

## **COURT OF KING'S BENCH OF MANITOBA**

### **B E T W E E N:**

HIS MAJESTY THE KING,	)	<u>Michael G. Himmelman</u>
	)	<u>Eric S.J. Shinnie</u>
- and -	)	for the Crown
	)	
KEITH CAMPBELL,	)	<u>Zachary B. Kinahan</u>
	)	<u>Ashley S. Anderson</u>
accused.	)	for the accused
	)	
	)	Judgment Delivered:
	)	February 11, 2026

### **GRAMMOND J.**

#### **INTRODUCTION**

[1] The accused is charged with two counts of second degree murder relative to the shooting deaths of Jordan Moosetail and Patrick Bighetty in The Pas, Manitoba, on January 15, 2023 (the "Shootings"). On November 26, 2025, I convicted the accused of both charges, with written reasons to follow. These are those reasons.

[2] I have previously issued two *voir dire* decisions in this matter, with written reasons<sup>1</sup>. Those decisions related, *inter alia*, to the validity of a warrant to search the accused's phone and the admissibility of electronic messages found on the phone

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<sup>1</sup> *R. v. Campbell*, 2025 MBKB 49 and 2025 MBKB 88

(the "Messages"). I determined that the Messages were admissible and they were entered into evidence at trial.

[3] It is not disputed that the accused was present at the scene of the Shootings together with three other individuals: E.C., M.B.<sup>2</sup>, and Michael Sanderson<sup>3</sup> (who I will refer to collectively as the "Group of Four" or the "Group"). Michael Sanderson was not armed, and as such, it is clear from the evidence that one of the other three individuals fired the shots that killed each of the victims. The issues before me were whether the accused was the shooter of one or both of the victims, or if he was not the shooter whether his actions made him a party to the offence of second degree murder or manslaughter, or whether he should be acquitted.

[4] The evidence against the accused relative to his role in the Shootings was circumstantial. As such, the main issue before me at trial was whether the Crown had proven beyond a reasonable doubt that the only reasonable inference that could be drawn from the whole of the evidence, including the lack of evidence, was that the accused participated in or was a party to the shooting of either or both of the victims. If the Crown did not so prove beyond a reasonable doubt, the accused would have to be acquitted.

## **BACKGROUND**

[5] The Crown called multiple witnesses at trial and presented video surveillance evidence from various sources. In addition, counsel filed several agreed statements of

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<sup>2</sup> E.C. and M.B. were youths at the material time and were charged and tried separately from the accused, who was an adult.

<sup>3</sup> Michael Sanderson was not charged.

facts and agreed that some of the testimony called at the first *voir dire* would apply to the trial *mutatis mutandis*. The only evidence called by the defence at trial was the testimony of the accused, in which he stated that he was present at the scene of the Shootings and that he saw E.C. shoot Jordan Moosetail. He also testified as to events that preceded and succeeded the Shootings.

[6] Having considered the evidence collectively, there are many facts regarding which there was no dispute at trial. In my view, the important undisputed facts include:

- a) the Shootings occurred during the early morning hours of January 15, 2023, in a back lane in a residential area of The Pas;
- b) the victim Jordan Moosetail suffered six gun shot wounds, to each of the neck, the upper chest, the left shoulder, the upper back, the lower back, and the right leg;
- c) Jordan Moosetail was found in the back yard of the residence in which he lived with his niece, on the west side of the back lane;
- d) the victim Patrick Bighetty suffered gun shot wounds to his left temple and his left hand;
- e) Patrick Bighetty was found on the east side of the back lane, across from the yard where Jordan Moosetail was found;
- f) the bullets that killed both victims were .22 calibre and were fired from the same weapon (the "Murder Weapon"), which was never recovered;
- g) the Murder Weapon was likely a long rifle;

- h) only the Group of Four and the victims were present when the Shootings occurred;
- i) neither of the victims knew anyone in the Group of Four prior to the Shootings;
- j) the accused is the cousin of each of E.C., M.B., and Michael Sanderson;
- k) earlier in the evening, the accused, E.C., and Michael Sanderson were together at a housing complex in The Pas, and attended two units occupied by the accused's aunts ("Unit 15" and "Unit 770");
- l) at approximately 11:20 p.m., the Group left the housing complex in a vehicle driven by M.B. (who was 14 years of age at the time);
- m) when the Group left the housing complex, the accused knew that E.C. had a firearm in his possession;
- n) at approximately 11:34 p.m. police were dispatched to a residence in The Pas where a drive-by shooting had taken place (the "Other Shooting")<sup>4</sup>, and no one was injured;
- o) police seized four bullet casings fired at the scene of the Other Shooting which were later determined to have been fired from the Murder Weapon;
- p) police also seized casings from a second firearm at the scene of the Other Shooting, which was a 9 mm firearm (the "9 mm Firearm");

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<sup>4</sup> The evidence before me does not reflect the time at which the Other Shooting took place, but police testified that when they responded to the call, they understood that events were current and in progress.

- q) the 9 mm Firearm was recovered by police in early March 2023 at an unrelated location;
- r) when the 9 mm Firearm was seized, there was adhesive tape wrapped around its stock, and police found E.C.'s fingerprints on that tape;
- s) on the night of the Shootings at approximately 11:59 p.m., the Group of Four attended at the New Avenue Hotel in The Pas (the "Hotel") on foot at which time:
  - (1) they interacted with the owner of the Hotel, who testified at trial;
  - (2) they interacted with another person, named Richard, at the beer vendor window;
  - (3) the owner of the Hotel gave E.C. a case of canned Twisted Tea, which is an alcoholic beverage; and
  - (4) at approximately 12:02 a.m., shortly after receiving the case of Twisted Tea, the Group left the Hotel on foot;
- t) thereafter, the Group of Four traversed a residential back lane in The Pas at which time they encountered a resident in his back yard, Willard Demery, who testified at trial that E.C. called him a "bitch" and threatened to shoot him. He also testified that one or more of the other individuals in the Group tried to dissuade E.C.'s behaviour and move him along;
- u) at approximately 12:27 a.m., the Group of Four were traversing a residential back lane very close to the scene of the Shootings. They passed an intersection with another back lane, and then stopped, after

which a series of flashes of light at what would become the scene of the Shootings caught the attention of at least one member of the Group. After a brief discussion, M.B. and E.C. reversed course and went towards the area of the flashes of light. The accused and Michael Sanderson followed M.B. and E.C.;

- v) after the Shootings, the Group of Four left the scene on foot and returned to the housing complex;
- w) outside the housing complex, M.B. handed an object to E.C., who was then seen carrying a firearm on video surveillance;
- x) the Group then entered Unit 15 for a brief period of time. After they left, the accused, E.C., and M.B. attended at Unit 770, where the accused and E.C. had been staying, but they did not gain entry to that unit;
- y) the accused's girlfriend at the time was residing next door to Unit 770, and he spoke to her through the window but was not granted entry to her unit. At the time, the accused was bound by a court order not to have contact with his girlfriend;
- z) at 1:18 a.m., the accused was arrested by police for breaching the no-contact order with his girlfriend, and was detained in a cell until the next day; and
- aa) on January 23, 2023 and January 24, 2023, the accused exchanged the Messages with each of his brother and his mother.

## **THE LAW**

[7] The law is clear that to convict in a case consisting of circumstantial evidence, I must be satisfied beyond a reasonable doubt that the accused's guilt is the only rational (or reasonable) inference that can be drawn from that evidence (***R. v. Griffin***, 2009 SCC 28, at paragraph 33).

[8] The leading case on circumstantial evidence is ***R. v. Villaroman***, 2016 SCC 33, where the court stated:

[26] ...There is a special concern inherent in the inferential reasoning from circumstantial evidence. The concern is that the jury may unconsciously "fill in the blanks" or bridge gaps in the evidence to support the inference that the Crown invites it to draw. ...

...

[30] ...Telling the jury that an inference of guilt drawn from circumstantial evidence should be the only reasonable inference that such evidence permits will often be a succinct and accurate way of helping the jury to guard against the risk of "filling in the blanks" by too quickly overlooking reasonable alternative inferences. ... The inferences that may be drawn from [an] observation must be considered in light of all of the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.

...

[35] ... In assessing circumstantial evidence, inferences consistent with innocence do not have to arise from proven facts. [citations omitted] Requiring proven facts to support explanations other than guilt wrongly puts an obligation on an accused to prove facts and is contrary to the rule that whether there is a reasonable doubt is assessed by considering all of the evidence. The issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. If there are reasonable inferences other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt.

...

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

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

...

[55] ... Where the Crown’s case depends on circumstantial evidence, the question becomes whether the trier of fact, acting judicially, could reasonably be satisfied that the accused’s guilt was the only reasonable conclusion available on the totality of the evidence.

## **POSITION OF THE PARTIES**

### **Crown**

[9] The Crown submitted that the specific intent to murder is obvious from the nature of the Shootings themselves, and contended that at the material time, the accused was carrying the Murder Weapon and used it to kill both victims. The Crown argued that the accused’s comments in the Messages to his brother and his mother (referenced below) amounted to a confession to the Shootings and that his explanations of the Messages at trial did not make sense. The Crown also pointed to internal inconsistencies in the accused’s evidence and suggested that he tailored his evidence to distance himself from E.C. and any visible firearms, such that his evidence is not credible.

[10] The Crown submitted, based upon the surveillance video of the scene, that the accused and M.B. crossed the back lane towards the area where Patrick Bighetty was found. The accused shot Patrick Bighetty because he was a potential witness to the shooting of Jordan Moosetail. Thereafter, the accused and M.B. left the scene first, which the accused admitted.



[11] The Crown also argued that the accused attended at the scene of the Shootings as “back-up” for E.C., whom he referred to repeatedly as his “little cousin”. The accused testified that he could not leave E.C., which the Crown argued was aiding and/or abetting. In other words, the accused chose to follow E.C. and M.B. to the scene of the Shootings, and when he did so he knew or was wilfully blind to the likelihood of violence.

[12] The Crown also argued that when the Group approached the scene of the Shootings, they were acting in concert and with a “mob mentality”, such that they shared a common intent to carry out a common unlawful purpose, because murder was a probable consequence of their actions.

### **Defence**

[13] The defence argued that there is insufficient evidence to conclude that the accused shot either of the victims. No witness said that he did so, or that he had a firearm. In addition, although he was present at the scene, he was not a party pursuant to s. 21 of the ***Criminal Code***, R.S.C., 1985, c. C-46.

[14] The accused’s evidence is that he saw E.C. shoot Jordan Moosetail, that he then ran from the scene, and that he did not see who shot Patrick Bighetty. The defence submitted that the accused did not know, and could not have known, that E.C. was going to shoot anyone despite his aggressive behaviour earlier that night.

[15] The defence also submitted that the Crown did not establish that the accused had the requisite intent for murder, which must coincide with the act causing death. The accused did no more than walk with someone who he knew had a firearm earlier in

the evening, and those facts are insufficient to impute knowledge of an impending murder, or to support a finding of aiding or abetting. In addition, just before the Shootings the accused tried to encourage E.C. to move along as he did during the earlier encounter with Willard Demery.

[16] The accused contended that the Crown's theory is speculative, and that his participation as argued by the Crown is not based upon evidence. Rather, as discussed in *Villaroman*, the Crown's theory is one of many hypotheses that can be imagined.

[17] The accused also argued that there can be no common intention because that requires a plan to commit a different crime, and there was no such plan here.

### **ANALYSIS AND FACTUAL FINDINGS**

[18] I will consider first the events that preceded the Shootings.

[19] I will comment upon the accused's evidence throughout these reasons. As referenced below, I have found that in many instances he tailored his evidence to conform with that which is seen on the video surveillance, and that where the video is unclear, he either attempted to distance himself from E.C. and the firearm in E.C.'s possession, or was evasive in his answers.

### **Weapons carried by E.C. and M.B. before the Shootings**

[20] The video surveillance from the housing complex shows, and the accused admitted, that E.C. was carrying a firearm while they were walking outside before they left the housing complex at 11:20 p.m. It is also clear that E.C. and the accused walked together to and from different units within the complex and entered the same units together. In addition, when the accused, E.C., and Michael Sanderson left the

housing complex in the motor vehicle driven by M.B., E.C. can be seen removing a firearm from his jacket, in plain view of the accused. The accused acknowledged in his testimony that he believed E.C. had a firearm when they left the housing complex.

[21] Having said that, I will comment further upon the accused's evidence on this issue because there are areas of concern, and I agree with the Crown's submission that the accused appeared to have had blinders on when he was in the presence of E.C. and the firearm.

[22] For example, the accused testified that he did not see the firearm carried by E.C. when they were together inside Unit 770 or while they were walking outside (even though E.C. was carrying it outside of his jacket, in plain view, as he was following the accused). Rather, the accused said that he saw the firearm for the first time as he and E.C. were leaving Unit 15, at which time the accused was following E.C., and E.C. was again carrying the firearm outside of his jacket, in plain view. In other words, when the video surveillance evidence was clear that E.C. had a firearm and that the accused must have seen it, he acknowledged that he did so, but where it was not clear that he would have seen the firearm, he denied knowledge of it.

[23] The accused testified that he did not know why E.C. had a firearm, that it was unusual for E.C. to be carrying a firearm, and that he was not sure where E.C. got the firearm. The accused also stated that he is not familiar with firearms, that he did not touch it or see what kind of firearm it was, and that he did not closely inspect it because he "does not care" about firearms. He also stated that although he did not

know what specific type of firearm it was, it looked like a long gun. I note that the video surveillance shows very clearly that E.C. was carrying a long gun.

[24] When M.B. attended at the housing complex to pick up the accused, E.C., and Michael Sanderson, the accused initially sat in the front passenger seat of the vehicle. The accused acknowledged, as the video surveillance reflects, that at one point, E.C. was standing beside the vehicle, directly to the accused's right, while the door was open, and that E.C. pulled out the firearm he was carrying. The accused agreed that he saw the firearm and then left the front seat to sit in the back seat on the passenger side, and E.C. sat in the front passenger seat. Again, I have concluded that the accused admitted only that which can be seen clearly on the video surveillance.

[25] I note that initially, the accused would not acknowledge that the firearm carried by E.C. could have been the 9 mm Firearm used in the Other Shooting, but after vigorous cross-examination, he acknowledged that it looked consistent with a photograph of the 9 mm Firearm. To be clear, there is no evidence before me of whether the firearm carried by E.C. at the housing complex was actually the 9 mm Firearm or some other firearm. All that can be discerned from the video surveillance is that it was a long gun.

[26] The accused testified that after the Group of Four left the housing complex, he and Michael Sanderson were dropped off at a "trap house" in The Pas, and that E.C. and M.B. left, saying they were going for a "quick ride" and would "be right back". They were gone for approximately one-half hour. The accused stated that he had no knowledge of E.C.'s plans for the evening and that the trap house drop-off was the last

time that he saw E.C. with a firearm prior to the Shootings. Michael Sanderson also testified that he and the accused attended at the trap house.

[27] The accused testified that when E.C. and M.B. returned to the trap house, the Group had a conversation about getting drinks at the Hotel. They then walked to the Hotel and left the car behind. The accused stated that he did not know whether E.C. still had a firearm with him at that time, that he was not aware of anyone else in the Group having a weapon at the Hotel, and that he did not see anyone in the Group with a firearm.

[28] I am satisfied from the video surveillance at the Hotel, which is of good quality, that when the Group of Four attended there, M.B. was concealing a firearm, because it is seen protruding from his vest when he entered the building. Again, there is no evidence of what firearm M.B. was carrying. I note, however, that E.C.'s jacket was open on the Hotel surveillance, and he did not appear to be concealing a weapon at that time. As such, M.B. could have been carrying the firearm that E.C. carried earlier.

[29] Regardless of what weapon M.B. was carrying at the Hotel, I reject the accused's evidence that he was not aware of anyone else in the Group being armed at the Hotel, or while they were walking after they left the Hotel. His evidence on that point is simply not credible, because the firearm carried by M.B. was visible.

[30] I note that after the Group left the Hotel, and before the Shootings, they were seen walking in a back lane on video surveillance, at which time E.C.'s jacket was still open, and no firearm was visible. I appreciate, as defence counsel noted, that the video surveillance clips in evidence are not continuous, such that not every movement

or action of the Group was captured. As such, it is possible that a firearm changed hands within the Group, but having said that, that particular video surveillance clip is of good quality<sup>5</sup>, and part of it is in colour, so in my view it is reliable evidence.

**Weapon carried by the accused before the Shootings**

[31] At trial, both the accused and Michael Sanderson denied that the accused was carrying a firearm that night, but it is clear from the surveillance video that he was carrying an object under his jacket. For example, at the housing complex, the accused can be seen holding his left hand to his side, and at the Hotel he was clearly adjusting something under his jacket on his right side. Similarly, when the Group left the Hotel, the accused's left arm was swinging freely as he walked, while his right arm was fixed to his side.

[32] The accused testified that throughout the night he was carrying a black metal baton under his jacket, of approximately 1 ½ feet in length, tucked into his waistband, for his own protection and safety (to use as a weapon), even though he knew it was illegal to carry a concealed weapon. He also stated that at no point did he remove the baton from his pants that night.

[33] The item that the accused was concealing cannot be seen on any of the surveillance video, except for one short clip<sup>6</sup> at the housing complex after he exited Unit 15. Although the surveillance camera was facing the accused as he walked, his

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<sup>5</sup> Exhibit 18, slide 46.

<sup>6</sup> Exhibit 18, slide 7.

position was backlit and the particulars of the item he was carrying cannot be discerned. Based upon that clip, the item could have been a baton or a long gun.

[34] As referenced above, when M.B. attended at the housing complex to pick up the accused, E.C., and Michael Sanderson, the accused initially sat in the front passenger seat of the vehicle and before doing so, he appeared to lean into the vehicle. The Crown asked him whether he placed an object inside the vehicle at that time. The accused answered initially that he did not think he had done so. He then stated that he did not know if he did so, that he did not recall doing so, and finally that he did not do so. In other words, the accused's evidence on that point was inconsistent and evasive.

[35] When asked about the movement or non-movement of his arms and the adjustments he appeared to be making in different video surveillance clips, the accused advised that he was probably pulling up his pants, pulling down his shirt, or "that's just the way I walk". Again, when the video surveillance captured his actions clearly, the accused stated that he was adjusting the baton in his waistband. In my view, however, there were other occasions on which he appeared to be adjusting a concealed weapon but would not admit that he was doing so.

[36] It is clear that the Group had at least two weapons in their possession that night because at the Hotel M.B. was seen carrying a firearm in the same time frame in which the accused was adjusting his concealed weapon.

[37] I will add that given the significant issues with the accused's credibility as referenced above and below, I do not believe that the weapon he was carrying that night was a metal baton.

**Aggressive Behaviour**

[38] I have also considered the behaviour of the Group, both at the beer vendor window in the Hotel and in the back lane when they encountered Willard Demery.

[39] The Hotel surveillance makes it clear that at the beer vendor window, E.C. was speaking and gesturing to Richard in an aggressive manner. There is no evidence of why he did so, and I note that Richard entered the Hotel very shortly after the Group of Four and did not appear to engage with or provoke them. As such, the aggressive behaviour occurred quickly and for no apparent reason.

[40] The Hotel owner testified that he gave E.C. a case of Twisted Tea at no charge to encourage the Group to leave the premises. He also stated that E.C. was acting aggressively and that the other members of the Group were not doing so.

[41] The accused testified that while E.C. was acting aggressively towards Richard, he was "just standing there and talking". He stated did not recall the conversation, except that E.C. was being aggressive. He acknowledged that on the video surveillance it looked like the Group of Four surrounded Richard at the beer vendor window, and I agree with that assessment.

[42] I have concluded from the video surveillance that the accused participated in intimidating behaviour towards Richard. While E.C. was acting aggressively towards Richard, the accused pulled a bandana up over his nose and stood beside E.C., directly behind Richard. The accused acknowledged that he looked directly at and appeared to be speaking to Richard while E.C. was acting aggressively. I reject the accused's assertion, therefore, that he did not participate in intimidating Richard. That statement



is simply not credible based upon the video surveillance evidence, which shows that the Group was acting in concert.

[43] After leaving the Hotel, the Group of Four encountered Willard Demery in a back lane, and I accept his evidence that E.C. engaged with him verbally, by name-calling and threatening to shoot him. The accused's evidence as to what occurred in that encounter was extremely similar in its contents to that of Willard Demery. More specifically, they both testified that one or more of the Group of Four attempted to discourage E.C.'s behaviour by pushing him along and saying words to the effect of "let's go" as Willard Demery testified, or "leave it alone" as the accused testified. In addition, both the accused and Willard Demery testified that during the interaction they did not see a gun in E.C.'s possession.

### **Scene of the Shootings**

[44] I have considered carefully the video surveillance evidence from the scene of the Shootings and the testimony of the accused as to what occurred there. Speaking generally, where the actions of the Group are clear in the video, the accused's evidence is consistent with it. Where the actions are less clear, the accused's evidence implicates E.C. and distances himself from involvement.

[45] It is important to note that the surveillance of the scene of the Shootings is of lesser quality than some of the other surveillance footage in evidence. More specifically, the surveillance was recorded after dark, the images appear in black and white, and the footage of the scene of the Shootings is in the distant background of the frame because it was captured by a camera at an adjacent residence across a back

lane. While figures at the scene can be seen by zooming in to the relevant part of the frame, the appearance of the individuals is grainy, and it is not possible to identify any individual from that footage alone.

[46] Having said that, the activity closest to the camera shows the Group of Four walking past the scene, changing direction to attend at the scene, and leaving the scene. During those clips additional details can be observed such that the Group can be identified, particularly when the footage is compared to other surveillance sources from that night. For example, E.C. can be identified easily because he was wearing a red jacket which presents as significantly lighter in colour than the black jackets of the others in the Group. Moreover, during his testimony the accused confirmed the identities of each member of the Group in the footage.

[47] The Group of Four's presence at the scene of the Shootings is made clear by the video surveillance, the testimony of the accused, and the fact that police found the DNA of both the accused and M.B. on a can of Twisted Tea retrieved from the bumper of a truck parked at the scene (the "Truck"). I note also that the only figures seen on the video surveillance in the back lane are the Group of Four and the victims.

[48] It is also clear that initially, the Group of Four passed the intersection of the back lane that led to the scene of the Shootings. The Group stopped, however, and shortly thereafter, a figure can be seen in the area of the scene of the Shootings, together with several small flashes of light at 12:27 a.m.

[49] The accused acknowledged, and I agree based upon the evidence before me, that the figure in the surveillance video was the victim Jordan Moosetail and that the

flashes of light occurred when he lit a cigarette. Jordan Moosetail's niece testified that he went outside for a cigarette at approximately 12:20 a.m., and the accused confirmed that he was smoking when the Group approached him.

[50] The accused testified that as the Group was walking eastbound past the scene of the Shootings, M.B. said that someone was filming them. The accused said that he encouraged them to keep walking, and the video surveillance shows that the Group did so, but only for a short distance. Two of the Group (who the accused identified as E.C. and M.B., with which I agree based upon my own observations) stopped a second time, and M.B. is then seen to point towards the scene of the Shootings multiple times. The accused testified that M.B. repeated that someone was filming them and "riled up" E.C. The accused testified that he again told the Group to keep walking, "let's go", and to leave it alone. On cross-examination, the accused testified that he did so because M.B. sounded like he wanted to "start a problem" such as an act of violence. The accused's evidence as to what M.B. said is not inconsistent with the movements reflected on the surveillance video and is the only evidence before me as to the conversation among the Group at the time. Ultimately, after some conversation, M.B. and E.C. turned back and walked towards Jordan Moosetail. The accused followed them, as did Michael Sanderson.

[51] The accused testified that he did not know what M.B. and E.C. were planning to do or what was going to happen, but he followed them to try to stop them from doing what they did, as he had done in the confrontation with Willard Demery. On

cross-examination, the accused admitted that he knew it was possible that E.C. would shoot someone or that things could get violent.

[52] I have concluded that the accused chose to follow E.C. and M.B. to the scene of the Shootings to protect them or to act as their “back-up”, and not to stop them as he testified because:

- a) the accused was armed;
- b) the accused knew that E.C. and/or M.B. were armed with a firearm that night;
- c) the accused, E.C. and/or M.B. moved together for most if not all of the night, including among units at the housing complex, in the car driven by M.B., to the Hotel on foot, and through a residential neighbourhood on foot;
- d) the accused was aware that E.C. had been acting aggressively before the Shootings, including at the Hotel and during the interaction with Willard Demery;
- e) the accused participated in intimidating Richard at the Hotel, which occurred quickly and for no apparent reason;
- f) when the accused followed E.C. and M.B. towards the scene of the Shootings, he did not appear to try to catch up to them, to overtake them, or to take any physical steps to stop or deter them from approaching Jordan Moosetail; and

- g) the accused testified both that he tried to stop them from doing what they did, and that he did not know what was going to happen, which are inconsistent statements.

[53] The accused testified that when the Group arrived at the scene, no one was filming them, and the person standing there (Jordan Moosetail) was smoking a cigarette. The accused testified that when he arrived at the scene he saw E.C. chasing Jordan Moosetail around the Truck, which is the last thing he remembers seeing. He then heard tussling and gunshots. He stated that he did not know that E.C. had a gun with him at that time, and did not see anyone pull out a gun, but he saw E.C. shoot Jordan Moosetail multiple times. He also stated "I seen [E.C.] pull out a gun at that moment", which is another inconsistency in his evidence. I note that police found six spent casings from the Murder Weapon very close to where the Truck was parked, and that Jordan Moosetail suffered six gun shot wounds.

[54] The video surveillance shows Jordan Moosetail walking towards the Group as they approached him, and that more flashes of light occurred both as they arrived at his location and shortly thereafter. After the flashes of light, general movement can be seen but no particular actions can be discerned. For example, no one is seen to chase anyone else around the Truck, nor is there any movement consistent with that activity.

[55] The accused testified that he did not know that Jordan Moosetail was going to be shot and did not know why it happened. He stated that he felt shocked and emotional, that he froze and was stopped in his tracks, and did not know what was going on or what to do. His ears were ringing, it all happened very quickly, and he was trying to

process what had happened. He then walked or “lightly ran” away towards the housing complex. He also testified that he did not remember what he did, and that he does not know what E.C. did after shooting Jordan Moosetail. In other words, there is an inconsistency in the accused’s evidence on this point, and as referenced below, the video surveillance does not support his claim that he left the scene immediately after Jordan Moosetail was shot.

[56] The accused testified that he did not see anyone else in the back lane or interacting with E.C. He also said that he did not see the shooting of the victim Patrick Bighetty and that he learned about the second victim the next day. Having said that, he also stated more than once, in the context of his explanation of the Messages, as referenced below, that he saw E.C. shoot “these guys”, referring to both of the victims. This inconsistency is significant in terms of my assessment of the accused’s evidence.

[57] Video surveillance evidence from two sources reflects that while the confrontation with Jordan Moosetail was ongoing, an individual was walking down the back lane towards the scene of the Shootings from the north, which is the opposite direction from which the Group of Four approached the scene. Based upon the timing and the location where the victim Patrick Bighetty was found, I am satisfied that this individual was Patrick Bighetty.

[58] The surveillance also reflects that as Patrick Bighetty was approaching the scene, two figures crossed the back lane from the yard where Jordan Moosetail was shot and moved quickly towards him. For the purposes of describing what the video surveillance

reflects, I will refer to these individuals as Figure A and Figure B, because as referenced above they cannot be identified on that portion of the surveillance video.

[59] Figure A stopped part way across the lane and then backed away from his direction of travel. Figure A remained in the view of the video surveillance camera and can be seen continuously. Figure B did not stop and continued out of the frame and appeared to be moving quickly at a jog or run. The surveillance does not reflect Figure B interacting with Patrick Bighetty, nor is he seen to be shot. Having said that, I am satisfied from a comparison of the scene photos and the video surveillance that Figure B moved towards the same area on the east side of the back lane where Patrick Bighetty was found. In addition, I am satisfied that Figure B shot Patrick Bighetty, because he was the only person who crossed the back lane towards that area.

[60] Figure B reappeared in the video surveillance frame after less than ten seconds, and appeared to be jogging or running towards the south, and moved past Figure A. Figure B then left the scene of the Shootings and was clearly the first of the Group to do so. Figure A followed Figure B and also appeared to be running. Two additional figures then emerged from the back yard where Jordan Moosetail was found, and followed Figures A and B. All four figures then turned eastbound down the back lane and resumed the Group's original path of travel.

[61] The accused testified that he ran from the scene of the Shootings and was the first of the Group to leave the scene, followed by M.B., and subsequently by E.C. and Michael Sanderson. He also testified that the Group of Four resumed their earlier path eastbound down the back lane towards the housing complex, which is corroborated by

video surveillance, including a second video surveillance source farther down the lane, in which the accused and M.B. are seen to be walking together, followed by E.C. (who was running), and Michael Sanderson.

[62] On cross-examination, the accused agreed that on the video it appeared to be him and M.B. that rushed across the back lane after Jordan Moosetail had been shot, but he would not agree that they did so. In addition, he would not agree that the two figures on the video ran to the area where Patrick Bighetty was found, because he said that he did not know what happened to Patrick Bighetty. The accused expressly denied shooting Patrick Bighetty, or anyone else that night.

[63] I am satisfied, however, that the accused was Figure B, because:

- a) Figure B's movements on the video can be traced from when he rushed out of the back yard where Jordan Moosetail was shot, went across the back lane to the area where Patrick Bighetty was shot, and left the scene;
- b) Figure B was clearly the first member of the Group to leave the scene;
- c) the accused admitted that he was the first member of the Group to leave the scene; and
- d) when Figure B resumed the original path of travel of the Group (eastbound down the back lane), he was closer to the video surveillance camera, and I am satisfied from my own review of the footage that he was the accused.

[64] In addition, I am satisfied on the basis of the footage that M.B. was Figure A. Neither E.C. nor Michael Sanderson, who were the third and fourth figures to leave the



scene, were seen to cross the back lane towards the area where Patrick Bighetty was found. Rather, they emerged from the back yard after Patrick Bighetty was shot and then followed the accused and M.B. back to the housing complex.

[65] Given my finding that the accused was Figure B, I reject his assertion that he left the scene after Jordan Moosetail was shot and that he did not see what happened to Patrick Bighetty.

[66] I will add, on the basis of the surveillance footage and the evidence of the accused, that the confrontation including the Shootings began and ended quickly. Less than two minutes elapsed from the time that the Group of Four arrived at the scene to the time that they fled the scene.

[67] Having said that, I have also concluded that the Shootings represented an escalation of the threatening behaviour that the Group exhibited towards Richard at the Hotel, and that E.C. exhibited towards Willard Demery only a few minutes before the Shootings.

[68] I have also considered the evidence of Michael Sanderson, who testified that he did not see the accused with a gun or shoot anyone that night. The parties agreed that Michael Sanderson was not armed. I agree that throughout the video surveillance his jacket was open and at no point did he appear to be concealing anything in his clothing. He testified that he was quite intoxicated and had trouble remembering parts of that night. The Crown suggested that his movements and behaviour show that he appeared to be intoxicated which is why he did or did not see certain things.

[69] I note that Michael Sanderson's evidence at trial was very brief and that he was not asked what he observed at the scene, including whether he saw who shot either of the victims. I also note that he is the cousin of each of the accused and E.C., and that he failed to attend the trial pursuant to the subpoena served upon him. Rather, he was arrested and brought to the trial to testify while in custody. For all of the foregoing reasons, I have concluded that Michael Sanderson's evidence is neither credible nor reliable and has no probative value relative to what occurred at the scene of the Shootings.

**Weapons after the Shootings**

[70] Video surveillance shows that after the Shootings, when E.C. travelled eastbound down the back lane towards the housing complex, he did not appear to be carrying a firearm. This detail is noticeable because the video surveillance reflects that after leaving the scene, E.C. was carrying his jacket and then put it on. The accused agreed that E.C. did so and surmised that E.C.'s jacket came off during the tussle at the scene of the Shootings. I note that E.C. clearly used both of his hands and arms to don the jacket while he was walking, and that no firearm is seen in his possession.

[71] The accused testified that he was not aware of what E.C. did with the firearm used in the Shootings because he "was up ahead" of E.C. I accept, as the surveillance video shows, that the accused and M.B. walked back to the housing complex together, followed by E.C. and Michael Sanderson. When the Group arrived at the housing complex, M.B. is seen to hand an object to E.C., and I find that the object was a firearm because E.C. was then seen carrying it in plain view. In other words, that

firearm was carried by M.B. after the Shootings, when he walked back to the housing complex with the accused.

[72] The Crown argued that the firearm handed to E.C. by M.B. was similar to the one that E.C. was carrying before the Shootings and was consistent with the 9 mm Firearm. I agree that the firearms looked similar, but I am not prepared to make any findings with respect to whether the firearm that M.B. handed to E.C. was the 9 mm Firearm or a different firearm. That detail cannot be discerned from the video surveillance evidence.

[73] After the Group returned to the housing complex, they entered Unit 15, and the video surveillance shows that E.C. was still carrying a firearm in plain view. The accused testified that after they entered the unit, he did not remember directly looking at the firearm, though he acknowledged on cross-examination that he must have glanced at it. He acknowledged that it looked like the firearm that E.C. had when they left the housing complex earlier that night. He also testified that he did not know what happened to the firearm that E.C. had. Again, the accused's evidence was evasive.

[74] I will add that I agree with defence counsel that the surveillance video does not show the accused putting anything in his jacket after the Shootings, passing a weapon to anyone, or otherwise carrying or handling a weapon, whether the Murder Weapon or otherwise.

[75] Having said that, since the Murder Weapon was never recovered, it was either concealed or disposed of in some manner. As referenced below, I have concluded that the accused was in possession of the Murder Weapon at the time of the Shootings,

irrespective of the fact that none of the video surveillance evidence showed conclusively that he was concealing a firearm as opposed to a baton that night. I am satisfied that the Murder Weapon was the object that he was holding and adjusting under his clothing at various times throughout the night.

### **POST-OFFENCE CONDUCT**

[76] One of the forms of circumstantial evidence that the Crown relies upon is the accused's post-offence conduct (or after-the-fact conduct), from which it argued inferences of guilt can be drawn. Leading cases on the use of this type of evidence reflect the following guiding principles.

[77] In ***R. v. White***, 1998 CanLII 789 (SCC), [1998] 2 S.C.R. 72, the court stated:

19 Under certain circumstances, the conduct of an accused after a crime has been committed may provide circumstantial evidence of the accused's culpability for that crime. For example, an inference of guilt may be drawn from the fact that the accused fled from the scene of the crime ... Such an inference may also arise from acts of concealment, for instance where the accused has ... changed his or her appearance ... As Weiler J.A. noted in *R. v. Peavoy* (1997), 1997 CanLII 3028 (ON CA), 117 C.C.C. (3d) 226 (Ont. C.A.), at p. 238:

Evidence of after-the-fact conduct is commonly admitted to show that an accused person has acted in a manner which, based on human experience and logic, is consistent with the conduct of a guilty person and inconsistent with the conduct of an innocent person.

...

21 Evidence of post-offence conduct is not fundamentally different from other kinds of circumstantial evidence. In some cases it may be highly incriminating, while in others it might play only a minor corroborative role. Like any piece of circumstantial evidence, an act of flight or concealment may be subject to competing interpretations and must be weighed by the jury, in light of all the evidence, to determine whether it is consistent with guilt and inconsistent with any other rational conclusion.

...

43 ... Post-offence conduct, like any evidence, takes on its full significance and probative value only in the context of the other evidence in the case.

Evaluated in a piecemeal fashion, the evidence of post-offence conduct may not allow a jury to conclude beyond a reasonable doubt what the motivation of the accused was for his or her actions. However, in conjunction with all the other evidence in the case, it may indeed assist the jury in determining whether a reasonable doubt exists with respect to guilt or innocence.

[78] In ***R. v. Calnen***, 2019 SCC 6, the court stated:

[106] After-the-fact conduct encompasses what the accused both said and did after the offence charged in the indictment was allegedly committed. It covers a large range of possible circumstances, and its content and contours are confined only by the limits of human experience. After-the-fact conduct may also arise in respect of all types of criminal offences and in different legal settings ... It is this potential breadth, variety, and mix of considerations that lies at the heart of the much repeated observation that the proper legal treatment of after-the-fact conduct is highly context and fact specific.

...

[112] In order to draw inferences, the decision maker relies on logic, common sense, and experience. As with all circumstantial evidence, a range of inferences may be drawn from after-the-fact conduct evidence. The inferences that may be drawn "must be reasonable according to the measuring stick of human experience" and will depend on the nature of the conduct, what is sought to be inferred from the conduct, the parties' positions, and the totality of the evidence: *R. v. Smith*, 2016 ONCA 25, 333 C.C.C. (3d) 534, at para. 77. That there may be a range of potential inferences does not render the after-the-fact conduct null: see *R. v. Allen*, 2009 ABCA 341, 324 D.L.R. (4th) 580, at para. 68. In most cases, it will be for the jury or judge to determine which inferences they accept and the weight they ascribe to them. "It is for the trier of fact to choose among reasonable inferences available from the evidence of after-the-fact conduct": *Smith*, at para. 78.

...

[116] ... Conduct that is "after-the-fact", and therefore removed in time from the events giving rise to the charge, carries with it a temporal element that may make it more difficult to draw an appropriate inference. This evidence may also appear more probative than it is, it may be inaccurate, and it may encourage speculation. After-the-fact conduct evidence may thus give rise to imprecise reasoning and may encourage decision makers to jump to questionable conclusions.

[117] To meet the general concern that such evidence may be highly ambiguous and susceptible to jury error, the jury must be told to take into account alternative explanations for the accused's behaviour. In this way, jurors are instructed to avoid a mistaken leap from such evidence to a conclusion of guilt when the conduct may be motivated by and attributable to panic, embarrassment, fear of a false accusation, or some other innocent explanation:

see White (1998), at para. 22; White (2011), at paras. 23-25; R. v. Arcangioli, 1994 CanLII 107 (SCC), [1994] 1 S.C.R. 129, at p. 143.

...

[145] Whether an inference is available is measured against what is reasonable and rational according to logic, human experience, and common sense. It is this combination which informs the determination of whether the impugned evidence makes the proposition more or less likely. This is an evaluative assessment, which is not defeated simply by listing alternative explanations. As long as the evidence is more capable of supporting the inference sought than the alternative inferences, then it is up to the fact finder, after considering all explanations, to determine what, if any, inference is accepted, and the weight, if any, to be provided to a piece of circumstantial evidence.

[79] With these authorities in mind, and before considering the after-the-fact conduct in this case, I note that I must be careful with this evidence and not leap to a finding or imputation of guilt where the conduct in question could be subject to various interpretations.

**Removal of outer clothing and flight**

[80] The video surveillance reflects that after the Group returned to the housing complex, the accused and E.C. attended at Unit 770 (where they had been staying), and E.C. kicked at the door of the unit repeatedly, apparently seeking to gain entry. Police testified that they received a call at 12:52 a.m. regarding an attempted break and enter at Unit 770, and that they attended to the housing complex at 1:06 a.m.

[81] At 1:18 a.m., police arrested the accused for breaching the no-contact order. He was found approximately 150 metres away from Unit 770 and his girlfriend's unit, covered in snow and out of breath, and without the jacket, hat, and bandana that he was wearing earlier. The accused admitted that he put those items in the back of a truck and was laying on the ground beside the truck just before he was arrested.

[82] As noted by defence counsel, the accused did not take steps to change his appearance immediately upon returning to the housing complex. Rather, he did so when police attended. Having said that, since it was the middle of winter, the only reasonable inference to be drawn from the removal of his outerwear is that he was trying to avoid detection.

[83] The accused said that he did so because he believed that he had been seen at the door of his girlfriend's unit and was concerned about being charged with breaching the no-contact order. I do not believe that explanation. Since the accused had spoken to his girlfriend, taking off his clothing would not have helped him avoid arrest. The only reasonable inference is that he was trying to avoid being arrested for the Shootings less than an hour earlier. Having said that, his actions do not necessarily lead to the inference that he was the shooter. It is just as reasonable to infer that he was trying to avoid detection because he was part of the Group involved in the Shootings.

### **The Messages**

[84] I have also considered the Messages. The accused testified that he was the author known as "Keeko Campbell", that his brother was "Drey Karter", and that his mother was "Jaycee Freedom". He also testified that "epony" is E.C. and "Allan" is E.C.'s younger brother. Both the accused and Michael Sanderson testified that "stevos" and "deebo" are Michael Sanderson.

[85] The agreed statement of facts setting out the Messages reflects the following:

- a) On January 23, 2023, the Facebook Messages show an exchange with "Drey Karter" and "Keeko Campbell" which states, "cops and gangs unit were looking for him and 'e pony' for a 'double homi.'"
- b) When asked, "Who did you guys do in?" the reply in two separate messages stated, "2 guys, 10 rounds in their face."
- c) The conversation later continued into January 24 when "Keeko Campbell" messaged Karter and said he won't see him for years.
- d) The conversation later continued with "Keeko Campbell" saying that Allan got picked up last night "and stevos locked up rn (right now) too he got charged for those murders too."
- e) Karter replied, "Murdered."
- f) "Keeko Campbell" replied in three separate messages:
  - i. "These 2 guys in the pas idk (I don't know) who"
  - ii. "Like last week"
  - iii. "9 days ago"
- g) "Keeko Campbell" again said that they are looking for him and "epony," and asked Karter to delete the conversation.
- h) Karter asked why they took "deebo." "Keeko Campbell" replied, "Because he was on camera, but not when the murdered happened u know what mean."
- i) On January 24, 2023, "Keeko Campbell" exchanged messages with "Jaycee Freedom." During the conversation, "Keeko Campbell" said, "I won't be seeing u for years."
- j) When asked what was wrong, the reply said, "I'm wanted."

[86] The Crown submitted that the accused's statement at paragraph 85(b) above, "2 guys, 10 rounds in their face" amounts to a confession to the Shootings. The accused testified that he made that statement because it was the truth and he saw E.C. shoot "these guys". He apologized for sending the message because it was disrespectful but stated that it was "the cold-hearted truth". He was trying to let his brother know what actually happened that night and was not trying to say that he was involved.



[87] The accused testified, with respect to the Messages at paragraphs 85(c) and 85(i) above, that he told his brother and his mother that he would not see them for years because he knew that he was being accused of murder and was likely to be held until his trial without bail.

[88] The accused testified, with respect to paragraph 85(g) above, that he asked his brother to delete the Messages because he did not want anyone to see the Messages and think that he was a part of anything.

[89] Defence counsel submitted that the Messages do not reflect the specific intent required for murder and that guilt is not the only reasonable inference that can be drawn from them. Rather, the accused answered the questions that his brother asked of him, but he did not explain everything that occurred. His comments that he would not see his family for years is not evidence of guilt, and the reality is that he was denied bail and has been incarcerated for years, away from his home community and his family.

[90] I am mindful of the fact that when considering the Messages, I must be careful not to jump to a conclusion that the accused shot either of the victims, when his comments could have been motivated by and attributable to an innocent explanation. Having said that, I also recognize that admissions and inculpatory statements do not necessarily present the same risk of error as does more ambiguous after-the-fact conduct ( *White*, at paragraph 42).

[91] I have considered the Messages as a whole and in context, recognizing that the accused was speaking to close family members that he knows well.

[92] I have also considered alternative explanations and possible meanings or motives for his comment “2 guys, 10 rounds in their face”, in response to the question “who did you guys do in?”, but I am unable to find an innocent explanation. It is not unusual for a person to deny having done something of which they are accused, especially violent acts such as the Shootings. It is very unusual, however, for someone to admit to involvement in two murders that they did not commit, particularly in the context of advising two family members that they would not see them for years.

[93] I reject the accused’s evidence that he was trying to tell his brother “what actually happened” that night. If that was true, based upon the accused’s testimony at trial, the Messages would have reflected that the accused saw E.C. shoot one or both of the victims while the accused did not shoot anyone.

[94] I will add that I do not accept that the accused told his brother and mother that he would not see them for years because he expected that he would be charged and denied bail. Rather, he said it because he expected to be convicted of murder.

[95] Similarly, I have concluded that the accused asked his brother to delete the Messages because he knew they were incriminating. On cross-examination, the accused agreed that the Messages looked incriminating and that someone reading them would think he was involved in the Shootings.

[96] Having considered the Messages as whole, I have concluded that the Messages support the findings that the accused shot Jordan Moosetail and Patrick Bighetty.

### **TESTIMONY OF THE ACCUSED**

[97] I have considered the accused's evidence in the context of the test set out in ***R. v. W.(D.)***, 1991 CanLII 93 (SCC).

[98] The accused presented as an articulate, calm, and respectful witness who had no difficulty answering questions. He appeared to listen to the questions carefully and clarified questions at different points in time before giving answers. For example, when the Crown used the word "rifle" to describe the firearm that E.C. was carrying, the accused pointed out that he had not agreed that E.C. was carrying a rifle, and agreed that he would be more comfortable with the use of the word "firearm".

[99] The accused was emotional at times in his testimony, and when asked about that emotion he said it was hard to testify because E.C. was his "little cousin" and his family, and it was "hard to point him out like that". The accused acknowledged that the phrase "little cousin" was a term of affection, and that he could not leave E.C. that night, even in a difficult situation.

[100] I agree with defence counsel that the accused was unshaken and did not change his evidence on certain material points of evidence, including that the weapon he was carrying was a baton, that he did not know that E.C. was going to shoot someone, and that he saw E.C. shoot Jordan Moosetail.

[101] Having said that, while the accused was unshaken on the main points of his evidence, including that he did not shoot anyone and that he was not carrying a firearm, there were inconsistencies in the details of his evidence. I have already commented upon several internal inconsistencies and other credibility problems in the accused's evidence, including the fact that he tailored his evidence to match that which

the video surveillance showed clearly. Additional inconsistencies and issues with the accused's evidence include the following:

- a) the accused testified that he "did not dare ask questions" of E.C. about the firearm he was carrying, which is inconsistent with the dynamic that the accused has advanced, namely that he was the older, more mature cousin who could not leave his "little cousin" even in a difficult situation;
- b) the accused testified both that E.C. told him that M.B. would pick them up from the housing complex and that he did not know who was coming to pick them up;
- c) the accused testified that he planned to go the trap house alone, and did not intend to spend time with E.C. that night, yet the evidence is clear that he and E.C. moved together throughout the night, except for the half-hour when the accused claims that he was at the trap house with Michael Sanderson;
- d) the accused initially denied that E.C. was trying to get into a fight at the scene of the Shootings, despite his aggressive behaviour at the Hotel and in the exchange with Willard Demery, and the accused's own evidence that M.B. got E.C. "riled up" just before they approached the scene;
- e) the accused testified that he followed E.C. and M.B. to the scene of the Shootings to try to stop E.C. from "doing what he did", meaning shooting one or more of the victims, even though he claimed that he did not know E.C. was armed with a firearm, which is incongruous; and

- f) the accused testified that when the Group returned to the housing complex, he was hoping to separate himself from E.C. and enter the unit occupied by his girlfriend. The video surveillance reflects that the accused waited while E.C. kicked at the door of Unit 770, and did not appear to pay any attention to his girlfriend's unit next door until someone in that unit opened a second storey window. I accept that the accused then had a conversation with his girlfriend through the open window, because the video surveillance shows that he is looking up and appears to be conversing. On cross-examination, the accused acknowledged that he did not have to stay with E.C. as he kicked at the door of Unit 770 and that he could have walked away. For example, he could have gone to the other door of his girlfriend's unit to seek to gain entry, but he said that he did not think of doing so. I find that the accused did not attempt to separate himself from E.C., and his assertion that he wanted to do so is not credible.

[102] Given all of the inconsistencies and other issues that I have identified in the accused's evidence, I do not believe his assertion that he did not shoot either of the victims, and I do not have a reasonable doubt as to his guilt because of his evidence.

[103] I will comment briefly upon the accused's alcohol consumption on the night of the Shootings. The accused testified that he started drinking alcohol at 5:00 or 6:00 p.m. that evening and that he drank to the point of intoxication, with his level of intoxication increasing over the course of the night. Similarly, Willard Demery testified

that the Group of Four sounded intoxicated during his interactions with them, and police noted that the accused was “intoxicated” upon his arrest at 1:18 a.m., including that his speech was slurred, he reeked of liquor, and his eyes were bloodshot.

[104] Having said that, the accused testified that his recollections of certain events were “clear”, including the interaction with Willard Demery shortly before the Shootings. While he acknowledged that he does not remember some parts of that night, at no time during his testimony did he assert that he did not remember something or that his recollections on a particular point were fuzzy or uncertain. He did not specify which events or what time frame he does not recall.

### **REASONABLE INFERENCES**

[105] Having made numerous factual and credibility findings, I will now consider the range of reasonable inferences that can be drawn from the circumstantial evidence before me. If there are reasonable inferences other than guilt, the Crown’s case does not meet the standard of proof beyond a reasonable doubt.

[106] In addition, and as referenced above, inferences consistent with innocence need not arise from proven facts and can arise from a lack of evidence. Moreover, such inferences may be reasonable possibilities if they are based upon logic, common sense, and experience, and not upon speculation. I must decide, as the trier of fact, whether any proposed alternative explanation is reasonable enough to raise a doubt. I need not exclude every conceivable or possible inference that may be consistent with the innocence of the accused, no matter how fanciful or irrational they may be.

[107] Defence counsel argued that a reasonable inference to be drawn from the evidence is that E.C. shot both victims acting on his own, while the accused, who was the older and more mature cousin, tried to keep him under control and look out for him, while armed with a baton.

[108] I have considered that inference, and whether there are any other reasonable alternative inferences that can be drawn from the circumstantial evidence, or lack of evidence, before me. Based upon the totality of my findings, and for the following reasons, I am satisfied beyond a reasonable doubt that the only reasonable inference available on the whole of the evidence is that the accused shot both Jordan Moosetail and Patrick Bighetty. As referenced above, it is not disputed that the Group was at the scene of the Shootings and that one of them fired the shots. It is also not disputed that Michael Sanderson was not armed. For the following reasons, I find that the only reasonable inference is that the accused was the shooter:

- a) after the Group left the Hotel, both the accused and M.B. were armed. E.C.'s jacket was open and he was not seen to be carrying a weapon;
- b) when the Group was at the scene of the Shootings, E.C. was "riled up" and a "tussle" occurred with Jordan Moosetail, at which time E.C.'s jacket was removed;
- c) after E.C. emerged from the back yard where Jordan Moosetail was found and fled the scene of the Shootings, he was not carrying a firearm because he donned his jacket using both hands and arms;

- d) the accused, who I have found was Figure B, was the only member of the Group who crossed the back lane fully and went to the area where Patrick Bighetty was found;
- e) the accused was, therefore, the only member of the Group who had an opportunity to shoot Patrick Bighetty;
- f) both victims were shot with the same firearm, and the whole of the confrontation lasted less than two minutes, including the "tussle" and the Shootings;
- g) given this short time frame and the speed with which the accused appeared to cross the back lane to the area where Patrick Bighetty was shot, I reject as a reasonable alternative inference that the Murder Weapon changed hands within the Group before he did so;
- h) rather, I have concluded that the accused was in possession of the Murder Weapon before he shot Patrick Bighetty, and that he used it to shoot Jordan Moosetail also;
- i) the accused followed E.C. and M.B. to the scene of the Shootings to protect them, or to act as their "back-up" and that is exactly what he did, by shooting Jordan Moosetail, after the tussle unfolded between E.C. and Jordan Moosetail; and
- j) when asked by his brother in the Messages who "you guys" did in, the accused stated "2 guys, 10 rounds in their face", which was an admission



of guilt, particularly in the context of the accused's additional comments that he would not see his family for years.

[109] I appreciate that there are some gaps in the evidence before me. For example, not all of the Group's actions or movements that night were captured on video surveillance, including the shooting of Jordan Moosetail. In addition, the Murder Weapon was never recovered, and there is no forensic evidence that the accused was the shooter.

[110] Having said that, I have considered the range of reasonable alternative inferences that can be drawn from the circumstantial evidence before me, and I have concluded that the only scenario that fits with the video surveillance evidence, and the accused's own evidence (which was not credible on many points) is that he shot both of the victims. In other words, the circumstantial evidence before me, viewed logically and in light of human experience and common sense, is not reasonably capable of supporting an inference other than that the accused was the shooter.

[111] I am satisfied that it is merely speculative, and not reasonable, that any other member of the Group, or any other person, shot the victims. The Crown has proven beyond a reasonable doubt that the accused was the shooter, and as such I did not consider whether the accused was liable as a party to the Shootings in any other capacity.

[112] In addition, because six shots were fired at Jordan Moosetail, including in the neck, chest, and back, and because Patrick Bighetty was shot in the head, I am satisfied beyond a reasonable doubt that the accused had the necessary *mens rea* for

murder at the material time. In firing those shots, one can only infer that either he intended to cause death or intended to cause bodily harm that he knew would likely cause death.

### **CONCLUSION**

[113] The accused is convicted of two counts of second degree murder.

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J.