

CANADA / JUDGMENT

R. v. Tregear

2025 BCSC 1834

COURT

Supreme Court of British Columbia

DECIDED

29 August 2025

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2025 BCSC 1834 R. v. Tregear

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Tregear,

2025 BCSC 1834

Date: 20250829

Docket: 185268-8

Registry: Victoria

Rex

v.

Paul Tregear

Before: The Honourable Justice Matthews

Oral Reasons for Sentence

Counsel for the Crown:

S. Green

Counsel for the Accused:

N. Brooks

Place and Date of Trial/Hearing:

Victoria, B.C.

April 4 and 8, 2025

August 18, 2025

Place and Date of Judgment:

Victoria, B.C.

August 29, 2025

Overview

[1] After a trial with a jury, Paul Tregear was convicted on each count of a four-count indictment in relation to a confrontation with his neighbour Anthony Nelson on May 7, 2022, during which Mr. Tregear shot Mr. Nelson. The convictions were:

- Count 1, possessing a non-restricted firearm knowing that he was not the holder of a licence, contrary to s. 92(1) of the Criminal Code, R.S.C. 1985, c. C-46;
- Count 2, pointing a firearm at Mr. Nelson, contrary to s. 87(1) of the Criminal Code;
- Count 3, discharging a firearm at Mr. Nelson with intent to wound, maim, or disfigure, contrary to s. 244(1) of the Criminal Code;
- Count 4, aggravated assault of Mr. Nelson, contrary to s. 268(2) of the Criminal Code.

[2] The Crown seeks a series of concurrent sentences, the longest of which is eight years for Counts 3 and 4, as well as ancillary orders.

[3] Mr. Tregear asserts that he is remorseful, he has commenced rehabilitation by ceasing drinking, and in those circumstances, a conditional sentence of two years less a day and three years of probation is appropriate.

Sentencing Positions of the Crown and Mr. Tregear

[4] The Crown seeks the following jail sentences to be served concurrently:

- a) Count 1, possessing a non-restricted firearm: one to two years;
- b) Count 2, pointing a firearm: two to three years;
- c) Count 3, discharging a firearm with intent: eight years; and
- d) Count 4, aggravated assault: eight years.

[5] The Crown also seeks ancillary orders as follows:

- a) Pursuant to s. 487.051(1) of the Criminal Code, taking of Mr. Tregear's DNA on the basis that Counts 3 and 4 are primary designated offences.

- b) Pursuant to s. 109(1)(a) of the Criminal Code, a 10-year prohibition on owning, possessing, or carrying any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition, and explosive substance for a period of 10 years; in addition, the Crown seeks a term that Mr. Tregear must not possess any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
 - c) Pursuant to s. 491(1)(b) of the Criminal Code, Mr. Tregear forfeit to His Majesty the firearm and ammunition seized by the police in relation to this matter to be disposed of as the Attorney General directs.
 - d) Pursuant to s. 743.2 of the Criminal Code, Court Services Branch forward to the Correctional Service of Canada a copy of the pre-sentence and psychological assessment reports and the transcribed sentencing reasons.
- [6] Mr. Tregear submits the following sentences served concurrently can be served as a conditional sentence of two years less a day plus three years' probation:
- a) Count 1, possessing a non-restricted firearm: one year;
 - b) Count 2, pointing a firearm: six months;
 - c) Count 3, discharging a firearm with intent: two years less a day; and
 - d) Count 4, aggravated assault: two years less a day.
- [7] Mr. Tregear does not take any position and, specifically, does not oppose the ancillary orders sought.

The Kienapple principle

- [8] The rule against multiple convictions is known as the Kienapple principle and is stated in *Kienapple v. R.*, [1975] 1 S.C.R. 729, 1974 CanLII 14.
- [9] The Crown initially made submissions on the potential applicability of the Kienapple principle pertaining to Counts 3 and 4. At the request of the court, the Crown also made submissions on the Kienapple principle with respect to Counts 2 and 3.
- [10] In *R. v. Baptiste*, 2025 BCCA 208, the Court of Appeal reviewed the Kienapple principle, describing it as "precluding multiple convictions for offences involving the same 'delict' (criminal act or criminal wrong)", such that "when an accused is found guilty of multiple offences with the same or substantially the same elements, the accused should be convicted of only the most serious of the offences" and "the conviction for the less serious offence should be conditionally stayed."

- [11] In *R. v. Prince*, [1986] 2 S.C.R. 480, 1986 CanLII 40, the Supreme Court of Canada established a two-step analytical framework to be applied in deciding whether a conviction should be conditionally stayed: first, whether there is a factual nexus between the offences at issue; and if so, second, where there is also an adequate legal nexus between them.
- [12] Whether there is a factual nexus between offences at issue is generally determined by considering whether the same act grounds each of the charges: *Prince* at 492. Where offending behaviour occurs over a time and one offence runs into another, the court should consider the remoteness or proximity in time and place between the offences, the presence or absence of relevant intervening events, and whether the acts underlying the offences were related to each other by a common objective: *Prince* at 492-493.
- [13] A legal nexus is also necessary because a single act "can involve two or more delicts against society which bear little or no connection": *Prince* at 494-495. A legal nexus exists where there is "no additional and distinguishing element" that the Crown must prove to make out the count sought to be stayed: *Prince* at 498-499.
- [14] In *R. v. Anderson*, 2021 BCSC 528, citing *R. v. Ivanic*, 2009 BCSC 931 at paras. 33-35, Justice Horsman, then of this court, accepted that s. 244(1) of the Criminal Code, discharging a firearm with intention to wound, maim, or disfigure, "is sufficiently distinct from aggravated assault that the Kienapple principle does not apply". I understand that conclusion was that the offences were legally distinct, and so no legal nexus exists that engages the Kienapple principle. That was what was held in *Ivanic* at paras. 33- 35, and I agree.
- [15] In *Baptiste* at paras. 66-70, the Court of Appeal held that pointing a firearm and reckless discharge of a firearm have different elements. Reckless discharge requires intention to discharge while pointing a firearm does not, and an unloaded firearm can be the subject of a conviction for pointing, but a loaded firearm is necessary to commit the offence of discharging.
- [16] Those differences also exist between the offence of pointing a firearm and the offence of discharging a firearm with intent to wound, maim, or disfigure. Although some of the comparison between the offences in *Baptiste* does not apply to the comparison of these offences, I am persuaded that most of the analysis and the conclusion in *Baptiste* applies to a comparison of pointing a firearm and discharge of a firearm with intent.
- [17] I conclude that Counts 2 and 3 are not subject to the Kienapple principle.

Circumstances of the Offence

- [18] The trial that resulted in Mr. Tregear's conviction was held by a judge sitting with a jury. The fact finding at that stage of the trial was undertaken by the jury.

Finding Facts on Sentencing Where the Verdict Was Reached by a Jury

- [19] Section 724(2) of the Criminal Code codifies the previous common law rule expressed in *R. v. Brown*, [1991] 2 S.C.R. 518 at 523, 1991 CanLII 73, that the sentencing judge is obliged to make the findings of fact necessary to impose sentence when the verdict has been reached by a jury.
- [20] In *R. v. Ferguson*, 2008 SCC 6, the Supreme Court of Canada considered the principles in *Brown* and s. 724(2), and observed at para. 16 that this can be a challenging exercise because the jury does not give reasons for its verdict. Nevertheless, the sentencing judge must determine the facts necessary for sentencing. The judge is only required to make the factual determinations necessary for deciding the appropriate sentence. At paras. 17-18 of *Ferguson*, the Court held that two principles are involved.
- [21] First, the express and implied factual findings of the jury's verdict bind the sentencing judge, and the judge shall not engage in finding facts inconsistent with what the jury must have found to reach its verdict.
- [22] Second, when the jury's factual findings are ambiguous, the sentencing judge should not try to infer or extrapolate from the verdict in an attempt to use logic to determine what the jury likely determined, but should find facts independently: *Brown*; *R. v. N.F.*, 1994 ABCA 402, 162 A.R. 117. This principle and s. 724(2)(b) permit the sentencing judge to make factual findings based on the evidence at trial.
- [23] If the Crown raises aggravating facts that are disputed, the burden on the Crown to prove those facts is beyond a reasonable doubt. To rely upon any other relevant fact, the sentencing judge must be persuaded on a balance of probabilities: s. 724(3)(d)-(e); *Ferguson* at para. 18, citing *R. v. Gardiner*, [1982] 2 S.C.R. 368, 1982 CanLII 30; and *R. v. Lawrence* (1987), 58 C.R. (3d) 71, 1987 CanLII 9452 (O.N.S.C.).
- [24] The sentencing judge does not have to find the facts most favourable to the accused, but must not make findings inconsistent with the jury's verdict: *R. v. Berry*, 2025 BCCA 14 at para. 25.

Facts Found on Sentencing

- [25] Below, I set out the facts that the jury must have found based on the verdict they reached. In this section, I set out the facts I find in addition to those facts. I have set out the findings, my findings and the jury's findings, in reverse chronological order, because the jury findings read somewhat skeletally, given they are based on the elements of the offences, and my findings review the evidence which provide the necessary context to understand the jury's findings.

- [26] I find the following facts based on the evidence at trial, except for where I state it is based on evidence from a different source. Much of it was not controverted. Where it was, I will address it.
- [27] The Nelsons and Mr. Tregear lived next to each other on large rural properties in Sooke, British Columbia. There were past negative interactions between the members of the Nelson family, Mr. Tregear's common-law spouse Cindy Hehn, and Mr. Tregear.
- [28] It is not contested that on May 7, 2022, Mr. Tregear, who owns a property neighbouring the Nelson property, walked up the Nelson driveway, a long uphill driveway, and came near the Nelson residence with a loaded .22 rifle.
- [29] There was different evidence on some of the interaction between Mr. Nelson and Mr. Tregear.
- [30] Mr. Nelson's evidence was detailed, and, although there were some variations between statements he gave and his trial evidence, those types of variations are to be expected. He was thoroughly cross-examined, and his evidence stood up to that challenge.
- [31] Mr. Nelson and his wife, Wendy Nelson, are suing Mr. Tregear as a result of the injuries Mr. Nelson suffered and the trauma of the event on both of them. The result of a criminal trial can assist a civil suit because, if the accused is convicted, the conviction is proof of the matters set out in the indictment.
- [32] I accept that the Nelsons, therefore, have a financial motivation to lie. However, the evidence and the jury's convictions amply support my independent conclusion that they were not lying on the core issues that result in the conviction. That is, that Mr. Nelson was shot by Mr. Tregear, Ms. Nelson witnessed this traumatizing event, and Mr. Nelson was gravely injured.
- [33] Mr. Tregear also gave evidence. Neither his evidence in chief nor his cross-examination inspired confidence that what he was saying was true. One example is his evidence that he walked from his property up the Nelsons' long driveway with a loaded .22 rifle to warn the Nelsons that there was a bear around. Below I address this evidence in more detail and explain why it cannot be believed.
- [34] Another example relates to the evidence on the discharge of the firearm. Mr. Tregear testified that he had control of the .22 rifle up until a time when Mr. Nelson grabbed both ends of it and cross-checked Mr. Tregear across the face with it. Prior to that event, Mr. Nelson testified that Mr. Tregear jammed the gun into his belly and he felt pain. There is no doubt that Mr. Nelson was shot in the stomach, and this is the only time at which that could have occurred in the sequence as described both by Mr. Nelson and by Mr. Tregear. Mr. Tregear denies discharging the .22 rifle. This is not believable.

- [35] A third example is that when Mr. Tregear was found by the police officer searching for him several hours after he fled the Nelson property and he was asked his name, he said something to the effect of, "I'm the guy you are looking for". When asked at trial why he said that, he responded that he was trying to be polite and helpful. Again, this evidence is not believable.
- [36] For these reasons, where the evidence of Mr. Nelson and Mr. Tregear conflicts, I prefer the evidence of Mr. Nelson.
- [37] I turn to the evidence and my findings.
- [38] At some point in the evening of May 7, 2022, Mr. Nelson went to his travel trailer that was parked near his home to retrieve some items. He testified that while in the trailer, he saw Mr. Tregear leaning against his house, pointing a rifle at him. Mr. Nelson testified that the rifle was resting on Mr. Tregear's shoulder and Mr. Tregear was looking down the sight of the rifle, pointing it at Mr. Nelson.
- [39] I pause to note that when Mr. Nelson testified, he said that at this point in time he did not know who the person pointing the rifle at him was. He came to the conclusion it was Mr. Tregear later in the events, as I will describe. Mr. Tregear's evidence made clear, it was him all along, although he does not, as I have said, agree with everything that Mr. Nelson testified to.
- [40] Mr. Nelson testified that Mr. Tregear walked towards him, holding the rifle at his waist with it pointed at Mr. Nelson. Mr. Tregear testified that when he first saw Mr. Nelson, he had the rifle in a ready position, but the barrel was pointed down and he never pointed it at Mr. Nelson. As I explain below, the jury accepted Mr. Nelson's evidence that Mr. Tregear pointed the .22 rifle at Mr. Nelson at some point, but that could be both times or one of the times that Mr. Nelson described. I conclude that Mr. Tregear pointed the rifle at Mr. Nelson both times as Mr. Nelson described.
- [41] Mr. Nelson testified that he called out to the effect of asking, with profanities added, who the man was and what was he doing on his property with a gun. He testified that the man responded to the effect of, "Do we have a feud?" Mr. Tregear testified that he did not say that, but rather said, "Hey, Tony", and that was all he said the whole time he was on the Nelson property that night.
- [42] I do not accept Mr. Tregear's evidence on this because of the problems with his credibility I have described, and because saying, "Hey, Tony", when on Mr. Nelson's property with a gun in circumstances where the neighbours had a history of feuding makes no sense. On the other hand, Mr. Nelson's evidence that Mr. Tregear said something along the lines of, "Do we have a feud?" or "We have a beef" fits within the preponderance of probabilities in the circumstances. I accept it.

- [43] Ms. Nelson testified that she was in the house and heard Mr. Nelson shouting, "What are you doing with a gun on my property?", so she grabbed a portable phone and dialled 9-1-1 while exiting the house. There is no dispute that Ms. Nelson called 9-1-1 and was exhibiting extreme upset at what was unfolding in front of her.
- [44] It is not contested that a physical altercation occurred between Mr. Tregear and Mr. Nelson outside the residence near where the Nelsons keep their travel trailer and park their truck. Mr. Nelson testified that he tried to push the .22 rifle away and Mr. Tregear stepped back and then jammed the .22 rifle into his belly. Mr. Nelson testified that he felt pain, but did not know that he had been shot until later when he saw a gunpowder burn on his skin. Ms. Nelson testified that she saw Mr. Tregear pull the gun back and then jam it into Mr. Nelson's abdomen and heard a loud bang.
- [45] As set out below, the jury found that Mr. Tregear discharged the .22 rifle, but it is not possible from that finding to know exactly when they found he discharged it.
- [46] There was evidence at trial that the ammunition in the gun was low velocity, which makes little to no sound when the gun is fired. Accordingly, I do not accept that Ms. Nelson heard a loud bang when the .22 rifle was discharged. Based on Mr. Nelson's evidence that he felt pain when the .22 rifle was jammed into his belly and the evidence overall which does not disclose another probable time when he was shot, I conclude that Mr. Tregear shot Mr. Nelson when he jammed the rifle into Mr. Nelson's belly.
- [47] Mr. Nelson testified that he hit Mr. Tregear in the face several times to try to get him to drop the gun. He testified that after that went on for a while, he got both hands on the gun, one on the barrel and one near the other end, and used it to cross-check Mr. Tregear in the face and wrest the gun away from him. It is not disputed that Mr. Nelson cross-checked Mr. Tregear across the face with the .22 rifle, and I find that he did.
- [48] There was evidence that a round was found in the chamber of the .22 rifle when the police seized the .22 rifle. That evidence indicates that after it was fired, the .22 rifle was racked to place another round in the chamber, so it was ready to fire again. I find these facts and I find that Mr. Tregear did that, as he testified he had control of the gun up until Mr. Nelson cross-checked him with it.
- [49] Mr. Nelson testified that after he cross-checked Mr. Tregear, he had the .22 rifle and Mr. Tregear tried to leave. He testified that he stopped Mr. Tregear from leaving and asked him who he was and why he was there. He testified that Mr. Tregear said something to the effect that Mr. Nelson wanted to hurt his Cindy. Mr. Nelson testified that he realized he was injured, so he let Mr. Tregear go. Mr. Nelson testified that when Mr. Tregear made a reference to Cindy, Mr. Nelson realized who the person on his property was. Mr. Nelson testified that Mr. Tregear took off into the bushes. I find these things happened as Mr. Nelson testified.

- [50] I find that within the next 15 to 20 minutes, the police arrived, and Mr. Nelson was transported by the police off the property, and then transferred to an ambulance and taken to Victoria General Hospital. He underwent emergency surgery during which the surgeons lost his vital signs and he had to be resuscitated. The surgeon, Dr. Kim, testified that the bullet pierced Mr. Nelson's small intestine in six places, and he removed parts of the small intestine and stitched it back together.
- [51] Dr. Kim testified that he found the bullet on imaging, but did not find it readily when operated, and did not want to do damage looking for it. The evidence of Dr. Kim was not challenged, and I accept it.
- [52] Mr. Nelson testified that he has had complications from the wound that have necessitated further hospitalizations and surgery due to a bowel obstruction. He has restrictions on what he can lift, as a result of which he can no longer work in the construction field.
- [53] He continues to have pain and disability due to the bullet wound. He has a scar that runs from his breastbone to his pubic bone. I accept this evidence.
- [54] There was evidence from a firearms expert that the gun was a .22-calibre rifle, which is a non-restricted firearm. I accept that evidence.
- [55] A former firearms officer for British Columbia testified. He checked the Canadian Firearms Information System and did not find any possession or acquisition licence, the type of licence Mr. Tregear was required to have for the .22 rifle, had been issued to Mr. Tregear. He testified that he found a record that Paul Tregear, with the same birthdate as Mr. Tregear, applied for a licence in April 2009, but withdrew the application on September 5, 2009.
- [56] Mr. Tregear testified that he was issued a licence, but it had expired. He testified that the expired licence was in his Sooke home, but he could not access it because he is not permitted under the terms of his bail to be in Sooke. I do not believe Mr. Tregear's evidence that he ever had a licence. He chose to testify. If he had a licence that expired, it would have been a simple matter to have Ms. Hehn, who still resides in their Sooke home, retrieve it for him.
- [57] I prefer the evidence of the firearms officer and find that Mr. Tregear was never issued a licence.
- [58] Mr. Tregear testified that he did not go onto the Nelson property with the intention of shooting Mr. Nelson. This issue of intention was also referred to as premeditation. It is important to understand that, for the fact-finding process, the question is not whether the offending was planned and deliberate. For cases of aggravated assault, the question on premeditation for sentencing is whether there was an absence of determined intention, such as an "impulsive act taken on the sudden": *R. v. Caulfield*, 1999 BCCA 190 at paras. 15-16.

- [59] With regard to whether Mr. Tregear's intention was to warn Mr. Nelson about the bear, Mr. Tregear agreed on cross-examination that the bear ran away when he saw it on his property, and there was no reason to have a gun after that. He testified that he went to warn the Nelsons about the bear. When asked why he took a loaded gun to a neighbour's house, he said it was because there was a bear and it made him feel safer. He agreed that he could have driven up to their home in his truck and that would have been safer than walking. He agreed that he could have called the police, animal control, or the Nelsons about the bear. He agreed he knew he was not welcome on the Nelson property. He agreed that he never said anything to Mr. Nelson about the bear between the time he first saw Mr. Nelson and when the physical altercation started or during the physical altercation.
- [60] I do not believe that Mr. Tregear went to the Nelsons' property to warn them about a bear. That evidence is simply not believable. He took a .22 rifle, which the firearms expert at trial said would not be effective against a bear. The evidence included the history of disputes between Mr. Tregear, Ms. Hehn, and the Nelsons that makes the notion that he was doing the neighbourly thing by taking a long walk in a dangerous situation to warn them about the bear implausible. There were obvious options that were safer, such as driving up or calling them on the phone.
- [61] I conclude that Mr. Tregear lied about the bear because he did go to the Nelsons' property with his .22 rifle with the intention of shooting Mr. Nelson.
- [62] In addition, the evidence of what Mr. Tregear did once on the property supports the conclusion that he was there to shoot Mr. Nelson. The .22 rifle was loaded. At some point, Mr. Tregear took the safety off, because otherwise the gun would not have fired. I conclude on the evidence from Mr. Tregear that he had control of the rifle until Mr. Nelson cross-checked him with it, and that he was the only person who could have released the safety on it before the bullet was fired.
- [63] The constable who found the .22 rifle at the scene found another bullet in the chamber, which means that after the bullet was fired, the gun was racked and ready to fire again. I find that Mr. Tregear was the only person who could have done that, given the evidence.
- [64] I have found that Mr. Tregear said to Mr. Nelson early in the altercation something along the lines of, "Do we have a feud?" or "We have a beef." I have found that Mr. Tregear said to Mr. Nelson near the end of the altercation something to the effect that Mr. Nelson wanted to hurt Cindy.
- [65] Mr. Tregear argues that it is possible that he went onto the property with the gun to intimidate the Nelsons and everything went "pear shaped" once he got there. He submits that, despite his lack of intention to shoot anyone, Mr. Nelson was shot. That submission is pure speculation that has no supporting evidence.

- [66] I am satisfied beyond a reasonable doubt that Mr. Tregear went to the Nelson property with the loaded .22 rifle for the purpose of shooting Mr. Nelson, and there cannot be a suggestion that the discharge of the firearm or the aggravated assault was a suddenly-taken, impulsive act.
- [67] Based on the evidence of Dr. Kim and Mr. Nelson's evidence in his victim impact statement, I find that Mr. Nelson almost died during emergency surgery for the bullet wound and had six perforations of his small intestine. I find that Mr. Nelson and Ms. Nelson, who witnessed the shooting and aggravated assault, suffered emotional consequences that they are still dealing with and which include their sense of safety on their property.
- [68] I find that members of the community who know of this event have also had their sense of security negatively affected.

Facts Found by the Jury Beyond a Reasonable Doubt

- [69] Based on the verdict and the elements of the offences on which Mr. Tregear was convicted, I conclude that the jury must have found, beyond a reasonable doubt, the following facts that are relevant to the sentencing.
- [70] The .22 rifle Mr. Tregear took onto the Nelson property was a non-restricted firearm which he possessed and for which he did not have a licence. Mr. Tregear actually knew he did not have a licence or was reckless or wilfully blind about whether he had a licence.
- [71] Mr. Tregear pointed the .22 rifle at Mr. Nelson, intended to point the gun at him, and did so without lawful excuse.
- [72] Mr. Tregear discharged the firearm at Mr. Nelson and intended to do so. Mr. Tregear intended to wound, maim, or disfigure Mr. Nelson.
- [73] Mr. Tregear applied force directly or indirectly to Mr. Nelson and did so by discharging the firearm. Mr. Tregear intended to apply force to Mr. Nelson, did so without the consent of Mr. Nelson, and did so knowing Mr. Nelson did not consent. The force wounded, maimed, or disfigured and/or endangered the life of Mr. Nelson.

Circumstances of Mr. Tregear

- [74] Mr. Tregear is currently 58 years old. He was 55 years old at the time of his offending. He has a criminal record. In 1987, at the age of 20, he was convicted of breaking and entering. He received a suspended sentence and probation of two years. In 2006, he was convicted of sexual assault of his young daughter. He was sentenced to 12 months in jail and 12 months of probation. I find these facts are proven beyond a reasonable doubt.
- [75] The evidence at this sentencing includes a presentence report prepared by a probation officer with the B.C. Corrections Branch, Amar Cheema, and a psychiatric report prepared by a psychiatrist, Dr. Oswald, with B.C. Mental Health and Substance Abuse Services

- [76] Both report writers provide information about Mr. Tregear's childhood and adulthood. Some of the information he provided to them conflicts. For example, he told Dr. Oswald that he could not recall any issues or problems when he attended St. Patrick's School in Oak Bay, but later in the interview said he had been suspended for selling cannabis to a student.
- [77] Mr. Tregear has told different people different things about his lifelong alcohol and drug use, as detailed below.
- [78] Mr. Tregear told Dr. Oswald that he did not sexually assault his daughter, but pleaded guilty to spare her the experience of testifying.
- [79] Some of the information Mr. Tregear provided to the report writers is not consistent with collateral information. For example, to Dr. Oswald, he described his time at Vancouver College as generally positive, but he told a forensic clinic staff member that he was expelled from Vancouver College due to behaviour problems.
- [80] Mr. Tregear was raised with one sibling, a younger sister, by their parents. Mr. Tregear told Probation Officer Cheema that his father physically and verbally abused him. Mr. Tregear attributes the abuse to his sister, whom he claimed would start problems, or to Mr. Tregear himself by doing something irresponsible.
- [81] Mr. Tregear told Probation Officer Cheema that he worked in construction for many years, including for a construction company on Pender Island, before starting his own construction and renovation company. Mr. Tregear told Probation Officer Cheema that he has two children who are in their twenties, one of whom, a son, is incarcerated. The other, his daughter, lives in Sooke. Mr. Tregear and their mother separated over 20 years ago.
- [82] Mr. Tregear told P.O. Cheema that he has never had a problem with drugs or alcohol and he only drank occasionally. However, there is a 2005 presentence report in which he reported that he consumed alcohol frequently, sometimes up to six drinks per day. He told that parole officer that he experimented with mushrooms in his teen years as well. He told P.O. Cheema that the only drug use he had engaged in was marihuana in his teens. Mr. Tregear told Dr. Oswald that he had used alcohol, cocaine, and cannabis over the course of his life since his teens, describing himself as a functioning alcoholic who was becoming a dysfunctional alcoholic. He told Dr. Oswald that he stopped using cannabis at age 30. He told Dr. Oswald that he had had cravings, in the past, for cannabis.
- [83] Mr. Tregear told P.O. Cheema that he had drank a few beers before the offending. He told Dr. Oswald that he had a couple of beers. He testified at trial that he had a beer when he came home from work on May 7, 2022. On cross-examination, he confirmed it was just one beer. Mr. Tregear told Dr. Oswald he was not intoxicated when he went to the Nelson property.

- [84] At the time of the offending and up to the present, Mr. Tregear is in a relationship with Cynthia Hehn. Mr. Tregear told P.O. Cheema that they have a strong relationship which was made stronger by the offences, describing an "us against the world" mentality. The evidence at trial was that the majority of the pre-offending conflict between the Nelsons and Mr. Tregear involved Ms. Hehn.
- [85] Mr. Tregear told P.O. Cheema that when he was arrested, which was the same night of the offence, he felt bad for himself because he thought his life was ruined. He told P.O. Cheema that after the shock wore off, he began to feel remorseful and began to feel bad for Mr. Nelson. Mr. Tregear told Dr. Oswald that he felt bad for Mr. Nelson's injuries, which he described as terrible. He told Dr. Oswald that his greatest hope for the future was to move away from his Sooke property and avoid Mr. Nelson as much as possible.
- [86] Mr. Tregear asserts that he suffered a brain injury during the offence and that he has dark matter in his brain from the fight that occurred between him and Mr. Nelson, when Mr. Nelson was trying to get the gun from him and eventually cross-checked him with it. He told Dr. Oswald that while in jail, he had a sudden loss of physical coordination involving his left leg, left hand, and foot. He told Dr. Oswald that he was assessed at the hospital and was told he may have had a stroke. Mr. Tregear put into evidence the report of a CT scan of Mr. Tregear's head taken on July 19, 2022, with a request to determine any reason for mild left arm and leg coordination since an altercation on May 7, 2022. The report described a mild degree of patchy ischemic change in the cerebral deep white matter and fracture of the nasal bones. There is no evidence to interpret this report, including whether the matters identified are consistent with a fight, a stroke, both, or neither.
- [87] .I accept the findings of the CT scan, but there is no evidence to determine what caused those findings. I cannot determine whether Mr. Tregear suffered a brain injury during his physical altercation with Mr. Nelson on the evidence. The evidence is not sufficient to conclude that he had a stroke or that, if he had a stroke, it was caused by the physical altercation and is causing problems with his leg coordination.
- [88] The terms of Mr. Nelson's bail prohibit him from being in Sooke, so he has been living on a property owned by his parents on Prospect Lake Road in Victoria, while Ms. Hehn lives on the property that Mr. Tregear owns that is next to the Nelson property. Mr. Tregear and Ms. Hehn see each other on the weekends when Ms. Hehn visits Mr. Tregear at the Prospect Lake Road property. Mr. Tregear told Dr. Oswald that Ms. Hehn does not consume alcohol or drugs.
- [89] Mr. Tregear told P.O. Cheema that he continues to have a poor relationship with his father and that he does not get along with his sister and has not spoken with her in about 20 years, despite doing work on constructing a barn for her, for which his mother compensates him. Mr. Tregear told P.O. Cheema that he has a good relationship with his mother, who has been supporting him through the difficulties he currently has.

- [90] Mr. Tregear advised P.O. Cheema that the court case -- and it is not clear whether he is referring to the criminal proceedings, the civil proceedings, or both -- causes him stress. He told Dr. Oswald that the criminal proceedings cause him worry and the civil proceedings cause him stress. Mr. Tregear reported to P.O. Cheema that he is concerned about Ms. Hehn's financial stability if he is incarcerated. He has expressed concern that she will not be able to afford living where she currently lives and will have to have a roommate.
- [91] Mr. Tregear has several letters of support on this sentencing hearing. Many of the letters of support are from clients of Mr. Tregear to whom he has provided renovation and handyman services. The letters describe Mr. Tregear as a hard worker, a good problem solver, softspoken, reliable, and punctual. Some of the letter writers make statements such as, "what Paul has been convicted of seems very out of character with the Paul we know," or "there is clearly another, kinder and professional side to [Mr. Tregear]".
- [92] Such statements are not of assistance. I presume that persons who would hire someone to work in their homes would not hire someone who is the sort of person who would walk onto his neighbour's property with a loaded firearm and shoot the neighbour, yet that is what Mr. Tregear has been convicted of doing. I cannot sentence him on the basis that his clients do not know him in a way that would allow them to predict he would do such a thing.
- [93] The fact that what Mr. Tregear did is unexpected and incomprehensible is at the heart of this sentencing hearing. Mr. Tregear asserts that a conditional sentence is appropriate, because he is a good person who made a mistake, but there is no evidence that provides a coherent explanation for why he did what he did. In order to accept that he will not do it again or that he is engaging in rehabilitation for the reason he did it, it is important to know what prompted it in the first place and what he is doing to avoid that happening again.
- [94] Mr. Tregear alludes but has not explained in any cohesive way, except to Dr. Oswald, a problem with alcohol. He told P.O. Cheema that he does not have a problem with alcohol. His evidence at trial was that he had a beer while working. As I have stated, his evidence at trial was that he had a single beer that evening prior to seeing the bear and taking his .22 rifle onto the Nelson property.
- [95] One of the police officers who arrested Mr. Tregear many hours after the altercation with Mr. Nelson smelled stale alcohol coming from his clothing. Another officer smelled alcohol coming from Mr. Tregear. There is no evidence that supports that he was intoxicated at the time of his offending. The evidence of his alcohol habits and rehabilitation is problematic, a topic to which I now turn to.
- [96] With regard to whether Mr. Tregear has a problem with alcohol or drugs and whether he has engaged in rehabilitation since the offending, Mr. Tregear's counsel stated at sentencing that the offending is linked to Mr. Tregear's alcohol use and, because Mr. Tregear stopped cold turkey after the offending, he is rehabilitated from that problem and it does not pose a future problem.

- [97] Again, Mr. Tregear told P.O. Cheema that he did not recall ever having a drug or alcohol problem and only drank casually. That cannot be squared with what he told Dr. Oswald about his alcohol use. Dr. Oswald reported that Mr. Tregear described daily consumption of alcohol, including approximately two beers and two hard drinks between 5:00 and 7:00 p.m. in the evening. He told Dr. Oswald that his intake is "stable and controlled".
- [98] At the sentencing hearing, Mr. Tregear, through his counsel, disputed that Mr. Tregear told Dr. Oswald that he continues to drink. Mr. Tregear submitted that Dr. Oswald's report should be read as Mr. Tregear being an alcoholic, in the sense of once an alcoholic, always an alcoholic, even when actively practising sobriety.
- [99] Dr. Oswald testified to address this matter. He testified that he understood what Mr. Tregear told him to include current use of alcohol at the levels he described. He testified that he conducted a screening for alcohol use disorder in which Mr. Tregear endorsed taking in larger amounts of alcohol than intended, having cravings for alcohol, using it despite knowing that he had problems caused by it. In particular, he suspects liver problems because his stomach hurts. Dr. Oswald testified that Mr. Tregear also endorsed increased tolerance to alcohol.
- [100] Dr. Oswald testified and his evidence was consistent with his notes taken during the assessment that Mr. Tregear told him that he "used to be a functional alcoholic, but I'm becoming dysfunctional".
- [101] On cross-examination, Dr. Oswald allowed that it was possible that he misunderstood the temporal component of Mr. Tregear's drinking. He testified that understanding people completely during assessments can be challenging, and Mr. Tregear was challenging because he was an unreliable historian. That is a reference to conflicts that Dr. Oswald noted in what Mr. Tregear said to Dr. Oswald compared to what he had said to others. However, Dr. Oswald maintained that he understood Mr. Tregear to be saying that he had an alcohol use disorder that was active at the time of the assessment and that Mr. Tregear continued to drink daily in the amounts of two beers and two hard drinks.
- [102] The only evidence is that Mr. Tregear continues to drink. His counsel's statement that he complies with his bail requirements is not evidence. What his counsel told me about him quitting cold turkey is not evidence. What he told Dr. Oswald is evidence and Dr. Oswald's understanding of it has been tested on cross-examination. While Dr. Oswald allowed for the possibility that he misunderstood, given the completeness of his notes and the evidence that Mr. Tregear told Dr. Oswald that he was a functioning alcoholic who is becoming a dysfunctional alcoholic, I am persuaded beyond a reasonable doubt that Mr. Tregear continues to drink and is drinking at the level of alcohol use disorder.
- [103] There was some debate as to whether it is necessary to find that Mr. Tregear is currently drinking at the standard of a balance of probabilities or beyond a reasonable doubt. For an aggravating factor, such as violating a term of bail, this must be proved beyond a reasonable doubt: *R. v. Bennight*, 2012 BCCA 461 at para. 29. However, the rule of evidence

of rehabilitation, which is not an aggravating or mitigating factor, but something the court must consider in determining a fit sentence, is subject to proof on a balance of probabilities: s. 724(3)(d).

[104] I find that the evidence establishes, beyond a reasonable doubt, that since the offending, Mr. Tregear has continued to regularly consume alcohol.

[105] Dr. Oswald acknowledged that there is no clear indication of what prompted Mr. Tregear to take a loaded gun onto his neighbour's property and shoot him. Dr. Oswald did, however, conclude that alcohol use is a risk factor in Mr. Tregear's chances of reoffending. He concluded that Mr. Tregear has a low risk of reoffending over the next six to 12 months, but an exception could be if he is made angry by a judgment for a large amount of money in favour of the Nelsons in the civil suit and seeks retribution. He recommends that Mr. Tregear stop drinking and seek treatment for his alcohol disorder to protect against possible future retaliation against Mr. Nelson.

[106] I find there is no evidence that Mr. Tregear has attempted rehabilitating his alcohol use disorder since the offending.

Circumstances of the Victims

Victim Impact Statements

[107] Mr. Nelson underwent emergency surgery the night of the incident, into the early morning hours of the next day. Mr. Nelson has had complications from the wound that have necessitated further hospitalizations and further surgeries due to a bowel obstruction. He continues to have pain and digestive problems due to the bullet wound, and he has a lengthy scar.

[108] Mr. Nelson has restrictions on what he can lift. As I will discuss below, the seriousness of Mr. Nelson's injuries is an aggravating factor. I find the Crown has proven these facts relating to Mr. Nelson's injuries beyond a reasonable doubt.

[109] Mr. Nelson and Ms. Nelson provided victim impact statements. Certain portions of those impact statements are objected to by Mr. Tregear on the basis that they contain statements that go broader than the impact of this offending on them, including impacts it has had on their community.

[110] Under s. 722 of the Criminal Code, a sentencing court is required to consider the statement of a victim "describing the physical or emotional harm, property damage or economic loss suffered by the victim as a result of the commission of the offence and the impact of the offence on the victim", but is also required to disregard any irrelevant portions of the statement: s. 722(8).

- [111] In *R. v. Berner*, 2013 BCCA 188, the Court of Appeal explained that victim impact statements play an important role in the sentencing process, hence the statutory requirement that the sentencing judge consider them. The Court explained that, in addition, the victim impact statement is intended "to bring home to the offender in a palpable way the consequences of his or her conduct and is a means to inform the court of the damage done by that conduct to the victim and, in directly, to the community": *Berner* at para. 13.
- [112] In this way, the victim impact statement achieves the objective of sentencing set out in s. 718(f) of the Criminal Code, to protect society and to contribute to respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions that promote a sense of responsibility in offenders and acknowledgment of the harm done to victims or to the community: *Berner* at para. 14.
- [113] When receiving victim impact statements and considering their content, it is important for the sentencing court to remember that a sentencing hearing is between society, represented by the Crown and the offender. It is not a tripartite hearing where the victim is a party. The court must not consider portions of victim impact statements that appear to try to compensate the victim for the loss or distract the sentencing judge from the purpose of sentencing: *R. v. Bremner*, 2000 BCCA 345 at paras. 14-16.
- [114] As *Berner* makes clear, the impact of offending on a community is relevant to sentencing. When taken in context, the objected-to portions of the statements of Ms. Nelson refer to persons who knew the Nelsons and who are part of the Sooke community. Sooke is a rural community. Firearm offences, as the caselaw below demonstrates, are insidious. Firearms are inherently dangerous, and when people learn that they are being used, it creates a general feeling of unsafety.
- [115] In this case, Mr. Nelson was minding his own business on his property when Mr. Tregear came onto it with a loaded firearm and shot him. Those circumstances, in the context of a rural community, have an impact on the sense of safety, or lack thereof, of people living in the community.
- [116] Ms. Nelson has voiced some of that in her victim impact statement. I do not consider these statements to be rendering the sentencing a tripartite hearing and objectionable on that basis.
- [117] Mr. Tregear also objects because the comments can be seen to be advocating for a particular length of sentence; in particular, Ms. Nelson's statement which contains the query of what Mr. Tregear will lose, given what they have lost as a family. I do not consider that to be asserting any particular form or length of sentence. It is a natural question: what will be the punishment for these crimes?
- [118] Ms. Nelson, I infer, wants there to be some rational connection between the sentence and the effects of the offending on her family, but she has not specified any specific sentence, much less asserted that an eye for an eye, et. cetera, must be meted out.

- [119] In his victim impact statement, Mr. Nelson stated that the effects of this offence on him include that his wife witnessed it and he senses her ongoing pain from the experience. He has also learned of the trauma that other family members endured when what happened to him was being communicated among the family. He is greatly affected by the fact that his daughter was working at Victoria General Hospital the night of the incident and, on hearing that a gunshot victim was coming to the hospital, ran to the blood bank to donate blood. She then learned that it was her own father who was the gunshot victim.
- [120] Mr. Nelson stated that his wounds have affected his ability to eat certain foods and to digest food. He stated that his job, his career, has been affected by his injuries and he has to retrain to do another job as a result. He wrote about the financial strain this situation has caused. Mr. Nelson stated that Mr. Tregear chose to do this to his entire family and his community, which has supported him. He stated that he is stronger for it. He stated that even though the bullet tore through him, it could not break his family which is full of love, or his community which is full of support.
- [121] Ms. Nelson, as I have noted, provided a written victim impact statement. She expressed difficulty in expressing in written words how this incident has changed their lives. Ms. Nelson stated that the offences took away her husband's career and his ability to work in the area trained for and worked in his entire life. She expressed the financial strain the offending caused, because Mr. Nelson has been unable to continue working and has had to retrain, while their bills and cost of living continue. She stated they used to have financial security and financial freedom and now they do not. Ms. Nelson stated that Mr. Tregear took away joy and safety of their home, including that she was reluctant to open the blinds in their house for many months. Ms. Nelson stated that around health "everything has changed" involving multiple ER visits, various medical devices, PTSD, and ongoing feelings of panic when her husband is not feeling well. She wonders if he is having another episode of abdominal blockage that will require hospitalization and surgery. She stated that they always need to know where the nearest bathroom is because of the ongoing effects of the bullet wound on Mr. Nelson's digestive system.
- [122] Ms. Nelson stated that she has seen the effect of this offending on her husband who lost his health and his career. She stated that his physical wounds grow over, but the pain and the emotional effects do not go away. She stated that she lost her husband that day, her sense of safety and security, and their financial freedom.
- [123] Finally, although not contained in the victim impact statement, the presentence report contains a statement of the type of sentence that the Nelsons told P.O. Cheema they prefer. I have disregarded that portion of the presentence report, as such a statement is not an appropriate part of a presentence report.

Legal principles

General

- [124] Section 718 of the Criminal Code provides that the fundamental purpose of sentencing is to protect society and contribute to respect of the law and maintenance of a just, peaceful, and safe society.
- [125] Subsections (a) through (f) of s. 718 set out objectives to achieve the fundamental purpose, namely denouncing unlawful conduct and its resultant harms, deterrence, both general and specific; separating offenders from society where necessary to protect the public; assisting in rehabilitation; providing for reparation for harms done, and promoting responsibility in offenders and acknowledging the impact of their conduct.
- [126] As explained in *R. v. Nasogaluak*, 2010 SCC 6 at para. 43, none of these factors are inherently more important than the other. Rather, the sentencing judge must determine which are important and persuasive, given the circumstances of the case.
- [127] Section 718.1 and s. 718.2 of the Criminal Code provide a non-exhaustive list of sentencing principles. Section 718.1 mandates that a sentence be proportionate to the gravity of the offence and degree of responsibility of the offender. The assessment of gravity addresses the normative wrongfulness of the harm posed or caused by the conduct to the victim or society: *R. v. Ellis*, 2022 BCCA 278 at para. 130, citing *R. v. Friesen*, 2020 SCC 9 at paras. 75-76; *R. v. Okimaw*, 2016 ABCA 246 at para. 14.
- [128] In *Ellis* at para. 131, the Court of Appeal explained that gravity is not about the circumstances of the offender, including the offender's background, personal characteristics, or experience that may have played a role in the offending. Those are matters that are relevant to the other aspect of proportionality, the degree of responsibility of the offender.
- [129] Section 718.2 of the Criminal Code provides for the consideration of aggravating and mitigating circumstances, the principles of parity and totality, and the instruction to consider all available sanctions, other than imprisonment, that are reasonable in the circumstances.
- [130] The most fundamental of these principles is proportionality: *R. v. Ipeelee*, 2012 SCC 13 at para. 37. Proportionality, by marrying the consideration of the gravity of the offence with the moral culpability of the offender, requires an individualized approach to sentencing: *R. v. Marchand*, 2023 SCC 26 at para. 123, citing *R. v. Parranto*, 2021 SCC 46 at para. 44; *R. v. Lacasse*, 2015 SCC 64 at para. 12; and *Ipeelee* at para. 51.
- [131] While the gravity of the offence may be the same, regardless of who commits it, the individual offender varies. A fit sentence is one which reflects the gravity of the offence, the degree of responsibility of the offender, and the unique circumstances of each case: *Parranto* at paras. 9-12, 205.

- [132] Parity, by providing that similar offenders who commit similar offences should receive similar sentences, gives meaning to proportionality: Friesen at paras. 30- 33.
- [133] Sentencing ranges are a tool to determine a fit sentence which assists the court with the parity principle. However, they are guidelines, not hard and fast rules, which must not overtake the unique circumstances of the offence, the offender, and the community in which the offence occurred or the principle of proportionality: Nasogaluak at para. 44; and R. v. Smith, 2017 BCCA 112 at para. 35.

Rehabilitation

- [134] In Marchand at para. 123, the Supreme Court of Canada explained that proportionality, and in particular the aspect of proportionality requiring the court to examine the moral culpability of the offender, requires that even in cases calling for emphasis on denunciation and deterrence, a fit sentence is one that furthers the overall objectives of sentencing, including prospects of rehabilitation. The Court held that respect for human dignity always requires that the "door to rehabilitation must remain open".
- [135] In R. v. Voong, 2015 BCCA 285 at para. 43, the Court of Appeal held that the public is protected when a former criminal is rehabilitated and deterred from committing more crimes.

Mitigating and Aggravating Factors

- [136] Sincere remorse can be a mitigating factor, but lack of it is not an aggravating factor: R. v. Hall, 2018 BCSC 1229. Lack of a criminal record is mitigating. Evidence of general good character is not mitigating: R. v. Fraser (14May2018), Penticton 33509 at para. 25.
- [137] Restrictive bail conditions can be mitigating in certain circumstances, including the length of time spent on bail, the stringency of the conditions, the impact on the offender's liberty, and the ability to carry on normal family and business relationships: R. v. Plowman, 2015 BCCA 423 at para. 28.
- [138] Complying with bail conditions is not mitigating. An accused is supposed to comply: R. v. Ravelo-Corvo, 2020 BCSC 2130 at para. 31.

Collateral Factors

- [139] Collateral consequences of offending and a sentencing are described as secondary consequences. That is secondary to the criminal process, including consequences arising from the commission of the offence, the sentence imposed, or the impact on the offender: R. v. Suter, 2018 SCC 34. While they can be taken into account, they are not aggravating or mitigating factors because those factors relate only to the gravity of the offence: R. v. Pham, 2013 SCC 15 at para. 11.

- [140] They may influence the consideration given to rehabilitation and assist in tailoring the sentence with regard to rehabilitation: *Pham* at para. 11. The weight to be given to them varies from case to case, and the seriousness of the offence: *Pham* at para. 12.

Consecutive or Concurrent Sentences and the Totality Principle

- [141] Section 718.3(4)(a) of the Criminal Code provides that the court shall consider consecutive sentences.
- [142] In *R. v. Li*, 2009 BCCA 85 at para. 42, the Court of Appeal described the test as to whether sentences should be concurrent or consecutive as "whether the acts constituting the offence were part of a linked series of acts within a single endeavour." Whether a set of facts is best characterized in this manner involves "the nature and quality of the criminal acts; the temporal and special dimensions of the offences; the nature of the harm caused to the community or to the victims; the manner in which the criminal acts were perpetrated; and the offenders' role in the crimes": *R. v. Potts*, 2011 BCCA 9 at para. 89.
- [143] Section 718.2(c) of the Criminal Code provides that "where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh". This is referred to as the totality principle. The totality principle requires a sentencing judge who orders an offender to serve consecutive sentences for multiple offences to ensure that the cumulative sentence rendered does not exceed the overall culpability of the offender. The totality principle seeks to ensure that a sentence is not crushing to a particular accused given his age, circumstances, and prospects, or to extinguish his rehabilitation prospects: *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500 at para. 42, 1996 CanLII 230; *R. v. Wozny*, 2010 MBCA 115 at paras. 59, 96.
- [144] The approach is to consider the appropriate sentence for each offence and to consider whether they should be sentenced consecutively or concurrently. The court then considers the total sentence to ensure the total sentence is just and appropriate and not crushing: *R. v. Gallagher*, 2025 BCSC 416 at para. 36. See also *Friesen* at paras. 155, 157.
- [145] It is clear that the totality review only applies where consecutive sentences are imposed. For example, in *Li*, Justice D. Smith provided a succinct consideration of the totality principle, citing *M. (C.A.)*, in which Justice Lamer, at para. 42, described the totality principle as a manifestation of proportionality in cases where there are consecutive sentences.

Firearm Offences

- [146] The British Columbia Court of Appeal in *R. v. Kachuol*, 2017 BCCA 292 at paras. 25-26, addressed the legislative approach to punishing firearm offence. The law reflects that guns are inherently dangerous and illicit possession of, viewed with common sense, possesses grave risks. The Court of Appeal explained that by criminalizing such conduct, the law intervenes before someone gets hurt. I note that that was a case about s. 95(1), possession

of a prohibited firearm. The Court of Appeal set aside a conditional sentence order of 23 months and 29 days, and substituted a sentence of three years' imprisonment.

[147] In *R. v. Ali*, 2015 BCSC 2539 at para. 83, Justice Holmes, as she then was, observed that illegal possession of firearms is a harm that society cannot tolerate and that, in firearm offences, the principles of denunciation and deterrence are paramount.

[148] In *Gallagher*, Justice Fitzpatrick sentenced a man who, in the course of a fight with friends at a beach, pulled a loaded handgun out of his shorts and began shooting into the air and into the sand. He pointed the firearm at more than one person. One person was shot in the hip. Justice Fitzpatrick observed that "gun incidents like this can have an extraordinary chilling effect in the community. It destabilizes people's sense of safety and security in enjoying their day to day activities".

Conditional Sentences

[149] Section 742.1 provides for conditional sentences where four criteria are met:

- 1) the offender must be convicted of an offence that is not punishable by a minimum term of imprisonment;
- 2) the court must impose a term of imprisonment of less than two years;
- 3) the safety of the community would not be endangered by the offender serving the sentence in the community; and
- 4) a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in s. 718-718.2 of the Criminal Code.

[150] In *R. v. Proulx*, 2000 SCC 5, the Supreme Court of Canada comprehensively addressed the appropriate approach to conditional sentences under what was then relatively new amendments to the Criminal Code. At paras. 58-60, Chief Justice Lamer explained that the requirement that the judge impose a sentence of imprisonment of less than two years does not require the judge to first impose a sentence of imprisonment of a fixed duration before considering whether that sentence can be served in the community and, in particular it does not require the sentencing court to consider the principles of sentencing twice: once in deciding whether the sentence will be less than two years of imprisonment, and again in determining whether a conditional sentence is appropriate. Rather, the sentencing court shall make a preliminary determination about whether the appropriate range of sentence is a term of imprisonment of less than two years and, if it is, then determine whether it is appropriate for the offender to serve his or her sentence in the community, taking into account the principles of sentencing.

[151] A determination that having the offender serve the sentence in the community will not endanger the safety of the community is a prerequisite to imposing a conditional sentence: s. 742.1(a); *Proulx* at paras. 63-65.

- [152] If the prerequisites of s. 742.1 are satisfied, the sentencing judge should give serious consideration to the possibility of a conditional sentence in all cases by examining whether a conditional sentence is consistent with the fundamental purpose and principles of sentencing that I have described and that are set out in s. 718-718.2: Proulx at para. 90.
- [153] At paras. 22, 41, 67, and 108 of Proulx, Chief Justice Lamer explained that a conditional sentence can provide denunciation and deterrence. However, there may be some circumstances where the need for denunciation or deterrence is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct or to deter similar conduct in the future.

Discussion

Preliminary Determination of Whether the Sentence Shall be Less Than Two Years

- [154] None of the offences have a mandatory minimum sentence; therefore, that obstacle to a conditional sentence order is not present.

Concurrent or Consecutive Sentences and the Totality Principle

- [155] The Crown asserts that the sentences should be concurrent. I agree that Counts 2 through 4 were clearly part of a linked series of acts within a single endeavour. Pointing the firearm, discharging the firearm, and the aggravated assault all involved the same encounter between Mr. Tregear and Mr. Nelson on the same day over an uninterrupted period of several minutes, and all due to the same, although unidentified, reason on the part of Mr. Tregear.
- [156] The issue is whether Count 1, possession of a firearm without a licence, is part of that endeavour. I noted that the indictment charges that as having occurred on May 7, 2022, and not the many years that the evidence disclosed that Mr. Tregear possessed the firearm without a licence. I have a question as to whether the fact that Mr. Tregear did not possess a licence for that firearm was part of the endeavour of the other three counts. I understand that the basis of the submission that the counts would be sentenced concurrently is that the indictment refers to the status of the firearm on that day and the fact that Mr. Tregear had a firearm that he was able to take to the Nelson property, shoot, discharge, and use to assault Mr. Nelson connects the firearm in its unlicensed status on that day to the other counts.
- [157] Based on this, I conclude that all of the sentences should be concurrent.
- [158] Mr. Tregear argues that a sentence of more than two years in custody would be crushing for him, so the sentence must be reduced under the totality principle if the fit sentence is determined to be more than two years. As I have discussed above, the totality principle applies when sentences are consecutive, so I will not consider the totality principle.

Proportionality and Consideration of Aggravating and Mitigating Factors

[159] The offences are very grave. The jurisprudence on gun offences supports that it will be a rare firearm offence, especially when the firearm, real or replica, is pointed at another person and causes fear, that will not be grave. In this case, the firearm was pointed, discharged, and the bullet gravely wounded Mr. Nelson. Mr. Nelson almost died and is living years later with physical and emotional wounds that continue to negatively affect him. The shooting also impacted the sense of security of his wife and those in the community.

[160] Mr. Tregear's counsel places great emphasis on the assessment of Mr. Tregear's responsibility. He argues that this part of the proportionality assessment goes to the individual circumstances of Mr. Tregear and cannot be overlooked just because the offending was grave. I agree, but there is no compelling evidence that there is some non-blameworthy matter that played a role in his offending. I accept that he was physically and verbally abused by his father and that he has an addiction to alcohol. The evidence does not draw a link between those features of his background and his offending.

[161] Mr. Tregear argues that his chances for rehabilitation must not be cut off, and this is an important part of the assessment of the individual aspects of proportionality, relying on the decision of the Supreme Court of Canada in *Marchand*. One of the challenging aspects of sentencing is to give appropriate weight both to the denunciation and deterrence objectives of sentencing, while leaving the door to rehabilitation open where appropriate: *Marchand* at para. 123.

[162] In *R. v. Lafleur*, 2018 BCSC 1454 at paras. 17-40, Justice Verhoeven reviewed many authorities on sentencing firearm offences and at para. 29, concluded that primary sentencing factors in such cases are general deterrence, denunciation, and protection of the public, and, therefore, rehabilitation must be a secondary consideration. I note that case was decided before *Marchand*.

[163] Unfortunately, in this case, the evidence does not support giving rehabilitation significant weight, either primary or secondary. That is because the preliminary question of what is at the root of Mr. Tregear's offending must be answered before a particular form of rehabilitation becomes meaningful. That question has not been answered. The evidence is not compelling that alcohol played a significant role. Dr. Oswald does not say that. His discussion about alcohol is that Mr. Tregear's alcohol problem is a factor in his risk of reoffending.

[164] There is no direct evidence of why Mr. Tregear did what he did. There are repeated references to the years-long conflicts between the neighbours in Mr. Tregear's statements to Dr. Oswald, but that as a motive was not the subject of direct evidence at trial. It is the Crown's theory of motive. The evidence as to what Mr. Tregear consumed in alcohol that night conflicts between his trial evidence and what he told the report writers. There is no evidence of any effort to rehabilitate from addiction to alcohol. Mr. Tregear has not

identified any other cause of his offending that he has sought or seeks to address.

[165] In describing his interaction with Mr. Tregear on the day of the assessment, Dr. Oswald stated:

At our meeting, he said he was having "an off day". He was not seen responding to internal stimuli, and essentially denied symptoms suggestive of psychosis. His thought process was logical and organized at all times. He was future oriented with respect to navigating his current legal problems. His cognition was grossly intact, but not formally tested. His insight and judgement both appeared good.

[166] Mr. Tregear submits that this passage, and in particular the last sentence, is an opinion from Dr. Oswald that Mr. Tregear has good insight into his offending and has good judgment that supports a positive outlook that he will not reoffend. I do not take this passage that way. I am of the view that in this passage, Dr. Oswald was speaking about whether Mr. Tregear was oriented to time and place, understood why he was being assessed, and had competent cognition.

[167] Later in his report, Dr. Oswald specifically addressed the risk of reoffending and concluded that Mr. Tregear did have risk factors for reoffending, including: a moderate history with violence; past antisocial behaviour including a break and enter conviction and driving while intoxicated; drama in relationships; substance use, including the use of cocaine and cannabis in the past and a current alcohol use disorder; trauma, specifically physical abuse from his father; and violent attitudes. Dr. Oswald noted that because Mr. Tregear had not sought treatment for alcohol use, there was a partly-present risk which is referred to as treatment or supervision response, because it remains to be seen whether he will be able to reduce his alcohol use. Dr. Oswald also opined that because Mr. Tregear was not connected to mental health treatment, including addiction resources, he posed a future management risk.

[168] Dr. Oswald also opined that Mr. Tregear did not have some other clinical risk factors such as instable behaviour since the offending, major mental illness, or violent ideation. Dr. Oswald concluded that Mr. Tregear has a low risk of reoffending over the next six to 12 months, with the exception of the possibility of becoming angry if the Nelsons obtain a judgment against them in their civil suit.

[169] As I have already stated, Mr. Tregear told Dr. Oswald that he thought the best thing for him would be to stay away from Mr. Nelson. That, I am sure, is a positive step, but it is not a rehabilitation plan.

[170] Mr. Tregear also argues that the brain injury and/or stroke which he asserts he suffered are collateral consequences that should be taken into account because they will render any sentence more severe for him. I have concluded that the evidence is not sufficient to support a finding that Mr. Tregear suffered a brain injury or stroke.

- [171] Mr. Tregear clearly was injured during the offending. There are photographs showing serious facial injuries, and the evidence is uniform that Mr. Nelson cross-checked Mr. Tregear with a .22 rifle. Those injuries occurred because Mr. Tregear pointed the rifle at Mr. Nelson and came at him with it. Mr. Nelson testified that at that time, he was very concerned about his wife who was nearby, and so very determined to get the .22 rifle away from Mr. Tregear. I do not consider the injuries Mr. Tregear suffered for which I have evidence to cause him collateral consequences, other than what is to be expected given what he did.
- [172] With regard to mitigating factors, Mr. Tregear argues that he has shown remorse by telling P.O. Cheema that shortly after feeling sorry for himself, he began to feel bad for Mr. Nelson, and by telling Dr. Oswald that he felt bad about Mr. Nelson's injuries which were terrible. However, Mr. Tregear has also frequently expressed regret about the consequences of his offending for himself and Ms. Hehn, including the financial consequences.
- [173] I conclude Mr. Tregear has expressed some remorse but, taken together with his other expressions, he has not expressed significant remorse or remorse that is proportionate to the harm he has caused. This is a neutral factor.
- [174] Mr. Tregear asserts that his bail conditions have been very restrictive and this can be a mitigating factor. I agree that restrictive bail conditions can be a mitigating factor, but I do not agree that Mr. Tregear has been severely limited in his liberty since his arrest. He has not been able to live in Sooke. He claims that this has restricted his ability to spend time with Ms. Hehn, a person with whom he is close and who supports him.
- [175] Leaving aside the worrying aspects of his statement that he and Ms. Hehn share an "us against the world" mentality, he has not actually been significantly restricted in that manner. Ms. Hehn continues to live in his house while he lives in Victoria. They see each other on weekends. It is not clear why Ms. Hehn continues to live in Sooke and cannot live with him where he is living now.
- [176] In Plowman, the offender had a curfew between midnight and 6:00 a.m. and was required to remain in British Columbia, which precluded him from seeing his children, except on occasions when he was allowed to travel to Alberta for that purpose. Despite evidence of the hardship that this caused his family, the Court of Appeal did not consider those bail conditions to be a mitigating factor.
- [177] The Crown asserts that the fact that Mr. Tregear took his .22 rifle to the Nelson property for the purpose of shooting Mr. Nelson and that it was not as a result of an impulsive act suddenly taken is an aggravating factor. I found the facts that support this factor beyond a reasonable doubt, and I agree that it is aggravating.
- [178] The fact that Ms. Nelson was also on the property, watching the events unfold and subjected to the potential of harm and the actual trauma, is aggravating, and the facts that support this factor have been proved beyond a reasonable doubt.

- [179] The fact that the offending took place on the property where the home of the Nelsons is and where they are entitled to feel safe and has undermined their sense of security is aggravating, and the facts that support this factor have been proved beyond a reasonable doubt.
- [180] It was proved beyond a reasonable doubt that a weapon was used in the commission of aggravated assault, and that is aggravating: Ali at para. 80.
- [181] Mr. Tregear's actions in running away, causing the police to engage in a manhunt, have been proven beyond a reasonable doubt and are aggravating: Lafleur at para. 43.
- [182] The seriousness of Mr. Nelson's injuries have been proven beyond a reasonable doubt and are aggravating.
- [183] I have found facts on the standard of beyond a reasonable doubt that Mr. Tregear continues to drink while on bail in violation of those terms. That is an aggravating factor. However, I do not consider it seriously aggravating since Mr. Tregear has an alcohol use disorder, and has not been offered or received any treatment for it.

Parity

- [184] In Gallagher, Justice Fitzpatrick reviewed several sentencing decisions on firearm-related offences. I set them out below. She found that the offender was a young person with significant Gladue factors who had a considerable record, including escalating firearm offences. Justice Fitzpatrick sentenced him to four years for pointing a firearm and eight years for reckless discharge of a firearm.
- [185] In R. v. Hassan, 2012 BCCA 201, there was a guilty plea to reckless discharge of a firearm and possession of a loaded firearm. Mr. Hassan had remorse and no criminal record. He was sentenced to seven years for reckless discharge of a firearm and four years of possession of a loaded firearm.
- [186] In Ali, Mr. Ali was convicted of aggravated assault and discharging a firearm with intent to wound, pursuant to s. 244(1) of the Criminal Code. One person was hit by a bullet and seriously wounded; others were terrorized and traumatized. Mr. Ali had no criminal record and expressed remorse. He was sentenced to 8.5 years for each of aggravated assault and discharging a firearm with intention to wound.
- [187] In Anderson, Mr. Anderson was convicted of aggravated assault, discharging a firearm with intent to wound pursuant to s. 244(1), and possession of a firearm with readily-accessible ammunition. Mr. Anderson was sentenced to nine years for the charge of discharging a firearm with intent to wound, eight years for aggravated assault, and four years for possession of a weapon with readily-accessible ammunition.

- [188] In *R. v. Oud*, 2016 BCCA 332, the Court of Appeal increased a four-year sentence imposed by the trial judge to five years. The circumstances of the offence were that Mr. Oud attempted to buy crack cocaine one evening, and when he realized the person who agreed to sell him crack cocaine took his money without supplying the drug, he retrieved a rifle he used for target practice and shot at the house that the crack cocaine seller had entered. The bullets narrowly missed at least one of the occupants. Subsequent to his arrest, Mr. Oud swore off drugs and stayed clean.
- [189] In *R. v. Alphonse*, 2020 BCSC 1882, the accused was convicted of recklessly discharging a firearm, discharging a firearm with intent to wound, pointing a firearm, and aggravated assault. Justice Winteringham, then of this Court, held that the range for the sentences on a global basis was five to eight years. Mr. Alphonse was sentenced to 44 months for reckless discharge, 44 months for s. 244(1) discharging a firearm with intent, three years for aggravated assault, and two years for pointing a firearm. In that case, the victim's serious life-changing injury was an aggravating factor. Mr. Alphonse's Gladue factors, including learning violence at residential school and his post-arrest commitment to recovery from lifelong alcoholism weighed heavily in reducing the sentence to the lower end of the range.
- [190] In *R. v. Deo*, 2023 BCSC 2486, Mr. Deo pleaded guilty to reckless discharge of a firearm and aggravated assault. His victim was seriously injured, and another person was traumatized. Mr. Deo had no criminal record and expressed remorse. He was sentenced to four years for the reckless discharge of a firearm.
- [191] In *R. v. Ivanic*, 2011 BCCA 158, the Court of Appeal upheld an eight-year sentence, including a six-year sentence for discharging a firearm with intent where the accused went to a residence for retaliation, backed the victim into a corner, and shot him twice at close range.

Count 1: Possessing a Non-restricted Firearm Contrary to s. 92(1) of the Criminal Code

- [192] In *Lafleur*, the offender was convicted of four firearm offences, one of which was possessing a restricted and prohibited firearm without a registration certification, contrary to s. 92(1). The sentence on that count was one year. Mr. Lafleur was 25 years old, had no previous violent offending, and had shown steps towards rehabilitation by the time of trial by taking programming.
- [193] The Crown submits in this case, the sentence should be one to two years, because Mr. Tregear used the gun to shoot someone, whereas Mr. Lafleur did not. I agree that there are many aggravating circumstances in this case that are not present in *Lafleur*. However, I note that in *Lafleur*, the weapon was restricted. It was a Glock handgun and a handgun which can be concealed, not a long gun like a .22 rifle. There were drug-trafficking offences for which Mr. Lafleur was convicted to which the weapons offences were related.

[194] I am of the view that parity does not demand a longer sentence than one year on this count. I conclude that one year is a fit sentence.

Count 2: Pointing a Firearm Contrary to s. 87(1) of the Criminal Code

[195] In Gallagher, the facts of which I have already related, the count of pointing the firearm was sentenced to four years. Gallagher was more serious in some ways than this case. Mr. Gallagher pointed his firearm at more than one person on a beach causing terror and mayhem for many people on the beach. Mr. Gallagher had previous and recent weapons offences convictions. Mr. Tregear's previous offending is dated and does not involve firearms. Mr. Gallagher was under a firearms and ammunition prohibition at the time of his offending. There were also significant Gladue factors involved in Mr. Gallagher's case and there are not in this case.

[196] In Alphonse, the offender was convicted of pointing a firearm contrary to s. 87(1), as well as recklessly discharging a firearm and discharging a firearm with intent and aggravated assault. The pointing a firearm conviction sentence was two years. The accused had significant and severe Gladue factors. By the time of sentencing, he had greatly reduced the risk to public safety by taking steps on recovering from alcohol addiction. Justice Winteringham considered a fit global sentence on all of the counts to be four to eight years.

[197] I accept the Crown's submission that the range for pointing a firearm is two to three years. I consider a fit sentence to be two and a half years on this count.

Count 3: Discharging a Firearm with Intent, Contrary to s. 244(1) of the Criminal Code

[198] In Anderson, Justice Horsman held that the range for discharging a firearm with intent was five to 14 years. She sentenced Mr. Anderson to nine years for discharge of the firearm and eight years on aggravated assault. Mr. Anderson shot his victim several times, but his victim was not as severely wounded as Mr. Nelson. Mr. Anderson had a prior conviction for aggravated assault. He expressed remorse.

[199] In Ali, the offender was also charged with both discharge of a firearm with intent and aggravated assault. Mr. Ali fired eight shots from a semiautomatic pistol into a vehicle, two of which hit one of the occupants of that vehicle. The injured person was not as seriously injured as Mr. Nelson. However, the circumstances of the offending were objectively more serious with sheer luck that more persons were not more seriously injured. Mr. Ali committed the offences for money, and the offending was done in a hit style involving the drug trade. Mr. Ali was sentenced to 8.5 years on each of the discharging a firearm with intent and aggravated assault counts to be, served concurrently.

[200] Based on a comparison of these cases to this case, and taking into account the proportionality analysis and the aggravating and mitigating factors of this case, I conclude that seven years is an appropriate sentence for the s. 244(1) conviction.

Count 4: Aggravated Assault, Contrary to s. 268(2) of the Criminal Code

[201] In *R. v. Craig*, 2005 BCCA 484, the Court of Appeal held that the range of aggravated assault is between 16 months and six years. The lower end is applied where there are consensual fights resulting in injury. The higher end is applied in cases of unprovoked attacks with weapons. I question whether the high end of that range is still applicable, especially since the provision provides for a 14-year maximum.

[202] In *Anderson* at paras. 26 and 39, Justice Horsman accepted a range of seven to nine years for aggravated assault committed with a firearm that was discharged.

[203] In this case, Mr. Nelson did not provoke the attack. He was on his property in his trailer wearing slippers when Mr. Tregear came at him with a .22 rifle. Based on *Anderson* and *Ali*, and the cases in which an offender has been convicted of aggravated assault as well as a firearm offence such as reckless or intentional discharge of a firearm, I conclude that seven years is an appropriate sentence for the aggravated assault conviction.

Conclusion on Conditional Sentence

[204] A conditional sentence requires the court to make a preliminary determination that a sentence of less than two years is appropriate. Mr. Tregear submits that a conditional sentence with house arrest for two years less a day, followed by three years' probation with other restrictive terms will mean his liberty is restricted and is appropriate, given Mr. Tregear's circumstances, his remorse, and his rehabilitation.

[205] I conclude that a sentence of two years less a day is not fit for Counts 2, 3, or 4. Mr. Tregear's individual circumstances, despite the comprehensive arguments of his counsel, are not compelling enough to warrant sentences so far below the range. Specifically, his remorse is slightly more than tepid, but not greatly more than tepid, and countered by his more frequently expressed feelings of regret for how his offending has affected him and Ms. Hehn. Rehabilitation is challenging to assess, because no clear cause of the offending has been identified. The most compelling evidence is the years-long conflict between the neighbours, but the precise reasons that Mr. Tregear sought to seriously injure and endanger the life of his neighbour due to this ongoing conflict has not been explained.

[206] There can be no compelling rehabilitation proposed for a problem that has not been identified or explained. To the extent that alcohol played a role, I have concluded that Mr. Tregear is not currently engaged in rehabilitation for his alcohol abuse disorder.

- [207] The moral blameworthiness of his offending is very high on these firearm offences. The jurisprudence emphasizes denunciation and deterrence. On Count 3 or 4, a sentence of below two years would be so far below the range that, without some extraordinary mitigating factors, it is inconceivable.
- [208] As a comparator, in Alphonse, Justice Winteringham sentenced an offender with extreme Gladue factors, who was making strides in his recovery, to four years which she considered to be the bottom of the range.
- [209] In Anderson, Justice Horsman held that the offender, who committed the same offences on Counts 3 and 4, as well as the offence of possession of a restricted firearm with readily-accessible ammunition, which is arguably more serious than the s. 92(1) count in this case, had to be separated from society for a lengthy period of time to address denunciation, deterrence, and public safety. In my view, that conclusion applies equally to Mr. Tregear's offending.
- [210] I conclude that Mr. Tregear is not eligible for a conditional sentence because a sentence of less than two years cannot be a fit sentence on Counts 2, 3, or 4.

Fit Sentence

[211] I conclude that fit sentences for the counts are as follows:

- a) Count 1, possessing a non-restricted firearm: one year;
- b) Count 2, pointing a firearm: two and a half years;
- c) Count 3, discharging a firearm with intent: seven years; and
- d) Count 4, aggravated assault: seven years.

[212] The sentence on all counts shall be served concurrently.

Ancillary Orders

[213] Mr. Tregear did not argue against any of the ancillary orders sought by the Crown. I agree they are appropriate.

Credit for Time Served Presentence

[214] Mr. Tregear spent 20 days in custody before he was released on bail. At the ordinary treatment of 1.5 days for each day served, the credit is 30 days.

Sentence

[215] Mr. Tregear, please stand. I sentence you as follows:

- Count 1, possessing a non-restricted firearm, contrary to s. 87(1) of the Criminal Code: one year;
- Count 2, pointing a firearm, contrary to s. 87(1) of the Criminal Code: two and one-half years;

· Count 3, discharging a firearm with intent, contrary to s. 244(1) of the Criminal Code: seven years;

· Count 4, aggravated assault, contrary to s. 268(2) of the Criminal Code: seven years.

[216] Before credit for time served, your total sentence is seven years, as these sentences are to be served concurrently. You have served 20 days in presentence custody. I grant you credit for 30 days, leaving a sentence to be served of six years and 335 days.

[217] Pursuant to s. 487.051(1) of the Criminal Code, I order the taking of Mr. Tregear's DNA on the basis that Counts 3 and 4 are primary designated offences. This shall be done while Mr. Tregear is in custody.

[218] Counts 1, 3, and 4 are punishable by a sentence of 10 years or more. Pursuant to s. 109(1)(a) of the Criminal Code, I prohibit Mr. Tregear from owning, possessing, or carrying any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition, and explosive substance for a period of 10 years. He must not possess any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, or prohibited ammunition for life.

[219] Pursuant to s. 491(1)(b) of the Criminal Code, I order Mr. Tregear to forfeit to His Majesty the King the firearm and ammunition seized by the police in relation to this matter, to be disposed of as the Attorney General directs.

[220] Pursuant to s. 743.2 of the Criminal Code, I order Court Services Branch to forward to the Correctional Service of Canada a copy of the presentence and psychological assessment reports and the transcribed sentencing reasons.

[221] That is the conclusion of my sentencing reasons. Mr. Tregear, you may have a seat.

[222] Counsel, anything arising?

[223] CNSL N. BROOKS: Yes, Justice, I'll ask that you waive the victim surcharge. It will have a financial impact and, of course, you're aware that he'll be not engaging in any employment at any time soon.

[224] THE COURT: Ms. Green?

[225] CNSL S. GREEN: I have no submission, Justice, thank you.

[226] THE COURT: All right. I consider it appropriate to waive the victim surcharge fine. I have heard significant evidence of financial pressures on Mr. Tregear and, as counsel points out, given my sentence, his ability to earn income has been limited over the course of his sentence.

[227] CNSL S. GREEN: Thank you, Justice, I have nothing further.

[228] THE COURT: Thank you. I would like to thank both counsel for their hard work and helpful submissions throughout the case and on sentencing.

[229] CNSL N. BROOKS: Thank you, Justice. Thank you, my friend.

[230] I delivered these reasons orally. I have edited them without changing the substance.

"Matthews J."

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