

CANADA / JUDGMENT

R. v. Monteith

2024 BCSC 1445

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2024 BCSC 1445 R. v. Monteith

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Monteith,

2024 BCSC 1445

Date: 20240809

Docket: X083817

Registry: New Westminster

Rex

v.

Carlos Nathaniel Monteith

Corrected Judgment: The judgment has been redacted for publication purposes on March 20, 2025.

Corrected Judgment: The text of the judgment was corrected at paragraphs 30, 33, 96, 105 and 120 on November 8, 2024.

Before: The Honourable Justice Verhoeven

Reasons for Judgment re:

Voir Dire #7 - Discreditable Conduct Evidence

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Place and Dates of Voir Dire:

New Westminster, B.C.

July 8-12, 2024

Place and Date of Judgment:

New Westminster, B.C.

August 9, 2024

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I. Introduction

- [1] The Crown applies for rulings as to admission of discreditable conduct evidence ("DCE"). The Crown contends that much of the evidence involves party admissions.
- [2] The accused, Carlos Nathaniel Monteith, is charged with the first-degree murder of Kristijan Coric occurring on or about September 28, 2019 at or near Surrey, BC. A trial with judge and jury is scheduled to commence February 3, 2025.
- [3] I issued two previous voir dire rulings in this matter: indexed as 2022 BCSC 2019, and 2023 BCSC 78.

II. Background

- [4] As this is a pre-trial ruling, the background information largely consists of the evidence that the Crown expects to establish at trial.
- [5] The following summary is taken from the Crown's submissions on this application. That summary, with some amendments, is as follows:
 - 1. Shortly after 6:00 pm on September 28, 2019, Kristijan Coric and his girlfriend, Megan Lao, stopped to get gas at the Mobil Gas Station at 18699 Fraser Highway, in Surrey BC (the "Gas Station"). They were driving a black Mercedes G-Wagon (the "G-Wagon"). Ms. Lao was the driver and Mr. Coric was sitting in the front passenger seat.
 - 2. Surveillance video from the Gas Station showed Ms. Lao exit the driver's side of the G-Wagon, fill it with gas, and then go into the Gas Station shop before returning. As she began to enter the G-Wagon, a person (the "Shooter") dressed in black, wearing a black mask, ran up
 - 3. to the G-Wagon and shot a black handgun at Mr. Coric multiple times as he sat in the passenger seat, before fleeing the scene.
 - 4. BC Ambulance paramedics attended the Gas Station by 6:19 p.m. and determined that Mr. Coric was dead.

5. An autopsy of Mr. Coric revealed that his death to be caused by multiple gunshot wounds. Mr. Coric had 18 separate gunshot wounds, although some of the wounds, particularly in the lower extremities, may represent re-entry wounds. Bullet fragments were recovered from Mr. Coric's head, brain, neck, chest, lung, arms, groin, and thigh. He was shot three times in the head and suffered multiple skull fractures and bleeding around the brain and injury to the brain.
6. The firearm expert's report revealed that 17 fired 9mm cartridge cases were found at the crime scene which were fired from the same firearm. There were also 14 fired bullets and bullet jackets that were also fired from the same firearm. Some of the fired cartridge cases were Federal brand ammunition, and one of the fired bullets was identified as a hollow point.
7. On September 29, 2019, a police search of the G-Wagon revealed a Quetcel brand GPS tracking device attached to the rear under-carriage. This was not a police device.
8. Surveillance video from the surrounding area of the Gas Station revealed a Toyota Corolla with BC License Plate GT3 03W (the "Toyota") following the G-Wagon prior to the shooting and leaving the scene after the shooting.
9. As the G-Wagon went to the Gas Station, the Toyota parked across the street at the Hillcrest Shopping Plaza. An individual exited from the passenger side of the Toyota, crossed Fraser Highway, and went to the Gas Station, where Mr. Coric was shot while seated in the passenger seat of the G-Wagon.
10. The Toyota left Hillside Plaza and parked at a nearby location, at the intersection of Fraser Highway and 188th Street.
11. Witnesses observed the Shooter run to the waiting Toyota and jump into the passenger side of the vehicle. The Toyota departed, proceeding northbound on 188th Street.
12. Dashcam footage was obtained from a vehicle driven by a member of the public, who was driving southbound on 188th Street at approximately 6:10 p.m. on September 28, 2019. This footage captured the Toyota driving northbound on 188th Street shortly after the shooting of Mr. Coric.
13. The Toyota was found burning at approximately 10:05 pm on September 28, 2019, in the parking lot of a Burnaby apartment building.
14. The driver of the Toyota was subsequently identified as Trion Castello by his former parole officer, Howard Kwan: see R. v. Monteith, 2022 BCSC 2019 (recognition voir dire). One of Mr. Castello's phone numbers in 2019 was 778-837-5094, according to a witness, MH.
15. The accused's bank records show that he had little money in his bank account around the time of the murder and afterwards.

16. An invoice (or receipt) was obtained from Holt Renfrew in Vancouver showing that the accused purchased four pairs of shoes from the store on September 29, 2019 (the day after Mr. Coric's murder). The total cost of the shoes was \$6,697.60.
17. Sometime during October of 2019, the accused went to live with DD in New Westminster. He lived with her on and off. According to DD, when he was at DD's residence, he was wearing expensive (Louis Vuitton) shoes and had a lot of money on him.
18. On November 17, 2019, the accused shot DD. He was arrested by the New Westminster police outside the Deluxe Hotel in Vancouver on November 23, 2019 in connection with the shooting of DD. When the accused was arrested, there was a bag next to him on the ground that contained a loaded firearm, a SIG Sauer 9mm handgun. (This is not the firearm that was used in the Coric killing.) The police also found 9mm ammunition (Federal brand) in the hotel room where the accused was staying at the time.
19. The accused was charged with the attempted murder of DD, along with various firearm offences, on November 23, 2019.
20. Following his arrest, the accused was in custody at North Fraser Pretrial Centre ("NFPC").
21. The accused became a suspect for the Coric killing owing to DD's statements to the police that while he was staying with her, he bragged about killing someone recently for money in Vancouver, and that he got paid \$70,000 for the killing. He also got a tattoo of a teardrop, on his face near his eye. He told DD that the tattoo signified that he had committed his first kill.
22. The police determined from the timing and the details that the only homicide that this could refer to was the killing of Mr. Coric in Surrey on September 28, 2019.
23. Production orders were obtained for jail calls of the accused while he was in custody at NFPC for the shooting of DD. During these calls, the accused referred to shooting people in the head, killing someone, and that he had a body. He also said that he has done things for money, and he could get 25 to life. He used slang terms for violence such as having a body, wiping a nose, spanking a man on camera, and having a hammer (firearm). The accused also rapped about being an assassin, killing someone, with hollow points, head shots, and having a black mask (which the Crown submits refers to the killing of Mr. Coric).
24. After the shooting of Mr. Coric, and before he was arrested for the shooting of DD, the accused engaged in the illicit drug trade in Squamish with Trion Castello and another man known as Jaden or "D". The accused also had a knapsack full of cash and drugs when the witness, MH, first met him.
25. On December 6, 2019, a search warrant was executed on the accused's room in the Budget Inn in Squamish. Expensive pairs of shoes were observed there as well as a box of 9 mm ammunition (Federal brand).

26. On August 31, 2020, the police executed a search warrant on the residence of Trion Castello's girlfriend. During the search they located a pair of Christian Louboutin black spiked shoes (size 43) inside a shoe box, which had the label Louis Flat Calf/Spike on it. In the box, there was a duplicate copy of the accused's receipt from Holt Renfrew from September 29, 2019 (the day after Mr. Coric's murder) with the initials "TC" on it.
27. On October 30, 2020, the accused was charged with the first-degree murder of Mr. Coric.
28. On April 19, 2021, during the trial for the shooting of DD, the accused pleaded guilty to two offences, discharging a firearm with intent to wound, maim or disfigure or endanger the life of DD, and unlawful possession of a loaded firearm. On April 22, 2021, he was sentenced to a global sentence of 6 ½ years, which after deducting pre-trial custody, resulted in a net sentence of 50 months and 10 days.
29. The theory of the Crown is as follows:
 - a. The accused was released from custody on September 4, 2019, in relation to other matters. He completed his parole supervision in Victoria on September 26, 2019. He travelled to Vancouver that same day. [The accused's phone records and bank records indicate that he travelled to the Lower Mainland on September 26, 2019].
 - b. The accused wanted to be a hitman (a killer for hire) as demonstrated by the "hit list" (the "List") he had in his possession in jail on August 16, 2019, his later comments to DD and in his jail calls, and the digital evidence.
 - c. The accused had access to firearms and ammunition prior to the murder of Mr. Coric.
 - d. The accused shot and killed Mr. Coric at the Gas Station on September 28, 2019. His getaway driver was Trion Castello (referred to as "Smitty" in the jail calls).
 - e. The accused was paid for killing Mr. Coric; in other words, it was a contracted hit.
 - f. The day after the murder, the accused bought Mr. Castello/Smitty expensive shoes at Holt Renfrew in Vancouver. This is confirmed by the receipt obtained from Holt Renfrew and the shoes and same receipt found at Mr. Castello's girlfriend's residence, as well as the accused's comments in the jail calls.
 - g. The accused bragged about this killing and being a hitter to DD and in his jail calls. While at DD's home, he obtained a teardrop tattoo to signify that he had killed Mr. Coric.
- [6] The Crown says that, although little is known about the deceased, Mr. Coric, there is evidence which supports the view that his murder was directed and planned, and likely tied up with drug activities. In this regard the Crown refers to the anticipated evidence of DD, the digital evidence, the jail calls of the accused, and the fact that a tracking device was found under the G-Wagon. Additionally, the G-Wagon was searched after Mr. Coric's murder, and drugs were found inside it, consistent with drug trafficking. The drugs found were tested and found to contain heroin, fentanyl, and cocaine.

- [7] Therefore, the Crown's theory is that the accused was paid to execute Mr. Coric, probably in relation to criminal drug gang activities.

III. Legal Principles

- [8] The parties agree as to the legal principles applicable governing the admission of DCE.
- [9] Evidence of uncharged disreputable conduct is presumptively inadmissible. However, there are exceptions. DCE may be admitted where the Crown is able to establish that it is relevant and material to a live issue at trial, and that its probative value outweighs its prejudicial effect: *R. v. Boden*, 2024 BCCA 6 [Boden] at para. 69.
- [10] In *Boden*, the Court added:
- [71] In assessing the probative value of uncharged disreputable conduct, a court will consider factors such as the strength of the evidence that the conduct occurred; the connection between the conduct and the accused; the extent to which the evidence supports the inferences the Crown seeks to make; and the materiality of the evidence: *Z.W.C.* at para. 98, citing David Paciocco, Palma Paciocco & Lee Stuesser, *The Law of Evidence*, 8th ed. (Toronto: Irwin Law, 2020), at pp. 74-75.
- [72] In assessing prejudicial effect, a court must consider the possibility the evidence could cause "moral" and "reasoning" prejudice: *Z.W.C.* at para. 101.
- [73] "Moral prejudice" involves the risk that the evidence will portray the accused as a "bad person" and result in a conviction based on the belief that they are someone with a propensity to have committed the charged offence: *Z.W.C.* at para. 102. This risk will increase with particularly inflammatory or egregious disreputable conduct: *Z.W.C.* at para. 104; *R.G.S.* at para. 39.
- [74] "Reasoning prejudice" occurs when evidence diverts the trier of fact from their task to decide the subject matter of the prosecution or renders the trial unduly confusing. Uncharged disreputable conduct must not overwhelm the case and attract more attention or more weight than logically justified. It must not leave the accused unable to respond properly because of the amount of time that has passed since the conduct occurred, because they are surprised by the evidence, or because of its collateral nature. Disreputable conduct evidence must not consume a disproportionate amount of court time and cause the trier of fact to unduly focus its attention on whether those acts occurred: *Z.W.C.* at para. 103; *R.G.S.* at para. 45.
- [75] Where they can, especially in a jury trial, judges should take reasonable steps to minimize the prejudicial effect of this evidence. They must also ensure it is not misused. For example, they may decide to limit the volume and extent of the evidence adduced by the Crown: *Z.W.C.* at paras. 111-112. Alternatively, the judge may direct that certain portions of the evidence be edited or presented in a way that ameliorates its prejudicial effect: *Z.W.C.* at para. 113. Finally, if evidence of uncharged disreputable conduct is admitted in a jury trial,

the trial judge must instruct the jury on its use. That instruction (including a mid-trial instruction where appropriate), should identify the evidence and explain its permitted and prohibited uses: Z.W.C. at para. 109.

- [11] The admissibility of evidence generally was discussed by the Supreme Court of Canada in *R. v. Schneider*, 2022 SCC 34 [Schneider]. That analysis was discussed by the Court of Appeal in *R. v. R.G.S.*, 2023 BCCA 52 [R.G.S.]. Portions of that discussion are as follows:
- [24] The Supreme Court recently addressed the framework for the admissibility of evidence in *R. v. Schneider*, 2022 SCC 34. The framework is the same regardless of whether the issue is similar fact, discreditable conduct, hearsay and so on.
- [25] The Court reiterated the three-part test trial judges must consider for the admission of all evidence: (a) whether the evidence is relevant; (b) whether it is subject to an exclusionary rule; and (c) whether to exercise their discretion to exclude the evidence (*Schneider* at para. 36).

A. Relevance

- [26] The first step is ascertaining relevance. Relevance is determined "by asking whether, in light of all the other evidence, the at-issue evidence logically tends to make a fact in issue more or less likely. This standard applies to all evidence in criminal trials" (*Schneider* at para. 45). The determination of relevance is a question of law and reviewable on a correctness standard (*Schneider* at para. 39).
- [27] Relevance is determined by applying logic and human experience (*Schneider* at para. 39).
- [29] The threshold for relevance is low and judges can admit evidence that has modest probative value (*Schneider* at para. 39).
- [32] General issues such as "credibility", "narrative" or "nature of the relationship" are not "portals" to propensity evidence about uncharged similar facts (*R. v. M.R.S.*, 2020 ONCA 667 at para. 72, citing *R. v. Gareau*, 2016 NSCA 75 at para. 51).
- [35] The next issue is whether the evidence is subject to an exclusionary rule. Unequivocally, the answer here is yes. Evidence of discreditable conduct outside the parameters of a charge is presumptively inadmissible. The evidence is inadmissible on the basis that an accused "has only to answer to the specific charge contained in the indictment" (*Handy* at para. 43). The evidence of disposition or propensity is "exceptionally admissible" (*Handy* at para. 51).
- [38] Thus, evidence tendered solely for the purpose of showing that an accused was a bad person or had a propensity to commit crime is not admissible. The risk in adducing the evidence raises moral prejudice and reasoning prejudice.

Moral prejudice

- [39] Moral prejudice is the risk of an unfocussed trial and a wrongful conviction arising from "the forbidden chain of reasoning [] to infer guilt from general disposition or propensity" (Handy at para. 139).
- [45] Reasoning prejudice arises when the jury is distracted from the issues at hand because they must consider multiple incidents rather than the offence charged (Handy at para. 144).
- [50] The third step in the analysis focusses on the balancing of the probative value of the evidence and its prejudicial effect. Probative value relates to the degree or extent of relevance to the trial issues and the strength of the inference that can be drawn from the evidence. The prejudicial effect relates to the likelihood that the jury will misuse the evidence (Schneider at para. 60). The danger of the potential for propensity reasoning cannot be understated. On the other hand, the judge may consider how the prejudicial effect of the evidence can be attenuated by a proper jury instruction (Schneider at para. 61).
- [51] However, the process is not that of weighing one against the other. As articulated in Handy at paras. 148-149:
- [148] One of the difficulties, as McHugh J. pointed out in Pfennig, supra, at p. 147, is the absence of a common basis of measurement: "The probative value of the evidence goes to proof of an issue, the prejudicial effect to the fairness of the trial." The two variables do not operate on the same plane.
- [149] As probative value advances, prejudice does not necessarily recede. On the contrary, the two weighing pans on the scales of justice may rise and fall together. Nevertheless, probative value and prejudice pull in opposite directions on the admissibility issue and their conflicting demands must be resolved.
- [12] The governing principles were also comprehensively reviewed by Justice Devlin in R. v. Bottomley, 2023 BCSC 406 [Bottomley] at paras. 10-36.
- [13] The threshold for relevance is low, and judges can admit evidence that has modest probative value: Schneider at para. 39. A judge must ask whether the evidence tends to increase or decrease the probability of a fact at issue. When doing so, they should take care not to usurp the role of the finder of fact. Evidence may be too speculative or equivocal to be relevant, but a judge's consideration of relevance must not be confused with weight. Concepts like ultimate reliability, believability, and probative weight have no place when deciding relevance: Schneider at para. 39. Evidence need not be unequivocal to be relevant: Schneider at para. 43.
- [14] Relevance can only be fully addressed in the context of the other evidence at trial: Schneider at paras. 40, 42.

- [15] Party admissions, including acts or words of a party offered as evidence against that party, are admissible as exceptions to the hearsay rule: Schneider at para. 52. Whether evidence is hearsay but falls within an exception to the hearsay rule is a determination to be made by the trial judge: Schneider at para. 58. In criminal trials, a party admission will be evidence that the Crown adduces against an accused: Schneider at para. 53.
- [16] Party admissions can constitute more than words; the common law has held party admissions to include, inter alia, silence, actions, and demeanour. A rule of thumb is that "anything the other side ever said or did will be admissible so long as it has something to do with the case": Schneider at para. 57.

IV. The Discreditable Conduct Evidence

- [17] The Crown's case relies, in large measure, on statements from the accused himself. These statements frequently include references to discreditable conduct on his part. There are many instances in which the accused appears to be bragging or boasting about things he has done or the type of person he is or wants to be. This includes the statements he made to DD (these are not the witness' actual initials), in his jail calls (including rap lyrics) and in his digital communications, such as text messages, and social media postings.
- [18] Almost all of the Crown's case relies on DCE of various kinds.
- [19] As the evidence the Crown seeks to rely on is highly inter-related, it is necessary for me to first describe or summarize the evidence, before analyzing the issues. The following is not an attempt to describe all of the voluminous evidence in question.

A. Evidence of DD, and MH

- [20] DD provided four statements to the police. The first three statements were given to New Westminster Police in relation to the accused shooting DD on November 17, 2019 (that is, 50 days after the killing of Mr. Coric on September 28, 2019). In her statements, she refers to the accused's drug activities, access to guns and ammunition, and having killed someone.
- [21] The Crown relies on a number of the things said by Mr. Monteith to DD as admissions. The Crown also relies on the evidence of DD to corroborate and give meaning and context to the statements of the accused as recorded in his jail calls. I referred previously to some of the evidence that the Crown relies on as admissions, based upon the evidence of DD, under "Background", above. In somewhat more detail, the evidence includes the following:
- a) He recently got a teardrop tattoo under his eye for "catching a body", and he had killed someone. He got a teardrop tattoo done at her house for his first killing. He was proud of it, and would brag about it constantly;
 - b) He got money for doing a job, and he had a lot of money;
 - c) He had killed someone for \$70,000;

- d) He had killed a man in downtown Vancouver. He was supposed to do the job with Dave, but Dave ended up going back to prison;
- e) He was supposed to split the money with Dave, who had set it up, but the accused was mad as he had to do the job on his own;
- f) He met Dave in Kent Institution;
- g) He was a "yes-man" for the UN, and if they wanted him to kill or rob people, he would do it;
- h) He was going to be a gangster, and got his first killing in Vancouver;
- i) He had stacks of money which was payment for a contract killing. The money was in stacks and had elastic around it. The money was payment for killing a man in downtown Vancouver;
- j) He also had a lot of drugs that he wanted to sell;
- k) He killed the man a week or five days before he showed up at her house;
- l) He was going to do another killing, and he wanted to be a hitman;
- m) She heard him on the phone, threatening to kill people all the time;
- n) He had bought three pairs of \$3,000 shoes. Gucci, and Louis Vuitton. He had shopped at the Fairmont in Vancouver after he got all the money for killing the guy;
- o) He had a 9mm gun, for which he had paid \$3,000;
- p) When he shot her, he was wearing red bottom "Louis Vuitton" shoes.

[22] Notably, Jahrel Frederick ("Dave") was arrested for a parole violation on September 27, 2019, the day before the murder of Mr. Coric.

[23] As noted, the killing of Mr. Coric occurred in Surrey, not Vancouver. The Crown contends that the references in DD's statement to the accused saying that he had killed someone in "Vancouver" or "Downtown Vancouver" may be explained by the fact that Mr. Monteith is from Toronto. The inference the Crown suggests is that the accused may not have distinguished between the City of Vancouver and other parts of the Lower Mainland.

[24] MH (these are not the witness' actual initials) told the police that in the fall of 2019 she was involved in the drug trade in Squamish with the accused, whom she knew as "Zaza", as well as with Castello, whom she knew as "PJ", and Jahrel Frederick, whom she knew as "Jaden" or "D", and a person named Dallas. MH states that Zaza showed up at her house with a bag of money and drugs. She identifies all of Jahrel Frederick, Trion Castello, and the accused. She provided phone numbers for these individuals which assists in confirming their identity.

[25] The Crown alleges that Castello was the driver for Mr. Monteith in relation to the killing of Mr. Coric, and that Jahrel Frederick, or "Jaden", or "D", is "Dave" as referred to in the evidence of DD, or "D", as referred to by the accused in his jail calls. The Crown contends that the accused referred to Castello as "Smitty" in the jail calls.

B. The Jail Calls, and Rap Lyrics

[26] The Crown obtained recordings for approximately 2,400 calls made by Mr. Monteith while he was in custody at NFPC, on the charge of attempted murder of DD. As noted, he was taken into custody November 23, 2019. Most of the calls the Crown relies on were made before Mr. Monteith became aware that he was a suspect in the murder of Mr. Coric. He first learned about that on June 18, 2020, when he was visited in jail by members of the Integrated Homicide Investigation Team. As noted, he was charged with the first-degree murder of Mr. Coric on October 30, 2020.

[27] Of the more than 2,400 phone calls, the Crown proposes to rely on various portions of up to 35 of the calls, largely as admissions, but also for other purposes, such as corroborating the evidence (and hence, the credibility) of DD, and MH, and generally, to give meaning and support to the other evidence the Crown relies on, such as the involvement of Castello as the getaway driver, the involvement of Frederick, and the digital evidence.

[28] The Crown contends that the institutional setting of the calls is important to understanding this evidence. Each call is preceded with a verbal warning that the call will be recorded and may be monitored. The Crown says that this explains why Mr. Monteith's conversations are guarded, and cryptic. He uses a great deal of slang and coded language throughout the calls. The Crown proposes to rely on the evidence of a slang expert to assist in interpretation of the calls. The Crown contends that, with the aid of extrinsic evidence, such as the evidence of DD and MH, as well as other evidence, the content of the calls will be revealed as admissions.

[29] Some of the admissions the Crown says can be derived from the jail calls include:

1. Within 48 hours of release from parole (September 26, 2019), he had made \$100,000.
2. He was in custody on a charge of attempted murder, in relation to the shooting of DD, but he was not in custody for the prior shooting.
3. He posted a picture on Instagram posing at Holt Renfrew with a bag of money. (The Crown relies on a photograph from Mr. Monteith's Instagram post, taken inside the Holt Renfrew store, of Mr. Monteith, posing with a bag containing several large wads of cash. As noted under "Background", above, the Crown has a receipt from Holt Renfrew dated September 29, 2019, the day after the killing, for four pairs of very expensive designer brand shoes. A copy of the receipt was seized August 21, 2020, on the search of an apartment in downtown Vancouver occupied by Trion Castello's girlfriend. The receipt is initialled "TC" for Trion Castello, the Crown says.)

4. Mr. Monteith had \$60,000, and gave \$10,000 to "Smitty" (who the Crown says is Trion Castello, the getaway driver).
 5. "Smitty" was behind the wheel, and got \$10,000, although he wanted \$15,000. Mr. Monteith took Smitty/Castello shopping "next day" (that is, September 29, 2019).
 6. Smitty/Castello has "seen me do things that will give him nightmares for the rest of his life".
 7. When you first "catch a body" (kill someone) it haunts you, and you drown the feelings with Hennessy, cigarettes and marihuana and "I, conquered that". (The Crown relies on the evidence of DD, in which she says that he was drinking heavily, smoking a lot of weed, and doing mushrooms while he was staying at her place. He was drinking a full 26 ounce bottle of Hennessy every day, which cost \$120 a bottle.)
 8. "What they caught me for was the least of what I was doing" [out there], and, "I'm happy that I got knocked for this and not anything else look on the bright side I could be facing life or something." (The Crown contends that these are, in context, clear references to the Coric homicide.)
 9. He brags that "I killed somebody just so you know--I have a body".
 10. Within three days of finishing parole, went to Holt Renfrew and "blew 20 grand".
 11. I "wiped a nose" (which the Crown says means an act of violence, such as shooting, robbery, or homicide) for money.
 12. "I super wiped a nose and never got caught for it. If I end up for that one adios for the rest of my life, would be in jail forever."
 13. He would never drive a G-Wagon, and (laughing) says "you know why". (The Crown says this is a reference to the G-Wagon in which Mr. Coric was killed.)
 14. Identifies himself as "Zaza" and says he "wiped his first nose at age 24" (he was 24 years of age at the time of the Coric killing).
 15. "I just finished parole A certain man gave me a bag and I looked in the bag and my life was never the same--most money I made in 10 seconds, most money seen in my life".
 16. "I am an assassin and I turn him into Casper" (which the Crown says refers to turning someone into a ghost, or in other words, killing someone).
 17. "Things I have done for money could send me away for the rest of my life". He states that he could get "25 to life".
- [30] As noted, the Crown contends that the evidence of DD is corroborated and gives meaning to many of the things the accused says in the jail calls. The Crown contends that the reverse is also true: the jail calls corroborate the evidence of DD; the evidence is mutually reinforcing.

- [31] In particular, the Crown argues that the jail calls corroborate the evidence of DD as to the accused purchasing clothes and high end shoes in Vancouver (the day after the murder of Mr. Coric), that he lived in Squamish at times, that he owed D (which the Crown says is the Dave referred to in her statements). He makes comments which the Crown says show that Mr. Castello (Smitty) was the driver, and that the accused committed the murder of Mr. Coric. Specifically, the Crown points to these calls and statements:
- a) Having a lot of money soon after getting out of jail and finishing parole: jail calls #1, 15, 19.
 - b) Getting money, bag, or racks of money or 60 bands and his sharing of the money: jail calls #6, 7, 8, 17, 19, 20, 24-25.
 - c) Involvement of Smitty (Castello): jail calls #5, 6, 7 (refers to Smitty being behind the wheel), 8, 9, 11, 12, 14 (refers to phone number 778-837-5094, which is Castello's number), 17, 24, 30 (asks to phone 778-837-5094).
 - d) Involvement of D: jail calls #8, 17, 24-25 (these last two calls corroborate DD's February 14, 2020 statement as to the accused and Dave being involved in setting up a killing which the accused did alone).
 - e) Getting money and buying expensive shoes and clothing: jail calls #1, 13, 19, 22.
 - f) Mentions Holt Renfrew: jail calls #1, 4, 19.
 - g) References to taking Smitty out shopping: jail calls #6, 7.
 - h) Having a place in Squamish: jail call #1.
 - i) Access to firearms and ammunition: jail calls # 3, 4, 10, 13, 22, 28, 29.
 - j) The accused killing someone: jail calls # 3, 6, 10, 12, 13, 16, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29 and 35.
 - k) Why he would not buy a G-Wagon: jail call #23.
- [32] In addition, the Crown relies on certain parts of the jail calls in which Mr. Monteith is singing or speaking rap songs that he has composed.
- [33] The rap lyrics include references to "wipe his nose"; "Louis Vuitton" and "Christian Louboutin" (the designer shoe brands purchased at Holt Renfrew); "Did it for a bag that was needed"; "blood money all my racks" (the Crown says that "racks" or "bands" is a reference to cash in \$1,000 increments); "I got hollow shells in this nine bitch;" and "I see blood that is my confession--murder was stressing". He refers to himself as a "certified hitter". "I'm an assassin and I turned him into Casper". (The Crown says that "Casper" refers to a ghost.) The lyrics also include "run up on you with a stick" (a firearm, the Crown says); "You know I am a killer"; "P226 filled with hollow tips" (the Crown says this refers to a gun, a SIG Sauer P226 handgun, and that a "nine bitch" can refer to a firearm. The Crown says that the "hollow shells" refers to hollow point bullets). As noted, one of the bullets used to kill Mr. Coric was a

hollow point. There are other similar lyrics.

C. Digital Evidence

- [34] The Crown seeks to rely on text messages and images obtained from the accused's Nokia mobile phone, seized on a search of the accused's room at the Deluxe Hotel in Vancouver on November 23, 2019. Other digital evidence the Crown seeks to rely on consists of social media posts captured from the accused's social media Instagram and Snapchat accounts.
- [35] The Crown contends that the digital evidence is relevant, as it goes to planning, motive, and identity, and some aspects are party admissions.
- [36] The Crown seeks to rely on text messages sent from the accused's Nokia phone to a contact named "Ian/BOXXER":
- a) On October 18, 2019, the accused wrote to Ian/BOXXER: "It's your evil twin broski I just popped my cherry for 60 racks LMFAOOOO";
 - b) On October 18, 2019, the accused wrote to Ian/BOXXER: "legendary BIG BIG CARLETO CORELONE";
 - c) On October 18, 2019, Ian/BOXXER wrote to the accused "what kind of work did you mosh," to which the accused writes "head shots" and then "Fat 60 k";
 - d) On October 29, 2019, the accused wrote to Ian/BOXXER saying "Until we have new numbers let's not talk heaty". (The Crown contends that "heaty" means conversations about illegal matters.)
- [37] The Crown contends that there are also several relevant images of the accused in his Nokia phone's image folder:
- a) the accused with big stacks of cash;
 - b) the accused making a wiping nose gesture;
 - c) the accused making a gun gesture with his hand, in the Holt Renfrew store.
- [38] Similarly, there are several images of the accused holding big stacks of cash that he sent to a third party on his Nokia phone.
- [39] There are several social media posts from the accused's Instagram and Snapchat accounts. These include the following:
- a) the accused referring to guns;
 - b) the accused posting a photo to Instagram containing a large amount of cash, and allusions to explosions or shots in the posting text;
 - c) the accused posing on Instagram while making a gun gesture with a large stack of cash;

- d) the accused displaying his middle fingers for the camera in what looks like the Deluxe Hotel, where the Nokia phone was located.
- [40] The text of some of the accused's Instagram posts also alludes to gangs, "murderplugs", and coming after people. These were also captured on his Nokia phone.
- [41] The Nokia phone also contained a Facebook Messenger conversation with Shawn Keepeness, that included the following messages:
- a) On September 24, 2019, the accused wrote to Mr. Keepeness "Got the plug mann yu might wanna come see me";
- b) On October 18, 2019, the accused wrote to Mr. Keepeness "watchu know bout 60k hits nigga", followed by photographs of the accused posing with cash and making a gun gesture in Holt Renfrew.

D. Teardrop Tattoo

- [42] DD says that he got the teardrop tattoo as this was his first killing, that he got paid for the killing, and the tattoo was done by someone named Dallas. He got the tattoo on his face to show everyone that he is a killer. The Crown expects to establish that the accused obtained the tattoo while he was staying at DD's residence, after the Coric killing, and before his arrest on November 23, 2019.

E. The List

- [43] A list, entitled or labelled as "Blood Bath" and "Hit List" (the "List") was found in the accused's possession on August 16, 2019, when he was transferred from Kent Institution to Surrey Pretrial Services Centre ("SPSC"). The List was subject of a previous voir dire decision, indexed as 2023 BCSC 78.
- [44] The List contains four columns. In the second column the words "Blood Bath" and "Hit List" are written, surrounded by what the Crown contends are three Christian crosses, two x's, a teardrop and an eye. (The defence contends that the drawing of a teardrop and the eye are open to other interpretations.) There are 52 names, nicknames, or initials on the List. One of the initials is "KC", which are the same initials as those of Mr. Coric, the murder victim.
- [45] During the previous voir dire, some of the correctional guards gave evidence that a number of the people on the List were high-risk individuals with gang affiliations. Furthermore, that a "hit" means to murder someone, and that some of the people on the List were inmates at SPSC or a federal institution, and/or associated with various gangs, such as the UN gang or the Red Scorpions.
- [46] The discovery of the List caused understandable alarm among federal and provincial corrections personnel. A Correctional Services of Canada official spoke to Mr. Monteith by telephone about the List while he was still in custody at SPSC (thus, before the Coric killing). The official says that Mr. Monteith laughed and "provided little explanation" about the List.

He challenged her to identify the persons on the list. He told her he had written the List while he was in segregation at Kent Institution. He said the List consisted of people he did not like or get along with, but he denied any intention to harm anyone on the List (para. 133 of the previous reasons for judgment).

[47] Apart from the express reference to "K.C.", the Crown argues that the List is relevant to the accused's intentions and motives, that is, he wanted to be a "hitman" or in other words, a killer for hire. The Crown also notes the drawings of what it says is an eye and a teardrop, which connect to the teardrop tattoo the accused obtained after the murder of Mr. Coric, signifying his first killing.

F. Custodial History of the Accused

[48] The Crown contends that the custodial history of the accused is relevant and important evidence. The evidence includes:

- a) He was in federal custody and transferred to SPSC on August 16, 2019. At that time, the List was found on his person;
- b) He was released from custody on September 4, 2019.
- c) He finished his parole on September 26, 2019 (two days before Mr. Coric was killed);
- d) He was arrested for shooting DD on November 23, 2019, 6 days after her shooting, on November 17, 2019.
- e) Thereafter, he was in custody at NFPC.

[49] Aspects of the evidence of DD refer to the custodial history of the accused. She says that she met him through LW, a "Brazilian gangster guy" who went by the name Brazil. She met Brazil via Facebook, and was aware that he had been in custody. He brought the accused to stay at her home. The accused and LW met in a halfway house in Chilliwack. The accused said he met Dave ("D"/Jaden/Jahrel Frederick) in Kent Institution.

[50] The Crown expects to lead evidence of the search of the accused's hotel room at the Deluxe Hotel in Vancouver on November 23, 2019, where his Nokia phone, a SIG Sauer 9mm handgun, and some ammunition (9mm, Federal brand) were located.

[51] The accused was in custody at NFPC for the shooting of DD when he made the jail calls in issue. He mentions his custodial status in some of his jail calls. So for example:

- a) He refers to "touching roads" and within 48 hours of finishing probation (the Crown says he is referring to parole) he was with \$100,000, and that he posted a picture on Facebook of himself with \$40,000, and he was in Holt Renfrew flexing. (The Crown will rely on expert evidence that "touching roads" means release from custody or parole. The Crown suggests "flexing" means showing off.)

- b) He refers to just finishing parole and "slapping up" the place. He touched roads and a man gave him a bag and it was the most money he had seen in his life and the most he had made for ten seconds.
 - c) He says he first got out at the end of September, and after not even two days, or three days, he went to Holt Renfrew and "blew 20 grand" in less than half an hour;
 - d) The accused told Shelsea or Chelsea that he was in custody for attempted murder. He referred to a shooting, and she asked was it the one he was telling her about, and the accused said no, the one after it.
 - e) The accused said that what they caught him for was the least of what he was doing out here and that he could be "facing life or something";
 - f) The accused was speaking to D and said he was in for "AM" (the Crown says this is reference to attempted murder, which is the charge for which he was arrested in relation to the shooting of DD). They were discussing an "18 band" (thousand dollar) debt. The accused said he burned someone for that, and he has a discussion with D doing "25 to life" (which the Crown says refers to the penalty for first degree murder, not attempted murder).
- [52] The Crown contends that the accused's custodial history is relevant to narrative, opportunity, the credibility of DD, and the identity of the accused as the killer of Mr. Coric.

G. Access to Firearms and Ammunition

- [53] The Crown proposes to adduce evidence that the accused had access to firearms and ammunition, and, specifically, a handgun.
- [54] The Crown contends that although this evidence relates to times after the shooting of Mr. Coric, it is relevant to the charge, as it shows that he was familiar with and had access to firearms and ammunition, and is relevant to his opportunity and means to commit the offence of killing Mr. Coric with a firearm. The Crown cites: *R. v. Aitken*, 2012 BCCA 134 at paras. 56-62; *R. v. Haevischer*, 2012 BCSC 1641 at paras. 22-25; *R. v. Sipes*, 2011 BCSC 640 [Sipes] at para. 783.
- [55] A summary of this evidence is as follows:
- a) The accused shot DD three times with a firearm on November 17, 2019;
 - b) Statements of DD:
 - i. When discussing the killing in Vancouver, and that he had shot someone in the head, the accused said some strippers threw away his gun, and he was mad about that; the strippers were white. They put the gun in a garbage can;
 - ii. When he first came to the house, he did not have a gun as he said some strippers threw it away. He would phone people to see if he could get a gun.

- iii. While the accused was staying with her, his girlfriend came out, and they stayed at a Bed and Breakfast for a while. When he came back, he had a new gun, for which he said he had paid \$3,000;
 - iv. He told her he paid \$3,000 for a silver gun and that anyone could get a gun if they wanted one;
 - v. He told her he was an important person and would not leave the house without a gun;
 - vi. He walked around the house with a gun. He carried it around in a bag or purse. She saw him with a handgun.
- c) digital evidence from the accused's Nokia phone, including numerous images depicting the accused holding handguns; and several images depicting ammunition, in association to the accused;
 - d) Social media posts, including:
 - i. Instagram posts showing the accused holding firearms, and symbolically wiping his nose with his finger;
 - ii. A post referring to a "brand new Sig Sauer", together with two emojis of wiping noses, and five explosions.
 - e) jail calls in which he refers to the Instagram pictures of himself with money and guns, and asks why they were deleted. In several other calls, he refers to firearms and ammunition;
 - f) When the accused was arrested on November 23, 2019 for the shooting of DD, he had a loaded SIG Sauer handgun in his possession, with a bullet in the chamber;
 - g) On the search of the Deluxe Hotel room where he was staying at the time of his arrest, the police found 9mm ammunition (Federal Brand). Likewise, 9mm ammunition (Federal Brand) was found in the Squamish hotel room that the accused had been staying in, when the police searched it on December 6, 2019.

H. Illicit Drug Activities

- [56] The Crown contends that evidence of the accused's involvement with illicit drugs is relevant. The evidence includes references to drug dealing, and personal use of drugs. The Crown contends that this evidence is relevant to narrative; to the nature of the relationships between DD and MH and the accused, and the credibility of DD and MH (as it confirms their statements as to his drug activities), and to assessment of the jail call evidence and the digital evidence.

- [57] DD gave several statements as to the accused having drugs in the house and selling drugs while staying at her home, and that he was using drugs and drinking heavily. The Crown also anticipates evidence from MH that in the fall of 2019 the accused was in possession of drugs and a lot of money when she first met him. He was also involved in selling illicit drugs with D (Jahrel Frederick) and PJ (Trion Castello).
- [58] There are messages between DD and the accused regarding drug dealing obtained from the accused's Nokia phone. There is also a photograph the accused sent to a Shawn Keepeness on Facebook Messenger in which he is seen sitting with a large bundle of cash and a bag of what appears to be marihuana.
- [59] The Crown argues that the evidence of DD regarding the accused's consumption of alcohol (Hennessy, specifically) and use of drugs while he was staying at her residence aligns with the statements of the accused in the jail calls about how "catching a body" or killing someone changes you, and how he drowned it with drugs and Hennessy. This consistency supports her credibility as a witness, and is also relevant to the identity of the accused as the killer of Mr. Coric. The Crown argues that it is open to the jury to find that the evidence of DD together with the jail calls, especially when considered alongside all of the other evidence, leads to the inference that the accused killed Mr. Coric.

V. Analysis

- [60] The volume of DCE the Crown proposes to rely on and the intertwined and interdependent nature of the evidence makes analysis of each particular item of proposed evidence impractical.
- [61] Therefore, I will address the issues with reference to the broad categories of evidence the Crown seeks to rely on, and which I have attempted to summarize, above.
- [62] As the DCE largely emanates from the accused himself, factors such as "the strength of the evidence that the conduct occurred" and "the connection between the conduct and the accused" (Boden at para. 71) are not significant.
- [63] The defence does not seek wholesale exclusion of some of the categories of DCE identified by the Crown, such as the accused's custodial history, access to firearms and ammunition, and illicit drug activities. In these categories the defence contends that some of the evidence is irrelevant, or should be excluded because its potential for prejudice exceeds its probative value.
- [64] The defence position is that the Court should restrict the presentation of the DCE to limit the amount of prejudice as much as possible.
- [65] The defence objects to introduction of the jail calls, including the rap lyrics, the statements made to DD, the teardrop tattoo, and the List.

- [66] During the course of the hearing, the defence suggested that much of the DCE, if it is to be admitted at all, could be the subject of admissions, or substantially reduced in scope. The Crown emphasizes that it is willing to limit the DCE as much as possible. So for example the Crown suggests that it is willing to further reduce the jail call evidence by relying on transcripts rather than playing audio in some instances, avoiding unnecessary duplication (or "piling on"), or by relying on admissions which would be discussed with the defence, following this ruling.
- [67] Crown and defence agree that a "stage II" hearing addressing the DCE in more specific detail may be required.
- [68] What is required at this stage are rulings setting out the broad parameters governing admissibility of the Crown's proposed DCE. As noted in the authorities (Sipes at para. 93; Haevischer at para. 34; R. v. Nguyen, 2021 BCSC 2174 [Nguyen] at para. 5), my rulings are subject to reconsideration depending upon how the evidence unfolds at trial, including during cross-examination. In addition, the defence has recently filed an application seeking exclusion of digital evidence obtained by searching data extracted from the accused's Nokia cell phone seized upon the search of his hotel room at the Deluxe Hotel in Vancouver, on November 23, 2019. Due to the highly inter-related nature of the evidence the Crown relies upon in this case, the outcome of that application has the potential to be relevant to the issues involved with admissibility of the other DCE.
- [69] The main issue at trial will be the identification of the accused as the killer of Mr. Coric. As the Crown submits, in that regard it can be expected that the accused will, in particular:
- a) Attack the credibility of the Crown witness, DD, a principal witness for the Crown;
 - b) Suggest that any statements he made to DD, in jail calls, or digital evidence, to recently killing a man are not true, and cannot be taken literally. These are not admissions. Rather, these are false boasts to make it seem like he is a gangster and/or a hitman, or plain fantasies, or in the case of the rap lyrics, merely artistic expressions;
 - c) Alternatively, even if the jury concludes that he actually killed someone, the Crown has not established that he killed Mr. Coric.
- [70] Of course, these questions will be for the jury to decide, on the basis of the entirety of the evidence at trial.
- [71] As noted in Schneider at para. 42, in assessing relevance, there is no basis to treat party admissions differently from other evidence. At this stage in the analysis, trial judges do not need to have classified the evidence as a party admission. All of the other evidence can be taken into account in determining the relevance of party admissions: at paras. 6, 42. Further, evidence does not need to be unequivocal to be relevant: at para. 43.

- [72] As noted previously, the relevance threshold is low. Subject to concluding that evidence is too speculative or equivocal to be relevant, the weight to be given to the evidence is a matter for the jury.

A. Evidence of DD, and MH

- [73] In general, the evidence of DD and MH is clearly relevant. The statements of Mr. Monteith to DD may be found to be admissions. Their evidence is also relevant as circumstantial evidence going to opportunity, means, motive (including state of mind), and identity, which will be the key issue at trial.
- [74] If accepted, the evidence of DD strongly supports the Crown's theory that Mr. Monteith killed a person for money, around the time that Mr. Coric was killed. The evidence includes explicit admissions that the accused had recently killed a person for money, and a number of details that support those facts, such as his possession of cash, consumption of alcohol and use of drugs, access to firearms and ammunition, and motive. The statements include details that link the accused to the Coric killing, such as the involvement of Dave, and the involvement of Castello, in relation to the Holt Renfrew shopping excursion.
- [75] The evidence of MH links Mr. Monteith to the killing of Mr. Coric through the involvement of Mr. Castello, and Mr. Frederick, his possession of cash, and timing of her interactions with him.
- [76] Their evidence becomes much more relevant, and highly probative, in the context of the other evidence in the case, such as the jail calls and the digital evidence.
- [77] The evidence of DD and MH is interwoven with abundant references to discreditable conduct, including drug dealing, possession of weapons, boasting about being a killer, the teardrop tattoo, boasting about having killed someone, wanting to be a gangster, being paid to kill someone, and so on.
- [78] All of this evidence has a high potential for prejudice.
- [79] Probative value relates to the degree or extent of relevance to the trial issues and the strength of the inference that can be drawn from the evidence: R.G.S. at para. 50.
- [80] The temporal connection between the discreditable conduct evidence and the charged offence may be taken into account in assessing its probative value. Even if events take place after the charged offence, the test remains whether the probative value of the evidence exceeds its prejudicial effect: R. v. Phan, 2020 ONCA 298 at para. 108.
- [81] Without appropriate, strong instructions, there is a very serious risk that the jury will engage in propensity reasoning, described in the authorities as "moral prejudice": Boden at para. 73; Bottomley at para. 32.

- [82] Reasoning prejudice includes the risk that the jury will be confused or distracted from the charge against the accused, and also the risk that the discreditable conduct may result in such condemnation or disgust by the jury so as to prevent it from assessing the evidence rationally and dispassionately: Bottomley at para. 31, citing Sipes at para. 32. As noted in Sipes, there is overlap between the two categories: at para. 61.
- [83] Although it is said that trial judges must decide whether the Crown has demonstrated that the probative value of the evidence exceeds or outweighs its prejudicial effect, the process is not that of weighing one consideration against the other, since they operate on different planes. Probative value of the evidence goes to proof of an issue, while prejudicial effect goes to fairness of the trial. As probative value advances, prejudice does not necessarily recede. "[T]he two weighing pans on the scales of justice may rise and fall together", even though they pull in opposite directions: R.G.S. at para. 51, quoting R. v. Handy, 2002 SCC 56 at paras. 148-149.
- [84] That is the case here. The evidence of both of these witnesses, and especially that of DD, has high probative value, and at the same time, substantial risk of prejudice.
- [85] In my view, the probative value of the evidence of DD and MH exceeds its prejudicial effect. Clear instructions to the jury will be required, probably as both mid-trial and final instructions.
- [86] In general, the potentially prejudicial aspects of their evidence cannot be segregated from the probative aspects.
- [87] An area of special concern relates to the shooting of DD on November 17, 2019, for which the accused was arrested on November 23, 2019 and charged with attempted murder. As noted, he was held in custody at NFPC following this, which is where he made the jail calls the Crown seeks to rely on at trial. The risk of prejudice in relation to these facts is high. For example, the jury would be tempted to engage in propensity reasoning, or reasoning prejudice resulting from condemnation and disgust concerning the behaviour of the accused. Moreover, as the defence argues, the fact Mr. Monteith shot DD may increase racial stereotype reasoning in the jury, such as the stereotype of the angry young Black male as being prone to violence. This is also a serious concern.
- [88] However, the jury will need to hear the evidence that the accused was charged with attempted murder in relation to a shooting that occurred after the shooting of Mr. Coric. This is essential to their understanding of the context and some of the content of the jail calls. The jury will need to know why the accused speaks in guarded, coded language and uses slang throughout the jail calls, the references to potential penalties, and the references to the first shooting, and the other one. If the jury must be told of the attempted murder charge, involving a shooting, there is not much gained by leaving out that the charge related to the shooting of DD. The shooting of DD also confirms aspects of DD's testimony, such as the accused's possession of a handgun. It confirms his access to guns and ammunition.

- [89] At the same time, it could be very difficult for DD, as with any lay witness, to follow instructions to omit a significant aspect of her evidence. Asking a witness to omit certain facts from their account of events can make it more difficult for them to give their evidence, and in some cases may unduly distort it: Sipes at paras. 83 and 400-404.
- [90] Moreover, DD is a key Crown witness, whose testimony can be expected to be vigorously challenged. The assessment of her credibility will be important. Omitting this part of her evidence may give the jury a distorted and unfair impression of her as a witness. For example, the jury may wonder how her evidence came to the attention of the police, and why she is giving evidence for the Crown in this case, especially in view of her own history of drug dealing, and criminal associations. (In fact, it may be that a Vetrovec warning will be required. This question has not yet been addressed.)
- [91] The Crown notes that in cross-examination the defence may suggest that DD's testimony is affected by animosity towards the accused. Her statements indicate that there was a considerable amount of conflict between them during the time he stayed with her. There may have been a disagreement between them about whether money was owed for drugs. The defence concedes that if animus towards the accused is suggested on cross-examination, then perhaps the witness could be permitted to give the omitted evidence. This is not a practical approach, especially in a jury trial, and may lead to questions among the jury members as to why this approach was taken.
- [92] The evidence that Crown seeks to adduce from DD is intertwined with her evidence about the history and nature of their relationship generally. Therefore that history and the nature of their relationship in general will be important to her evidence.
- [93] In summary, in my view attempting to omit the evidence of DD's shooting is likely to be unworkable, and is likely to cause problems at the trial, while only limiting the potential for prejudice to some degree.
- [94] Therefore, I am not directing that DD must omit evidence of the shooting.
- [95] However, the prejudicial aspects of her evidence (as with all of the DCE) should be limited to the extent reasonably possible.
- [96] While it is not possible to entirely omit the fact of the shooting of DD from the evidence, the evidence as to the surrounding facts relating to the shooting are unnecessary. The details surrounding the shooting itself are not essential to her evidence, and are prejudicial. Her account suggests that the shooting was unprovoked and senseless. Therefore the evidence of DD about the shooting itself should be very limited. An agreed statement of facts may be of assistance.
- [97] In addition, of course, suitable instructions to the jury will be required.

[98] The defence has indicated that they will likely seek to challenge potential jury members for anti-Black racial bias, and will seek anti-bias instructions. The Crown has indicated that it is unlikely to oppose these measures. These steps may help reduce the potential for prejudicial reasoning on the part of the jury.

B. The Jail Calls, and the Rap Lyrics

[99] As noted, the Crown relies on certain portions of up to 35 of the jail calls.

[100] The Crown proposes to play the audio recordings of portions of approximately 23 of the jail calls. Others could be adduced by way of transcripts, or admissions. The total length of the audio from the calls would be about 96 minutes.

[101] The defence opposes the admission of the jail calls. It argues that the calls are difficult to decipher, or indecipherable, contain significant amounts of slang, and in general, are very difficult to understand. Therefore, the defence questions the probative value of the evidence, while pointing to significant prejudicial effects of the admission of the jail calls. The defence argues that the calls contain inflammatory language that would distract the jury, as well as possibly triggering stereotypical thinking and racial bias against Mr. Monteith as a Black man.

[102] The defence argues, alternatively, that the jury does not need to hear the audio recordings of the jail calls. The jury could be given transcripts in some cases, or material points could be the subject of admissions.

[103] I heard significant portions of the audio recordings during this voir dire. They are, as the defence notes, often very difficult to understand. Agreed transcripts are helpful. Interpretation of the slang is necessary. However, although the task may not be easy, and despite the cryptic, coded, guarded, and apparently deliberately vague nature of the statements, and the difficulties associated with deciphering and interpreting their contents, when set against the other evidence in this case, the admissions that the Crown argues for arising from the jail calls are open to the jury to find.

[104] On the Crown's interpretation (which as I said the jury may choose to accept), the contents of the jail calls are highly probative. I accept the Crown's submission that some of the jail calls may be admissions. They help establish major parts of the Crown's case, such as that Mr. Monteith was motivated to kill for money, and did so, very shortly after being released from parole. As the Crown says, the jail calls can link Mr. Monteith specifically to the Coric killing. The links include Trion Castello's role in the murder of Mr. Coric, as the driver of the Toyota, the association with Mr. Castello, during and after the shooting, and the timing of the killing. The Crown contends that the jail calls establish that Mr. Monteith did the killing with "Smitty" (Castello), who was behind the wheel, and was paid \$10,000 by him of the \$60,000 that he had. They popped champagne ("Dom") and went shopping the next day.

- [105] In addition, the jail calls link with and give support to other evidence in the case, most notably, the evidence of DD. Also, to Mr. Monteith's references to being a hitman in his social media posts, and text messages. The jail calls refer to some specific aspects of the Coric killing, such as rapping about killing someone with hollow points, and running up to someone with a gun (the shooter ran up to Mr. Coric's vehicle before shooting him); having a gun in his hand and having a black mask on, and it being executing time when he has a gun in his hand, and there will be headshots (the shooter of Mr. Coric had a mask on and Mr. Coric was shot in the head). Photographs on Mr. Monteith's social media posts depict a collage of items including Dom Perignon champagne, what may be drugs, items referred to in the Holt Renfrew receipt and in his calls (the designer brand shoes), several large wads of cash, and a handgun, as well as the accused posing with large wads of cash, and several photos of him holding a handgun, in a menacing manner.
- [106] As the defence argues, the calls contain inflammatory language, and may engender negative stereotypical reactions and prejudicial thinking. The calls are laced with profanity, and contain many references apparently glorifying guns, violence, drugs and criminal lifestyles.
- [107] As noted, central issues at trial will be what Mr. Monteith meant by the statements in the jail calls, and whether the references were to real facts, or are merely boasting, bragging, fictional, or fantasies of some sort. Also, if the statements can be accepted as real, whether they relate to the killing of Mr. Coric.
- [108] Although presenting the jail calls via transcripts or admissions can help to ameliorate the inflammatory nature of the calls, and in many cases the Crown is prepared to do so, in my view, in order for the jury to fairly decide these important questions, the jury must hear for itself a substantial portion of the jail call recordings. It is essential that the jury hear and assess the accused's own spoken voice, words, tone, and emotions, in connection with the specific admissions and related statements the Crown relies on. As noted, admissions may consist of demeanour: *Schneider* at para. 57. The cases recognize that it may not be possible to sanitize the Crown's case: *Sipes* at para. 366; *Bottomley* at paras. 40-41.
- [109] As with the evidence of DD and MH, the potential for prejudice of this evidence is substantial, but the probative value of the evidence is so high that it outweighs the potential for prejudice.
- [110] I conclude that the jail calls are admissible, including the audio recordings, to the extent reasonably necessary for the jury to fairly decide the issues.
- [111] I turn to consideration of the rap lyrics, which are embedded in the jail calls.
- [112] As I noted in *Nguyen* at para. 38, the mere fact that an artist records a rap song with lyrics that refer to drugs, guns, violence and the like cannot be taken as an admission that the artist was involved in such activities.

- [113] However, courts have admitted such evidence where there is a significant nexus between the lyric tendered for admission and the subject matter of the charge: *Nguyen* at para. 42, *R. v. Skeete*, 2017 ONCA 926 at para. 187; *R. v. Mills*, 2019 ONCA 940 [*Mills*] at para. 122.
- [114] In *Mills*, the Court accepted that courts must be alive to the risk that the admission of rap lyrics may trigger or inflame stereotypical assumptions about race and culture, and that this concern is a factor that must be taken into account in determining the probative value of rap lyrics and any prejudice that may flow as a result of admission.
- [115] In this case, there are many references in the rap lyrics connecting them to the subject matter of the charge, especially in the context of all of the other evidence.
- [116] As with the jail calls and the evidence of DD, and the digital evidence, the rap lyrics may be seen as admissions that the accused killed someone for money. The recent killing of Mr. Coric and the nature of that killing (as a probable drug gang related execution, and the specifics of the shooting) when combined with the other evidence in the case provides a strong connection between the rap lyrics and the facts of the charge alleged.
- [117] Specifics include references to "Ima wipe his nose"; "Did it for a bag that was needed"; "I got hollow shells in this nine bitch"; "Certified hitter"; "I'm an assassin and I turned him into a Casper"; "Blood money all my racks"; "Christian Louis Vuitton with spikes"; "P226 filled with hollow tips"; "slither gang hitter"; "see me in a black mask"; "I got this strap"; "see gun in my hand"; "executing time"; "headshot". (The Crown says "spikes" actually refers to Christian Louboutin brand shoes decorated with spikes, of the type purchased at Holt Renfrew the day after the murder.)
- [118] In my view, the rap lyrics are highly probative, in relation to the same issues as the jail calls generally. As to their potential for prejudice, their content is not too different from that of the other evidence, including the other parts of the jail calls, the DD evidence, and the digital evidence. So for example this evidence carries with it similar risks of stereotypical and racially biased thinking as with much of the other evidence. The risk of prejudice is generally similar to that of the other evidence in the case, except that as a form of artistic expression, the rap lyrics carry a particular risk of being misused. The jury must be instructed that forms of artistic expression such as this may be fictional.
- [119] I conclude that the rap lyrics are admissible, with appropriate cautions to the jury.

C. The Digital Evidence

- [120] Aspects of the digital evidence may also be seen as DCE, such as images or references to guns and cash, and to gangs and murder. The risk of prejudice is similar to that of the other evidence.

[121] However, the evidence is highly probative, as it supports the other evidence in the case, emanates directly from the accused himself, and may be seen as admissions as to several of the Crown's factual allegations. I conclude that the evidence is admissible, subject to the pending defence application.

D. The Teardrop Tattoo

[122] The tattoo strongly aligns with the evidence of DD, a key Crown witness, and supports DD's credibility as a witness. I accept that the Crown will likely establish that the accused obtained the tattoo during the October to November time frame, thus matching the timing of the Coric killing. The Crown argues that the tattoo is further evidence going to motive, namely, that the accused wanted to be a killer (and was proud of the fact that he had become one), and is evidence that he had recently killed someone, thus aligning with the timing of the Coric murder, and the key issue in this case, the identity of the accused as the killer. The Crown argues that evidence of the tattoo is intertwined with evidence that the Crown says are admissions of the accused that he participated in the contract killing of Mr. Coric.

[123] The defence argues that the probative value of the tattoo is doubtful. Among other things, it contends that such tattoos are fairly common in prison culture. There is no way to know whether the tattoo is just bravado, or what act the tattoo could relate to. It could even signify a loss suffered by Mr. Monteith.

[124] Standing alone, of course, the tattoo would not be strong evidence of anything much. However, I accept the submissions of the Crown that in the context of the other evidence in the case, the tattoo is potentially highly probative.

[125] In context, the potential for prejudice of this evidence is not very high, as it is similar in character to much of other evidence. As with much of the other evidence, appropriate cautionary instructions to the jury will be required.

E. The List

[126] The Crown contends that the List is relevant to the accused's intentions (to kill people on the List) and his motive (to be a hitman) which points to him being the killer of Mr. Coric, whose initials are among the names on the List. The Crown contends that the List is probative of the main issue at trial, identity.

[127] The defence contends that it is dangerous speculation to suggest that the List is in fact a hit list, and this would be contrary to other evidence. The defence contends that the initials "K.C." could relate to many persons other than Mr. Coric. The previous voir dire evidence suggested that some of names on the list were UN gang members, which contradicts the idea that the accused wanted to be a killer for the UN gang.

- [128] I agree with the defence that on the state of the evidence available to me on this voir dire, the reference to "K.C." on the List as a potential target could be nothing more than a coincidence. The evidence the Crown relies on is that Jahrel Frederick ("D"/Dave/Jaden) set up the hit, but then went back to prison. There is no evidence of a prior connection between the accused and Mr. Coric, or of planning the killing preceding the release of the accused from parole days before the murder. The List was found August 16, 2019, well before the murder. The Crown may or may not argue that "K.C." means Mr. Coric, or that the List is an actual list of people that the accused wanted to kill. However, these are considerations going to weight, and are for the jury to decide.
- [129] Nevertheless, threshold relevance for admission of the evidence is met. As a minimum, as the Crown contends, it supports the Crown's theory that the accused wanted to be a hitman. Thus, it is relevant to motive, and, along with other similar evidence of this nature, to identity.
- [130] The List is merely one more item of evidence in this respect.
- [131] In my view, the probative value of the List is not high, but in the unique circumstances of this case, I am not persuaded that admission of the List would cause a significant risk of prejudice. The disreputable conduct that the List carries is that the accused prepared such a list, which glorifies gang killings, and indicates his desire to be a contract killer for a drug gang. In the context of the other admissible evidence, much of which is of a similar nature, this does not add very much. Therefore the List is admissible, and of course the weight if any the jury chooses to give to it will be for it to decide.

F. Custodial History

G. Access to Firearms and Ammunition

H. Illicit Drug Activities

- [132] These categories of evidence may be dealt with together.
- [133] As noted, in general, the defence does not categorically oppose admission of these categories of evidence. Indeed, as to custodial history and drug activities, the defence itself may be relying on this evidence.
- [134] Efforts have already been made to limit the scope of the evidence, and to limit its prejudicial effects, and further efforts may be necessary. However, in general, the evidence is admissible.

- [135] The Crown acknowledges the concern about the quantity of DCE, in relation to the cumulative effect of admitting multiple pieces of DCE, or of "piling on". It is however difficult to avoid what may be seen as "piling on" in the circumstances of this case, where the Crown's case is based very largely on DCE. Nevertheless, the court must be careful not to admit more DCE than is necessary. The court may exclude evidence with some probative value where less prejudicial evidence could provide a similar benefit: Bottomley at para. 36.
- [136] I invite counsel to continue to explore ways to limit the potential for prejudice of the abundant DCE in this case. I remain open to considering any specific aspects of the evidence that might be unnecessary.

"Verhoeven J."

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