

CANADA / JUDGMENT

R. v. McCook

2025 BCSC 2557

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2557 R. v. McCook IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. McCook, 2025 BCSC 2557 Date: 20250417 Docket: 77831-3 Registry: Prince George Rex v. Brent Angus McCook Before: The Honourable Justice Sukstorf Oral Reasons for Judgment re: Admissibility of a Hearsay Statement Counsel for the Crown: R.J. Climie A.P. Dawson, Articled Student Counsel for the Accused: L.J. Helps C.M. McCauley Place and Dates of Hearing: Prince George, B.C. April 7-9, 2025 Place and Date of Judgment: Prince George, B.C. April 17, 2025 Table of Contents I. Introduction.. 3 A. Circumstances of the Alleged Offence. 3

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- [1] THE COURT: These reasons were delivered orally and have since been edited.
- [2] These are my reasons for judgment on the Crown's application for a ruling on the admissibility of a hearsay statement under the principled exception to the hearsay rule. The evidence in question is an audio-recorded statement given by Wayne Parry to then-RCMP Constable Chris Watson, following the death of Rochelle Poole. The statement has been transcribed and is the subject of this voir dire.
- [3] I note that then-Constable Watson has been promoted to a Corporal since the time of these events. For clarity, I will refer to him Corporal Watson for the remainder of these reasons. I. Introduction
- [4] The accused, Brent Angus McCook, is charged with second degree murder in connection with the death of his then-spouse, Rochelle Poole ("Deceased"), which occurred on January 24, 2023, at 912 Seymour Street ("Residence") in Kwadacha, British Columbia.
- [5] Mr. McCook opposes the admission of Mr. Parry's statement, arguing that it does not meet the test for threshold reliability. A. Circumstances of the Alleged Offence
- [6] On January 24, 2023, at approximately 11:00 a.m., RCMP officers responded to multiple 911 calls reporting that the accused, Mr. McCook, was at the Residence firing a rifle toward neighbouring houses and threatening individuals. When police arrived, they found that members of the community had already disarmed and restrained Mr. McCook. He was arrested at the scene for the reckless discharge of a firearm, contrary to s. 244.2 of the Criminal Code, R.S.C. 1985, c. C-46, and appeared to be intoxicated.
- [7] While on scene, a civilian told officers to check on a woman seated in the front passenger seat of a pickup truck parked in the driveway facing the Residence. Officers then discovered the Deceased, the accused's common-law spouse, with an apparent gunshot wound to the head. The truck had two bullet holes in the windshield: one on the driver's side, with a bullet lodged in the headrest, and one on the passenger side, which allegedly struck and killed the Deceased. Mr. McCook was subsequently re-arrested and is now charged with second degree murder, contrary to s. 235(1) of the Criminal Code, in connection with Ms. Poole's death.
- [8] The investigation revealed that Mr. McCook and the Deceased had been drinking from the previous day into the morning of January 24, 2023. While their interactions were reportedly positive for most of that time, Mr. Parry, whose hearsay statement is before the Court, told the RCMP that he witnessed Mr. McCook become angry towards the Deceased about missing Ski-Doo keys. The Crown offers his statement to show that Mr. McCook was angry with the Deceased that morning, believing she had taken the keys. However, shortly after the interaction witnessed by Mr. Parry, the couple left the Residence for a drive with Jason Poole and Whitney Boya, suggesting any tension that might have existed had subsided.

- [9] These events occurred in a small, close-knit Indigenous community, where many individuals are closely related and social dynamics are intertwined. The investigation involved multiple civilian witnesses with direct ties to both Mr. McCook and the Deceased. This broader social context, including local knowledge and family relationships, has shaped the evidentiary landscape in this case.
1. Evidence on the Voir Dire
- [10] On May 10, 2023, at 10:12 a.m., Corporal Watson of the North District RCMP took an audio-recorded statement from Mr. Parry. At the time of the Deceased's death on January 24, 2023, Mr. Parry lived a few doors down from the Residence where the Deceased was shot and next door to the Deceased's mother, Loretta Poole.
- [11] The Court heard the audio recording and received a corresponding transcript of the interview during the voir dire. In his statement, Mr. Parry described having contact with both the Deceased and Mr. McCook on the morning of January 24, 2023.
- [12] Corporal Watson also testified regarding his role in the investigation into the Deceased's death and the circumstances surrounding his interview with Mr. Parry.
- [13] Mr. Parry died on April 18, 2024, as confirmed by a letter from the British Columbia Coroners Service dated March 6, 2025.
- [14] As corroborative evidence, the Crown proffered the transcript evidence of Jason McCook, Mr. McCook's cousin, who testified under oath on April 9, 2024, at the Preliminary Inquiry into this charge and was subject to cross-examination. As both Jason McCook and the accused share the same surname, and with no disrespect intended, I will refer to him simply as Jason for the remainder of these reasons. II. Legal Framework A. Hearsay and the Principled Exception
- [15] Hearsay evidence--out-of-court statements tendered for the truth of their contents--is presumptively inadmissible because it cannot be tested through contemporaneous cross-examination and may compromise or undermine trial fairness. Additionally, the admission of hearsay evidence risks eroding the truth-seeking function of the trial, which could compromise fairness to the accused: *R. v. Charles*, 2024 SCC 29 at paras. 43-44; *R. v. Bradshaw*, 2017 SCC 35 at para. 20.
- [16] In *R. v. Khelawon*, 2006 SCC 57 at para. 35, the Supreme Court of Canada stated that the fundamental concern underlying the rule against hearsay is the absence of three core trial safeguards:
- a) testimony under oath or affirmation;
 - b) observation by the trier of fact; and
 - c) the opportunity for cross-examination by opposing counsel.

- [17] Without these safeguards, the reliability of the statement cannot be adequately tested: Khelawon at para. 48. B. Traditional Exceptions and the Principled Approach
- [18] Some hearsay evidence may be admitted under recognized common law exceptions. However, all hearsay exceptions--traditional or novel--are now governed by the principled approach to admissibility established in *R. v. Khan*, [1990] 2 S.C.R. 531, 1990 CanLII 77 and refined in *Khelawon*, *Bradshaw*, and *R. v. Baldree*, 2013 SCC 35; *R. v. Starr*, 2000 SCC 40 at paras. 106, 200.
- [19] In *Khelawon* at paras. 47-49 and *Bradshaw* at para. 23, the Supreme Court of Canada confirmed that, under the principled approach, hearsay may be admitted if the proponent establishes, on a balance of probabilities, both:
- a) necessity: the declarant is unavailable to testify, including by reason of death, rendering contemporaneous in-court evidence impossible (*R. v. Blackman*, 2008 SCC 37 at para. 34); and
 - b) threshold reliability: the statement is sufficiently trustworthy to overcome the specific hearsay dangers it presents (*Charles* at paras. 45-47). C. Threshold Reliability
- [20] Threshold reliability may be established in two ways:
- a) procedural reliability: adequate substitutes for cross-examination exist, such as video recording, sworn testimony, or a prior opportunity for cross-examination (*Bradshaw* at para. 28; *Charles* at para. 46); or
 - b) substantive reliability: the statement is inherently trustworthy considering the circumstances in which it was made, its contents, and any corroborative evidence (*Bradshaw* at para. 30; *Charles* at para. 47).
- [21] Threshold reliability may be established through procedural or substantive means, or a combination of both. However, their combined use must not obscure deficiencies: hearsay cannot be admitted without either sufficient procedural safeguards or clear indicia of trustworthiness: *Bradshaw* at paras. 27, 32.
- [22] As emphasized in *R. v. B.H.H.*, 2024 BCSC 2508 at para. 77, and *R. v. Newsham*, 2019 BCCA 126 at para. 14, threshold reliability concerns admissibility, not the ultimate truth or weight of the statement. The question is whether the statement is trustworthy enough to be admitted without cross-examination, not whether it is accurate. This is a gatekeeping function for the trial judge and is distinct from the trier of fact's role: *Bradshaw* at paras. 39-41; *Khelawon* at para. 50.

- [23] Where the Crown relies on substantive reliability, the court must assess whether the surrounding circumstances and any corroboration sufficiently mitigate the risks of fabrication, misperception, faulty memory, or inaccurate narration: *R. v. Hawkins*, [1996] 3 S.C.R. 1043 at para. 75, 1996 CanLII 154. If so, cross-examination would add little and the statement may be admitted.
- [24] Key factors to consider include the declarant's opportunity to perceive the event; the potential impact of time, emotion, or outside influence; and whether the statement was voluntarily and reliably recorded. Where the concern is contamination rather than fabrication, the inquiry focuses on whether the memory remained independent. *D. Corroborative Evidence*
- [25] As confirmed in *Newsham* at para. 20, corroborative evidence may be considered at the admissibility stage to assess substantive reliability. This approach was set out in *Khelawon* and reaffirmed in *Bradshaw and Charles*.
- [26] To support substantive reliability, corroboration but must meet specific criteria:
- a) It must support the truthfulness or accuracy of the material aspects of the hearsay statement: *Bradshaw* at paras. 44-45.
 - b) It must address the specific hearsay dangers presented (e.g., misperception, memory distortion, or fabrication): *Bradshaw* at para. 47; *Charles* at para. 54.
 - c) It must rule out plausible alternative explanations for the statement on a balance of probabilities: *Bradshaw* at para. 49; *Charles* at para. 55.
- [27] Corroborative evidence must go beyond aligning with a party's theory or bolstering the declarant's general credibility: *Bradshaw* at para. 44. It must directly support the material aspects of the hearsay statement for which it is tendered.
- [28] In *Bradshaw*, the Court held that corroborative evidence must be trustworthy and show that the "only likely explanation" for the hearsay statement is that the declarant was truthful or accurate about its material aspects: at paras. 4, 44-50. Absolute certainty is not required, but the evidence must be assessed in context, not in isolation: *R. v. Larue*, 2018 YKCA 9 at para. 119, *aff'd* 2019 SCC 25.
- [29] In short, the statement must be so inherently trustworthy that cross-examination would add little, ensuring it can be fairly admitted without compromising trial fairness. *E. Judicial Discretion: Probative Value Versus Prejudicial Effect*
- [30] Even where necessity and reliability are established, admissibility is not automatic. The trial judge retains a residual discretion to exclude the statement if its prejudicial effect outweighs its probative value: *Khelawon* at para. 49; *Bradshaw* at para. 24.

- [31] Additionally, compliance with the hearsay rule does not override other evidentiary exclusions or considerations of overall trial fairness. III. Application of Law to the Facts A. Necessity
- [32] Necessity is clearly established. Mr. Parry is deceased and unavailable to testify. This criterion is not in dispute. B. Threshold Reliability
1. Statement Overview and Witness Context
- [33] As mentioned above, the hearsay statement in question was given by Mr. Parry to Corporal Watson on May 10, 2023.
- [34] I found Corporal Watson to be a credible and reliable witness. He gave clear evidence regarding the context of the interview, acknowledged limitations in the audio recording, and candidly explained areas where the transcript may not fully capture the meaning of Mr. Parry's comments due to background noise.
2. Procedural Reliability
- [35] As mentioned above, procedural reliability is typically established where a statement is made under oath, is video or audio recorded, or was subject to contemporaneous cross-examination. None of those safeguards were fully present in this case.
- [36] Although the statement was audio recorded and transcribed, it was not made under oath, and Mr. Parry was not subject to cross-examination. The audio contains background interference which obscures key portions. The Crown concedes procedural reliability is not met and instead relies solely on substantive reliability.
3. Substantive Reliability
- [37] I turn now to the circumstances in which Mr. Parry gave his statement. These are central to assessing whether the statement is sufficiently trustworthy to meet the threshold for admissibility.
- [38] The test is whether, on a balance of probabilities, the statement is so inherently reliable that cross-examination would add little. The focus is not on the truth of the statement, but rather on whether it can be fairly admitted without cross-examination.
- [39] As discussed above, Mr. Parry gave an audio-recorded statement to a uniformed RCMP officer more than three months after the incident. He was described as sober, cooperative, and alert. While background noise affected parts of the recording, the officer testified that the transcript was generally accurate. Mr. Parry was a neighbour to both Mr. McCook and the Deceased and claimed to have made relevant firsthand observations.

- [40] There is no evidence that Mr. Parry had a motive to mislead or influence the investigation. His responses were generally clear and required little prompting. Although he briefly confused the Deceased and her mother, Loretta, he corrected the error and it appears to have been an isolated incident.
- [41] The Crown submits that the statement is inherently trustworthy. Mr. Parry was cooperative, gave his statement in a formal setting, and was not aligned with either party. His answers, the Crown argues, reflect clarity and candour and any minor inconsistencies do not undermine reliability.
- [42] The defence raises concern about memory contamination, given Mr. Parry's proximity to others involved and the delay before his statement was given. The defence argues that, without cross-examination, the risks posed by time, community influence, and possible exposure to rumours create sufficient doubt about the reliability of his perception, memory, and narration.

4. Corroboration

- [43] As explained earlier, to assess substantive reliability of a hearsay statement, the court must also consider corroborating evidence which relates to the material aspects of the statement and supports the conclusion that the only likely explanation is that the declarant was truthful or accurate in those respects.
- [44] In this case, the Crown relies on the testimony of Jason as corroborative evidence. Jason was present with both Mr. McCook and the Deceased on the day leading up to the incident and ultimately intervened by tackling Mr. McCook to disarm him.
- [45] I now apply the Bradshaw test, as outlined earlier, to Jason's evidence to guide my assessment of whether the statement meets the threshold for admissibility.
- a) Does Jason's Evidence Support the Truth or Accuracy of the Material Aspects of Mr. Parry's Statement?
- [46] The Crown tenders Mr. Parry's statement to establish two material aspects:
- a) that Mr. McCook became angry on the morning of January 24, 2023, in relation to missing Ski-Doo keys and that this anger was directed at the Deceased; and
- b) that he was intoxicated at the relevant time.
- [47] These observations are central to the Crown's theory regarding the accused's mental state and conduct before the shooting. As corroboration, the Crown proffers the transcript evidence of Jason, who testified under oath on April 9, 2024, at the Preliminary Inquiry into this matter.
- [48] Consequently, Jason's testimony must directly support these specific material points, not merely peripheral or uncontested details of the Crown's case.

- [49] The analysis below assesses whether Jason's evidence meaningfully supports threshold reliability by addressing the hearsay dangers presented by Mr. Parry's statement.
- [50] The specific evidence that the Crown seeks to rely upon from Mr. Parry's statement is as follows:
- a) Mr. Parry's description of the argument between the Deceased and Mr. McCook over keys to a Ski-Doo which had gone missing and which Mr. McCook suspected the Deceased had taken (Parry Police Statement Transcript at p. 3, lines 70-71, p. 9, lines 237-246 [Parry Transcript]).
 - b) Mr. Parry's description of Mr. McCook's state of mind at approximately 10:00 a.m. on the date of the incident in the following terms:
 - i. "the fuckin' key was gone And he got irate about that" (Parry Transcript at p. 3, lines 75-78);
 - ii. "then the key went missing and he started getting pretty pissy like he booted his sled and everything else and he started screaming at her a bit " (Parry Transcript at p. 8, line 228-p. 9, line 232); and iii. "[y]eah he was getting mad over it He kicked the snowmobile" (Parry Transcript at p. 19, line 520-528).
 - c) Mr. Parry's observations about the sobriety of Mr. McCook:
 - i) He was intoxicated he was right? He wasn't way like I've seen Brent really drunk Yeah he was, he was definitely intoxicated right he wasn't like, if you guys saw him as a police officer you would definitely pull him over right he, yeah he does need or give him a breathalyzer close to the window right (Parry Transcript at p. 16, lines 438-451). Q: Okay, okay, but he's not like black out drunk A: No, not to Q: Doesn't know where he is A: not to my point no (Parry Transcript at p. 16, lines 456-459).
- [51] On the day in question, Jason was hanging out with Mr. McCook and the Deceased. During the Preliminary Inquiry, he was asked about his time at the Residence, with specific questions querying whether Mr. McCook was angry: Q: Okay. Okay. So when you were at Brent and Rochelle's, were there any disagreements? A: No, just when Brent was trying to find his Skidoo keys, but he couldn't. Q: Okay. And did he seem upset about that, angry about that? A: Yeah, a little bit upset, yeah. (Preliminary Inquiry Transcript at p. 36, lines 2-8 [PI Transcript]).
- [52] Jason was asked again about whether Mr. McCook was angry. He stated: Q: Did he seem upset or angry about the Skidoo keys? A: Yes, he was a little bit upset, yeah. Q: Okay. And was this before or after you were driving around? A: Before. Q: Okay. Okay. And was Brent upset about anyone in particular with the keys? A: No, just that he couldn't find them. Q: Okay. And did you do anything to calm him down? A: Yeah, just tried to talk to him and all that. Was trying to calm down the best as I can. Q: And did things seem fine after that point? A: Yes, it was. (PI Transcript at p. 36, lines 18-30).

- [53] In the Preliminary Inquiry, Jason told the court that the three of them, as well as his cousin, Ms. Boya, were drinking and driving around Kwadacha. He could not recall what time it was but indicated that it was in the morning: PI Transcript at p. 35, lines 14-38.
- [54] Jason was then questioned on the drinking they engaged in while they were driving around. He provided the following testimony: Q: Okay. So then you went driving around in the truck. Were you - - and you were drinking in the truck? A: Yes. Q: Okay. Do you recall how much you had to drink that day? A: No, I don't, but was about - - a fair amount, I guess. Q: Okay. And who was driving the truck? A: I was. THE COURT: Sorry, you were? A: Yeah. After - - I took over after a while. CNSL T. ZANATTA: Q: And you took over from Brent? A: Yeah. Q: And that was at his request? A: yes. Q: Did he give you a reason? A: Because he was getting drunk. Q: Okay. So after driving around, what did you do? A: We parked the truck, I think, and then we went to Whitney's. (PI Transcript at p. 36, line 39-p. 37, line 13).
- [55] Under cross examination, Jason gave the following relevant evidence: Q: Mr. McCook, I want to ask you a little bit about this fight over the Skidoo keys, or this - - this - - the fact that Brent was agitated over the Skidoo keys. He wasn't agitated at anybody in particular; he was just annoyed he couldn't find the keys, correct? A: Correct. Q: It wasn't like he was blaming you or Rochelle or anybody else for them, correct? A: No ma'am. Correct, yeah. Q: And you got him calmed down pretty good, as I understand it? A: Yeah. (PI Transcript at p. 41, lines 29-41). Q: Okay. Now, you - - do you remember what you were drinking that night? A: No, I don't. Q: Do you remember what anybody else was drinking? A: No. I think there was vodka, I'm pretty sure, and Q: And was the vodka being done as shots or with mixer? A: Shots. Q: Okay. And was everybody in the car doing the vodka? A: Yeah. Q: And was everybody consuming equal amounts? A: Yeah. Fair. (PI Transcript at p. 42, lines 8-21). Q: From your point of view, was Brent drunk when you parked the car? A: I believe so, yeah. Q: Okay. A: Yeah. Q: And had you seen him that drunk before? A: No. Q: The two of you had grown up together? A: Correct. Q: I'm sure you'd done some drinking together? A: Yeah. Q: And you never seen him that intoxicated before? A: No. Q: From your point of view, was there anything that happened in the car that would lead him to be angry at Rochelle? A: No Q: Did you think everything was okay when - - when you all got out of the car? A: Yes. Q: And was there anything between the time that you guys get out of the car and the time that you hear the first gunshot, that you - - that was a concern or a red flag for you, or any type of thing like that? A: No. I was just shocked that I heard it and Yeah, I was just shock. Like - - Q: Yeah, the - - A: Didn't expect that or nothing. (PI Transcript at p. 43, lines 4-33).
- b) Does Jason's Evidence Overcome the Specific Hearsay Dangers Presented by Mr. Parry's Statement?
- [56] I must now assess whether the corroborative evidence outlined above meaningfully addresses the specific hearsay dangers raised by Mr. Parry's statement, namely risks related to perception, memory, narration, and sincerity.
- i. Identification of the Specific Hearsay Dangers

- [57] The primary hearsay dangers raised by Mr. Parry's statement are memory distortion; perception and narration errors; and the risk of untested sincerity. I describe each of these dangers in turn below. ii. Memory Distortion
- [58] The delay in taking Mr. Parry's statement raises some risk that his recollection may have been reconstructed from incomplete memory or shaped by community speculation. The timing and context are key: the statement was given months after the events occurred in a small, tightly-knit community where rumours and discussions will undoubtedly have circulated.
- [59] To be clear, community dynamics alone do not render a statement unreliable, but courts must be cautious when it is coupled with lack of clarity and shifting narrative within the statement. My concerns in this regard are discussed below. iii. Perception and Narration Errors
- [60] As described briefly above, Mr. Parry's observations do not cover the entire period in which relevant events unfolded. He was not present during the two-hour drive during which others, including Mr. McCook, consumed alcohol. His comments about Mr. McCook's intoxication and anger may reflect only a partial picture or misunderstandings of tone or conduct.
- [61] Mr. Parry lived next door to the Deceased's mother in a small, tightly-knit community where information circulates rapidly. In this context, it is plausible that aspects of his account were informed, consciously or unconsciously, by conversations with others or by local gossip. This concern is heightened by the absence of contemporaneous cross-examination and is particularly relevant given Mr. Parry's general comment about there being a "bad history" between Mr. McCook and the Deceased when they drank: Parry Transcript at p. 2, lines 33-34.
- [62] Mr. Parry describes making two visits to the Residence on the morning of January 24, 2023. His account of the first visit is at times unclear and internally inconsistent. When he first describes what happened during the first visit, he only provides vague details and then says, "I mess around with the sled for a bit and then I ended up leaving and there was a few people there": Parry Transcript at p. 2, lines 36-37. He later notes that the Deceased and Ms. Boya were present, along with an unnamed individual, whom he later suggests may have been Jason: Parry Transcript at p. 2, lines 36-39, p. 6, lines 167-170. Jason's own evidence confirms he was there.
- [63] Regarding the second visit, Mr. Parry initially states that the next time he went over to the Residence, he ended up going over to Blaine Peter's house and they were sitting out in front of his yard when Mr. McCook and the Deceased pulled up in their truck and asked them if they wanted to come drink with them: Parry Transcript at p. 2, lines 41-44. He states that "[t]hey seemed like they were alright at that point": Parry Transcript at p. 2, line 46.

- [64] Later, after reflecting upon hearing about the death of the Deceased, Mr. Parry states that "[t]hey didn't seem too happy about everything, during the day they were arguin' back n' forth": Parry Transcript at p. 3, lines 66-71. However, by his own testimony, he only saw them briefly very early in the morning and this contradicts his many comments that they seemed alright at various points.
- [65] Mr. Parry then qualifies his earlier statement by saying, "I never saw none of this, you know. But Brent didn't seem too bad, neither did Rochelle, you know": Parry Transcript at p. 4, lines 85-86.
- [66] Later in the interview, Mr. Parry is asked to provide more specifics of the two visits. With respect to the first visit, he clarifies that he and Mr. McCook were "trying to change the ignition out because somebody ripped his ignition, he lost the keys," implying a non-contentious mechanical issue and that the keys were lost: Parry Transcript at p. 6, lines 155-156.
- [67] Then after reflecting on the news of the Deceased's death, Mr. Parry states, "I think Rochelle did take his keys " then qualifies it by saying, "from the sled but he was in there when we were looking at it, we turn around to go do to something on the back and the fuckin' key was gone And he got irate about that": Parry Transcript at p. 3, lines 66-78.
- [68] He then further qualified his earlier statements by saying "that's the only thing that I, I was there for": Parry Transcript at p. 3, line 80.
- [69] Mr. Parry then states, "I knew it wasn't gonna end well about the darn key because this happened before with them ": Parry Transcript at p. 3, lines 82-83. This is inconsistent with his earlier comment that things between Mr. McCook and the Deceased were alright at the point that he saw them at Mr. Peter's, which by his evidence, would have been right after the Ski-Doo key incident.
- [70] In response to the question from the RCMP as to whether Mr. McCook and the Deceased were getting along at the time, Mr. Parry says, "[y]eah they seemed alright but [INDECIPHERABLE]" and later says, "it seems like that every time they drink...": Parry Transcript at p. 7, lines 180-185.
- [71] At one point, Corporal Watson tried to determine when the alleged incident with the keys took place. He asked, "was this the time that the key went missing"? Mr. Parry responded, "[n]o tha, he asked me to come back and give me a hand, I said 'okay listen I gotta go to the house first and """: Parry Transcript at p. 7, lines 188-191. This suggests the key went missing on his second visit to the Residence, but Mr. Parry had just said that they were changing out the ignition because there was a lost key.

- [72] Mr. Parry was then asked whether they worked on the Ski-Doo when he returned. In response, he stated that he did and "then the key went missing." He describes Mr. McCook becoming "pretty pissy" and stated that he kicked the Ski-Doo, "like he booted his sled and everything else and he started screaming at her a bit right and I was like 'yeah okay buddy, I'm outta here,' you know I don't need this shit": Parry Transcript at p. 8, line 224-p. 9, line 234.
- [73] Mr. Parry was asked if Mr. McCook was accusing the Deceased of taking the key and he responded it was like "give me the fuckin' key right like what is wrong with you. He just wanted to go for a ride on his sled, he wanted to get it fixed": Parry Transcript at p. 9, lines 237-246. There is no mention of any threats being made.
- [74] Mr. Parry indicates that he went to Mr. Peter's house, where he recounts that Mr. McCook and the Deceased later drove by in their truck. He then asked Mr. McCook if he wanted to buy a snowmobile "cheap, I'll give it to you cheap it has no fucking key." Mr. Parry describes Mr. McCook as being "all bitchy about it": Parry Transcript at p. 10, lines 263-272.
- [75] However, Mr. Parry had just clarified that after the alleged Ski-Doo incident, when he was at Mr. Peter's house and Mr. McCook and the Deceased came by in their truck, "[t]hey seemed like they were alright at that point": Parry Transcript at p. 2, line 46.
- [76] Taken together, Mr. Parry's account is marked by internal inconsistencies and a somewhat shifting narrative regarding the anger of Mr. McCook. There is confusion as to when events occurred, when the Ski-Doo keys went missing, and the nature of Mr. McCook's behaviour. These inconsistencies--when combined with the risk of community influence and the absence of cross-examination--undermine the clarity and independence of Mr. Parry's memory and raise significant concerns that can only be clarified through cross-examination. iv. Risk of Untested Sincerity
- [77] While there is no suggestion that Mr. Parry acted in bad faith or had a motive to lie--indeed, it is uncontested that he was friendly with both Mr. McCook and the Deceased--the lack of cross-examination means his sincerity, assumptions, and potential exposure to external influence cannot be adequately tested.
- c) Does Jason's Evidence Address These Specific Dangers?
- [78] Jason was present with both the Deceased and Mr. McCook during the relevant events. As already stated, he testified under oath and was subject to cross-examination. There is no evidence to suggest that his testimony is unreliable and the Court has no reason to doubt the trustworthiness of his corroborative evidence.
- [79] With respect to intoxication, Mr. Parry described Mr. McCook as "definitely intoxicated," though not "blackout drunk," and suggested he would have been over the legal limit if stopped by police: Parry Transcript at p. 16, lines 444-456. Jason corroborated this to a significant extent, testifying that the group, including Mr. McCook, consumed a substantial amount of vodka during a two-hour drive and that Mr. McCook asked him to take over

driving because "he was getting drunk": PI Transcript at p. 37, line 10. Jason further stated that, by the time they parked, Mr. McCook was visibly impaired and that he had never seen him that intoxicated before: PI Transcript at p. 43, lines 4-10.

- [80] Mr. Parry described Mr. McCook as becoming "irate" and "pissy," as yelling at the Deceased, and as kicking the snowmobile in anger over missing keys: Parry Transcript at p. 3, lines 66-78, p. 8, line 224-p. 9, line 234. This conduct suggests a volatile or hostile emotional response on Mr. McCook's part. In contrast, Jason described Mr. McCook as only "a little bit upset," stating that the frustration was not directed at anyone in particular: PI Transcript at p. 36, lines 6-25. He testified that he calmed Mr. McCook down and that the remainder of the morning was relaxed and progressed without incident: PI Transcript at p.36, lines 26-30.
- [81] The witnesses were both present during the relevant interaction, though they describe it differently. Mr. Parry reported assisting with the snowmobile, potentially placing him in a position to observe Mr. McCook's immediate reaction. Jason, however, stated that he was the one who calmed Mr. McCook down. Their differing accounts likely reflect variances in perspective rather than one being inherently more accurate than the other. It is not the role of the judge on a voir dire to resolve such differences. Any exaggeration, understatement, or nuance in their observations is a matter for the trier of fact.
- [82] However, the most problematic aspect of Mr. Parry's statement is his suggestion that Mr. McCook directed his frustration specifically at the Deceased in a manner that implies animus or abusive behaviour. These comments go beyond general agitation and, if accepted, may suggest motive or a pattern of hostility.
- [83] Even more concerning are the innuendo-style comments in Mr. Parry's statement suggesting a history of problems between the couple, particularly when drinking. Yet Mr. Parry later distances himself from these claims, conceding, "I never saw none of this," adding, "Brent didn't seem too bad, neither did Rochelle": Parry Transcript at p. 4, lines 85-86. These contradictions raise serious doubt as to whether Mr. Parry personally observed any of the alleged behaviour, either historically or on the morning in question. Inconsistencies of this nature, especially those implying animus, can only be properly tested through cross-examination. Given the passage of time, his close relationship with the Deceased's family, and the dynamics of a small, tightly-knit community, it is plausible that elements of Mr. Parry's account were unconsciously shaped by conversations with others or based on second-hand information.
- [84] A judge may rely on corroborative evidence to establish threshold reliability only if, when viewed in its full context, it demonstrates that the most likely explanation for the hearsay statement is that the declarant was truthful or, in this case, accurate about the material aspects of the statement.
- [85] While the corroborative evidence lends some support to Mr. Parry's statement, particularly with respect to intoxication, it does not meaningfully corroborate the most prejudicial or contested elements, including the allegation that Mr. McCook directed his anger at the

Deceased. The key hearsay dangers, namely misperception, memory distortion, and suggestibility, remain unresolved. Mr. Parry's shifting account, and the uncertainty about whether the most serious allegations were personally observed, raise a real risk of unfairness and highlight reliability issues that can only be resolved through cross-examination.

d) Are There any Alternative Explanations for Mr. Parry's Statement?

[86] Given the limited scope of Mr. Parry's observations, inconsistencies in his account, and the potential influence of community discussion, plausible alternative explanations for his statements have not been excluded. Even if accepted at face value, the statement does not support an inference that Mr. McCook threatened or intended to harm the Deceased.

e) Conclusion on Threshold Reliability

[87] I find that the disordered and shifting nature of Mr. Parry's statement, when viewed in the absence of contemporaneous cross-examination, lacks sufficient trustworthiness. The issue is not simply whether the statement is accurate--that is for the trier of fact--but whether it is reliable enough to be admitted in the first place. I do not believe Mr. Parry intended to mislead or cause harm to either the Deceased or Mr. McCook. The inconsistencies and contradictions or, at minimum, the lack of internal clarity, on matters central to this case prevent me from placing the requisite trust in the statement's reliability.

[88] Based on all the foregoing, I find that the Crown has not established that Mr. Parry's statement meets the test for threshold reliability.

[89] The exclusion of Mr. Parry's statement does not preclude the Crown from advancing its case through other admissible evidence, more specifically through the evidence of Jason and Ms. Boya. The exclusion simply reflects the court's obligation to ensure that only evidence meeting the established thresholds of trustworthiness is admitted when it can't be tested through cross-examination.

f) Residual Judicial Discretion

[90] Even if Mr. Parry's statement met the threshold for substantive reliability, I would have exercised my discretion to exclude it. In the context of a domestic homicide, the risk of moral and reasoning prejudice is high, particularly where the probative value is modest and other admissible evidence is available. Unlike spontaneous ante-mortem declarations admitted to explain relationship dynamics or rebut claims of accident, Mr. Parry's statement was not made by the Deceased or Mr. McCook and reflects only his own observations made earlier in the day. Its evidentiary weight is further diminished by delay, internal inconsistencies, and his remarks about past conflict, comments he later admitted were not based on personal knowledge.

[91] The availability of other witnesses--specifically Jason and Ms. Boya--who were present during the relevant events and can provide admissible, cross-examinable evidence on the same issues further reduces the necessity of admitting Mr. Parry's untested and inconsistent statement. The risk of unfair prejudice outweighs its limited probative value.

[92] This ruling does not speak to the ultimate merits of the Crown's case, but rather reflects the evidentiary threshold required for a hearsay statement to be admitted at trial. IV.

CONCLUSION

[93] Mr. Parry's statement does not meet the threshold for admissibility under the principled approach to the hearsay rule. It lacks sufficient indicia of trustworthiness. The statement is excluded. "S. Sukstorf J."

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