

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING,)	<u>Carrie D. Ritchot</u>
)	for the Crown
- and -)	
)	
DAKOTA RAVEN BRUYERE,)	<u>Thomas Rees</u>
)	for the accused
accused.)	
)	
)	Judgment Delivered:
)	September 23, 2024

BOCK J.

INTRODUCTION

[1] On July 25, 2023, the accused, Dakota Bruyere, shot Depanshu Chumber in the abdomen at very close range with a sawed-off, 12-gauge shotgun. Mr. Chumber survived this assault despite the serious injuries he suffered as a result.

[2] Mr. Bruyere is charged with several offences arising out of the events of July 25, 2023, but he contests only one: a charge of attempt to commit murder involving

the use of a restricted firearm in violation of s. 239(1)(a) of the ***Criminal Code***, R.S.C., 1985, c. C-46 (the "***Code***").

[3] For the reasons that follow, I find Mr. Bruyere guilty.

THE LAW

[4] As I observed in ***R. v. Flett***, 2022 MBQB 122, to be convicted of attempted murder the accused must be found to have possessed the specific intent to kill. It is not enough to prove that the accused ought to have anticipated that his conduct might, or probably would, lead to the victim's death. Reckless conduct cannot result in a conviction for attempted murder (***R. v. Ancio***, 1984 CanLII 69 (SCC), [1984] 1 S.C.R. 225, at pp. 250-251).

[5] The essential elements of the offence are succinctly summarized by Horsman J. in ***R. v. Anderson***, 2020 BCSC 2196, at para. 97:

[97] The *actus reus* for the offence of attempted murder under s. 239(1)(a) of the *Criminal Code* is the taking of some step towards the commission of the offence beyond mere preparation. The *mens rea* is the specific intent to kill. An accused may only be convicted of attempted murder if it is proven beyond a reasonable doubt that the accused intended to cause the death of another person: see *The Queen v. Ancio*, 1984 CanLII 69 (SCC), [1984] 1 S.C.R. 225 at pages 401 to 402. Absent a direct expression of an intention to cause the death of the victim, subjective intention may be inferred from the totality of the circumstances, including the nature of the weapon, the extent of its use, the manner in which it is used on the victim, the area of the victim's body that is attacked, and the results of the attack: see *R. v. Vukaj*, 2016 BCCA 356 at para. 44.

ISSUE AND THE PARTIES' POSITIONS

[6] At issue is whether the Crown has proved Mr. Bruyere's specific intent to kill Mr. Chumber beyond a reasonable doubt.

[7] The Crown argues the only reasonable inference to draw from the evidence is that Mr. Bruyere intended to kill Mr. Chumber. As a matter of common sense, someone in Mr. Bruyere's position would usually know that the predictable consequence of the shot which he fired at Mr. Chumber is the victim's death. With that in mind, Mr. Bruyere must have intended, even if for only a moment, Mr. Chumber's death.

[8] Mr. Bruyere disputes this. He argues that the totality of the circumstances leaves open another possibility – a hurried discharge of the shotgun in Mr. Chumber's direction which was only intended to stop Mr. Chumber from pursuing him, but not to kill him. He submits this ought to give rise to a reasonable doubt with respect to the question of his intent.

DISCUSSION AND DISPOSITION

[9] The events with which this case is concerned occurred at the Quickie Mart convenience store at 840 Logan Avenue. The store was equipped with surveillance cameras. Relevant video records were compiled and entered as Exhibit 3. Much of what follows is drawn from that video, an agreed statement of facts (entered as Exhibit 1) and Mr. Chumber's testimony.

[10] On the morning of July 25, 2023 Mr. Chumber was the only clerk on duty at the store. At approximately 11:28 a.m. Mr. Bruyere entered the store. He took a bright blue Gatorade drink from the cooler located just inside the store's entrance, turned and left without paying for it. Mr. Chumber witnessed all of this from his position behind the store counter.

[11] Mr. Chumber followed Mr. Bruyere out of the store, intending either to retrieve the drink or obtain payment for it. Mr. Bruyere was only a few steps outside the store entrance when he glanced over his right shoulder and noticed Mr. Chumber coming up behind him. Mr. Bruyere turned to face Mr. Chumber. As he did so, he pulled out the shotgun which he had concealed in his sweater.

[12] Mr. Chumber took about six more steps toward Mr. Bruyere, who backed away with each step. As Mr. Bruyere backed away, he steadied the shotgun's barrel with his left hand, pointed it at Mr. Chumber's abdominal area and fired. Mr. Chumber testified the shot was fired from "point blank" range. This is confirmed by the video, which shows the two men separated by about an arm's length at the time of the shooting.

[13] After he shot Mr. Chumber, Mr. Bruyere turned quickly and fled the scene. A few steps later he turned back, just as quickly, to retrieve the drink which he had dropped on the road. Moments later he returned again, this time to retrieve a piece of the shotgun which had fallen off. He then made his way eastbound down Logan Avenue.

[14] Meanwhile, Mr. Chumber staggered back into the store, retrieved his cell phone and called 911. On the store's video footage he can be seen sinking slowly to the floor while he speaks to the emergency responder. By the end of the call, he is lying in the doorway, flat on his back.

[15] Mr. Chumber sustained very grave injuries as a result of Mr. Bruyere's assault on him. They are described in detail in the medical records tendered as Exhibit 4. I will briefly summarize them.

[16] On admission to hospital Mr. Chumber was diagnosed with a gunshot wound to his upper right abdomen. On July 25, 2023, he underwent a trauma laparotomy to repair damage to his abdomen and bowel. On August 3, 2023 he was required to undergo a second surgery to complete a complex secondary wound closure in his abdomen. He was discharged from hospital on August 4, 2023. In the months that followed he made a slow and painful recovery. Although he has recovered full physical function, he has been left with permanent scars on his upper right abdomen and right arm, as well as the memory of a very traumatic event.

[17] These circumstances, viewed as a whole, leave me with no reasonable doubt concerning Mr. Bruyere's criminal intent. In my opinion, when Mr. Bruyere fired the shotgun, he intended to kill Mr. Chumber. He had armed himself with a loaded and obviously lethal weapon. Before he fired the shotgun, he steadied it and pointed it at Mr. Chumber, who was unarmed. I do not find Mr. Chumber's conduct to have been either provocative or aggressive. The shot was fired at "point blank" range at Mr. Chumber's abdominal area, caused life-threatening internal injuries to a vital part of his body, and necessitated emergency surgery. Mr. Bruyere's conduct after the shooting – turning back to retrieve both the drink and the piece of the shotgun that had fallen – reflects a mind operating rationally in the moment.

[18] The arguments presented on Mr. Bruyere's behalf fail to persuade me otherwise. In particular, I acknowledge there is no evidence that Mr. Bruyere planned his attack on Mr. Chumber in advance. Indeed, they were strangers to one another and at no point did either speak to the other. The entire scene played out very quickly, in slightly less

than 30 seconds. I also accept Mr. Bruyere did not know Mr. Chumber's intentions as he approached him, and that his motive was to make his escape.

[19] Despite this, I find Mr. Bruyere's decision to use deadly force against Mr. Chumber in these circumstances to be inexplicable. Mr. Bruyere did not steady his shotgun and take aim at some non-vital part of Mr. Chumber's body, like his foot or hand, nor did he drop the stolen drink and run. Instead, he shot Mr. Chumber in the abdomen. Facts like these call for some explanation, but none is offered. As Cory, J.A. (as he then was) observed in *R. v. Bains and Grewal*, (1985), 7 O.A.C. 67, 1985 CarswellOnt 1590 (Ont. C.A.), at para. 27, "in the absence of any explanation the only rational inference that can be drawn is that the shotgun was fired with the intention of killing the victim".

[20] I do wish to emphasize that by calling for an explanation of the attack on Mr. Chumber I am not shifting the burden of proof to Mr. Bruyere. Not only does that burden remain on the Crown, but *R. v. Villaroman*, 2016 SCC 33, reminds us that "[r]easonable doubt is not an inference or a finding of fact that needs support in the evidence presented at trial" (at para. 28). However, that same authority cautions against acting on alternative interpretations of the circumstances that are unreasonable: "alternative inferences must be reasonable, not just possible" (*Villaroman*, at para. 42).

[21] In this case, I find the alternative inference which the defence says could be drawn from the evidence as a whole never rises from more than a merely possible to a reasonable interpretation of events, and it therefore fails to give rise to a reasonable doubt.

[22] For these reasons I find Dakota Bruyere guilty of attempt to commit murder.

OTHER CHARGES

[23] As I noted at the outset of these reasons, Mr. Bruyere is charged with several other offences arising out of the events of July 25, 2023. He called no evidence at the trial and at the end of the Crown's case conceded that there was evidence on which to find him guilty on all of those charges, including aggravated assault should I find him not guilty on the charge of attempted murder.

[24] The evidence satisfies me beyond a reasonable doubt that Mr. Bruyere is also guilty of the following offences under the ***Code***:

- (a) robbery with a prohibited firearm contrary to s. 344(1)(a) as a result of his theft of the drink;
- (b) possession of a firearm – the shotgun – while he was prohibited from doing so by reason of a prohibition order issued on September 25, 2018, contrary to s. 117.01(1);
- (c) possession of a firearm with ammunition contrary to s. 95(1);
- (d) possession of a prohibited firearm contrary to s. 92(1);
- (e) carrying a concealed weapon contrary to s. 90(1); and
- (f) discharge of a firearm with intent to wound contrary to s. 244.

[25] I invite counsel to address at the sentencing hearing how the principle in ***Kienapple v. R.***, 1974 CanLII 14 (SCC), [1975] 1 S.C.R. 729, should apply in these circumstances.