

CANADA / JUDGMENT

R. v. Russell

2023 BCSC 1123

COURT

Supreme Court of British Columbia

DECIDED

27 June 2023

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

2023 BCSC 1123 R. v. Russell

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Russell,

2023 BCSC 1123

Date: 20230627

Docket: 77381

Registry: Prince George

Rex

v.

Paul Nicholas Russell

Before: The Honourable Justice Marzari

Oral Reasons for Judgment

Counsel for the Crown:

D.A. Jardine, KC

G. Furmaniuk

Counsel for Paul Nicholas Russell:

D.M. Turko, KC

Z. Zwanenburg

Place and Dates of Trial:

Prince George, B.C.

May 1-5, 8-10, 2023

Place and Date of Judgment:

Prince George, B.C.

June 27, 2023

Introduction

- [1] Just after noon on November 25, 2021, Mr. Paul Nicholas Russell approached the RCMP detachment in Vanderhoof in his white pickup truck. Without getting out of his truck, he fired a rifle at two marked RCMP vehicles parked in the parking lot on the north side of the detachment. He then pulled his truck forward and fired twice more in the direction of a window on the west side of the detachment. He drove his truck forward again and rounded the corner of the RCMP detachment where he fired his rifle again - this time at the south, front-facing side of the detachment.
- [2] Mr. Russell then drove away for approximately five minutes before returning in his truck to the detachment, where he proceeded to use his truck to ram an RCMP Highway Patrol vehicle on the east side of the detachment. He shot several times into this vehicle and twice into the window on the east side of the detachment, at one point getting out of his truck to do so.
- [3] Mr. Russell then returned to his vehicle, reversed out of the parking area of the RCMP detachment, and drove away. His actions caused a tone alert notifying RCMP detachments in Fraser Lake and Prince George, and a lockdown of two of the local elementary and high schools, as well as an emergency alert sent to cell phones in the town of Vanderhoof.
- [4] Approximately 30 minutes later, Mr. Russell and his white pickup truck were identified driving down the road close to Mr. Russell's home. Upon seeing and identifying the truck, two RCMP officers turned to follow Mr. Russell, engaging their lights and sirens. Over the course of a few kilometres, the officers pursued Mr. Russell down the main street of Vanderhoof and towards the highway that leads to Prince George. During this pursuit, Mr. Russell collided with another RCMP vehicle arriving from Prince George and attempting to block his path. Shortly thereafter, Mr. Russell pulled over into a Kal Tire parking lot where he was arrested without further incident.
- [5] The above sequence of events is generally not contested by Mr. Russell, and I find it is established beyond a reasonable doubt by the evidence. The time, date, jurisdiction, and Mr. Russell's identity are also established beyond a reasonable doubt by the evidence in this case. The primary issue before me is whether the Crown has proven that Mr. Russell was acting intentionally throughout, and with the various requisite mens rea with respect to each of the counts charged.

- [6] Mr. Russell has been charged with nine counts relating to the above incidents. The most serious charge is that Mr. Russell was attempting to commit the murder of a member or members of the RCMP using a firearm contrary to s. 239(1)(a.1) of the Criminal Code, R.S.C. 1985, c. C-46, (Count 1). In Count 2, Mr. Russell is charged with intentionally discharging a firearm into or at a place, knowing or being reckless as to whether another person was present, or while being reckless as to the life or safety of another person, contrary to s. 244.2(3)(b) of the Criminal Code.
- [7] Also, in relation to this shooting incident, Mr. Russell is charged with:
- a) possession of a weapon for a purpose dangerous to the public peace or for the purpose of committing an offence contrary to s. 88(1) of the Criminal Code (Count 3);
 - b) transporting a firearm in a careless manner contrary to s. 86(1) of the Criminal Code (Count 4);
 - c) committing mischief causing actual danger to life by wilfully discharging a firearm into the RCMP detachment contrary to s. 430(2) of the Criminal Code (Count 8); and,
 - d) committing mischief by wilfully discharging a firearm into the detachment and into motor vehicles of the RCMP at a value of in excess of \$5,000, contrary to s. 430(3) of the Criminal Code (Count 9).
- [8] In addition, Mr. Russell is charged with the following generally in relation to the pursuit following the shooting incident:
- a) storing ammunition in a careless manner without reasonable precautions for the safety of other persons contrary to s. 86(1) of the Criminal Code (Count 5);
 - b) dangerous operation of a vehicle contrary to s. 320.13(1) of the Criminal Code (Count 6); and
 - c) failing to stop the motor vehicle as soon as was reasonable while being pursued by a peace officer contrary to s. 320.17 of the Criminal Code (Count 7).

Issues

- [9] Generally, Mr. Russell concedes that he intentionally shot at and damaged police vehicles and the physical building of the RCMP Vanderhoof detachment. He agrees that those actions were deliberate. However, he says that the bullets that entered the RCMP detachment through windows on the west and east sides of the detachment were stray bullets, and that the Crown has not proven that they were intended to harm anyone. He further argues that the Crown has not proven the specific intent to kill RCMP officers required with respect to the attempted murder charge. Nor, he says, has the Crown proven the mens rea for the reckless discharge of a firearm, in that the Crown has not proven that he had the mental capacity to perceive the risk of harm to persons in the detachment at the time of his actions.

- [10] Mr. Russell does not contest Count 3 related to possession of a weapon for a dangerous purpose, and Count 4 with respect to the careless use of a firearm as it relates to the time period in which he was actively driving his truck around the detachment while firing his rifle.
- [11] Mr. Russell says there is no evidence to establish a marked departure from the standard of care with respect to the storage of ammunition in this case in relation to Count 5.
- [12] With respect to Counts 6 and 7 relating to the police pursuit, Mr. Russell says that due to the initial chase vehicle being an unmarked RCMP vehicle, and also due to his mental health situation, it cannot be assumed that he understood that he was being pursued by police when he failed to stop, and that the Prince George RCMP vehicle caused the collision by attempting to cut him off.
- [13] With respect to Count 8 relating to mischief causing actual danger to life, Mr. Russell says that the Crown has not proven that harm to life or danger to life was foreseeable or likely from his actions.
- [14] Finally, Mr. Russell does not contest that Count 9 was made out with respect to mischief over \$5,000 in relation to the damage to the exterior of the detachment and the RCMP vehicles.
- [15] I will therefore review the counts, including the mens rea (mental element) required to be proven by the Crown beyond reasonable doubt, for each one.
- [16] I will start by setting out my factual findings, many of which are uncontentious in this case.
- [17] I will then go on to consider the evidence related to Mr. Russell's mental state, including his history prior to the incident of mental health issues, and the evidence of his mental state in the 24 hours surrounding the incident.
- [18] Finally, I will determine whether the Crown has established beyond a reasonable doubt each of the offences Mr. Russell has been charged with. This will be where I consider what inferences I can make from the established facts with respect to Mr. Russell's mental state (for example Mr. Russell's intent or purpose for specific intent offences, and whether or where Mr. Russell was aiming when he shot through the windows of the RCMP detachment). I make those inferences on the beyond a reasonable doubt standard.

Factual Findings

- [19] I will now proceed with my factual findings in this case.

The Shooting Incident

- [20] The evidence of the witnesses across the street from the RCMP detachment and Sergeant Ushock (who observed Mr. Russell through his window), together with the photographic evidence, establishes that Mr. Russell approached the RCMP detachment in his white Ford pickup truck driving south along Church Avenue, wearing a fedora and mirrored sunglasses.

He stopped in the oncoming lane of traffic closest to the RCMP detachment, and fired six shots from a rifle later seized from his vehicle. The evidence establishes that three rounds were shot into RCMP vehicle VH6103, and three rounds were shot into RCMP vehicle VH6102 at this time. Both RCMP vehicles were parked at the north side of the detachment in the rear parking lot beside other cars. The bullets hit the front grill, headlights, and front windshield of these vehicles. The evidence, including the evidence of the witness across the street, the angle of the entry and exit holes, and the ballistic evidence, establishes beyond a reasonable doubt that these bullets were shot from Mr. Russell's rifle, while he was stopped on Church Avenue behind the detachment building.

- [21] I agree with the Crown that there were two vehicles closer to Mr. Russell's position and closer to Church Avenue that were not hit by any bullets, and that these were either civilian or unmarked vehicles.
- [22] Mr. Russell then drove forward on Church Avenue, still in the oncoming lane and adjacent to the RCMP detachment, outside of the windows on the west side of that building. One set of windows is the most exposed on this side of the building, with the other two sets of windows being partially blocked by vegetation. I find that Mr. Russell fired two shots towards the exposed set of windows.
- [23] One bullet entered the brick frame around this window and did not go further. The other bullet entered the window, proceeded through the top of the office manager's monitor, across the office manager's desk and office area, through the divider at the back of the office manager's cubicle, past the doorway of the commanding officer, and eventually became lodged into the side of a fax machine in the common area of the RCMP detachment.
- [24] I find that Mr. Russell then drove his truck forward to the corner of Columbia Street where he turned left, again into the oncoming lane. He then fired at the front (south-facing side) of the RCMP detachment. The photographic evidence at trial does not demonstrate or establish exactly where those shots landed, however four shots are audible on a video of this incident, and I find that Mr. Russell fired four times from this location. After those four shots, Mr. Russell drove forward on Columbia Street approximately one block to the main street of Burrard Avenue.
- [25] I find that it was most likely at this point that he was observed by the witness, Mr. Wallace, who was crossing Columbia Street to make a deposit at the bank at the corner of Burrard and Columbia. I accept Mr. Wallace's evidence that although Mr. Russell appeared to be approaching the intersection quite quickly, he made a controlled stop and waved Mr. Wallace across the crosswalk. Before Mr. Russell made a left turn onto Burrard Street, Mr. Wallace was able to identify what looked like approximately 10 inches of a barrel of a rifle sticking out the driver side window, with an iron sight at the tip. Based on the description of the driver, the truck, the timing, the presence of the rifle, and that the truck turned onto Burrard Avenue, I find that Mr. Wallace observed Mr. Russell as he was leaving the detachment.

- [26] I find Mr. Russell returned to the RCMP detachment approximately five minutes later. This time he entered the east side of the detachment where there is a lane or driveway, and the video evidence establishes that he fired his rifle seven times, the first four times in fairly quick succession. I also find that he used his truck to ram a parked RCMP vehicle VH6602 forward by several feet. Surveillance video shows the lower portion of someone walking, pointing and reloading a rifle over the course of approximately a minute at this time.
- [27] The evidence as a whole establishes beyond a reasonable doubt that the person in the surveillance video was Mr. Russell. Although there is no sound to that surveillance video, I find that this surveillance video overlaps with the time when shots were heard coming from this side of the RCMP detachment.
- [28] I am satisfied that Mr. Russell fired three shots into the back of RCMP vehicle VH6602 and another bullet into the side of that car. I also find that Mr. Russell fired two rounds through the window on the east side of the detachment and into the office of the RCMP traffic patrol. These two bullets travelled over the top of the chair of the office area of one of the officers in the traffic patrol department and lodged in the metal shelving units above the monitors on that desk. Pieces of a bullet and metal from the cabinet also penetrated the divider of that cubicle and lodged into the side and back wall of the next office area over.
- [29] I find - upon reviewing the evidence, including various videos and the photographs of the location of the shell casings and the angles of the shots - that Mr. Russell got out of his truck for approximately one minute during which time he fired his rifle into the side of the traffic patrol vehicle VH6602. Beside the traffic office window is an exit door which became partially blocked by the highway patrol vehicle when it was pushed forward in front of that door. The movement of the traffic vehicle also exposed the full east facing window of the traffic office. There are 43 seconds between the last shot heard on the east side of the building and Mr. Russell's truck backing out of the driveway of the detachment.
- [30] In total, Corporal Turmel was able to account for 15 of the rounds fired into the detachment or police vehicles surrounding the detachment. In addition to the 15 bullets that are accounted for in Corporal Turmel's evidence, the video evidence indicates that Mr. Russell shot four times towards the front of the detachment, and those shots do not appear to be accounted for in the locations set out in Corporal Turmel's testimony. I find that there were up to four additional shots unaccounted for by Corporal Turmel, but little turns on this.
- [31] At the time that Mr. Russell fired through the west window of the detachment, he was observed by two witnesses across the street, and also by Sgt. Ushock, the commanding officer of the RCMP detachment in Vanderhoof. I accept Sgt. Ushock's evidence that he was sitting in his office at his desk having just finished his lunch when he heard the sound of high-powered gunshots, looked through his blinds and saw a white pickup truck stopped in front of the office windows, and saw a man in the driver's seat holding a rifle and cycling the action (extracting the spent cartridge and reloading a fresh one). The man he saw was wearing reflective aviator sunglasses and a fedora style hat, and was holding the rifle with

the barrel of the rifle on the windowsill pointing towards the detachment. Sgt. Ushock yelled for everyone to hit the floor, at which point a bullet came through the window, missed him narrowly, and hit the fax machine.

- [32] Based on Sgt. Ushock's testimony as well as the evidence of Cst. Bulmer, whose work area is across from Sgt. Ushock's office door, I find that the bullet crossed through the office manager's work area at about head level for a person who was sitting, and chest level for a person who was standing. Fortunately, the office manager who would ordinarily have been sitting in front of this monitor had left the office for lunch.
- [33] I find the bullet did not enter the desk area of Cst. Bulmer or any of the other officers, although it did pass through the common area directly outside of Sgt. Ushock's office where the fax machine sat.
- [34] The evidence establishes that all of the officers then stayed on the ground until the first round of shooting stopped, at which point Sgt. Ushock crawled back to his desk and signalled the tone alert.
- [35] By the time Mr. Russell returned and began firing at the vehicles and the detachment on the east side of the building, the officers and civilians and staff in the building had been placed in a secure area with no windows. There would have been no officers in the traffic office during this part of the shooting incident.
- [36] It was not until surveillance video of the exterior of the detachment indicated that the white truck was leaving, that Sgt. Ushock allowed any of the officers to exit the detachment. At that time, one of the officers chased Mr. Russell's white truck on foot down Columbia Street, and Sgt. Ushock and Cst. Bulmer got into Sgt. Ushock's unmarked black truck to pursue Mr. Russell.

The Pursuit

- [37] Based on the direction of the white truck as it left the detachment, Sgt. Ushock was concerned that the shooter was going to the elementary and high schools in Vanderhoof. Cst. Bulmer got into Sgt. Ushock's unmarked police vehicle, and they drove to both schools. They did not locate Mr. Russell or the white pickup truck in these areas, but they did direct lockdown procedures for those schools.
- [38] After attempting to locate the white truck in Vanderhoof for approximately 30 minutes, Sgt. Ushock identified the truck by its appearance, and by its licence plate, close to Mr. Russell's home, which was the registered address for the truck. Both Sgt. Ushock and Cst. Bulmer saw Mr. Russell's white truck from some distance away driving towards them. Cst. Bulmer was able to identify the driver as Mr. Russell from previous interactions as they passed each other, and Mr. Russell nodded at him. Once the truck's licence plate was confirmed, Sgt. Ushock engaged lights and sirens and began to pursue Mr. Russell.

- [39] I find that Mr. Russell did not stop after the officers activated their lights and siren. I accept Cst. Bulmer's evidence that near the intersection of Burrard and Victoria it appeared that Mr. Russell was pulling over to stop at the side of the road, and that Cst. Bulmer started to prepare to get out of the vehicle, but then Mr. Russell sped away again.
- [40] The evidence is inconsistent as to whether Mr. Russell was driving excessively fast. Some witnesses describe him as driving at the speed limit, others say he was driving faster than that. Overall, I accept Cst. Bulmer's evidence as the most reliable evidence as to Mr. Russell's speed during the pursuit, and I find that both vehicles were going faster than the traffic around them, and that Cst. Bulmer was legitimately concerned for the safety of others on the road.
- [41] Mr. Russell drove south through downtown Vanderhoof on Burrard Street towards Highway 16 (towards Prince George).
- [42] Constable Woodbeck of the Prince George detachment, who was driving a marked RCMP vehicle with lights and sirens engaged on Highway 16 into Vanderhoof from Prince George, attempted to stop Mr. Russell's vehicle by pulling in front of him before Mr. Russell reached the highway. I find on the evidence that Mr. Russell did not slow down or attempt to evade Cst. Woodbeck's vehicle, but proceeded through the front of Cst. Woodbeck's RCMP vehicle, and then continued onto Highway 16.
- [43] I find that at the time of the collision, there were multiple police vehicles with lights and sirens pursuing Mr. Russell down Burrard Street from the centre of Vanderhoof, as well as at least two vehicles, driven by Staff Sgt. Baker (also a member of the Prince George RCMP detachment) and Cst. Woodbeck, arriving from Prince George and driving towards him. I find that many police vehicles and sirens arriving from other jurisdictions would have been visible or audible to Mr. Russell once he was approaching Highway 16.
- [44] Not long after turning onto Highway 16, Mr. Russell turned right, into the parking lot of Kal Tire. Dash cam video shows that Mr. Russell turned on his signal flashers before making that turn. He came to a stop against the wall of a structure, and was immediately followed by Sgt. Ushock and Cst. Bulmer in their vehicle, pinning the rear of Mr. Russell's white pickup truck into place. Staff Sgt. Baker, who had been directly following behind Cst. Woodbeck from Prince George, stopped his vehicle immediately behind the Ushock vehicle.

The Arrest and Detention

- [45] Cst. Bulmer approached the passenger side of Mr. Russell's vehicle with his carbine pointing towards Mr. Russell. Sergeant Ushock, supported by Staff Sgt. Baker, approached Mr. Russell from the driver side of his vehicle, also with guns raised. The evidence establishes that Mr. Russell did not visibly react to the officers' approach, or their demands that he get out of the truck. I accept the evidence of Cst. Bulmer, who had the best view of Mr. Russell at this time, that Mr. Russell was sitting in the truck on the driver side clenching the steering wheel staring straight ahead and not acknowledging or responding to the officers. A brown rifle

and boxes of ammunition were in the seat behind him.

- [46] Staff Sgt. Baker removed Mr. Russell from the truck with some effort, after telling him he was under arrest.
- [47] Mr. Russell came out of the truck and onto the ground with his arms under his body, and his hands near his waist, which the arresting officers considered to give rise to a risk that he might have weapons accessible to him. With some effort, and using elbows, fists, and the butt of a gun, several officers pulled Mr. Russell's hands behind his back and into handcuffs. At least three of the officers testified to striking Mr. Russell on the face and back in an effort to have him release his hands. The video evidence shows Mr. Russell not responding, either aggressively or helpfully. Mr. Russell does not, for example, get out of the truck upon demand or bring his hands up upon demand; however, he makes no apparent efforts to fight or harm the officers other than using his strength to resist removal from the truck and having his hands brought behind his back.
- [48] As a result of the manner of his arrest, I find that Mr. Russell suffered bruises to his back and a black eye, including a fracture around the bones below his left eye.
- [49] The evidence establishes that Mr. Russell was then formally cautioned, placed under arrest, and escorted to a police car. There is no sign that he resisted, and the evidence is that he generally followed direction from that point on. There was no evidence of alcohol in a flask found in the truck, nor was there any evidence to indicate that Mr. Russell had been drinking in the minutes or hours prior to the arrest.
- [50] Several officers who observed Mr. Russell around the time of the shooting and his arrest noted a "thousand-yard stare" or that he seemed to be looking past or through people. He was also noted to be flat or non-responsive in his expression and affect at times. At the time of his arrest, he was observed to be non-responsive to directions to get out of the car and produce his hands.
- [51] The arrest and the drive to Prince George were audio-recorded. At the time of his formal arrest, Mr. Russell stated that he did not understand what was going on or why he was under arrest. At one point, Mr. Russell stated that he had not done anything that day but work and go to buy some beer. He does clearly state that he wants to speak to a lawyer.
- [52] The officers at the time of arrest generally agreed that he was "fairly flat" in his presentation and agreed that he seemed confused, maybe a bit dazed, or in shock. The arresting officers who testified generally agreed that he had a "blank" expression staring straight ahead, and was not initially responsive to orders. One officer agreed that information seemed like it was "not computing".
- [53] No issue was taken with respect to the adequacy of the Charter warning or the voluntariness of various utterances made by Mr. Russell to the officers at the time of his arrest and thereafter. The defence expressly conceded that Mr. Russell's answers and utterances at the time of his arrest, drive to Prince George and processing, as well as at the hospital, were

voluntary in the R. v. Oickle, 2000 SCC 38 sense, and waived the right to a voir dire on this issue. The defence relies on Mr. Russell's audio-taped utterances in relation to whether mens rea has been established.

- [54] Mr. Russell was taken by Cst. Pike from Vanderhoof to Prince George. After his arrest, Mr. Russell was described by various officers as acting confused and agitated. Over the course of the drive, which lasted more than half an hour, Mr. Russell kept up a running monologue which was captured (with more or less clarity) on Cst. Pike's audio recorder. Much of what Mr. Russell was saying is indecipherable. At times Mr. Russell's voice rises and it is possible to hear specific words and phrases, frequently punctuated by expletives.
- [55] In some of these discernable utterances, Mr. Russell indicates an interest or preoccupation with military training and weapons, which was also recalled by Cst. Pike. At one point Mr. Russell says something about skinning pigs, which Cst. Pike specifically remembers because he considered it a reference to police. Because so much of this monologue is indecipherable, it is not possible to say whether some of it, about people he knows and places he has been, has some kind of internal coherence. For the most part, however, the running monologue is incoherent.
- [56] Once Mr. Russell was delivered to the RCMP detachment in Prince George, he expressed not knowing where he was or what day it was. The evidence establishes that he was largely compliant with directions with respect to searches, photographs, and change of clothes. He was taken to the "lawyer room" where he lay down a number of times on the floor. When the legal aid call came through, he was observed to be speaking on the phone and then he lay down again.
- [57] Paramedics arrived to check on him and advised that he needed to be taken to the hospital for his eye injury. He followed the directions of the hospital paramedic staff, answering questions about his medications.
- [58] Cst. Pike described Mr. Russell at the hospital as largely following directions. However, at one point he began to refer to himself as "Yeti" and speaking in the third person, particularly with the doctor. At the hospital, Mr. Russell can be heard to be using different voices, and speaking in non-sequiturs. Cst. Pike's observation was that with the female nurses, Mr. Russell spoke more normally, and did not refer to himself as "Yeti".
- [59] While at the hospital, another call to legal counsel was arranged in a private room, after which he was given a CT scan and waited in the emergency room area until the psychiatrist on call, Dr. Kolisang, arrived to speak with him.

The Psychiatric Evidence

- [60] Dr. Kolisang was called by the Crown to give evidence of his examination of Mr. Russell at the hospital. The defence also relied on the evidence of Dr. Kolisang, and conceded that he was not a person in authority for the purposes of the voluntariness inquiry, and waived a voir dire in relation to his evidence of what Mr. Russell said to him during this examination.
- [61] Dr. Kolisang examined Mr. Russell in the emergency department behind closed drapes. For the most part, his conversation with Mr. Russell was not audible to Cst. Pike who stood 20-25 feet away. Cst. Pike did hear Mr. Russell at one point, speaking with an elevated voice, stating that he was pissed off at the police, and that he shot at the police.
- [62] Dr. Kolisang's evidence was that Mr. Russell responded to his name, and accurately stated that he lived in Vanderhoof, BC, but did not provide answers to all of Dr. Kolisang's questions. Dr. Kolisang described Mr. Russell as speaking slowly with clear words. Sometimes he spoke softly but at times his voice would go up and down. He was not responsive to external stimulus.
- [63] In response to the question of who he lives with, Mr. Russell answered that he lives with "whoever he wants to" but then went on to say that he lives in the forest so animals can come in and out. Mr. Russell said that he planned to live off the land. He described himself as a "mountain man" that crosses avalanches with howitzers.
- [64] He described having a .303 British gun on him, and thousands of guns. He also said he was working for the RCMP and the Armed Forces.
- [65] With respect to what brought him to the hospital, Dr. Kolisang's evidence is that Mr. Russell responded that he did not know initially. He went on to explain that he went to work that morning, he was driving a Ford, and that he was employed by Peter and Associates (all of which is generally supported by the evidence). Mr. Russell described being hit in a head-on collision, and having cops after him with guns (events also supported by the evidence of the pursuit).
- [66] Dr. Kolisang also testified that Mr. Russell described that after he finished work, the cops got in his way. He said he started shooting at them, and described putting a few bullets in their cars. When asked why, Dr. Kolisang said Mr. Russell stated "because I can" and "I use them like target practice".
- [67] When asked about whether he was concerned about his safety in this regard, Mr. Russell responded to Dr. Kolisang that he was not concerned about safety because he was a "better shot", "a perfect nightmare", and he "disabled their vehicles". He said that he was frustrated with the RCMP because of "all the stuff going on in Canada".
- [68] Dr. Kolisang also asked Mr. Russell about alcohol or substance use, to which Mr. Russell responded that he uses alcohol, but that his last drink was a long time ago. He would not comment on the use of other recreational drugs. Dr. Kolisang described Mr. Russell's

answers to questions as going off in other directions, and that he was concerned that Mr. Russell might be delirious and not quite in touch with reality. As a result, he wanted Mr. Russell to be seen by an internist to consider whether or not there was an underlying physical cause to his delirium, particularly given the evident blow to his head and the fracture under his eye.

- [69] Dr. Kolisang spoke with Mr. Russell for approximately 15 to 30 minutes. He did not speak with him again. Mr. Russell was kept overnight at the hospital.
- [70] I find that Dr. Kolisang did not diagnose Mr. Russell with psychosis on November 25, 2021. He was primarily concerned with determining whether or not Mr. Russell was experiencing some impairment of cognition with potential psychosis. He denied that Mr. Russell was experiencing any hallucinations, and described Mr. Russell's discussion of being a mountain man and living in the forest with animals as a "thought content disorder". Dr. Kolisang described Mr. Russell as confused and giving incoherent answers, but ultimately he was not able to say whether there was a physical injury basis or psychotic basis for these symptoms.
- [71] At the time of his examination, Dr. Kolisang was not aware of Mr. Russell's medical history, but was reminded in cross-examination that he had seen Mr. Russell earlier in the year. At that earlier time, Mr. Russell was admitted to the hospital, and had been assessed as psychotic and prescribed antipsychotic medication. Dr. Kolisang did not know how long Mr. Russell had stayed in the hospital that previous time, and had not followed up with him.
- [72] In cross-examination, Dr. Kolisang was presented with a number of hypothetical symptoms or behaviours exhibited by Mr. Russell that day. Dr. Kolisang agreed that a history of psychosis would generally support a present diagnosis of psychosis, however he did not agree to any specific diagnosis for Mr. Russell on the day of the shooting, stating that he had not made one, and that there were more than 20 possible causes for the aspects of Mr. Russell's behaviour highlighted by the defence.
- [73] Dr. Kolisang agreed that during his examination, Mr. Russell was devoid of suicidal intention, and he made no expression of homicidal intent. Indeed, Mr. Russell stated that he did not want to hurt anyone. Nor did he present as angry. Overall, Dr. Kolisang agreed that Mr. Russell did not clearly state or express an intention to kill someone during his examination.

Mr. Russell's Mental Condition Leading Up to the Shooting Incident

- [74] Mr. Russell's brother, mother and grandmother testified at the trial with respect to Mr. Russell's behaviour and mental condition leading up to the shooting incident. In addition, Cst. Bulmer had a previous interaction with Mr. Russell six months prior to the incident in July 2021, and information with respect to Mr. Russell's recorded interactions with the RCMP in the Prime database were also tendered by the defence without objection. From that evidence, I am able to find the following facts regarding Mr. Russell's mental condition in the months, weeks, and days leading up to the incident.

- [75] Mr. Russell grew up in Vanderhoof and was 37 years of age at the time of trial. He has a younger brother, Matthew Russell, and a younger sister. Mr. Russell has worked in the mining industry in British Columbia, across Canada, and around the world, including Egypt. In or about 2020, Mr. Russell completed his first year of millwright apprenticeship while working at a company in Vanderhoof that builds equipment for sawmills. In 2021, the year of the incident, Mr. Russell was working at the company, and his younger brother Matthew was his supervisor.
- [76] Mr. Russell and his brother Matthew occasionally go hunting together. From the evidence before me, it was Mr. Russell who was the hunting and firearms enthusiast, with a collection of at least 20 firearms that he kept in a locked closet or safe in his home. My understanding is that the firearms were all properly registered. Mr. Russell also told his brother that he was involved in the Rocky Mountain Rangers, and that he did some parades and training with them in Prince George.
- [77] Based on the evidence before me, concerns regarding Mr. Russell's mental health arose in the summer of 2021. His mother testified that she received a phone message from Mr. Russell about talking to a dead uncle, and she and her husband brought him to the hospital and set up an appointment with the psychiatric ward in Prince George.
- [78] In July 2021 Cst. Bulmer responded to a 911 call made by Mr. Russell himself, and found him on the street saying that he was part of the Rocky Mountain Rangers (which may be true) but also saying that he was part of MI6, and was doing security for the Vancouver Olympics. Cst. Bulmer detained Mr. Russell under the Mental Health Act, R.S.B.C. 1996, c. 288. Mr. Russell expressed trust in Cst. Bulmer and got into a police car to be taken to the hospital. Mr. Russell was not aggressive at the time, though he did try to leave several times and was encouraged by Cst. Bulmer to stay at the hospital until he could be seen by a psychiatrist. Although Cst. Bulmer's impressions are not qualified expert evidence, at the time Cst. Bulmer noted that it seemed that Mr. Russell was "stuck in a time warp", disorganized and hallucinating.
- [79] In August 2021, Mr. Russell's parents had to leave Vanderhoof for a family funeral, and Mr. Russell was not able to travel with them. His doctor said he could not be unsupervised, and I find that Mr. Russell stayed in hospital for a few days that month when his parents were not available. It is apparent that Mr. Russell's parents were doing the best they could to support him throughout this period, and that there was considerable pressure on them to support him at home rather than in the hospital.
- [80] There is also evidence that at some point in the fall of 2021, Mr. Russell dropped off an elk antler at the RCMP station in Vanderhoof, and was found driving his all-terrain vehicle towards Prince George, which his mother described as odd and unusual behaviour for him. No qualified expert evidence was called with respect to Mr. Russell's diagnosis at that time, but I accept his mother's evidence that she perceived from her discussions with Mr. Russell and his doctors that Mr. Russell was drinking excessively and that this was causing him to

perceive threats and events that were not present. For example, he would see fire-fighting helicopters in the sky and describe them as spy planes. He would treat a thermometer as if it was a spy device. Mr. Russell was prescribed various medications.

- [81] Mrs. Russell's impression was that Mr. Russell was not regularly taking his medication in the fall of 2021. In October 2021, Mr. Russell's parents took him back to the doctor and he was prescribed olanzapine. During this time, Mr. Russell's father also took the key to Mr. Russell's gun safe, although Mrs. Russell was not sure this was his only key.
- [82] Mrs. Russell described Mr. Russell as not functioning well during this period. One time when his parents visited he was using his oven to heat his house, and he would frequently lie down instead of doing the work that he said he would do. He missed a lot of work. His mother would help him to manage his medication by having him take it in her presence, and when she could not be present, she would dole out a few pills at a time for him to take over the following days. From the prescription that he received on October 19, 2021 of 30 pills, of which he was meant to take one per day, there were still 10 pills left on the day of the incident of November 25, 2021, when the prescription should have been finished. Mrs. Russell's impression was that he was improving with the medication but that he was still having delusions, and there were times that he could not "fill in the blanks". In November 2021, she was touching base with him every day whether in person or by phone.
- [83] Approximately a week before the incident, Mr. Russell called his grandmother, which is something he would frequently do. On this occasion, Mr. Russell told his grandmother that he was in Prince George and that he had confidential information that the IRA was bombing Prince George hotels and he was going to patrol. She felt that he was not making sense and was not himself. She remembers the date, because she then called her daughter, Mr. Russell's mother, to tell her that she was concerned about Mr. Russell and that they needed to find a way to "straighten him out".
- [84] On the Saturday before the incident, Mr. Russell was at his parents' house and there was a message from the Firearms Registry on their answering machine saying that Mr. Russell might need a medical certificate to keep his registered rifles. I find that Mr. Russell did listen to this message.
- [85] The overall impression I obtained from Mr. Russell's family members was that Mr. Russell generally respected and admired the police, and identified himself with military or paramilitary structures. There was no evidence that Mr. Russell had expressed negative or hateful attitudes towards the RCMP.

- [86] The night before the incident, on Wednesday, November 24, Mr. Russell came to his parents' house in the afternoon, but left angry and upset. It was his mother's impression that he was upset over their attempts to get him to take his medications and restrict his alcohol consumption. He told his parents that he had taken his medication. Mr. Russell's parents then drove to his house later that night to check on him, although they did not enter the house.
- [87] The next morning, at work, Mr. Russell's brother Matthew noticed the smell of alcohol on Mr. Russell. He had his brother working on "simpler" tasks that month and in the preceding months, which included buffing metal and welding.
- [88] In the month of November, Mr. Russell's timesheets indicate that he worked a close to full-time week the first week of November, missed two days of work the second week of November, and missed two days of work the third week of November, but made one of those days up on a Saturday. The week of the shooting incident, Mr. Russell worked full eight-hour shifts Monday, Tuesday and Wednesday, and went to work at 6:30 a.m. the morning of Thursday, November 25 for his regular shift. He left for lunch around noon. Matthew expected him back at work around 12:30 after lunch, but Mr. Russell did not return.
- [89] The next person to see Mr. Russell on November 25, 2021 was Mr. Mueller, who lives two blocks from Mr. Russell. Mr. Mueller is a good friend of Mr. Russell's brother Matthew. Mr. Russell was a friend of Mr. Mueller's father.
- [90] Mr. Mueller testified that Mr. Russell arrived at his house just after noon. Mr. Russell was in his work clothes, including a welding jacket and beanie and steel toe boots. He asked to see Mr. Mueller's father, but Mr. Mueller explained that it was a bad time as they were getting ready to bury Mr. Mueller's dog who had recently died. Mr. Russell was sorry but persistent and continued to ask to see Mr. Mueller's father, which Mr. Mueller found to be lacking in empathy.
- [91] Mr. Mueller reports that Mr. Russell also seemed to be uncertain of his whereabouts and what he was doing, and he was talking about being part of a special operational force. When asked what he meant, he continued to talk about special operations. Mr. Mueller asked him to leave and he did.
- [92] I find that Mr. Russell likely went home after this, and changed out of his work clothes and put on the clothes he was ultimately arrested in, including the fedora and mirrored sunglasses. His brother found Mr. Russell's steel toe work boots in Mr. Russell's house when he went to check on him after Mr. Russell did not return to work and he received the emergency alert on his cell phone.

Actus Reus Elements of the Charged Offences

- [93] On the basis of the above summary of the evidence and my factual findings in this regard, I am satisfied that the Crown has proven the following common elements of a number of the counts beyond a reasonable doubt.
- [94] I am satisfied that it was Mr. Russell that drove the white pickup truck to the RCMP detachment in Vanderhoof, BC on November 25, 2021. The Crown has also established that Mr. Russell intentionally discharged a firearm at or into RCMP marked vehicles and the RCMP offices, including both the main RCMP office and the traffic patrol office.
- [95] In relation to the driving-related offences, the evidence establishes beyond a reasonable doubt that Mr. Russell was operating a motor vehicle while being pursued by peace officers, and that he did not stop the motor vehicle as soon as reasonably practicable. He collided with Cst. Woodbeck's vehicle at full speed.
- [96] For the purposes of the mischief charges, the evidence establishes beyond a reasonable doubt that Mr. Russell interfered with property, being both the RCMP building and equipment, and the motor vehicles parked outside that building, by discharging a firearm, and that the damage to the property as a result was over \$5,000.
- [97] I turn now to the central issue in this trial: the evidence and inferences that I make with respect to Mr. Russell's mental state at the time of the shooting incident and pursuit.

Accused's Mental State at the Time

- [98] The Crown says that the evidence establishes beyond a reasonable doubt that not only was Mr. Russell capable of understanding and intending the natural consequences of his actions, it establishes that he had planned, and carried out a plan, to ambush and kill RCMP members. Specifically, the Crown says that Mr. Russell's plan was to provoke RCMP officers to leave the safety of their detachment by firing towards it, into it, and at RCMP vehicles around it, with the intention to draw them out and to kill them as they emerged from the building. The Crown says that, at the least, the evidence establishes that Mr. Russell intended to kill one or more members of the RCMP who would have been visible when he shot bullets into the west window of the main offices.
- [99] The Crown suggests a possible motive for this attack was the voice message Mr. Russell received earlier that week indicating that his firearms licences might be revoked as a result of his mental health deterioration and struggles. The Crown relies on Mr. Russell's statement to Dr. Kolisang saying that "the cops pissed me off, so I started shooting at them".

- [100] The defence submits that "due to the disruption of Mr. Russell's mind" the Court ought not to apply the common sense inference that Mr. Russell understood the consequences of his actions. They say that the common sense inference is particularly problematic with respect to the Crown's ability to prove specific intent to kill, which is required for the charge of attempted murder on Count 1.
- [101] Beyond the attempted murder charge, Mr. Russell asserts that his behaviour and utterances indicate that he was not mentally well before, during, or after the shooting on November 25, 2021, and that the Crown has therefore not proven general intent and other lesser mens rea requirements for all of the counts (with the possible exceptions of Counts 3 and 4 regarding possession of a weapon for a dangerous purpose, and careless use of a firearm). The defence says that the evidence establishes nothing more than Mr. Russell's intention to shoot at empty RCMP vehicles and the exterior of the RCMP detachment.
- [102] I will first deal with the application of the common sense inference to Mr. Russell on the evidence before me, before considering the specific mens rea requirements for each of the charges.
- [103] Because there is often no direct evidence of an accused's intention at the time of an incident, the Crown often must prove this mental element through inferences drawn from established facts. One such inference is the common sense inference that "a person usually knows what the predictable consequences of his or her actions are, and means to bring them about": *R. v. Walle*, 2012 SCC 41 at para. 64.
- [104] In *Walle*, Justice Moldaver (for the Court) also noted that some caution must be taken in relying upon the common sense inference. The inference should not displace the requirement to consider all the evidence relating to intent, particularly evidence that points away from intent. As stated at para. 63:
- the inference is permissive, not presumptive and that before acting on it, [the trier of fact] must carefully consider the evidence that points away from it.
- [105] As was explained by Associate Chief Justice Holmes in *R. v. Klein*, 2020 BCSC 333 at para. 160:
- The common sense inference was traditionally described as applying to the "sane and sober" accused person, and was therefore sometimes said not to apply if there were signs of mental disturbance or intoxication.
- [106] However, the Supreme Court of Canada has recently emphasized in *R. v. Daley*, 2007 SCC 53 and *Walle* that there is no rigid formula concerning the use of the inference: *Daley* at para. 104; *Walle* at paras. 64-68. The overarching question is whether, on the whole of the evidence, the trier of fact has "a reasonable doubt that the accused did not have one or the other requisite intents" for the offence committed: *Walle* at para. 66.

[107] Many factors may give rise to a doubt as to whether the common sense inference is available. The cumulative effect of intoxication, or drugs, combined with mental disturbance (short of mental disorder under s. 16 of the Criminal Code) or other factors, are relevant. This is sometimes referred to as the "rolled up" instruction given to juries. Although these combined factors are often referred to as a defence, it refers to whether the Crown has proven the necessary mens rea element.

[108] The cumulative effect or rolled up defence was summarized by Holmes A.C.J. in Klein at para. 165:

The applicable authorities clearly allow mental disturbance short of a s. 16 mental disorder to play a part in a rolled up or cumulative effect defence, or to function alone as the basis for reasonable doubt about specific intent.

[109] The following passage from R. v. Robinson, 2010 BCSC 368 at para. 107 was most recently endorsed by our Court of Appeal in R. v. O.V., 2015 BCCA 449 at para. 55:

... Because we cannot look into the mind of the accused and there is often little direct evidence of an accused's mental state, intent must generally be proven based upon inferences to be drawn from established facts. This is where use may be made of the common sense inference that a sane and sober person intends the natural consequences of his acts. But there may be circumstances that cast doubt on whether one can safely rely on the common sense inference. Such circumstances include intoxication, whether by alcohol or drugs. In addition, evidence of a mental condition that falls short of a mental disorder that renders the accused not criminally responsible, may raise a reasonable doubt as to whether the accused had the necessary specific intent. If such circumstances, either alone or in combination, raise a reasonable doubt that the accused had the subjective intent to cause bodily harm or that he had the subjective knowledge that the bodily harm he inflicted was of such a nature that it was likely to result in death, then the accused is entitled to the benefit of that doubt and cannot be convicted of murder.

[110] Also in Robinson, the court observed at para. 110:

Where there is evidence of a mental condition relevant to intent, this evidence must be considered along with all the other evidence in determining whether the accused had the intent requisite for murder. Such consideration does not create the notion of diminished responsibility, which does not exist in our law. Rather it simply recognizes that if the accused was suffering from some sort of mental condition at the time of the offence, that mental condition is a circumstance that might affect whether or not he formed the necessary specific intent (see R. v. Bailey (1996), 111 C.C.C. (3d) 122 (B.C.C.A.)).

[111] Although these provisions are most often discussed in relation to whether the specific intent of murder has been established by the Crown, Mr. Russell says that it is equally applicable to the use of the common sense inference in this case for the general intent counts.

- [112] I agree that at any point that the Crown is relying upon the common sense inference, whether to prove the specific intent of murder, or to prove awareness or understanding of the risks occasioned by Mr. Russell's actions (for example to prove recklessness), I must consider whether the Crown has proven that the inference is appropriate on the evidence, and whether the evidence as a whole establishes the required mental element beyond a reasonable doubt.
- [113] In approaching this task, I remain mindful that Mr. Russell is presumed innocent unless and until the Crown meets its burden of proof. The Crown is required to prove each element beyond a reasonable doubt. The burden never shifts to the accused. A reasonable doubt is not an imaginary, far-fetched, or frivolous doubt. It is not doubt based on sympathy for or prejudice against anyone involved in this trial. It is a doubt based on reason and common sense. It is a doubt that logically arises from the evidence or lack of evidence: *R. v. Lifchus*, [1997] 3 S.C.R. 320 at para. 36, 1997 CanLII 319.
- [114] In determining whether the Crown has met its burden, I must apply my logic and common sense to the totality of the evidence, including gaps in that evidence, and consider whether other reasonable possibilities or plausible theories inconsistent with guilt exist: *R. v. Villaroman*, 2016 SCC 33 at paras. 35-37; *R. v. Ali*, 2021 ONCA 362 at paras. 97-98.
- [115] The Crown points to numerous cases where evidence of delusional thinking, a "thousand-yard stare", and psychiatric evidence of a diagnosis applicable to the time of the incident, have nevertheless left the court without a doubt as to the accused's intent to accomplish the natural consequences of their actions. Indeed, there are several cases where these circumstances have been found to provide "no evidence" that the accused did not intend the consequences of his actions in the specific intent offence of murder.
- [116] The Crown points to *O.V.*, for example, where the BC Court of Appeal upheld the trial judge's finding that the specific intent for murder was made out despite the accused suffering from delusional disorder, where the defence expert's evidence was "lacking in specifics" and contained "no description of how or to what extent the defendant's ability to form an intent to kill was possibly affected by [his] delusionary thoughts".
- [117] A similar finding was made in *R. v. Danjou*, 2020 BCSC 1819, where Justice Beames found that the Crown had proven the mental element for murder notwithstanding the defence submission that the accused was in a state of mental disruption made more intense by his alcohol consumption. The defence in that case called a forensic psychiatrist, who testified that the accused met the criteria for delusional disorder and alcohol use disorder, and also had narcissistic personality traits and disassociative amnesia. Police in that case also described the accused as having a "thousand-yard stare", and maintaining a flat affect. Justice Beames nevertheless was not left with a reasonable doubt as to the accused's intent, and specific intent, to kill the deceased.

[118] I would also note the case of Klein where Holmes A.C.J. found she had no doubt regarding the accused's specific intent to kill. In that case, the accused was diagnosed with schizophrenia some months after the stabbing, and there was considerable evidence of the accused have a disturbed mental state in the time leading up to, during, and after the stabbing of two teenage girls. Associate Chief Justice Holmes concluded at para. 227 that:

Mr. Klein's unusual behaviour during the 48 hours before the attack is of concern, and I have taken it into account. However, even if it reflects a mental disturbance on Mr. Klein's part, there is nothing in the evidence to suggest that the mental disturbance may have affected Mr. Klein's ability to foresee the consequences of his conduct.

[119] The defence points to cases in which intoxication or mental disruption affected the accused's capacity to form the necessary specific intent for murder. The defence particularly relies on the cases of R. v. Shearer, 2020 BCSC 116, and R. v. B.E., 2019 BCSC 1442.

[120] In B.E., a case involving a young accused who was charged with two counts of second degree murder, Justice Williams found that the common sense inference was not available to the Crown based on the evidence of the disrupted mental state of the accused: B.E. at para. 89. Williams J. found that he had a doubt as to the accused's capacity to form the specific intent for murder: B.E. at para. 106. The accused was found guilty of manslaughter.

[121] In Shearer, a case involving an accused charged with second degree murder, Williams J. found he had a doubt as to whether the accused was thinking "in a rational way": Shearer at para. 109. The accused in Shearer was acquitted of the charge of second degree murder, but was found guilty of the offence of manslaughter.

[122] I have reviewed all of the evidence in this case, including the evidence that Mr. Russell was experiencing delusions in the months leading up to the incident, and that even in the moments before the shooting incident he was associating himself with some sort of paramilitary operation. His comments in the police car on the way from the incident to the Prince George detachment suggest a mind that was somewhat disjointed and lacking in situational awareness. There was also evidence of a lack of appropriate responsiveness when he saw Cst. Bulmer as he passed him in his truck, and then later when he was arrested, and confusion and agitation afterward.

[123] However, none of this evidence is accompanied by evidence that these conditions had an effect or an impact on Mr. Russell's ability to form the intention to carry out the actions that he did, or to act deliberately, with knowledge and understanding of the likely consequences. For example, Mr. Russell's apparent delusions regarding being part of a paramilitary operation do not detract from the common sense inference that he understood the risks of firing a rifle into an RCMP building, and that he intended the natural consequences of doing so.

- [124] I also find that the evidence establishes a deliberate course of conduct which required the execution of a series of intentional steps. Mr. Russell demonstrated the ability to go to work and perform metal-working tasks that morning. He was able to drive home to change, drive to the RCMP detachment, and shoot fairly precisely at RCMP vehicles and the RCMP building, reload his rifle, and stop to let a pedestrian cross the road. That Mr. Russell returned five minutes after his first assault on the detachment also indicates that Mr. Russell was continuing to act with deliberation. The defence argues that Mr. Russell's return suggests, at least, a lack of forethought in terms of the consequences he might face by doing so. However, the ability to make wise decisions is not the test the Crown must meet to establish the mens rea elements of these offences.
- [125] Like in *O.V. and Klein*, I find it to be entirely speculative that any disruptive thoughts or delusional thinking that Mr. Russell was experiencing in the minutes, days and weeks before the shooting, had an effect or bearing on his ability to form specific plans, to carry those plans out, or to intend and understand the natural consequences of his actions. I make this finding even assuming Mr. Russell's post arrest ramblings reflected the state of his mind at the time of the shooting and police pursuit, and were not caused by a concussion or other physical injury at the time of his arrest.

The Charges

- [126] I turn then to each of the counts, with a focus on the mental element of each of the counts that Mr. Russell is charged with, starting with the specific intent charge of attempted murder in Count 1.

Count 1: Attempted Murder

- [127] The mental element of attempted murder is well established: it requires not only the intent associated with the performance of deliberate actions, but the specific intent to kill: *R. v. Ancio*, 1984 1 S.C.R. 225 at 248-249, 1984 CanLII 69. It is not sufficient to simply have an intention to harm with consequences that could lead to death. Nor is it enough that the accused knows their actions are likely to cause death or is reckless to the possible consequences: *R. v. Weng*, 2022 BCCA 332 at paras. 85-86.
- [128] It is not necessary for the Crown to prove that Mr. Russell had the specific intent to kill a known individual. Shooting into a crowd can infer sufficient intent to kill any person who is hit: *R. v. Marshall*, 1986 CanLII 4617 at 159-160 (N.S.C.A.), 25 C.C.C. (3d) 15. For Count 1, the Crown must prove beyond a reasonable doubt that Mr. Russell had the specific intent to kill a member, or members, of the RCMP.
- [129] While I have no doubt that Mr. Russell was capable of acting deliberately, and forming a plan and acting upon it, I am not satisfied beyond a reasonable doubt that Mr. Russell specifically intended to kill one or more members of the RCMP.

- [130] The Crown points to a number of factors that they say indicate that Mr. Russell was acting upon a plan to ambush members of the RCMP, by provoking them to emerge from the detachment so he could fire at them. This could explain Mr. Russell's return after five minutes when it might be expected that detachment members would have started to emerge. It could also explain why he waited outside the detachment for 46 seconds after he had rammed the police vehicle and fired his final seven shots into that vehicle and the window before leaving.
- [131] While this is a plausible explanation for Mr. Russell's combined actions, it is not the only explanation available to me. It reflects what Sgt. Ushock legitimately perceived as the intent of the attack at the time, and which he sought to avoid by preventing any officers from leaving the detachment to confront the shooter. In doing so, he may well have saved more than one life. Nevertheless, a good guess about Mr. Russell's intentions does not meet the standard in this case. I am not convinced beyond a reasonable doubt that this was Mr. Russell's intent.
- [132] Nor am I convinced beyond a reasonable doubt that Mr. Russell was aiming at any visible member of the RCMP when he shot through the windows of the detachment. The Crown concedes that Mr. Russell could not have known if there was anyone behind the traffic patrol window when he shot into that window, which is heavily mirrored. Furthermore, it is conceded that by that point there was no one present in that area to have been targeted: all the civilians and officers present in the building had moved to a more secure location in the building without windows.
- [133] The Crown argues that Mr. Russell would have been able to see one of the officers working in the main area of the detachment through the west window when he fired through that window. I am not convinced of that. I have found that the person that would ordinarily have been sitting directly behind that window was on a lunch break at the time the bullet entered his office area. Had he been there sitting at his computer, he could have been fatally shot. However, he was not. No one was sitting at this desk to be seen by Mr. Russell. I find that the Crown has not established that Mr. Russell knew that there was someone sitting behind that window when he fired at it.
- [134] I find that the evidence overall does not establish beyond a reasonable doubt that Mr. Russell had the specific intent to kill a member or members of the RCMP. I find Mr. Russell not guilty on Count 1.

Count 2: Reckless Discharge of Firearm

- [135] That brings me to the charge of reckless discharge of a firearm in Count 2. I find that the Crown has proven the elements of this offence beyond a reasonable doubt.

- [136] As stated above, I find that Mr. Russell intentionally discharged his firearm, the rifle, at and into the RCMP detachment from multiple sides. The mens rea element of this count requires the Crown to prove beyond a reasonable doubt that Mr. Russell did this knowing, or being reckless as to whether, another person was present in the building, or while being reckless as to the life or safety of another person: *R. v. Baptiste*, 2019 BCSC 497 at paras. 156-187.
- [137] I will first address whether the Crown has established beyond a reasonable doubt that Mr. Russell was aiming at the windows of the building when his bullets entered through those windows and into the populated work areas of the RCMP main area and traffic patrol area. I find that the Crown has met this burden.
- [138] In coming to this conclusion, I have considered a number of established facts, including that:
- a) Mr. Russell has a long history and experience with guns, started duck-hunting at the age of 11, and enjoys gun collecting and hunting;
 - b) Mr. Russell was able to hit the RCMP vehicles, and only the RCMP vehicles, at the rear of the detachment, which were located further back from Church Avenue than the detachment's west wall and windows;
 - c) Before firing through the west window, Mr. Russell pulled his truck forward (still in the oncoming lane of traffic on Church Avenue so as to have the driver side of his truck closer to the RCMP building), and pulled the truck up to the windows. He fired two shots in the direction of the only set of windows on that side not partially obstructed with vegetation;
 - d) When Mr. Russell fired through the traffic patrol window on the east side of the detachment, he was either in his vehicle which would have been directly adjacent to that window (after pushing the patrol vehicle forward with his truck), or he was standing not far from the windows facing them.
- [139] Mr. Russell's after-the-fact comments to Dr. Kolisang also tend to support this intention, though they are not necessary to my findings in this regard.
- [140] On all of the evidence, I am satisfied beyond a reasonable doubt that Mr. Russell was specifically targeting the marked RCMP vehicles that he hit. I also find beyond a reasonable doubt that the bullets that Mr. Russell shot through the windows of the RCMP detachment were aimed at those windows; they were not simply "stray" bullets. Mr. Russell intended to shoot these bullets into the RCMP detachment.
- [141] I am also satisfied beyond a reasonable doubt that Mr. Russell either knew, or was reckless as to whether another person was present in the RCMP detachment at that time. Mr. Russell chose a busy time of day, on a work day, to take these actions. If Mr. Russell had taken these actions at midnight on a weekend, I may have been left with some doubt in this regard. However, I am satisfied that if Mr. Russell did not know with certainty that persons were

present in the building on the day and at the time he carried out his actions, he certainly must have known there was a real risk that persons would be there, and he nevertheless chose to take that risk.

[142] I am also satisfied beyond a reasonable doubt on the second branch of s. 244.2(3)(b) of the Criminal Code that the risk that Mr. Russell knowingly took was dangerous to the life or safety of other persons. In firing the rifle into the west and east windows of the RCMP detachment, Mr. Russell was reckless as to the life or safety of persons.

Count 3: Possession of Weapon for Dangerous Purpose

[143] The conduct with respect to this count overlaps with the conduct in Count 2, but incorporates not only the shots fired into the RCMP detachment, but also the shots fired at the exterior of that building and the vehicles outside the building. Mr. Russell has acknowledged that the latter conduct is likely sufficient to make out Count 3.

[144] This offence is a specific intent offence, and requires that the Crown establish that Mr. Russell had a purpose dangerous to the public peace while in possession of his weapon: *R. v. Woods*, 2020 BCSC 302 at paras. 94-98.

[145] I find that the Crown has established beyond a reasonable doubt that Mr. Russell was carrying a weapon (here a rifle) for a purpose dangerous to the public peace, and specifically for the purpose of firing at the exterior and interior of the RCMP detachment, and at RCMP vehicles. I am satisfied that Mr. Russell was also carrying this firearm for the purpose of committing an offence, including the offence of reckless discharge of a firearm, set out in Count 2.

[146] I will hear submissions from the Crown and defence as to whether this finding adds anything to Mr. Russell's overall culpability.

Count 4: Careless Transportation of a Firearm

[147] I will also need to hear submissions with respect to whether Count 4 adds anything to the findings I have already made.

[148] Count 4 is a charge under s. 86(2) of the Code, which is an objective fault offence employing a modified objective test, which requires the trier of fact to consider the matter from the perspective of a reasonable person in the circumstances of the accused: *R. v. Evans*, 2021 BCSC 1521 at paras. 29-32. This provision of the Criminal Code requires that the Crown prove the use, carrying, handling or transporting of a firearm in a careless manner or without reasonable precautions for the safety of other person. Rather than proving a particular purpose or intent, the Crown must establish that Mr. Russell's conduct constituted a "marked departure from the standard of care of a reasonable person in the circumstances" without lawful excuse.

- [149] The focus of the Crown submissions on this count was Mr. Russell's transportation of a loaded firearm in his truck. They rely on s. 10(1)(a) of the Storage, Display, Transportation and Handling of Firearms by Individuals Regulations, SOR/98-209 which provides that an individual may only transport a non-restricted firearm if it is unloaded. They say that this establishes the standard of care owed by Mr. Russell and that his driving of the truck while the rifle was loaded on Church Avenue and Columbia Street was a marked departure from this standard.
- [150] The defence concedes that when Mr. Russell drove forward from the rear position on Church Avenue, to the position across from the west windows, and then around the corner onto Columbia Street, firing his rifle out his truck window from each position, Mr. Russell was transporting a loaded non-restricted firearm. He does not suggest a lawful excuse.
- [151] I am satisfied that the Crown has established this offence during the period that Mr. Russell was seen driving and then firing his rifle at the RCMP detachment from Church and Columbia Streets. The evidence does not establish that the gun remained loaded, for example, when Mr. Wallace saw Mr. Russell driving with the rifle pointed out the driver side window at the intersection of Columbia and Burrard. The Crown has not led any standard of care evidence with respect to that conduct, and so the only conduct that the Crown has established in breach of this section of the Criminal Code coincides with the offences I have already determined proven beyond a reasonable doubt.

Count 5: Careless Storage of Ammunition

- [152] This is also an objective fault offence, being charged under the same section of the Code as Count 4, requiring the Crown to establish a marked departure from the standard of care of a reasonable person in the circumstances related to the careless use, carrying, storing or transporting of ammunition.
- [153] The evidence establishes that Mr. Russell was transporting loose ammunition rounds on the floor and back seat of his truck throughout the pursuit. This seems like an unsafe practice, but I have no evidence or submissions on the standard of care required for the safe transport of ammunition in this case. I therefore find that the Crown has not established this offence beyond a reasonable doubt.

Count 6: Dangerous Operation of a Conveyance

- [154] This is another objective fault offence: *R. v. Heth-Klems*, 2023 BCCA 246 at para. 25. The Crown must establish that Mr. Russell was driving in a manner dangerous to the public and exercising a degree of care that is a "marked departure from the standard expected of a reasonably prudent driver in the accused's circumstances."
- [155] The evidence does not establish that Mr. Russell was driving at a speed or in a way that constitutes a marked departure from the standard of care generally. He demonstrated awareness of Mr. Wallace, and stopped for him to cross at the crosswalk. While being

pursued he may have been speeding, or driving faster than traffic, but he also had police with lights and sirens close behind his truck presumably clearing his path, and there is no evidence that he was driving in a way that was a hazard to others during this period. Mr. Russell even signalled when he eventually pulled his truck over into the Kal Tire parking lot.

[156] The moment in Mr. Russell's driving that merits consideration on the evidence of this count is when his truck collided with that of Cst. Woodbeck's, who was trying to cut Mr. Russell off.

[157] Mr. Russell argues that it was Cst. Woodbeck that drove into him, not the other way around, and so he should not be found guilty of this offence.

[158] As I found above, Cst. Woodbeck attempted to cut Mr. Russell off by pulling into his oncoming lane. Mr. Russell neither slowed down nor made any evasive maneuvers so as to avoid a collision with Cst. Woodbeck. However, had Cst. Woodbeck's vehicle not been a police vehicle with lights and sirens flashing, I am not convinced that Mr. Russell's failure to avoid the accident could be found to be a criminally marked departure from the standard of care.

[159] The gravamen of this offence relates to the fact that Mr. Russell was being pursued by the police, and the car that cut him off was also a police car attempting to cut off his flight. I therefore consider that the conduct at issue is better considered as an element of Count 7.

Count 7: Flight from Police Officer

[160] The elements of this offence require the Crown to establish that:

- a) Mr. Russell was operating a motor vehicle at the specified time;
- i. With contemporaneous pursuit by a peace officer in a police vehicle; and
- ii. Failed to stop the motor vehicle as soon as reasonable in the circumstances
- b) Without reasonable excuse;
- c) For the purposes of evading the police.

[161] The mens rea element of this offence requires proof beyond a reasonable doubt that Mr. Russell acted deliberately, or was willfully blind, to the pursuit of the officers requiring him to stop. The focus of the mental component for this offence is related to the evasion of police: *R. v. Kulchisky*, 2007 ABCA 110 at para. 4.

- [162] The Crown has established the actus reus of this offence from the moment Sgt. Ushock and Cst. Bulmer engaged lights and sirens, and Mr. Russell failed to stop. I find that this was before Mr. Russell had crossed the bridge into downtown Vanderhoof, and continued through downtown, to the highway at the south end of town, to the point that Mr. Russell turned onto the highway before pulling over at the Kal Tire store, and included the moment that Mr. Russell collided with Cst. Woodbeck's vehicle that attempted to cut him off.
- [163] The defence argues that the Crown has not proven that Mr. Russell knew, or should have known, that the unmarked police vehicle following him was a police vehicle. No other lawful excuse is suggested for Mr. Russell's actions.
- [164] I am satisfied by the evidence that the Ushock and Bulmer vehicle, though unmarked, had lights and sirens engaged. Both Cst. Woodbeck and Staff Sgt. Baker also had lights and sirens engaged as they approached Mr. Russell. Cst. Woodbeck's vehicle was a marked police vehicle.
- [165] Mr. Russell's actions in starting to pull over on Burrard Avenue and then speeding away also indicate Mr. Russell had knowledge of the police pursuit before the collision.
- [166] On all the evidence, I am satisfied beyond a reasonable doubt that Mr. Russell knew he was being pursued by a police officer when he failed to stop for the police before entering downtown Vanderhoof, while driving through downtown Vanderhoof, and when he collided with Cst. Woodbeck's vehicle. It was only when he would have been able to see and hear the police vehicles coming down the hill towards him on the highway that he pulled over into the Kal Tire parking lot.

Count 8: Mischief Causing Danger to Life

- [167] Both Count 8 and Count 9 require the Crown to prove the underlying elements of mischief, including interference with property by an intentional act (here discharging a firearm at a detachment of the RCMP). Count 8 also requires that the Crown establish that this conduct caused "actual danger to life" and that Mr. Russell acted intentionally or recklessly in this regard: *R. v. Toma*, 2000 BCCA 494 at para. 92.
- [168] Mr. Russell argues that the Crown has not established that his actions caused danger to life that was not merely incidental to the damage to the property. He relies on the 1955 Newfoundland Supreme Court decision, *R. v. Nairn*, 1955 CanLII 502 at 273 (N.L.S.C.), 112 C.C.C. 272 for the proposition that the danger to life must result from the damage to the property, not the discharge of the firearm itself.
- [169] As I read the cases provided to me, including *Nairn* and *R. v. Humphrey*, [1986] O.J. No. 1247, 21 O.A.C. 36 (C.A.), mischief may be proven where the actual danger to life is the direct result of the deliberate action constituting the mischief, and not just merely incidental thereto. In *Humphrey* the Ontario Court of Appeal clarified that "the actual danger to life" may be caused by the damage to property or by the act itself.

[170] In this case, I find that the Crown has established beyond a reasonable doubt that Mr. Russell's actions were deliberate, that they caused damage to property, including the exterior and interior of the RCMP detachment, and that this mischief caused actual danger to life, both directly, and through the flying glass and metal that the bullets entering the RCMP detachment created.

Count 9: Mischief over \$5,000

[171] It follows that I also find that the elements of Count 9 with respect to the damages to the police vehicles and detachment. Mr. Russell concedes that the evidence establishes that he wilfully shot RCMP vehicles and the exterior of the RCMP detachment.

[172] I am satisfied beyond a reasonable doubt that Mr. Russell deliberately shot at RCMP vehicles, the RCMP detachment building, and into the detachment, and that, in doing so, he caused more than \$5,000 in property damage.

CONCLUSION

[173] Mr. Russell would you please stand:

[174] On Count 1 (Attempted Murder), Count 5 (Careless Storage of Ammunition), and Count 6 (Dangerous Driving), I find you not guilty.

[175] I find you guilty of:

- a) Reckless Discharge of a Firearm (Count 2);
- b) Possession of a Weapon for a Dangerous Purpose (Count 3);
- c) Careless Use of a Firearm (Count 4);
- d) Flight from a Peace Officer (Count 7);
- e) Mischief Causing Danger to Life (Count 8); and
- f) Mischief over \$5000 (Count 9).

[176] There is substantial commonality in terms of the conduct upon which I have made these findings, and I invite submissions in this regard.

"Marzari, 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/23/11/2023BCSC1123.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-russell-2023-bcsc-1123>

Prepared on 25 October 2026 · Esheria