

CANADA / JUDGMENT

R. v. Harkness

2025 BCSC 633

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Supreme Court of British Columbia

DECIDED

18 March 2025

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2025 BCSC 633 R. v. Harkness

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Harkness,

2025 BCSC 633

Date: 20250318

Docket: 107299

Registry: Kamloops

Rex

v.

Corey Richard Harkness

Before: The Honourable Madam Justice Ker

Oral Reasons for Judgment

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R. Tessman

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Place and Date of Trial:

Kamloops, B.C.

March 25-28, 2024

April 2-5, 8-10, 2024

August 12-16, 2024

December 5, 2024

Place and Date of Judgment:

Kamloops, B.C.

March 18, 2025

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[1] These reasons were delivered orally. They have since been edited for distribution.

Introduction

[2] Corey Richard Harkness is before the Court charged with one count of second-degree murder. More specifically, he is charged that:

on or about the 14th day of January, 2019, at or near Cache Creek, in the Province of British Columbia, did, while using a firearm in the commission of the offence, commit the second degree murder of Brock Kenneth LEDOUX, contrary to Section 235(1) of the Criminal Code.

[3] On the morning of January 14, 2019, the deceased, Brock Ledoux, was released from a transition house in Kelowna, British Columbia, having completed the custodial portion of a federal sentence of imprisonment. His close friend, Teriesa (Teri) Fawcett, picked him up shortly after 10:00 a.m. Before leaving Kelowna, Ms. Fawcett and Mr. Ledoux made a couple of stops, first to his parole officer and then to purchase miscellaneous items.

[4] One such item purchased by Ms. Fawcett was a 750 ml bottle of JP Wiser's 40% proof Deluxe Rye Whiskey. She bought it for Mr. Ledoux who wanted to celebrate his release, having told her that his mission for his first day of freedom was "to get drunk, high, and laid". Mr. Ledoux started to drink the whiskey straight from the bottle. He continued to do so throughout the course of the day.

[5] Over the next nine hours, Mr. Ledoux consumed a prodigious amount of alcohol, roughly $\frac{3}{4}$ of the bottle of whiskey--approximately 600 ml of alcohol. By the time Ms. Fawcett and Mr. Ledoux arrived in Cache Creek, Ms. Fawcett described Mr. Ledoux as "having a good drunk going on".

[6] The relationship between Ms. Fawcett and Mr. Ledoux was strictly platonic. They met in Ashcroft, B.C., after Ms. Fawcett had moved back there following the massive fire in Barrier, B.C. that burned half the town to the ground. Both Ms. Fawcett and Mr. Ledoux were involved in the drug trade at that time, selling drugs on the street. What initially started out as a competitive business rivalry, developed into a deep, personal friendship that waxed and waned over the years. Ms. Fawcett eventually gave up drugs and became sober. In 2018, after

not having seen Mr. Ledoux for some time, they reconnected and rekindled their friendship. Ms. Fawcett, who clearly was very fond of Mr. Ledoux, repeatedly described him as her brother when she testified.

- [7] There is no issue that Mr. Ledoux was shot on January 14, 2019, while attending inside a residence on Collins Rd. in Cache Creek, or that he died as a result of the gun shot wound that he sustained to the right side of his chest, close to the midline and above the right nipple. The type of firearm used appears to have been a pellet shotgun based on the shotgun cup, wad and pellets found inside the deceased's chest cavity at autopsy.
- [8] There also is no issue that the offence in this case is that of second-degree murder.
- [9] The only issue for the Court to determine in this case is whether the Crown has proved beyond a reasonable doubt that Corey Harkness was the person who shot and killed Brock Ledoux.
- [10] Teri Fawcett was the sole eyewitness to the events, seated as she was in her sedan parked across the street from the residence where Mr. Ledoux was shot. Ms. Fawcett testified that she witnessed Corey Harkness shoot Brock Ledoux.
- [11] Mr. Harkness did not testify, as is his right. He did call one witness, Staff Sergeant Thomas Watts ("S/Sgt. Watts"), a Bloodstain Pattern Analysis Specialist with the RCMP, who provided expert evidence on this topic.

Roadmap for these Reasons

- [12] Although there were only 14 witnesses called in this trial, the evidence adduced was detailed and voluminous.[1] During the investigation, Ms. Fawcett provided a number of different statements--four in total, including her 911 call shortly after the time of the shooting.[2] In her January 15, 2019, interview with Constable Sutherland of the Ashcroft RCMP, Ms. Fawcett also created a diagram wherein she outlined the position of Mr. Ledoux and Mr. Harkness at the time of the shooting. She made further annotations and amendments to this diagram on four occasions, once when interviewed just before the preliminary inquiry on March 12, 2020, and three times while under cross-examination at the trial. It would not be inaccurate to observe that her placement of the two protagonists in this case evolved as the trial progressed. As a result, Ms. Fawcett was the subject of a vigorous and protracted cross-examination.
- [13] A large volume of detailed evidence outlined (i) the orientation of particular residences and streets in Cache Creek and (ii) the initial investigative steps following the 911 call that dispatched EHS paramedics and members of the Ashcroft RCMP detachment to the scene. I do not propose to review all of that evidence in any detail, though I have considered it in its entirety. Rather, I will review the salient features of the evidence that impact most directly on the only issue in this case: whether the Crown has proved beyond a reasonable doubt that Mr. Harkness shot Mr. Ledoux. To assist, it is useful to provide an outline of the course these

reasons will take:

- i. First, I will set out the positions of the parties.
 - ii. Next, I will summarize the well-known principles that inform the assessment of credibility.
 - iii. Next, I will review the relevant evidence. First, I will set out the basic facts about the arrival of Brock Ledoux in Cache Creek on January 14, 2019, and the events that led up to the shooting. I will then address the dispatch and attendance of paramedics and police to the Collins Rd. residence and then outline the physical layout and condition of the Collins Rd. residence as it existed when EHS and RCMP personnel attended at the scene in response to the 911 calls.
 - iv. Next, I will turn to the uncontroversial evidence from the police witnesses and the Crown experts called to provide opinion evidence as well as the sole defence witness called: S/Sgt. Thomas Watt, the Bloodstain Pattern Analysis Specialist. My purpose in approaching the evidence this way is to set out the scene of the shooting and what the objective evidence appears to establish about it.
 - v. I will then turn to the evidence of Ms. Fawcett and review it assessing it against the principles governing the assessment of credibility.
- [14] I will make findings of fact as I go through these various sections.

Positions of the Parties

- [15] The Crown contends that, notwithstanding the frailties in Ms. Fawcett's evidence, when the Court considers the evidence as a whole, it should have no doubt that Mr. Harkness was the person who shot Mr. Ledoux and that it ought to convict Mr. Harkness of second-degree murder.
- [16] Counsel for Mr. Harkness contends that when the Court considers the totality of the evidence, particularly the objective forensic evidence as considered against Ms. Fawcett's constantly changing version of events, I should have more than a reasonable doubt as to the identity of the individual who shot and killed Mr. Ledoux. Indeed, the defence contends that Ms. Fawcett was such an incredible witness, the Court ought not to rely upon any aspect of her evidence in so far as identification of Corey Harkness being the shooter is concerned. The defence urges the Court to acquit Mr. Harkness of the charge.

Principles Informing the Assessment of Credibility

- [17] The overarching principle in any criminal case is that the Crown has the burden of proving its case beyond a reasonable doubt. An accused remains clothed with the presumption of innocence until the Crown has discharged its burden of proof. Generally, an accused has no burden of proof in respect of the elements of the offence charged. In *R. v. C.*, 2004 NSCA 135 at para. 19, Justice Cromwell (as he then was) eloquently made the following point: "the ultimate issue in any criminal case is not who the jury (or judge) believes but whether, in light of all of the evidence, a reasonable doubt about guilt persists".

- [18] A significant issue in this trial is the credibility and reliability of the Crown's only eyewitness to the events, Ms. Teri Fawcett. Indeed, the issue of the credibility and reliability of Ms. Fawcett in this case is determinative.
- [19] In *R. v. Awasis*, 2012 BCPC 573, the Honourable Judge Bagnall addressed the issue of fact-finding and reasonable doubt in the context of a sexual assault trial where defence evidence was called. While Mr. Harkness did not testify in this case, Judge Bagnall's observations in *Awasis* remain instructive:
- [9] The task of finding the facts, of determining what really happened, involves the weighing of evidence, but is not an exercising in preferring one witness's evidence over that of another. This is because the doctrine of reasonable doubt applies to the issue of credibility as it does to every other issue in a criminal trial.
- [10] Triers of fact, whether judges or members of a jury, are not able to look into a witness's mind to see whether the witness is speaking the truth, yet we must try to discern, if we can, where the truth lies. Some aspects of a witness's testimony that I find helpful in this determination are these, and these are in no particular order:
1. The external consistency of the evidence given. I ask whether the testimony of the witness is consistent with independent evidence that I accept.
 2. The existence of prior inconsistent statements or previous occasions when the witness was untruthful. A criminal record for certain offences may be applicable to this issue.
 3. The internal consistency of the testimony. I ask whether the witness's evidence changes while the witness is testifying.
 4. I consider any motive that the witness might have to lie or mislead the court.
 5. I consider the ability of the witness to originally observe, to record in memory, and to recall the event.
 6. I consider the attitude and demeanour of the witness. I look at whether the witness is evasive, belligerent, or inappropriate in response, particularly during cross-examination.
 7. This might be the most important of the factors. I consider the sense of the evidence. When I apply my common sense to the evidence, is the result impossible, improbable, or unlikely, and what other results are there?
- [11] Some or all of these factors, sometimes just one of these factors, leads to the moral certainty that a witness's testimony is not reliable
- [20] And in *R. v. Scott*, 2019 BCSC 313, I elaborated on *Awasis* adding reference to a number of factors that are considered in the credibility and reliability assessments that courts are called upon to make:

- [31] In *Gill Tech Framing Ltd. v. Gill*, 2012 BCSC 1913 ["Gill Tech"], I summarized a number of factors that are considered in assessing the credibility and reliability of witnesses. Although *Gill Tech* was a civil case, the factors enumerated therein are equally applicable to assessments of credibility in a criminal trial:
- [27] The factors to be considered when assessing credibility were summarized by Madam Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, as follows:
- [32] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis* (1926), 31 O.W.N. 202 (Ont. H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Faryna*]; *R. v. S.*(R.D.), 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).
- [28] In assessing credibility in the face of conflicting evidence, the Nova Scotia Supreme Court in *Re: Novac Estate*, 2008 NSSC 283 noted the following at paras. 36 and 37:
- [36] There are many tools for assessing credibility:
- a) The ability to consider inconsistencies and weaknesses in the witness's evidence, which includes internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony and the testimony of other witnesses.
 - b) The ability to review independent evidence that confirms or contradicts the witness' testimony.
 - c) The ability to assess whether the witness' testimony is plausible or, as stated by the British Columbia Court of Appeal in *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1951] B.C.J. No. 152, 1951 CarswellBC 133, it is "in harmony with the preponderance of probabilities which a practical [and] informed person would readily recognize as reasonable in that place and in those conditions", but in doing so I am required not to rely on false or frail assumptions about human behavior.
 - d) It is possible to rely upon the demeanor of the witness, including their sincerity and use of language, but it should be done with caution (*R. v. Mah*, [2002] N.S.J. No. 349, 2002 NSCA 99, paras. 70-75).

- e) Special consideration must be given to the testimony of witnesses who are parties to proceedings; it is important to consider the motive that witnesses may have to fabricate evidence. *R. v. J.H.*, 2005 CanLII 253 (ON CA), [2005] O.J. No. 39 (Ont. C.A.), paras. 51-56).
- [37] There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See *R. v. D.R.* 1996 CanLII 207 (SCC), [1996] 2 S.C.R. 291 at para. 93 and *R. v. J.H.*, supra).
- [21] In approaching the issues and in assessing the evidence in this case, I have kept all of these factors in mind. Moreover, I have kept in mind that the onus is on the Crown and the ultimate burden is proof beyond a reasonable doubt.

Evidence

- [22] A number of admissions were made in this trial, which obviated the need for the Crown to call a number of witnesses on a variety of issues. As such, matters were streamlined considerably.
- [23] Brock Ledoux was shot inside the Collins Rd. Residence sometime around 7:00 p.m. on January 14, 2019. In the immediate aftermath of the shooting, everyone who was inside left the residence. According to Ms. Fawcett, Mr. Harkness left in an SUV with the other man she saw in the residence. Ms. Fawcett described this other man, whom she did not know, as stocky, shirtless and with dark hair. She testified he eventually put on a black t-shirt. According to Ms. Fawcett, during the encounter inside the residence, this man was always positioned near the kitchen counter that looked into the living room.
- [24] Teri Fawcett did not immediately call 911 as, on her evidence, Mr. Harkness exited the residence and came out onto the street towards her vehicle. When this happened, Ms. Fawcett drove away from the residence down Collins Rd. towards the cul-de-sac. She saw Mr. Harkness run back to an SUV in the driveway area and get in the passenger side of the vehicle. The man wearing the black t-shirt got into the driver's seat. The SUV drove away from the residence in the opposite direction. Essentially, Ms. Fawcett testified the SUV travelled back towards Highway #1, the Firehall, and the town centre. Once Ms. Fawcett saw this, she pulled a U-turn and went back to the Collins Rd. residence.
- [25] When Ms. Fawcett entered the Collins Rd. residence, she saw Brock Ledoux positioned such that his body was half on and half off the loveseat couch located in the living room. She described Mr. Ledoux's position in reference to Photograph #40 in Exhibit 1, indicating that his buttocks were resting on the armrest of the couch that was closest to the living room window, i.e. the west side of the living room. She indicated that the left side of his body was up against the backrest of the couch with his head propped against the wall and his legs hanging down from the seat of the couch. Ms. Fawcett pulled out her cellphone, went outside to the front of the house to obtain the house number, and then called 911 seeking medical and police assistance.

A. Brock Ledoux's Arrival in Cache Creek on January 14, 2019

- [26] Ms. Fawcett and Mr. Ledoux left Kelowna by noon on January 14, 2019, with the intention of heading to Ashcroft, B.C. where Ms. Fawcett resided. According to Ms. Fawcett the intention was that her friend would spend the night at her place and the next day she would drive him to his aunt's house in north-central B.C. so that he could see his children.
- [27] Ms. Fawcett drove back towards Ashcroft, B.C., via Kamloops. Stops were made at various points of interest along the way, including at a gym in Kamloops where, according to Ms. Fawcett, Mr. Ledoux was hoping to obtain his 'tribute' or 'homage'[3] from others for his service of 'taking the rap' for others in terms of criminal activity. According to Ms. Fawcett, Mr. Ledoux was hoping that his connections in the criminal world would provide him with drugs or other remuneration for the service he had rendered to them by going to jail for them. His connections did not come through. And so, they left Kamloops and continued on their way back to Ashcroft.
- [28] Shortly before 7:00 p.m., as they approached the Ashcroft area, Mr. Ledoux directed Ms. Fawcett to go to Corey Harkness's residence located on the Trans Canada Highway in the neighbouring village of Cache Creek, which is approximately a five-minute drive from Ashcroft. Ms. Fawcett did not want to go to Mr. Harkness's residence, but Mr. Ledoux insisted that they do so. According to Ms. Fawcett, Mr. Ledoux wanted to collect his 'tribute', or money from a drug debt from Mr. Harkness.
- [29] Ms. Fawcett understood that Mr. Harkness lived in the shop/garage outbuilding area on the property and that his parents lived in the main residence adjacent to the shop. Ms. Fawcett and Mr. Ledoux arrived at Mr. Harkness's residence and learned he was not there.
- [30] They moved on to the residence of Mr. Harkness's then-girlfriend, Chelsey Prior (Ms. Prior having ended the relationship in June or July 2019) and located Mr. Harkness there. He was about to go to work with Ms. Prior, painting the interior of a local pizza shop. Mr. Ledoux said that Mr. Harkness needed to go with them to the "Collins Rd. residence". Chelsea Prior testified she did not want Mr. Harkness to go with Mr. Ledoux and said Mr. Harkness looked scared to her. However, he eventually capitulated after either Ms. Fawcett or Mr. Ledoux promised to have Mr. Harkness back to Ms. Prior within 20 minutes.
- [31] Chelsea Prior was a longtime resident of Cache Creek. By January 14, 2019, she and Mr. Harkness had been in a relationship for two-and-half years. When they first started dating, Mr. Harkness divided his time between the Collins Rd. residence and Ms. Prior's residence. However, by January 2019, Mr. Harkness was spending most of his time at her residence. Occasionally, Mr. Harkness also stayed at his parent's residence on the Trans Canada Highway.

- [32] Ms. Prior met Jesse McCormick through Mr. Harkness. She described Mr. McCormick as stocky and closer to her height of 5'6" or 5'7" inches tall. Mr. Harkness was a bit taller, skinny, and had a different colour of hair. The admissions at trial establish Mr. Harkness was 5'11" inches tall and 169 lbs. when he voluntarily turned himself in to the Ashcroft RCMP detachment on January 16, 2019.
- [33] Ms. Prior testified that the plan for the evening of January 14, 2019, was that she and Mr. Harkness were to finish painting her employer's restaurant premises. In the later afternoon of that day, both she and Mr. Harkness were taking naps, with Ms. Prior in her bed and Mr. Harkness on a couch in the living room.
- [34] Between 6:15 p.m. and 6:30 p.m., Ms. Prior received a Facebook Messenger call from Ms. Fawcett, though she did not answer it. Instead, she started to get ready to go to the restaurant. Ms. Fawcett called again but Ms. Prior did not answer. Approximately five minutes after the second call, somewhere between 6:30 p.m. and 6:45 p.m., there was an unexpected knock at her door and Mr. Ledoux announced his presence.
- [35] Ms. Prior did not invite Mr. Ledoux inside. Rather, Mr. Ledoux elected to make his own way into the mudroom area of her home and asked if Mr. Harkness was in. Ms. Prior indicated that he was, but that he was taking a nap. Mr. Ledoux insisted she get Mr. Harkness and seemed to not take her "no" for an answer. She described their voices as being raised and deduced that Mr. Harkness appeared at the door because of the raised voices. Ms. Prior assumed Mr. Ledoux was high and drunk. His demeanour scared her.
- [36] When Mr. Ledoux saw Mr. Harkness, he said, "You're coming with me", but Ms. Prior said, "No he's not he's supposed to come painting with me". Mr. Ledoux insisted that Mr. Harkness would be going with him and promised Ms. Prior that Mr. Harkness would be back to her in 20 minutes. Mr. Ledoux also told her that he promised not to hurt Mr. Harkness, which Ms. Prior thought to be an unusual comment. Ms. Prior described Mr. Harkness as appearing terrified.
- [37] In light of Mr. Ledoux's promise to have Mr. Harkness to the restaurant in 20 minutes, Ms. Prior indicated it was alright for Mr. Harkness to go with Mr. Ledoux but expected that she would see him at the restaurant in 20 minutes. Mr. Ledoux, Ms. Fawcett and Mr. Harkness left in Ms. Fawcett's vehicle. Ms. Prior recalled that when Mr. Harkness left her home with Mr. Ledoux, Mr. Harkness was wearing a grey puffer coat, something shorter than a trench coat, with a fuzzy fur lined hoodie.
- [38] Ms. Prior went on to her employer's restaurant and started to set up to paint. Mr. Harkness did not return to her in the 20 minutes Mr. Ledoux had promised and Ms. Prior became concerned. At about 7:15 p.m., Mr. Harkness sent her a one-word text message "hey" and she replied. Then, sometime between 7:21 p.m. and 7:25 p.m., he telephoned her, but she missed the call.

- [39] Between 7:25 p.m. and 7:30 p.m., Ms. Prior texted Ms. Fawcett and learned that Mr. Harkness was being accused of something. Ms. Prior went looking for Mr. Harkness at his parent's residence but did not find him. She then went to the Collins Rd. residence. There she saw Ms. Fawcett, who was "freaking out, crying and screaming" and had blood on her hands. Ms. Fawcett repeatedly told her that "Corey shot Brock", something that Ms. Prior could not believe.
- [40] Contrary to Ms. Prior's evidence that established that the attendance of Mr. Ledoux and Ms. Fawcett was a tense encounter, Ms. Fawcett painted the encounter between Mr. Ledoux, Ms. Prior, and Mr. Harkness as a lighthearted and jovial affair. Essentially, Ms. Fawcett portrayed the encounter as a reunion between old friends who joked about how good they all looked, and that Mr. Ledoux had made comments about wanting to have sex with Mr. Harkness or a three-way encounter with Ms. Prior and Mr. Harkness. Ms. Prior provided no such account.
- [41] Ms. Fawcett went out of her way to paint the encounter as something that it was not. Where her account conflicts with the evidence of Ms. Prior, I prefer Ms. Prior's account. Ms. Prior was a composed and careful witness. Although her memory for some details about the encounter at her home with Mr. Ledoux, Ms. Fawcett and Mr. Harkness had faded with the passage of five years, her memory was refreshed when directed to portions of her statement provided to the police in March 2019. She adopted many passages from her statement as accurate and true. I found Ms. Prior to be forthright in her evidence and had no reason to portray the encounter as anything other than what it was: a tense event with Mr. Ledoux seeking something from Mr. Harkness, likely his tribute, and Mr. Harkness appearing very scared.
- [42] I find that by the time Mr. Ledoux arrived at Ms. Prior's residence he had consumed a significant amount of alcohol and, to employ Ms. Fawcett's assessment, "had a good drunk on". He was seeking his tribute from Mr. Harkness and was not prepared to leave Ms. Prior's residence without Mr. Harkness. I accept Ms. Prior's evidence that the encounter was a strained and frightening meeting and that it most definitely was not the friendly, lighthearted and jovial reunion between friends that Ms. Fawcett would have the Court believe.
- [43] Ms. Fawcett drove Mr. Ledoux and Mr. Harkness to the residence on Collins Rd. in Cache Creek. Mr. Harkness was sent inside to obtain drugs or money for Mr. Ledoux. Before leaving the vehicle, Mr. Harkness was threatened by Mr. Ledoux that if he was not back in five minutes, "he'd come in and thump him". Ms. Fawcett and Mr. Ledoux remained in her vehicle, a Saturn Ion, parked across the street from the Collins Rd. residence.
- [44] As they waited for Mr. Harkness to return to the vehicle, Ms. Fawcett watched some of the activities that were occurring in and around the residence and told Mr. Ledoux she felt uncomfortable about what was going on. Mr. Ledoux became impatient, left the vehicle and headed into the residence on Collins Rd., likely kicking the door in to enter the residence. Moments later, Mr. Ledoux was shot in the chest at a relatively close range.

- [45] Teri Fawcett was an eyewitness to the events, seated as she was in her sedan parked across the street from the Collins Rd. residence. The residence was elevated from the street level by a few feet as it was on the slope of a hill that rose up behind the residence. The perimeter of the residence was bounded by a chain link fence. The Collins Rd. residence had a large picture window in the front facing the street that provided a fairly good view into the interior of the residence, particularly part of the living room and kitchen area, depending on the state of the vertical blinds and other window coverings.
- [46] As noted in the introduction, it was Ms. Fawcett's evidence that Mr. Harkness shot Brock Ledoux. I will address Ms. Fawcett's evidence later in these reasons.

B. The Dispatch and Attendance of Emergency Personnel to the Collins Rd. Residence

- [47] At approximately 7:05 p.m. on January 14, 2019, Ms. Fawcett made a 911 call stating her friend had been shot and seeking assistance from medical and police personnel accordingly. A nearby ambulance with an EHS paramedic crew was dispatched to the scene arriving approximately three minutes later. The two paramedics were in the residence approximately five minutes after receiving the dispatch.
- [48] As they arrived on scene, the paramedics conducted a slow-drive safety sweep in their vehicle to ensure the area was safe for them to enter. As the ambulance approached the address, Sean Duthie, a paramedic riding in the passenger seat of the vehicle, could see through the front window that there was a person bobbing up and down, moving in a manner consistent with trying to administer CPR. Notwithstanding his vantage point in a vehicle with a seat position higher than a regular vehicle, he could not see the person being worked on as the wall blocked his view.
- [49] Once the paramedics determined the scene was safe, they entered the residence and started to work on Mr. Ledoux. They ceased their efforts at 7:24 p.m. when directed to do so by the on-call emergency physician being consulted as they worked on Mr. Ledoux. As Mr. Ledoux was not responding to the medical interventions they were administering, they were advised to discontinue their efforts. Mr. Ledoux died at the scene.
- [50] At 7:15 p.m. a police dispatcher telephoned Ms. Fawcett in order to obtain further information. Shortly thereafter, members of the Ashcroft RCMP detachment scrambled to respond to the dispatch of a shooting on Collins Rd. Part of the information that the officers received in the dispatch was that Corey Harkness had shot Brock Ledoux and then fled the scene in a black vehicle, possibly a Ford Edge. A number of officers responded and converged on Cache Creek, partially in order to locate Mr. Harkness. They convened at the Firehall, which became a temporary command post for the initial stages of the investigation.

- [51] The evidence is clear on one thing for certain: when Mr. Harkness entered the Collins Rd. residence on January 14, 2019, there was at least one other male inside the residence, likely Jesse McCormick, who resided in the residence along with Mr. Harkness's sister.
- [52] At approximately 7:45 p.m. Cpl. Christopher Buckland and Cst. Nicholas Theoret of the Ashcroft RCMP stopped a black Ford Edge SUV that was in the vicinity of the shooting travelling along Stage Rd. Inside the vehicle were Mr. Harkness's sister, Tashina, and Mr. McCormick. As Mr. Harkness was not with them, they were permitted to leave and go on their way. Ms. Fawcett was shown photographs of this vehicle when she testified and indicated it was not the vehicle in which she saw Mr. Harkness and the other male drive away when they left the scene.
- [53] Members of the Ashcroft RCMP gathered at the Firehall to plan the next steps of the investigation and how to locate Mr. Harkness. Sometime after 8:30 p.m. a team of officers attended at the address of Mr. Harkness's parents in an effort to try and locate Mr. Harkness. He was not on the property, though one officer believed he may have seen Mr. Harkness exiting the back of the property and climbing the hill towards Stage Rd.
- [54] Robert Thomson was a resident of Cache Creek and lived in the upper area of the town on Stage Rd. Shortly after 9:00 p.m. he was out on the balcony of his home watching the lights of seven or eight police vehicles leave from the Firehall with their emergency lights activated. This was an unusual sight for Cache Creek. As he was watching this, he observed a man trying to find a way to get under the chain link fence of the vacant property across the street from his residence. As Mr. Thomson explained, no one goes through that area as a short cut and so this seemed odd to him. He video recorded his observations of the man trying to get through the fence. He was about 50 to 60 feet away from the man and his vantage point was from the balcony of his home. The video was about seven seconds in length. After he stopped recording the man, Mr. Thomson noticed that the man went over the fence, crossed Stage Rd., and went west into a vacant lot next to his home.
- [55] After he stopped recording the man, Mr. Thomson went and stood in his driveway and had a slightly better opportunity to see the man, whom he described as average height, under six feet tall, with an average build being approximately 180 lbs. This observation was brief but better than what he observed from his balcony. He recalled the man was wearing a tan heavy denim Carhartt® style work jacket.
- [56] Mr. Thomsen was asked if, at the time of his observations, he was able to identify the person. He believed the man might have been Mr. Harkness but conceded he had never met or seen Mr. Harkness before. He candidly explained that at the time he saw the man, he had already heard about what had happened, seen a number of social media posts that suggested Mr. Harkness shot the deceased, and looked up what Mr. Harkness looked like.

- [57] Mr. Thomsen fairly conceded that he could not say with total certainty that the video depicted Mr. Harkness as he had never seen him in person before. He was clear that he was not stating as a fact that it was Mr. Harkness depicted in the video. Mr. Thomsen's evidence does not amount to an identification of Mr. Harkness as the man trying to get under the fence on the night of January 14, 2019, approximately two hours after the shooting of the deceased.
- [58] One person located at the Harkness property was Jesse McCormick who was arrested by Cst. Sandra Neill at approximately 9:31 p.m. and placed in the back of her police vehicle. She described Mr. McCormick as calm, polite and cooperative throughout her dealings with him. Cst. Neill engaged in other duties germane to the investigation and then, at about 10:30 p.m., transported Mr. McCormick to the Ashcroft RCMP detachment. He was lodged in cells at about 11:05 p.m. His clothing, being a pair of jeans and a long sleeve black Nike t-shirt, was seized from him.
- [59] Cst. Buckland performed a Gun Shot Residue ("GSR") test on Mr. McCormick. The GSR test was conducted by taking swabs of Mr. McCormick's hands and his face. The swabs were sent for analysis and the results were conveyed to Dr. Claude Dalpé, an expert in GSR analysis.
- [60] Mr. Harkness was not located on the evening of January 14, 2019. He voluntarily surrendered to the Ashcroft RCMP on January 16, 2019.

C. The Layout of the Collins Rd. Residence and the Scene upon Arrival of the Emergency Personnel

- [61] The descriptions that I am about to outline for the layout of the Collins Rd. residence comes from an examination of the photographs in Exhibit 1 that the Court was led through, the evidence of S/Sgt. Paul Bouwman and others, as well as Exhibit 3 the aerial photographs of Cache Creek.
- [62] Collins Rd. runs in a north-south direction. The north end of the road ends in a T-intersection with Hwy 1 East and the south end of it is a cul-de-sac.
- [63] The Collins Rd. residence is located on the east side of Collins Rd. and is positioned approximately $\frac{1}{4}$ of the way south of the T-intersection. The front of the residence faces the street and is the western side of the building. It is positioned at the bottom end of the slope leading up a hill behind the residence to the east. Several photographs in Exhibit 1 clearly establish that the Collins Rd. residence is elevated from the street level, given the geography of the area. However, there was no evidence adduced as to the actual elevation differential as between the main floor of the residence and the street. Nor was there evidence addressing the measurements of the front window, in terms of height from the floor. A planned drawing prepared by Cpl. Raymond Hebert establishes that the picture window was 1.84 metres wide.[4]

- [64] Significantly, there was no precise placement of where Ms. Fawcett's vehicle was parked when the shooting occurred. Rather, there was only an estimate that she was parked almost across the street from the front window of the residence as depicted in photographs 13-15 in Exhibit 1. The police investigators did not confirm with Ms. Fawcett the precise location of her vehicle at the time of the shooting and conducted no independent assessment of the possible sight lines from Ms. Fawcett's vantage point.
- [65] The potential sight lines for Ms. Fawcett's observations, based on the estimated position of her vehicle, are included in Exhibit 1, Tab 3, pp. 5 & 6, as well as Exhibit 18, in point cloud five (defined below), and Exhibit B which is simply an enlarged and printed version of point cloud image five from Exhibit 18.
- [66] The only evidence as to potential actual sightlines is found in Exhibit 1, Tab 3 which contains the 3D Laser-Leica Scan output of the Collins Rd. residence. The scan at p. 5 provides a measurement from a pole located across Collins Rd. to an interior cabinet in the kitchen as being approximately 34.5 metres.[5] However, the pole in the scan images was not where Ms. Fawcett indicated her vehicle was parked.
- [67] Exhibit 18 is a USB with five 'point clouds' (that is, visual renderings of spatial data) that were generated from the image at Exhibit 1 Tab 3, p. 5. In Exhibit 18, the fifth point cloud contains a possible sight line from where Ms. Fawcett's vehicle was believed to be parked. Included in this rendering is a scale which, when applied to the sight line from the vehicle back into the living room where the body of Mr. Ledoux is depicted, suggests that Ms. Fawcett was parked in her vehicle and was approximately 80 to 90 feet away from the scene. And, as S/Sgt. Bouwman acknowledged in his evidence, given the slope of the terrain, Ms. Fawcett's line of sight was slightly downhill from the living room of the Collins Rd. residence. Accordingly, she had to look up to see into the living room. Although Ms. Fawcett indicated in her evidence that photograph 15 in Exhibit 1 provided the best depiction of her point of view, it is important to note that that photograph was taken not at the street level or the possible level of where she was seated in her vehicle. Rather, photograph 15 was taken from inside the Collins Rd. residence front yard and is a slightly higher elevation than Ms. Fawcett's estimated point of view and sight lines.
- [68] Turning to the residence itself, the front of the residence facing Collins Rd. has a large picture window that looks out on the street. The window had vertical blinds and a swag-like curtain that hung down covering a portion of the south east corner of the window.[6] At the time of the shooting, the vertical blinds were drawn across the window but were left open. In essence, the slats of the blinds were positioned in such a fashion as to permit someone outside the residence to look inside it, but the blinds would create some interference. Additionally, the swag-like curtain that was draped across a corner of the right-hand side of the window would have obscured part of the living room area.

- [69] S/Sgt. Paul Bouwman, a forensic identification expert with the Kamloops RCMP detachment, attended at the scene at approximately 2:53 p.m. on January 15, 2019, the day after the shooting. The residence had been secured the evening before; nothing had been moved or changed in the residence since the time of Mr. Ledoux's attendance inside and his subsequent death. Part of S/Sgt. Bouwman's duties involved examining the scene and taking the 3D Laser-Leica Scans of the Collins Rd. residence and adjacent areas. S/Sgt. Bouwman confirmed that the scene had not been altered and that the blinds and window coverings were not manipulated. The photographs in Exhibit 1 at Tab 2 depict the state of the Collins Rd. residence at the time of the shooting. Once the Forensic Identification members obtained photographs of the scene and concluded their examination, they shut the vertical blinds at approximately 5:20 p.m. Accordingly, the vertical blinds and the swag-like curtain on the front picture window are positioned in the same state as they were at the time of the shooting. Indeed, the Crown fairly conceded as much in its closing submissions.
- [70] A door at the front of the house was unusable as it was barricaded by furniture, clothing and other items inside the residence.[7] The only serviceable door to enter the residence at the time is located on the north side of the house. Entry through this door leads to the laundry area and to the right of that is a step up into the kitchen area.[8] Examination of the entry door revealed what appeared to be smudges consistent with footwear being applied to the outer portion of the door and damage to the door locking mechanism consistent with the door having been kicked in at some point.[9]
- [71] Once inside the kitchen, the view straight ahead is to the living room area and the large picture window that looks west out on to Collins Rd.[10] On the other side of the kitchen counter, looking into the living room, there is a dark couch against the north wall of the house. Between the couch and the front picture window is what appears to be a child's rocking chair. The interior depiction of the living room shows the front picture window and the position of the vertical blinds, across the window but open. In addition, there are the swag-like curtains draped over the curtain rod and tied in a knot at the bottom end on either side of the window.[11]
- [72] Photographs 15 & 16 of Exhibit 1 at Tab 2 depict the exterior view of the residence with the vertical blinds across the window, though in this case the blinds are turned open. In photograph 16, which looks in from outside the residence, the swag-like curtain is visible across part of the right side of the picture window, thus obscuring the view into a portion of the residence.
- [73] There was coffee table in the living room, albeit not in the usual position of running parallel to the couch. Instead, the coffee table is off at an angle away from the couch. However, the items on it remain undisturbed, including: a TV remote control, a clear coffee mug with a clear liquid in it, a bowl with some decorative ornaments in it, as well as a laptop balanced on both a plastic container filled with screws, nuts and bolts and some sort of electronic device that appears to be like a cassette tape-recorder. The lower level of the coffee table houses a collection of papers and identification cards that all appear to be undisturbed.[12]

This observation of the state of the coffee table and the items on it takes on more significance in light of Ms. Fawcett's evidence.

- [74] Cst. Buckland testified that the houses on Collins Rd., including the Collins Rd. Residence were adjacent to a steep hill. The residences were on the downslope of the hill and were marginally higher than Collins Rd. itself. And so, when driving along the street, one must look up slightly to see the residences.

D. The Forensic Evidence

i. Toxicology Results

- [75] During the autopsy of Mr. Ledoux, samples of bodily substances (blood, urine, and eye fluid) were taken from his body. The samples were sent to the Forensic Toxicology Services Section of the RCMP and analyzed by Kimberly Young, a Forensic Specialist. The results of these tests were admitted:

- a. In the eye fluid, the presence of ethanol was detected;
- b. In the urine, the concentration of ethanol was 271 milligrams in 100 millilitres;
- c. In the blood, the concentration of ethanol was 175 milligrams in 100 millilitres; and
- d. In the blood, the concentration of fentanyl was less than 2.5 nanograms.

- [76] Ms. Young explained the meaning of the readings and the cautions that had to be placed on them. Her evidence was that the ethanol level in the urine is usually 30% higher than in blood samples. The amount of fentanyl detected was less than the lowest range reportable, so she was unable to say what the exact level was. In cross-examination she opined on a possible blood alcohol level for a hypothetical male the size of Mr. Ledoux (six feet tall, 198 lbs., and relatively fit). Assuming the male consumed 600 ml of 40% whiskey, the theoretical maximum alcohol level would be 318 mg/% but more likely between 159 mg/% and 175 mg/% or higher at some time earlier than death. The tenor of Ms. Young's evidence and the toxicology results confirms that prior to death Mr. Ledoux had consumed a significant amount of alcohol, as Ms. Fawcett testified to in her evidence.

ii. Dr. Claude Dalpé - Gun Shot Residue (GSR) Analysis

- [77] Dr. Claude Dalpé was qualified as an expert in GSR analysis and provided expert opinion evidence on this issue. He explained the mechanism for the dispersal of GSR and indicated that GSR particles can travel up to 18 to 20 metres downrange with the bullet when it exits the muzzle of a firearm. GSR particles are non-adhesive and like a fine dust. They will adhere or remain on skin but are easily removed. After four hours about 90% of the residue on hands will be lost. It can remain on an unwashed face for up to 24 hours and can remain trapped in clothing fibres until the item is washed. Given the ease with which the particles disperse from items that they adhere to, the RCMP policy is not to accept samples obtained from suspects if more than 12 hours has elapsed from the time of the discharge of the

firearm. GSR analysis cannot distinguish between whether the individual with GSR on them was the shooter or a bystander.

- [78] In this case, Dr. Dalpé analyzed the GSR swabs that were obtained from Mr. McCormick and located a single particle characteristic of GSR on the sample obtained from the left side of Mr. McCormick's face. Dr. Dalpé's resultant conclusion, contained in his expert report, was that Mr. McCormick either fired the firearm, was in proximity to a firearm being discharged, or was in contact with another source of GSR, such as the surface of a firearm. He remarked in his report that "[i]n certain circumstances, a person may be indirectly exposed to a source of GSR without having fired or handled a firearm directly."
- [79] What I take from Dr. Dalpé's evidence is that one GSR particle on Mr. McCormick could be meaningless. However, he could not rule him out as the shooter. The fact that Mr. McCormick was not arrested for over an hour after the shooting provided opportunity for GSR particles to disperse either by falling away or through washing. Moreover, the fact that Mr. McCormick was not swabbed for GSR residue for nearly four hours after the shooting provided further opportunity for other GSR particles to become lost from the surfaces of his face, hands and possibly clothing.

iii. Dr. Doyle - Forensic Pathologist

- [80] Dr. Jason Doyle was the pathologist who conducted the autopsy of Mr. Ledoux on January 22, 2019. He was qualified as a forensic pathologist capable of outlining the observations he made and his opinion as to the cause of Mr. Ledoux's death.
- [81] The cause of Mr. Ledoux's death was obvious. It was a gun shot wound to the central right anterior side of the chest cavity. The injury was so large that Mr. Ledoux would have suffered instant and significant respiratory compromise and massive bleeding into his chest. Dr. Doyle noted that an injury of this magnitude would result in immediate unconsciousness and may have caused death within seconds to minutes.
- [82] Dr. Doyle described the injury to Mr. Ledoux's chest as an ovoid shaped hole of approximately 10 cm in diameter. Dr. Doyle's suspicions that the injury was a gun shot wound were confirmed with an x-ray of the deceased's chest that showed multiple small white spheres in the right chest area with a concentration to the outer edge of the right side of Mr. Ledoux's body. The edges of the ovoid wound were scalloped, indicative of a close-range but not contact wound. Essentially, the pellets were starting to disperse as they entered Mr. Ledoux's chest. The muzzle of the shotgun, however, was close enough to the deceased that the shotgun shell entered Mr. Ledoux's chest cavity and became lodged in it, albeit the shell was found in two pieces in the chest area.
- [83] Dr. Doyle testified that there are four ranges for gun shot wounds: (i) contact where the muzzle is against the skin surface, (ii) closer range, (iii) intermediate range, and (iv) distant range. He ruled out the wound as being a contact shot as the wound was ovoid, not round in nature, so that the muzzle was not at right angles to the skin surface. Moreover, the wound

was quite large and had scalloping on its edges which was indicative of the muzzle being in the closer range of fire. Intermediate range shots usually leave a small hole in the centre with small pellet holes throughout, something not evident in Mr. Ledoux's wound. A distant shot wound has no central hole, just small pellet holes throughout; Mr. Ledoux's wound was not indicative of either.

- [84] Dr. Doyle explained in cross-examination that the further the barrel of the shotgun is away from the individual, the less likely it is that the wad and cup of the shotgun shell will intrude into the body. Where the shotgun is held at right angles to the skin, but farther away from the person, then the central hole will appear roughly round with scalloped edges.
- [85] Dr. Doyle agreed that the distance of the shotgun muzzle from the deceased's chest was approximately 4 feet, with a margin of 2 feet on either side of that so between 2 and 6 feet from the deceased's chest when the shotgun was fired.
- [86] Dr. Doyle described the wound sustained by Mr. Ledoux as being an ovoid-shaped gunshot wound to the right side of his chest, just off the midline. In cross-examination, he described the trajectory of the shotgun shell as being oriented with the deceased in a vertical position, with his head at 12 o'clock and his feet at 6 o'clock. Dr. Doyle explained that the shotgun shell traversed the deceased's body by travelling from the 4 o'clock to 10 o'clock position. In other words, the shell and its pellets moved upwards from the lower side closer to the mid-line to the higher side of the wound. Dr. Doyle concluded the orientation or path of the shotgun shell was travelling from the lower left side of the deceased's body to the upper right side of his body, producing the ovoid shaped wound. And so, the projectiles or pellets from the shotgun were heading in directions from the deceased's left to his right and slightly upwards.
- [87] Dr. Doyle explained that the shot was fired in a close enough range that the shotgun shell entered the deceased's body--meaning it did not fall in its path of travel outside the body--but far enough away that shotgun pellets had started to disperse and the shell had broken in two, as two pieces of it were found in the deceased's chest. The edges of the wound were described as scalloped in nature, indicating that the muzzle was far enough back from the deceased's body to allow for the pellets to have some time to start to spread. None of the shotgun pellets exited the deceased's body.
- [88] Dr. Doyle agreed in cross-examination that, assuming the deceased was standing up in a vertical position when he was shot, the barrel and muzzle of the gun were somewhere to the deceased's left.

- [89] If the shooter had been closer to the deceased, as in, less than 2 feet away from him, one would usually see some gun powder burns on the deceased or his clothing. Although Dr. Doyle did look at the deceased's t-shirt, he could not be certain if the black marks to the left of the hole in the t-shirt were gunpowder or blood concentrations. If the shooter had been farther away from the deceased, he would expect more pellet wounds, and it would be unlikely that the wad of the shotgun shell would have entered the chest cavity.
- [90] Dr. Doyle agreed that if the deceased had been face-to-face with the shooter, he would have expected to see a more circular wound with the orientation being upward from the six to 12 o'clock position. He also agreed that if the shooter had been to the right of the deceased when the shot was fired, the orientation of the travel of the shotgun shell and pellets would have been in the opposite direction to what he found, meaning it would have travelled from right to left. Finally, had the shooter been farther away than four feet (with the margin of error of between two and six feet), he would have expected to see the pellets more dispersed, and the shotgun shell would not have entered the deceased's chest.
- [91] Dr. Doyle agreed with the observation made by Dr. Vincent DiMaio in his authoritative textbook *Gunshot Wounds*[13] wherein the author noted as follows:

The wound descriptions at various ranges given in the previous paragraph should be used only as a rough guide in estimating range. There have been many formulas published to determine the range at which a shotgun has been discharged, but none of these formulas is reliable. The only reliable method of determining range is to obtain the actual weapon and the same brand of ammunition used and then conduct a series of test shots so as to reproduce on paper the pattern of the fatal wound on the body. Thus, in all deaths from shotgun wounds, the size of the shot pattern on the body should be measured so that the range can be determined accurately. It must be stressed that identical weapons of the same choke may produce different patterns; thus, the actual weapon employed in a killing must be used. A fact not often appreciated is that ammunition plays a great part in the size of the pattern. Different brands of ammunition, even when loaded with the same shot size, produce different patterns at the same range.

Another factor often not considered, and that can cause errors in range determination, involves the measurement of the shot pattern on the body. Different individuals measure the same pattern differently. The occasional flier should be ignored, and only the main mass of the pellet pattern should be measured.

- [92] In re-examination, Dr. Doyle indicated the obvious: if the position of the deceased shifted relative to the person holding the shotgun, or the person holding the shotgun shifted relative to the deceased, that would change the pattern of injury. He also explained that if the deceased and the shooter were face-to-face, the shotgun would have needed to have been held to the deceased's left and shot from lower to higher to produce such an injury. Or, if the deceased were in a twisted position such that his right side was angled away from the shooter, the result could be a similar wound pattern to one produced by the shotgun being held to the deceased's left.

- [93] I will address Ms. Fawcett's positioning of the deceased and Mr. Harkness in more detail when I review her evidence. However, I note the following: In Ms. Fawcett's original diagram drawn during her police interview on January 15, 2019,[14] the day after the shooting, she placed Mr. Ledoux standing between the couch and the coffee table (which she positioned as parallel to and in front of the couch) with his back to the north wall of the living room, thus facing south. She depicted Mr. Harkness standing facing Mr. Ledoux, but to the right of Mr. Ledoux's right side, and facing north. She placed the person she described as the unknown man wearing the black t-shirt off to Mr. Ledoux's left side and behind the portion of the kitchen counter that looked into the living room, thus east of Mr. Ledoux or to his left.[15]
- [94] At this juncture, I acknowledge Ms. Fawcett's evidence indicates that the man in the black t-shirt behind the counter did not have the gun because, on her evidence, she assumed he was resting his arms on the counter. She assumed this because she could not actually see what he was leaning on.
- [95] Assuming the shot came from the left of Mr. Ledoux and based on Ms. Fawcett's first description of the positions of the three men in the residence when the shot was fired, Dr. Doyle's opinion, which I accept, at the very least raises the reasonable possibility that Mr. Harkness might not have been the shooter.
- [96] A further item of information germane to the analysis is this: Ms. Fawcett commenced her evidence on March 28, 2024. In her direct examination on that date, she testified that the man in the black t-shirt was in the kitchen area near the door and that Mr. Ledoux and Mr. Harkness were facing each other when the deceased was shot.
- [97] The continuation of Ms. Fawcett's evidence was stood down until April 3, 2024. Dr. Doyle testified on April 2, 2024, and at that time provided his opinion on the trajectory of the bullet across the deceased's body from left to right with the implication being that the shooter was standing to the left of Mr. Ledoux. In cross-examination, which commenced on April 3, 2024, Ms. Fawcett's evidence on the positioning of Mr. Ledoux and Mr. Harkness started to shift. Her evidence on this point went through a number of variations thereafter.

iv. Staff Sergeant Thomas Watts - the Bloodstain Pattern Analyst

- [98] S/Sgt. Thomas Watts was called by the defence. He was qualified as an expert to give opinion evidence with respect to the identification and interpretation of blood stain patterns found at crime scenes. In this case, when the investigation was being conducted by the RCMP, S/Sgt. Watts did not attend the crime scene. Instead, he was asked to review the photographs of the scene taken by members of the Forensic Identification Section of the RCMP and to provide his interpretation of what the bloodstains meant. He explained that the preferred method of interpretation is to physically attend the scene and examine the evidence in situ. He was unable to do so in this case as at the time of this investigation he was the only analyst in the province capable of doing such an assessment. As he was unable to be everywhere all at once, he conducted a number of interpretations by means of examining the photographs

of the scene that were provided to him by the investigators.

[99] S/Sgt. Watts took the Court through an informative PowerPoint presentation to explain the science of Bloodstain Pattern Analysis. Basically, it is the examination of the number, size, shapes, locations, and distribution patterns of bloodstains in order to provide an interpretation of the physical events that gave rise to their origin. He explained the distinction between a bloodstain and a bloodstain pattern. A bloodstain is a deposit of blood on a surface. A bloodstain pattern is a grouping or distribution of bloodstains that indicates through regular or repetitive form, order, or arrangement, the manner in which the pattern was deposited. Analysis of bloodstain patterns may be able to determine the following:

- the minimum number of blows;
- the location of blows or shots;
- the location of victims, subjects, or objects during a bloodletting event;
- the type and direction of impact that produced the bloodstains;
- the movement of the victim, subjects, or objects during or after a bloodletting event; and
- the sequence of events related to the bloodletting.

[100] Certain characteristics of a bloodstain can indicate directionality, meaning the direction that the blood drop was travelling at the time it was deposited. As S/Sgt. Watts explained, "the tail tells the tale", meaning the curved leading edge of a blood drop indicates where the blood drop first struck. It then goes "into a roll" ending in a tail such that the pattern indicates the continued movement of the blood drop due to the momentum of the fluid.

[101] S/Sgt. Watts outlined in his evidence the three main categories of bloodstains: (i) gravity; (ii) spatter; and (iii) transfer. Each of these three main categories contain subgroups.

[102] S/Sgt. Watts had no input into what photographs were taken at the scene; he simply reviewed what the investigators submitted to him. Based on his examination of the photographs, he provided an initial report with key summary opinions. I note that his report, issued on May 14, 2019, contains the incorrect ordinal directions that Cpl. Raymond Hebert provided in his sketch of the residence.[16] The parties agreed that Cpl. Hebert's reference to the wall behind the couch as being the west wall was a mistake. In fact, the wall behind the couch is the north wall. My references to the ordinal points of north, south, east and west, in respect of S/Sgt. Watt's report and opinions, is with the corrected ordinal directions.

[103] The inside of the Collins Rd. residence, as depicted in the photographs he examined, was divided into five areas for the purposes of his opinion.

- Area A was where the deceased's body was found on the living room floor. His legs were elevated from the floor resting partially on the east end of the arm of the couch--the end closest to the kitchen counter--with his feet caught up in a partially overturned barstool.
- Area B was the north wall behind the couch.
- Area C was the living room floor closer to the kitchen.
- Area D was the west side of the couch (closest to the front window).
- Area E was an interior door on the east side of the residence.

[104] It is not necessary to address the different bloodstains or the interpretations thereof in Areas A, C, D and E, as none of these areas contained spatter stains, only transfer and drip stains.

[105] The focus of S/Sgt. Watts' evidence and his opinion was the spatter bloodstain findings in Area B. In his initial opinion, S/Sgt. Watts noted that in Area B, being the north wall of the residence, there was a minimum of 60 spatter stains, 2mm or less in size, some with an east-to-west directionality located on the north wall above the couch.

[106] There was also a concentration of circular shaped spatter stains located above the east arm of the couch. Based on his examination of the photographs, S/Sgt. Watts opined that these spatter stains were consistent with force applied to a source of blood, originating from the east side of the couch. S/Sgt. Watts explained that his use of the phrase "consistent with" meant that the scenario described was, in his opinion, most likely what had occurred based on the available information when he conducted his analysis.

[107] In June 2024, before he was called to provide evidence at the trial, the Crown and the defence made a joint request of S/Sgt. Watts to provide a supplementary report updating his original Bloodstain Pattern Analysis Report of May 2019. Two alternative hypothetical scenarios were provided to him to comment upon. The two scenarios were essentially the following:

- Hypothetical 1 was the defence theory of the positions of the shooter and the deceased at the time of the shooting.
- Hypothetical 2 was the Crown theory of how the bloodstains could have been deposited on the north wall as a result of Mr. Ledoux being dropped and blood being transferred as a result of it gushing from the wound.[17]

As the defence pointed out in their submissions, there is a large swath of uncertainty as to how precisely the blood spatter ended up on the north wall.

[108] The spatter stains that S/Sgt. Watts considered most closely on the north wall were captured in the photographs contained in Appendices A and B.[18] The import of S/Sgt. Watts' evidence on this point was that Appendix A illustrated the directionality of some of the spatter stains above the couch on the north wall. The arrows in Appendix A illustrate that

the spatter stains on the wall were moving downwards and to the west, meaning they were moving away from the kitchen area towards the front window. A red circle was placed on Appendix A to show the general area of where the source of the blood, Mr. Ledoux, would have been.

- [109] In his evidence, S/Sgt. Watts confirmed that the directional bloodstain spatter stains on the north wall above the couch and the circular shaped stains concentrated around the east arm of the couch, Area B in his reports, indicated to him that the deceased was located near the east side of the couch at the time that the force was applied in the approximate area where he was photographed. Some or all of the spatter stains could have been produced as a result of the gunshot impacting the deceased's body. However, if the circular spatter stains, at the east or right end of the couch were directly related to the gunshot injury, it limited the position of the deceased's body at the time he was shot such that he could not have been facing south at the time of the injury.
- [110] S/Sgt. Watts agreed with the proposition that it was possible some or all of the bloodstains depicted in Area B could have been made from spatter created by the movement of the deceased's body as it responded to the force of the gunshot. He offered a list of possible explanations to fit this proposition, though the list provided was not exhaustive. He also indicated that post-event scenarios could account for some or all of the stains located above the couch.
- [111] Significantly, as there were no photographs of the position of Mr. Ledoux's body before he was moved to the floor and ended up in the position depicted in photograph 40 of Exhibit 1, S/Sgt. Watts could not confirm that the spatter stains on the north wall above the couch were not created as a result of medical intervention, either from being moved or from the application of unsuccessful life-saving intervention methods.
- [112] S/Sgt. Watts observed that it was difficult to determine the position of the shooter or the direction of the shot from the bloodstain spatter in Area B. Nevertheless, if the circular spatter stains on the wall were caused by the gunshot injury, this variable limited the direction the deceased could be facing and therefore where the firearm could have been pointing in the scene. If this were the case, then the shooter "was not likely located in the south area of the living room" because that did not provide the line of sight necessary to deliver the injury to the right side of the deceased's chest.
- [113] In his supplementary report and in his evidence, it seemed that S/Sgt. Watts agreed that both hypothetical scenarios could account for or provide a reasonable explanation for the stains located on the north wall. However, for Hypothetical 2--the dropping scenario with blood squirting or gushing as the deceased was moved--the deceased's body had to have been facing the north wall in some fashion to account for the stains.

- [114] S/Sgt. Watts' supplementary report, however, also contained a mistaken understanding of where the deceased's body was positioned when the deceased came to rest on the couch. S/Sgt. Watts understood Mr. Ledoux to be resting on the east arm of the couch, whereas Ms. Fawcett had him propped on and against the west arm of the couch, closer to the front window. Despite this mistake, S/Sgt. Watts was able to reorient his positioning of the deceased to accord with that point.
- [115] Hypothetical 1, as outlined in the materials in Exhibit 34 and depicted in the diagram in Exhibit 36, had Mr. Ledoux standing to the east of the couch facing south, with the shooter in the area of the kitchen counter, southeast of the deceased, shooting in a northwest direction. S/Sgt. Watts concluded that could account for the stains on the north wall, particularly those stains that had an east west directionality.
- [116] Hypothetical 2, as outlined in the materials in Exhibit 34 and depicted in the diagram in Exhibit 38, was described as a possible explanation for how the spatter stains may have been deposited not through the mechanism of the injury (the gunshot wound) but instead created when the deceased was moved from one position to another on the couch, with the blood squirting or gushing from the deceased's wound. And so, if after Mr. Ledoux was shot, his body rotated to his left (counterclockwise) and came to rest with his buttocks on the west arm of the couch, this would not account for the spatter stains on the wall. In order for the spatter stains to have been placed there, he would have to have been dropped on the floor to the right of the demarcation line included in the drawing in Exhibit 37. But even if he was dropped on the floor in the area he was depicted, that would not have created the east to west directional bloodstains on the north wall.
- [117] In my view, the evidence of S/Sgt. Watts as gleaned from his report, supplementary report, and his testimony reduces to the following points that he adopted in his evidence based on the bloodstain patterns he observed:
- a. The spatter stains on the north wall, Area B, were consistent with being created by force applied to a source of liquid blood (in this case, force being applied to Mr. Ledoux's body).
 - b. The exact nature of that force could not be established with certainty.
 - c. The directionality of the spatter stains indicated that the source was located in an area southeast of the couch. Indeed, the diagrams in Exhibit 34, Tab 4, p. 5 at Appendix B as well as Exhibit 36 and Exhibit 38 all positioned Mr. Ledoux in approximately the same general area when he was shot: southeast of the couch in the area between the couch and the edge of the kitchen counter that faced the living room.
 - d. There were conditions in which the spatter stains could have been created as a direct result of the gunshot (with the kinetic energy of the pellets striking Mr. Ledoux causing spatter stains to travel through the air and deposit on the north wall).

- e. There were conditions in which the spatter stains could have been created as a direct result of Mr. Ledoux moving (essentially rotating) because of the force of the impact striking his body, but not directly related to the kinetic energy of the bullet.
- f. There were conditions in which the spatter stains could have been created from a post-event activity, such as Mr. Ledoux being moved or moving after the gunshot was delivered.
- g. There were conditions in which the spatter stains could have been created from a post-event activity, but unrelated to the movement or manipulation of Mr. Ledoux.

[118] When S/Sgt. Watts was asked about the rotational forces involved with the direction the deceased may have spun and how that related to castoff stains, the officer indicated that, where he had a partial pattern with some stains with directionalities, he could not confirm that either scenario (rotating clockwise or counterclockwise as set out in Hypothetical 1 and Hypothetical 2, respectively) was impossible.

[119] In light of the above, S/Sgt. Watts evidence could not completely or fully assist in determining the precise location of the deceased or the location of the shooter when the shot was fired. Both scenarios outlined in the hypotheticals provide possible explanations. And so, S/Sgt. Watt's evidence appears inconclusive on this point.

[120] However, what the S/Sgt's evidence did do was at least acknowledge that the bloodstains were consistent with Mr. Ledoux having been shot from his left (being the southeast and consequently towards the kitchen counter area) and then shedding blood while moving clockwise away from the force of the blast as outlined in Hypothetical 1. That Hypothetical 2 was also a possibility does not detract from the fact that the circumstances of Hypothetical 1 could account for the bloodstain spatter on the north wall. To that end, the Crown has not negated the alternate reasonable possibility: that the shooter was to the left of Mr. Ledoux closer to the kitchen counter area when the shot was fired.

v. Findings from the Forensic Evidence

[121] Having reviewed the forensic evidence adduced at this trial, the following facts emerge:

- By the time Mr. Ledoux arrived in Cache Creek, and in the moments before his death, he was intoxicated, animated, and seemingly angry or aggressive in his dealings with Mr. Harkness. The toxicology evidence confirms Ms. Prior's observations of Mr. Ledoux and at least confirms Ms. Fawcett on the amount of alcohol Mr. Ledoux consumed that day.
- Based on Dr. Doyle's interpretation of the trajectory of the shotgun shell and the dispersal of the shotgun pellets that he found in Mr. Ledoux's chest during the autopsy, his evidence at the very least establishes that the shooter was standing to the left of Mr. Ledoux's left side. His evidence raises the reasonable possibility that the shooter was located in the area of the kitchen counter rather than in the face-to-face position of Mr. Ledoux and Mr. Harkness that Ms. Fawcett maintained she observed.

· Based on S/Sgt. Watt's analysis of the photographs of the bloodstain patterns depicted in Exhibit 1, Tab 2 and reproduced in Exhibit 34, Tab 4, he concluded that each of the two hypothetical scenarios provided to him by counsel were reasonable possibilities to explain the bloodstain spatter and circular stains on the north wall behind the couch. He was fairly clear that the deceased was likely standing to the southeast of the couch in the living room, in the area of the kitchen counter, in order for the spatter to be placed on the north wall. He could not eliminate the reasonable possibility that the shooter was off to the left of the deceased. Accordingly, his evidence also raises the reasonable possibility that the shooter was standing over to the left of the deceased.

· Dr. Dalpé located one particle of GSR on the swab the RCMP obtained from the left side of Jesse McCormick's face approximately four hours after the shooting. It could have been deposited there because he fired the gun or was in the area where the gun was fired. Critically, Dr. Dalpé could not rule out Mr. McCormick as the shooter.

[122] Collectively, this forensic evidence could reasonably support the possibility that the shooter was not Corey Harkness. Ms. Fawcett's evidence placed Mr. Harkness in an area of the living room, facing Mr. Ledoux, when the shot was fired. Her evidence as to Mr. Harkness's position as the purported shooter is inconsistent with the forensic evidence and opinions as to the possible location of the shooter and cannot be reconciled with it.

E. The Evidence of Teriesa (Teri) Fawcett

[123] In his closing submission, Crown counsel indicated that he would focus his submissions on the sole eyewitness to the event, Teriesa Fawcett. Counsel noted that this trial distilled into an examination of Ms. Fawcett's evidence. For the most part, the rest of the evidence went to provide narrative and context to the key events.

[124] Crown does not rely on any of the aftermath evidence --often referred to as post-offence conduct--to identify the shooter. The Crown fairly concedes that Mr. Thomson's evidence of the man trying to climb under and then getting over the fence and crossing Stage Rd. does not take the Court anywhere near identification of the accused as the shooter. I agree with all of these points. Mr. Harkness was not identified by Mr. Thomson.

[125] As a result, the determination of this case rises and falls on the evidence of Ms. Fawcett. As noted previously, Teri Fawcett was a very close friend of Brock Ledoux. Obviously, she witnessed an extremely distressing event--her friend was killed in front of her. She was understandably traumatized and in a state of shock at the time. She clearly remained traumatized about the event when she testified.

[126] Ms. Fawcett was also the subject of a searing cross-examination that established many inconsistencies and contradictions in her evidence. At the end of her cross-examination, she made it clear that she wanted to see justice done for her friend. However, she testified said she was not prepared to lie and disagreed with the suggestion that she was prepared to say whatever she had to in order to get Mr. Harkness convicted. An examination of Ms. Fawcett's evidence adduced at the trial calls into question the veracity of that assertion.

i. Ms. Fawcett's evidence on direct examination

[127] Ms. Fawcett commenced her evidence on March 28, 2024. The completion of her direct examination was stood down over the Easter weekend and resumed on April 3, 2024, one day after Dr. Doyle had testified and provided his opinion as to the likely direction of where the shot was fired from relative to Mr. Ledoux.

[128] Ms. Fawcett outlined in her evidence that once they arrived at the Collins Rd. residence, she parked her vehicle across the street facing south. As Mr. Harkness was preparing to get out of her vehicle, Mr. Ledoux told him he wanted an 1/8th or a ¼ of "whatever" (meaning drugs) he could get him and that he had ten minutes to do so. Ms. Fawcett testified that Mr. Ledoux told Mr. Harkness that if he was not out in ten minutes, he would "thump him". Once Mr. Harkness got out of the vehicle, Mr. Ledoux revised the time allotted to five minutes. Mr. Harkness was not carrying anything when he went into the house.

[129] Ms. Fawcett outlined her observations of Mr. Harkness going into the residence, seeing another man in the residence wearing no shirt, Mr. Harkness speaking to the man and then leaving the house twice to rummage around in a burgundy vehicle parked in the driveway. She described Mr. Harkness as looking flustered and sketchy. She did not see Mr. Harkness carrying anything at this time either.

[130] Ms. Fawcett told Mr. Ledoux about what she could see and told him she was not comfortable with what was going on. Ms. Fawcett testified she told Mr. Ledoux that she thought they should leave. At this juncture, Mr. Ledoux said words to the effect of "fuck this", exited the car, walked deliberately and quickly to the residence and entered it "like he owned the place". As Mr. Ledoux was walking to the house, the unknown man with no shirt put on a black t-shirt.

[131] Ms. Fawcett was clear that she could see everything inside the residence from where she was seated in her vehicle, testifying as follows:

A. I seen [sic] everything. Every light was on in the house. There was -- I could see the kitchen, I could see the living room, I could see the TV. The blinds weren't drawn. It was just like watching everything on a TV screen.

[Emphasis added.]

- [132] It is difficult to discern how Ms. Fawcett could see the TV in the residence from her vantage point seated in her vehicle parked across the street. As photograph 47 in Exhibit 1 illustrates, the TV was on the south side of the living room on the wall that joined with the inaccessible front door of the residence. And, the plan drawings in Exhibit 1, Tab 2, at pp. 3-4, depict the TV positioned against the south wall of the living room, well south of the front window and behind the obstructed front door.
- [133] Once Mr. Ledoux entered the residence, he walked to where Mr. Harkness was standing in front of the window and positioned himself six to seven feet to the left of Mr. Harkness. Significantly, in her evidence on the first day of direct examination, Ms. Fawcett positioned Mr. Ledoux and Mr. Harkness as facing each other once Mr. Ledoux entered the residence and made his way into the living room area. She placed Mr. Ledoux to the left side of the front window and Mr. Harkness to the right side of the front window (from the point of view of looking into the residence from outside) with Mr. Harkness roughly where the light was shining as depicted in photograph 3 in Exhibit 1. The unknown man now wearing the black t-shirt was standing back and to the left of Mr. Ledoux in the kitchen area near the door to the outside.
- [134] Ms. Fawcett said Mr. Ledoux was not carrying anything and that she could not see if Mr. Harkness was carrying anything either. Mr. Ledoux appeared to say something to Mr. Harkness and Mr. Harkness said something back. Mr. Ledoux then raised his arms to waist level with his arms outstretched and the palms of his hands facing up. He appeared to have a confused look on his face, as if he were saying, "What are you doing?" to Mr. Harkness.
- [135] Although Ms. Fawcett could not see anyone's legs, only their torsos and heads, she testified she then saw Mr. Harkness change his body position slightly, moving from standing straight to a position where had he turned his torso slightly to the right, moved his right foot back, and placed his right hand in his pocket. Ms. Fawcett indicated that all this happened in approximately ten seconds and that the distance between the men did not change.
- [136] According to Ms. Fawcett, the next thing that happened was she heard a bang and saw a flash coming from the area of Mr. Harkness's right-side at waist level. She then saw Mr. Harkness's body move back slightly. Using photograph 4 in Exhibit 1, Ms. Fawcett testified that she saw the flash about $\frac{3}{4}$ of the way down the righthand side of the front window.
- [137] Ms. Fawcett estimated that the man in the black t-shirt was about four feet away from Mr. Ledoux at the kitchen counter when she heard the bang and saw the flash. Using photographs 31 and 72 in Exhibit 1, she positioned the unknown man in the black t-shirt as standing behind the counter on the kitchen side of the counter resting his arms on the counter in the area of the blue caulking gun. Although she could not actually see his arms resting on the counter, this is what she surmised he was doing.

- [138] Ms. Fawcett testified that, after seeing the flash, she observed Mr. Ledoux's hands come up, explaining that it looked like someone had hit him really hard in his chest, and then he was tossed to the left across the window to the other side of the room and out of her sight. Ms. Fawcett explained that it looked like someone had thrown him across the room.
- [139] Ms. Fawcett saw the man in the black t-shirt run out of the residence and Mr. Harkness followed. The man in the black t-shirt got into the driver's side of the minivan parked in the driveway and Mr. Harkness ran to the passenger side of the minivan. At this juncture, when Ms. Fawcett looked up, she said Mr. Harkness started walking towards her vehicle and so, afraid for her safety, she drove away from the residence. She returned to the scene when she saw the minivan leave and head in the opposite direction. Ms. Fawcett estimated that between two and five minutes elapsed between her seeing the flash, driving away from the scene, returning after the vehicle Mr. Harkness was in left the scene, entering the house, and calling 911.
- [140] When Ms. Fawcett went into the residence, she located Mr. Ledoux slumped on the living room couch in the position described earlier in these reasons with his buttocks resting on the west arm of the couch. She stepped out of the residence to obtain the house address and then called 911 to request assistance. The dispatcher directed her to perform CPR. She testified that "in one motion" she grabbed the coffee table with one hand, pushed it out of the way to make room, grabbed Mr. Ledoux, pulled him to the floor, and started to administer CPR. Ms. Fawcett agreed that photograph 46 in Exhibit 1 depicted where she placed the coffee table when she moved it.
- [141] When she moved Mr. Ledoux from the couch to the floor, blood suddenly gushed everywhere. The 911 dispatcher directed her to get a towel to try to stop the bleeding. In order to try to stop the bleeding, Ms. Fawcett obtained a towel from the linen cupboard beside the kitchen. Ms. Fawcett did not pay attention to the final position Mr. Ledoux was placed in as she was focused on trying to revive him and was unaware that his feet were caught up as depicted in photograph 40 of Exhibit 1. Ms. Fawcett continued to administer chest compressions until the paramedics arrived, pulled her off Mr. Ledoux, and took over.
- [142] Ms. Fawcett explained that her emotional state at the time of the events was one hundred percent shock.
- [143] Ms. Fawcett selected photograph 15 of Exhibit 1 as providing the best picture for what she saw. She testified that she was right across the street and that the window was like a TV screen. She could see everything going on inside the residence. Photograph 13 in Exhibit 1 is said to depict the area where the investigators believed Ms. Fawcett's vehicle to have been parked across the street when she saw Mr. Ledoux be shot. An enlargement of that viewpoint is also found in Exhibit 1, Tab 3, p. 6. with the investigator's SUV parked approximately where Ms. Fawcett's vehicle was positioned. Ms. Fawcett confirmed this position as being her vantage point in cross-examination.

ii. Ms. Fawcett's evidence on cross-examination

[144] As noted earlier, Ms. Fawcett was subjected to a lengthy cross-examination. I do not propose to review it in its entirety. Rather, I will focus in on a few key points that raise significant concerns as to her reliability and credibility.

[145] At the commencement of the cross-examination, defence counsel endeavoured to have Ms. Fawcett describe where Mr. Harkness was standing in relation to the light depicted in photograph 3 of Exhibit 1 that she commented upon in direct examination. When photograph 15 was placed in front of her and she was reminded that in direct examination she had indicated that this image was most like her perspective on the window, she agreed, saying she was positioned a bit to the left so that she was directly in front of the window. She agreed that her position in her vehicle meant that she was farther away from the window than the perspective depicted in photographs 3 and 15.

a. Ms. Fawcett's view was partially obstructed by the blinds and window covering on the front window

[146] In cross-examination, Ms. Fawcett insisted that the blinds on the window were actually wide open, meaning the slats of the blinds were not across the window as depicted in the photographs. She surmised that the attending police officers closed the blinds after they arrived. Ms. Fawcett did acknowledge that if the curtain was positioned as depicted in photograph 16 it would have obscured her view of Mr. Harkness.

[147] Towards the end of her cross-examination, Ms. Fawcett was again asked about the window, the blinds and the curtains and what that meant for her line of sight:

Q. So, Ms. Fawcett, I have a -- I've zoomed back in on photograph 14 and we're looking at the screen, Exhibit 2.

A. Mm-hmm.

Q. And you have the book, Exhibit 1, in front of you, Tab 2 are the photographs, and I'm going to suggest to you -- I'm just going to advise you, ma'am, and then make a suggestion. So this court has heard evidence that at the time this photograph was taken, that the blinds and the curtains had not been disturbed and that - which suggests, ma'am, that this, in fact, was a -- would have been a better view than the one you had of the right side of the living room. Do you have any explanation of how you were able to see Corey Harkness in that context?

A. I don't remember there being blinds in the window. It was totally empty.

Q. Okay.

A. Yeah.

Q. But -- so you don't -- whether or not you remember it, you agree that if the blinds were in the position that were -- are in now --

A. Yes.

Q. -- and now meaning photograph 14, Exhibit 2, and if the curtain was in the position it is now, again now meaning Exhibit -- photo 14 in Exhibit 2 --

A. Yes.

Q. -- you would not have been able to see Corey Harkness?

A. I seen Corey Harkness.

Q. Okay. So let me just rephrase the question, all right? So if the blinds had been as they are in photograph 14, if the curtain would have been as it is in photograph 14, do you agree that you would not have been able to see Corey Harkness?

A. I seen Corey Harkness.

Q. Okay. Are you not prepared to answer my question?

A. I seen -- yeah, I answered your -- I seen Corey Harkness.

THE COURT: Ms. Fawcett?

A. Yes.

THE COURT: Listen to the question and answer the question.

A. Yes.

CNSL I. CURRIE:

Q. So I'm suggesting to you, ma'am, that had the curtains been as they are in photograph 14 --

A. Yes.

Q. -- had the blinds been as they are in photograph 14 --

A. Yes.

Q. -- you would not have been able to see the spot with Corey Harkness was standing?

A. So he must have been closer to the middle then, because I seen him.

Q. Okay. All right. So closer to the -- the middle meaning closer to the aisle between the microwave and the counter?

A. Yes.

Q. Closer to the left-hand side of the -- of the diagram?

A. Yes.

Q. Closer to the spot where you -- you said that Brock was standing?

A. Yes. Everybody might have moved over two feet --

Q. Okay.

A. -- but I did one hundred percent see Corey.

Q. And you one hundred percent didn't see blinds?

A. No.

Q. You one hundred percent didn't see curtains?

A. No.

[148] Ms. Fawcett maintained that the blinds were not in the state depicted in the photographs and nothing obstructed her view when she saw the shooting events inside the house, that there was nothing across the window to interfere with her view. The evidence of the police officers is decidedly to the contrary. Ms. Fawcett's inability to acknowledge that she might be mistaken on this objectively established fact is very concerning.

[149] Obviously, the blind slats covering the window area, albeit in an open position, coupled with the fact that there was drapery fabric covering part of the area of the window where Ms. Fawcett positioned Mr. Harkness would have impinged on what she was able to see. She acknowledged as much at one point in her cross-examination and then later started to move Mr. Harkness to different positions. It is her steadfast insistence that there was nothing covering the window to interfere with what she saw that undermines not only her reliability on most everything else but her credibility as well.

[150] Notably, at the end of cross-examination, when Ms. Fawcett was reminded that she had earlier agreed that if the window coverings were in place as depicted in the photographs at the time of her observations, she would not have seen Mr. Harkness, Ms. Fawcett again changed the positions of the two men:

Q. -- had the blinds been as they are in photograph 14 --

A. Yes.

Q. -- you would not have been able to see the spot with Corey Harkness was standing?

A. So he must have been closer to the middle then, because I seen him.

Q. Okay. All right. So closer to the -- the middle meaning closer to the aisle between the microwave and the counter?

A. Yes.

Q. Closer to the left-hand side of the -- of the diagram?

A. Yes.

Q. Closer to the spot where you -- you said that Brock was standing?

A. Yes. Everybody might have moved over two feet --

[151] Her evidence on this point does not harmonize with the independent evidence that I do accept as to the state of the blinds and the curtain on the right-hand side of the window.

[152] A considerable amount of time was spent taking Ms. Fawcett through various photographs, endeavouring to establish whether they reflected her sight lines. She agreed that the SUV depicted at p. 6 of Tab 3 of Exhibit 1 was roughly where her vehicle was positioned as she observed the events inside the residence.

b. Ms. Fawcett's cross-examination on her prior statements about what she saw at the time of the shooting

[153] In her recorded conversation with the dispatcher at 7:15 p.m., Ms. Fawcett was asked if she witnessed the shooting. She said, "Yes, well I didn't see the shooting itself, I seen, I was out in my car." She then indicated she knew who shot Mr. Ledoux and told the dispatcher it was Corey Harkness. In answer to another question from the dispatcher as to how she knew it was Corey, Ms. Fawcett told the dispatcher that she had been watching through the window and saw Corey back up. She then she heard a bang and saw the fire shot. She then went on to say she saw Corey with the gun.

[154] Ms. Fawcett was cross-examined on this statement and denied that she had said she saw Mr. Harkness with the gun. She also denied that she said she did not see the shooting. At one point in this line of questioning she agreed she did not see the shooting and then in the next breath said she did. Ms. Fawcett explained that the whole conversation was a blur because she was freaking out. When it was suggested that this was a lie, Ms. Fawcett said it was a mistake and an inaccuracy, not an intentional lie.

[155] About 40 minutes after speaking to the dispatcher, Ms. Fawcett provided another statement to Cst. Taylor, which was recorded at the scene. In this statement, she indicated that she could see Corey go over to the window when Mr. Ledoux entered the house and that she could see his arms and stuff. When asked if she saw the firearm she told the officer she did not but said she saw the (muzzle) flash and heard the bang. Also in this statement, she described Mr. Ledoux as yelling when he went into the residence and yelling at Mr. Harkness while they were in the living room.

[156] Ms. Fawcett was cross-examined on parts of this statement and indicated that she was not being truthful when she told the officer that she heard Mr. Ledoux yelling something about wanting to get going as he kicked on the door of the Collins Rd. residence. She said she did not hear what he was saying, rather she was just "speaking out" and whatever she said came out of her mouth. She also agreed that she could not hear what Mr. Ledoux was saying inside the residence and explained that this was an embellishment.

[157] Ms. Fawcett provided a formal statement to Cst. Sutherland of the Ashcroft RCMP on January 15, 2019, that was video- and audio-recorded. Ms. Fawcett expanded on what she could see, saying that although Mr. Harkness was in the corner she could see his arms, his

chest and just the front of his face. In this statement, Ms. Fawcett indicated she could not see the gun that Corey was holding. In cross-examination, she said this was not true about what she could see of Mr. Harkness's face, she could only see the side of it. She also agreed that it was not true that she heard Mr. Ledoux yelling at Mr. Harkness.

[158] Importantly, in her interview statement, Ms. Fawcett drew a diagram of the positions of Mr. Ledoux, Mr. Harkness and the man in the black t-shirt when they were inside the house at the time of the shooting. She also described Mr. Harkness as walking over to the corner of the window where there was a pile of stuff, where the mess was inside the residence.[19] Ms. Fawcett told the officer she saw Mr. Ledoux waving his arms and leaning in towards Mr. Harkness and that he was yelling at him to "make good for what you do".

[159] In cross-examination, Ms. Fawcett conceded this assertion was an embellishment and untrue. She could not hear what Mr. Ledoux was saying. Ms. Fawcett agreed that other details she included in this part of her statement about the argument were embellishments. She could not explain why she had done so apart from simply talking it out and excising it from her brain, which she later explained as a "brain dump". She was at pains to deny that she was lying, though she agreed she was embellishing or exaggerating in her statement to Cst. Sutherland.

[160] In the January 15, 2019, video of her formal statement to the RCMP, Ms. Fawcett demonstrated Mr. Ledoux's movements; they appeared to be challenging Mr. Harkness and yelling at him. However, in her testimony, she softened Mr. Ledoux's demeanour, suggesting he simply raised his arms with the palms of his hands outstretched in front of him. She explained that she was just embellishing, playing it up and "talking out her butt" when she made that statement to the officer. She conceded that she was not providing the most truthful representation to the officer when she made this statement and said she had no idea why she did not provide a more truthful account on this point.

c. Ms. Fawcett's shifting positions of the parties in her diagrams

[161] Ms. Fawcett agreed that when she was interviewed by Cst. Sutherland she was doing her best to assist the investigation by telling the truth as best she could and by providing as much detail as she could remember.

[162] During the interview, Ms. Fawcett drew a diagram of the positions of Mr. Ledoux, Mr. Harkness and the unknown male. The diagram was marked as Exhibit 15 in the trial. Ms. Fawcett agreed she was trying to be as accurate as she could when she drew the diagram. The diagram depicts Mr. Ledoux standing between the couch and the coffee table that was parallel to the couch at the southeast end of the couch, and she agreed that that was where she put Mr. Ledoux. Mr. Harkness was positioned to the right of Mr. Ledoux, at the right edge of the window frame and the person with the black shirt was behind the counter to Mr. Ledoux's left.

- [163] Ms. Fawcett confirmed this diagram when she was interviewed by Neil Flannigan of the Crown's office on March 12, 2020, just before the preliminary inquiry. She added descriptors to the diagram, such as, "Cory here when Brock shot". This diagram was marked as Exhibit 16 in the trial.
- [164] Ms. Fawcett was then taken through a series of views and perspectives in the photographs that started to limit what she was actually able to see inside the residence given her vantage point, the lower elevation of her vehicle, and the fact of her having to look up into the house.
- [165] Ms. Fawcett was also taken to photographs looking into the residence at night and agreed that photograph 101 in Exhibit 1 was to the left of her viewing position and approximately the right distance from her vantage point. She eventually agreed that from this position she had seen less of the right side of the house than what photograph 103 depicted. She noted that if the blinds were not in the photograph, it would be a lot easier to see the front of the kitchen cabinet on the right-hand side of the photograph.
- [166] Defence counsel continued to probe Ms. Fawcett on what she could see as she watched through the window. Ms. Fawcett disagreed with the defence that she positioned Mr. Ledoux in Exhibit 15 at the back end of the couch. She indicated that she was simply saying he was in the area. She then said she had no idea of his position when he was shot, and that it was simply her best estimate of where he was when her memory was freshest. Ms. Fawcett then changed her position of Mr. Ledoux and said he was more in the center.
- [167] Ms. Fawcett annotated a copy of Exhibit 15 and relocated Mr. Ledoux to in front of the coffee table closer to where she had placed Mr. Harkness. This was marked as Exhibit 17. It was Ms. Fawcett's evidence that the diagram she drew the day after the event was simply a rough sketch and that where she positioned Mr. Ledoux in Exhibit 17 was exactly where he was standing. She explained that the first diagram, Exhibit 15, was only approximate or a guess. She denied that she had been told anything about Dr. Doyle's evidence of positioning the shooter to the deceased's left while there was a break in her evidence.
- [168] When pressed the next day in cross-examination as to what she was telling the officer when she drew the diagram, and specifically whether she told the officer that Mr. Ledoux walked behind the coffee table, Ms. Fawcett testified that she was just embellishing or exaggerating because she was freaked out. In the video, Ms. Fawcett demonstrated to the officer what Mr. Ledoux did in walking between the couch and the coffee table. Ms. Fawcett then testified that to the best of her knowledge she was not telling the truth at this point, and agreed she was embellishing or exaggerating.
- [169] When asked why she had not explained this change in position to Mr. Flannigan in March 2020 when they went over the diagram that is Exhibit 16, Ms. Fawcett said he only briefly touched on it and that she was only providing an approximation. Significantly though, Ms. Fawcett still placed Mr. Ledoux behind the coffee table in Exhibit 16. Nevertheless, she insisted in cross-examination that Mr. Ledoux never went behind the coffee table and really

only went to near the end of the kitchen counter. She said that she did not think that where Mr. Ledoux was precisely standing was going to be of any significance in the trial and that she did not think the officer was concerned with where Mr. Ledoux was standing. Respectfully, this aspect of her evidence defies credulity.

- [170] Ms. Fawcett was pressed further on the repositioned diagram, Exhibit 17, and estimated that in fact Mr. Ledoux was maybe four feet from the couch.
- [171] On the last day of cross-examination, Ms. Fawcett was provided with a copy of the diagram in Exhibit 1 at Tab 3, p. 3 and asked to mark where Mr. Ledoux, Mr. Harkness and the unknown man in the black t-shirt were positioned when she made her observations of the incident. Ms. Fawcett did not want to view her earlier diagrams (Exhibits 15 and 17) to assist her. This diagram was marked Exhibit 20. It changed the positions of Mr. Ledoux and Mr. Harkness considerably, pushing both parties closer to the kitchen and more face to face, with Mr. Harkness now positioned slightly to the left of Mr. Ledoux. Mr. Harkness was moved closer to where the towels were in the linen cupboard next to the kitchen cabinet. Ms. Fawcett then repositioned Mr. Harkness again, as depicted in Exhibit 21, to more accurately reflect him being much farther back in the house, between the stove and the cupboard where the towels were located. In Exhibit 21, she depicted Mr. Ledoux and Mr. Harkness as facing each other. It was her evidence that this was more accurate and that the previous diagrams were simply rough estimates.
- [172] Ms. Fawcett then explained that, in fact, Mr. Ledoux and Mr. Harkness were standing very close, at about half a meter away from each other. She agreed that the two men were about one arm's length apart and then modified this to say they were two arm's lengths apart. Ms. Fawcett then modified Exhibit 21 to move Mr. Ledoux back a bit from Mr. Harkness, marking that change in position with a red pen. Ms. Fawcett then agreed that the two men were about three quarters of a meter apart from each other and further agreed that that was a lot less than six feet. When confronted with her evidence in direct examination where she indicated the two men were six feet apart, she said she was mistaken.
- [173] Ms. Fawcett agreed that Exhibits 20 and 21 were much different positions than depicted in Exhibit 15 and 16. She then went on to say that in fact that Exhibit 15, previously described as a rough sketch, was "pretty much dead-on from where Corey was standing". She then said he needed to be moved closer to the shelving unit.
- [174] Ms. Fawcett was cross-examined on her positioning of Mr. Harkness in the corner. She denied Mr. Harkness was standing in the corner of the room. When confronted with her statement to Cst. Sutherland describing Mr. Harkness in the corner where all the mess was, on the right side of the window, pointing to the diagram she had drawn, Ms. Fawcett agreed that she said that and that was true. She then seemed to indicate that what she meant was not the corner of the room but the corner of the window. Later still, when defence counsel suggested that Mr. Harkness was standing in the corner of the room, the following exchange occurred:

Q. And Corey was standing in the corner of the room, which was a -- a place where the gunshot might well have come from, right?

A. He was standing in the corner of the window, not in the corner of the room because there was too much garbage there, and my friend, he was standing in the corner in my frame.

Q. So you'll agree, looking at photograph 14, of course, that if he was in the corner of the window, he would have been behind those blinds in that -- with that curtain that's shown in photograph 14?

A. Well, obviously he wasn't that far over.

Q. Okay. So obviously he wasn't in the corner of the window?

A. I never said he was in the corner of the window.

Q. Well, we can replay your answer that you gave not 30 seconds ago when you said he was in the corner of the window.

A. It's a big window. There's -- be lots of area.

Q. Yeah, so big window, four corners, right?

A. Okay, well, let's get your ruler out and we'll measure it.

Q. Well, it's -- I don't need to. It's about six feet.

A. Okay.

Q. Yeah. So -- and it has four corners, you agree with that?

A. Yes.

Q. And Corey was in none of them?

A. No, he wasn't in any corners.

Q. Right. Okay. And so had you said he was in the corner of the window, you would have been embellishing?

A. I would have been lying if I said he was in the corner of a window.

Q. Okay. So -- yes, all right. So you obviously didn't say that a minute ago?

A. I might have.

Q. Okay.

A. Because you're putting words in my mouth to get me screwed up.

Q. Right. Okay. So --

A. Yes, that's what you do.

Q. Yeah, no, so my fault, I accept responsibility for making you say that, but that would be a lie, of course, because he wasn't in the corner of the window?

A. No, he wasn't in the corner of the window.

[175] Frankly, Ms. Fawcett's evidence on this particular point was repeatedly internally inconsistent and contradictory such that it is impossible to discern from her evidence where Mr. Harkness was standing at the time Ms. Fawcett says he shot Mr. Ledoux.

d. Ms. Fawcett downplayed the aggressive nature of Mr. Ledoux's interactions with Mr. Harkness

[176] Ms. Fawcett was at pains to downplay Mr. Ledoux's interactions with Mr. Harkness before he left the vehicle to go into the Collins Rd. residence. Ms. Fawcett testified that Mr. Ledoux having told Mr. Harkness that he would "thump him" if he was not back in five minutes was not meant as a threat or to be aggressive. Later she testified that she did not know what the definition of "thump" was and then indicated her belief that it was more akin to what you did to a baby's bottom, presumably intending to mean spanking a child's bottom.

e. Ms. Fawcett's description of moving the coffee table

[177] I have previously outlined Ms. Fawcett's description of how, in one quick motion, she moved the coffee table from it being parallel to the couch to over to its position near the pile of clothing as depicted in photographs 30, 46 and 47 of Exhibit 1, and then moved Mr. Ledoux to the floor to administer CPR. Given the description provided in her evidence as to the hurried nature of the movement of the coffee table, I have grave reservations that this in fact occurred in light of the seemingly undisturbed nature of the laptop balanced on top of two other items. I am left to wonder whether this too was an embellishment or exaggeration in her evidence.

Conclusion on Ms. Fawcett's Evidence

[178] Crown counsel acknowledged that Ms. Fawcett was an unsophisticated witness who had inconsistencies in some of her earlier statements to authorities. However, the Crown urged that the Court should be able to infer from the more specific and repeated aspects of her observations that what she indeed saw Mr. Harkness shoot Mr. Ledoux.

[179] Ms. Fawcett was subjected to a protracted and withering cross-examination largely necessitated by her own conduct on the witness stand. In my view, her recalcitrance on the witness stand necessitated such an approach. Ms. Fawcett not only contradicted herself both between direct examination and cross-examination but also within cross-examination, to wit: the position of Mr. Harkness in the corner of the room or the corner of the window. Significantly, her evidence on the positioning of Mr. Ledoux and Mr. Harkness during the encounter shifted dramatically. Finally, her resort to embellishments in her statements to the authorities, and her overall seeming inability or refusal to answer some of the questions put to her in cross-examination made for a difficult three days of cross-examination. To be

blunt, Ms. Fawcett did not fair well: her reliability was always going to be in issue given that she was the eyewitness to a very traumatic and sudden event, viewed from difficult sightlines with window coverings interfering with those sightlines. By the end of her cross-examination, her credibility had been completely dismantled.

- [180] With the above review of some of the more problematic features of Ms. Fawcett's evidence, I turn to the questions that Judge Bagnall posed in *Awasis* and apply them to Ms. Fawcett's evidence.
- [181] First, I ask whether the testimony of the witness is consistent with independent evidence that I accept. It is not. Ms. Fawcett's evidence on the positioning of Mr. Harkness and Mr. Ledoux does not accord with Dr. Doyle's evidence as to where the shooter was standing relative to the deceased and it does not accord with the evidence of S/Sgt. Watts as to how the blood stains might have been cast onto the north wall above the couch. Nor does it accord with the reality that the blinds were across the window, albeit open. Furthermore, the swag-like curtain at the sides of the window would have impaired Ms. Fawcett's sight lines.
- [182] Second, the existence of prior inconsistent statements or previous occasions when the witness was untruthful. Ms. Fawcett was cross-examined on a number of prior inconsistencies in her various statements and admitted to being untruthful in her interview with Cst. Sutherland at various points. She also explained some of the untruthful points as being embellishments or exaggerations.
- [183] Third, the internal consistency of the testimony. I ask whether the witness's evidence changes while the witness is testifying. Ms. Fawcett's evidence changed a number of times on a number of points including what she heard, what she saw, and, most significantly, where Mr. Harkness and Mr. Ledoux were positioned during the encounter.
- [184] Fourth, I consider any motive that the witness might have to lie or mislead the court. Ms. Fawcett's motive appears to be to seek justice for the killing of her friend. While that is a laudable personal goal, I am left with the impression from the overall tenor of her evidence that this is one of those rare instances where her motive outweighs her ability to provide an honest, truthful, candid and reliable account.
- [185] Fifth, I consider the ability of the witness to originally observe, and subsequently to record in memory and later recall the event. Ms. Fawcett's shifting version of events that initially included not seeing who shot Mr. Ledoux, significantly revising the position of Mr. Harkness vis-à-vis Mr. Ledoux more than five years after the events--seemingly to account for problematic obstacles in her sightlines--all cause me to have grave reservations about the accuracy of her memory. The traumatic nature of what she witnessed may also have negatively impacted her ability to record the event in her memory and to later recall it accurately.

- [186] Perhaps even more telling on the opportunity to observe the events was Ms. Fawcett's admission that if the window coverings were in place as depicted in the photographs, she could not see what she claimed she observed. And so, she maintained that the vertical blinds and the drapery fabric on the right corner of the window were not there when she saw the events unfold. The evidence unequivocally establishes that the window coverings were in fact as depicted in the photographs and that nothing from the scene at the residence had been altered prior to the photographs being taken by the investigators. Given that fact, and Ms. Fawcett's at one point concession that she would not have been able to see Mr. Harkness, and then her repositioning of the parties again, I cannot rely upon her evidence as to what she says she observed of the encounter in the living room.
- [187] Sixth, I consider the attitude and demeanour of the witness. I look at whether the witness is evasive, belligerent, or inappropriate in response, particularly during cross-examination. Although attitude and demeanour of a witness while testifying should not be given undue weight, I can say without hesitation that Ms. Fawcett's performance on the witness stand was bewildering for its recalcitrance in answering some of the questions put to her in cross-examination and for the contradictions within her own evidence in cross-examination.
- [188] Seventh, I consider the sense of the evidence. When I apply my common sense to the evidence, the question becomes: is the result impossible, improbable, or unlikely, and what other results are there? On Ms. Fawcett's evidence--the accuracy and truthfulness which is, frankly, very difficult to discern--I am left with the question as to whether in fact she could be mistaken. When I consider her evidence within the context of the rest of the evidence going to the issue of positioning of the shooter and Mr. Ledoux, she could well be mistaken in what she believes she saw.
- [189] Finally, in addition to Ms. Fawcett's evidence causing me grave reservations as to its veracity, accuracy, and reliability, her evidence, is seemingly inconsistent with the evidence of Dr. Doyle and S/Sgt. Watts. Their evidence raises a reasonable doubt as to positioning of Mr. Ledoux and Mr. Harkness in the incident and supports the conclusion that Ms. Fawcett may well be mistaken as to Mr. Harkness being the shooter. Ms. Fawcett initially positioned Mr. Harkness off to Mr. Ledoux's right and then subsequently had him almost straight on to Mr. Ledoux when he was shot.
- [190] The evidence of Dr Doyle and S/Sgt. Watts is to the contrary: that the shooter was to the left of Mr. Ledoux something more consistent with the position of the unknown male behind the kitchen counter.
- [191] Respectfully, the most that can be taken from Ms. Fawcett's evidence is that she believes it was Mr. Harkness who shot Mr. Ledoux. And, while it might have been Mr. Harkness who shot Mr. Ledoux, equally, it might not.

- [192] As the lawyers in this court room know and the members of the public in the gallery need to understand, a belief that Mr. Harkness was the shooter is insufficient. The burden is on the Crown to prove beyond a reasonable doubt that Mr. Harkness was the shooter. That is a high standard. While this does not require proving it to an absolute certainty, the level of proof that the Crown must discharge, beyond a reasonable doubt, is much closer to absolute certainty than probable guilt.
- [193] The standard most definitely is not a balance of probabilities. In other words, the standard is not satisfied if the trier of fact can only say that it is more likely than not that Mr. Harkness was the shooter. That is not proof beyond a reasonable doubt.
- [194] Proof beyond a reasonable doubt means I must be sure that Mr. Harkness was the shooter. Respectfully, I am not sure. The most I can say on the state of the evidence before me and the findings of fact that I have made is that he might have been.
- [195] In light of the foregoing review of Ms. Fawcett's evidence highlighting some of the more significant inconsistencies, contradictions and problematic features of her evidence, I cannot rely at all on Ms. Fawcett's account of who shot Mr. Ledoux.
- [196] As the eyewitness to this very traumatic event, the reliability of Ms. Fawcett's evidence was always going to be an issue given the difficulties with her vantage point and the limited sightlines she had to see what she says she saw. However, by the end of cross-examination, the credibility of her evidence had also turned into a very significant, indeed determinative issue.
- [197] To say Ms. Fawcett gave confusing and contradictory evidence would be an understatement. While I have no doubt Ms. Fawcett believes she saw Corey Harkness shoot her friend Brock Ledoux, I am unable to rely upon her evidence at all.
- [198] Having considered the totality of the evidence in this case and the submissions of counsel, in my view, it would be unsafe to rely upon Ms. Fawcett's evidence to convict Mr. Harkness.
- [199] Mr. Harkness, would you stand up, please.

Conclusion

- [200] For the reasons outlined in this judgment, I am not satisfied that the Crown has discharged its burden of proving beyond a reasonable doubt that you shot Mr. Ledoux. Ms. Fawcett's evidence is completely unreliable. I am unable to place any weight on it.
- [201] Moreover, the combination of Dr. Doyle's evidence on the orientation of the trajectory of the shots fired, suggesting that the shooter was to Mr. Ledoux's left, coupled with S/Sgt. Watt's evidence as to the reasonably possible explanations for the blood stains on the north wall of the living room of the Collins Rd. Residence, raises a reasonable doubt.
- [202] Accordingly, I find you not guilty of second-degree murder. The charge is dismissed.

[203] Finally, I thank counsel for their significant efforts in streamlining this trial and for their thoughtful submissions and assistance in this very difficult case.

"Ker J."

- [1] The evidence of one other witness, Cpl. Raymond Hebert, of the RCMP, was the subject of admissions, in light of his unavailability for trial due to medical circumstances. He was one of the Forensic Identification Service Specialists who attended the scene of the shooting, took photographs, prepared diagrams and authored an Ident Occurrence Report. The parties agreed that Cpl. Hebert mistakenly included errors in compass directions when he described the residence and items within it. They agreed that where Cpl. Hebert wrote West, the orientation was actually North and where he wrote East it was actually South.
- [2] The four statements were as follows: (i) the initial 911 call at 7:05 p.m.; (ii) the transcribed call of the dispatcher contacting Ms. Fawcett at 7:15 p.m.; (iii) Ms. Fawcett's tape-recorded statement to Cpl. Taylor outside the Collins Rd. residence at 7:53 p.m.; and (iv) Ms. Fawcett's audio and video recorded statement to Cst. Sutherland at the Ashcroft RCMP detachment on January 15, 2019 at 3:33 p.m. This last statement was nearly two hours long.
- [3] It is agreed between the parties that in this context "tribute" or "homage" in the criminal underworld means--repayment for a service done for others. More broadly, to pay tribute or pay homage involves something one says, does, or gives in order to express respect or admiration for someone. In other words, paying tribute or homage is doing something to show respect for someone or something.
- [4] Exhibit 1, Tab 3, p. 4.
- [5] Depicted in photographs 31 & 79 at Tab 2 of Exhibit 1.
- [6] Exhibit 1, Tab 2, photographs #14-16, 30.
- [7] Exhibit 1, Tab 2, photograph #28.
- [8] Exhibit 1, Tab 2, photographs #19-22.
- [9] Exhibit 1, Tab 2, photographs #18-23.
- [10] Exhibit 1, Tab 2, photographs #27-28.
- [11] Exhibit 1, Tab 2, photographs #27-30.
- [12] Exhibit 1, Tab 2, photographs #30, 46-47.
- [13] Exhibit 14 was an extract from Vincent J.M. DiMaio, *Gunshot Wounds: Practical Aspects of Firearms, Ballistics, and Forensic Techniques*, Third Edition (Florida: CRC Press, 2016), pp. 209-215.
- [14] Exhibit 15.

- [15] More specifically, she testified on April 3, 2024 (pp. 15-16) that the person in the black t-shirt was standing behind the counter with his arms resting on the counter near the caulking gun as depicted in photograph 72 (and 31) of Exhibit 1, Tab 2.
- [16] Exhibit 34, Tab 2.
- [17] Exhibit 34 contains S/Sgt. Watts' curriculum vitae, his May 2019 Bloodstain Pattern Analysis Report, the June 3, 2024 email to him seeking a joint supplementary report updating the original Bloodstain Pattern Analysis Report, the two alternative hypothetical scenarios, and S/Sgt. Watts' June 10, 2024 written report responding to the questions posed by counsel as well as the two hypotheticals he was asked to consider.
- [18] These same photographs are found in Exhibit 1, Tab 2, photographs 94 & 95.
- [19] Presumably the pile of clothing and items as depicted in photograph 47 of Exhibit 1.
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Prepared on 25 October 2026 · Esheria