

CANADA / JUDGMENT

R. v. Rumbles

2024 BCSC 2128

COURT

Supreme Court of British Columbia

DECIDED

21 November 2024

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2024 BCSC 2128 R. v. Rumbles

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Rumbles,

2024 BCSC 2128

Date: 20241121

Docket: 25765-2

Registry: Salmon Arm

Rex

v.

Gordon Kent Rumbles

Before: The Honourable Justice B. Smith

Reasons for Judgment

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was corrected on November 26, 2024

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B.Q.H. Der, K.C.

Place and Date of Trial:

Kamloops, B.C.

July 22-August 2, 2024

Place and Date of Judgment:

Salmon Arm, B.C.

November 21, 2024

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Introduction

- [1] Shortly before 7:38 p.m. on November 6, 2021, near Sicamous, British Columbia, Gordon Kent Rumbles drove a pickup towing a trailer across the centre line of Trans-Canada Highway 1, and collided head-on with a pickup driven by Shaun Stacey Michael.
- [2] Mr. Michael was fatally injured. Mr. Rumbles survived, but was seriously injured.
- [3] Mr. Rumbles is charged on a three-count indictment with dangerous operation of a motor vehicle, causing death (count 1); impaired operation of a motor vehicle, causing death (count 2); and having 80 milligrams of alcohol or more in 100 millilitres of blood, causing death (count 3).
- [4] Much of what Mr. Rumbles did on November 6, 2021, is undisputed.
- [5] Mr. Rumbles' defence is that he did not intentionally consume the alcohol which caused him to commit the prohibited acts. He is a person with diabetes. He contends that when he consumed the alcohol he was in a state of either moderate or severe hypoglycemia.
- [6] Crown and defence both identify the central issue as whether the Crown has proven, beyond a reasonable doubt, that Mr. Rumbles had the required culpable intent, a mens rea defence; rather than whether he committed the prohibited acts voluntarily, an actus reus defence of non-mental disorder automatism.

General Legal Principles

Presumption of Innocence

- [7] The presumption of innocence is the first and most important principle of law applicable to every criminal case. Mr. Rumbles enters the proceedings presumed to be innocent, and the presumption of innocence remains throughout the case unless the Crown, on the evidence before me, satisfies me beyond a reasonable doubt that he is guilty.
- [8] Two rules flow from the presumption of innocence. One is that the Crown bears the burden of proving guilt. The other is that guilt must be proved beyond a reasonable doubt. These rules are linked with the presumption of innocence to ensure that no innocent person is convicted.

Burden of Proof

- [9] The burden of proof rests with the Crown and never shifts. There is no burden on Mr. Rumbles to prove he is innocent. Mr. Rumbles does not have to prove anything.

Reasonable Doubt

- [10] A reasonable doubt is not an imaginary or frivolous doubt. It is not based on sympathy for or prejudice against anyone involved in the proceedings. Rather, it is based on reason and common sense. It is a doubt which arises logically from the evidence or from an absence of evidence.
- [11] It is virtually impossible to prove anything to an absolute certainty, and the Crown is not required to do so. Such a standard would be impossibly high. However, the standard of proof beyond a reasonable doubt falls much closer to absolute certainty than to probable guilt. I must not find Mr. Rumbles guilty unless I am sure he is guilty. Even if I believe Mr. Rumbles is probably guilty or likely guilty, that is not sufficient. In those circumstances, I must give the benefit of the doubt to Mr. Rumbles and find him not guilty, because the Crown has failed to satisfy me of his guilt beyond a reasonable doubt.
- [12] The requirement of proof beyond a reasonable doubt applies to each of the essential elements of the offences. The Crown must prove Mr. Rumbles did each of the elements that make up the offences. It does not apply to individual items of evidence. I must decide, looking at the evidence as a whole, whether the Crown has proved Mr. Rumbles' guilt beyond a reasonable doubt.
- [13] If I have a reasonable doubt about Mr. Rumbles' guilt arising from the evidence, the absence of evidence, or the credibility or reliability of one or more of the witnesses, then I must find him not guilty.

R. v. W.(D.)

- [14] A criminal trial is not a credibility contest. In cases involving the credibility of an accused person, I must apply the framework discussed by the Supreme Court of Canada in R. v. W. (D.), [1991] 1 S.C.R. 742 [W.(D.)].
- [15] W.(D.) applies not only to evidence of an accused person, but to all exculpatory evidence: R. v. C.L.Y., 2008 SCC 2; R. v. Dinardo, 2008 SCC 24. If I believe the exculpatory evidence, I must acquit. If I do not believe the exculpatory evidence, but am left with a reasonable doubt by it, I must acquit. Even if I do not believe the exculpatory evidence and am not left with a reasonable doubt by it, I must ask myself whether, on the whole of the evidence, I am convinced beyond a reasonable doubt of the guilt of the accused. Finally, if, after careful consideration of all of the evidence, I am unable to decide whom to believe, I must acquit: R. v. C.W.H., [1991] B.C.J. No. 2753 (B.C.C.A.).

Assessment of Credibility and Reliability

- [16] The court's fact-finding role requires an assessment of two things. First, a witness's credibility; second, the reliability of their evidence.

- [17] The assessment of a witness's credibility and the reliability of their evidence requires me to consider factors such as: the witness's ability and opportunity to observe events; the firmness of their memory; their ability to resist the influence of interest to modify their recollection; whether their evidence harmonizes with independent evidence that has been accepted; whether they change their testimony in direct and cross-examination; whether their testimony seems unreasonable, impossible or unlikely; whether they have a motive to lie; and their demeanour generally: *Bradshaw v. Stenner*, 2010 BCSC 1398; *aff'd* 2012 BCCA 296.
- [18] Credibility assessments may not be purely intellectual and may involve factors that are difficult to verbalize: *R. v. R.E.M.*, 2008 SCC 51 at para. 49. They must not be based on emotional evaluations, stereotypes, guesswork, or impermissible reasoning, but grounded in reason and made as objectively as possible: *R.C.T. v. A.K.T.*, 2023 BCSC 654 at para. 11. I may believe some, all, or none of a witness's evidence: *R. v. B.T.*, 2020 BCSC 1185 at para. 42 [B.T.].
- [19] I must be cautious when considering demeanour, because I have no baseline for assessment, and courtrooms can be unfamiliar and intimidating environments, to which people react differently: *B.T.* at para. 43.
- [20] I keep these general principles in mind as I consider the evidence.

The Issue

- [21] The issue for determination is whether Mr. Rumbles possessed the mens rea for the offences.

Undisputed Facts

- [22] I begin by identifying undisputed facts.

Date and Jurisdiction

- [23] The collision happened on November 6, 2021, in Sicamous, British Columbia.

Vehicles

- [24] The vehicles involved in the collision were:

- a 2008 Dodge Ram 3500 pickup (the "Dodge") towing a 2016 Alcom LLC Express DL 6X10 cargo trailer (the "Trailer"); and
- a 2017 Ford F-350 pickup (the "Ford").

- [25] Mr. Rumbles was driving the Dodge and towing the Trailer, both of which were in a proper roadworthy condition and met the standards of the British Columbia Motor Vehicle Act Regulations, B.C. Reg. 26/58 [Regulations] at the time of the collision.

- [26] Mr. Michael was driving the Ford, which was in a proper roadworthy condition and met the standards of the Regulations at the time of the collision.

Identity

- [27] Mr. Rumbles was the driver of the Dodge, as observed by witnesses, Donna Williams, Erin Trott, Cathy Zowty, Valerie McPherson and David Payne. Mr. Rumbles is the person who spoke with David Payne, Brody Henry, Paramedic Johnson, Paramedic Strayer and Cpl. Fisher. It was Mr. Rumbles' blood which was analysed for blood glucose level and alcohol content.

Circumstances of Collision

- [28] The collision occurred on Highway 1, at the Bruhn Bridge, on the west side of Sicamous.
- [29] Mr. Rumbles was eastbound on Highway 1, west of Spallumcheen Road. At the same time, Mr. Michael was westbound on Highway 1, also west of Spallumcheen Road. Mr. Rumbles failed to negotiate a counter-clockwise curve, and the Dodge struck concrete no-posts which bordered the south side of the highway, causing it to redirect in a northeast direction, cross the eastbound lane and encroach into the westbound lane. The left front of the Dodge struck the left front of the Ford, within the westbound lane.
- [30] Mr. Michael remained in the Ford. Mr. Rumbles was ejected through the right front passenger window of the Dodge.

Mr. Michael Fatally Injured

- [31] Mr. Michael was fatally injured. The cause of Mr. Michael's death was blunt force trauma injuries he sustained in the collision.

Mr. Rumbles Seriously Injured

- [32] Mr. Rumbles was seriously injured in the collision. His injuries included: a broken neck, a fractured pelvis, four broken ribs, a broken wrist, and concussion. He was placed on concussion protocol, was in hospital for 15 days, and was unable to bear weight for three to four months.

No Other Contributing Factors

- [33] The weather conditions, the road conditions, and the other motorists did not contribute in any way to Mr. Rumbles' manner of driving, or the collision.

Mr. Rumbles' Route

- [34] Mr. Rumbles' route started at his home in Thorsby, near Edmonton, and ended at the Bruhn Bridge, in Sicamous. He drove west on Highway 22 to Drayton Valley, then north to Highway 16 through Jasper, to south on Highway 5 to Kamloops, then east on Highway 1 to Salmon

Arm, then southeast on Highway 97B to south on Highway 97A to Enderby. At this point, Mr. Rumbles' route deviated from his intended route. Instead of going east from Enderby to his destination at Mabel Lake, Mr. Rumbles turned around and drove north on Highway 97A and northwest on Highway 97B, back in the direction of Salmon Arm. While Mr. Rumbles was driving northwest on Highway 97B, witness Donna Williams observed him driving erratically.

- [35] From north on Highway 97A and northwest on Highway 97B, Mr. Rumbles turned left on Highway 1 and drove west through Salmon Arm, back in the direction of Kamloops, where witnesses Erin Trott and Cathy Zowty, who were travelling together, observed him driving erratically. Ms. Trott and Ms. Zowty lost sight of Mr. Rumbles for a while, because they slowed to increase their distance from him, however, they encountered him again, stopped on the highway, with another vehicle stopped behind him.
- [36] While stopped on the highway, Mr. Rumbles attempted to make a U-turn to go east, back in the direction of Salmon Arm, but was unable to do so due to a concrete median separating westbound and eastbound traffic. After attempting unsuccessfully to make a U-turn, Mr. Rumbles drove a short distance further west, before pulling over on the shoulder.
- [37] Meanwhile, witness Valerie McPherson, who was the driver of the vehicle that had been stopped behind Mr. Rumbles before he attempted to make a U-turn, had a brief exchange with him roadside. According to Ms. McPherson, Mr. Rumbles appeared unfit to drive and was displaying symptoms consistent with having had a stroke. Ms. McPherson was concerned Mr. Rumbles may have been in medical distress.
- [38] At some undetermined later location, Mr. Rumbles turned around on Highway 1, because he was next seen by witness David Payne, going east on Highway 1, east of Salmon Arm, in the direction of Sicamous. Mr. Rumbles was driving erratically, swerving from side to side, speeding up and slowing down. Mr. Payne passed Mr. Rumbles and they both continued to drive east towards Sicamous. As they approached Sicamous, Mr. Rumbles was still driving erratically. As Mr. Payne drove onto the Bruhn Bridge, the Ford, driven by Mr. Michael, passed him going westbound. Moments later, at around 7:38 p.m., Mr. Payne looked in his rear-view mirror and saw the Dodge cross into the westbound lane and collide head on with the Ford.
- [39] Mr. Payne immediately stopped, went to the scene of the collision and attempted unsuccessfully to assist Mr. Michael, who succumbed to his injuries. Mr. Payne then went to assist Mr. Rumbles. At 7:38 p.m. Mr. Payne called 911. Others started to arrive on the collision scene, including witnesses Brody Henry and Braiden Parkes.
- [40] All the witnesses who dealt with Mr. Rumbles at the collision scene said he appeared confused.

Alcoholic Drinks in the Dodge

[41] An investigating police officer seized the following alcoholic drinks from the Dodge:

- two empty cans of 355 ml "White Claw" sparkling hard seltzer containing 5% alcohol by volume;
- two unopened cans of White Claw still attached to a plastic six-pack harness;
- one $\frac{3}{4}$ empty bottle of "Absolut Raspberri" flavoured vodka containing 40% alcohol by volume; and
- two unopened intact bottles of 19 Crimes wine.

[42] The officer did not find any other drinks, alcoholic or otherwise, in the Dodge.

No Food in the Dodge

[43] There was no food in the Dodge.

Mr. Rumbles Transported to Hospital

[44] Paramedics transported Mr. Rumbles by ambulance to Kamloops where, at 10:00 p.m., he was admitted to Royal Inland Hospital.

Evidence of Crown Witnesses

Donna Williams

[45] Donna Williams saw the Dodge on the late afternoon of November 6, 2021, northbound on Highway 97B, to westbound on Highway 1, towards Salmon Arm. Mr. Rumbles was driving erratically, veering across the highway. At 5:51 p.m., Ms. Williams called 911.

Erin Trott and Cathy Zowty

[46] Erin Trott and Cathy Zowty, who were travelling together, saw the Dodge on the late afternoon and early evening of November 6, 2021, westbound on Highway 1, west of Salmon Arm. Mr. Rumbles was driving erratically, veering across the highway and the shoulder, speeding up and slowing down. Mr. Rumbles stopped and tried to make a U-turn, from westbound to eastbound, despite the obvious presence of a concrete median in the centre of the highway. They saw another vehicle stop and pull over to the side of the highway near the Dodge. When they last saw the Dodge, it was westbound on Highway 1, towards Kamloops. They first saw the Dodge around 6:30 p.m., then again at 6:44 or 6:45 p.m. Ms. Zowty tried to call 911.

Valerie McPherson

[47] Valerie McPherson saw the Dodge in the westbound lane of Highway 1, west of Salmon Arm. Mr. Rumbles was stopped, then tried to make a U-turn, from westbound to eastbound, despite the obvious presence of a concrete median in the centre of the highway. Mr. Rumbles reversed the Dodge, and the Trailer struck her vehicle. Mr. Rumbles drove forward a short distance, before pulling over to the side of the highway. She followed the Dodge and

stopped behind it. She got out of her vehicle to inspect it for damage. Mr. Rumbles approached her. He had an unsteady gait, and was walking in a somewhat staggered way, tilted towards the right. His eyes appeared wide and glassy. He looked down at her bumper, then at her. She asked him if he was okay. He mumbled something incomprehensible. It seemed to her as if there was a delay in his answer. She asked him again if he was okay. She said: "And again, he looked at me, somewhat confused and then slowly answered "Yeah"". She asked him "What just happened here?" He did not answer. He got back in the Dodge and sped away. At 6:45 or 6:46 p.m., Ms. McPherson called 911. When she last saw the Dodge, it was westbound on Highway 1, towards Kamloops.

- [48] Ms. McPherson has 21 years experience as a registered respiratory therapist. From her work, she is familiar with the symptoms of a person having a stroke, including facial droop, unsteady gait, and slurred speech. She said that when she spoke with Mr. Rumbles he seemed confused, and was speaking gibberish. She thought he was displaying symptoms consistent with having had a stroke. She spoke with him shortly before she called 911.

David Payne

- [49] David Payne saw the Dodge on the early evening of November 6, 2021, eastbound on Highway 1, east of Salmon Arm, around Canoe. Mr. Rumbles was driving erratically, veering across the highway and the shoulder, speeding up and slowing down. He passed the Dodge shortly before reaching Sicamous. As he drove onto the Bruhn Bridge over the highway on the west side of town, he passed the Ford, which was westbound. He looked in his rear-view mirror and saw the Dodge cross into the westbound lane and hit the Ford head-on. He immediately went to the scene of the collision. Mr. Michael was fatally injured. He rendered assistance to Mr. Rumbles, who appeared to have been ejected from the Dodge through the right front passenger window, and was lying on the highway parallel to the passenger door. Mr. Rumbles looked stunned, and was moaning, making noises, and saying he was cold. He asked Mr. Rumbles' name and if he had been drinking. Mr. Rumbles mumbled something that sounded like "Ken" and said he had one earlier. He asked Mr. Rumbles "When?". He said he could not remember. Mr. Rumbles kept repeating that he was cold. He believed Mr. Rumbles was in shock, confused and unaware of what he was saying. Mr. Rumbles was incoherent. At 7:38 p.m., Mr. Payne called 911.

Brody Henry

- [50] Brody Henry arrived at the scene of the collision shortly after it occurred. Mr. Rumbles was lying on the highway. Mr. Henry went to up to Mr. Rumbles and asked him a few basic questions. Mr. Rumbles was mumbling and very disoriented. He asked Mr. Rumbles if he knew where he was. Mr. Rumbles said "I don't know". He asked Mr. Rumbles "What were you doing? Where were you coming from?". Mr. Rumbles said he was coming home from work at Enderby. He asked Mr. Rumbles if he had been drinking. Mr. Rumbles said no, then yes.

Braiden Parkes

- [51] Braiden Parkes arrived at the scene of the collision with Mr. Henry. Mr. Rumbles was not making complete sentences, he was slurring his words, mumbling, incoherent and seemed confused.
- [52] A paramedic asked Mr. Rumbles two or three times if he had anything to drink that night. Mr. Rumbles said he had one earlier. The paramedic told Mr. Rumbles it was 7:30 and asked him when he had the drink. Mr. Rumbles said "Eight".

Paramedic Johnson

- [53] Paramedic Johnson and her partner attended the scene of the collision. She rendered assistance to Mr. Rumbles and conducted vital assessments, including determining his blood glucose level.
- [54] Mr. Rumbles was awake and talking. He was able to identify that he was in Sicamous and that it was evening. He said he was going from Edmonton to Enderby, and that his last memory was driving through Salmon Arm. He did not remember the collision. She asked him what happened. He did not recall. She asked him his name and he told her. She asked him if he had been drinking and he said he had a drink "A while ago".
- [55] At 8:04 p.m. she determined Mr. Rumbles' blood glucose level was 9.3, which did not cause her to be concerned. She would have been concerned by a reading of 4 or less, or anything "really high", meaning in the teens. Mr. Rumbles told her he was an insulin-dependent diabetic.
- [56] Shortly before 8:30 p.m., she and her partner left the scene of the collision and transported Mr. Rumbles by ambulance to Chase.

Paramedic Strayer

- [57] Paramedic Strayer and his partner met Paramedic Johnson and the ambulance which transported Mr. Rumbles from the collision scene to Chase. He did an assessment of Mr. Rumbles. He asked him questions and noted his responses. Mr. Rumbles was able to communicate verbally but seemed confused at times.
- [58] Paramedic Strayer and his partner transported Mr. Rumbles by ambulance from Chase to hospital in Kamloops.
- [59] Paramedic Strayer said normal blood glucose levels are between 4 and 7.

Cpl. Fisher

[60] RCMP Cpl. Fisher had a brief conversation with Mr. Rumbles in the back of the ambulance. Mr. Rumbles seemed to have slurred speech. Cpl. Fisher also attempted to locate witnesses at the scene, arranged for a collision reconstructionist and the coroner, noted and photographed the alcoholic drinks which were inside the Dodge, and photographed the scene of the collision.

Cst. Chan

[61] RCMP Cst. Chan accompanied the ambulances which transported Mr. Rumbles from the scene of the collision to hospital in Kamloops. Cst. Chan obtained a warrant for the blood which a medical lab technician drew from Mr. Rumbles at the hospital, and sent it for analysis. He obtained a production order for Mr. Rumbles' hospital medical records, and sent them to the same analyst. He received the analyst's reports.

Analyst Bylenga

[62] Analyst Bylenga is a forensic alcohol specialist and was qualified as an expert in:

- analyzing biological fluids for the presence of alcohol;
- physiology of alcohol, including absorption, distribution and elimination of alcohol from the human body;
- pharmacology of alcohol, including effects of alcohol on behaviour and motor skills, and how this relates to the task of operating a motor vehicle; and
- analytical methods and results, including calculating blood alcohol concentrations.

[63] Ms. Bylenga analysed the blood the medical lab technician drew from Mr. Rumbles. Using a range of conversion factors found in scientific literature, she converted the readings from Mr. Rumbles' hospital medical records to determine its blood alcohol concentration.

Mr. Rumbles' Diabetes

[64] Mr. Rumbles was diagnosed with diabetes in 2005. He had a diabetes-related medical crisis in 2018, following which he began managing his diabetes with daily injections of long-acting insulin. Mr. Rumbles self-administers long-acting "Tujeo" brand insulin by injection every day.

[65] In addition to insulin, Mr. Rumbles also manages his diabetes with various medications.

Mr. Rumbles' Consumption of Alcohol

- [66] Before the collision, Mr. Rumbles consumed at least two of the cans of White Claw, and approximately three quarters of the bottle of vodka. The time at which Mr. Rumbles began to consume the vodka, and how long he consumed it for, is unknown. Whether Mr. Rumbles consumed the two missing cans of White Claw is unknown.

Mr. Rumbles' Blood Glucose Levels

- [67] Mr. Rumbles' blood glucose level at the time of the collision is not known. At 8:04 p.m., approximately 26 minutes after the collision, it was 9.3.

Mr. Rumbles' Blood Alcohol Content

- [68] At 10:17 p.m., a medical lab technician collected blood from Mr. Rumbles. The blood contained 46 mmol/L of ethanol. Analyst Bylenga subsequently analysed the blood and determined it contained 186 +/- 3 milligrams of alcohol in 100 millilitres of blood.
- [69] Mr. Rumbles' blood alcohol content at the time of the collision is not known. By extrapolation, it was somewhere between 213 and 239 milligram percent.

Mr. Rumbles' Presentation

- [70] Mr. Rumbles' presentation when he interacted with Valerie McPherson was consistent with someone having a stroke, or significantly impaired by alcohol, or experiencing some degree of hypoglycemia.
- [71] Mr. Rumbles' presentation when he interacted with David Payne, Brody Henry, Paramedic Johnson, Paramedic Strayer and Cpl. Fisher was consistent with someone who had just sustained serious bodily injuries in a motor vehicle accident, or was significantly impaired by alcohol, or experiencing some degree of hypoglycemia.

Sugar Content of the Alcoholic Drinks

- [72] Each can of White Claw contained one gram of sugar. The sugar content of the vodka is not known.

Mr. Rumbles' Evidence

- [73] Mr. Rumbles testified about his personal life and professional career, his diabetes diagnosis, treatment and management, and the events of November 5 and 6, 2021.
- [74] Mr. Rumbles is married, with two adult children, and two grandchildren. He grew up in Thorsby, a small farming community near Edmonton. His career has been varied. He has worked as a farmer, as a professional driver, and in the oil and gas industry. He is currently successfully self-employed and lives and works in Saudi Arabia. He has a Class-1 driver's license. He does not have a criminal record.

- [75] Mr. Rumbles was diagnosed with diabetes in 2005. At first, he managed his diabetes only with medication; but in 2018, he had a near-fatal diabetes-related medical crisis involving diabetic ketoacidosis, as a result of which he was hospitalized in Vernon. Ever since then, he has managed his diabetes with long-acting insulin and medication.
- [76] From 2005, Mr. Rumbles' primary medical professional care-provider for his diabetes was his family doctor. During his medical crisis in 2018, he was under the care of a specialist, and he also met with a dietician. After his release from hospital following the medical crisis, he returned to the care of his family doctor. As instructed by the specialist who treated him during the medical crisis, he was referred by his family doctor to Dr. Winterstein, a specialist closer to his home.
- [77] Mr. Rumbles claims his concern with his diabetes has always been high blood glucose, and that he has no known history of low blood glucose. According to him, none of his medical professional care providers or others have ever discussed with him the dangers of low blood glucose, in particular hypoglycemia.
- [78] Mr. Rumbles says that on November 5, 2021, the day before the collision, he ate his last meal of the day in the early or late afternoon. Before going to bed at his usual bedtime of between 7 and 9 p.m. he self-administered his prescribed daily dose of long-acting insulin by injection. His plans for the following day were to drive from his home in Thorsby to his seasonal property at Mabel Lake near Enderby. It was a journey he had undertaken many times before, either alone or, most often, with his wife. This time, he planned to drive alone in the Dodge, pulling the Trailer, which contained some furniture. His wife and mother-in-law planned to make the same journey the following day.
- [79] Mr. Rumbles says that on November 6, 2021, he woke up at around 5 a.m. and made himself a coffee, one cream, no sugar. He did not eat breakfast. As was his habit, he checked the safety lights on the Dodge and the Trailer. He set out at about 6 a.m., without any food, snacks or drinks, apart from his coffee. He packed his insulin. He did not pack a blood glucose monitor, as he had one at his property in Mabel Lake.
- [80] From Thorsby, Mr. Rumbles drove west into British Columbia. When he reached Valemount, he stopped to purchase diesel. He also purchased a six-pack of White Claw, a 750 ml bottle of Absolut Raspberri vodka, and two bottles of 19 Crimes wine. He then continued on his way.
- [81] According to Mr. Rumbles, shortly after leaving Valemount, he began experiencing flu-like symptoms. At or near Clearwater, he opened and consumed a can of White Claw. Between 12:58 p.m. and 1:10 p.m., he exchanged several text messages with his wife about the good road conditions, and his progress. Somewhere before reaching Kamloops, he opened and consumed another can of White Claw. He was still experiencing flu-like symptoms, which by then were getting progressively worse. Shortly before reaching Salmon Arm, between 4:42 p.m. and 4:52 p.m., he exchanged several more text messages with his wife, about the same topics.

[82] According to Mr. Rumbles, he has no memory of anything that happened from when he reached Salmon Arm until he found himself laying on the road in Sicamous at the scene of the collision.

[83] According to Mr. Rumbles, he no longer consumed hard liquor after his medical crisis in 2018. He would occasionally consume alcoholic drinks, such as White Claw, or wine, but he did not drink vodka, and had never consumed it straight. He had no intention of drinking vodka straight on November 6, 2021. He had no intention of becoming intoxicated while driving.

Dr. Kline's Evidence

[84] Defence called Dr. Kline as a witness, to give expert opinion evidence.

Expert Qualification

[85] Dr. Kline is an endocrinologist. I qualified him as an expert in:

- endocrinology;
- the study of hormones and related disorders;
- the secretion and action of hormones in humans; and
- diabetes.

[86] Dr. Kline watched and listened to Mr. Rumbles' testimony. He testified about various matters within the scope of his expert qualifications, opined on various aspects of Mr. Rumbles' testimony, and offered a hypothesis concerning the events of November 6, 2021.

[87] I will now provide a summary of the salient parts of Dr. Kline's evidence.

Diabetes

[88] Diabetes is a common disorder of insulin secretion by the pancreas. Insulin is a hormone which works to move blood glucose to cells in the body. The pancreas of a person with diabetes is unable to produce appropriate amounts of insulin. Without treatment, a person with diabetes is unable to move blood glucose to cells in the body. This results in high blood glucose, which is also known as hyperglycemia.

Hypoglycemia

[89] In contrast with high blood glucose is low blood glucose, which is also known as hypoglycemia.

[90] Hypoglycemia can be classified as mild, moderate, severe, or somewhere in between.

[91] In a mild hypoglycemic state, symptoms may include feeling unwell, mild sweating, slightly increased heart rate, some agitation, and hunger.

- [92] In a moderate hypoglycemic state, these symptoms are accentuated, and may include tremors, palpitations, and the beginnings of some degree of cognitive dysfunction, which could be some form of disorientation, behaviour change, impaired judgment, confusion, forgetfulness, and difficulty concentrating.
- [93] If a moderate hypoglycemic state progresses to a severe hypoglycemic state, there will be gross motor dysfunction, overt confusion, seizure, loss of consciousness, coma or death.
- [94] The three states of hypoglycemia are not closed, and are best understood as a continuum. The symptoms would not necessarily be the same each time a person experiences a particular state of hypoglycemia, but there will be similarities within each category upon repeat events.
- [95] Persons who are experiencing mild to severe hypoglycemia may well have a muddled recollection or amnesia of events that occurred during hypoglycemia.
- [96] Within the moderate stage of hypoglycemia, a person may still be able to perform some activities, especially stereotyped or common activities, for example, driving a car on a familiar route, but ending up lost. This does not mean during the hypoglycemic state they will always be able to explain what they are doing, or why, or that they will do it the way they intend.

How Hypoglycemia Manifests

- [97] There are many factors which go into how hypoglycemia manifests, for example: the rate of change in blood glucose, the median level achieved, and whether there has been previous experience with hypoglycemia.
- [98] Rapid-onset significant drop in blood glucose level typically produces symptoms quickly and becomes readily apparent to the affected person.
- [99] Slow-onset drop in blood glucose level may not have an easily identifiable onset time, and may progress to hypoglycemia without the affected person necessarily knowing that the process has begun.
- [100] If a person is using insulin and is unaware of its ability to provoke hypoglycemia, or what it would manifest as, Dr. Kline would expect them to attribute it to something else.

Insulin Production and Regulation by the Pancreas

- [101] The pancreas produces insulin in response to blood glucose levels, releasing insulin to help move glucose into cells when needed. Once blood glucose levels normalize, the pancreas stops insulin production, preventing hypoglycemia. This natural process does not occur for insulin-using persons with diabetes, as they cannot reverse the effect of the insulin once it has been administered. If they inject too much insulin relative to carbohydrate intake, blood glucose levels can drop too low, leading to hypoglycemia.

Insulin-Glucose Mismatch

[102] In order to replicate the way in which insulin produced by the pancreas works, an insulin-using person with diabetes would need to administer multiple injections of insulin over a 24-hour period. The advantage of a long-acting insulin is that it allows a user to administer a single injection which gives sustained insulin activity for 24 hours. The disadvantage is that once a dose of long-acting insulin is administered, its effects cannot be undone, and it will last for the full duration of its action. When an insulin-using person with diabetes takes a daily dose of long-acting insulin, it is usually calibrated or titrated according to the expectation that their carbohydrate intake and daily activities will be roughly the same from day to day. Deviation from their usual carbohydrate intake and daily activities results in an insulin-glucose mismatch, which may result in hypoglycemia.

"Tujeo" Long-Acting Insulin

[103] Tujeo is an injectable long-acting insulin. Taking 18 units of Tujeo daily, which is what Mr. Rumbles takes, is not an unusual dosage. It is typical to inject Tujeo once every 24 hours. Tujeo has been engineered to have nearly 24 hours of action, which is different to how insulin produced by the pancreas works.

[104] Insulin produced by the pancreas has a rapid onset effect, in accordance with what the body needs. As soon as blood glucose levels are normal, or going towards low, the pancreas immediately shuts off the insulin effect. This is why a person does not experience hypoglycemia on a daily basis.

Effect of Alcohol on Hypoglycemia

[105] One possible effect of alcohol is to provoke or worsen hypoglycemia. Although the reason for this is not entirely well understood, it appears to be a direct effect of ethanol acting on the liver, preventing it from being able to synthesize or create glucose. If a person had low blood glucose, the ethanol effect on the liver could worsen hypoglycemia.

[106] Two or three grams of sugar, such as found in two or three cans of White Claw would not be expected to materially change blood glucose level.

Perception of the Manifestation of Hypoglycemia

[107] A person's perception of the manifestation of hypoglycemia can differ depending on how quickly blood glucose levels drop. Rapid onset of hypoglycemia through short-acting insulin use tends to produce symptoms quickly, which a person recognizes more easily. In contrast, slow, gradual onset through long-acting insulin use may result in less obvious symptoms, in which a person may not immediately recognize they are becoming hypoglycemic.

The Ideal Standard of Practice Versus the Reality of Patient Education

[108] According to Dr. Kline, there is a difference between the ideal standard of practice and the reality of patient education concerning insulin use. Ideally, medical professional care-providers thoroughly educate patients new to insulin use about why insulin is being prescribed and the potential risks, particularly the risk of hypoglycemia. The information provided should be tailored to a patient's ability to understand and retain the information.

[109] Dr. Kline claims that, in his experience, in reality, the level of education and the amount of information received by patients is highly variable. While some may receive comprehensive education on the use of insulin and the risks involved, many may receive only basic instructions that they can expect to see lower blood glucose levels with progressively higher insulin doses. This variability in education means that not every patient receives the ideal level of guidance about insulin use, efficacy, and safety.

Mr. Rumbles' Medical History

[110] In Dr. Kline's opinion, Mr. Rumbles' medical history of managing his diabetes first with medication, then, after a period of years, with insulin too is "a nice display of the natural history of most individuals who have, what we call, Type 2 diabetes". He said:

Quite often, at first diagnosis, a person with diabetes can be well-controlled on a single oral agent. But with time and with progressive loss of pancreatic insulin productive capacity, we would expect to see sugars will begin to rise again despite being on one medication. And so a doctor will add a second medication.

Same progress continues, a third medication gets added or a fourth medication. By the time you get to four or five medications, to control your blood sugars, we would recognize that as being the - the latest stages of diabetes. Almost certainly requiring insulin as the next step.

Dangerous Operation

Mens Rea

[111] The mens rea for dangerous operation is a modified objective standard: R. v. Beatty, 2008 SCC 5 at para. 43; R. v. Roy, 2012 SCC 26 at para. 36; R. v. Chung, 2020 SCC 8 at para. 14.

[112] The focus of the mens rea analysis is stated in Roy, at para. 36:

[36] The focus of the mens rea analysis is on whether the dangerous manner of driving was the result of a marked departure from the standard of care which a reasonable person would have exercised in the same circumstances (Beatty, at para. 48). It is helpful to approach the issue by asking two questions. The first is whether, in light of all the relevant evidence, a reasonable person would have foreseen the risk and taken steps to avoid it if possible. If so, the second question is whether the accused's failure to foresee the risk and take steps to avoid it, if possible, was a marked departure from the standard of care expected of a

reasonable person in the accused's circumstances.

- [113] The mens rea includes a decision by the accused to continue on their errand when they ought to have been aware that they would be creating a foreseeable risk due to their impairment: Beatty, at para. 43; Roy, at para. 36; Chung, at para. 14; R. v. Thomas, 2024 BCCA 20 at para. 45.

Impaired Operation and Over 80

Mens Rea

- [114] The mens rea for the offences of Impaired Operation and Over 80 is the intent to operate a motor vehicle after the voluntary consumption of alcohol or a drug: R. v. King, [1962] S.C.R. 746 [King], 1962 CarswellOnt 18, at para. 64; R. v. Daynard, 1991 CarswellOnt 10, at para. 2.
- [115] Where it has been proved that a driver was operating a motor vehicle while their ability was impaired by alcohol, a rebuttable presumption arises that their condition was voluntarily induced, unless other evidence is adduced which raises a reasonable doubt as to whether they were, through no fault of their own, disabled when they undertook to drive and drove, from being able to appreciate and know that they were or might become impaired: King, at para. 63.

Discussion and Analysis

Mr. Rumbles' Credibility

- [116] Mr. Rumbles' credibility is central to my assessment of the issues for determination.
- [117] There is no evidence that Mr. Rumbles has a criminal record, or that he has had any negative contact with the criminal justice system, or that he is a person of discreditable character, whether by conduct or lifestyle.
- [118] While testifying, Mr. Rumbles displayed appropriate demeanour. He was attentive and appeared to be listening carefully to questions. His answers were responsive, careful and delivered without long pauses or requests for questions to be repeated or clarified. He maintained good eye contact. He was not argumentative. He did not display any hostility, or any abrupt change in demeanour under cross-examination. He did not give me any sense that he was attempting to control the narrative.
- [119] I am mindful of the need for caution when considering demeanour.
- [120] The plausibility of Mr. Rumbles' evidence must be assessed together with the expert's opinion. In assessing what weight, if any, to give to the expert's opinion, the strength of the evidentiary foundation upon which it is based is very important.
- [121] The plausibility of Mr. Rumbles' evidence must be also assessed with the evidence of the witnesses. For example, there is supporting evidence for the defence theory that Mr. Rumbles was already hypoglycemic when he interacted with the witnesses, but their

observations of his presentation are equivocal, in that they are also consistent with him being significantly intoxicated. Moreover, the two possibilities are not mutually exclusive, as Mr. Rumbles' presentation after the collision is also consistent with someone who had just sustained serious bodily injuries in a motor vehicle accident.

[122] I am mindful of the following passage from the civil case of *Faryna v. Chorny*, [1952] D.L.R. 354 (C.A.) at 356-357, 1951 CarswellBC 133:

The test [for credibility] must reasonably subject [a witness's] story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness must be its harmony with the preponderance of the probabilities...

[123] There are no apparent inconsistencies between Mr. Rumbles' evidence at trial, and what the witnesses saw him do and heard him say.

[124] I did not detect any indicia of deceit in the way Mr. Rumbles gave his evidence, such as fabrication, exaggeration or minimization. He did not attempt to downplay his consumption of two cans of White Claw while driving, clearly evidence which presented him in a poor light, particularly in light of subsequent events. He does not challenge any of the evidence of the Crown witnesses.

[125] I am mindful that deceit can be difficult to detect.

[126] I am mindful that although Mr. Rumbles has an obvious self-interest in securing an acquittal, it is an error for me to reason that he would be motivated to lie in order to secure an acquittal.

[127] While I find parts of Mr. Rumbles' evidence credible, I reject his evidence on certain important points, which I discuss below. On these points I find Mr. Rumbles' testimony inconsistent with the preponderance of the probabilities.

Reliability of Mr. Rumbles' Evidence

[128] As with credibility, the reliability of Mr. Rumbles' evidence is central to my assessment of the issues for determination.

[129] There is no evidence that Mr. Rumbles lacks any intrinsic capacity to provide reliable evidence. His evidence about his diabetes diagnosis, treatment and management, and the events of November 5 and 6, 2021, all pertains to things he personally experienced. There was no indication or evidence that his ability to accurately testify about events he does remember is compromised. He did not display any inability to relate what he can reasonably be expected to recall. He demonstrated good communication skills, used appropriate vocabulary, was articulate, with good command of the English language.

Dangerous Operation

Did Mr. Rumbles take his prescribed dose of long-acting insulin before going to bed on the evening before the collision?

[130] Mr. Rumbles was the source of this evidence. His testimony is uncorroborated. It is also unchallenged. I accept Mr. Rumbles' testimony on this point, and find as a fact that he took his prescribed dose of long-acting insulin before going to bed on the evening before the collision.

Did Mr. Rumbles consume any food on the day of the collision?

[131] Mr. Rumbles was the source of this evidence. His testimony is corroborated in that there is no evidence of any food in the Dodge, either at the time of the collision or beforehand. It is also unchallenged. I accept Mr. Rumbles' testimony on this point, and find as a fact that he did not consume any food on the day of the collision.

Had Mr. Rumbles been educated about the dangers of low blood glucose, how to prevent it, and how it would manifest?

[132] Mr. Rumbles was the source of this evidence. He claims he was never educated about the dangers of low blood glucose, how to prevent it, and how it would manifest. He claims he only received instruction about food regulation through counting calories. The focus was always on reducing his high blood glucose. After starting to use insulin in 2018, he did not experience any incidents involving memory loss or strange behaviour, and had never gone for as long a period of time without food. When he tests his blood glucose level in the morning it is typically around 7, which he considers high because he knows the normal range is between 4 and 7.

[133] I found it interesting that Mr. Rumbles knew the normal range for blood glucose levels to be between 4 and 7, and considers his typical morning reading of 7 to be high. It begs the question, if Mr. Rumbles knew 7 was high, what did he think 4 was? Based on his own evidence, he must have known that 4 was at the low end of the range. This begs the further question, if he must have known 4 was at the low end of the range, how can he credibly claim to have never heard about the dangers of low blood glucose? The answer is that he cannot.

[134] There is no other evidence about Mr. Rumbles' general state of knowledge about low blood glucose before the day of the collision.

[135] Diabetes is a critical condition which requires management. On the day of the collision, Mr. Rumbles knew this to be true, having experienced a diabetes-related medical crisis in 2018, as a result of which he had to begin treating the condition with long-acting insulin. I consider it self-evident that the proper management of the condition depends for its success on the acquisition and implementation of accurate information on an ongoing basis.

- [136] What I take from Mr. Rumbles' evidence is that, before the day of the collision, there was no reason for him to believe the dangers of low blood glucose were an aspect of the condition which he needed to manage.
- [137] I do not believe that Mr. Rumbles was never educated about the dangers of low blood glucose, how to prevent it, and how it would manifest.
- [138] I reject Mr. Rumbles testimony that he did not know about the dangers of low blood glucose before November 6, 2021. It is not believable. It defies credulity that between 2005, when he was first diagnosed with diabetes, and especially after he started using insulin in 2018, none of the following told Mr. Rumbles about the dangers of low blood glucose:
- his family doctor, when he was first diagnosed;
 - the specialist who treated him in hospital after his medical crisis in 2018;
 - the dietician he met in hospital after his medical crisis in 2018;
 - his family doctor, after his medical crisis in 2018;
 - Dr. Winterstein, the specialist his family doctor referred him to after his medical crisis in 2018.
- [139] The objective of starting to use insulin as part of the management of diabetes is to facilitate the lowering of blood glucose levels. High blood glucose and low blood glucose are different sides of the same coin. It is undisputed that Mr. Rumbles knew about high blood glucose. It defies belief that nobody, especially none of Mr. Rumbles' medical professionals, told him about the dangers of low blood glucose.
- [140] Mr. Rumbles has enjoyed a varied and successful career, most recently self-employed as one of the owners of a company operating in Saudi Arabia. It is clear from his history of employment in various fields that he is an intelligent and resourceful man, one who I am satisfied would inform himself about the dangers of low blood glucose, and would act in a way consistent with his self-interest in properly managing his condition. He has many reasons to be motivated by self-interest in properly managing his condition, not only for himself, but for others too, including his family and business partners.
- [141] Dr. Kline said that insulin-using persons with diabetes who are educated about the condition would typically take an active interest in managing their blood glucose levels and insulin. He also said that while such persons are expected to be responsible for managing their own doses, the extent of this responsibility can vary. Some patients may rely on healthcare providers for insulin dose adjustments, especially if they need additional guidance or have complex medical needs. While that may be true, the issue here though, is the broad question of Mr. Rumbles' knowledge about the dangers of low blood glucose for persons with diabetes, not the narrow question of his involvement in dose adjustments.

[142] I also take into account Dr. Kline's opinion about what he referred to as the ideal versus the reality concerning the education of persons with diabetes by their medical professional care-providers. Dr. Kline's evidence suggests some care-providers, including family doctors and endocrinologists, fail in their professional standards of care about something which could have fatal consequences for their patients. Dr. Kline prefaced his opinion on this point by saying it was based on his experience, however, what he meant by that was not explored. For example, I do not know the scope, basis or recency of Dr. Kline's experience about the education of persons with diabetes by their medical professional care-providers. I give his opinion on this point very little weight. Moreover, even assuming the accuracy of Dr. Kline's opinion, it does not follow that any of Mr. Rumbles' professional medical care-providers, in fact failed in their professional obligations to inform Mr. Rumbles, either individually or as a group. There is no evidence from any of Mr. Rumbles' care-providers on this point, or at all.

[143] I find as a fact that, before the collision, Mr. Rumbles knew about the dangers of low blood glucose for persons with diabetes, how to prevent it, and how it would manifest.

Did Mr. Rumbles associate his flu-like symptoms with low blood glucose or a medical crisis related to diabetes?

[144] Mr. Rumbles testified that at or near Valemount he started feeling flu-like symptoms of lethargy, tiredness, and sweating, and between Kamloops and Salmon Arm he felt hungry. Dr. Kline said feeling hungry would be unusual in a situation such as having the flu, but it is quite typical of hypoglycemia. Of course, while feeling hungry may be quite typical of hypoglycemia, it is also obviously consistent with not having eaten since the early or late afternoon of the previous day. Feeling flu-like symptoms as well as feeling hungry is not something that should have alerted Mr. Rumbles to the possibility that his flu-like symptoms might actually be a symptom of something more serious.

[145] There is no evidence Mr. Rumbles had ever experienced any prior episodes of low blood glucose. His medical crisis in 2018 was associated with diabetes, specifically in relation to high blood glucose, but it manifested differently, being characterized by the sudden onset of vomiting.

[146] It stands to reason that if Mr. Rumbles had associated his symptoms with something more serious, such as a medical crisis related to diabetes, he would have done something other than simply continue to drive, and then, while still driving, consume two alcoholic drinks. It makes sense that, at a minimum, he would likely have communicated to his wife that he was feeling unwell, yet his text communications with his wife show he did not.

[147] I find as a fact that Mr. Rumbles did not associate his symptoms with low blood glucose or a medical crisis related to diabetes.

Was Mr. Rumbles' conduct a marked departure from the standard of care that a reasonable person would observe in the circumstances?

- [148] I turn now to the question of whether Mr. Rumbles' conduct was a marked departure from the standard of care that a reasonable person would observe in the circumstances.
- [149] Counsel disagree as to the start point for considering Mr. Rumbles' conduct.
- [150] Crown says the start point is when Mr. Rumbles was in Clearwater at 1:10 p.m. Crown says that at this point Mr. Rumbles made a conscious decision to continue driving in the face of a real risk of medical crisis or intoxication. Crown says that in doing so, Mr. Rumbles' conduct was a marked departure from the standard of care that a reasonable person would observe in his circumstances.
- [151] Defence says the start point is later, at a point when they assert Mr. Rumbles was in a state of insulin-induced hypoglycemia.
- [152] Mr. Rumbles' claim that he was never educated about the dangers of low blood glucose, how to prevent it, and how it would manifest, is significant to his defence on the charge of Dangerous Operation, because it is relevant to mens rea, namely whether his conduct was a marked departure from the standard of care expected of a reasonable person in his circumstances.
- [153] I have already found as a fact that, before the collision, Mr. Rumbles knew about the dangers of low blood glucose for persons with diabetes, how to prevent it, and how it would manifest. However, that is not the end of the inquiry. The question is whether, armed with this information, Mr. Rumbles' conduct was a marked departure from the standard of care that a reasonable person would observe in his circumstances.
- [154] I will begin by considering the situation before Mr. Rumbles set out on the morning of November 6, 2021.
- [155] Mr. Rumbles testified that on November 5, 2021, he had last eaten in the early or late afternoon. Before going to bed, he injected his long-acting insulin. Before he started out, he checked his blood glucose level, made a coffee for the road, and did a safety check on the Dodge and Trailer, consistent with his habit of doing so when he worked as a professional Class 1-licensed driver. He knew driving is a complex task. He knew towing a trailer requires increased attention.
- [156] When Mr. Rumbles decided to drive that morning, he knew he had not eaten since the previous afternoon, and that his insulin was still doing its work. Although he checked his blood glucose level before he started out, finding it within the normal range for him in mornings, knowing he was embarking on a long drive, he did not take a blood glucose test kit. He did not consume any carbohydrates, or take any to consume along the way. On previous occasions when he had made the same trip, often with his wife, he had stopped for food along the way. This time he intended to stop for food in Salmon Arm.
- [157] I will now consider events along the way.

[158] Mr. Rumbles testified that several hours into his trip, around the time he stopped in Valemount for diesel and to buy alcoholic drinks, he started to experience flu-like symptoms, which got progressively worse. I have already found as a fact that Mr. Rumbles did not associate his symptoms with low blood glucose or a medical crisis related to diabetes.

[159] By the time Mr. Rumbles began to experience flu-like symptoms, he knew:

- he had driven for hours;
- towing a loaded trailer;
- with hours of driving to go;
- on Highway 1;
- along a route which would take him to or through three urban centres: Kamloops, Salmon Arm, and Enderby; and
- in the daytime, when roads and highways are more heavily travelled.

[160] Yet, around Clearwater, while experiencing worsening flu-like symptoms, knowing he had an empty stomach, knowing that consuming alcohol affects driving ability, he opened a can of White Claw and consumed it, while continuing to drive. When he finished the first can of White Claw, still experiencing worsening flu-like symptoms, he opened another can of White Claw and consumed it too, still while continuing to drive.

[161] I pause here to note that there is no evidence Mr. Rumbles was impaired by alcohol at any time after he left his residence, until he was first observed driving erratically by Donna Williams. Indeed, Analyst Bylenga testified that Mr. Rumbles' blood alcohol content would not have exceeded the legal limit if he had consumed only the two cans of White Claw.

[162] That, however, is not the issue.

[163] Recognizing that the actus reus of the charge of Dangerous Operation is not at issue, it is nevertheless noting it for context.

[164] In the actus reus inquiry, the question is whether Mr. Rumbles' decision to continue driving while still experiencing flu-like symptoms, drinking one, then two cans of White Claw, viewed objectively, was dangerous to the public in all the circumstances. I find that it was. At this point, Mr. Rumbles' manner of driving was dangerous in that he was endangering the public. His manner of driving created a clear risk of damage or injury. Driving is an inherently dangerous activity, albeit one which is both legal and of social value.

[165] I return now to the mens rea analysis.

- [166] The focus of the mens rea analysis is on whether the dangerous manner of driving was the result of a marked departure from the standard of care expected of a reasonable driver in the circumstances.
- [167] As to the first question in the mens rea analysis, I find that, in light of all the relevant circumstances, a reasonable person would have foreseen the clear risk of damage or injury and taken steps to avoid it if possible.
- [168] As to the second question, I find that Mr. Rumbles' failure to foresee the clear risk of damage or injury and take steps to avoid it here, not only possible, but obvious - by choosing not to drink first one, then two alcoholic drinks; was clearly a marked departure from the standard of care expected of a reasonable driver in the circumstances.
- [169] It goes without saying that driving a motor vehicle while consuming one and then two alcoholic drinks poses a risk of danger to the public. That Mr. Rumbles was not actually impaired by those two drinks, and that a White Claw can is no different from any other non-alcoholic drink can is irrelevant.
- [170] I find that from the point Mr. Rumbles decided to consume the first can of White Claw, while continuing to drive, his conduct was a marked departure from the standard of care expected of a reasonable driver in the circumstances.

Impaired Operation & Over 80

Was Mr. Rumbles in a state of either moderate or severe hypoglycemia when he consumed the vodka?

- [171] I turn now to the question of whether Mr. Rumbles was in a state of either moderate or severe hypoglycemia when he consumed the vodka.
- [172] Mr. Rumbles testified he has no memory after arriving in Salmon Arm. He claims the next thing he remembers is lying on the road wondering why it was so dark. According to Mr. Rumbles' version of events, he obviously cannot say whether he was in a state of either moderate or severe hypoglycemia when he consumed the vodka.
- [173] Concerning Mr. Rumbles' claim of not being able to remember anything after he reached Salmon Arm, Dr. Kline said persons who are experiencing mild to severe hypoglycemia may well have a muddled recollection or amnesia for the events that occurred during the phase of hypoglycemia.
- [174] Within the moderate hypoglycemic range, a person may still be able to do things, even though their mind may not be fully cognizant.

- [175] Witnesses who interacted with Mr. Rumbles described his presentation as "confused", "incoherent", "mumbling" and "out of it". The observations of Valerie McPherson, David Payne, Brody Henry and Braiden Parkes are consistent with Mr. Rumbles having just sustained serious bodily injuries in a motor vehicle accident, or being significantly impaired by alcohol, or experiencing hypoglycemia. In this regard, it is notable that Mr. Rumbles appears to have sustained a concussion.
- [176] Dr. Kline cannot definitively say whether Mr. Rumbles was experiencing hypoglycemia prior to and at the time of the collision, only that it is a possibility. He agreed the evidence consistent with that possibility is equally consistent with an alternative, namely that Mr. Rumbles voluntarily chose to consume alcohol while driving, did so to the point of intoxication, and caused the collision.
- [177] In Dr. Kline's opinion, Mr. Rumbles did not experience cognitive impairment of an overt nature due to hypoglycemia in the early afternoon hours. Because cognitive impairment of an overt nature is a feature of the state or moderate or severe hypoglycemia, based on Dr. Kline's opinion, I find as a fact that Mr. Rumbles did not experience moderate or severe hypoglycemia in the early afternoon hours.
- [178] In Dr. Kline's opinion, it is "certainly possible" the symptoms Mr. Rumbles described as he neared Salmon Arm are consistent with symptoms of hypoglycemia, and that he thinks it is a "possibility" Mr. Rumbles was suffering from insulin-induced hypoglycemia at the time of his erratic driving in the later stages of the afternoon to the early evening.
- [179] He said:
- My opinion, Mr. Rumbles' situation contains all of the prerequisites for an insulin-induced hypoglycemic event. He was using insulin. He was using a long-acting form of insulin, which would be expected to have an effect for up to 24 hours after the injection. He - I heard him testify that he did not know about the risks of hypoglycemia; what to watch for, how to prevent it. And he testified that he did not eat the next day while travelling.
- And so, having given a dose of long-acting insulin and then not consuming the expected daily carbohydrates is a setup for hypoglycemia.
- [180] It is apparent that Mr. Rumbles' claim that he had not been educated about the dangers of low blood glucose, how to prevent it, or what it would manifest as .was something Dr. Kline considered important to his opinion that it is a "possibility" Mr. Rumbles was suffering from insulin-induced hypoglycemia at the time of his erratic driving in the later stages of the afternoon to the early evening. I have already found as a fact that, before the collision, Mr. Rumbles knew about the dangers of low blood glucose for persons with diabetes, how to prevent it, and what it would manifest as. I do not know how this would have affected Dr. Kline's opinion, and he was not asked to opine on variable scenarios.

- [181] Dr. Kline said that alcohol use has to be approached with great care by insulin-using persons with diabetes, because the effects of alcohol can be unpredictable. In some cases, consuming alcohol can induce or aggravate hypoglycemia. Conversely, depending on the amount of alcohol consumed and co-existing sugars, as in flavouring, a higher blood glucose level can result.
- [182] While Mr. Rumbles' blood glucose level at the time of the collision is unknown, Dr. Kline said he was not hypoglycemic at 8:04 p.m., which was 26 minutes after the collision, when Paramedic Johnson tested his blood glucose and determined it was 9.3. Dr. Kline was asked if 9.3 is in a normal range and he said: "I agree that it's - yes, I with that can be in a normal range".
- [183] I note that Dr. Kline did not say that a reading of 9.3 is in the normal range, only that it "can be in a normal range". His answer suggested the need for further information about what can make 9.3 within the normal range, when all the other evidence was to the effect that the normal range is between 4 and 7. He was not asked to clarify it.
- [184] Dr. Kline offered several potential explanations for why Mr. Rumbles' blood glucose level at 8:04 p.m. was 9.3: first, the waning effect of Mr. Rumbles' long-acting insulin; second, that Mr. Rumbles could have "intact function of his counter-regulatory hormones"; third, any glucose content in the raspberry flavoured vodka; and finally, a combination of one or more of the foregoing.
- [185] As to the third potential explanation, Dr. Kline said that the question of whether the vodka consumed by Mr. Rumbles could have contributed to raising his blood sugar is unanswerable, because there are too many unknown variables. He identified a number of unknowns which affect how much glucose would be needed to raise blood glucose levels:
- the glucose content and volume of the vodka consumed;
 - Mr. Rumbles' initial blood glucose level;
 - the amount of insulin already in his body;
 - how much insulin remains active after glucose is ingested; and
 - Mr. Rumbles' sensitivity to insulin.
- [186] Mr. Rumbles did not give any evidence about his usual carbohydrate intake or daily activities.
- [187] Mr. Rumbles said that on the day before the collision:
- he did not consume any carbohydrates after having lunch sometime in the afternoon; and
 - he administered his regular dose of long-acting insulin in the evening before going to bed.
- [188] Mr. Rumbles said that on the day of the collision:

- he did not consume any carbohydrates; and
- he had no activity other than driving.

[189] Despite Dr. Kline having identified a number of unknowns which affect how much glucose would be needed to raise blood glucose levels, he opined that this possibly resulted in Mr. Rumbles having an insulin-glucose mismatch that led to hypoglycemia.

[190] Dr. Kline said he formulated his opinion taking into consideration Mr. Rumbles' testimony that:

- after October 2018 he no longer drank hard liquor;
- while he occasionally would consume alcoholic drinks such as White Claw, or wine, he did not drink vodka, and had never consumed it straight;
- as usual, he administered long-acting insulin the previous evening;
- he had not eaten since the previous day;
- he felt progressively unwell between approximately 1 p.m. and 4:52 p.m.;
- he had no memory from arriving in Salmon Arm until after the collision;
- he consumed two White Claw alcoholic drinks along the way;
- at 8:04 p.m. his blood glucose level was 9.3;
- he had no intention of becoming intoxicated or drinking vodka straight.

[191] Dr. Kline testified that all of this information was "at least possibly relevant" to his opinion. His answer suggested the need for exploration of what might affect any one or more of these pieces of information being "at least possibly relevant". He was not asked to clarify it.

[192] Defence asked Dr. Kline to articulate his hypothesis:

Okay. So if I may then go to this question. So if you've - you consider the relevant evidence and the - sorry, and the relevant science and clinical medicine for this case, can you offer a hypothesis then for the court as to what may have occurred to Mr. Rumbles and how he may have drank vodka when he would not have meant to or intended to, in a large amount that created the impairment?

[193] Dr. Kline further stated:

I think it will be plausible to hypothesize that having taken a dose of long-acting insulin the night before, and then not consumed any carbohydrates during the day, it may be that he would have begun to become hypoglycemic at some point during the day.

Having not been previously instructed about hypoglycemia, how to prevent it, or what it would manifest as, I believe it is plausible that he began to have hypoglycemia symptoms, but did not recognize the actual nature of what he was sensing.

Not recognizing that he was becoming hypoglycemic, he did not consume carbohydrates, and, therefore, the hypoglycemia did not remit. If anything, it may have persisted and/or progressed.

The consumption of two White Claws containing alcohol may have further either impaired some recovery from hypoglycemia or contributed to worsening of the hypoglycemia that was already there.

Once the hypoglycemia passes to a more moderate phase - so beyond simple flu symptoms, sweating, etc. - but once it passes to a more moderate phase and begins to affect cognition, I believe it is plausible that judgment could be sufficiently impaired such that a person - in this case, Mr. Rumbles - could do something which normally would be ill-advised and out of character.

And in this particular case, that ends up being the continued consumption of alcohol at a time when it should not be drunk. The subsequent alcohol intoxication plus or minus any ongoing hypoglycemia contribute to aggressive cognitive and motor dysfunction. And I believe the facts of the case are not disputed beyond that.

[194] In cross-examination, Dr. Kline was asked if he could comment on the probability of his hypothesis having occurred. He said:

Sure. So as I'm sure you know, when a scientist is asked to comment on the probability of a hypothesis, you can't just look at the hypothesis in question because it's really a calculation involving the possibly or probability of the hypothesis you're interested in, but also divided by the probability of the alternate hypothesis or no hypothesis. Which, in this case, the alternative hypothesis is that he simply made a decision to drink alcohol when he shouldn't have, and this was pure intoxication.

In order for me to give you a probability estimate between the two hypotheses, I need to have grounds for assigning a probability to the default or no hypothesis. And to do that, I probably would need to know Mr. Rumbles, his family, interview him to get an idea as to the likelihood that he would do such a thing either because of hidden alcoholism or whatever else.

I have not met Mr. Rumbles. I do not know him. And so, I'm unable to comment on the probability that he just decided to drink alcohol because he does things like that.

That being the case, I cannot calculate an overall probability between the two hypotheses and I must stay with plausibility for the one that I've advanced.

[195] I find Dr. Kline's evidence about undisputed matters within the areas of his expertise to be generally reliable. I find, however, that I can give Dr. Kline's opinions, including his hypothesis, very little weight, because he never interviewed Mr. Rumbles, his doctor, any of the other medical professionals who treated him after his medical crisis in 2018, or any of his family. He also did not review certain material pertaining to Mr. Rumbles' treatment.

- [196] Dr. Kline reviewed a copy of parts of the police report, including witness's accounts of Mr. Rumbles' pattern of driving and at the collision scene. While Dr. Kline listened to and watched Mr. Rumbles' evidence, he did not listen to or watch the evidence of any of the other witnesses. Other than the referenced parts of the police report, I do not know what else he reviewed, or to what extent the witness's accounts in the report are consistent with their testimony at trial.
- [197] Dr. Kline said defence provided him with Mr. Rumbles' medical history, but I do not know whether that means he actually reviewed Mr. Rumbles' medical records or was only told about Mr. Rumbles' history with diabetes and, if the latter, exactly what he was told.
- [198] Dr. Kline said he did not review any documentation from Mr. Rumbles' initial consultation or discussion regarding the initiation of insulin therapy. He cannot speak to the exact details of what instructions or guidance Mr. Rumbles received during that consultation or discussion.
- [199] Dr. Kline knew the results of the blood alcohol content analysis of samples of blood taken from Mr. Rumbles; and that two empty cans of White Claw, each containing 1 gram of sugar; and a bottle of vodka, largely empty, were found in the Dodge.
- [200] Dr. Kline testified that insulin titration, or adjusting an insulin dose, is dependent on a regular schedule, including consistency in exercise, timing of meals, and consumption of carbohydrates. For patients who have a regular routine, insulin titration is straightforward, because their insulin needs remain stable from day to day. However, for individuals with a more variable lifestyle, insulin titration becomes challenging, because their daily insulin needs fluctuate, making it harder to find a consistent dose.
- [201] When asked specifically about Mr. Rumbles' insulin regimen on November 5, 2021, Dr. Kline said Mr. Rumbles was likely in a maintenance phase, where he was using a "usual dose" of insulin rather than adjusting it. However, this "usual dose" assumes Mr. Rumbles had a regular schedule of activities and eating to match it.
- [202] For stable diabetes control, Dr. Kline emphasized that a regular schedule is crucial, especially when using a fixed dose of insulin. This includes consuming a set amount of carbohydrates, and maintaining consistent intake across meals. If a person with diabetes takes a fixed insulin dose but does not follow a regular diet schedule, for example, by fasting or skipping consumption of carbohydrates, it could lead to negative effects on blood glucose levels.
- [203] Dr. Kline was unable to comment on Mr. Rumbles' schedule, or whether his driving all day on November 6, 2021, represented a deviation from his usual routine. The lack of information available to Dr. Kline about Mr. Rumbles' schedule detracts from the weight I can give to his explanation of how Mr. Rumble's insulin dose titration and schedule may have contributed to a hypoglycemic event that day.

- [204] For the reasons already stated, I attach very little weight to Dr. Kline's hypothesis to the effect that moderate or severe hypoglycemia impaired Mr. Rumbles' judgment such that he may have consumed the vodka without intending to.
- [205] I find that Mr. Rumbles was not in a state of either moderate or severe hypoglycemia when he consumed the vodka. I find that Mr. Rumbles was operating the Dodge while his ability was impaired by alcohol and with a blood alcohol level in excess of the legal limit. I accept Analyst Bylenga's evidence by extrapolation that Mr. Rumbles blood alcohol content at the time of the collision was somewhere between 213 and 239 milligram percent, a level well in excess of the legal limit.
- [206] Additionally, although it is unknown exactly when Mr. Rumbles started consuming the vodka and became impaired, I find that by 5:51 p.m., when Donna Williams observed Mr. Rumbles driving erratically, he was already impaired. Mr. Rumbles' driving was obviously of sufficient concern to Ms. Williams that she called 911. Moreover, at the time of Ms. Williams' observations, Mr. Rumbles was driving in the opposite direction from his intended destination.
- [207] Witnesses who interacted with Mr. Rumbles described his presentation that I find to be consistent with him being significantly impaired by alcohol. The first evidence of Mr. Rumble's impairment can be found in the observations of Donna Williams, who observed him driving erratically at 5:51 p.m. Shortly thereafter, witnesses Erin Trott, Cathy Zowty, and Valerie McPherson, also observed Mr. Rumble's driving erratically and observed his presentation of behaviour consistent with being impaired. I find the evidence of these witnesses establishes Mr. Rumbles was impaired by 5:51 p.m.
- [208] It follows from my finding that Mr. Rumbles' ability was impaired by alcohol and had a blood alcohol level in excess of the legal limit that a rebuttable presumption arises that Mr. Rumbles' state of impairment was voluntarily induced.
- [209] I have already found that I give little weight to Dr. Kline's hypothesis that moderate to severe hypoglycemia impaired Mr. Rumbles' judgment such that he may have consumed the vodka without intending to. Upon consideration of the remaining evidence adduced before me, I have no reasonable doubt about whether Mr. Rumbles was, through no fault of his own, disabled when he undertook to consume the vodka and continue driving, from being able to appreciate and know that he was or might become impaired.
- [210] I come to this conclusion for the reasons pertaining to my finding that Mr. Rumbles' conduct was a marked departure from the standard of care expected of a reasonable driver in the circumstances. I have no reasonable doubt that Mr. Rumbles was able to appreciate and know that he was or might become impaired when he decided to consume the two cans of White Claw while continuing to drive, after driving for hours with many hours to go, while experiencing worsening flu-like symptoms, knowing he had an empty stomach and had not consumed food since the afternoon of the previous day, knowing that consuming alcohol affects driving ability, and knowing the dangers of low blood glucose for persons

with diabetes.

Bolus Drinking

[211] Defence raised the issue of bolus drinking, contending that Mr. Rumbles may not have been impaired at the time of the collision because the evidence raises the possibility that Mr. Rumbles consumed the vodka within 30 minutes before either his interaction with Valerie McPherson at 6:46 p.m. or the collision at 7:38 p.m.

[212] I have found as a fact that Mr. Rumbles was impaired at or before 5:51 p.m., when he was first observed driving erratically by Donna Williams. The bolus drinking argument has no application in these circumstances, as by then Mr. Rumble was already impaired.

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[213] I have carefully scrutinized the evidence in this case. I do not believe the exculpatory evidence of Mr. Rumbles. I give very little weight to the exculpatory and hypothesis evidence of Dr. Kline. The exculpatory evidence does not leave me with any reasonable doubt. Considering all the evidence, I am satisfied beyond a reasonable doubt that Mr. Rumbles committed the offences with which he is charged.

Conclusion

Dangerous Operation

[214] On count 1, I find Mr. Rumbles guilty.

Impaired Operation and Over 80

[215] On count 2, I find Mr. Rumbles guilty.

[216] On count 3, I find Mr. Rumbles guilty.

"B. Smith J."

B. SMITH J.

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