

CANADA / JUDGMENT

R. v. McCook

2025 BCSC 1328

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1328 R. v. McCook

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. McCook,

2025 BCSC 1328

Date: 20250617

Docket: 77831-3

Registry: Prince George

Rex

v.

Brent Angus McCook

Before: The Honourable Justice Sukstorf

Oral Reasons for Judgment

Counsel for the Crown:

R.J. Climie

A.P. Dawson, Articled Student

Counsel for the Accused:

L.J. Helps

C.M. McGauley

Place and Dates of Trial:

Prince George, B.C.

April 28-30, 2025

May 1, 2; 5-7, 2025

May 12, 13, 2025

Place and Date of Judgment:

Prince George, B.C.

June 17, 2025

- [1] THE COURT: So these are my reasons for judgment. If I publish this decision or a transcript of these reasons is ordered, I reserve my right to edit the judgment for grammar, correct citations, however the result and the substance will remain unchanged.

Overview

- [2] The accused, Brent Angus McCook, is charged with second degree murder of his spouse, Rochelle Poole, contrary to s. 235(1) of the Criminal Code, R.S.C., 1985, c. C-46. Ms. Poole was shot and killed on January 24, 2023, near the couple's residence in Kwadacha, British Columbia.
- [3] From the evidence presented to the court, it is clear that Mr. McCook discharged the firearm that resulted in Ms. Poole's death. At the time of the shooting, Mr. McCook was severely intoxicated. Mr. McCook asserts that his level of intoxication was so extreme that he was unable to form the intention necessary to support a conviction of murder.
- [4] The issue before the court is whether the Crown has proven, beyond a reasonable doubt, that at the time of the shooting Mr. McCook had the requisite mens rea to support a conviction for second degree murder. If Mr. McCook's level of intoxication prevented him from forming specific intent, a conviction for manslaughter would be appropriate in these circumstances.
- [5] The analysis below considers the elements of the offence, the relevant legal principles, and the totality of the evidence presented at trial. I note that several individuals referenced in these reasons share the same family names. For clarity and without intending any disrespect, I will refer to some individuals by their first names.

Facts

- [6] Kwadacha, also known as Fort Ware, is a remote First Nations community situated in northern British Columbia. It is accessible only by logging roads or air and has a population of approximately 350 to 400 people. The community is tightly knit and many residents related by family or through longstanding connections.

- [7] The remoteness of Kwadacha means that emergency services and law enforcement are limited, and community leaders often play front-line roles in responding to crises. This context is relevant to understand both the interpersonal dynamics among the witnesses and the unfolding events on January 24, 2023.
- [8] Based on the testimony heard by the court, the following is the relevant timeline of the final 24 hours of Ms. Poole's life.
- (a) January 23, 2023, to early morning January 24, 2023
- [9] On the morning of January 23, 2023, Mr. McCook and Ms. Poole met up with Roxanne McCook, who is Mr. McCook's sister, and her partner, Rodrigue Beaudin, for a trip to Mackenzie, B.C., located approximately 425 kilometres from Kwadacha. The group left between 9:00 and 10:00 a.m. in Mr. Beaudin's truck.
- [10] Upon arriving at the outskirts of Mackenzie, Mr. Beaudin parked the vehicle and the group took a cab into town. At around 4:00 p.m., the group visited both a grocery store and a liquor store. Mr. McCook and Ms. Poole spent approximately \$627 on alcohol, including vodka and pre-mixed drinks, while Mr. Beaudin and Roxanne invested a similar amount in liquor. There are no licensed establishments selling alcohol in Kwadacha, therefore liquor must be sourced from neighbouring towns.
- [11] The return trip started later that evening. During the drive back to Kwadacha, Mr. McCook and Mr. Beaudin took turns behind the wheel, each consuming a total of four to five shots from the whiskey and rum bottles they had purchased. Meanwhile, Ms. Poole and Roxanne relaxed with drinks in the back seat. The mood remained casual and social throughout.
- [12] The group returned to Kwadacha around 2:00 a.m. on January 24, 2023. After unloading the groceries and alcohol, they continued drinking together at 912 Seymour Street, Kwadacha, British Columbia. Mr. McCook and Ms. Poole resided at this residence.
- [13] Mr. Beaudin testified that the atmosphere around 2:00 a.m. was relaxed and that they did not observe any apparent conflict. He indicated that everyone was drinking and the parties discussed plans to go camping the next day. The trip was to include Mr. McCook, Ms. Poole, Mr. Beaudin, Roxanne, and Mr. McCook and Ms. Poole's two young children, who were around seven months and three years old.
- [14] Mr. Beaudin described their planned camping trip as something he had been looking forward to, noting that although he had not hunted with Mr. McCook before, he wanted to because of Mr. McCook's skill and experience. He also mentioned that the outing was intended to be a traditional experience for the children, an opportunity to spend time outdoors on the land.
- [15] Between 3:30 and 4:00 a.m., Mr. Beaudin and Roxanne started to argue. Mr. McCook intervened and stated that everyone was tired and that they should all get some sleep. At that point, Mr. Beaudin and Roxanne returned to their own residence.

- (b) Morning, January 24, 2023, starting at approximately 8:40 a.m. to 10:30 a.m.
- [16] Around four hours later at approximately 8:40 a.m., Jason McCook, Mr. McCook's close cousin, arrived at the residence. He testified that the only people there were himself, Mr. McCook, and Ms. Poole. He described the mood as lighthearted with only good vibes. However, he observed that both Mr. McCook and Ms. Poole were drinking and that neither appeared to have slept the previous night.
- [17] At one point, Mr. McCook became visibly frustrated because he could not find his snowmobile keys. Jason testified that Mr. McCook was angry, but his frustration was not directed at anyone in particular. Jason indicated that he attempted to calm Mr. McCook down and that he was kind of successful. The situation de-escalated without incident and, at the time, Jason observed no signs of conflict or tension between Mr. McCook and Ms. Poole.
- [18] Jason testified that later that morning, his cousin, Whitney Boya, joined them. He, Mr. McCook, Ms. Poole, and Ms. Boya then went for a drive around Kwadacha in Mr. McCook's pickup truck. He mentioned that the drive started sometime after sunrise, which was at 8:40 a.m., though he could not remember the exact time. Jason estimated that the group drove around for approximately two hours. Throughout this drive, all four people in the group consumed alcohol. At the outset, Mr. McCook was driving while Ms. Poole was seated in the front passenger seat and Jason and Ms. Boya were seated in the back. Jason stated that everyone in the vehicle was drinking liquor, specifically bottles of hard alcohol.
- [19] He described Mr. McCook as drunker than usual, though in Jason's view he seemed all right at that stage. As Mr. McCook's level of intoxication increased, he asked Jason to take over driving. Jason agreed and Mr. McCook moved to the middle of the front seat, while Ms. Poole remained in the passenger seat. Jason drove the vehicle for the rest of the outing.
- [20] While Jason indicated that the party drove around for about two hours, there is evidence that Mr. McCook made at least two stops. It is not entirely clear from the evidence whether Jason and Ms. Whitney accompanied them during these stops, but I accept that Mr. McCook stopped and visited on two separate occasions, which will be explained below.
- [21] The first is the drive by Blayne Pierre's house. At around 9:00 a.m., Blayne Pierre testified that Mr. McCook, Ms. Poole, and Patrick Miller arrived at his home in a pickup truck. Ms. Poole sat in the front passenger seat, while Patrick was in the back seat.
- [22] I pause here to note that some witnesses referred to Patrick Miller as Patrick Massettoe. The evidence suggests, and I accept, that Patrick Massettoe and Patrick Miller are the same person. Patrick Massettoe is Ms. Poole's brother. Patrick Massettoe did not testify at trial.
- [23] Jason was asked whether Patrick Massettoe was present during the drive. He testified unequivocally that only he, Mr. McCook, Ms. Poole, and Ms. Boya were in the vehicle. When asked whether Patrick could have been with them, he replied no, and confirmed that he knew who Patrick was.

- [24] I note the difference between Mr. Pierre and Jason's testimony. However, as I will discuss below, I do not find this discrepancy relevant to the matter before the court. Ultimately, I accept that Mr. McCook visited Mr. Pierre's home on the morning of January 24, 2023, either with or without Patrick or Jason. Mr. Pierre testified that when the group arrived, he was outside under a carport working on his snowmobile. He testified that Mr. McCook offered him a drink of Ciroc vodka, which he accepted.
- [25] In cross-examination, Mr. Pierre agreed that Mr. McCook also asked whether he wanted to party. He understood Mr. McCook to be suggesting that the parties hang out while he continued working on the snowmobile.
- [26] Mr. Pierre also recalled Mr. McCook stating that the group was going to the store for fuel and would return afterward. At this point, Mr. Pierre advised Mr. McCook to park the truck, as he believed Mr. McCook was over the limit to drive safely. Although Mr. McCook was able to hold a conversation and was not slurring his speech, Mr. Pierre had formed the opinion that he had consumed alcohol and should not be driving. Mr. McCook did not accept Mr. Pierre's advice.
- [27] Mr. Pierre noted that Mr. McCook and Ms. Poole were laughing, smiling, and holding hands, showing no signs of conflict, aggression, or tension between them.
- [28] The next stop, the Kwadacha store.
- [29] Later that morning, Mr. McCook entered the Kwadacha store holding what appeared to be an open can of alcohol. Michelle McCook, the store manager and Mr. McCook's cousin, was working that morning. She observed Mr. McCook walk past the tills and head directly to the back of the store. Michelle testified that Mr. McCook seemed to be under the influence, though he was not visibly staggering. Upon noticing the can of alcohol, she approached Mr. McCook and asked him to leave, citing the store's no-alcohol policy. In response, Mr. McCook became argumentative, asserting that she "let everyone else in here drink." He remained in the back area for approximately five to seven minutes before leaving.
- [30] Michelle described his behaviour as defiant and highly uncharacteristic. She noted that Mr. McCook was typically quiet, respectful, and reserved. She interpreted the encounter as a clear indication that he was intoxicated and acting out of character.
- [31] Michelle's testimony is corroborated by Mason Abou, who was also working at the store that morning. Mr. Abou testified that he encountered Mr. McCook in the back area of the store shortly before 10:00 a.m., around the same time Michelle asked him to leave. Mr. McCook was holding what appeared to be an open can of beer and offered Mr. Abou a drink, which he declined.

- [32] Mr. Abou has lived in Kwadacha since 2004. At the time of the incident, he described himself as a heavy drinker. However, he testified that he has now been sober for a year and a half. He is currently employed as a cultural coordinator, responsible for land-based healing, bushcraft, survival training, and teaching traditional First Nations practices.
- [33] According to Mr. Abou, Mr. McCook appeared visibly intoxicated and agitated. Although he was capable of carrying on a conversation, his demeanour was impaired and abnormal. Drawing on his own experience, Mr. Abou stated that, "I was an alcoholic, so I know first hand a lot of the stages, um, and where you're at, um, when consuming alcohol."
- [34] He confirmed that Mr. McCook grew angry and defiant when asked to leave, but ultimately exited the store.
- [35] After Mr. McCook left the store, Michelle was outside Kwadacha store smoking a cigarette. She saw Mr. McCook's truck drive past and noted that he was in the passenger seat of the pickup truck. As the vehicle drove by, Mr. McCook also gave Michelle the middle finger.
- [36] Michelle testified that this behaviour was also highly uncharacteristic of Mr. McCook. She interpreted the gesture as further evidence of Mr. McCook's intoxicated and erratic state that morning. She estimated that this interaction occurred approximately 30 minutes before she received the first radio message reporting the shooting, which she later confirmed took place around 11:00 a.m.
- [37] I return now to Jason's testimony that the party drove around Kwadacha drinking for approximately two hours. Jason testified that at some point during the drive, they likely passed the Kwadacha store, though he did not specifically recall doing so. Jason also confirmed that at some point, he took over driving from Mr. McCook, due to Mr. McCook's level of intoxication. I accept that Mr. McCook's transition from driver to passenger indicates the progression of Mr. McCook's intoxication.
- [38] I find that Jason's evidence does not directly confirm or contradict the testimony of either Michelle or Mr. Abou, both of whom stated that Mr. McCook entered the store on January 24, 2023.
- [39] Based on the totality of the evidence, I find that Mr. McCook did in fact enter the store and that the final portion of the group's drive occurred after the visit to the Kwadacha store, aligning with the time Mr. McCook gave Michelle the middle finger from the passenger seat of his truck.
- (c) Late morning, January 24, 2023, approximately 10:30 a.m. to 11:00 a.m.

- [40] Jason confirmed under cross-examination that he parked the truck in front of the residence at approximately 10:30 a.m. He stated that he took the truck keys with him and went inside Ms. Boya's house, which was situated two houses down from the residence. Approximately 20 to 30 minutes later, Jason heard gunshots. He went downstairs to investigate and saw Mr. McCook standing by his truck armed with a rifle. There is no evidence that Mr. McCook's truck was moved or operated between the time Jason parked it and the start of the shooting.
- [41] Jason attempted to approach Mr. McCook, but Mr. McCook fired a shot in his direction, prompting Jason to take cover behind Ms. Boya's house. He then went back inside and confirmed that Ms. Boya was still there. Looking out the window, he saw Mr. McCook fire another shot towards Ms. Boya's residence. He and Ms. Boya lay on the floor while she contacted the school by phone.
- [42] For reference, in Kwadacha, the emergency response centre is located within the school or learning centre and serves as a central command point during emergencies. Staff assess incoming calls, coordinate with responders, liaise with band offices and an emergency operation centre, and manage public safety messaging.
- [43] At the time of the shooting, Rebecca Tallman was the director of health services for Kwadacha. Shortly before 11:00 a.m. on January 24, 2023, while at the school, she overheard the phone call from Ms. Boya. Ms. Tallman indicated that she heard Ms. Boya say that Mr. McCook was shooting a gun towards her house. Ms. Tallman immediately left in her vehicle to assess the situation and determine whether the RCMP needed to be contacted.
- [44] Upon arriving at the residence, Ms. Tallman saw Mr. McCook holding a black rifle. Ms. Tallman indicated that the rifle appeared to have a scope and that Mr. McCook was pointing the rifle towards Ms. Boya's house. While Ms. Tallman witnessed Mr. McCook point the gun in the direction of Ms. Boya's house, she testified that she did not see him aim or sight down the gun. Ms. Tallman yelled at Mr. McCook to get his attention and cautioned those nearby to stay back. In response, Mr. McCook placed the rifle under his chin.
- [45] Ms. Tallman then called for help using her radio and issued a warning over the radio, advising people to avoid Seymour Street, while using her vehicle to block the road.
- [46] Rylan Massettoe, Ms. Poole's brother, testified that he became aware of the incident through a community radio transmission while refueling at a local gas station. He immediately drove to the residence where he observed Mr. McCook standing outside holding a firearm. He testified that he began to approach Mr. McCook, asking, "What are you doing?" when Mr. McCook pointed the rifle in Rylan's direction. In response, Rylan lay down on the ground and identified himself to Mr. McCook as his brother-in-law. Mr. McCook did not respond verbally; however, he did turn the weapon on himself.

- [47] Jason's testimony supports that Mr. McCook aimed the firearm at the individuals arriving at the scene. He stated he witnessed Mr. McCook point the rifle away from Ms. Boya's residence. After the rifle was directed away from him, Jason left Ms. Boya's house, removed his shoes, and stealthily moved towards Mr. McCook.
- [48] As he got closer, Jason noticed Mr. McCook attempting to reload the rifle. Jason ultimately tackled Mr. McCook, who briefly pointed the firearm under his chin again before Jason managed to pull it away. Mr. McCook did not say anything during this exchange, and when Jason asked, "What's wrong with you? Why are you doing this?" he received no response. Jason pinned Mr. McCook to the ground and called for help. He testified that he saw Rylan and Mr. Abou nearby and called to them. Both men responded. Although Jason could not recall their exact actions, he confirmed together the three men successfully disarmed Mr. McCook.
- [49] In the moments after disarming Mr. McCook, Jason testified that Mr. McCook appeared unrecognizable, like there was no one behind the wheel. He elaborated, "It was like no one was home, like the lights were on but no one was there," and confirmed that he had never seen Mr. McCook in such a state. Jason attributed this change entirely to intoxication.
- [50] Mr. Abou testified that he heard Ms. Tallman's radio alert and immediately went to the scene. Upon arriving, he noted that Jason and Rylan were engaged with Mr. McCook near the residence, and he joined them in subduing and disarming him. During this exchange, Mr. Abou realized that the scope was caught in Mr. McCook's sweater, so he untangled it and gained control of the weapon before checking to ensure it was not loaded.
- [51] Rylan testified that after Mr. McCook was disarmed, he appeared frightened, vacant, unsteady, and markedly unlike his usual self. Rylan indicated that when he looked into Mr. McCook's eyes, he felt like it was not him. He repeated this sentiment on many occasions throughout his testimony. He insisted that on the day of the shooting, including in the immediate aftermath, Mr. McCook seemed like a totally different person. That it looked like it just was not him and that, "It wasn't my brother-in-law at all."
- [52] Rylan also explained that he had known and partied with Mr. McCook many times, but on this occasion Mr. McCook seemed more intoxicated than Rylan had ever seen him. He testified that Mr. McCook's level of impairment was extreme.
- [53] Shortly after Mr. McCook was subdued, Rylan heard him say something to the effect of, "Bro, I'm dead too." During cross-examination, Rylan conceded that he could not be certain of the exact wording, but confirmed that, "Bro, I'm dead too," was the gist of what Mr. McCook said.
- [54] In response, Rylan said, "Brent, what do you mean? You guys are just drunk," At that moment, Rylan was not yet aware that his sister had been shot. However, Rylan asked the police to check on her in the vehicle.

- [55] After the incident, Rylan entered the residence to search for his nephews who were present. He then retrieved two additional firearms and handed them to Mr. Abou. While Rylan was in the residence, Mr. Abou secured the rifle seized from Mr. McCook in the back seat of his truck. He subsequently secured the two additional firearms that Rylan found in Mr. McCook's house in his truck.
- [56] The police arrived around the time Rylan was passing the guns to Mr. Abou. The three weapons were ultimately given to the RCMP Constable Halliday.
- [57] Mr. Abou indicated that he witnessed Mr. McCook being arrested. He observed that following the shooting, Mr. McCook's condition had deteriorated significantly from when he had seen him at the store. Mr. McCook was slurring his speech, swaying on his feet, and appeared emotionally and spiritually vacant. Mr. Abou testified that the light in his eyes was gone.
- [58] I note that Mr. Abou, who had seen Mr. McCook both before and after the shooting, described the change in Mr. McCook's behaviour as extreme. Drawing on his cultural background and experience with sobriety, he elaborated that Mr. McCook appeared:
- ... way more -- way, way, way worse, like yeah, it was way more intoxicated, Ry even said he was gone, like Mr. McCook was gone. I don't know how differently I can explain it. As a First Nation individual and the laws of spirituality and the traditional stuff, we believe that everything has a spirit, from the tree to the rock to the sun, and that's the light that we see in everyone's eyes. Just his demeanour, he was gone. That is the best way I could describe it without making it sound like hocus pocus.
- [59] Ms. Tallman witnessed Jason tackle and disarm Mr. McCook with Rylan's assistance. She later saw Constable Halliday arrive and arrest Mr. McCook. Ms. Tallman also described Mr. McCook's appearance after the shooting as vacant, and noted that he did not look like himself. She had never seen him hostile or agitated before, and testified that something unusual was going on. Because Mr. McCook's demeanour was completely out of character, she believed he was under the influence of alcohol or another substance.
- (d) Police arrival and the arrest, approximately 11:15 to 12:30 p.m., Constable Halliday
- [60] Constable Christopher Halliday, a member of the RCMP for 22 years, had been assigned to Kwadacha for about one month before January 24, 2023. He had not interacted with Mr. McCook prior to that day.
- [61] At approximately 11:00 a.m., Constable Halliday received reports of a possible shooting. Aware of the potential danger and following the direction of Corporal, now Staff Sergeant, De Jong, he responded to the scene in hard body armour. Upon arrival, the scene was calmer than he had expected. He observed Mr. Abou and Rylan placing firearms into a truck. Constable Halliday was directed to a man, later identified as Mr. McCook, who was standing between a garbage container and a porch, shouting and raising his arms. Constable Halliday gave Mr. McCook verbal directions, but Mr. McCook did not seem to respond or

comply. Consequently, Constable Halliday approached him, grasped his arm, and brought him face down onto a snowbank. He then handcuffed Mr. McCook, informed that he was under arrest for discharging a firearm, and assisted him to his feet without difficulty. He then provided him his Charter rights. Constable Halliday noted that at the time of his arrest, Mr. McCook could walk unaided, but exhibited erratic behaviour.

- [62] After being taken to the police station, Mr. McCook displayed further mood changes, oscillating between swearing, crying, kicking at the door, making roaring noises, and being calm and cooperative. Constable Halliday described Mr. McCook's behaviour as inconsistent and at times unintelligible as his demeanour shifted from aggressive to weeping. During this period, Constable Halliday observed that Mr. McCook's speech was slightly slurred, he emitted a strong odour of alcohol, and some of his statements were incoherent or nonsensical. Nonetheless, Mr. McCook was able to respond quickly and accurately to questions regarding his name, date of birth, and address.
- [63] Shortly after the arrest, Rylan asked Constable Halliday to check on his sister in the truck as she might need help. When Constable Halliday first approached the driver side of the truck, he noticed someone slumped in the passenger seat. On opening the passenger door, he observed that Ms. Poole had a visible facial wound, and upon closer examination, he concluded that she was deceased.
- [64] Constable Halliday closed the truck's door, declared the area a crime scene, and instructed all civilians to leave. He then cleared the residence to ensure no one else was injured or inside. Upon returning, Constable Halliday searched Mr. McCook and placed him in the police vehicle. He noted that he had to instruct Mr. McCook multiple times before he complied with the direction to enter the vehicle.
- [65] After consulting with other officers and securing the scene, Constable Halliday re-chartered Mr. McCook. During this re-chartering, Constable Halliday once again informed Mr. McCook that he had the right to counsel and that he was not obligated to speak with the police. Constable Halliday also notified Mr. McCook that he was now under arrest for murder.
- [66] In cross-examination, Constable Halliday acknowledged that at times Mr. McCook seemed not to understand his Charter rights. Based on his three hours of interaction with Mr. McCook, which included witnessing Mr. McCook's mood swings, incoherent speech, repeated requests for Halliday's badge number, and shifting states of agitation and calm, Constable Halliday concluded that on the spectrum of intoxication, Mr. McCook was highly intoxicated.

Constable Nelis

- [67] Constable Oliver Nelis had served as an RCMP officer for about three and a half years when the incident occurred and was positioned as a general duty officer in the Tsay Keh Dene / Kwadacha area. On January 24, 2023, he responded to the shots-fired call and arrived on the scene at approximately 12:15 p.m., travelling with Staff Sergeant De Jong from the Tsay Keh detachment.
- [68] Upon arrival, Constable Halliday asked Constable Nelis to assume custody of Mr. McCook who was seated in Constable Halliday's police vehicle following his arrest. Constable Nelis took custody of Mr. McCook at approximately 12:18 p.m. Constable Nelis testified that, at the request of Constable Kafadar, he retrieved the Lakefield II .22 from inside the residence. Constable Kafadar expressed concern about his safety, prompting Constable Nelis to put on gloves to inspect it. He opened the bolt and observed that there was a live round in the chamber, as well as three live rounds in the magazine.
- [69] As Constable Nelis moved Mr. McCook into his vehicle, he noted a strong smell of alcohol and observed that Mr. McCook had visible injuries to his lip and elbow. Mr. McCook required assistance to walk and displayed clear signs of significant intoxication, including slurred speech, unsteadiness, emotional volatility, and incoherence.
- [70] Constable Nelis described Mr. McCook as alternating between yelling, crying, and repeatedly asking why he was being detained. Constable Nelis stated that while he did not have a long conversation with Mr. McCook, Mr. McCook kept repeating the same questions despite receiving answers. Based on his experience, Constable Nelis described Mr. McCook as being in a highly-intoxicated state, noting that he was on the more intoxicated end of the spectrum, though not extreme.

Constable Kafadar

- [71] Although she did not testify, the evidence at trial indicated that RCMP Constable Kafadar established the scene security at 912 Seymour Street in Kwadacha on January 24, 2023, at 11:59 a.m., shortly after the initial arrest of Mr. McCook. It is undisputed that during the scene containment, no unauthorized access occurred and there was no material alteration or contamination of the scene.
- [72] Before securing the residence, Constable Kafadar took custody of Mr. McCook at the end of the driveway after he had been arrested and handcuffed by Constable Halliday, who then checked the vehicle and discovered Ms. Poole deceased inside. Later that same day, Constable Kafadar found an additional firearm near the residence, near the entrance to the residence, and contacted other officers for assistance. And, as mentioned earlier, Constable Nelis attended and retrieved the firearm, and he inspected it for safety, noting one live round in the chamber and three live rounds in the magazine.

Staff Sergeant De Jong

- [73] Staff Sergeant De Jong was the detachment commander for the Tsay Keh Dene detachment on January 24, 2023. In this capacity, he was responsible for overseeing both the Tsay Keh and the Kwadacha RCMP detachments. The two communities are situated approximately 70 kilometres apart and are linked by a gravel forest road. In good weather, it takes about an hour to travel between these communities.
- [74] At 11:05 a.m., Staff Sergeant De Jong received a report of shots fired in Kwadacha. Constable Nelis picked him up and together they drove to the scene, arriving at the residence at approximately 12:15 p.m. Staff Sergeant De Jong testified that he had not had any previous interactions with Mr. McCook before the day of the shooting.
- [75] On that day, he stated that he was in Mr. McCook's vicinity for approximately one hour in total and acknowledged that Constables Halliday and Nelis had significantly more direct contact with Mr. McCook.
- [76] Staff Sergeant De Jong testified that he has been an RCMP officer since 2005 and has dealt with hundreds of intoxicated individuals. Based on his observations and experience, Staff Sergeant De Jong described Mr. McCook as intoxicated, but not unusually so. He stated that in his experience, Mr. McCook's level of intoxication was not noteworthy or remarkable. Nevertheless, he reaffirmed during cross-examination that others had a more sustained engagement with Mr. McCook.
- [77] Staff Sergeant De Jong also indicated that while he attempted to facilitate Mr. McCook's contact with legal counsel, the counsel deemed Mr. McCook too impaired to comprehend legal advice. Following the custody procedure, Staff Sergeant De Jong proceeded to the crime scene to assist Constable Kafadar.

The post-arrest medical assessment and processing

- [78] After being taken into RCMP custody, Mr. McCook was transported to the Kwadacha RCMP detachment. Upon arrival, he remained highly intoxicated and exhibited mood swings, incoherence, and agitation. Although he was able to stand unaided, he was escorted into the detachment by both Constables Nelis and Halliday. Under the supervision of Staff Sergeant De Jong, Mr. McCook was searched, his clothing seized, and gunshot residue swabs taken. Staff Sergeant De Jong arranged for Mr. McCook to contact legal counsel by telephone. However, duty counsel concluded that Mr. McCook was too intoxicated to comprehend his legal rights and therefore declined to provide advice.
- [79] Staff Sergeant De Jong assured counsel that no statement would be sought until Mr. McCook could understand his legal rights and Mr. McCook was then returned to his cell.

- [80] Constable Nelis testified that Ms. Poole's brother, Patrick Massettoe, arrived at the Kwadacha RCMP detachment at approximately 2:00 p.m. on the day of the incident. He appeared intoxicated and agitated, interfering with police operations. As a result, Constable Nelis, along with other officers, placed Patrick in a cell at the detachment to contain the situation and prevent further disruption.
- [81] Although Mr. McCook and Patrick could not see each other, they were able to speak. Constable Nelis recalled that Patrick was yelling and attempting to reassure Mr. McCook by telling him that things would be okay. In response to Patrick's assurance, Mr. McCook asked about Ms. Poole and their children.
- [82] Later that evening at approximately 8:47 p.m., roughly nine hours after his arrest, Constable Nelis transported Mr. McCook to the nursing station in Kwadacha. At this nursing station, he received medical treatment, including stitches for an elbow injury. There is no direct evidence before the court regarding how Mr. McCook sustained his elbow injury.
- [83] Constable Nelis, who took custody of Mr. McCook at approximately 12:18 p.m. on January 24, 2023, observed that he had a bloody lip and elbow. While the injury may have resulted from the physical struggle during his apprehension by Jason and Rylan, or during his arrest by Constable Halliday, no witness testified as to how the injury occurred and no officer attributed it to a specific event.
- [84] Notably, neither the Crown nor the defence raised any concerns regarding the injury or how it may have been sustained. As such, the cause of Mr. McCook's elbow injury remains undetermined on the record.
- [85] Both Constables Nelis and Halliday testified regarding Mr. McCook's presence at the Kwadacha nursing station on the evening of January 24, 2023. Constable Nelis, who accompanied Mr. McCook into the clinic, indicated that although Mr. McCook had calmed somewhat by that point, he still appeared visibly intoxicated.
- [86] Constable Nelis also remembered that the nurse attending to Mr. McCook shared the opinion that at the time, his level of intoxication was still quite high. Constable Halliday, who also attended the nursing station, similarly observed that Mr. McCook remained intoxicated. He testified that Mr. McCook cried during parts of the visit and appeared emotionally unstable, and expressing that he missed his children. Constable Halliday confirmed that these emotional outbursts aligned with mood swings and behavioural volatility Mr. McCook had exhibited throughout the day.
- [87] While Mr. McCook was no longer overtly combative, his mood fluctuated significantly, reinforcing the officers' assessment of ongoing intoxication.
- [88] Neither officer reported any difficulty in having Mr. McCook treated, nor did they suggest that the nursing station raised any medical concerns that would have precluded his continued detention. There is no evidence before the court to indicate that Mr. McCook was unfit to remain in custody following the medical assessment. What is clear is that both

officers were consistent in their opinion that Mr. McCook remained under the influence of alcohol at the time of his clinical examination and that his behaviour was indicative of significant impairment.

- [89] Following medical treatment, Mr. McCook was taken to the RCMP detachment at Tsay Keh. He arrived at approximately 10:20 p.m. and was booked into cells. The timelines and observations from witnesses, police officers, and medical staff confirm that Mr. McCook remained heavily intoxicated well into the late evening of January 24, 2023.

Review of the Forensic Investigation Materials

- [90] Corporal Vann Turmel testified that he has been a police officer since 2009, and since 2014 he has served with the Forensic Identification Section of the Prince George RCMP, specializing in crime scene investigation. Corporal Turmel was the primary officer from the Forensic Identification Section assigned to this investigation.
- [91] Corporal Mark Adams testified that he has been a police officer for 11 years and was assigned as a secondary officer in the Forensic Identification Section for this investigation.
- [92] On January 24, 2023, at approximately 4:00 p.m., Corporal Turmel travelled to Kwadacha by RCMP aircraft to assist in this investigation. Upon arrival, he attended a 5:00 p.m. briefing with local RCMP officers and members of the Northeast District Major Crime Unit.
- [93] The following morning, January 25, 2023, he and Corporal Adams executed a search warrant at 912 Seymour Street. This warrant authorized the search of the residence and of Mr. McCook's truck for firearms, ammunition, spent casings, alcohol containers, and bodily substances. Corporal Turmel testified that he and Corporal Adams conducted a preliminary survey of the scene before placing yellow evidence markers next to key items and photographing the area.
- [94] During the examination of the scene, they also inserted trajectory rods through the holes in the truck's windshield to assess the paths of the bullets. Based on this on-scene examination, Corporal Turmel later prepared a six-page forensic identification report documenting the forensic investigation findings, including a supplemental one-page post mortem following the autopsy of Ms. Poole.
- [95] Corporal Adams, who assisted with scene photography, measurements, and scanning, prepared a sketch diagram based on nine scanning positions. This information aided in the creation of a 3D rendering of the scene which was prepared by the RCMP "E" Division.
- [96] Corporal Adams also completed a two-page continuation report, summarizing the placement of forensic markers and the distances from the point of impact. This report estimated that, based on the trajectory of the bullets through the passenger head rest, the shooter was located inside the residence, approximately 23 to 24 feet from the truck when firing the rifle. This finding is supported by the fact that the RCMP found two spent .308-calibre cartridges on the kitchen floor to the right of where they estimated the

shooter had fired the rifle, consistent with the right-side ejection pattern of a Tikka .308. The Crown's firearms expert, Ms. Pederson, confirmed in her testimony that this model of rifle ejects casings to the right, supporting the forensic interpretation of the shooter's position relevant to the spent casings.

- [97] Both Corporals Turmel and Adams testified that the trajectory analysis exercise was limited to determining the direction of fire and could not accurately establish the distance from the firearm to the point of impact, nor could it identify the shooter's exact location at the time of discharge.
- [98] Corporal Turmel further emphasized that trajectory paths may be influenced by environmental factors such as weather, wind, and the nature of the substrate. He also explained that the use of laminated safety glass, as in that used in windshields, prevents forensic examiners from determining the sequence in which the shots were fired.
- [99] Additionally, two spent cartridges were found in the snow near the front driver side of the truck, one .308 calibre and one .243 calibre. Both cartridges were identified as having been discharged from the .308 Tikka rifle. The Crown's firearms expert, Ms. Pederson, testified that while the .243-calibre ammunition is not designed for use in a .308 rifle, it is still possible to chamber and fire it from the rifle due to the similarity in the casing diameter. Corporal Turmel confirmed this aspect of the forensic findings in his summary of the ballistic evidence at the scene.
- [100] As part of the forensic examination, Corporal Turmel also made direct observations of Ms. Poole. The forensic report stated that Ms. Poole was slouched towards the centre of the vehicle with the left side of her face obscured by her long hair. She was clutching a mickey of vodka in her left hand. A grey backpack was on her lap containing an open case of Budweiser beer.
- [101] After processing the scene, Corporal Turmel assisted in securing and transporting Ms. Poole to Vernon for an autopsy. Ms. Poole was first driven by ambulance to Tsay Keh medical facility. Corporal Turmel personally drove the ambulance, due to poor weather conditions. He later accompanied Ms. Poole's body to Prince George, where it was then transferred to Vernon for the autopsy. At no point did Corporal Turmel observe any tampering with the locked body bag.
- [102] The court accepts the forensic evidence from Corporals Turmel and Adams is relevant and reliable. However, I also recognize its limitations. The trajectory analysis does not specify how far the shooter was positioned. Nonetheless, it confirms that the bullets were fired from the direction of the kitchen in the residence. Although the forensic evidence cannot establish specific intent or deliberate targeting, it provides context for evaluating the mechanics of the shooting when considered alongside the photographic documentation, the forensic diagrams, and the sworn testimony. The limitations of the evidence are explored further in the subsequent analysis.

Expert evidence

- [103] Ms. Evelyn Pederson was qualified before the court as an expert in forensic firearms examination without objection. Her evidence was admitted under the framework articulated in *R. v. Mohan*, [1994] 2 S.C.R. 9, and *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23.
- [104] The court was satisfied that her opinions met the threshold requirements of relevance, necessity, proper qualification, in the absence of any exclusionary rule. Her conclusions were based on a comprehensive examination of the firearms, cartridge cases, and bullet fragments recovered from the investigation.
- [105] Ms. Pederson testified that the .308 Tikka rifle recovered at the scene was operable and could be discharged with minimal physical effort.
- [106] During her testimony, she demonstrated how to load and handle the firearm. This demonstration included clipping in the magazine, racking the bolt, and pulling the trigger while the firearm was unloaded. She explained that racking the bolt involves two to three quick hand motions and that an adult male would require little force to complete the task. She also indicated that the trigger pull ranged from two to 4.5 pounds. She confirmed that the rifle's magazine is spring loaded, allowing the next round to chamber automatically once the magazine is inserted.
- [107] Her findings confirm that the two spent cartridge cases recovered from the kitchen were discharged from the .308 Tikka rifle. Aside from the two spent .308 cartridges found on the floor in the kitchen, two additional spent cartridges, one .308 calibre and one .243 calibre, were recovered from the snow near the front driver side of the truck. Ms. Pederson explained that while the .243 round is not designed for the .308 Tikka, it can be fired from the rifle because the casing diameters are similar, though the bullets differ in size.
- [108] The evidence suggests that all four corresponding cartridges may have been successfully loaded into the magazine that was used and fired from the same .308 rifle.
- [109] Ms. Pederson noted that using an incorrect calibre can damage the firearm and reduce its accuracy. In her opinion, this is common knowledge within the firearms community, and an experienced shooter would likely recognize the inconsistency and know not to use incorrect ammunition.
- [110] She also clarified that the rifle's bolt must be inserted for the firearm to function, but it can be stored either with the rifle or separately. Additionally, she indicated that the rifle could be fired from non-traditional positions, including without the buttstock braced against the shooter's shoulder, and that the scope did not need to be positioned at the 12 o'clock mark for the rifle to operate.

- [111] Importantly, Ms. Pederson agreed that a firearms magazine can be preloaded and that racking a round into the chamber takes only seconds, depending on the shooter's proficiency.
- [112] She testified that for experienced users, including hunters or law enforcement, loading or racking a firearm becomes a matter of muscle memory. She emphasized that this handling often becomes automatic and can be completed even under conditions of impairment.
- [113] In response to hypothetical questions, she acknowledged that while she could not assess an individual's level of intoxication or cognitive function, in her view, it would not be inconceivable for a person with firearms experience to load, rack, and fire a .308 rifle while significantly intoxicated.
- [114] She further testified that the trajectory evidence was consistent with the discharge of a weapon originating from the residence. However, she could not pinpoint the shooter's exact position or determine the sequence in which the shots were fired. She corroborated the RCMP's testimony that factors such as weather, wind, and the use of laminated safety glass hindered any firm conclusions regarding angle, origin point, or bullet order. Further, Ms. Pederson told the court that the bullet fragments that were found in the headrest of the vehicle recovered during the forensic investigation were inconclusive and could not be positively identified or excluded as having come from the Tikka rifle.
- [115] The court accepts Ms. Pederson's evidence as reliable within its scope. Her testimony establishes that the Tikka rifle was operable and could be discharged by someone with limited strength and coordination. However, her analysis does not and was not intended to speak to Mr. McCook's cognitive state or capacity to form intent at the time of the shooting.
- [116] The relevance of her opinion lies in her testimony related to the mechanical feasibility of an intoxicated firearm operation, not in the mens rea assessment which remains a question for the court.
- [117] Lastly, Dr. Jason Doyle, a forensic pathologist, was similarly qualified as an expert after the court considered his qualifications and reviewed a thorough, jointly-tendered, admission of facts with his report. His report confirmed that Ms. Poole died from a single gunshot wound to the head. Post mortem toxicology revealed that Ms. Poole had a blood alcohol concentration of 0.281 grams per hundred millilitres, a level consistent with severe intoxication, significant cognitive and motor impairment, and a risk of unconsciousness. Dr. Doyle's expert opinion aligns with the accounts of civilian and police witnesses regarding the alcohol consumption patterns of both Ms. Poole and Mr. McCook during the relevant time period.

The positions of the parties

The position of the Crown

- [118] The Crown's theory is that Mr. McCook retrieved a high-powered .308 Tikka rifle, loaded it with ammunition that is usually stored in a separate location within the residence, took up a shooting position inside the kitchen, and discharged two precision shots through the windshield of the parked truck, one of which struck and killed Ms. Poole.
- [119] The Crown asserts that after the shooting, Mr. McCook exited the residence and walked towards the parked truck. It is at this point that Jason witnessed Mr. McCook standing near the residence holding the rifle.
- [120] The Crown argues that this sequence of conduct, although not directly observed by any witness, can be reliably inferred from the forensic evidence, ballistic trajectories, and admissions of fact. The Crown emphasizes that Mr. McCook's deliberate actions retrieving the firearm from storage, obtaining the appropriate magazine and ammunition, manually loading the rifle, and positioning himself approximately 23 to 24 feet from the vehicle before firing shots through the passenger and driver side head rest, demonstrate that he acted purposefully with the intent to kill Ms. Poole.
- [121] The Crown maintains that Mr. McCook's conduct warrants a conviction for second degree murder. The Crown further highlights that both shots struck the level of the truck's headrest, indicate a targeted shooting rather than random discharges. The Crown asserts that Mr. McCook acted with deliberation and had subjective foresight that his actions would result in the death of Ms. Poole.
- [122] After shooting Ms. Poole, Mr. McCook exited the residence and fired two additional rounds at Jason. The Crown contends that this serves as further evidence of Mr. McCook's intention to kill.
- [123] While the Crown acknowledges that Mr. McCook was intoxicated, they argue that his level of impairment did not reach the threshold of advanced intoxication necessary to negate specific intent. Instead, the Crown contends that Mr. McCook's purposeful actions, including manipulating the rifle's bolt multiple times, aiming at others, and expressing suicidal ideation are inconsistent with cognitive incapacity.
- [124] The Crown also asserts that Mr. McCook stating, "Bro, I'm dead too," to Rylan reflects an awareness of the consequences of his actions.
- [125] In the alternative, the Crown argues that, should the court conclude that Mr. McCook's level of intoxication creates a reasonable doubt regarding his capacity to form specific intent, the Crown submits that Mr. McCook is nonetheless guilty of manslaughter. Firing a loaded weapon into a vehicle occupied by another person is inherently dangerous and unlawful and resulted in the death of Ms. Poole.

The position of the defence

- [126] The defence contends that the Crown has not proven beyond a reasonable doubt that Mr. McCook is guilty of second degree murder, as they failed to demonstrate that he possessed the subjective foresight of death necessary to support a conviction for second degree murder. The defence argues that, as described in *R. v. Daley*, 2007 SCC 53 [Daley], Mr. McCook was in such a profound state of advanced intoxication that he was unable to form the subjective intent to kill Ms. Poole.
- [127] To support this assertion, the defence drew the court's attention to the fact there is no evidence suggesting that Mr. McCook knew Ms. Poole was in the vehicle, nor was there any evidence indicating that he intended to inflict harm upon her. The defence also argues that, given Mr. McCook's level of intoxication, the common sense inference that a person intends the natural consequences of their actions does not apply in this case.
- [128] As I mentioned at the beginning, the central issue for determination is whether the Crown has proven, beyond a reasonable doubt, that Mr. McCook possessed the specific intent necessary to support a conviction of second degree murder. The requirement for specific intent is outlined in s. 229(a)(i) and (ii) of the Criminal Code as follows:

229 Culpable homicide is murder

- (a) where the person who causes the death of a human being
- (i) means to cause his death, or
- (ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

- [129] In other words, it requires the court to assess whether Mr. McCook intended to cause the death of Ms. Poole or whether he intended to cause Ms. Poole bodily harm, knowing it was likely to cause death, and was reckless as to whether death ensued or not.
- [130] In resolving the issue, the court must consider the impact of Mr. McCook's consumption of alcohol and specifically whether his intoxication was such that he could not form the requisite intent. If the Crown fails to prove either pathway to murder, but it has established that Mr. McCook caused Ms. Poole's death by an unlawful act, the appropriate verdict would be a conviction for manslaughter.

Credibility and summary of the witness testimony

- [131] As recounted above, the court received testimony from numerous civilian and police witnesses whose observations are central to assessing Mr. McCook's state of mind before, during, and after the murder. It is therefore necessary for me to consider the credibility and reliability of the witnesses' testimony.

[132] Credibility refers to the truthfulness or honesty of a witness's testimony, while reliability refers to the witness's ability to observe, recall, and accurately describe events. Credibility and reliability are therefore related but distinct concepts as set out by *L.M. v. K.M.*, 2022 BCSC 689 at para. 275.

[133] In my view, each of these witnesses provided evidence that was generally consistent throughout both direct and cross-examination and in many cases was supported by independent testimony or physical evidence.

Rodrigue Beaudin

[134] Mr. Beaudin's evidence remained neutral and objective. The court found his recollections credible and consistent with the broader timeline. He acknowledged his own alcohol use during the return trip from Mackenzie, and neither minimized nor exaggerated Mr. McCook's behaviour. His testimony was particularly useful in establishing the early stages of Mr. McCook's alcohol consumption on January 23, 2023, as well as his calm demeanour in intervening when he and Roxanne began to argue.

Jason McCook

[135] He is a close relative of Mr. McCook and the evidence indicates that they were raised in the same household as brothers. He served as a key witness in recounting Mr. McCook's transition from social drinking to a state of profound intoxication. Given his longstanding familiarity with Mr. McCook, Jason was particularly well positioned to evaluate the changes in Mr. McCook's behaviour. His account of the drive, Mr. McCook's request to relinquish control of the vehicle, and Mr. McCook's post-shooting condition described by Jason, "like no one was behind the wheel", was vivid and compelling. Jason was forthright about his own alcohol consumption and candid regarding what he did and did not observe, enhancing the overall credibility of his testimony.

[136] I am mindful that, due to his own sustained alcohol consumption on that morning, Jason's recollection of certain non-critical details, such as whether they stopped at the Kwadacha store, was limited. However, witnesses often remember different aspects of events with varying clarity and they have different reasons to remember.

[137] I found Jason's evidence regarding the material events to be both credible and reliable. His testimony on critical details was corroborated by several other witnesses and is accepted.

Blayne Pierre

[138] He testified that Mr. McCook stopped by his residence shortly after 9:00 a.m., offered him a drink of vodka and appeared to be over the limit. He recalls telling him to park the truck. While his observations of Mr. McCook's drinking behaviour and apparent impairment are consistent with the progression of alcohol described by other witnesses, his statement that Patrick Massetoe was in the truck was not corroborated by any other witness. That being

said, Jason, who testified that he drove around with Mr. McCook, was not asked whether they stopped at Mr. Pierre's residence. It is possible that both witnesses are accurately recollecting the events, and that Jason and Ms. Boya joined Mr. McCook after his interaction with Mr. Pierre.

[139] Nevertheless, this discrepancy is not critical. Given the contradiction with Jason's testimony regarding the occupants of the vehicle, I assign limited weight to Mr. Pierre's evidence on that point. However, I do accept his observations concerning Mr. McCook's impaired state.

Michelle McCook

[140] As Mr. McCook's cousin, Michelle had direct knowledge of his usual character. Her account of Mr. McCook entering the store with open alcohol and acting uncharacteristically defiant was credible and probative. Her observation of him gesturing rudely from the truck approximately 30 minutes before the shooting was consistent with his escalating intoxication. Her professional and neutral demeanour under questioning supported the reliability of her evidence.

Mason Abou

[141] Mr. Abou's testimony was particularly insightful, both because of his position as a cultural leader in the community, and because of his knowledge of intoxication from his own experience as a former heavy drinker. He credibly distinguished between Mr. McCook's level of intoxication and behaviour at the store and his condition after the shooting. His description of Mr. McCook as spiritually gone was echoed by other witnesses and reflected a meaningful cultural framework for assessing behavioural change. Mr. Abou's evidence was thoughtful, consistent, and delivered without embellishment.

Rebecca Tallman

[142] Her role as the director of health services in Kwadacha and her decision to intervene when the shooting began gave her a unique and credible vantage point. She used specific language like "vacant", "not Brent", and "something was wrong with him" when describing Mr. McCook. Similar sentiments were echoed in various forms by the others. Ms. Tallman's professionalism and apparent neutrality, as well as her responsible conduct on the day of the shooting, further reinforced the weight of her testimony.

Ryan Massettoe

[143] As a brother of the deceased, his testimony naturally required careful scrutiny for potential bias. However, he was forthright about the emotional impact of the events and he did not exaggerate or embellish. His description of Mr. McCook following the shooting, "it wasn't him", and his recollection that Mr. McCook said, "I'm dead too", were compelling, especially when considered alongside similar observations from others. His familiarity with Mr. McCook's sober conduct lent credibility to his comparative assessment of Mr. McCook's

behaviour.

Constable Nelis

[144] Was directly responsible for Mr. McCook after his arrest. He testified that Mr. McCook was incoherent, emotionally volatile, and required assistance to walk and respond to basic questions. He described Mr. McCook as being highly intoxicated. I found Constable Nelis was careful and neutral in his cross-examination. His assessment aligned with the testimony of the other civilian and police witnesses, with expert opinions, and with his contemporaneous notes. I find his testimony to be both credible and reliable.

Constable Halliday

[145] As the arresting officer, Constable Halliday spent the most time with Mr. McCook. His testimony was clear, detailed, and consistent with police practice. While he noted that Mr. McCook could answer some basic questions, he also described Mr. McCook as being incoherent, volatile, and unable to comprehend his legal rights. His assessment that Mr. McCook was highly intoxicated was supported by other evidence and therefore I give it considerable weight.

Staff Sergeant De Jong

[146] Testified that Mr. McCook's level of intoxication was not noteworthy or remarkable. I place limited weight on this aspect of his evidence for two reasons. First, Staff Sergeant De Jong had only minimal contact with Mr. McCook and secondly, and more importantly, his testimony was internally inconsistent. While he described Mr. McCook's intoxication as "unremarkable", he also acknowledged that Mr. McCook was too impaired to comprehend legal advice. That level of impairment would, by definition, be noteworthy. I prefer and accept the latter aspect of Staff Sergeant De Jong's evidence as it aligns with the testimony of both Constable Halliday and Constable Nelis regarding Mr. McCook's significant level of intoxication.

Corporals Turmel and Adams

[147] As I stated above, I accept the reliability and credibility of their forensic evidence within its technical limits.

Ms. Pederson and Dr. Doyle

[148] Her expert evidence related to the mechanical function of the firearm was clear and persuasive. She confirmed the rifle could be operated with minimal effort by someone who was significantly impaired and she emphasized the role that muscle memory can play in operating the firearm. Appropriately, she did not offer any opinion on Mr. McCook's mental state.

- [149] Dr. Doyle's report, admitted into evidence on consent, confirmed Ms. Poole's cause of death and indicated her blood alcohol content at the time. His report was also consistent with eyewitness accounts and the forensic scene findings.
- [150] Taken as a whole, the testimony of the witnesses was consistent and credible. Their independent and corroborating accounts establish a reliable evidentiary foundation from which I can draw my conclusions.

The legal framework

- [151] Section 222 of the Criminal Code states that a person commits homicide when, directly or indirectly, by any means, that person causes the death of a human being. Homicide can be culpable or not culpable, but only culpable homicide is an offence. Culpable homicide includes murder and manslaughter.
- [152] Section 222(5)(a) of the Code states that culpable homicide occurs when the person causes the death by means of an unlawful act.
- [153] Section 229(a), which I have already indicated, outlines when culpable homicide is murder to distinguish it from manslaughter.
- [154] Section 231 provides that all murder that is not first degree murder is second degree murder.
- [155] Section 234 provides culpable homicide that is not murder or infanticide is manslaughter.
- [156] To convict Mr. McCook of second degree murder, the Crown must prove and I must be satisfied, beyond a reasonable doubt, that Mr. McCook caused the death of Ms. Poole and Mr. McCook caused Ms. Poole's death by committing an unlawful act, and Mr. McCook had the necessary intent for murder.

The actus reus and causation

- [157] There is no dispute between the parties as to Ms. Poole's cause of death. She died of a single gunshot wound to the head. This is supported by Dr. Doyle's expert report which I accept in full.
- [158] The evidence is also clear Mr. McCook fired the gunshot that killed Ms. Poole. For reasons unknown, Mr. McCook loaded his .308-calibre Tikka rifle and discharged it twice from within the residence towards his parked truck outside. These two bullets passed through the windshield of his vehicle and one struck Ms. Poole in the front of the head, resulting in her death. Based on the evidence, I find the Crown has proven the actus reus of the offence beyond a reasonable doubt.
- [159] Mr. McCook caused Ms. Poole's death via unlawful discharge of a firearm.

The mental element or the mens rea

- [160] Since I find that Mr. McCook directly caused Ms. Poole's death, he is guilty of culpable homicide. The next question is how this culpable homicide should be classified, either as murder or manslaughter, depending on whether the Crown has demonstrated the necessary level of intent. For me to conclude that Mr. McCook committed second degree murder, I must be satisfied beyond a reasonable doubt that he possessed the specific intent necessary to support such a conviction.
- [161] Section 229 of the Criminal Code sets out two pathways for the Crown to prove mens rea. Mr. McCook will be found to have specific intent if Mr. McCook meant to cause Ms. Poole's death or Mr. McCook meant to cause bodily harm that he knew was likely to cause Ms. Poole's death and was reckless about whether death would ensue or not.
- [162] The burden remains on the Crown to prove that Mr. McCook possessed the specific intent necessary for a conviction of second degree murder. The Crown submits that there is sufficient evidence of the required mens rea to support a conviction for second degree murder. As the actus reus for unlawful killing has been established, the issue is whether they have proven the mental element.

The defence of intoxication

- [163] In cases involving significant intoxication, the defence of intoxication may operate to reduce a charge of murder to manslaughter if the intoxication raises a reasonable doubt as to whether the accused was capable of forming the specific intent required. However, the defence of intoxication is only available to negate specific intent and does not apply to general intent offences such as manslaughter: Daley at para. 40.
- [164] For the offence of manslaughter, being that it is a general intent offence, s. 33.1 of the Criminal Code creates liability even in the case of self-induced intoxication unless the intoxication is so extreme that it is akin to automatism. In this case, there is no evidence of intoxication to the point of automatism and the defence did not argue that.
- [165] Before the defence of intoxication is considered, it must have an air of reality. A defence has an air of reality where there is an evidentiary basis upon which a properly-instructed trier of fact could reasonably conclude that the accused was capable of forming the requisite intent.
- [166] As outlined by the Supreme Court of Canada in Daley at paras. 44 to 45, once the air of reality threshold is met, the defence of intoxication must be evaluated on its merits. Consistent with the principles set out in R. v. Cinous, 2002 SCC 29 [Cinous], the court must assess the totality of the evidence, assuming the evidence relied upon by the accused is true. Cinous also clarifies that a mere assertion by the accused, without more, is insufficient to meet the air of reality threshold.

[167] In this case, the Crown concedes that the evidence establishes Mr. McCook was in an advanced stage of intoxication. After considering the totality of the evidence, I am satisfied that the defence of intoxication meets the air of reality threshold and is properly before the court for consideration.

The common sense inference and intoxication

[168] In assessing whether the accused had the requisite mens rea, the trier of fact may generally infer, as a matter of common sense, that a person intends the predictable consequences of their actions. However, where intent is at issue, particularly in cases involving intoxication, the so-called common sense inference must be approached with caution. While the common sense inference remains available, even in the presence of intoxication, as affirmed in *R. v. Courterille*, 2001 BCCA 17 at para. 32; Daley at para. 104, its application must reflect that intoxication operates along a continuum. The more impaired a person becomes, the greater the likelihood that their conduct may become uninhibited or unintended, and that they may not need or understand the predictable consequences of their actions.

[169] Therefore, while the common sense inference remains permissible, it is not presumptive and must be assessed in light of the totality of the evidence. This was highlighted by the comments of Justice Moldaver in *R. v. Walle*, 2012 SCC 41 at paras. 63-67:

[63] In my view, instructing a jury on the common sense inference serves a useful purpose. It provides the jury with a marker against which to measure the rather amorphous concept of intent. A proper instruction also sounds a cautionary note. The jurors are admonished that the inference is permissive, not presumptive, and that before acting on it, they must carefully consider the evidence that points away from it. That is important. Left to its own devices, a jury might too readily turn to common sense for an answer, especially in cases like the present one, where common sense might suggest that anyone who fires a gun into a person's chest at close range would surely be aware of the consequences.

[64] That said, I do not mean to suggest that the common sense inference instruction should be tied to a rigid formula. Thus, by way of example, while trial judges may choose to refer to the "sane and sober" person when instructing a jury on the common sense inference, they need not do so. A simple instruction along the lines that "a person usually knows what the predictable consequences of his or her actions are, and means to bring them about", would suffice. (See Canadian Judicial Council, Model Jury Instructions (2012) (online), at Homicide, Offence 229.a, at para. 6.)

- [65] In the end, what is critical is that the jury be made to understand, in clear terms, that in assessing the specific intent required for murder, it should consider the whole of the evidence that could realistically bear on the accused's mental state at the time of the alleged offence. The trial judge should alert the jury to the pertinent evidence. How detailed that recitation should be will generally be a matter for the trial judge, in the exercise of his or her discretion.
- [66] After the jurors have been alerted to the pertinent evidence, they should be told that if, after considering the whole of the evidence, they believe or have a reasonable doubt that the accused did not have one or the other of the requisite intents for murder at the time the offence was committed, then they must acquit the accused of murder and return a verdict of manslaughter.
- [67] If, however, there is no evidence that could realistically impact on whether the accused had the requisite mental state at the time of the offence, or if the pertinent evidence does not leave the jury in a state of reasonable doubt about the accused's intent, then the jury may properly resort to the common sense inference in deciding whether intent has been proved.
- [170] This guidance applies with equal force to a judge sitting alone. The trier of fact must not default to the common sense inference where there is credible evidence, such as intoxication, mental health conditions, or emotional disturbance that realistically bears on the accused's state of mind.
- [171] In the present case, Mr. McCook did not testify and there is therefore no direct evidence regarding his state of mind or intent at the time of shooting.
- [172] Accordingly, while the Crown may draw common sense inferences, it must also consider the whole of the evidence to determine whether Mr. McCook possessed the necessary mental intent at the time of the shooting.

The application of R. v. Daley

- [173] In accordance with Daley, I am required to assess the degree of Mr. McCook's impairment: (2) whether Mr. McCook's cognitive functions were sufficiently intact to support a conclusion of specific intent; and then if the totality of evidence, including after-fact conduct, suggests purposeful action.
- [174] Daley also clarifies that minor intoxication cannot negate specific intent. The question when considering the defence of intoxication is whether Mr. McCook was so impaired that his capacity to form intent was negated.
- [175] I also note that advanced intoxication does not automatically displace mens rea. The court must still determine whether, at the critical moment when Mr. McCook discharged the rifle, his cognitive functioning was so impaired that he lacked the mental capacity to intend to cause death or to cause bodily harm he knew was likely to cause death.

Jurisprudential comparators

- [176] In *R. v. Alexander*, 2024 BCSC, 2491 [Alexander], the accused admitted to causing the victim's death, but asserted she lacked the specific intent due to her level of intoxication. The court engaged in detailed assessment of both direct and circumstantial evidence, including witness observations and expert toxicology, to determine whether the accused had the capacity to form intent. Despite evidence of significant intoxication, the court found the accused had some awareness of her conduct and that her level of intoxication did not negate her ability to form intent. The accused was convicted of second degree murder and this decision underscores that for the defence of intoxication to succeed, the impairment must rise to a level that negates the accused's ability to foresee the consequences of their actions.
- [177] In *R. v. Zhao*, 2020 BCSC 1322 [Zhao], the accused shot and killed a relative during a domestic confrontation and subsequently dismembered the victim's body. The accused admitted to causing the victim's death, but argued that he lacked specific intent required under s. 229(a)(i) or (ii) of the Criminal Code. He testified that the shooting occurred in the context of a sudden and emotionally-charged conflict which involved a physical altercation, a threat to his daughter, and a struggle over a hammer. The accused described acting out of fear, confusion, and panic.
- [178] Conversely, the Crown relied on the accused's post-offence conduct, including dismemberment and cleanup, to support the inference that the accused had specifically intended to commit the murder. The court concluded that the Crown had not proven beyond a reasonable doubt that the accused intended to kill or to cause bodily harm, knowing it was likely to cause death.
- [179] While the post-offence conduct was disturbing, the court found that, in light of all the circumstances, the accused's later conduct did not mean that the accused had the requisite intent at the time of the shooting.
- [180] The accused was therefore convicted of the included offence of manslaughter, but not of second degree murder.
- [181] In *R. v. Taylor*, 2009 BCSC 1525 [Taylor], the accused shot and killed his partner with a high-powered rifle similar to the one in this case, but it was at close range. The defence in Taylor advanced that this shooting was an accident. The defence did not advance the defence of intoxication. However, the trial judge held that, based on the circumstances of the case, intoxication must still be considered in assessing whether the Crown had proved the specific intent required for second degree murder.
- [182] The judge ultimately found that the accused intentionally discharged the rifle during an angry domestic altercation and convicted him of second degree murder. This case is a comparator for instances where intoxication is in play, but not determinative.

Analysis

- [183] The following analysis considers whether Mr. McCook possessed the mental capacity at the time the fatal shot was fired and whether the surrounding circumstances, including his level of intoxication, negate the mental element required for murder.
- [184] I reiterate that even if the court is not satisfied beyond a reasonable doubt that Mr. McCook possessed subjective intent, considering the court's finding that Mr. McCook caused Ms. Poole's death, the unlawful discharge of a firearm, Mr. McCook would nevertheless be guilty of manslaughter.

The progression of intoxication and cognitive function

- [185] In assessing whether Mr. McCook had the capacity to form specific intent, I considered his degree and progression of his intoxication. The record reveals that over 17 consecutive hours, Mr. McCook consumed excessive amounts of alcohol. Witnesses described the alcohol's physical and behavioural impact on Mr. McCook becoming increasingly pronounced over the time period in question.
- [186] The evidence is both extensive and consistent across civilian and police testimony. It is corroborated by physical evidence and expert findings. What follows is a summary of the key facts regarding Mr. McCook's consumption of alcohol and its observed effects on his demeanour leading up to and immediately following the offence. These facts provide important context for evaluating his cognitive functioning at the time of the offence.
- [187] As I already indicated, consumption of alcohol began on January 23, 2023. A receipt entered into evidence confirms that they spent \$627.12 on alcohol, although it is unclear whether any alcohol remained in the mickey that was found in Ms. Poole's hand or in the open six-pack of beer located in the backpack on her lap. There was no unopened alcohol containers that were entered into evidence as having been found at the scene. This supports the testimonial evidence that the parties engaged in sustained and heavy alcohol consumption throughout the night and into the morning.
- [188] Mr. Beaudin testified that both he and Mr. McCook each consumed approximately four to five unmeasured shots in total from bottles of whiskey and rum. He described the mood as relaxed and social. When a disagreement arose between Mr. Beaudin and Roxanne, it was Mr. McCook who calmly suggested that everyone get some sleep. At that time, he was coherent, rational, and in control of his behaviour.
- [189] Four or five hours later, signs of alcohol impairment began to emerge. Jason observed that both Mr. McCook and Ms. Poole were drinking and appeared to have not slept. He described a brief episode where Mr. McCook became visibly upset over misplaced snowmobile keys, and that indicated the first sign of alcohol-induced irritability in Mr. McCook.

- [190] Shortly thereafter, around 9:00 a.m., Mr. McCook and Ms. Poole stopped at the residence of Blayne Pierre, where he observed Mr. McCook drinking from a bottle of Ciroc vodka. He testified that he believed Mr. McCook was over the limit, and this interaction reflects a shift from sociable drinking to visible signs of impairment. By mid-morning, Mr. McCook's impairment had become more pronounced when he entered the Kwadacha store carrying an open can of alcohol. Michelle described him as argumentative, defiant, and confrontational. Her account was corroborated by Mr. Abou, who testified that Mr. McCook appeared clearly intoxicated and agitated in the Kwadacha store.
- [191] Following this, Mr. McCook continued to drink and drive around Kwadacha with Ms. Poole, Jason, and Ms. Boya. Jason confirmed that everyone in the truck was drinking bottles of liquor and they consumed a fair amount while driving around.
- [192] We have evidence that Mr. McCook asked him to take over driving because he was too intoxicated. It reflects not only his impaired motor skills, but also his own awareness of his increasing impairment. This is at around the same time when Michelle stated that he gave her the middle finger, which was also highly unusual.
- [193] At around 10:30, Jason parked the truck in front of the residence. Within 20 to 30 minutes, a gunfire was heard.
- [194] After the shooting incident, there were several pieces of evidence about Mr. McCook's level of intoxication which the defence argues show an advanced level of intoxication. I note that in accordance with *R. v. White*, [1998] 2 S.C.R. 72 [White], I may consider post-offence conduct as circumstantial evidence of intent. However, because intoxication is in issue, after-fact conduct must be reviewed with caution and not taken as dispositive.
- [195] Multiple civilian witnesses describe Mr. McCook as not being himself, spiritually gone. They were not speculative remarks, but they were grounded in their prior knowledge of Mr. McCook.
- [196] Together the civilian witnesses, none of whom had a legal or investigatory role, consistently described Mr. McCook as confused, disoriented, and vacant following the offence. They also indicated that he was visibly intoxicated. Their accounts provide necessary corroboration of Mr. McCook's impaired cognitive function in the immediate aftermath of the shooting.
- [197] Police officers who interacted with Mr. McCook in the hours following the shooting, provided consistent and credible accounts of his intoxication condition. Their observations were drawn from direct interactions. Constable Nelis described Mr. McCook as being in a highly-intoxicated state. He observed a strong smell of alcohol, emotional volatility, including yelling and crying, repeated and incoherent questions, despite receiving answers, and at the nursing station over nine hours later he assessed that Mr. McCook was still significantly intoxicated and noted a high level of intoxication had persisted throughout the day.

- [198] Constable Halliday similarly testified that Mr. McCook was highly intoxicated and he described slurred speech, strong odour of alcohol, an inability to understand Charter rights, and his behaviour as erratic, disorganized, such as roaring, crying, and kicking the interior of the police vehicle, and making incoherent or delusional remarks.
- [199] Although Mr. McCook was able to state his name, date of birth, many of his other responses were disconnected or nonsensical.
- [200] During Mr. McCook's arrest and subsequent interactions with police, Constable Halliday testified that while he would not classify Mr. McCook as grossly intoxicated, he considered him to be near that level. He explained that in his experience, a grossly intoxicated person is typically unconscious or nearly so and unresponsive to questioning. He also admitted that at the detachment, they had to assist Mr. McCook in getting undressed primarily due to a balance issue.
- [201] Both officers concurred that while Mr. McCook was capable of walking and speaking, his cognitive abilities were notably compromised.
- [202] They characterized his behaviour as erratic and noted his capacity to understand and respond appropriately to verbal cues was diminished. This assertion is further backed by an incident where Staff Sergeant De Jong tried to link Mr. McCook with legal counsel, only for counsel to determine that Mr. McCook was too impaired to grasp the legal issues at hand.
- [203] Taken together, these observations are consistent with a state of advanced intoxication, marked not by physical incapacity, but by severe cognitive and emotional disorganization. This evidence aligns with and reinforces the civilian testimony regarding Mr. McCook's altered state following the offence.
- [204] He transitioned from being calm and sociable in the early morning hours of January 24, 2023 to being visibly impaired by 9:00 a.m., unable to drive his vehicle by mid-morning, and severely intoxicated in the moments directly after the shooting. This state of intoxication then persisted for many hours after Mr. McCook was taken into RCMP custody, with him displaying significant signs of intoxication, even nine hours later when he was brought to the nursing station.

The impact on capacity to form intent

- [205] Having reviewed the evidence in its totality, including the civilian and police observations, forensic findings, and expert evidence, I am satisfied at the time of the shooting Mr. McCook was experiencing what the law recognizes as an advanced state of intoxication. This level of impairment engages the legal threshold at which the ability to form specific intent may be negated. Mr. McCook's disorientation, emotional volatility, and incoherence immediately following the offence appeared consistent with impaired cognition.

- [206] While the Crown highlights Mr. McCook's actions in retrieving and firing the firearm, there is no direct evidence that Mr. McCook knew Ms. Poole was in the vehicle, nor is there any evidence that he acted with deliberation. It was a January morning in northern British Columbia. However, none of the witnesses provided any details about the weather that day or any effect it could have had on visibility into the vehicle from Mr. McCook's position inside the residence. The evidentiary record is silent on whether the windshield was affected by glare, light conditions, or even had been covered by snow, frost, or condensation, which could have obstructed the view in the truck.
- [207] I note that when Corporals Turmel and Adams arrived at the residence the following day, it was recorded to be approximately minus two degrees Celsius with low clouds and a skiff of snow had fallen overnight. Their report noted that the ground was covered in snow and that the windshield had been blanketed with a skiff of snow overnight, necessitating its clearing to inspect the bullet holes. While forensic trajectory analysis confirmed the direction of the fatal shot, it did not determine whether Mr. McCook could see inside the vehicle or if he intended to strike Ms. Poole or any other individual.

Post-offence conduct and evidentiary caution

- [208] The Crown relies in part on Mr. McCook's behaviour following the shooting, such as raising the rifle under his chin and the statement, "Bro, I'm dead too," as indicative of his awareness and intent. The Crown argues that these words and actions support the inference that Mr. McCook clearly understood the consequence of his actions.
- [209] The court recognizes that post-offence conduct may, in certain contexts, support an inference of intent. However, as noted in *White and Zhao*, such evidence must be approached with caution when intoxication is a factor.
- [210] I note that in the aftermath of the shooting, Constable Halliday testified that Mr. McCook made several unusual comments. When he was informed of his arrest for murder and homicide, he was not told that it was Ms. Poole at the time. When he received his s. 10(b) caution, he asked Mr. Halliday's badge number. Constable Halliday informed him that he could call a lawyer, and once again he asked for Constable Halliday's badge number.
- [211] While using a handheld recorder to document the administration of Mr. McCook's rights, the device also captured several unresponsive or incoherent remarks made by Mr. McCook, such as, "They attacked me first," and "I got my lawyer right here."
- [212] Mr. McCook had to be asked multiple times to get into the police vehicle. He posed questions about the ongoing investigation and was advised again that the officer was investigating a murder. In response, he made comments that did not align with the unfolding facts, insisting that he had not done anything wrong. He also said, "Give me my uncle," and claimed that he had not killed his uncle, alleging instead that a person named Vance James was responsible.

- [213] While in the police cruiser, while Mr. McCook saw his neighbour, he further stated, "Alfred, that person right here. The person right here. He's been hiding." The reference to Alfred did not seem relevant to the investigation, although Alfred was mentioned several times. There was no evidence indicating that anyone was hiding or that any other individual was responsible for the shooting.
- [214] Mr. McCook also expressed a desire to contact a lawyer, but named several community members who were not lawyers. Constable Halliday testified at the time he formed the impression that Mr. McCook was too intoxicated to understand his rights or what was being communicated to him.
- [215] Furthermore, Mr. McCook made emotional and nonsensical remarks, including telling Constable Halliday that he loved him and wanted to honour him for his service. Overall, Mr. McCook's speech and behaviour contained multiple statements that lacked coherence or contextual relevance.
- [216] Later while at the police station speaking to Patrick, he inquired about Ms. Poole and the children. Despite the Crown's assertion that the comment, "I'm dead too", suggested that Mr. McCook was culpable, I find no other evidence in his post-offence conduct to indicate that in the aftermath of the shooting, he was aware of or that he acknowledged having killed Ms. Poole. The emotional volatility and erratic behaviour observed here, also demonstrated by multiple civilian and police witnesses, may reflect impaired cognition, panic, paranoia, or confusion just as readily as purposeful action.
- [217] The court has already found that Mr. McCook was in an advanced state of intoxication. In this context, the Crown's reliance on that one statement of post-offence conduct to establish intent must yield to the broader evidentiary record and the inferences that can be drawn from the totality of the evidence rather than from a single statement in isolation.

Circumstantial proof

- [218] Given the ambiguities in Mr. McCook's post-offence conduct, the next question of intent must be assessed through the lens of circumstantial evidence. When mens rea is evaluated through circumstantial evidence, the court must consider the range of reasonable inferences that can be drawn from the evidence. If the evidence supports a reasonable inference other than guilty, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt as set out in the *R. v. Villaroman*, 2016 SCC 33 [Villaroman], case at para. 35.
- [219] The defence submits that there is no direct evidence that Mr. McCook knew Ms. Poole was in the vehicle or foresaw the fatal consequences of his actions. While discharging a shot to the head is objectively dangerous, the record is silent on whether he was aware Ms. Poole was in the vehicle or whether, given his advanced stage of intoxication, he even knew he was aiming at the truck.

- [220] The defence also asserts that Mr. McCook's advanced intoxication raises a competing inference that he lacked cognitive capacity to form the intent. The Crown counters that with, as an accomplished hunter, Mr. McCook knew that firing a .308 rifle at close range would almost certainly prove fatal. These conflicting inferences must be resolved on the totality of the evidence.
- [221] I note that no witness testified to seeing Ms. Poole leave the truck or move about during the 20- to 30-minute period between the vehicle being parked and the shooting, an interval during which we can infer that Mr. McCook exited the truck, retrieved his rifle before firing. Notably, neither Jason nor any other witness was asked whether Ms. Poole appeared to be asleep or unconscious when the truck was parked. That omission limits the court's ability to infer that she was capable of any interaction during that timeframe, let alone a confrontation with Mr. McCook.
- [222] The Crown advances the theory that a quarrel may have erupted in the intervening half hour, ultimately leading to the shooting. However, there is no direct or circumstantial evidence to support this hypothesis. As I mentioned, no witness heard yelling, saw any physical interaction, or observed Ms. Poole leave the truck or interact with Mr. McCook. The evidentiary record is silent.
- [223] The Crown led no evidence that Mr. McCook threatened or planned to kill Ms. Poole before the shooting. To the contrary, on the day before, the morning of the shooting, witnesses described the two as enjoying an amicable relationship. Not only is there no evidence of motive or conflict between the two, the evidence points to the contrary: they were seen laughing, holding hands, and planning a family camping trip just hours before the shooting.
- [224] At approximately 10:30 a.m., after parking the vehicle, it is undisputed that Jason and Ms. Boya left the residence about 20 to 30 minutes before the shooting, and there was no indication of any conflict at the time of that departure.
- [225] Based on the evidence, it seems more likely that Ms. Poole passed out in the truck, either before or shortly after it was parked, and remained there throughout. She was found still seated in the passenger seat with a mickey in her hand and an open case of beer on her lap. There is no evidence that she exited or re-entered the vehicle carrying alcohol. More importantly, given her level of intoxication, it is uncertain whether she would even be capable of doing so. The lack of any indication supports the inference that there was no confrontation or exchange between her and Mr. McCook during the relevant period that might otherwise support a finding of motive or specific intent.
- [226] Even if one were to accept that a domestic dispute played some role in precipitating the shooting, such a theory would not account for the broader pattern of disorganized and unpredictable behaviour that followed. After shooting towards his truck, Mr. McCook fired multiple rounds towards Jason at Ms. Boya's home where no conflict had been reported. He later swung the rifle towards his brother-in-law Rylan without any apparent reason,

provocation, or verbal exchange. These actions were indiscriminate and disconnected, displaying a pattern of impulsivity rather than deliberation. A quarrel with Ms. Poole, if it occurred, offers no rational explanation for his erratic conduct during this period.

[227] The evidence viewed as a whole undermines the proposition that the fatal shot was the product of an intention or targeted aggression.

[228] The Crown did not advance any theory of motive. While the lack of motive is not itself determinative, in the context of a sudden, unexplainable act of violence conducted during a period of overwhelming intoxication, its absence contributes to reasonable doubt as to whether he intended to harm Ms. Poole.

The purposive behaviour and the other firearms

[229] The Crown submitted that Mr. McCook purposefully undertook the following actions. He retrieved the .308 Tikka rifle from the pantry, obtained ammunition from another location, loaded and chambered a round, positioned himself 23 to 25 feet from the truck, discharged multiple shots into the truck, fired at bystanders, pointed the rifle towards himself in a suicidal gesture, and stated, "Bro, I'm dead too." In the Crown's view, this sequence of events supports an inference that Mr. McCook was aware of and intended the lethal consequence of his actions.

[230] However, several witnesses gave testimony regarding Mr. McCook's proficiency with firearms. Mr. Pierre, who had hunted with him approximately a dozen times, described Mr. McCook as a highly-skilled hunter and someone meticulous and careful in his handling of guns. Rylan Massettoe similarly testified that Mr. McCook was experienced with firearms and had never, in his observation, kept loaded weapons or handled them recklessly. Mr. Beaudin indicated that he had wanted to hunt with Mr. McCook precisely because of his reputation for being a highly-skilled hunter. Collectively, their testimony establishes him as having a high level of confidence in operating firearms, and that he understood safe storage and handling practices.

[231] The same witnesses gave witness testimony about where he typically stored his firearms, magazine, and ammunition in his residence.

[232] Rodrigue Beaudin testified that he kept his rifles in a pantry located near the kitchen of his home and, according to Mr. Beaudin, the magazines were stored in a drawer beneath the kitchen counter and ammunition was kept in a cupboard near the door to the outside. He specifically noted that he had never seen preloaded magazines or loaded firearms in the home.

[233] Mr. Pierre, who had gone hunting with him, confirmed that firearms were stored in a front closet, not the pantry. He said ammunition was stored above the refrigerator. Like Mr. Beaudin, he testified that he never saw a loaded firearm or a loaded magazine in Mr. McCook's home. And Rylan confirmed that rifles were stored in the pantry, consistent with

what Mr. Beaudin said, and that the ammunition was stored separately across the kitchen in drawers, not in the pantry. He, too, had never seen loaded firearms or a preloaded magazine.

- [234] The testimony of the above witnesses, each familiar with Mr. McCook's household and firearm-handling habits, was broadly consistent. Rifles were typically stored in a pantry or closet, magazine in drawers, and ammunition kept separately in cupboards or other kitchen storage. Notably, no witness described Mr. McCook as someone who routinely kept loaded firearms and preloaded magazines in the home.
- [235] On this basis, the Crown submits that Mr. McCook must have retrieved the various components of the firearm used in the shooting -- namely, the rifle, magazine, and ammunition -- from their usual storage locations. While that would be consistent with his established practices, I find that aspect of the Crown's theory remains speculative, as no witness observed him loading or handling any firearm before the shooting.
- [236] The situation is further complicated by the discovery of an additional rifle, a Lakefield II .22, found in the residence, loaded and ready to fire. This fact is difficult to reconcile with the consistent testimony indicating that Mr. McCook did not typically store loaded firearms. It suggests a significant deviation from his usual approach to firearm safety.
- [237] These facts do not support the inference that the Crown wants the court to draw regarding the purposive conduct of Mr. McCook. Instead, I find that it gives rise to evidentiary uncertainty, including whether Mr. McCook intentionally loaded the weapons shortly before the incident and, if so, for what purpose. Even assuming he did retrieve, load, and prepare multiple firearms just before the shooting, this conduct alone does not establish a specific intent to kill Ms. Poole, particularly if, as the evidence suggests, she was seated in the vehicle and posed no threat. In fact, it may suggest a completely different purpose.
- [238] The presence of the Lakefield II .22 found in the home with a bullet chambered and three rounds in the magazine undermines a theory of a singular targeted intent. If Mr. McCook only wanted to kill Ms. Poole, it is unclear why he would have prepared the second rifle; why the II .22 and not the Winchester 243. Instead, his behaviour suggests a pattern that was disorganized, impulsive, and possibly paranoid.
- [239] Constable Nelis testified that while Mr. McCook was being transported to the detachment, Mr. McCook repeatedly shouted that he had done nothing wrong, and when he was informed about the investigation for murder, he did not seem to understand who the alleged victim was. His subsequent statements and behaviour suggest that he may not have realized that he had killed Ms. Poole, and his comment, "They attacked me first," and his references to his uncle being the victim of a murder, stating that he did not do it, introduces ambiguity and raises questions that I find are difficult to reconcile with the evidence. The act of loading multiple firearms, despite a clear history of safe storage, likely indicates a confused or exaggerated sense of threat. This behavior aligns with someone who is profoundly intoxicated and disoriented. Additionally, considering the erratic and

indiscriminate conduct observed after the shooting, this raises further concerns about the Mr. McCook's state of mind.

The reasonable doubt arising from alternative inferences

- [240] When reasonable inferences arise from the evidence, and one of those inferences could exculpate the accused, a verdict of not guilty of second-degree murder should be reached. As stated in *Villaroman* at paras. 35 to 38, plausible alternative explanations or theories advanced by the defence do not need to be based on proven facts. Instead, they must be reasonable, considering the entirety of the evidence or the absence of it.
- [241] Alternative explanations for Mr. McCook's conduct must be evaluated logically. The key question is whether the circumstantial evidence provides a logical and non-speculative inference that reasonably supports a finding other than guilt.
- [242] I have carefully considered the alternative theories advanced by the defence, in light of the guidance in *Villaroman*, to determine whether they offer a reasonable, non-speculative inference that is consistent with the evidence. I am mindful that inferences must not rest on speculation, particularly where evidentiary gaps remain unaddressed by any direct or indirect proof. I also note that while the common sense inference may generally permit the trier of fact to conclude that a person intends the natural and probable consequences of their action, that inference must yield when, in cases like this, the totality of the evidence raises a reasonable doubt as to intent.
- [243] In this case, the compelling and consistent evidence of advanced intoxication, disorganized conduct, and emotional volatility significantly weakens any potential common-sense inference.
- [244] As I mentioned earlier, Mr. McCook was in an advanced state of intoxication. Given that an additional rifle was recovered from the residence in a ready-to-fire condition, it is reasonable to infer that the .308 Tikka may also have been preloaded before the shooting. Alternatively, both firearms could have been loaded at an earlier time, or during the 20- to 30-minute window before the incident. However, even if Mr. McCook prepared multiple weapons, that conduct, especially in light of his prior practice of safe storage, does not necessarily support an inference that he intended to kill Ms. Poole. Rather, the loading of multiple firearms may point to, as I explained, to disorganized, reactive, or paranoid behaviour or a greater threat making it equally plausible that Mr. McCook perceived a general threat unrelated to Ms. Poole.
- [245] If he intended to kill her, the need for an additional loaded weapon is hard to understand, especially given his firearms proficiency, her passive posture in the vehicle, and the absence of any threat she posed. These circumstances raise a reasonable doubt as to whether his actions were directed explicitly at Ms. Poole or were instead the result of perceived greater threat, confusion or intoxication. Based on Ms. Pederson's testimony, I acknowledge that an experienced shooter could operate the rifle mechanically while

intoxicated. As a skilled hunter, Mr. McCook may have chambered a round out of muscle memory. This possibility further weakens the Crown's claim of deliberate preparation.

- [246] As I mentioned earlier, the pattern of erratic firing towards Rylan and Jason supports the view that Mr. McCook acted without a coherent purpose and undermined any inference of deliberation or focused intent.
- [247] The evidentiary record does not provide information about what, if anything, Mr. McCook perceived in the moments leading up to the fatal shot. If Ms. Poole had remained in the truck--evidence suggests that she likely would have--she would have been there for at least 20 minutes after Jason and Ms. Boya left. It is also possible that Mr. McCook could have forgotten that Ms. Poole was still in the truck, been unable to see her, and believed there was a threat from something or someone else.
- [248] While the forensic trajectory confirmed the direction of the shot, it does not estimate Mr. McCook's visibility through the windshield and into the vehicle from inside the house. There is also no information on whether condensation or fog had formed on the window from Ms. Poole being in the truck.
- [249] The Crown submits that Mr. McCook deliberately fired a precision shot from within the kitchen, approximately 23 to 24 feet, killing Ms. Poole. However, I note that Constable Halliday testified that when he was asked to check on Ms. Poole, that he could not clearly see her from the driver side of the truck, even while standing just a few feet away. He had to walk around and open the passenger side door before he could properly assess her condition. This raises a reasonable doubt as to whether Mr. McCook, from a much greater distance, would have been able to see Ms. Poole at all.

Conclusion

- [250] The court is required to determine whether the Crown has met its burden to prove the specific intent required for murder. I am not satisfied that it has. The evidence establishes that Mr. McCook was in an advanced state of intoxication. There was no direct evidence of foresight or deliberation. There is no indication Mr. McCook saw Ms. Poole in the vehicle, no suggestion of motive or prior conflict, and no evidence that he targeted her.
- [251] Taken together, the above considerations raise reasonable doubt about whether Mr. McCook had the capacity to form the intent to kill or to cause bodily harm, knowing it was likely to result in death. In reaching this conclusion, I am guided by the principles articulated in Daley, applied in Alexander, where the courts emphasize that advanced intoxication may negate subjective foresight, even in circumstances where the act that caused the death was objectively serious.
- [252] Accordingly, I find that the Crown has not proven beyond a reasonable doubt that Mr. McCook possessed the specific intent required under s. 222(a) of the Criminal Code. While the Crown has not met its burden to prove second degree murder, the court is satisfied that

Mr. McCook caused the death of Ms. Poole by committing an unlawful act, namely discharging a loaded firearm in the direction of a vehicle. That act was objectively dangerous and directly caused Ms. Poole's death. The Crown has therefore proven the elements of an unlawful act of manslaughter.

[253] Accordingly, Mr. McCook, please stand. I find you not guilty of second degree murder. However, I find you guilty of manslaughter. You may be seated.

"Sukstorf J."

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