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(Winnipeg Centre)
Indexed as: R. v. Daher and Brightnose-Baker
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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING,)	<u>Brent I. Davidson</u>
	)	<u>Bryton M.P. Moen</u>
	)	for the Crown
- and -)	
)	
JESSE JAMES DAHER and	)	<u>Michael P. Cook</u>
EVAN DANIEL BRIGHTNOSE-BAKER	)	<u>Emilie Cook</u>
Accused.	)	for Jesse James Daher
)	
	)	<u>Laura C. Robinson</u>
	)	<u>Morgan K. Lawrence</u>
	)	for Evan Daniel Brightnose-
	)	Baker
)	
	)	JUDGMENT DELIVERED
	)	ORALLY:
	)	December 28, 2022

CHAMPAGNE J.

I. INTRODUCTION

[1] The body of Mohamed Mohiadin Ahmed ("Ahmed") was recovered from the Red River on October 12, 2020. It was evident that foul play was involved as the body was

wrapped with multiple coverings and bound by a variety of items including zip ties, tape, plastic cling wrap and ratchet straps.

[2] Jesse James Daher ("Daher") and Evan Daniel Bill Brightnose-Baker ("Brightnose-Baker") are jointly charged with second-degree murder for causing the death of Ahmed on October 10, 2020. In addition, Daher is charged with pointing a firearm at Jared Martel.

[3] The Crown consented to a trial before a judge without a jury, which took place before me over the course of two weeks. Throughout the trial, witnesses and the co-accused were referred to by various names. For the most part, I refer to individuals by their surname.

[4] The police investigation determined that Ahmed was beaten and died in a residence at 1046 Royse Avenue ("Royse") on October 10, 2020. Brightnose-Baker and a masked intruder brandishing a firearm forced Ahmed into the bathroom of the small bungalow. Ahmed could be heard yelling and begging for his life as he was viscerously assaulted.

[5] The autopsy revealed numerous blunt force trauma and sharp force trauma injuries on the body. The cause of death was extensive blunt force trauma to the head.

[6] Upon arrest, Brightnose-Baker gave a statement to the police admitting involvement in the assault of Ahmed. Brightnose-Baker claims when he left the residence, Ahmed was still alive and the evidence against him supports a conviction for manslaughter not murder. I pause to note that the statement from Brightnose-Baker can only be used as evidence against him and it cannot be used as evidence against Daher.

[7] Daher submits the evidence falls short of proof beyond a reasonable doubt that he was involved in this matter. There was no physical evidence such as fingerprints or DNA to connect Daher to this homicide. He submits I might be suspicious that he was the masked intruder brandishing a firearm but maintains the Crown has failed to discharge their onus to prove identity beyond a reasonable doubt.

[8] The issues to be determined in this trial are identification and the intent required for murder.

II. BACKGROUND

[9] This case involves a violent, senseless death connected to the criminal drug subculture in Winnipeg. The victim and all civilian witnesses who testified are or were heavy drug users. The drug of choice was predominately methamphetamine ("meth"), although some witnesses consumed other hard drugs. The evidence clearly demonstrates that Winnipeg has a serious meth problem. The police and civilian witnesses testified about the crime, danger and violence associated with the criminal drug problem in the city.

[10] It is clear that all of the witnesses involved in this drug lifestyle understand the code of the street. There is tremendous pressure to remain silent, not to cooperate with the police or prosecution as cooperation or the perception of cooperation will have you labelled a "rat". Words have power and being labelled a "rat" puts your health and safety at risk.

[11] At the time of this incident, it is fair to describe Royse as a "flop house", a place where people go to do drugs. Colin Leiterman ("Leiterman") and James Freitas ("Freitas")

lived there as roommates and shared the rent. Meghan Burnett ("Burnett") was the girlfriend of Freitas and she was present on October 10, 2020. I have not heard any evidence from Freitas or Burnett, as they did not attend court. I issued warrants for their arrest on the first day of the trial. I also issued a warrant for the arrest of Terri Sawyer as she failed to attend court in response to her subpoena.

[12] Leiterman and Jared Martel ("Martel") were present on October 10, 2020, when Ahmed was attacked at Royce. Both men are serious drug addicts. They attended court in response to their subpoena but it is clear they did not wish to testify. Their credibility and the reliability of their evidence is in question and must be carefully assessed.

[13] Noreen Kyla Osborne ("Osborne") was in a relationship with Brightnose-Baker at the time of this incident. They had been together for approximately two years. She comes from a difficult background. She is a drug addict and was in foster placement staying in a group home. She would spend time with her older sister Desiree Thomas and knew Daher as he was in a relationship with Desiree. She described Daher as her sister's "baby daddy". Daher and Desiree share two children.

[14] Osborne turned 18 years old on October 9, 2020, the day before this incident. The police interviewed her on April 27, 2021. She recounted the events surrounding her 18th birthday. She implicated Daher and Brightnose-Baker in the death of Ahmed. She was called to testify in this trial. It is clear she did not wish to participate. She could recall little of what she told the police. I admitted her video-statement into evidence pursuant to the principled exception to hearsay. I will discuss the ultimate reliability of her statement in my reasons.

[15] The only other civilian witness to testify was Theresa Derendorf ("Derendorf"). She met Desiree Thomas in the Winnipeg drug scene and became close friends. Through Ms. Thomas, she met Daher, Osborne and Brightnose-Baker. She considered this group of people friends. Thomas and Daher moved in with Derendorf in late October 2020. Osborne and Brightnose-Baker would often attend their residence on Austin Street. Derendorf testified about discussions she had with the co-accused who claimed responsibility for the death of Ahmed.

[16] The evidence I heard demonstrates Daher and Brightnose-Baker spent significant time together and were described as brothers. It is also clear that all of the civilian witnesses and the co-accused knew the victim from his involvement in the drug scene.

III. THE EVIDENCE

August 11, 2020

[17] On August 11, 2020, the Winnipeg Police Service ("WPS") received a report of an assault at 204-505 Victor Street. Cst. Bilodeau and his partner were driving to the location at 9:46 a.m. and came across the victim at 610 Ellice. The officer told me he spoke to the victim who was identified as Ahmed. The officer noted a laceration to the back of his head and that he was bleeding from his neck and hands. The officer called for an ambulance.

[18] Ahmed told the officer he was at 204-505 Victor when a male named Jesse assaulted him. Ahmed indicated the assault was over money. Ahmed told the officer he did not recall owing anyone money but did identify Jesse as a meth user and dealer.

Ahmed indicated he was struck approximately 12 times with a piece of wood before he could get up and leave.

[19] To be clear, this evidence was not offered for the truth of what happened, it was tendered as the information given to the officer that, in turn, informed the police response to the complaint of assault.

[20] A second police unit attended 204-505 Victor. Cst. Haub testified that he was on scene at 9:49 a.m. He knocked on the door of the suite and a woman named Tanya Hyes answered. The officer had everyone come out of the apartment. In addition to Ms. Hyes, the officer identified three males: Chris Geddes, Jesse Daher and Evan Brightnose-Baker.

[21] Computer checks revealed that Brightnose-Baker was listed as a missing person. The officer made further inquiries to deal with the missing person report while Brightnose-Baker was in the rear seat of the police car.

[22] After identifying all of the people in the suite, the officer received information from the Patrol Sergeant that Ahmed did not wish to have further police involvement in the matter. The police concluded the investigation with no further action.

Colin Leiterman

[23] Leiterman told me he has had a serious drug addiction for a decade. He smokes meth and crack cocaine. He knew Ahmed as Ahmed would attend his residence at Royce to do drugs. Leiterman was arrested on October 14, 2020. He provided a statement to the police.

[24] Leiterman has a lengthy criminal record including a conviction for indignity to a dead body. That conviction was recorded on June 8, 2021. The conviction was in relation to Leiterman disposing of the body of Ahmed by throwing it into the river.

[25] Leiterman is a serious drug addict and an uncooperative and unsavoury witness. It is clear he was being less than forthright and truthful. I assess his evidence with a strong Vetrovic caution.

[26] Leiterman confirmed he lived at Royce. The house is a small three-bedroom home with a bathroom, kitchen and living room. There is no basement. He lived there with a roommate named James and other roommates who would come and go. He could not recall the surname of James and could not recall the names of any other roommates.

[27] Leiterman told me he was at his residence with roommates on October 10, 2020. He said James was there with his girlfriend. He does not recall her name. He confirms Ahmed was in house when some masked men came into the house. First, he says it was two men and then three. He was asked to describe the masks. He believes they were balaclavas. He believes both men were masked. He did not recognize the intruders. He was asked about weapons. He described one guy with a metal thing. He tells me it was a gun and he knows the difference between a handgun and long gun. He told me it was a long gun but would not provide further details about the firearm.

[28] The intruders told Leiterman to get into a room. He, James and James' girlfriend went to the back bedroom. He told me they did not try to leave out the rear door. He is unable to explain why he did not leave. He did not call the police, as he did not have a phone. He did not see anyone else call the police.

[29] He did not see what happened to Ahmed but he could hear him screaming. He believes Ahmed was screaming because he was scared. Leiterman was provided his statement to refresh his memory and then told me Ahmed was freaking out, he did not want to die. He did not help Ahmed as there was a weapon and believes there was nothing he could do. He said the screaming went on for 20 minutes then backtracks from that answer stating he did not have a stopwatch.

[30] He told me he heard one of the males call Ahmed a "skinner" or "rat". After the males left, Leiterman went to check on Ahmed and found him in the bathtub. He saw blood on Ahmed's hands and head. He was laying in the tub on his back. His hands were in front of him bound together. There was a towel and saran wrap around his hands.

[31] Leiterman left the residence and a day or two later returned to remove the body. Leiterman wrapped the body in a tarp and other coverings and used a wagon to remove the body from the house to a vehicle. He placed the body and the wagon in the vehicle and drove to an area by the Canoe Club where he dumped the body in the Red river.

[32] Leiterman denies assaulting Ahmed in anyway. He denies calling anyone to advise them that Ahmed was in the residence.

[33] In cross-examination, Leiterman agreed his residence was a place for people to do drugs. He confirmed people would come and go at all hours of the day and night. He advised that the Capri Motel was close by and people from that location would often end up at his residence to do drugs. He was a heavy drug user and described the dangers

that went along with the drug lifestyle. His home was previously the site of a home invasion; he has had a gun pulled on him in the past and a crossbow pointed at him.

[34] He agreed his roommate was James Freitas and his girlfriend was Meghan Burnett. He said both were meth users and in the home on October 10, 2020. He also agrees Jared Martel was there that night.

[35] He states that he did not see Ahmed being attacked. He maintained he, Freitas and Burnett were in the back bedroom when he could hear the yelling and screaming.

[36] When describing intruders, he said it was two guys, then three guys and it could have been four or five guys. He claims the guys were all masked in full dark balaclavas. He could only see eyes. He saw a gun. Later in cross-examination, he advises he told police it was a shotgun that looked like a pistol grip sawed-off, it was a "12", it was pretty wide. I conclude he is describing a 12 gauge sawed-off shotgun to the police.

[37] Leiterman cleaned up the washroom after removing the body. He washed out the tub and wiped down surfaces.

Jared Martel

[38] Martel is 30 years old and a serious drug addict. At the time of this offence, he was using meth daily. He has a lengthy criminal record that includes many property offence convictions. His record is consistent with a person who steals to support their drug habit. As previously noted, his credibility and the reliability of his evidence requires careful scrutiny. Martel did not want to attend court or testify and is concerned about being labelled a "rat".

[39] The police located Martel on October 20, 2020. He was arrested on unrelated warrants. He was driven to police headquarters and he provided a statement about this matter.

[40] Martel knew Ahmed for approximately two years and considered him a friend. He told me Ahmed also had a drug problem and would use meth. Martel also knew James Freitas for approximately three years and described him as a friend and buddy. He knew Freitas had a girlfriend named Meghan. Martel would go to Royse almost every day to get high. He knew Leiterman as he lived with Freitas on Royse.

[41] Martel also knows the accused Daher. He knew Daher through Terri-Lynn Sawyer. He told me Sawyer lived in an apartment on Furby and he had seen Daher at that suite on four or five occasions. He described Daher as a white male who was tall with a shaved head. He thought Daher was about six feet tall and thin. Martel never had a problem with Daher in the past.

[42] Martel explained that he was at Royce on October 10, 2020, to get high. He recalls Freitas, Meghan, Leiterman, Ahmed and himself were in the house. At approximately 1:00 a.m., a male came to the house. He described the man as native with a medium build and in his 20s. Martel had never before met the man. They were both in the living room, said, "what's up?" then shook hands and sat down. Ahmed was sitting on the couch and then got up and said "I am gonna dip", which means to leave.

[43] The native male stood up and told Ahmed, "Where the fuck do you think you are going?" The native male had a collapsible baton in his hands. He used it to strike Ahmed in the collarbone. It was a hard strike. He hit Ahmed two more times, once in the

shoulder and then in the face. Martel wanted "to get the fuck out of there". He got up to flee and the native male struck him twice with the baton on the left arm. Martel demonstrated in court how he raised his left arm to block the baton. He told me the baton struck his left hand and he had some bruising injury to his left pinky finger and the outside area of the left hand where the pinky finger meets the hand. The police photographed the hand injury on October 20, 2020, and the photographs are in Exhibit No. 9.

[44] Martel told me while this was going on, another male came into the house and was in the living room. The male had a gun, a sawed-off shotgun. He pointed it at people in the house including Ahmed. The armed male told Martel to "get the fuck out of the way".

[45] Martel told me the armed male looked like Daher. The male was wearing a facemask or balaclava. He believes it was black nylon material. It covered his face and his nose. The male was wearing a black hat. Martel could only see the area around the eyes and he did not recognize the voice.

[46] Exhibit 10 is the photo lineup Martel reviewed on October 20, 2020, when he spoke to the police. The lineup was captured by video. It is clear that Martel recognizes photograph number six as the officer continues to show the remaining four photographs. The officer asks if he recognized anyone and Martel nods in agreement. The officer asks if he remembers the number of the photograph and Martel responds, number eight. That was clearly an error about the number and not the photograph. They go through the

lineup a second time and Martel selects number six. Martel explains that number six is a photograph of Daher. He agrees Daher is the person who pointed the gun at him.

[47] In his testimony, Martel denied the armed male threatened him with the gun. Martel got out of the house and went to the Capri. He never tried to help Ahmed. As he was fleeing, he heard Ahmed loudly yelling, "Stop" and he said Ahmed sounded scared.

[48] Martel was asked what he told the police about the gun being pointed at him. He said he told the police it was not pointed at him. The Crown provided his statement to refresh his memory. Martel then told me the gun was pointed at him when he was told to "get the fuck out of the way" but he does not believe it was intentional. He is unable to explain why he believes it was unintentional.

[49] On cross-examination, Martel said there could have been other people present. He believes a woman named Rochelle was there and although there could have been others, he does not recall who they were.

[50] He is a heavy drug user and agrees it can mess up your memory. He was snorting and smoking meth on the night of this incident. He was very high and has a fuzzy memory of what went on that night.

[51] He agreed meth users can become aggressive but it depends because not all people get angry or aggressive. He was asked about Jayson Borden who he knows but does not recall being at the house. He was asked about Kingsley Bruce and told me he does not know him and does not know if he was at Royse.

[52] He was asked about Ahmed and if he was a guy who ripped people off. At first, he told me Ahmed did not do that sort of thing but later reviewed his statement and

agreed he told police Ahmed ripped people off. He was asked if that was a bad reputation. He told me his reputation is worse than ripping people off because he was testifying.

[53] He told police Ahmed and Rochelle had a problem because she called Ahmed a "skinner". It was suggested being known as a rat or skinner were bad and Martel agreed. It was suggested Rochelle was in the house that night and he responded, "I think so".

[54] Martel said three or four guys could have entered the house. He is asked about the white guy. It was put to him that he told police it looked like Jesse and he could not say for sure it was Jesse. He agreed he could not be sure. He told police the guy was about six feet tall and agrees Jesse is six foot three and that is a noticeable difference. Martel acknowledged the facemask covered most of the intruder's face. He is unable to say if he had a shaved head or if he had hair. There were no unique identifiers visible on the part of the face he could see. He did not recognize the voice when the armed masked intruder spoke.

[55] He confirms it was a sawed-off shotgun but cannot say if the individual was wearing gloves. He said it is possible the guy with the gun left at the same time that he did. He is asked questions about the gun. He acknowledged the armed intruder moved around and the gun moved with him. He agrees the gun was never pointed at him but rather traveled by his direction as the guy moved around holding the gun.

[56] He cannot say if anyone entered the house after he left. He was asked if a guy called Gordie was there and he said no. He was asked about a bald skinny guy and guy called Blair and he did not recall those people being at the house. It was suggested that

the death of Ahmed was the talk of the neighbourhood. Martel told me he heard it on the news. He does not know if it was discussed at the Capri motel. He denied a guy named Lindsay told him details of this incident.

[57] Martel gave his statement to the police on October 20, 2020. By that time, he had heard that a body had been recovered from the river prior to giving his statement. He also heard more news about the incident after he gave his statement to the police.

[58] He was asked about what happened when the guy with the gun came in and he replied he just wanted to get out of there. He was struck with the baton after the guy with the gun entered the residence. He agrees he cannot remember the sequence of events. He recalled Ahmed screaming. Martel told me he is uncertain who had the baton but is certain he was struck with the baton. He agreed he did not seek medical attention.

[59] He was arrested about one year later on October 27, 2021. At that time, Martel reviewed a photo line-up and selected photo No. 4, which was the photograph of Brightnose-Baker. By that time, he had seen news reports about the suspects in this case. He agreed that one of the photographs in the line up was the same photograph that he seen in the news. He is unable to say if he selected the photograph because he recognized the individual from the incident or if it was because he recognized the photograph from media reports.

Noreen Kyla Osborne

[60] Osborne turned 18 on October 9, 2020. She and Brightnose-Baker came to the attention of the police on April 27, 2021. They were picked up at 278 Salter. They provided videotaped statements to the police. It is clear from their statements that they

cared for each other and were in a serious relationship for approximately two years. Osborne explained her relationship to Daher through her sister Desiree Thomas. Osborne is close to Daher and called him her brother. It is clear she was close to Brightnose-Baker and Daher and had no desire to get them in trouble.

[61] In her statement, Osborne told the police she, Desiree, Daher and Brightnose-Baker were staying in the same residence around the time of her 18th Birthday. I am uncertain of the exact address as the evidence alludes to 737 Beverley, 737 Sargent and 2-320 Toronto. I suspect it was the Toronto Street address as the police had dropped her off at that location on October 9, 2020. She explained it was her cousin's spot, meaning his home, but her cousin was never there.

[62] Osborne explained Brightnose-Baker looked up to Daher and considered him a big brother. At the time of the incident, I note Brightnose-Baker was 21 years old and Daher was 28.

[63] Osborne and Brightnose-Baker were sleeping in a back room when Daher came in and woke up Brightnose-Baker. Daher told Brightnose-Baker to "get ready, let's go". The two men left the residence and she did not see them until late the next day.

[64] When the two men returned to the residence, she saw blood on Brightnose-Baker's clothes. He hand washed his jeans in the tub, as there was no washer or dryer in the residence. She told the police Brightnose-Baker threw out his shoes. She recalled there was some discussion and the two men said they did it. Osborne went on to explain Daher said it first and she recalls he was smiling as if he was proud of it. Through the discussion, she quickly figured out they were speaking about Ahmed. She knew Ahmed as she had

previously met him a few times at her sister's old spot on Toronto. Near the end of her statement, she confirms it was Daher who said, "we killed him, we killed Moe".

[65] She told the officers there was an earlier incident when they beat up Ahmed. She believes it was because he ripped people off and another reason was they believed he was a "skinner". After that incident, Osborne told the police Daher and Brightnose-Baker talked about killing Ahmed.

[66] After Ahmed's death, Osborne explained the two men were acting like they were proud of what they did. She explained they were bragging about it but it was mostly Daher. They said they dragged Ahmed into the bathroom and beat him up. She said Ahmed was hit in the head and went on to explain he was hit with the top of the toilet tank lid and she thinks that is when Ahmed was knocked out. The discussion led her to believe it was Daher who struck Ahmed in the head with the toilet tank lid. She also speculates that they shot him because they previously said they would shoot Ahmed. She believes they had access to a sawed-off shotgun that they kept in their residence.

[67] She also guesses they stabbed him because they always carried knives. She told the police Brightnose-Baker told her that James was to get rid of the body by throwing it into the river. James was supposed to stab the lungs so the body would sink. The two men mentioned something about James forgetting to stab the lungs. She believes the death happened at James' place. She recalls them talking about blood everywhere, there was blood on the walls and it was hard to clean up. She told the police it was weird because all the stuff to clean up a body was already there.

[68] Counsel for Daher cross-examined Osborne noting she gave her statement to the police approximately six months after Ahmed was killed. She agreed her memory would fade with time. Counsel focused on her drug use. She was a heavy drug user who smoked and injected meth in 2020 and 2021. She agreed meth messed up her head. Things can be confused and it is difficult to remember. She would be paranoid. She acknowledged that meth can cause audio and visual hallucinations meaning people on meth can see and hear things that are not really there.

[69] She would go on meth binges. She would use meth, stay awake for days, and then sleep for days. That cycle makes it difficult to remember. She was in this type of meth cycle when she spoke to the police. She agreed she might have been mistaken about what Daher told her. She knew a little about the case from media and discussions on the street.

[70] She agreed with the suggestion that she heard all of the information about this case from other people but she never mentioned who those people were. She was told Ahmed was hit in the head with the toilet tank lid and it was other people who told her that.

[71] She agreed that she never heard Daher and Brightnose-Baker talking about killing Ahmed prior to the death of Ahmed. She never heard Daher say he wanted to beat up Ahmed. She denied that Daher would tell stories about how tough he is or that he is a superhero. She never heard Daher claim he killed the guy who assaulted his sisters.

[72] She agreed that Daher never told her he killed Ahmed and that it was a mistake when she told the police Daher told her he killed Ahmed.

[73] Counsel for Brightnose-Baker questioned Osborne about her relationship with Brightnose-Baker. She began a relationship with him when she was young and in a foster home. She knew Brightnose-Baker also had experience in foster care. At times, she would leave her group home and she would be reported as a missing person. She knew the same thing happened with Brightnose-Baker. She believes he had a support worker through FASD Justice.

[74] She stated that Brightnose-Baker was a follower. He was taken advantage of because he was a quiet, shy, vulnerable guy. She agreed that she and Brightnose-Baker moved around a lot in 2020 until April 2021. They spent a lot of time with her sister Desiree.

[75] Osborne was a heavy drug user at the time of this incident. She would use drugs at various locations with various other users and had many conversations. She agrees that she is unable to say who told her what information and exactly what they said.

[76] Osborne told the police many things but she cannot say today if it was the truth. She does not know if it is true that Ahmed was dragged into the bathroom. She cannot say today where she got that information.

[77] She is unable to say today why she told the police that Brightnose-Baker was washing blood out of his jeans. She does not know if it is true. The drug use would affect her memory.

[78] She agrees that the drug lifestyle in Winnipeg is a dangerous lifestyle. She has witnessed violence. Heavy drug use makes it difficult, if not impossible, to keep track of days and time.

[79] She used meth and "down". She describes "down" as fentanyl or heroin. She agreed Brightnose-Baker was a regular user of meth and "down".

[80] She was asked about her video statement to the police. She was unable to say what information the police told her. She felt uncomfortable and intimidated with the police. She agreed she is unable to say today where she got the information she told the police.

[81] She would attend a vacant suite at 626 Ellice to do drugs. She did not recall being arrested on her 18th birthday and charged for being unlawfully in 626 Ellice but did agree she would have been dropped off at her sister's place at 2-320 Toronto Street.

[82] Osborne admits her criminal record and that she was arrested on September 3, 2022, for firearm offences. At that time, she gave a false name saying she was Cassidy Swampy. She was released on conditions. She was recently arrested on November 17, 2022, for breaches and that is why she is in custody.

Theresa Derendorf

[83] Derendorf started using meth in 2019. She was an addict using meth all day every day. Prior to that, she was in a family relationship. She and her husband have four children. They owned three successful businesses and she led a charmed life. In 2017, she separated from her husband and her life spiralled into the drug scene. She has a criminal record from September 14, 2022. She was convicted for possession of a controlled substance for the purpose of trafficking and possession of property obtained by crime. After serving the equivalent of 174 days in pre-trial custody, she was sentenced

to a five-month conditional sentence order and 12 months of probation. The last time she used meth was the day she was taken into custody on March 24, 2022.

[84] Derendorf told me about her relationship with Desiree Thomas, Daher, Osborne and Brightnose-Baker. In October 2020, Derendorf was living in a basement suite on Austin. Desiree moved into her residence around the end of October 2020 and Daher moved in shortly after at the beginning of November 2020.

[85] Desiree was a very close friend from the drug scene. Derendorf knew Desiree's children and knew Daher as the father to the boy and girl. Daher lived in her suite from November until December 28, 2020. The December 28th day stands out for Derendorf as that is the day she was arrested and she claims Daher's friends raped her.

[86] She knows Daher and describes him as 6 foot 1 inch Caucasian male with blue eyes and a shaved head. She confirmed Daher had access to a sawed-off shotgun with a black bandana wrapped around the handle part. She described seeing the shotgun shells for the gun. It was a big gun but it was cut down.

[87] Derendorf knew Osborne and knew she was dating Brightnose-Baker. She said Osborne and Brightnose-Baker would attend the Austin residence several times per week. She recalls Brightnose-Baker was born in 1999 as that is the year she met her husband.

[88] Derendorf knew a man named Danny Delang from the drug scene. That is how she met Ahmed as Ahmed and Delang were in a relationship. She described Ahmed as very thin. She learned Ahmed had been killed since she and Delang had a conversation about Ahmed's death while she was in her residence on Austin with Desiree and Daher. They were all within earshot sitting in the living room. The conversation was on

speakerphone as Desiree and Daher both knew Delang. At the time of the conversation, she believed Colin Leiterman had been charged with Ahmed's death and she believed Ahmed had been killed at the river.

[89] While the conversation was going on, Daher got up and started pacing. Shortly after the conversation, within an hour, Daher started talking about times in his life he had to protect women from bad men. There was further conversation about Leiterman in custody. Daher wanted to obtain Leiterman's inmate number to drop off money and mentioned Leiterman was staying solid or he was scared.

[90] There was further conversation about Ahmed within the next 24 hours. Derendorf explained Daher had mentioned he had run-ins with Ahmed previously that were not good. Daher said a group of black guys including Ahmed had chased Daher in a back alley in the West End of Winnipeg.

[91] Daher described another incident where he and Brightnose-Baker saw Ahmed and they took his bike and beat him up. Daher told her Ahmed went to the police and the police arrested both of them at 505 Victor. They let Daher go but held Brightnose-Baker because he was a missing person. She was told that Brightnose-Baker was shown a picture of Ahmed by the police and it said he was a pedophile. She explained they called him a "skinner".

[92] Tommy Bignal lived at 505 Victor. He is Daher's best friend and is the guy who raped Derendorf.

[93] Later on, Daher told her about Ahmed's death. He told her he killed Ahmed as the police had given the green light on Ahmed because Ahmed was a skinner. He told her

he had numerous run-ins with this skinner and it was destiny. He wanted to take out Ahmed, so he did. Daher told her it was at a house off Pembina Highway and she knew of the house. She confirmed the house she was speaking of was in the photobook, Exhibit No. 4.

[94] Daher told her the gruesome details. He said he took Ahmed into bathroom, tied him up and tortured him for days. He said Ahmed would not die. He was begging for his life and crying for his mother. He had a strong will to live. Daher told her it happened in the bathroom. She had previously assumed Ahmed died at the river. She never heard he had been tied up. Daher was the one who said he was tied up. Daher said that Ahmed was wounded by a faucet embedded in his face. Daher said Ahmed's entire face was beaten and broken. He said he stabbed Ahmed. She said Daher was proud that he took out this skinner. He believed he was doing the right thing. She said Daher told her his brother Brightnose-Baker was there. Daher told her other people were in the house including a guy named James, Leiterman, a girl and Jay Borden.

[95] Daher was not concerned about Leiterman as he was solid but worried the others ratted him out and he would kill the witnesses. He had a kill sheet and said, "no face no case".

[96] Derendorf recalled a conversation she had with Brightnose-Baker at the Austin residence some time after her conversations with Daher. The conversation stands out because Desiree's other sister named Gina had overdosed in the living room at Austin. Gina was using "down", which is fentanyl. She looked dead. An ambulance attended to care for Gina. The paramedics revived her. She refused to go with them because she

just got out of jail and wanted to get high. The paramedics cautioned her that her tolerance was diminished because she had not been using while in custody and she should use less drugs. The paramedics were about to leave when Osborne and Brightnose-Baker arrived.

[97] Gina did not realize she had overdosed but everyone else was shook up because she was essentially dead. The conversation was serious and Brightnose-Baker was very emotional. Brightnose-Baker said he hated being addicted to "down" and he wanted Osborne and himself out of the drug lifestyle. He explained he was going to church several times per week to shake off his involvement in the death of Ahmed.

[98] Brightnose-Baker admitted he was present when Ahmed was beaten and he was afraid of Daher so he gave Ahmed a few punches to seem like he was taking part in it. Brightnose-Baker said Ahmed wanted to live. He wished Ahmed would just die to be out of the misery and horror that he was suffering. He explained Ahmed was crying for his family and begging and begging but to no end.

[99] Derendorf had this information but did not go to the police. She explained she was not there and there were other people to say what happened. She was concerned and afraid about speaking to the police. She said there was a plan to call the police to come to the apartment so the police could find Daher and arrest him if there were warrants. She was too afraid to follow through and never called the police.

[100] On December 28, 2020, Derendorf was arrested and then released by the police. The police dropped her off at her residence on Austin. Daher and his friends believed she went to the police and ratted out Daher. She was beaten and raped when she

returned to her residence. She knew she needed to leave the city and the province. Desiree's sister Gina said she had a car that she could sell cheap.

[101] On January 12, 2021, she went with Gina to her place on Mountain. They went to the apartment. Gina opened the door and Daher was on the couch with Desiree. Daher ran at her, pulled out a gun and put it to her face. He pulled the trigger while she put her hand up and pulled the trigger again. He was punching her, calling her a "rat" and trying to pull her into the suite. Blood was squirting out of her face. She could see the bathroom and tub in the suite and immediately believed he was going to drag her into it and kill her. Desiree and Gina were screaming, she was fighting for her life, broke free from Daher and went to the hospital. She described the weapon as a handgun and later learned it was a pellet gun. She has pellet fragments in the area of her right eye. She continues to suffer vision problems. The doctors removed the pellet from her hand.

[102] She believes that Daher and his friends think she ratted him out because she was arrested and then dropped off by the police on December 28, 2020. The only thing she knew about Daher to explain his violent behaviour was his involvement in the death of Ahmed. Dervedorf made it clear she did not rat him out. She had been arrested and charged for her own offences.

[103] She spoke to the police on January 19, 2021. She gave a statement and also reviewed photo lineups identifying Daher and Brightnose-Baker. In her separate discussions with Daher and Brightnose-Baker, they never ever mentioned anyone else being involved in killing Ahmed.

[104] Counsel for Daher cross-examined Derendorf at length about being shot by a pellet gun and the injuries she sustained. Counsel also took her through the circumstances of the assault and rape by four men. Counsel suggests she has a personal grudge against Daher for the pellet gun incident.

[105] Derendorf explained she is a Christian woman. She did not come to testify to hurt Daher. She feels bad for him. She feels hurt and disappointed because she believed they were friends and she believed he would protect her and Desiree.

[106] She agreed that there are ongoing medical consequences for her. She cannot have a MRI because pellet fragments in her orbital bone. She told me the scariest thing was the rape that she went through. She blames Daher for the rape. Tommy Bignal was not her drug dealer. She had met him a couple of times through Daher. There were four guys who beat and raped her and they were saying she ratted out Daher.

[107] She wishes Daher had never told her what he did to Ahmed because then there would have been no reason to attack her. She takes PTSD medication as a result of the assault and rape. She went on to describe the pain and anguish she continues to suffer. It is absolutely clear that she was traumatized and is telling the truth about the rape and pellet gun incident.

[108] Counsel suggested again that she had motive to lie and exaggerated her discussions with Daher. She disagreed with the suggestions. It was suggested that Daher always said he had heard Ahmed was killed in a bathtub. She strongly disagreed and is certain that Daher said he killed Ahmed in the bathtub.

[109] Derendorf has tried to put the drug lifestyle behind her. She had to leave those friends behind. She has moved out of province to get away from the lifestyle.

[110] Counsel suggested Derendorf knew Daher was an abusive boyfriend. She agreed and she wanted to protect Desiree. She got to know Daher when he moved into her residence on Austin and shared some of his background. He claimed he had killed before. He explained some guy attacked his sisters and he killed the guy. She believes the guy was some uncle. She agreed that could have been made up. It was suggested he said he killed other people. She only knows of him killing the guy who attacked his sisters and the killing of Ahmed.

[111] It was suggested that he portrayed himself as a hero or superhero and she agreed that is how Daher described himself. She hopes he was exaggerating his behaviour. She also knows he is capable of doing serious violence because of what he did to her.

[112] Derendorf explains that the drug lifestyle is dangerous and there is a need to seem tough or violent to protect yourself. Daher was part of the drug scene and was a meth user. She made it clear that Daher did more than talk about violence, as he was violent towards her so it was not just talk and exaggerations.

[113] She was questioned about what Daher told her about stabbing Ahmed. It was suggested to her that Daher said he stabbed Ahmed in the foot. Derendorf explained it was the foot or hand. He said he could not do anything more to the face. There was nothing left to do to his face. He was stabbing him all over and had to stab in the foot or hand. She believes he used the word stab not the word slice.

[114] Derendorf was asked by counsel if Daher told her he hired Jay Borden to dispose of Ahmed. Derendorf gave a detailed account of what Daher told her. She said Borden went into the house and opened the bathroom door and saw Ahmed and quickly closed the door stating he saw nothing. Daher told Borden he did see something and Daher told Borden and Leiterman to dispose of Ahmed and they dumped him in the river.

[115] Counsel suggested Daher told her Borden picked up Daher that night. She disagreed. Daher never told her how he got to the house. Daher told Derendorf that Tanya (known as TK) was at the house and told her that Ahmed was there.

[116] Derendorf explained it was Brightnose-Baker that said Borden drove him there. She explained that Brightnose-Baker's explanation about what happened had nothing to do with Ahmed being a "skinner". The murder had to do with "down" and it was about drug money owed to Daher.

[117] Counsel had Derendorf confirm Daher told her the police disclosed information that Ahmed was a pedophile. She was unsure if it was Daher or Brightnose-Baker that had the information from the police but she was certain Daher told her about it.

[118] Her connection to Ahmed was through Danny Delang. She was surprised to hear Ahmed was selling drugs. She knew he was a meth user but she did not believe him to be someone selling drugs.

[119] She confirmed Osborne and Brightnose-Baker came to her Austin street residence three times a week and they used "down". She felt Brightnose-Baker was a victim as well.

Evan Brightnose-Baker

[120] Brightnose-Baker was arrested on April 27, 2021. He gave a lengthy video statement that is marked Exhibit No. 1 in the trial. The statement from Brightnose-Baker can only be used against him; it cannot be used against Daher. I will briefly summarize the relevant portions.

[121] He confirmed that there was an incident on Victor Street prior to the death of Ahmed. It was at Tanya's place. Tanya is known as TK. Brightnose-Baker said Ahmed took TK's money. There was a fight, the police were called and he was interviewed by the police.

[122] He admits he was at Royce and involved in assaulting Ahmed. He stated, "I did it man, I did it, I fucked up".

[123] Brightnose-Baker said he was brought along and not even told what was going to happen. He was sober that night and was only told they were going to do a job. Once they were closer to the residence, he was told about the job. He said the assault was over money and they were going to "tax" Ahmed, which meant they were going to take his stuff. He stated, "I just thought he was going to rob him".

[124] He said they went in and Ahmed was in the kitchen area. He was forced into the washroom. Ahmed was bleeding from the head and nose. He said Ahmed was struck with a collapsible baton in the living room but he denies it was he who had the baton. He told the police Leiterman struck Ahmed with the baton.

[125] Ahmed was tied up with zip ties and clothes. He was scared and begging to be let go. Brightnose-Baker described Ahmed fighting for his life. Ahmed got free and out

of the tub only to be assaulted some more. Ahmed was on the floor in the bathroom between the tub and toilet and Brightnose-Baker was jumping on him. Ahmed was asked for money and emptied his pockets but he had no money. He was tied up and put back in the tub. Brightnose-Baker described using ratchet straps to restrain him.

[126] The police question him about cling wrap being used to wrap around Ahmed's hands. He denies ever touching the cling wrap. He was told his fingerprints were located on the cling wrap in a kitchen drawer. He agrees he may have passed it to someone.

[127] Brightnose-Baker goes on to say others showed up in a truck. Some unknown male with a sword stabbed Ahmed. Brightnose-Baker claims he left the residence alone. Ahmed was still alive and he never meant for him to die.

[128] He goes on to say he cleaned up the washroom before he left. He used a cloth and a mop to clean up blood in the washroom and kitchen area. He agrees that there was probably blood on his shoes and the shoes are gone. Brightnose-Baker said he cleaned up the place for an hour.

Media Releases

[129] During this investigation, the WPS authorized a number of media releases. The first was on October 12, 2020. The media report disclosed that the WPS found a body in the river. The next day, the WPS sent out an updated media report. That report included information that the body recovered from the river was the 29-year-old victim Ahmed.

[130] Exhibit No. 13 is the media release from January 19, 2021, which advises the public that the police have a warrant for the arrest of Daher. The report gives a physical description of Daher and includes his photograph.

[131] Exhibit No. 14 is the media release from February 10, 2021. The WPS is asking for information from the public to locate Daher and Brightnose-Baker. There are physical descriptions and photographs of both suspects in the media release.

[132] On February 28, 2021, there was another media release seeking assistance to locate Brightnose-Baker and it includes the same photograph of the suspect. There was a final media release about Brightnose-Baker on April 28, 2021, indicating that he was in police custody.

Social Media and video from the taxi

[133] The police were able to obtain social media images of Daher from his Facebook account that are in evidence. Exhibit No. 26 is the Facebook profile for Daher that contains the statement, "I don't like being the bad guy, I love being the bad guy". Within the image are the words "no face no case".

[134] Exhibit No. 27 appears to be a selfie of Daher posing outside beside some buildings. He is wearing a hat with a peak. Although the photograph is unclear, I can see a checkerboard pattern on the underside of the peak of the hat.

[135] Exhibit No. 28 is another selfie of Daher taken inside in front of a mirror. He is wearing a black toque and white t-shirt. This photo reveals his physical stature.

[136] Exhibit No. 29 is an image with three individuals. Daher is in the centre. He has a shaved head. Brightnose-Baker is on the right of the page.

[137] Exhibit No.30 is another image of Daher. It appears to be a mirror image. His toque has the word POLO on it and it appears backwards. He is wearing a black mask that covers up to the bridge of his nose.

[138] Exhibit No. 31 is another image of Daher. It is taken outside. It is a head shot. He is wearing a mask and covering. He is also wearing a hat with a checkerboard pattern on the underside of the peak.

[139] The police were also able to obtain video evidence from a Duffy's taxi that attended to Royce on October 10, 2020, at 12:50 a.m. The video consists of three clips and is marked Exhibit No. 20.

[140] The video captures the taxi picking up a sole occupant. The first clip has the front view that captures an individual outside passing in front of the taxi. The person appears to be tall and thin with something on their back. The camera also captures a black truck and white car in the driveway near the house.

[141] The second clip is the rear view and it captures the individual getting in the rear passenger seat. It also captures the driver of the taxi. The video camera distorts the lighting so it is difficult to make out colours. In both clips, you can hear the discussion about where the individual wishes to go. It is clear the person does not personally know the location as it is an address at 2339 Pembina Highway and the person is suggesting the street is Dartmouth. The person provides the driver with a sheet of paper with the address using their left hand. There is no glove on the hand. The taxi driver is explaining the address is 2339 Pembina and 30 is the unit number and Dartmouth must be the person.

[142] The driver hands the paper back to the person. Throughout this clip, I am able to tell the individual is wearing a backpack. The person has a balaclava type mask covering

their face. The individual is wearing a hat on their head facing backwards so the peak is at the rear. I am able to see a checkerboard pattern on the peak of the hat.

[143] The final clip captures the taxi arriving at the destination. There is a discussion pertaining to the fare and the person in the back is indicating \$10 is all that the driver needs to give him back as change. The driver hands the money back and I can see the person is wearing a glove on their hand.

[144] I have carefully reviewed the video clips numerous times. I conclude the passenger is a tall thin male with a build similar to Daher. The voice is that of a male. The passenger is wearing a hat with a peak. The peak has a checkerboard pattern similar to the pattern seen on the hats worn by Daher in the Facebook images found in Exhibits Nos. 27 and 31. The person is wearing a balaclava or mask that is similar to the mask worn by Daher in Exhibit No. 30.

[145] It is an agreed fact that the family of the deceased moved out of unit 30-2339 Pembina Highway on September 3, 2020. The deceased, Ahmed, was the sole occupant of the residence after September 3, 2020. The passenger in the taxi had the home address for Ahmed but it is clear from the discussion in the taxi that he had never been there in the past. As I will explain, the totality of the evidence proves beyond a reasonable doubt the passenger in the taxi is Daher and he was driven to Ahmed's residence.

Autopsy

[146] On October 13, 2020, Dr. Littman conducted the autopsy on Ahmed. He found multiple blunt trauma to the head with associated skull fractures and acute brain trauma.

There was non-lethal sharp force injuries to the head, trunk and limbs. There was also blunt force injuries to the trunk and upper limbs.

[147] The autopsy report is Exhibit No. 33 and it details the incredible number of injuries inflicted on Ahmed. There were gaping lacerations to the skull that were associated to comminuted skull fractures. This means the bone has broken into a number of pieces.

[148] Significant force would have been required to inflict these types of injuries. The type of force required would be similar to swinging a baseball bat to the skull. Dr. Littman opined the head wounds and skull fractures were caused by at least three or four blows and up to 10 or more. The wounds were caused by a blunt object. Dr. Littman agreed that a number of different objects could have caused the injuries including a toilet tank lid.

[149] Dr. Littman went on to describe many sharp force injuries. There were stab wounds to the back and the thighs of the body. There were many lacerations caused by sharp force injuries throughout the body. Some to the head, some to the arms and legs. He noted there was bleeding associated with the sharp force injuries that indicate the heart was still beating and Ahmed was alive when the injuries were inflicted. The sheer number of injuries suggest this was a prolonged attack.

Legal Principles.

[150] In the Criminal Justice System, there are a number of foundational principles worth repeating:

- First, the accused comes to court cloaked with the presumption of innocence.
- Second, the onus is on the Crown to prove the case.

- Third, the standard of proof is substantial, as the Crown must prove the charge beyond a reasonable doubt.
- Forth, the accused need not say anything and need not prove anything as he has the constitutional right to remain silent. In this case, Daher exercised his right to remain silent and did not call any evidence in the trial.
- Brightnose-Baker did not testify but his video statement to the police from April 27, 2021, is in evidence. In assessing his statement, I am guided by the test set out by the Supreme Court of Canada in *R. v. W.(D.)*, 1991 CanLII 93 (SCC).
- I note that a trier of fact is entitled to accept some, all or none of the evidence of witnesses that testify in a trial.

[151] The requisite intent for murder is set out in section 229 of the Criminal Code:

Murder

s. 229 Culpable homicide is murder

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

Analysis

[152] This was a targeted attack on Ahmed. He was assaulted in the living room at 1046 Royce. He was forced into the bathroom where he was restrained, beaten, tortured and killed. The totality of the evidence proves beyond a reasonable doubt that Daher and Brightnose-Baker together killed Mohamed Ahmed.

[153] Daher argues the evidence falls short of proving his identification beyond a reasonable doubt. I disagree. I accept the evidence of Theresa Derendorf. It was refreshing to have a witness attend court and testify in a completely open and honest

manner. Daher submits she has motive to lie and did lie because of his violent assault on her. I flatly reject that submission.

[154] I carefully observed and listened to Derendorf, she is a truthful and reliable witness. I acknowledge she was a heavy meth user at the time and has a criminal record. She came to the drug lifestyle later in life. It is clear that she is an intelligent and thoughtful person. She understands better than anyone the dangers associated with cooperating with the criminal justice system. She denies that she is seeking revenge against Daher by testifying and I believe her.

[155] She testified about what she knew and where she obtained the information. The information came from Daher and Brightnose-Baker. The only other information she had about the death of Ahmed came from Danny Delang and the first media report. She believed Ahmed was shot and killed at the river. It was only after separate discussions with the co-accused that she learned about what happened to Ahmed.

[156] Derendorf did not exaggerate or embellish her evidence. She was careful and measured with her responses. Her evidence was logical and fits with all of the other evidence presented in court. She was cross-examined at length by counsel for Daher. She was unmoved. She provided emotional but consistent evidence about Daher's violent assault against her. The more she was questioned, the stronger her evidence. She provided details about her injuries both physical and emotional. She was unshaken on cross-examination. The most difficult witness to cross-examine is the witness who tells the truth. It is clear Derendorf was telling the truth.

[157] I accept Daher told her he had previous run-ins with Ahmed including the incident on Victor. Daher told her that Ahmed was a "skinner". Daher told her he tortured and killed Ahmed when he was in the tub and that Ahmed was begging for his life and his face was beaten and broken. He stabbed other parts of his body. That is consistent with the autopsy results, the scene photographs and DNA evidence that located blood of Ahmed in the washroom.

[158] I accept Derendorf saw Daher with a sawed-off shotgun and ammunition when he stayed at her residence on Austin Street. I accept her evidence that Daher portrayed himself as a hero who protects women and children. He was bragging and proud for taking out Ahmed whom he said was a "skinner".

[159] I find that Daher had all of this information and he said all of these things to Derendorf because he was the masked intruder brandishing the sawed-off shotgun. He assaulted, tortured and killed Ahmed. While torturing Ahmed, he learned information of his home address and I conclude the masked passenger in the taxi was Daher going to the victim's residence.

[160] I accept Derendorf's evidence about information she received from Brightnose-Baker. He told Derendorf he was present when Ahmed was beaten and he was afraid of Daher so he gave Ahmed a few punches to seem like he was taking part of it. Brightnose-Baker said Ahmed wanted to live. He told Derendorf he wished Ahmed would just die to be out of the misery and horror that he was suffering. He explained, Ahmed was crying for his family and begging for his life to no end.

[161] Daher and Brightnose-Baker never told Derendorf of any other person being involved in the death of Ahmed.

[162] There is other evidence about the identification and involvement of Daher and Brightnose-Baker. It comes from the video statement of Osborne. I reject most of Osborne's in-court testimony. She is deeply entrenched in the criminal drug lifestyle. She is aware of consequences for those that cooperate with a prosecution. It is hardly surprising that she would not want to testify in the presence of the co-accused.

[163] I acknowledge her video statement was taken six and a half months after the death of Ahmed. She has a criminal record and is a serious drug addict that can affect memory. However, I find her statement to the police on April 27, 2021, to be reliable. She explained her close relationship to Daher and Brightnose-Baker. She had no reason to lie and provide police with information to implicate the co-accused.

[164] She described the relationship between Brightnose-Baker and Daher. It is consistent with other evidence. The men were like brothers. Daher was older and Brightnose-Baker looked up to him.

[165] She told the police about a prior occasion where they beat up Ahmed. This is consistent with the police attending 505 Victor and it is consistent with the evidence from Derendorf on this point.

[166] Osborne recalled she and Brightnose-Baker were sleeping when Daher came in the room and told him to "get ready, let's go". She said it was unexpected. I accept that evidence, as it is consistent with what Brightnose-Baker told the police. He told the police he was brought along and not told why. He said he went to the residence with Daher.

[167] I accept Osborne's evidence that Daher and Brightnose-Baker had access to a sawed-off shotgun. The evidence of Derendorf and Brightnose-Baker's statement to the police supports her evidence on this point. Brightnose-Baker told the police Daher had a shotgun. I pause to note that I am only using Brightnose-Baker's statement for the limited purpose of identifying markers of reliability regarding Osborne's statement. I am not using his statement as evidence against Daher.

[168] Osborne told the police Ahmed was dragged into the bathroom and beat up. This is consistent and supported by the evidence from Leiterman, Derendorf, Brightnose-Baker and the scene.

[169] Daher said, "we killed him, we killed Moe". This is consistent with what Daher told Derendorf. Osborne said they were bragging about it. She said Daher was smiling and proud of killing Ahmed. This is consistent with what Daher told Derendorf.

[170] Osborne told the police Brightnose-Baker returned with blood on his clothes and shoes. She saw him wash his jeans in the tub and throw out his shoes. They told her there was blood everywhere and on the walls. They said the blood was hard to clean up. This evidence is consistent with the evidence from Leiterman, the DNA and the evidence from Brightnose-Baker to the police. He told the police he had blood on his shoes and he got rid of them. He told the police he took an hour clean up the residence. He denied washing his jeans in the tub. I do not believe him. He admits kicking and punching Ahmed in the tight confines of the bathroom. He said he had to wrestle him into the tub. Ahmed was bleeding all over. There was blood throughout the bathroom and up the walls. I conclude he had blood on his clothes.

[171] Osborne told the police that she believes Daher told her that he struck Ahmed with a toilet tank lid and that is what knocked him out. I accept this evidence. It is consistent with the opinion of Dr. Littman and the toilet tank lid was missing from the bathroom.

[172] Other evidence of identification of Daher comes from Martel and the taxi video. That evidence on its own is insufficient to prove it was Daher but it does add to the overall strength of the identification evidence.

[173] Brightnose-Baker argues he is only guilty of manslaughter. He admits he assaulted Ahmed but left the residence when Ahmed was alive. I do not believe him and his statement does not raise a reasonable doubt about the extent of his involvement in this horrific murder. The totality of the evidence proves beyond a reasonable doubt that he and Daher beat, tortured and killed Ahmed.

[174] Brightnose-Baker admits his brother told him they had a job to do. He was told they were going to "tax" Ahmed. Together, they went to 1046 Royce. I find Brightnose-Baker was armed with a collapsible baton. I suspect Ahmed recognized Brightnose-Baker from the incident on Victor and tried to leave. I accept the evidence from Martel. It was Brightnose-Baker who struck Ahmed with the baton while in the living room. He also struck Martel twice in the arm resulting in bruising to his hand that was still visible ten days later.

[175] I reject Brightnose-Baker's evidence that it was Leiterman who had the baton and struck Ahmed. Leiterman was never questioned on this point. As I said, this was a targeted attack. Brightnose-Baker and Daher were involved in a dangerous lifestyle. Common sense suggests they were prepared and armed when going to do a job.

[176] I reject Brightnose-Baker's story that other guys showed up with a sword and stabbed Ahmed. He never told that to Osborne or Derendorf because it did not happen. I find he is lying to the police on this point.

[177] Brightnose-Baker admits to forcing Ahmed into the bathroom where he was beaten, tied up, tortured and killed. Brightnose-Baker was there from the start to the end. He admits that he cleaned up blood with a cloth and a mop. He cleaned the residence for an hour. This was not his residence. There was only one reason for him to clean it up and that was to remove evidence. The length of time he was there, the injuries inflicted and the blood in the residence speaks to the condition of Ahmed and the intent of the accused. The totality of the evidence proves beyond a reasonable doubt Daher and Brightnose-Baker meant to cause his death and are guilty of second-degree murder.

[178] The totality of the evidence proves Daher was the masked intruder who brandished the sawed-off shotgun. On October 20, 2020, Martel told the police Daher pointed the sawed-off shotgun at him and told him to get out of the way. I acknowledge Martel backed away from that statement in his testimony. Again, that is not surprising given he was testifying in the presence of the co-accused. It was clear to me that Martel was afraid during his testimony. He does not want to be known as a rat since that is a dangerous label.

[179] I find Daher did point the sawed-off shotgun at Martel and told him to get out of the way. This was a targeted attack. Daher was after Ahmed. Martel was in the way. Ahmed knew he was in trouble and was fighting back against Brightnose-Baker. Daher

was armed with a sawed-off shotgun. He pointed it at Martel to gain control and compliance. That type of weapon is possessed to intimidate and instill fear. It is favoured for its lethal nature and ease of concealment. It is often hidden in a pant leg, jacket or backpack. I note, Daher had a backpack when he left in the taxi. He still had a sawed-off shotgun after this incident when he moved in with Derendorf on Austin.

[180] Section 2 of the ***Criminal Code*** defines firearm as:

... a barrelled weapon from which any shot, bullet or other projectile can be discharged and that is capable of causing serious bodily injury or death to a person, and includes any frame or receiver of such a barrelled weapon and anything that can be adapted for use as a firearm.

[181] A sawed-off shotgun meets the definition of firearm.

[182] The totality of the evidence proves beyond a reasonable doubt that Daher pointed the sawed-off shotgun at Martel on October 10, 2020, and I convict him of count two on the Indictment.

IV. CONCLUSION

[183] Jesse James Daher and Evan Brightnose-Baker are guilty of second-degree murder for killing Mohamed Ahmed. Jesse James Daher is guilty of pointing a firearm at Jared Martel.

_____J.