
CANADA / JUDGMENT

R. v. Rana

2018 BCSC 294

COURT

Supreme Court of British Columbia

DECIDED

5 February 2018

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2018 BCSC 294 R. v. Rana

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Rana,

2018 BCSC 294

Date: 20180205

Docket: 27231-2

Registry: Vancouver

Regina

v.

Saeed Mobeen Rana

Restriction on Publication: A publication ban has been mandatorily imposed under s. 486.5 of the Criminal Code restricting the publication, broadcasting or transmission in any way of information that could identify a victim or witness referred to in this judgment by initials. This publication ban applies indefinitely unless otherwise ordered.

Before: The Honourable Mr. Justice Pearlman

Oral Reasons for Judgment

Counsel for the Crown:

D.Y.D. Sim

J.C.A. Pellerin

Counsel for the Accused:

K. Pechet

Place and Date of Trial:

Vancouver, B.C.

November 27, 28, 29, 30, 2017

and

December 4, 5, 7, 11, 12, 15, 2017

Place and Date of Judgment:

Vancouver, B.C.

February 5, 2018

Table of Contents

BACKGROUND FACTS. 3

POSITIONS OF THE CROWN AND DEFENCE. 5

The position of the Crown. 5

The position of the accused. 6

The legal framework. 7

The offence of attempted murder 7

Proof beyond a reasonable doubt 9

Credibility and reliability. 10

Vetrovec witnesses. 11

Circumstantial evidence. 13

Co-principals. 14

THE EVIDENCE. 15

Eye witnesses evidence. 15

Evidence of witness A. 15

Evidence of witness B. 16

Evidence of Kulwinder Sidhu. 17

Confirmatory video evidence. 18

Evidence of Brenna McLaud. 19

Evidence of Constable Molnar 20

Evidence of witness C. 20

Evidence of David Mak, Security Specialist with Rogers Communications. 29

Evidence of witness C, continuation. 30

Evidence of Kevin Westell 31

Evidence of witness D. 33

ANALYSIS. 37

Count 1. 37

Count 2. 41

Count 3. 42

RESULT. 42

[1] THE COURT: The accused, Saeed Mobeen Rana, stands charged that:

Count 1

Saeed Mobeen Rana, on or about the 4th day of April, 2016, at or near Surrey, in the Province of British Columbia, did, using a restricted or prohibited firearm, attempt to commit the murder of [witness A] by shooting him, thereby wounding him, contrary to Section 239(1)(a) of the Criminal Code.

Count 2

Saeed Mobeen RANA, on or about the 4th day of April, 2016, at or near Surrey, in the Province of British Columbia, did possess a loaded prohibited or restricted firearm, to wit: a handgun, without being the holder of an authorization or licence under which he may possess the firearm in that place and a registration certificate for the firearm, contrary to Section 95(1) of the Criminal Code.

Count 3

Saeed Mobeen RANA, on or about the 4th day of April, 2016, at or near Surrey, in the Province of British Columbia, did occupy a vehicle knowing there was a prohibited firearm, restricted firearm or non-restricted firearm, prohibited weapon, prohibited device other than a replica firearm, or prohibited ammunition, to wit: a handgun, in the vehicle, contrary to Section 94(1) of the Criminal Code.

- [2] The principal issues are whether the Crown has proved beyond a reasonable doubt the identity of the accused as a participant in the events of April 4, 2016, and if so, whether the accused had the specific intention to kill when he discharged his firearm.

BACKGROUND FACTS

- [3] By way of background, shortly before 2:00 p.m. on April 4, 2016, witness A, a 19-year-old university student, suffered a gunshot wound to his left thigh while he sat in his father's black BMW sedan at the side of the road in a residential neighbourhood in Surrey, British Columbia. Witness A had no connection with his assailants.
- [4] Not long after he had left his home for university, witness A pulled over to the north side of the road facing west in the 8600 block of 86A Avenue in Surrey. A black SUV pulled up parallel to his vehicle, about 1.5 metres away, also facing west. Witness A saw a person, whose face was largely masked by a dark bandana, in the front passenger side of the SUV. He saw the front and rear passenger side windows roll down and observed one gun at each of the two windows. He recalled seeing three persons in the SUV. Shots were fired. Witness A took cover until the shooting stopped. He estimated the gunfire continued for 30 seconds.
- [5] After the shooting stopped, the black SUV drove west on 86A Avenue toward 140th Street. Witness A left the BMW and initially headed east. However, he returned to the BMW to retrieve a marihuana grinder from the vehicle's trunk. While he was doing so, a white four-door sedan with tinted windows approached him from the east. The white sedan slowed as it approached witness A, and the driver, who witness A described as an East Indian male in his twenties, asked witness A if he had been shot. The white sedan then proceeded west on 86A Avenue. Witness A testified the driver was the sole occupant of the white sedan.
- [6] When the police attended, they found broken glass, five spent .45 automatic calibre shell casings, two unfired .45 automatic calibre cartridges, and various bullet fragments. In the same area, the police also seized the gun barrel and slide of a .45 automatic calibre Glock model 21 handgun, and springs and an ejector compatible with that make and model of handgun. The police investigation also revealed 16 bullet holes in the black BMW at various locations, ranging from the hood and driver's side front quarter panel, through the driver's door and driver side rear door and rear window. Both the front driver and passenger's side windows had been shattered. The police also found two bullet holes in the fences of the property adjacent to the location on 86A Avenue where witness A had stopped his vehicle. In addition, the police located and seized two discharged 10 millimetre or .40 calibre bullets from the interior of the BMW. However, they found no 10 millimetre or .40 calibre shell casings.
- [7] The police also seized the bullet surgically removed from witness A's thigh at Royal Columbian Hospital. Mr. Christopher Kerr, the Crown's expert in forensic firearms analysis, was unable to determine the calibre of that bullet.

- [8] On April 6, 2016, witness C, a 21-year-old career criminal, was arrested in possession of a loaded .22 calibre handgun and 4.5 ounces of cocaine. In June 2016, witness C began to cooperate with the police, and provided a series of statements to the RCMP during June and July of that year. Witness C later entered into a plea and a limited immunity agreement, by which he received immunity from prosecution for offences related to his arrest on April 6, 2016, and from prosecution for the attempted murder of witness A.
- [9] Pursuant to the limited immunity agreement, witness C entered guilty pleas to one count of discharging a firearm with intent to wound, contrary to s. 244(1) of the Criminal Code, R.S.C. 1985, c. 46, and one count of using a firearm during the commission of an aggravated assault, contrary to s. 85 of the Code. In exchange for his services as an agent for the RCMP and his agreement to provide truthful testimony consistent with his statements to the police, the limited immunity agreement provides for payments of financial benefits to witness C, at the discretion of the RCMP, of up to \$100,000.
- [10] The Crown relies on the evidence of witness C to identify Mr. Rana as an occupant of the black SUV on April 4, 2016, and as the person who possessed and fired the .45 calibre Glock 21 handgun at witness A.
- [11] The Crown also relies on the testimony of witness D, a former drug user and low-level dial-a-dope line worker. Witness D, who was an unarmed passenger in the black SUV on April 4, 2016, identified Mr. Rana, who he knew as "Hardy", as a participant in the shooting, along with witness C, and Mr. John Cullen, the driver of the black SUV.

POSITIONS OF THE CROWN AND DEFENCE

- [12] I turn now to the positions of the Crown and the defence.

The position of the Crown

- [13] The Crown says that in the spring of 2016, Mr. Rana was a leader of a group of drug traffickers engaged in an escalating conflict with a rival group. It is admitted that on March 29, 2016, five shots were fired at the home of the accused's mother and siblings.
- [14] On the afternoon of April 3, 2016, another incident occurred at the intersection of 88th Avenue and 132 Street in Surrey, where shots were fired at a grey Nissan Altima vehicle bearing British Columbia licence plate CJ764G. It is admitted that on March 29, 2016, the accused was issued traffic violation tickets while seated in the driver's seat of that vehicle. The Crown invites the court to infer that Mr. Rana was the driver of the Nissan Altima and the target of the April 3, 2016 shooting.
- [15] The Crown submits these events gave the accused a motive to seek revenge against members of the rival group. Relying on the testimony of witness C and witness D, the Crown contends that the accused, and his associates, Cullen and witness C, set out on April 4, 2016, seeking to lure members of the rival group to a meeting, under the pretext that they wanted to buy drugs. On the Crown's theory, Rana, Cullen, and witness C all took part in the shooting of

witness A when they mistook the black BMW for the vehicle they expected to meet at or near the intersection of 86A Avenue and 140 Street. To support its position that the accused, witness C, and Mr. Cullen were all together at the relevant times on April 4, 2016, the Crown also adduced cellular telephone tower and call detail records, and witness D's testimony.

The position of the accused

- [16] The defence submits the Crown has failed to establish beyond a reasonable doubt the identification of Mr. Rana as an occupant of the black SUV at the time of the shooting on April 4, 2016, or that the accused possessed and discharged a loaded firearm at the relevant time. The defence also argues that if Mr. Rana discharged a firearm, the Crown has failed to demonstrate that the weapon he fired wounded witness A. Further, the defence submits the Crown has not met its burden, on the charge of attempted murder, of proving beyond a reasonable doubt that the accused had the specific intention to kill the occupant of the black BMW.
- [17] The defence says the evidence establishes that witness C and John Cullen worked together in the drug trade and were enforcers who readily resorted to violence, including the use of firearms, to enforce the rules of that trade. The defence theory is that on April 4, 2016, witness C and Cullen organized and carried out the shooting as an intended reprisal after Rana had informed witness C on the evening of April 3, 2016, about the shooting incident earlier that afternoon. According to the defence theory, following his arrest on April 6, 2016, witness C, who was facing serious charges and was disappointed that Rana had ceased to communicate with him, responded to police overtures and agreed to provide evidence against Mr. Rana in return for the limited immunity agreement. The defence contends that witness C's testimony minimizes his own responsibility and attributes much of what he did on April 4, 2016 to Mr. Rana.
- [18] The defence contends there are material inconsistencies between the testimony of witness C and witness D's account of the events of April 4, 2016. The defence says that witness D's testimony provides no comfort to the court that witness C can be trusted in his assertion that the accused committed the offences charged.
- [19] The defence also argues that the preponderance of reliable evidence points to two, rather than three guns at the scene. In making this submission, the defence relies on the evidence of witness A, who observed two guns; the testimony of Mr. Kulwinder Sidhu, a resident of the neighbourhood who heard two short bursts of gunfire; and Christopher Kerr's acknowledgment that the forensic evidence was consistent with two guns.

The legal framework

The offence of attempted murder

- [20] The Crown must prove beyond a reasonable doubt that the accused, using a restricted or prohibited firearm, attempted to commit the murder of witness A on April 4, 2016.
- [21] Section 239(1) provides that every person who attempts by any means to commit murder is guilty of an indictable offence.
- [22] Section 24(1) and (2) of the Criminal Code state:

Attempts

24 (1) Every one who, having an intent to commit an offence, does or omits to do anything for the purpose of carrying out the intention is guilty of an attempt to commit the offence whether or not it was possible under the circumstances to commit the offence.

Question of law

- (2) The question whether an act or omission by a person who has an intent to commit an offence is or is not mere preparation to commit the offence, and too remote to constitute an attempt to commit the offence, is a question of law.
- [23] The mens rea for attempted murder is the specific intent to kill: *R. v. Ancio*, [1984] 1 S.C.R. 225.
- [24] In *R. v. Ali*, 2015 BCSC 2034, Justice Holmes succinctly set out the elements of the offence of attempted murder at paras. 25 to 27:
- [25] The offence of attempted murder always requires proof beyond a reasonable doubt of a specific intent to kill, as the mental element of the offence . . . This requirement places the offence of attempted murder in contrast to the offence of murder, which may be committed where, for example, the accused did not specifically intend to kill but meant to cause bodily harm that he or she knew was likely to cause death and was also reckless whether death ensued or not . . . A specific intent to kill is always the necessary mental element for the offence of attempted murder.
- [26] It is not necessary for the accused person to have set out to kill. If his or her intention was initially different but changed to an intention to kill, even if only for a brief time, that intent will suffice to establish the mental element, so long as it coincides with the physical element . . .
- [27] The physical element for the offence of attempted murder consists of any act done by the accused person to fulfill his or her intention to kill, so long as that act is beyond mere preparation: *Ancio* at para. 30.

[25] In appropriate circumstances, the specific intent to kill may be established through the common sense inference that persons intend the natural and probable consequences of their actions. In *R. v. M.A.A.*, 2012 BCCA 402, at para. 7, the Court, in the course of dismissing an appeal from convictions on one count of second degree murder and two counts of attempted murder, cited the following passage from the reasons of the trial judge:

The judge began his analysis of the Crown's case of attempted murder with the recognition that it is difficult to prove. He then reviewed what is required in law to establish the requisite intent:

[115] The law generally allows a trier of fact to infer, however, that sane and sober persons intend the natural and probable consequences of their actions. Thus, if a person acts in such a way as to produce predictable consequences it may generally be inferred that he intended those consequences . . .

[116] Applying that principle to the use of handguns, it may ordinarily be inferred that a person who fires such a weapon from close range at a vital portion of the body of another person intended to kill that person. Thus, in *R. v. Bains . . . Cory*, JA (as he then was) said at page 5:

All firearms are designed to kill. A handgun is a particularly insidious and lethal weapon. It is easy to carry and conceal, yet at close range, it is every bit as deadly as a .50 calibre machine gun. It follows that when, at close range, a handgun is pointed at a vital portion of the body of the victim and fired, then in the absence of any explanation the only rational inference that can be drawn is that the gun was fired with the intention of killing the victim. No other reasonable conclusion can be reached: a deadly weapon was used in the very manner for which it was designed - to cause death. It is appropriate to conclude that in these circumstances the gun was fired in order that it might fulfill its design function and kill. An element of surprise arises only if death does not occur.

Proof beyond a reasonable doubt

[26] Mr. Rana is presumed innocent. The Crown, at all times, bears the burden of proving all essential elements of each offence beyond a reasonable doubt.

[27] A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense and is logically derived from the evidence or absence of evidence. Even if I believe the accused it is probably guilty, or likely guilty, that is not sufficient. In those circumstances, I must give the benefit of the doubt to the accused and acquit because the Crown has failed to satisfy me of the guilt of the accused beyond a reasonable doubt: *R. v. Lifchus*, [1997] 3 S.C.R. 320 at paras. 36 to 39.

[28] Although the Crown must prove each element of an offence beyond a reasonable doubt, "proof beyond a reasonable doubt does not apply to the individual items of evidence or the separate pieces of evidence in the case, but to the total body of evidence upon which the Crown relies to prove guilt": *R. v. Morin*, [1988] 2 S.C.R. 345 at para. 49.

Credibility and reliability

[29] The trier of fact may accept some, all, or none of a witness's testimony: *R. v. Langlet*, 2013 BCSC 2274 at para. 46, citing *R v. Mathieu*, 90 C.C.C. (3d) 415, (Que.C.A.) aff'd [1985] 4 S.C.R. at para. 61.

[30] As Justice Watt, for the Court, explained in *R. v. H.C.*, 2009 ONCA 56, at para. 41:

Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately

i. observe;

ii. recall; and

iii. recount

events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence . . .

[31] In *Langlet*, the Court provided a helpful summary of the factors bearing on the assessment of a witness's credibility at paras. 28 and 31:

28 The accepted factors that bear on credibility include internal consistency of a witness's testimony, consistency over time, corroboration or external consistency with other evidence, any interest the witness may have in testifying including motive to lie, whether the witness is independent, the presence or absence of an oath or affirmation, and prior criminal convictions where relevant.

. . .

31 I note that the consistency of a witness's testimony is an important factor in an analysis of the credibility of a witness, both internally and externally. Can the witness provide the same account at different times? Can the witness provide consistent answers as he or she is asked questions about portions of their testimony or particular aspects of it? Similarly, is a witness's testimony externally consistent? Do aspects of the witness's testimony correspond with testimony of other witnesses (absent evidence of collusion) or other real evidence? Is the account provided by the witness a plausible one? Does it accord with common sense?

[32] Further, as Justice Voith stated in *R. v. Paterson*, 2017 BCSC 536, at para. 118, another element in assessing credibility is whether a witness has a motive to lie. A witness who receives financial benefits for his testimony or has received immunity or a reduced charge in exchange for cooperation with the police may have a motive to lie: *Langlet* at para. 39; *R. v. Malik and Bagri*, 2005 BSCS 350 at para. 671.

Vetrovec witnesses

- [33] Witness C and witness D are both Vetrovec witnesses whose testimony must be approached with caution.
- [34] In cautioning jurors concerning the risk posed by relying on the evidence of an unsavoury witness, trial judges provide a Vetrovec instruction which incorporates the following essential elements:
- 1) drawing the attention of the jury to the testimonial evidence requiring special scrutiny;
 - 2) explaining why this evidence is subject to special scrutiny;
 - 3) cautioning the jury that it is dangerous to convict on unconfirmed evidence of this sort, though the jury is entitled to do so if satisfied that the evidence is true; and
 - 4) explaining that the jury, in determining the veracity of the suspect evidence, should look for evidence from another source tending to show that the untrustworthy witness is telling the truth as to the guilt of the accused.
- See *R. v. Khela*, [2009] 1 S.C.R. 104 at para. 37; *R. v. Kehler*, [2004] 1 S.C.R. 328 at paras. 17 to 19.
- [35] No particular category of witness requires a Vetrovec caution. However, where the court concludes the jury should be cautioned, it should provide a clear and sharp warning to attract the attention of the triers of fact to the risk of adopting, without more, the evidence of the witness: *Khela* at paras. 5 and 6; *R. v. Vetrovec*, [1982] 1 S.C.R. 811, at p. 831.
- [36] Confirmatory evidence will be independent and material. Confirmatory evidence will be independent where it is not tainted by connection to the Vetrovec witness: *Khela* at para. 39.
- [37] In order to be material, confirmatory evidence need not implicate the accused: *Khela* at paras. 40 to 41; and *Kehler* at paras. 15 to 16.
- [38] Viewed in the context of the case as a whole, the items of confirmatory evidence should give comfort to the trier of fact that the witness can be trusted in his or her assertion that the accused is the person who committed the offence: *Khela* at para. 42.
- [39] Where the only issue in dispute is whether the accused committed the offence, the evidence, to be confirmatory, must comfort the trier of fact that the Vetrovec witness is telling the truth in that regard: *Khela* at para. 43.
- [40] A trier of fact is entitled to convict on the evidence of the disreputable witness on disputed facts that are not otherwise confirmed if the trier of fact, having been cautioned concerning the danger of doing so, is satisfied, on the whole of the evidence, that the witness is telling the truth: *Kehler* at para. 22, and *Khela* at para. 37.
- [41] Absent evidence of collusion, one Vetrovec witness can confirm the evidence of another Vetrovec witness: *R v. McCann*, 2013 BCCA 69 at para. 9.

Circumstantial evidence

[42] Where one or more elements of the offence depends exclusively or largely upon circumstantial evidence, the trier of fact must be satisfied beyond a reasonable doubt that the guilt of the accused is the only reasonable inference that may be drawn from the evidence.

[43] In *R. v. Villaroman*, 2016 S.C.C. 33, Justice Cromwell, for the court, in discussing the relationship between proof by circumstantial evidence and proof beyond a reasonable doubt, stated at paras. 36 to 38:

36 I agree with the respondent's position that a reasonable doubt, or theory alternative to guilt, is not rendered "speculative" by the mere fact that it arises from a lack of evidence. As stated by this Court in *Lifchus*, a reasonable doubt "is a doubt based on reason and common sense which must be logically based upon the evidence or lack of evidence" . . . A certain gap in the evidence may result in inferences other than guilt. But those inferences must be reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.

37 When assessing circumstantial evidence, the trier of fact should consider "other plausible theor[ies]" and "other reasonable possibilities" which are inconsistent with guilt . . . I agree with the appellant that the Crown thus may need to negative these reasonable possibilities, but certainly does not need to "negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused" . . . "Other plausible theories" or "other reasonable possibilities" must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.

38 Of course, the line between a "plausible theory" and "speculation" is not always easy to draw. But the basic question is whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty.

[44] Ultimately, the trier of fact must be satisfied that the accused's guilt is the only reasonable conclusion available on the totality of the evidence: *Villaroman* at para. 55.

Co-principals

[45] Section 21(1) of the Code provides that everyone is a party to an offence who:

- 1) actually commits it;
- 2) does or omits to do anything for the purpose of aiding any person to commit it; or
- 3) abets any person in committing it.

[46] A party to the offence of attempted murder must possess the specific intent to kill: *R. v. Logan*, [1990] 2 S.C.R. 731 at para. 43.

[47] Where two or more persons jointly participate in an offence, with the requisite intent, they will all be guilty as joint principal offenders under s. 21(1)(a).

[48] Where co-perpetrators or principals engage in a deadly assault, the Crown need not prove which of the attackers struck the fatal blow or blows: *R. v. Ball*, 2011 BCCA 11 at para. 28.

[49] In upholding the convictions for manslaughter for two appellants who had participated in a group attack on their victims, the court in *Ball* held, at para. 30:

30 . . . Both men were attacked at the same time by a group of individuals after they left the pub. The trial judge found that the group that attacked the Johnston brothers consisted of members of the Woolnough party. It matters little that each attacker did not lay a hand on each person assaulted. What matters is that all played a part in the attack, whether it was striking one brother or the both of them. In such a case the blow of one is the blow of them all.

[50] Here, the Crown submits that the accused, Mr. Cullen, and witness C acted in concert in arranging to ambush members of a rival drug trafficking group, and that all three shot at witness A with the intention of killing him. If all three participated in the shooting, it does not matter which of them fired bullet that struck witness A.

THE EVIDENCE

Eye witnesses evidence

[51] I turn now to the evidence, beginning with the evidence of the eyewitnesses witness A, his father, witness B, and Mr. Kulwinder Sidhu.

[52] In considering the eyewitness evidence, I do bear in mind the frailty of eyewitness evidence and the caution one must always exercise regarding its reliability, particularly where the witness is either the victim or a close observer of violent or otherwise traumatic events.

Evidence of witness A

[53] I have already touched upon the evidence of witness A. He testified that shortly after he left his home on April 4, 2016, he had stopped on the north side of 86A Avenue facing toward 140th Street. Shortly after he did so, he noticed a black van or SUV, I should say, pull up on his left side and about one and a half metres away. He described the black SUV as being a higher vehicle than his vehicle. When he first looked, he saw the windows rolled down and saw one gun pointing at him from each of the front and rear passenger side windows of the vehicle. He took cover as the shots were fired. Witness A estimated that the shooting lasted for maybe 30 seconds. After the shots stopped, he initially ran east back in the direction of his home, but later returned to his vehicle to retrieve the marihuana grinder from the trunk, which he was reluctant for his parents to find.

- [54] Witness A was unsure of how many shots were fired. He estimated the number in double digits. After the shooting stopped, he saw the black SUV take off, heading west on 86A Avenue toward 140th Street.
- [55] Shortly thereafter, another vehicle, a four-door white sedan, approached him and the driver, an East Indian male in his early 20s, inquired whether witness A had been shot. The white sedan then headed off to the west on 86th Avenue.
- [56] Witness A had sent a text message to a friend at 1:46 p.m. on April 4, 2016, while he was in the black BMW at the side of 86A Avenue. He also called 9-1-1 at 1:56 p.m. He identified those communications when he was shown his cellular telephone log. That evidence establishes that the shooting occurred sometime between 1:46 and 1:56 p.m. on the afternoon of April 4, 2016.
- [57] Witness A testified in both his direct and cross-examination that, not surprisingly, he was in something of a shock following the traumatic event of April 4, 2016. That afternoon, he gave several statements to the police in which he made statements to the effect that "if they", meaning the occupants of the black SUV, "had really wanted to, they could have shot me in the head."
- [58] That is a single piece of evidence relating to the intentions of the occupants of the van. However, it is an observation made by the victim of a very traumatic event within hours of the shooting taking place. There is evidence in this case, to which I will refer in some detail in the course of my reasons, that multiple rounds were fired; that seven of those rounds struck the driver's side door of the black BMW; that the driver's side window was shattered; and that the police retrieved a bullet fragment from the front passenger's seat at a point just below the headrest. It will be necessary to consider all of that evidence in making any determination or drawing any inference with respect to the intent of those who fired at witness A.
- [59] Finally, witness A gave evidence that he could not see the driver and that the most that he could say was that there were three people in the SUV.

Evidence of witness B

- [60] Witness A's father, witness B, testified that on the afternoon of April 4, 2016, he was at home when his son left to go to university. While he was watching television, he heard a series of pops or bangs. Shortly afterwards, witness A came running and told witness B that he had "got shot at". Witness B also gave evidence that he accompanied witness A back to the black BMW, which had rolled from the point where the shooting occurred to a location near the intersection of 86A Avenue and 140th Street. Witness B also observed the multiple bullet holes in the vehicle and the shattered glass. He also said that he saw bullets or cartridges on 86A Avenue, but did not touch anything.

Evidence of Kulwinder Sidhu

- [61] Kulwinder Sidhu was a neighbourhood resident who had an unobstructed view looking west on 86A Avenue from the living room of his home. He was a witness who carefully recounted his observations and impressed me as doing his best to provide a reliable account of what he heard and observed on April 4, 2016.
- [62] Mr. Sidhu testified that around 2:00 p.m. on that date, he heard two short bursts of gunfire, which he likened to automatic gunfire. Mr. Sidhu looked out his living room window where he saw a young man in dark shorts and T-shirt on 86A Avenue. He said this individual was running toward his home. He observed a white car make a U-turn at the intersection of 141 Street and 86A Avenue, and then proceed west on 86A where it stopped for a second when it drew alongside the young man who was in the roadway. Mr. Sidhu described the white vehicle as a white four-door sedan, which he thought was a Dodge Intrepid. Mr. Sidhu also saw the driver of the white car, who he said was a young male with dark skin and a distinct haircut. He estimated his age at 20 to 25 years.
- [63] Mr. Sidhu, after making these observations, went upstairs and called 9-1-1.
- [64] In cross-examination, Mr. Sidhu described the duration of the gunshots as very brief. He thought each burst lasted for a second or two and that the total period of gunfire was less than five seconds. He repeated that there were two separate bursts.

Confirmatory video evidence

- [65] The evidence of Mr. Sidhu and witness A and, as we shall see, also the evidence of witness C and witness D, concerning the presence of the white four-door sedan at and near the scene of the shooting shortly after the shooting took place is confirmed by video surveillance evidence. The Crown entered video surveillance seized by the police from a residence located at 8651 141st Street. That video footage depicts events between 1:00 p.m. and 2:15 p.m. on April 4, 2016, and also depicts the intersection of 141st Street and 86A Avenue.
- [66] The video shows that at approximately 1:54 p.m., a dark SUV travelled north on 141st Street and turned west on 86A Avenue. It also shows that at 1:55 p.m., a white four-door sedan made a U-turn from travelling eastbound to westbound on 86A Avenue.
- [67] The police also seized video surveillance evidence from the Gurdwara Sahib Brookside facility located at 8365 140th Street in Surrey, British Columbia. That video surveillance footage captured images of activity on 140th Street on April 4, 2016, showing traffic travelling northbound in the background and southbound in the foreground.
- [68] The Gurdwara Sahib Brookside video depicts the image of a white four-door sedan with tinted windows travelling north on 140th Street at 1:52:31 p.m., and an image of a vehicle of the same description travelling south on 140th Street at 1:55:50 p.m. The officer who introduced that video evidence identified the vehicle depicted as a white Chrysler Intrepid.

- [69] The police also located an abandoned white Chrysler Intrepid with tinted rear windows, a front British Columbia licence plate and a rear Saskatchewan licence plate at 144th Street and 72nd Avenue in Surrey, British Columbia, later in the day on April 4, 2016.
- [70] Again, the video evidence and the location of the white Chrysler Intrepid provide some corroboration for both the evidence of witness A and Mr. Sidhu, and aspects of the evidence of witness C and witness D.

Evidence of Brenna McLaud

- [71] The Crown also introduced evidence with respect to the April 3, 2016, shooting incident.
- [72] Brenna McLaud testified that on April 3, 2016, she was the driver of a vehicle stopped in the eastbound curb lane on 88th Avenue at 132nd Street. She had stopped for a red light at the intersection. Ms. McLaud testified that she heard at least two "pop pops", and that she then looked up and saw an accident or collision in the intersection.
- [73] She observed two vehicles in the westbound lanes. One was a darker coloured SUV, which she thought was dark green, in the turn lane. The second vehicle was a Nissan Altima in the through lane. Ms. McLaud described the Nissan Altima as moving from the through lane into the left-hand turn lane and colliding with the SUV. She saw the SUV go over the median and then turn left to go south on 132nd Street, while the Nissan Altima went north on 132nd Street.
- [74] Ms. McLaud observed that the driver's side window of the Nissan Altima was shattered by what appeared to be bullet holes. She said she observed definitely one hole and maybe two holes, but was not able to see anyone inside the vehicle. She estimated that only five to seven seconds elapsed from the time that she heard the popping sounds until both vehicles departed.
- [75] Ms. McLaud was shown photographs taken from the red light traffic camera located at the intersection of 132nd Street and 88th Avenue at approximately 5:41 p.m. on April 3, 2016. She identified the grey Nissan Altima bearing B.C. licence number CJ764G, depicted in those images, as the vehicle she had observed at the intersection on April 3, 2016.

Evidence of Constable Molnar

- [76] The Crown also called Constable Molnar, who testified that on April 3, 2016, he was involved in the investigation of the shots fired incident at the intersection of 132nd Street and 88th Avenue. During the evening of April 3, 2016, as a result of a report of a vehicle found with bullet holes, he attended to inspect a grey Nissan Altima located on Salal Place, just to the north of the scene where the shooting had occurred.

- [77] Constable Molnar arrived at approximately 11:15 p.m. on April 3, 2016, and observed three bullet holes in the driver's side window of that vehicle. There was also some damage to the driver's side of the Nissan, which led Constable Molnar to believe the Nissan had been side swiped.
- [78] Constable Molnar gave evidence that the police investigation determined that the registered owner of the Nissan Altima at the time of the April 3, 2016, incident was a Paula Turner, and that the Nissan Altima, which had been seized by the police, was returned to Ms. Turner on April 20, 2016. He was not aware whether Ms. Turner had been interviewed, nor was he able to provide any evidence about who had possession of her vehicle on April 3, 2016.
- [79] Constable Molnar's observations concerning the gunfire damage to the Nissan Altima and also his description of the damage to the driver's side of the vehicle is significant because it is consistent with the description that witness C gave concerning the damage to the Nissan Altima that he observed on the evening of April 3, 2016, when he inspected that vehicle at the request of Mr. Rana.
- [80] We will take the morning break now, before I turn in detail to the evidence of witness C.

(PROCEEDINGS ADJOURNED FOR MORNING RECESS)

(PROCEEDINGS RECONVENED)

Evidence of witness C

- [81] THE COURT: The evidence of witness C.
- [82] Witness C is 22 years old and has a Grade 11 education and an extensive criminal record. His young offender record includes convictions for possession of a weapon and possession of stolen property. His adult record includes possession of stolen property, abduction, flight from a peace officer, and numerous breaches of bail and probation.
- [83] Witness C gave evidence that he had committed at least 50 break and enters and home invasions and at least 30 robberies of convenience stores. Some of the robberies involved the use of bear spray or the beating of uncooperative clerks. Witness C also testified that he had participated in numerous fights involving all kinds of weapons, including bear spray, tire irons, firearms and knives. He admitted to stabbing one victim. He also acknowledged he had committed a theft of mail and credit card fraud, and was involved in an uncharged hit and run offence.
- [84] Witness C acknowledged that during his teens, he used crystal meth and marihuana, ecstasy, MDMA and codeine pills. He claims that for many years he enjoyed easy access to firearms and possessed firearms of all types, including handguns, rifles, shotguns and assault rifles.

- [85] Witness C started dealing in hard drugs at age 15 or 16. He testified that in the summer of 2013 or 2014, he began selling drugs for the accused, and his associate, a Mr. Johal. He identified Mr. Rana.
- [86] Witness C testified that in the fall of 2014, he started to operate his own dial-a-dope line. Following a term of imprisonment and his release in late November 2015, he moved to Chilliwack, where he worked for Rocco, who he also knew to be Johnny Cullen. Witness C testified that Rocco owned a dial-a-dope line in Langley and obtained his drugs from Mr. Rana and Johal. Beginning in late November 2015, witness C started working with Rocco in Chilliwack. Witness C identified the photo at exhibit 1, tab G, as depicting Rocco or Mr. Cullen. Witness C's work for Rocco included selling drugs, collecting cash, chopping the dope, and delivering reloads to street-level dealers. He would also administer beatings to errant employees of the dial-a-dope line. Witness C described confronting competitors and robbing them. He also testified that on one occasion he shot up the home of an individual who owed Rocco money with an assault rifle.
- [87] Witness C also testified that he had a business and social relationship with Mr. Rana and Mr. Johal, and was very close to them until his arrest on April 6, 2016.
- [88] In his direct examination, witness C described a conflict which developed between Mr. Rana and Mr. Johal and their associates, on the one hand, and a rival group of drug dealers. Witness C heard from Rana that his family's house had been shot at. He also heard that Mr. Johal's brother had been shot at. Witness C started carrying a gun and, at times, he and other members of Mr. Rana's group would go out and look for members of the rival group.
- [89] In the week or so before April 4, 2016, witness C participated in break and enters to a home in White Rock and another at High Point. He stole \$70,000 in cash from the White Rock residence and intended to use that money to start his own dial-a-dope operation.
- [90] Witness C testified that on April 3, 2016, he arranged to meet with Mr. Rana. They drove around for about an hour in Mr. Rana's vehicle, which witness C described as a grey Nissan Altima. Witness C said that he repaid a drug debt he owed to Mr. Rana and arranged through Mr. Rana to purchase \$15,000 in drugs. He described Mr. Rana's vehicle as a four-door grey Nissan Altima with tinted windows, and said he had seen Mr. Rana driving the same vehicle before.
- [91] According to witness C, Mr. Rana called him later on the night of April 3, 2016, told him where the Nissan Altima was located, and asked him to check the vehicle. Witness C drove by and observed three bullet holes in the driver's side window. He also observed some denting and scraping along the driver's side of the vehicle, which led him to believe the Nissan Altima had been sideswiped. Witness C called Mr. Rana to report what he observed and to see if Mr. Rana was okay. Witness C did not recall his conversation with Mr. Rana. When shown exhibit 46, photos 4 and 5, witness C identified the Nissan Altima, and testified that those photos depicted the condition of the vehicle as he observed it on the evening of April 3, 2016.

- [92] Witness C testified in his direct examination that on the following morning, April 4, 2016, Mr. Rana called him on his ZTE flip phone, using the number 587-966-1675, a number that witness C had saved in his ZTE phone contacts as "HH". At the time of the call, witness C was sleeping at his girlfriend's residence in Guildford. According to witness C, Rana said, "Let's go ride," and asked witness C to pick up some bandanas and gloves. Witness C understood that Mr. Rana wanted to go to look for the members of the rival group and that he was seeking revenge for the shooting the day before.
- [93] Witness C testified that he got up and drove to Guilford Mall, where he purchased some blue latex gloves and blue bandanas. He arranged to meet with Mr. Rana near 88th Avenue and 140th Street. When he arrived at that location, witness C got into the back driver side seat of the other vehicle, a black Hyundai Tucson SUV. Mr. Cullen was driving and Mr. Rana was seated in the front passenger seat. Witness C testified that Mr. Rana gave him a 10 millimetre handgun. He observed that Mr. Rana had .45 calibre handgun and that Mr. Cullen had another 10 millimetre handgun.
- [94] Witness C gave each of the others a bandana, which they tied around their necks. He understood that they would use the bandanas to cover their faces if they found someone to shoot.
- [95] According to witness C, they drove around Surrey and stopped by his father's place to pick up some screwdrivers in order to steal licence plates. While they were driving around, Mr. Rana told them that on April 3, 2016, he had stopped at the intersection of 88th Avenue and 132nd Street when a green SUV came up on his left and started shooting at him.
- [96] Also while they were driving around in Surrey, Mr. Cullen contacted witness D, who lived in Langley. They drove to Langley to pick up witness D.
- [97] Witness D, worked for Cullen on his dial-a-dope phone line. Witness C knew witness D to be a drug user.
- [98] Witness C identified exhibit 51 as a photo of witness D. Witness D confirmed that exhibit 51 depicts him.
- [99] According to witness C, when they arrived at witness D's residence, Mr. Rana got into the rear passenger side seat, witness C remained in the rear driver side seat, while witness D occupied the front passenger seat, and Mr. Cullen drove the vehicle.
- [100] Witness C testified that at Cullen's direction, witness D called a member of the rival group, ostensibly to arrange a meeting to purchase drugs in Langley. Their plan was to shoot the members of the rival gang who attended the meeting. However, when the associate of the rival group told them it would take 45 minutes to an hour to set up the meeting, Rana, Cullen, and witness C did not want to wait that long. According to witness C, Mr. Rana gave him the Surrey numbers of two members of the rival group. Witness C saved those numbers on his ZTE phone, he said, as "Goof" and "Goof 2". Witness C testified that using the name of a customer of the Surrey group provided by Mr. Rana, he called and arranged a

meeting to purchase drugs at 86A Avenue and 140th Street in Surrey. On the way to the meeting, they stopped in an alley and changed the Hyundai's licence plates for plates witness C had stolen earlier in the day.

- [101] Witness C testified that just before they arrived at the intersection of 86A and 140th Street, one of the members of the rival group called him to say that they were already at the meeting location and wanted to get on with the transaction. The black Hyundai SUV turned left off 141 Street onto 86A Avenue, heading west toward 140th Street. They saw a black BMW on the right side of 86A Avenue with its engine running and pointed in the direction of 140th Avenue. Witness C said they assumed that the vehicle belonged to the rivals from Surrey.
- [102] As they approached the stationary BMW, witness C, Mr. Rana, and Mr. Cullen pulled up their bandanas. Mr. Cullen brought the black Hyundai to a position parallel to the BMW and about one to one and a half metres away from it. Witness C testified that Mr. Rana rolled down the rear passenger side window and started shooting at the BMW with his .45 calibre handgun. Witness C leaned across from the rear passenger side and started shooting. Mr. Cullen also leaned across from the driver's seat, rolled down the front passenger side window and started shooting. Witness C testified that he leaned across holding his handgun in his left hand and then started shooting. As he did so, he saw a single occupant in the driver's seat of the black BMW, a young East Indian male. Witness C testified that he shot at the victim and his purpose was to hit the individual in the car.
- [103] According to witness C, after they stopped shooting and started to drive away, Mr. Rana was holding only part of his handgun. Again according to witness C, Rana asked him if he had shot Rana's gun. Witness C said that he had not done so.
- [104] As they departed, witness C saw the victim run behind his vehicle, which he believed to be a black BMW model 325i. As the black Hyundai was turning right from 86th Avenue to head north on 140th Avenue, witness C observed a white vehicle, which he believed to be an older Intrepid, coming north on 140th Street and turning left onto 86A Avenue. He said he observed two occupants in the white Intrepid, both East Indian males. At that point, he realized that the white Intrepid contained their intended victims.
- [105] Witness C said that after leaving the scene, he, Rana, Cullen, and witness D drove to the home of a friend of Mr. Rana's where they removed the stolen plates and a number of spent shell casings from the Hyundai.
- [106] Ironically, their intended victims called witness C, told him there had been a shooting, and that he should not go to the meeting place for the drug transaction.
- [107] Rana, Cullen, and witness C later drove to a White Spot restaurant in Langley where they had lunch and complained about shooting up the wrong person. After lunch, Rana and Cullen dropped witness C off by his rental vehicle. He returned the 10 millimetre pistol to Mr. Rana. Witness C testified that he drove off and carried on with the rest of his day.

- [108] On April 5, 2016, witness C met with his friend Alex, purchased a .22 calibre handgun equipped with silencer and an encrypted BlackBerry PGP phone. He testified that he purchased that phone for communications in the drug trade and that the handgun was for protection.
- [109] On April 6, 2016, witness C drove to Alex's home where he bought four and a half ounces of cocaine for his intended dial-a-dope operation. On the same day, witness C was arrested by the police. At the time of his arrest, he was in possession of the cocaine, the handgun, the ZTE flip phone, and the BlackBerry encrypted phone.
- [110] Witness C has been in custody since April 6, 2016.
- [111] For a period of time following his arrest, witness C was in frequent contact with Mr. Rana by telephone. In June 2016, witness C was approached by police investigators. Ultimately, he entered into a plea and limited immunity agreement, marked as exhibit 53. As we have seen, he pleaded guilty to the offences of discharging a firearm with intent to wound and using a firearm during the commission of an aggravated assault, for which he received a sentence of five years.
- [112] On November 16, 2016, and December 7, 2016, witness C signed letters of acknowledgment, marked as exhibits 54 and 55, which document his agreement to assist the RCMP in investigations into suspected criminal activities of Mr. Rana and others, in exchange for the limited immunities and financial benefits described earlier in these reasons.
- [113] Witness C identified exhibit 56, the consent to search his cellphones. He also identified his blue ZTE flip phone and the photos contained in exhibit 43 depicting his contact list on the ZTE phone.
- [114] Witness C identified the numbers and contact information shown for "Goof" and "Goof 2" as the numbers Mr. Rana gave him to call for setting up the meeting in Surrey. The number he saved under "Goof", 604-928-8000, was the number he used to contact the Surrey drug dealers on April 4, 2016. The number for "Rocco", 778-384-4703, was the telephone number he used to contact John Cullen at that time.
- [115] Witness C estimated that a total of 20 shots were fired on April 4, 2016. He acknowledged that his purpose in shooting at the driver of the BMW was to try to kill him.
- [116] Witness C was unable to recall in his direct examination when he had last spoken with witness D. In cross-examination, witness C agreed that he could not confirm that the last time he spoke with witness D was when he and his associates dropped witness D off at his residence on April 4, 2016. He agreed that it was possible they spoke before he was taken into custody on April 6, 2016.
- [117] Witness C also testified that when the police approached him in June 2016 wanting to know if he could help them, he was willing to cooperate.

- [118] He denied that when he gave his first statement to the police, he was frustrated and unhappy with Rana, despite the fact he had complained to the police that Rana and Johal had not contacted him for over a month.
- [119] Witness C agreed in cross-examination that he was a lifestyle criminal, and that beginning at age 14 or 15, and for a period of six or seven years until his arrest on April 6, 2016, he engaged in day-to-day, day-in/day-out criminal activity.
- [120] Witness C also agreed that he now has a contract with the police providing for payment of up to \$100,000, and that his obligation under that contract is to come to court to testify. By para. 5 of his plea and limited immunity agreement, witness C adopted the contents of his statements to the police of June 28, June 30, July 4, July 11, and July 12, 2016, as providing full and truthful accounts. He agreed that his obligation is to come to court and to tell the truth as it is set out in those statements. He understands that in order to be paid under the arrangement he has made with the police, he has to meet with the police and attend trial, and that he is expected to testify along the same lines as his statements to the police. Witness C agreed with defence counsel that he wanted the money.
- [121] Witness C also agreed in cross-examination that for four months, commencing in December 2015, he worked for Rocco - that is Johnny Cullen - and that he lived with Rocco for most of that time. He agreed that they were very close associates and friends, and that he sold drugs for Rocco.
- [122] In cross-examination, witness C maintained that Rana had told him about the shooting incident at 132nd and 88th Avenue of April 3, 2016, the following morning. He denied Rana had relayed that event to him on the evening of April 3. When defence counsel put to witness C his statement of July 4, 2016, and suggested to him he told the police his conversation with Mr. Rana took place on April 3, 2016, Witness C denied that was the case. He maintained that throughout his statement he was describing to the police what happened on April 3 as related by Mr. Rana. Witness C also claimed he told the police that Rana informed him about the events of April 3, while they were riding around on April 4, 2016.
- [123] In my view, it is more in keeping with the preponderance of the probabilities that Mr. Rana told witness C about the shooting incident of April 3, 2016 that evening, when he spoke with witness C and requested that he check out the Nissan Altima. The vehicle had been fired upon earlier in the day. This was a significant event in the escalating dispute with Mr. Rana's rivals. In my view, it is unlikely that he would have withheld that information until the following morning.
- [124] Witness C maintained that Mr. Rana had given him the two telephone numbers for the Surrey drug line and that he made the calls to set up the meeting at 140th Street and 86A Avenue. He also agreed that a couple of minutes after the shooting at 86A Avenue, he received a call from the Surrey drug line that there had been a shooting and that he should not come to the meeting place. He agreed there was no possible reason to call the Surrey

drug line later on April 4, 2016. Witness C was then shown a record of telephone calls placed to and from his number 778-680-4606. That record showed three calls from his number to the Surrey drug line number at 3:24:39 p.m., 3:27:02 p.m. and 3:34 p.m. on April 4, 2016. He then claimed he made those calls to set up a second meeting in order to "shoot them again". Witness C said that at the time he made those calls, he was still with Rocco and Rana. Earlier in his cross-examination, he gave evidence that immediately after the shooting, he, Rana, Rocco, and witness D drove to a residence in Delta where they remained for about 10 to 15 minutes. Witness C said he then wanted to be dropped off at his rental car. He agreed that it was a five to ten minute drive from the Delta residence to the location where he had left his rental car, near the scene of the shooting. When they arrived, the police were there and he did not pick up his car. Witness C claimed they then drove to Langley, where they spent between 30 and 45 minutes before he returned to pick up his rental car and then drive to his father's home.

Evidence of David Mak, Security Specialist with Rogers Communications

- [125] The Crown introduced the expert evidence of Mr. Mak, a security specialist with Rogers Communications, who was qualified to give expert opinion evidence respecting, among other things, cellular telephone communications and cell sites. Through Mr. Mak, the Crown introduced records from Rogers Communications of call detail records for telephone numbers 587-966-1675, the number witness C associated to Hardy or Rana; number 778-384-4703, Rocco's number; and witness C's own number, 778-680-4606.
- [126] Mr. Mak produced a report in which he mapped the locations of various cell sites located in Richmond, Delta, Surrey, and Langley, and used by these three phone numbers on April 4, 2016. He also produced call detail records for each of those numbers, which list all the calls, text messages, and the various cell sites used by those phones on that day.
- [127] In cross-examination, Mr. Mak candidly acknowledged that this evidence has its limitations. In particular, while a cell phone will seek to communicate through the cell site having the strongest signal, it is entirely possible that two phones using the same cell site at the same time, and even using the same azimuth and sector, may not be located adjacent to each other and may in fact be some distance apart.
- [128] However, what is notable in this case is that the cell site map and report produced by Mr. Mak shows two and sometimes all three of the phones associated with the numbers for Rana, Cullen, and witness C ostensibly at the same locations and using the same cell sites at a variety of locations in Guildford, Surrey, Langley, over the course of the day at times which correspond with the activities described by witness C and witness D in their testimony.
- [129] While there is clearly margin for error with this information, I do attach considerable weight to the pattern of phone usage linking all three phones over the course of the relevant time on April 4, 2016.

[130] Mr. Mak's report, exhibit 61, maps calls from the Hardy, or Rana phone, coded black, at 3:25:05 p.m., and from the Cullen phone, coded green, at 3:27:07 p.m. at the same cell site as witness C's phone, coded red, at the times of his last three communications with the Surrey drug line phone number. I find that evidence supports the inference that witness C, the accused, and Mr. Cullen were all together at that time.

Evidence of witness C, continuation

[131] In describing the incident of April 4, 2016, witness C confirmed that witness D was sitting in the front passenger seat and was neither wearing a mask nor armed when the black Hyundai SUV pulled up alongside the black BMW.

[132] Witness C is left-handed. He testified that in order to shoot, he leaned to the right with his left arm fully extended to the right side, and that he believes the barrel of his pistol was just inside the rear passenger side window as he fired. He agreed that it was possible some shell casings were ejected out of the window, but also said that they later found lots of shell casings in the vehicle. Witness C agreed that it would have been incredibly dangerous and loud for Mr. Rana, who was seated in the rear passenger seat with his face close to the window and to witness C's firearm.

[133] On any account, the discharge of firearms in close quarters and in close proximity to other occupants of the vehicle can only have created a hazardous and chaotic situation.

[134] Witness C maintained that his solicitor, that is the lawyer appointed to provide him with independent legal advice, Mr. Westell, was mistaken when he wrote in his proffer letter of June 20, 2016, that Rana and witness C both fired .45 calibre weapons. Witness C denied he told his lawyer that he was firing a .45.

[135] On re-examination, witness C was shown exhibit F for identification, the letter from his lawyer dated June 20, 2016. Witness C said he had never previously seen the letter and said that he had nothing to do with the creation of that document.

Evidence of Kevin Westell

[136] The only witness called for the defence was Mr. Westell. In his direct examination, Mr. Westell testified that on June 9, 2016, he met with witness C at the Surrey RCMP detachment for over an hour. Mr. Westell interviewed witness C and provided legal advice to him. Mr. Westell made contemporaneous notes of the interview on his laptop.

[137] Mr. Westell confirmed he was the author of exhibit F, the June 20, 2016, proffer letter which provided a synopsis or summary of the information witness C was able to provide to the police.

- [138] In exhibit F, Mr. Westell wrote that "Rama" and witness C both were firing .45s during the shooting of April 4, 2016. Mr. Westell had no independent recollection of what witness C told him about that during the interview of June 9. He was then asked to produce his notes. Mr. Westell testified that he had used the name "Rama" in error throughout his notes.
- [139] Mr. Westell was also referred to passages in his notes where witness C told him that "me, Johnny Cullen were in the vehicle and that 'Ishke' was in the back seat". His notes also refer to "Ishke" driving a Nissan Altima.
- [140] In cross-examination, Mr. Westell confirmed that at page 1 of exhibit F, he identified "Ishke" as an alias for Rana. He also referred to "H" and "Hardy" as aliases for Rana.
- [141] Crown counsel suggested to Mr. Westell that he had made an error when he stated in the proffer letter that Rana and witness C had fired .45s. It was put to him that witness C told him that Cullen and witness C fired 10 millimetre handguns and that Rana fired a .45. Mr. Westell said that it was possible he made an error, but that he had no independent recollection of what he was told by witness C on this point.
- [142] Crown counsel referred Mr. Westell to his note, "in the car me, Cullen driving and shooting a 10 mm. . . Ishke in the backseat, shooting a .45." Mr. Westell agreed his notes did not record witness C telling him that he had a .45 and agreed the note is ambiguous. He also agreed that his entry in the letter regarding Rana and witness C firing .45s was different from his notes. Mr. Westell did not know if the letter is accurate.
- [143] On re-examination, defence counsel directed Mr. Westell to his note, "Ishke in backseat, shooting a .45, .45 at the scene." He agreed that his notes indicate that one of the shooters was in the back of the SUV. Mr. Westell also testified that witness C told him he was one of the shooters, but did not recall if witness C also told him he was in the back of the vehicle.
- [144] I find that, in light of his lack of any independent recollection of what witness C told him regarding the guns used by Rana and witness C, and his acknowledgment that he might have made an error when he wrote that both witness C and "Rama" were firing .45s, Mr. Westell's evidence is of little assistance in assessing the credibility of witness C's evidence that only Rana was armed with a .45 calibre handgun.

Evidence of witness D

- [145] I turn now to the evidence of witness D. He also testified for the Crown under a limited immunity agreement.
- [146] Witness D is 26 years old. He testified that until May 20, 2016, he was addicted to heroin and that he supported his drug habit by shoplifting, other forms of theft, and cashing stolen cheques. He also worked for Rocco or John Cullen selling heroin, crack cocaine, crystal meth and cocaine. Witness D worked for Rocco on his dial-a-dope phone line in Langley and Chilliwack.

- [147] Witness D admitted to his criminal record, which includes convictions for theft, fraud, and breach of probation.
- [148] Witness D testified that on April 4, 2016, he was at a friend's house at 168th and 24th Avenue in White Rock, British Columbia. That morning, Rocco called him and then came to pick him up. When Rocco arrived, he was seated in the driver's seat of a blue Hyundai Tucson SUV. Witness D got into the front passenger seat. Witness C and Hardy were in the back of the vehicle.
- [149] Initially, in his direct examination, witness D testified that witness C, was seated in the back of the SUV, behind the driver's seat. Later in his direct examination, he said that he thought that Hardy was seated behind the driver, but he was not 100 percent sure of that.
- [150] In cross-examination, witness D agreed that he believed Hardy was behind the driver, but again he was not 100 percent sure. He also agreed that Rocco was driving, he was the front seat passenger, and that left witness C on the rear passenger side.
- [151] Witness D knew witness C to be Rocco's right-hand man and knew Hardy to be the boss of the dial-and-dope phone line.
- [152] Witness D identified exhibit 52, a photograph of witness C, as accurately depicting witness C.
- [153] Witness D understood that Rocco got his drugs from Hardy. He did not know Hardy by any other name. Witness D identified the accused as the person he knew as Hardy.
- [154] According to witness D, after he got into the SUV, witness C told him that they wanted to retaliate for an incident in Surrey where Hardy had been shot at. Witness C wanted witness D to call the rival Surrey drug group to set up a meeting in Langley. Witness D said he could not make the call because the people in Langley knew him and that he worked for Rocco. Witness D said that witness C then called a Surrey number to set up a meeting in Surrey. Witness D recalled witness C using a ZTE flip phone to make the call and identified exhibit 42 as the phone witness C used.
- [155] While they drove to Surrey, witness C called the Surrey drug dealers a couple more times. He recalled that along the way they stopped once, rather than twice, as witness C testified. Witness D remembered a single stop where witness C stole the licence plates from a van and put them on the Hyundai SUV.
- [156] Witness D testified that nobody changed seats in the SUV from the time he was picked up until after the shooting. Witness D also testified that he was also known by the nickname used by witness C to identify the front seat passenger in the SUV.
- [157] Witness D also gave evidence that Rocco told him that Hardy was driving a Nissan car when he was shot at in Surrey.

- [158] After witness C changed the licence plates, the group drove to the Surrey meeting place. Witness D said that they all put on bandanas in order to conceal their faces. He said that Hardy told him to put on a bandana.
- [159] Although witness C says witness D was not wearing a bandana, it makes sense that all of the occupants would do so in order to avoid identification. Further, witness A saw a person whose face was largely covered by a bandana in the front passenger seat of the SUV. I find that it is consistent with the preponderance of the probabilities that all of the SUV's occupants had masked their faces with bandanas.
- [160] Witness D testified that they pulled up alongside a white BMW, with the passenger side windows of their SUV directly facing the BMW driver, who witness D described as an East Indian male in his mid to late 20s, seated in the driver's seat. He said Hardy, Rocco, and witness C all fired their handguns. According to witness D, Rocco leaned over, extended his right arm, and fired his handgun, which he held about two feet away from witness D's head. Witness D thought that Rocco stopped the SUV for perhaps five seconds, but was not 100 percent sure about that. He saw the person in the white BMW get out and run away and saw the BMW start to roll backwards.
- [161] As the Hyundai turned right from the street where the shooting took place, witness D observed a white Chrysler turn left onto the same street. He realized the white Chrysler contained their intended targets. Witness D confirmed that he, Rocco, witness C, and Hardy drove off and that they received a call from the occupants of the white Chrysler telling them not to come to the meeting as someone had been "shot at".
- [162] After they left the scene, they went to a house where witness C removed the plates and someone cleaned out the shell casings from the SUV. An East Indian male drove witness D, Rocco, Hardy, and witness C to Langley. Along the way, they threw the stolen plates into a bush. Witness D testified that he was dropped off at 116th Street and Glover Road in Langley, where another one of Rocco's workers picked him up.
- [163] Witness D testified that from April 4 through May 2016, he continued to sell drugs, but no longer did so for Rocco and Hardy. He said that they had ordered an associate to beat him once before and once after the shooting.
- [164] Witness D was taken into custody in May 2016. Following his release, he left the Lower Mainland and did not return until December 2016. He said that he never saw Rocco after April 4, 2016, although he continued to communicate with him once or twice a month through Facebook Messenger. Witness D gave evidence that after April 4, 2016, he never spoke with witness C again.
- [165] Witness C was unsure whether he ever spoke with witness D between the time they parted on April 4, and his arrest on April 6, 2016. However, they both agree that they have not communicated since witness C's arrest. I find that witness C and witness D have had no opportunity for collusion.

- [166] On August 5, 2016, witness D was approached by a person claiming to be an associate of Rocco's. They had two conversations. By the second conversation, witness D knew he was talking to a police officer. On January 15, 2017, he was interviewed by some police officers about the incident of April 4, 2016, but denied he was in the vehicle at the time. He agreed that he had lied to the police on that occasion and said he did not want to get anybody in trouble.
- [167] On January 26, 2017, witness D was interviewed again. The police were aware that he was in the vehicle and knew the details of the shooting. At that point, witness D admitted that he was in the vehicle on April 4, 2016.
- [168] During a fourth interview on February 24, 2017, witness D identified witness C and also identified the person he knew to be Hardy as "boss and fired shots".
- [169] Witness D entered into the immunity agreement on July 12, 2017, as a result of which all outstanding charges against him were dropped, in exchange for his agreement to testify in these proceedings.
- [170] In cross-examination, witness D agreed that he was close to Rocco and was grateful and loyal to him. However, he said that at times Rocco was unhappy with him and, as a result of money shortages, hired people to beat him. He agreed that Rocco and witness C would use violence or threats of violence as drug enforcers.
- [171] In cross-examination, witness D also agreed that witness C organized the meeting with the rival dealers, and that witness C was the "mastermind" in setting up the meeting with the intended targets.
- [172] Witness D testified that after the shooting stopped, he saw Mr. Rana holding part of a handgun.
- [173] Although he said he was 100 percent sure about the white colour of the BMW, when shown exhibit 40, a photograph depicting the vehicle in which witness A was shot, witness D agreed that he had got the colour wrong.
- [174] Witness D agreed that he spoke with Corporal Barrett on January 15, 2017, that the officer showed him a picture of Rocco which he identified, and that he told the truth about who Rocco was and what he did on that occasion. When he was shown a picture of Mr. Rana, witness D said his name was Jack and described him as a mid-level drug worker who was not present in the vehicle on April 4, 2016. Witness D explained that because Rana had more power than Rocco, he was not prepared to identify him at that time.
- [175] When witness D was interviewed by the police again on January 26, 2017, the police told him that he was potentially facing charges of attempted murder and conspiracy to commit murder. At the end of the interview, he admitted that he was in the car. He said the police were aware of the details of the shooting incident of April 4, 2016, and agreed that the police told him the exact details of the story and wanted him to confirm those details.

ANALYSIS

Count 1

- [176] It goes without saying that the evidence of both witness C and witness D must be approached with extreme caution. However, on a number of relevant points, their evidence is consistent. In particular, they both gave evidence of observing Mr. Rana holding only part of the handgun immediately after the shooting. The police retrieved and forensically examined the slide and barrel of the .45 calibre Glock model 21 found at the scene of the shooting. They also seized a number of cartridges which Mr. Kerr was able to confirm had been ejected from the slide and the barrel. That evidence implicates Mr. Rana as the person who used the handgun.
- [177] The accounts of witness D and witness C concerning the white Chrysler Intrepid are also similar, although according to witness D there was a single occupant in the vehicle, while witness C believed there were two.
- [178] They both related an account of the four occupants of the vehicle arranging or seeking to lure members of the rival group to an ambush, and both confirm that witness C communicated on a number of occasions with those individuals on a ZTE flip phone. Witness C's account of being at his girlfriend's on Guildford and then going to Guildford Mall to purchase gloves and bandanas at the request of Rana is supported by call detail information provided by Mr. Mak showing that witness C's phone was associated to cell sites close to his Guildford girlfriend's address and the Guildford Mall at the requisite times.
- [179] There are differences between the two accounts given by witness C and witness D. According to witness C, witness D called the Langley drug dealers and attempted to arrange a meeting with them. Witness D says that he made it clear when the subject was raised that he could not contact the Langley drug dealers because they knew him, and that at that point, witness C initiated contact with the Surrey drug line.
- [180] There are other discrepancies, including the discrepancy about whether the van stopped once or twice on its way to the scene of the shooting. In my view, those discrepancies tend to confirm that witness D and witness C were independently recalling the events of April 4, 2016. While there was no opportunity for collusion, had they told their stories in complete lock step, one would have greater reason to believe that they were seeking to tailor their evidence.
- [181] Another seeming discrepancy in their evidence, of course, is the evidence concerning Mr. Rana's location in the rear of the Hyundai SUV at the time of the shooting.

- [182] Witness C was adamant that Rana was seated in the rear passenger seat and described in some detail how he had to reach across in order to fire his weapon while Rana was occupying that seat. Witness D's recollection wavered and I conclude that he had no clear memory of exactly where Mr. Rana was seated, except that he knew he was in the rear of the vehicle. Witness D was also certain that Mr. Rana had participated in the shooting.
- [183] I do not believe for one moment that witness C, following his arrest on April 6, 2016, underwent some kind of conversion on the road to Damascus. However, in my view, to put it bluntly, he recognized that his self-interest lay in providing an accurate account of the events of April 4, 2016.
- [184] While I have not accepted all of his evidence, I am satisfied, as a result of the confirmatory evidence to which I have referred, that he was telling the truth when he identified Mr. Rana as an occupant of the van or SUV and a participant in the shooting, and when he testified that Mr. Rana was the person who possessed and discharged the .45 calibre Glock model 21 handgun.
- [185] I turn now to the question of whether the Crown has proven beyond a reasonable doubt that when Mr. Rana fired his weapon, his intent was to kill the occupant of the black BMW.
- [186] Witness C made it clear that his intention was to do so. In fact, he gave evidence to the effect that he could see no reason to shoot at someone unless one intended to kill them.
- [187] Here the defence points to the fact that the shooting took place at remarkably close range and involved at least one person, witness C, with considerable familiarity with firearms, and yet a large number of rounds were fired, striking the black BMW at points from the front hood to the rear passenger side or the rear driver's side panel. The defence seemed to be suggesting that the shooters intended to send a warning message to an individual they believed to be a member of a rival gang, but did not have the requisite intent to kill.
- [188] However, when I consider the whole of the evidence, I conclude that it is appropriate to rely upon the common sense inference and find that when Mr. Rana fired his weapon, he did so intending to kill the occupant of the black BMW.
- [189] I say that taking into account witness C's evidence of the escalating conflict between the two rival groups of drug dealers, the evidence of the shots fired at Mr. Rana's mother's home, the evidence of the shooting at the Nissan Altima on April 3, 2016, a vehicle with which Mr. Rana has some association. I also take into account that at least seven of the bullets fired at the black BMW struck the driver's side door and that both the driver's and passenger's side front windows were shattered by gunfire. That, together with the police retrieval of a bullet fragment from just below the headrest of the front passenger side driver's seat, leads me to conclude that all members of the group, including Mr. Rana, were targeting the occupant of the driver's seat in the vehicle. The fact that each of Mr. Cullen, Mr. Rana, and witness C were firing a lethal weapon and the large number of rounds fired can only lead to the conclusion that their intention was to kill witness A, believing him to

be a rival gang member.

[190] I also find that Mr. Rana fired at least five rounds from the Glock model 21 .45 calibre handgun. I make that finding based upon Mr. Kerr's expert evidence concerning the identification of five spent .45 calibre cartridges as having been fired from the Glock 21 barrel and slide found at the scene.

[191] Mr. Rana, together with his colleagues, witness C and Mr. Cullen, not only planned but set in motion a scheme to ambush and eliminate rival drug dealers. Mr. Rana instructed witness C to procure gloves and bandanas, in order that participants might conceal their identities, all in furtherance of the intended plan to lethally attack a rival or rivals.

[192] I am satisfied, on the whole of the evidence, that the Crown has met its burden of establishing beyond a reasonable doubt that Mr. Rana committed the offence of the attempted murder of witness A.

Count 2

[193] I turn now to Count 2, possession of a prohibited or restricted firearm with ammunition.

[194] On Count 2, the Crown must establish beyond a reasonable doubt that on April 4, 2016, Mr. Rana possessed a loaded prohibited or restricted firearm, a handgun, without being the holder of an authorization or licence under which he may possess the firearm in that place, and a registration certificate for the firearm.

[195] I have already found that the Crown has proven, beyond a reasonable doubt, that on April 4, 2016, the accused possessed and used the .45 calibre Glock model 21 handgun, components of which were seized at the scene of the offence.

[196] The defence has made admissions of fact pursuant to s. 655 of the Code that on April 4, 2016, Mr. Rana was not the holder of an authorization, licence, or registration certificate for any firearm.

[197] Mr. Christopher Kerr, a designated weapons analyst, has provided a certificate of analysis, marked as exhibit 48, certifying that each of the two intact .45 calibre cartridges seized at the scene is ammunition within the meaning of s. 84(1) of the Code.

[198] Mr. Kerr has also provided his opinion, which I accept, that exhibits 9, 13, 15, 19, and 20, the five spent .45 calibre cartridge cases seized from the scene, were fired from exhibit 6, the seized Glock 21 slide and barrel. I find the Crown has proven beyond reasonable doubt that the .45 calibre Glock 21 was loaded when it was possessed by the accused on April 4, 2016.

[199] The Crown has established that the accused committed the offence of unlawful possession of a loaded prohibited or restricted firearm, contrary to s. 95(1) of the Code, as charged in Count 2.

Count 3

[200] Count 3, unauthorized possession of a firearm in a vehicle. Section 94(1) of the Code makes it in an offence to be the occupant of a motor vehicle knowing there is a prohibited firearm or restricted firearm in the motor vehicle. Under subsections (a) and (b), a person is exempt from liability if he or another occupant of the motor vehicle is entitled to possess and transport the firearm and, in the case of a prohibited restricted firearm, has a registration certificate.

[201] Here, Mr. Rana knew on April 4, 2016, that the .45 calibre Glock model 21 handgun was in the Hyundai SUV and used that handgun to commit the offence of the attempted murder of witness A. Again, the accused had no authorization, licence, or registration certificate for the handgun.

[202] I find that the Crown has established beyond a reasonable doubt that the accused committed the offence charged on Count 3.

RESULT

[203] Mr. Rana, would you please stand.

[204] On Count 1, I find you guilty as charged of the attempted murder of witness A.

[205] I also find you guilty as charged on each of Counts 2 and 3.

"PEARLMAN J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/18/02/2018BCSC0294.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-rana-2018-bcsc-294>

Prepared on 27 October 2026 · Esheria