 12 - 14 years' imprisonment, Crown counsel proposed a global sentence of 10 years, less credit for the entire time Mr. Byron has spent in custody at a rate of 1.5 day to 1.

[107] With respect to each count, Crown counsel proposed the following:

Count 1: s 463/344(1)(b) attempted robbery 4	2 years, consecutive to Count
Count 2: s 82(1) possess explosives	2 years concurrent w Count 1
Count 4: s 344(1)(a.1) robbery with a firearm 1	7 years consecutive to Count
Count 5: s 268 aggravated assault	7 years concurrent w Count 4
Count 6: s 81(1)(b) explosion w/i to cause bodily harm	7 years concurrent w Count 4
Count 8: s 351(2) masked w/i to commit indictable offence 4	10/12 mths concurrent Count

[108] Ancillary orders requested by the Crown include:

1. An order pursuant to ss 109/110 which would include a lifetime ban for explosives, and a 20 year ban for other types of weapons described in that section;
2. A mandatory DNA Order pursuant to s 487.051(1) as a result of being found guilty of primary designated offences;
3. A forfeiture order pursuant to s 490.1 with respect to all items seized in the course of the investigation, subject to reasonable requests and/or submissions with respect to items that can be returned to Ms. Byron; and
4. A discretionary restitution order to GardaWorld in the net amount of funds outstanding, which is \$118,000.00 dollars, pursuant to s 738(1).

[109] Crown counsel observed that the offences in this case are extremely serious, carrying a high degree of responsibility. Denunciation is paramount and the crimes must be condemned in the strongest terms. The robberies consisted of planned ambushes with no motivation but "pure greed." There was no concrete evidence provided to the Court that the money went to pay for medical bills or medication for any member of Mr. Byron's family, while there was some evidence as a result of the search of his home, that the money was spent on new items for himself. The level of violence used was unjustified. The offences involved exceptional planning and deliberation over several months, consisting of scouting trips, written observations of the guards' behaviour, and travelling to the United States to pick up items.

[110] When the first bomb did not work, Crown counsel highlighted the fact that Mr. Byron created a more powerful bomb for use in the second robbery, and brought with him on that second occasion the Beretta Semi-Automatic Rifle. While Mr. Byron asserted that the firearm was not loaded at the time, Crown counsel submitted that the Court could infer it was loaded as it

was loaded when it was found, still covered with Mr. Evans' blood. According to the Crown, the only reasonable conclusion the Court can reach is that the rifle was loaded at the time of the offence, which is an aggravating factor in this case.

[111] Other aggravating factors cited by Crown counsel included:

1. Significant impact on Mr. Evans as described in his Victim Impact Statement;
2. Significant impact on other victims in the armored delivery community;
3. The amount stolen was significant: \$130,000.00;
4. The vulnerability of victims as a result of the ambush tactics in which Mr. Byron made sure they were rendered defenceless;
5. Only \$11,520.00 of the stolen money was recovered, with \$30,000.00 traced to Mr. Byron's bank account. Mr. Byron has never fully accounted for a significant portion of the funds stolen. Lack of accounting for lost funds undermines claims of genuine remorse as he may yet benefit from his crimes;
6. The offence involves an element of breach of trust in relation to his prior employment at GardaWorld. His employer trusted him with procedures and methods, which he went on to use for unlawful purposes;
7. When his home was searched, he had other bombs ready. When he was captured it was during what appeared to be a scouting trip to Grassland, Alberta. It is highly probable that in arresting him when they did, the EPS prevented a further crime from occurring;
8. He kept live explosive devices in his home with his wife and kids present, demonstrating a disregard for his family's safety; and
9. He lied and attempted to mislead police following his arrest by concocting a fictitious character, Mr. McCormack, as the true villain. It was only because surveillance information had been held back that EPS were able to catch him in this lie.

[112] With respect to mitigating factors, the Crown conceded that it is mitigating that Mr. Byron entered a guilty plea. While he should be given credit for this, that credit should be tempered by the fact that to date, he has not accounted for the missing funds. Furthermore, the plea was not particularly early, as it was entered five weeks before trial.

[113] The Crown referred to another potentially mitigating factor, which is currently the subject of a partial publication ban, stating that no credit should be given.

[114] Finally, Crown counsel agreed that some credit should be given for the fact that Mr. Byron served over half of his time in remand under strict COVID-19 restrictions. The Crown suggested that this credit should not be considered an increase in the statutorily restricted pre-sentence 1.5. to 1 presentence credit, but rather, that it be considered as a separate head of mitigation. The Crown described this reduction as a "last look for totality purposes" and suggested an additional reduction of sentence by 1 – 2 months.

[115] On the issue of considerations for ordering restitution, Crown counsel referred the Court to *R v Bean*, 2020 ABCA 409 [*Bean*].

Mr. Byron's position

[116] Defence counsel argued that considering all the mitigating factors, the circumstances of the offence and the offender, and the conditions of pre-trial incarceration, Mr. Byron should be given a sentence of time-served, or something very close to time-served. He did not offer any particular breakdown of sentence.

[117] Defence counsel submitted that the totality of sentence imposed, based on the cases provided by the Crown, should be in the range of 7 years, not 10 years, considering the starting point for these types of offences, which is 5 years. Mr. Byron should then be given pre-trial detention credit of 1.5 days for every day served. As of the date of sentencing submissions, he had served 925 days in remand, which means he is entitled to 1387.5 days of credit, equal to close to four years: three years and 292.2 days.

[118] Of the days he spent in pre-trial custody, 546 days were spent in custody either at the Edmonton Remand Centre (ERC) or the Edmonton Young Offender Centre (EYOC) during the COVID-19 pandemic under lockdown or restricted conditions. That time needs to be accounted for with credit greater than 1.5 days to 1.

[119] Dealing with the aggravating factors asserted by the Crown, Defence counsel objected to framing the victims in this case as “vulnerable” in the usual sense that term refers to in criminal sentencing. The Court should consider that these were individuals trained specifically for the risk that Mr. Byron ultimately posed to them.

[120] Defence counsel did not agree that this was an offence motivated solely by greed. He argued that conclusion would require the Court to ignore much of the evidence about Mr. Byron's personal circumstances. For example, Ms. Morton testified that Mr. Byron said some of the money was given to his brother to help pay for his medical bills.

[121] On the issue of disregard for his family's safety regarding live explosives found in the home, again Defence counsel submitted the Crown overstated the risk posed. This type of explosive creates a “flash and bang” rather than a devastating explosion. Similarly, the bomb actually used was designed to minimize the injuries caused to the guards.

[122] With respect to mitigating factors, Defence counsel argued that the guilty plea should be considered significantly mitigating in this case. A substantial cause for the delay in the guilty plea was Mr. Byron's retention of new counsel and the need to review the significant disclosure in this case in accordance with professional obligations.

[123] Mitigation should also be given for the additional factor which is the subject of a publication ban. The credit to Mr. Byron for the attempt should be more than notional regardless of what the outcome actually was.

[124] Mr. Byron's personal history was also argued to be mitigating. Mr. Byron was raised by an abusive father who suffered from mental illness. He had a difficult childhood, with his family moving around a lot and his experiences being bullied at school.

[125] Defence counsel emphasized that a sentence involving a significant additional period of incarceration would mean that Mr. Byron will never see his mother again in person as she is very sick, and her prognosis is not good. This should be a mitigating factor, as should the collateral circumstances relating to his wife, Ms. Driesen. Ms. Driesen has mental health issues and heavily relies on the support of her husband. She is currently raising two young children on her own

without his assistance. As such, if he is sentenced to additional time in custody he would like to serve his time in British Columbia to be near them.

[126] Defence counsel spent a significant amount of time addressing certain aspects of the PSR, asking that little or no weight be applied to certain statements and opinions as Ms. Morton appeared to be “predisposed” to be suspicious of Mr. Byron. If there were different possible interpretations of his intentions in making a particular statement, she always went with the worst.

[127] With respect to restitution, Defence counsel noted that the amount sought by the Crown would be very burdensome for Mr. Byron and his family, given that as Ms. Morton observed, he has no real plan for his release and no really good prospects for employment. That said, Mr. Byron is willing to try to pay restitution if it means he can see his family sooner and a generous repayment schedule is agreed to by the Crown. Defence counsel observed that an order of restitution is to be considered a form of punishment that would go towards a reduction in the overall sentence, referencing *R v Siemens*, 1999 Canlii 18651 (Man CA) and other similar cases that followed thereafter.

ANALYSIS

[128] There is no question that that the offences committed in this case are extremely serious, and that they carry with them a high level of moral culpability on the part of Mr. Byron. This is further evidenced by the fact that Parliament has prescribed a maximum sentence of life imprisonment for s 344(1)(A.1), robbery with a firearm, as well as for s 81(1)(b), causing an explosion with intent to cause bodily harm. While 12 – 14 years may be the judicial sentencing range for similar offences, in fact, the legislative ceiling is set at life in prison.

[129] Mr. Byron’s offences were premeditated, meticulously organized and planned, and executed with precision. He intended to cause bodily harm to the guards at Scotiabank, and he succeeded. Mr. Evans is permanently scarred, has suffered significant hearing loss and has persistent ringing in his ear, and has suffered emotional and financial harm as a result of the robbery. I reject Defence counsel’s submission that the Crown somehow inflated the impact on Mr. Evans by relying on what he said in his Victim Impact Statement. There is no question that Mr. Evans was gravely injured as a result of Mr. Byron’s actions.

[130] I similarly reject the implication, which was made numerous times during the hearing, that Mr. Byron deserves some kind of credit for building a bomb that was “designed to minimize injury.” In my view, there is no credit to be gained from stating that the homemade bomb you built was deliberately designed to merely maim and incapacitate your victims, not to kill them. Mr. Byron built a bomb that was designed to, and did, blow up in another human being’s face causing Mr. Evans serious and lasting injuries. It was an extremely violent, anti-social, and disturbing act. Telling the Court that “it could have been much worse” is decidedly not helpful to Mr. Byron’s cause.

[131] As observed by the Crown, Mr. Byron’s crimes are very rare and extremely dangerous. They are the type of crimes that cause community members to fear for their lives in spaces they previously thought to be safe. I agree that they are the type of offences that cry out for a denunciatory sentence, to act as a strong deterrent to Mr. Byron, and to other would-be robbers who might read about Mr. Byron’s escapades in the news and consider copying him. They need to know that they will be caught, and incarcerated for a very long time.

[132] While the global sentence I impose in this case should send a clear message to Mr. Byron and the community, it must be proportionate to the sentences faced by other offenders in similar situations, and it must appropriately account for the unique aggravating and mitigating factors discussed by both counsel in their oral and written sentencing submissions.

[133] To that end, I accept and adopt the Crown's submissions with respect to the aggravating factors in this case, with one exception: I cannot conclude that the Crown has proven beyond a reasonable doubt that the firearm was loaded at the time of the offence. That said, the only purpose he could have had for carrying an unloaded firearm to the scene of the bombing was to cause the guards to fear for their lives, and/or to use it as a tool to beat or attack the guards. I note that the firearm itself was covered in Mr. Evans' blood when it was located in Mr. Byron's basement.

[134] With respect to mitigating factors, I agree with Defence counsel that the guilty plea in this case, while somewhat late, is significantly mitigating. It saved a considerable amount of court time, and prevented numerous civilian and EPS witnesses from having to testify. It is also mitigating that Mr. Byron has no prior criminal record, although in my view, the fact that his first conviction is for serious offences of this nature makes the lack of a record less impactful.

[135] I accept that Mr. Byron is sincerely remorseful, and this is also a mitigating factor. He told me he regrets the pain and hurt he caused the victims, *and* to his own family.

[136] That said, based on my own assessment of Mr. Byron made during the course of his testimony, and considering the nature and tone of certain submissions made on his behalf by counsel, I agree with Ms. Morton's observation that despite his honest expression of remorse, Mr. Byron continues to minimize the gravity and seriousness of his actions. To choose the path that he did when confronted with intense financial and familial health pressures - similar to what thousands of other Canadian families are confronted with on a daily basis - is inexplicable and unjustifiable. It is not the kind of choice a pro-social person would ever consider.

[137] At one point in his submissions, Defence counsel submitted that Mr. Byron's challenging childhood and allegations of abuse at the hands of his father should be treated as mitigating factors, "similar to *Gladue* factors." Mr. Byron is not Indigenous and this is an unacceptable analogy in the circumstances.

[138] Mr. Byron had as many opportunities as he had challenges growing up. He did well in high school, achieved post-secondary diplomas, travelled the world working in his chosen field, and married a woman who continues to love and support him despite what he has done. He was close with his siblings, and appears to remain close with his sister and his mother. Mr. Byron is an intelligent, educated person with a good support system in place. He should have both known better and done better. I decline to view his challenging childhood as a mitigating factor.

[139] While I may not have addressed each and every factor submitted by Crown and Defence counsel specifically in these reasons, I fully considered the lengthy submissions that were made by each party in making my sentencing decision.

[140] The sentencing range for a sophisticated, premeditated violent robbery involving the use of a firearm and explosives, should in fact be higher than 12 – 14 years. The use of explosives in my view, sets this case apart from the earlier cases I reviewed. Having weighed all the relevant principles and factors applicable in this case, and in particular, considering the mitigating factors, I find that Mr. Byron's global sentence should be 9.5 years in jail.

[141] With respect to the attempted robbery, Mr. Byron will serve 2 years' jail on Count 1: attempted robbery, and 2 years concurrent with Count 1 on Count 2: possession of explosives.

[142] Mr. Byron's sentence for the counts relating to the Scotiabank robbery are to be served consecutively to the sentence imposed on Counts 1 and 2. This was not a "spree"; rather, it was two separate offences, committed two months apart, in two different locations, with two different victims impacted by the explosion: *R v Dyck*, 2020 ABCA 412 [*Dyck*] at paras 25 - 29.

[143] He will serve 6.5 years on each of Counts 4, 5, and 6: robbery with a firearm, aggravated assault, and causing an explosion with intent to cause bodily harm. I am satisfied that it would be appropriate in the circumstances of this case for those three charges to be served concurrently to one another as they are "so closely linked to each other as to constitute a single criminal adventure": *R v Keough*, 2012 ABCA 14 at paras 59-61.

[144] With respect to Count 8: wearing a mask with the intent to commit an indictable offence, I sentence Mr. Byron to 1 year's jail. That time will be served consecutively to Counts 4, 5 and 6. Wearing a disguise in this case did not assist Mr. Byron in the commission of the offence; rather, his goal was to evade capture subsequent to the offence. It is an offence separate and apart from the act of robbery, and I did not consider it to be an aggravating factor with respect to the robbery itself: see *Dyck* at paras 30 -33.

[145] On this issue of whether to order restitution in this case, I have considered the Court of Appeal's guidance in *Bean* and the factors set out at para 17, as well as the entirety of the Ontario Court of Appeal's decision in *R v Castro*, 2010 ONCA 718 [*Castro*].

[146] While proof of an inability to pay is not strictly speaking, a bar to ordering restitution, in this case, I have no evidence before me that Mr. Byron will be able to pay back the amount stolen promptly, or at all. A restitution order would be highly unlikely to provide a "convenient, rapid and inexpensive means of recovery" for GardaWorld in this case, and furthermore, should not be issued in circumstances where it serves as a replacement for civil proceedings: see *Bean* at para 17 and *Castro* at para 43.

[147] On the other hand, Mr. Byron has not accounted to the Court, other than through hearsay evidence, respecting where all of the stolen money is or has gone: see *Castro* at para 34. I note that in the *Morasse* decision, the failure of the offenders to account to the Court for the whereabouts of the stolen funds was considered very aggravating indeed: the offenders were sentenced to 20 years in jail for their role in the theft of \$140,000.00 from a Brinks truck.

[148] However, considering the lengthy sentence I have imposed in this case and the difficulties Mr. Byron and his family will continue to face in the coming years as a result of his incarceration, I am not going to order restitution in this case. Once he is released, I would like Mr. Byron to stay focussed on becoming a good provider for his family and encourage him to live up to his potential.

[149] The other ancillary orders sought by the Crown are granted, on the terms as set out in the Orders signed on October 22, 2021, specifically: a s.109 Order which includes a lifetime ban on explosives and a 20 year ban for other types of weapons; a mandatory DNA Order pursuant to s 487.051(1); and a forfeiture Order dealing with return and/or forfeiture of various items seized during the investigation.

[150] Turning then to the issue of credit and enhanced credit for pretrial custody. Mr. Byron is to be given credit at a rate of 1.5 to 1 for each day he spent in custody from March 4, 2019 to

October 22, 2021, which is 965 days. I am satisfied that the full credit of 1.5 to 1 should be given for the entire time he has been in custody. Based on his testimony in the *Charter voir dire*, most of which I accepted, he did serve “hard time” even before the COVID-19 pandemic started.

[151] As of the date of sentencing submissions, Mr. Byron had spent approximately 586 days at the ERC or ERC Annex at the EYOC under post-COVID-19 pandemic restrictions. The number of days may have increased in the time period between submissions and date of sentencing on October 22, 2021 as a result of the impact of the “fourth wave” of the pandemic on the ERC. For the reasons set out in the accompanying *voir dire* decision, I am reducing his sentence by an additional 240 days to account for his experiences during that time period.

[152] The end result is that Mr. Byron now has approximately 5 years left to serve on his jail sentence.

Heard on the 13th day of September, 2021.

Oral decision delivered on the 22nd day of October, 2021.

Dated at the City of Edmonton, Alberta this 8th day of November, 2021.

Tamara L. Friesen
J.C.Q.B.A.

Appearances:

Thomas O’Leary
Appeals and Specialized Prosecutions
for the Crown

Eric Crowther
Engel Law
for the Accused