Date: 20261106
Docket: CR 25-01-40456
(Winnipeg Centre)
Indexed as: R. v. Sumner
Cited as: 2026 MBKB 151

# COURT OF KING'S BENCH OF MANITOBA

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

| | | |
|---|---|---|
| HIS MAJESTY THE KING, | ) | Libby Standil |
| | ) | Theresa Cannon |
| applicant, | ) | for the applicant |
| | ) | |
| - and - | ) | Zachary Kinahan |
| | ) | Caleigh Glawson |
| DYSON IRVIN LAWRENCE SUMNER, | ) | for the accused |
| | ) | |
| respondent (accused). | ) | Judgment Delivered: |
| | ) | November 6, 2026 |

## MONNIN J.

[1] Dyson Irvin Lawrence Sumner ("the accused") is charged with second degree murder, contrary to s. 235(1) of the ***Criminal Code***.

[2] The Crown alleges that the accused shot and killed Murdo Baker in the early morning hours of March 19, 2024.

[3] The defence submits that the Crown has failed to prove the essential elements of the offence beyond a reasonable doubt. Alternatively, it submits that the Crown has not proven intent. If anything, the accused is guilty of the included offence of manslaughter.

[4] For the reasons that follow, I find the accused guilty of second degree murder.

## BACKGROUND

[5] The events giving rise to this matter occurred in the suite of Abel Spence during the evening of March 18, 2024, and the early morning of March 19, 2024 (the "Suite").

[6] The Suite was a bachelor apartment on the fifth floor of a Manitoba Housing complex located at 504 - 817 Main Street (the "Apartment Building"). There is an elevator located on the fifth-floor hallway of the Apartment Building. There are also doorways at either end of that hallway leading to stairs that lead to other floors and the outside of the Apartment Building.

### THE SUITE

[7] The door of the Suite opens inward towards the west. Immediately inside the entrance is a closet on the left and a bathroom on the right. From the entrance, a west-facing window is visible down a hallway leading towards an open living area. The window is situated in the middle of the open living area, and sits approximately between the bedroom area, on the left, and the living room and kitchen area, on the right (Ex. No. 2, p. 1).

### THOSE PRESENT IN THE SUITE

[8] On March 18 - 19, 2024, ten people were gathered in the Suite, namely:

- Mr. Spence;
- Abby Hall (Mr. Spence's girlfriend);
- the accused (also known as "Dice");
- Mr. Baker;
- Shane Chubb;

- Gerri Porth (Mr. Chubb's girlfriend, who was deceased by the time of trial);
- Roberta Chubb (Mr. Chubb's sister);
- Nichelle Hudson;
- Noreen Flett; and,
- Larry Dumas.

[9] The gathering in the Suite was not static. Those present entered and left the Suite and the Apartment Building at different times during the evening of March 18, 2024, and early morning of March 19, 2024. Also, various amounts of drugs and alcohol were consumed by those present in the Suite before and during the gathering. Surveillance video admitted at trial assists in establishing when people entered and left the Suite and the Apartment Building (Ex. No. 6). It does not show what happened inside the Suite.

[10] Mr. Baker can be seen on the surveillance video entering the Suite at approximately 3:23 a.m. on March 19, 2024. This was the last time that he was seen alive on the surveillance video. At some point thereafter, Mr. Baker was fatally shot once on the left side of the head with a .22-calibre bullet. Those present inside the Suite can be seen leaving shortly after Mr. Baker was shot. His body remained there and was discovered later that morning.

**THE EVIDENCE**

[11] The Crown's evidence comes from six principal sources: (i) the evidence of some of those present in the Suite, (ii) the evidence of Teslyn Bigelow, a civilian witness who discovered Mr. Baker's body; (iii) the evidence of some members of the Winnipeg Police Service ("WPS") who were involved in the investigation; (iv) the evidence of Tony Brown,

an expert in DNA evidence; (v) an Admission of Facts for Trial; and (vi) the surveillance video, and the physical and forensic evidence.

[12] The Crown did not call the following people who were in the Suite: (i) Ms. Chubb, (ii) Ms. Flett; and (iii) Mr. Dumas.

[13] The accused did not testify, as is his right. He is presumed innocent, and that presumption remains unless the Crown proves every essential element of the offence beyond a reasonable doubt.

[14] Numerous exhibits were admitted at trial. While my reasons only reference some of them, I have considered them all.

**ADMISSION OF FACTS FOR TRIAL**

[15] The parties filed an Admission of Facts for Trial (Exhibit No.1). It provides, *inter alia*, the following:

- The date of the offence was March 19, 2024.
- The parties agree:
    - To the continuity of all seized exhibits, including the exhibits sent off for forensic testing.
    - To the continuity of the scene in the Suite from the time that WPS officers arrived on scene.
    - To the accuracy of the photos taken of the scene by the WPS.
    - To the accuracy of the surveillance videos entered at trial.
    - That the WPS generated 10 photos for a photo lineup that were shown to Mr. Spence, Ms. Hall, Ms. Hudson and Mr. Chubb.

- That the cause of Mr. Baker's death was a gunshot wound to his head, as determined by the forensic pathologist, Dr. Petra Rahaman. A small calibre, markedly deformed grey metal projectile with an orange metal coating was removed from Mr. Baker's brain. The trajectory of the projectile was left to right, and slightly upward and front to back.
- The range from which the firearm was discharged could have been as close to a few centimetres or up to a few feet. A more precise distance could not be established since the firearm was not recovered.
- To the continuity of the autopsy photos tendered at trial.
- To the qualifications of the DNA expert called by the Crown, Tony Brown. Mr. Brown was qualified as an expert in the interpretation and comparison of DNA profiles and the application of statistical significance.
- That three of the accused's fingerprints from his right hand were located on a Breezer bottle (an alcoholic beverage) that was found in the garbage at the Suite.
- When the fingerprints of the accused were deposited on the Breezer bottle is unknown. It is also unknown when and where the accused fingerprints were deposited on the bottle.

- On the opinion of the Firearms expert Aaron Yu, that the projectile recovered from Mr. Baker's brain was .22 rimfire calibre ammunition, with conventional rifling characteristics, designed to be discharged from a firearm.

## CROWN'S WITNESSES

### Teslyn Bigelow

[16] Teslyn Bigelow worked for the Assembly of Manitoba Chiefs through the Eagle Urban Transition Centre and Fresh Start Housing programs. Generally speaking, these programs assist Indigenous people in transitioning to urban centres and securing stable housing. As of March 19, 2024, she had held this position for approximately nine months.

[17] Mr. Spence was one of her clients. He had lived in the Suite for approximately one month. Ms. Bigelow visited him daily and knew that he struggled with alcohol addiction. She also testified that she knew that Ms. Hall was Mr. Spence's girlfriend.

[18] By March 19, 2024, Mr. Spence faced eviction because of complaints about noise and people frequently entering and leaving the Suite. Ms. Bigelow attributed many of these problems to Mr. Chubb, who had been banned from the Apartment Building. Mr. Spence was ultimately evicted on March 20, 2024.

[19] At approximately 9:15 a.m. on March 19, 2024, Ms. Bigelow attended the Suite for her daily visit to Mr. Spence. She went with her co-worker, Dustin Favel. She knocked several times but received no response. She opened the door and proceeded to "peek" inside. She asked Mr. Favel to remain at the entrance to prevent the door from closing.

[20] Ms. Bigelow observed a pile of blankets and other items in the front closet area. She checked the bathroom and found no one. Looking down the west-facing hallway, she saw a body on its back with the head facing toward the west-facing window and the feet facing toward the entrance (Ex. No. 2, pp. 2 – 4). She recalled that the body (later determined to be Mr. Baker) was wrapped in a white blanket. Ms. Bigelow approached to determine whether Mr. Baker needed assistance. However, she believed that Mr. Baker was already deceased. When Ms. Bigelow approached Mr. Baker, she noticed blood near his head. His head was tilted, preventing her from seeing the face clearly. She did not recognize Mr. Baker.

[21] Ms. Bigelow described the Suite as cold, with the west-facing window open. She further testified that while Mr. Spence's Suite was ordinarily tidy, it was very messy that morning. She observed clothing and other items in the front closet area, along with what she believed to be drug paraphernalia, including torches and glass pipes. Ms. Bigelow testified that this led her to believe that drug users had been present. While she was inside the Suite, she only touched the bathroom door handle. She stayed inside the Suite briefly before leaving. Mr. Favel called the WPS and Ms. Bigelow waited in the fifth-floor hallway until they arrived.

**Constable Eric Wytinck**

[22] On March 19, 2024, Cst. Wytinck and his partner responded to a report of a body in the Suite. Upon entering the Suite, Cst. Wytinck observed Mr. Baker lying on his back near the register beneath the window. He noticed that the west-facing window was open and that two blankets were covering the body. Constable Wytinck noticed blood on

Mr. Baker's head, on a pillow and the floor. He also observed an object that he believed to be a crack pipe. Mr. Baker's body was warm. Constable Wytinck's partner attempted CPR. During those efforts, Mr. Baker was moved approximately one to two feet from his original position. The Winnipeg Fire Department also attended, but resuscitation was unsuccessful. Constable Wytinck secured the scene and briefed members of the WPS Identification Unit when they arrived.

**Constable Brigitte Foidart**

[23] Constable Brigitte Foidart is a member of the WPS Identification Unit. She first attended the Suite at approximately 10:15 a.m. on March 19, 2024, accompanied by her unit supervisor. Other WPS officers were already present. She observed Mr. Baker lying on his back, with his feet pointed toward the entrance and his head facing toward the west-facing window. She testified that his head had originally rested up against the register on the floor beneath the west-facing window. However, another WPS officer had moved him during attempted medical intervention. Constable Foidart was not present when this happened.

[24] Constable Foidart testified that Mr. Baker was covered by two blankets, including a white fire blanket. She lifted the blankets and touched his body, including his hands and head. His body was still warm. She observed blood around his head and a small, round injury on the left side of his head above his ear (Ex. No. 2, p. 9). Constable Foidart did not notice any blood on the wall near the register. She recalled that the Suite was not particularly warm, and the window was open.

[25] Constable Foidart left the Suite at approximately 11:30 a.m. on March 19, 2024, and returned to WPS headquarters to conduct a fingerprint search. Mr. Baker was identified at that stage. After a search warrant was obtained, Cst. Foidart returned to the Suite at approximately 4:16 p.m. on March 19, 2024, with Sergeant Boulet and Constable Winters. Constable Winters photographed the scene (Exhibit No. 2).

[26] Constable Foidart testified that she received information from Constable Kostiuk that a suspect had worn red clothing. During her search of the Suite, a pair of red Adidas pants were recovered. Also, another pair of pants was selected because of possible blood staining. Both pairs of pants tested presumptively positive for blood and were submitted for forensic analysis (Ex. No. 2, pp. 10 and 14). Constable Foidart could not determine when the stains were deposited. A DNA sample was later obtained from the accused for comparison.

[27] In addition, a blue Walmart bag containing several articles of clothing was recovered from behind a dresser in the Suite (Ex. No. 2, p. 5). Constable Foidart could not determine when the bag had been placed there nor when the clothing had been put in the bag. The Suite contained Narcan, torches, pipes associated with drug use and numerous alcohol containers, most of which were empty. A small quantity of a substance resembling crystal methamphetamine was found on Mr. Baker. A "dime bag" was recovered beneath him.

[28] Constable Foidart found no evidence that anything had been washed in the kitchen sink or that blood had been cleaned from the scene. In her view, a person standing at the kitchen sink probably could not see the bed. Whether someone near the closet near

the front entrance of the Suite could see the bed or where Mr. Baker was lying would depend on that person's position.

[29] Constable Foidart testified that she had reviewed the surveillance video that was obtained and it showed, among other things, that the suspect at the time (the accused) had been wearing a star-patterned blanket at one point. That blanket was seized from the Suite. In addition, the surveillance video also showed garbage bags being removed from the Suite and taken to the Apartment Building's mechanical room. The WPS recovered three garbage bags from that location. During their recovery, a .22-calibre cartridge case fell from one of the garbage bags. The .22-calibre cartridge was seized. Constable Foidart could not determine when it had been placed there.

[30] A Breezer bottle with three fingerprints from the accused was recovered from the kitchen garbage. She acknowledged that numerous people had been in the Suite and that items could have been moved. She also stated that she was unaware of anyone removing bags or backpacks from the Suite but could not say what occurred when she was not there. She returned to the suite at 4:36 p.m. on March 19, 2024, after receiving information that the suspect had been seen with a metal object. No such object was recovered.

[31] On March 20, 2024, Cst. Foidart and Sgt. Boulet attended Mr. Baker's autopsy and photographs were taken as directed by the forensic pathologist. These photographs depict, among other things, Mr. Baker's head wound and a projectile recovered from his brain. The projectile was submitted for examination (Ex. No. 3).

**Constable Alan Mymryk**

[32] On March 19, 2024, Constable Mymryk obtained surveillance video from the Apartment Building and a nearby location to assist in identifying individuals present during the evening of March 18, 2024, and early morning of March 19, 2024 (Ex. No. 6.). Constable Mymryk testified that the timestamps on the surveillance video were accurate, except for the Main Street entrance camera of the Apartment Building, which was approximately six minutes slow. The recordings contained no audio. Much of the surveillance video shows the fifth-floor hallway outside the Suite, at the front Main Street doors of the Apartment Building and outside the Apartment Building. While there are several individual clips of the surveillance video, the following are of note:

- A person believed to be the accused can be seen entering the Suite at approximately 10:23 p.m. on March 18, 2024. It shows him wearing red coloured pants and a red jacket.
- People believed to be Mr. Spence and Ms. Hall can be seen entering the Suite at approximately 11:20 p.m. on March 18, 2024.
- A person believed to be Mr. Baker can be seen entering the Suite at approximately 11:19 p.m. on March 18, 2024.
- A person believed to be Ms. Hudson can be seen arriving the Apartment Building at approximately 3:02 a.m. on March 19, 2024, with several others of those known to the present in the Suite.
- A person believed to be Mr. Baker can be seen entering the Suite for the last time at approximately 3:23 a.m. on March 19, 2024.

- A person believed to be Ms. Hudson can be seen leaving the Suite at approximately 3:34 a.m. on March 19, 2024.
- People believed to be Mr. Spence, Ms. Hall and Ms. Chubb, can be seen leaving the Suite at approximately 3:38 a.m. on March 19, 2024.
- Three males, believed to be Mr. Chubb, the accused and Mr. Dumas, and two females, believed to be Ms. Flett and Ms. Porth, can be seen leaving the Suite at approximately 3:40 a.m. They can be seen carrying various bags. The male believed to be the accused appears to be wearing dark or black clothing and a white blanket over his shoulders.
- A person believed to be Ms. Hudson can be seen returning to and entering the Suite at approximately 4:30 a.m. on March 19, 2024. She can be seen leaving the Suite at approximately 4:53 a.m. on March 19, 2024, carrying a bottle, and a backpack.
- A person believed to be Ms. Hudson can then be seen returning to the Suite at approximately 7:00 a.m. on March 19, 2024, and it appears that she is not able to gain entry.
- Surveillance video after the shooting is believed to have occurred, shows the outside the Apartment Building near the Northern Hotel. A person believed to be accused can be seen wearing a white blanket over his shoulders. His pants appear to be a different colour from the red pants worn earlier.

[33] Constable Mymryk testified that based on the surveillance video, the WPS estimated that Mr. Baker was shot between 3:23 and 3:36 a.m. on March 19, 2024. Constable Mymryk acknowledged that the surveillance video might not have captured everyone entering or leaving the Suite. Also, it did not establish precisely what items were removed after the shooting was believed to have occurred. Constable Mymryk identified Mr. Dumas in the video surveillance but stated that based on their investigation the WPS did not consider him a person of interest. Mr. Dumas was not interviewed by the WPS.

[34] Constable Mymryk testified that he participated with Detective Jean-Guy Roy in interviews and identification procedures involving Mr. Spence and Ms. Hudson. Mr. Spence was first interviewed on March 19, 2024, and again on March 21, 2024. During the second interview, Mr. Spence participated in a photo lineup and identified the accused. Constable Mymryk testified that he observed no concerns about his sobriety or ability to understand the questions and procedure.

[35] Constable Mymryk testified that on March 28, 2024, the WPS located Ms. Hudson (who was told that she was a suspect at the time) on Main Street and transported her to WPS headquarters. Constable Mymryk testified that she appeared sober and understood the interview and identification procedure. He further stated that Ms. Hudson identified the accused in a photo lineup and said words to the effect of that he shot Mr. Baker in the head. I note that this is not evidence of the accused's guilt.

[36] Constable Mymryk testified that Mr. Chubb was located and interviewed on April 30, 2024.

**Abel Spence**

[37] Mr. Spence did not see the shooting.

[38] Mr. Spence testified that at the time of the shooting, he lived in the Suite for a few months. He has a criminal record, with his most recent charge dating to 2013. His girlfriend, Ms. Hall, frequently stayed with him in the Suite. Mr. Baker, who was Mr. Spence's nephew, was also a frequent visitor at the Suite and sometimes stayed overnight.

[39] Mr. Spence recalled that several people were present in the Suite on March 18 to 19, 2024, including Mr. Baker, Mr. Chubb, Ms. Porth, Ms. Chubb, Ms. Flett, and the accused. Mr. Spence testified that knew the accused as "Dice," having met him through Mr. Chubb. Mr. Spence had met the accused a few times before the shooting, including at the Suite. He described the accused as an Indigenous male with black hair and an average build. Mr. Spence testified that the accused was shorter than him and estimated his own height as six feet. Mr. Spence recalled the accused wearing red clothing that night.

[40] At times, Mr. Chubb purchased alcohol for Mr. Spence in exchange for being able to stay in the Suite. Mr. Spence testified that Mr. Chubb had been banned from the Apartment Building, but he continued to stay in the Suite. Mr. Spence testified that he believed that Mr. Chubb was selling drugs. He denied ever seeing Mr. Chubb with a weapon on March 18 to 19, 2024, or previously. Mr. Spence acknowledged that he was evicted from the Suite on March 20, 2024.

[41] Mr. Spence acknowledged that he was intoxicated on March 18 - 19, 2024. At the time he drank almost daily. On March 18, 2024, Mr. Spence spent much of the day drinking Stone Cold beer with Ms. Hall and another man (who was not one of the people present at the Suite on March 18 - 19, 2024). Mr. Spence and Ms. Hall had made several trips to the nearby Northern Hotel to purchase alcohol that day. Mr. Spence estimated that they consumed or shared approximately ten two-litre bottles of Stone Cold, and he added that he had lost count. Also, he testified that he used marijuana daily and smoked methamphetamine weekly, sometimes daily. Mr. Spence testified that he had smoked methamphetamine on March 17, 2024, and marijuana on March 18, 2024.

[42] Mr. Spence and Ms. Hall eventually returned to the Suite during the evening of March 18, 2024, with the intention of going to bed. He denied seeing any argument between the accused and Mr. Baker before he went to bed. Mr. Spence also did not recall seeing any weapons before he went to bed. Mr. Spence and Ms. Hall eventually went to bed. He was on the right hand side of the bed and Ms. Hall was on the left-hand side. Although he acknowledged substantial alcohol consumption, he denied passing out. He did not know how long he had been asleep when he was woken up by what he described as a "big bang". Mr. Spence recalled that the noise caused his ears to ring.

[43] Mr. Spence recalled sitting up in bed and seeing the accused standing approximately two to three feet away pointing a firearm at him and Ms. Hall. He described the firearm as approximately eight inches long and brown or wood coloured. Mr. Spence recalled that Ms. Hall was screaming and that the accused said words to the effect of "Fuck you guys." Mr. Spence could not recall whether he responded. Mr. Spence

testified that while he was primarily looking at the firearm, he maintained that he could also see the accused holding it. Mr. Spence also saw Mr. Baker lying on the floor approximately two to three feet away from him. Mr. Baker neither spoke nor moved. Mr. Spence did not recall seeing blood. Mr. Spence testified that some of the lights in the Suite were off, but he recalled that the hallway lights were on. Further, Mr. Spence testified that he could not recall if the accused had hand tattoos. Mr. Spence testified that he did not know why Mr. Baker had been shot and reiterated that he had not witnessed the shooting.

[44] After a brief moment, the accused told Mr. Spence and Ms. Hall that they could leave. Mr. Spence recalled that they left immediately. As they were leaving the Suite, Mr. Spence recalled seeing Ms. Flett sitting on the couch in the kitchen area and seeing Mr. Chubb standing in the hallway and Ms. Porth near the front closet area. Mr. Spence also testified that he also saw the accused move toward the kitchen and walk in circles. Mr. Spence testified that he believed that the accused was still holding the firearm.

[45] Mr. Spence acknowledged that his previous interactions with the accused had been brief and that the circumstances following his hearing the gunshot were chaotic. He was also questioned about the effects of intoxication and memory. He maintained that he recalled hearing the "loud bang" and seeing the accused with the firearm. He stated that he was in shock and he had never woken up with a firearm pointed at him. He also testified that he had never heard Ms. Hall scream in that manner. After Mr. Spence and Ms. Hall left the Suite and the Apartment Building, they went to her uncle's place. He described Ms. Hall as being "freaked out" crying. Later that morning, he went to his

brother Donald's place, as Ms. Hall's uncle did not have a phone. Mr. Spence's brother contacted the WPS who picked Mr. Spence up on March 19, 2024, for an interview. Mr. Spence was again interviewed by the WPS on March 21, 2024, where he participated in a photo lineup with the WPS. Mr. Spence identified the person he knew as "Dice" and whom he said had pointed a firearm at him. He was also shown surveillance video and identified himself and others present that evening.

**Abby Hall**

[46] Ms. Hall also did not see the shooting.

[47] Ms. Hall is Mr. Spence's girlfriend and frequently stayed at the Suite. Ms. Hall and Mr. Spence have been together for about six years. She has no criminal record. She knew Mr. Baker, who also stayed at the Suite periodically, as Mr. Spence's nephew. Ms. Hall testified that on March 18, 2024, she had consumed alcohol with Mr. Spence. She described herself as "pretty drunk" and overtired. She had been awake, apart from intermittent sleep, for approximately three or four days. She also acknowledged using methamphetamine and crack cocaine around that time. Ms. Hall could not recall how much methamphetamine she had consumed. She acknowledged the effect that drugs and alcohol can have on memory and described her recollection as consisting of "bits and pieces." She also testified that a subsequent head injury had affected her memory.

[48] Ms. Hall testified that several people came and went from the Suite on March 18 - 19, 2024, including herself, Mr. Spence, Mr. Baker, Mr. Chubb, Ms. Porth, Ms. Chubb, and the accused. She could not recall if Ms. Flett was there, although she identified her during her statement to the WPS. She had met the accused, whom she knew as "Dice,"

once or twice previously. She recalled drinking with the accused outside of the Apartment Building earlier on March 18, 2024, and telling Mr. Spence that she did not feel safe around him. She also recalled that the accused gave her a hug and that the accused had shared a sip of his alcohol with her at some point during the night.

[49] Ms. Hall and Mr. Spence made several trips to the Northern Hotel to purchase Stone Cold beer and other types of alcohol. They returned to the Suite intending to go to bed. Ms. Hall testified that she felt uneasy returning to the Suite because of all the people who were present. She testified that she had sensed a "weird vibe".

[50] Ms. Hall testified that before going to bed, she had seen the accused near the refrigerator waving what she described as a black firearm. She became frightened and told Mr. Spence that she wanted to leave. Nevertheless, they remained and went to bed. Ms. Hall acknowledged that she had not mentioned to the WPS seeing the accused with a firearm before the shooting and that she had told the WPS words to the effect that she would not have entered the Suite had she known a weapon was present. Ms. Hall testified that she withheld this information from the WPS because she feared getting into trouble. She first disclosed this observation to the Crown in January 2026. This was also contained in a Can-Say provided at trial (Ex. No. 26). Ms. Hall also testified that she did not recall seeing anyone else with a firearm in the Suite.

[51] Ms. Hall recalled that prior to going to bed, she saw the accused and Mr. Baker going through clothing in the Suite. The accused began removing his clothes and spoke about taking a shower. She described the accused as a "bit off," and stated that he was either high or drunk. Ms. Hall testified that Mr. Spence had told her that the accused and

Mr. Baker had had an argument at some point. She did not witness an argument, however, and did not know whether they knew each other.

[52] Ms. Hall and Mr. Spence eventually went to bed. She was on the left side of Mr. Spence. Ms. Hall was awakened by she described as a "big bang" that caused her ears to ring. Ms. Hall recalled that she rose to her knees on the bed and saw the accused near the refrigerator holding a firearm. She testified that she recalled the accused saying words to the effect of "If you say anything, I'll fucking kill you." She also recalled seeing Mr. Baker lying on the floor beside the bed. Ms. Hall testified that she was frightened and in shock but recalled saying to the accused words to the effect of "why are you doing this?". Ms. Hall testified that the kitchen area was dark, although the hallway lights were on. Ms. Hall maintained that she could see the accused and the firearm pointed at her.

[53] After a short time, the accused told her and Mr. Spence that they could leave the Suite. Ms. Hall quickly left the Suite with Mr. Spence, and they were followed by Ms. Chubb. Upon leaving the Suite, they entered the fifth-floor elevator. After leaving the Suite and the Apartment Building, she and Mr. Spence went to her uncle's place. She described herself as crying and shaking. Mr. Spence eventually went to his brother's residence that morning to contact the WPS because her uncle did not have a phone.

[54] Ms. Hall gave a statement to the WPS on March 20, 2024. She also acknowledged that she had not disclosed her methamphetamine use during that interview stating that she was ashamed to admit it. During a photo lineup with the WPS, Ms. Hall identified the person that she knew as "Dexter" or "Dyson" and that he was the one who pointed the firearm to her face. She testified that WPS did not direct her selection. She also

identified the accused and others who were present in the Suite as depicted in surveillance video stills.

[55] Although she had met the accused only once or twice before, Ms. Hall maintained that she recognized the face of the person who pointed the firearm at her. Ms. Hall recalled that the accused was wearing red clothing before the shooting, and she told the WPS that he was wearing red clothing afterward. She denied that she and Mr. Spence had discussed what she should tell the WPS before giving her statement.

**Nichelle Hudson**

[56] Ms. Hudson testified at trial pursuant to a witness warrant. Ms. Hudson was picked up by the WPS and brought in to testify. She acknowledged that she had recently consumed fentanyl and methamphetamine but stated that she was sober. She was held in custody overnight and completed her testimony the following day. She does not have a criminal record. She also stated that she suffers from depression, anxiety and sleeping difficulties.

[57] Ms. Hudson testified that she knew Mr. Spence, Ms. Hall and Mr. Chubb from the Main Street area and that she frequently visited the Suite. She described Mr. Chubb as her best friend, Ms. Hall as her "Street Auntie," and Mr. Baker and Ms. Flett as friends. She also testified that she had known the accused, who she referred to as "Dice," for approximately two years. She also described him as a friend.

[58] Ms. Hudson testified that she had consumed alcohol, methamphetamine, fentanyl and pills on March 18 - 19, 2024. She described herself as high but not "super drunk or high" and stated that her intoxication level was 5 out of 10. She further testified that she

wore glasses but was not wearing them that night. In that regard she stated that she could still see things at a certain distance without wearing her glasses, even in a dimly lit room.

[59] Ms. Hudson testified that she attended the Suite during the early morning of March 19, 2024. She initially stated that she arrived alone and was let in by Ms. Flett. However, a surveillance photograph showed her arriving at the Apartment Building with Mr. Chubb, Ms. Porth and Ms. Flett at approximately 3:02:24 a.m. (Ex. No. 36). Ms. Hudson acknowledged that she was mistaken and stated that the surveillance photograph assisted her in recalling some details.

[60] Ms. Hudson recalled that upon entering the Suite, she sensed that the "vibe" was not good. She recalled Mr. Chubb, Ms. Porth, Ms. Chubb, Ms. Flett and the accused were there. She stated that "Dice was in a mood" but Mr. Chubb was able to calm him down. She further recalled that Mr. Chubb suggested that she "sit with the girls," referring to Ms. Porth and Ms. Chubb, in the front closet area near the entrance.

[61] Ms. Hudson testified that when Mr. Baker arrived at the Suite, the accused began pacing. She recalled the accused saying to Mr. Baker words to the effect of "I should just fucking rob you". She testified that she was standing approximately five feet behind the accused, and heard the accused say words to the effect of "quit starting a beef with my family" before seeing the accused remove a firearm from his waist area, point it at Mr. Baker and shoot him in the head. She testified that she recalled the accused showing no emotion when he did so.

[62] Ms. Hudson did not recall seeing the accused walking around with a gun before the shooting. Ms. Hudson initially recalled that there was only one shot. She later suggested that there might have been two shots fired because her head was spinning and her ears were ringing. She subsequently returned to her recollection of there only having been one shot fired. At trial, she described the firearm as a black "zip gun," approximately 18 inches long and probably single-barrelled. She acknowledged having previously described it to WPS as having one or two barrels. She testified that she was behind the accused when he took out the firearm and shot Mr. Baker and therefore did not get a good look at it. Although the lighting in the Suite was dim, she maintained that she could see what happened. Ms. Hudson testified that she left the Suite immediately after seeing the accused shoot Mr. Baker and she went outside the Apartment Building. She described the shooting as a "buzz kill" and said she was panicking.

[63] Once she was outside the Apartment Building, she encountered Mr. Chubb and Ms. Porth. Ms. Hudson subsequently returned to the Suite. She testified that once inside the Suite, she recalled seeing Mr. Baker lying on the floor and shaking. She nudged him with her foot, climbed onto the bed and told him she would get help. Ms. Hudson acknowledged that she did not contact the WPS, stating that she was afraid of the accused. She testified that she collected alcohol and items belonging to Mr. Chubb and Ms. Porth and then left the Suite. She then met Ms. Porth outside the Apartment Building, gave her belongings to her and parted ways. She recalled seeing the accused, Mr. Chubb, Ms. Chubb, Ms. Porth and Ms. Flett leave together.

[64] Ms. Hudson gave differing explanations for why she returned to the Suite. She stated that she was collecting items that belonged to Mr. Chubb and Ms. Porth because they were a couple. She also testified that she had spoken with Ms. Porth about obtaining drugs from her.

[65] Ms. Hudson testified that later in the day, March 19, 2024, she saw Mr. Chubb and the accused outside the Northern Hotel, and she recalled that the accused threatened to kill them if they said anything. She acknowledged that she did not mention this threat in her statement to the WPS.

[66] Ms. Hudson described the accused as approximately five feet ten inches tall, muscular and someone she believed to be Indigenous and Pakistani. She further stated that he had short hair in a "fade" hairstyle. She also recalled that the accused sometimes wore glasses but was not wearing them that night. She could not recall hand tattoos. She described his clothing at the time of the shooting as being dark or black and recalled seeing the accused wearing what she described as a white hospital blanket over his head and shoulders at times.

[67] On March 28, 2024, the WPS approached Ms. Hudson on Main Street. She testified that she gave the WPS the accused's name when they approached her. Ms. Hudson testified that the WPS told her that she needed to come with them or risk being arrested as a suspect. Ms. Hudson testified that she did not go to the WPS voluntarily. That said, she gave a statement because she believed that Mr. Baker did not deserve what happened to him. She participated in a photo lineup and identified the accused as being the person who shot Mr. Baker.

[68] Ms. Hudson denied being drunk while giving her statement to the WPS but acknowledged having consumed approximately one gram of methamphetamine. She testified that she has developed a high tolerance over the course of approximately seven years of addiction. She could not recall whether she told the WPS that she had used fentanyl on March 18 and 19, 2024. She also acknowledged taking pills known as "gabbies" on those dates, and that she had not disclosed this to the WPS. Ms. Hudson acknowledged that alcohol and drugs can affect perception and memory. She stated that sometimes she forgets what happened the previous day. However, she stated that she had never seen someone get shot before and that she remembered the really "loud bang".

[69] At trial, Ms. Hudson acknowledged speaking with Mr. Chubb about the shooting before giving her statement to the WPS and that she did not disclose this to the WPS. However, she denied agreeing with Mr. Chubb about what she should say to the WPS. Ms. Hudson testified that she was aware that Mr. Chubb sometimes carried a weapon but testified that she did not see him with one that night. She also denied that she returned to the Suite to remove Mr. Chubb's belongings to protect him. She also denied having falsely identified the accused as the shooter to protect Mr. Chubb.

[70] When questioned about differences between her trial testimony and WPS statement, Ms. Hudson said she told the WPS what she wanted to tell them. She maintained that she had told the WPS the truth, but that she was not going to provide them "every single detail."

[71] At trial, Ms. Hudson also stated for the first time that she believed Mr. Chubb and the accused had planned the killing of Mr. Baker, referring to it as a "set up." She did not provide any details to support this belief other than saying that she recalled that Mr. Chubb did not seem surprised when it happened. Also, Ms. Hudson denied identifying the accused as the shooter in retaliation for his having stabbed her cousin in the stomach the summer before Mr. Baker's shooting.

**Detective Sergeant Jerett Kyle Reid**

[72] In March 2024, Detective Sergeant Reid was a member of the WPS Homicide Unit, and he was involved in the investigation regarding shooting. On March 20, 2024, Det. Sgt. Reid and Det. Paul Clark located Ms. Hall and transported her to WPS headquarters for her interview. Ms. Hall appeared sober and cooperative. The photo lineup procedure was explained to her. During the interview, Ms. Hall identified the accused as the person she had seen with the firearm. Further, he stated that Ms. Hall also identified people who were in the Suite as depicted in surveillance video stills.

[73] Detective Sergeant Reid testified that he met with Ms. Chubb during the investigation. Ms. Chubb had difficulty maintaining focus and took considerable time to respond. Given her condition, it was determined not to obtain a statement. There was no follow-up with Ms. Chubb, and she was not called to testify.

**Detective Jean-Guy Roy**

[74] Detective Roy participated in witness interviews and identification procedures during the investigation. On March 19, 2024, Det. Roy and Cst. Mymryk interviewed Mr. Spence. Mr. Spence was advised that he was neither under arrest nor considered a

suspect. Mr. Spence reviewed surveillance stills, identified those present at the Suite and wrote their names in photographs and initialed them. He was free to leave afterward.

[75] On March 21, 2024, Mr. Spence was interviewed a second time. The photo lineup procedure was explained to him. Mr. Spence selected the photograph of the accused as the person he knew as "Dice" and as who had pointed the gun at him and Ms. Hall.

[76] Detective Roy also participated in the interview with Ms. Hudson on March 28, 2024. The photo lineup procedure was explained to her. The photographs appeared in a different order from those shown to Mr. Spence. Ms. Hudson identified the accused as "Dice" and stated words to the effect that she saw him shoot Mr. Baker in the head.

**Tony Brown — DNA Expert**

[77] Mr. Brown was qualified as an expert in DNA analysis (Ex. No. 22). Mr. Brown testified that two samples from the red Adidas pants were analyzed (Ex. No. 2, p. 13). Sample AA was collected near the front of the leg, and sample AB from the waistband. Mr. Brown testified that the DNA findings regarding Sample AA and the accused's known sample resulted in a finding that it was approximately 33 quadrillion times more likely if the DNA originated from the accused than if it originated from an unrelated person selected at random. Mr. Brown opined that this likelihood ratio provided very strong support for the finding that the DNA originated from the accused.

[78] Mr. Brown explained that the standard practice is to limit testing to two samples. Also, Mr. Brown acknowledged that DNA transfer was possible. However, he noted that the red Adidas pants were not contained in the blue Walmart bag containing other articles of clothing (Ex. No. 2, p. 5).

### Shane Chubb

[79] Mr. Chubb testified that in March of 2024, he was homeless and was regularly using methamphetamine and alcohol. Mr. Chubb effectively denied having any knowledge of who was present or what had occurred at the Suite on March 18 - 19, 2024. While he acknowledged providing a statement to the WPS on April 30, 2024, he recanted that statement at trial. He testified that he had used methamphetamine shortly before being taken into custody. He also testified that had been using methamphetamine for several days and was in what he described as a manic state when he gave his statement to the WPS. Mr. Chubb maintained that he did not remember much of what he told the WPS and, in any event, his statement was false.

[80] The Crown proceeded under s. 9(2) of ***The Canada Evidence Act***, R.S.C. 1985, c. C-5, in relation to inconsistencies between Mr. Chubb's testimony and his prior statement. Mr. Chubb essentially maintained that he did not know what had occurred and that his prior account was untrue. The Crown subsequently commenced what is commonly known as a ***KGB*** application seeking to have Mr. Chubb's prior statement admitted for the truth of its contents. The Crown ultimately abandoned the ***KGB*** application.

## POSITION OF THE PARTIES

### THE CROWN'S POSITION

[81] The Crown submits that Ms. Hudson testified that the atmosphere in the Suite changed when Mr. Baker arrived. The accused made threatening remarks towards Mr. Baker and then shot him in the head at close range. Ms. Hudson has known the

accused for approximately two years. She was positioned about five feet behind him when he shot Mr. Baker. She also testified that the accused threatened her and Mr. Chubb later that day if they disclosed what had occurred.

[82] While it acknowledges Ms. Hudson's drug and alcohol consumption and the inconsistencies in her evidence, the Crown submits that her account of Mr. Baker's shooting was nevertheless credible and reliable. The Crown rejects the suggestion that Ms. Hudson fabricated her account to protect Mr. Chubb or that she should be treated as a ***Vetrovec*** witness.

[83] The Crown submits that Ms. Hudson's evidence is also supported by the evidence of Ms. Hall and Mr. Spence. They testified that they awoke to a loud bang, saw the accused holding a firearm and observed Mr. Baker lying on the floor. The Crown submits that inconsistencies and discrepancies in their evidence do not undermine the credibility and reliability of their central observations.

[84] The Crown relies on surveillance video confirming the movements of those present in the Suite and tracking the accused through changes of clothing and footwear. It further relies on the DNA evidence associated with the red Adidas pants that it states the accused was seen wearing. The Crown also relies on evidence from the forensic pathologist that establishes that Mr. Baker was shot in the head from a close distance. The Crown submits that the absence of gunshot residue on clothing worn earlier in the evening does not undermine its case, suggesting that the accused had changed his clothing by the time of the shooting.

[85] As to intent, the Crown maintains that there is no evidentiary foundation of intoxication negating the requisite intent or of an accidental shooting. On the contrary, the evidence established the intention necessary for murder.

**THE DEFENCE'S POSITION**

[86] On the issue of identity, the defence submits that the Crown's case depends principally on Ms. Hudson, who it argues is a ***Vetrovec*** witness. In sum, the defence submits that her evidence is neither credible nor reliable. The defence also challenges Ms. Hudson's opportunity to observe the shooting and points to her failure to describe certain identifying features of the accused.

[87] The defence submits that Ms. Hall and Mr. Spence were intoxicated when they claim to have awoken to a loud bang and observed the accused holding a firearm. In any event, the defence submits that they did not see the shooting and that their evidence does not establish that the accused fired the fatal shot.

[88] The same applies to the surveillance video, which does not depict the shooting or the accused carrying a firearm. Also, the defence points to the fact that no firearm was recovered and states that the forensic evidence does not directly establish that the accused was the shooter.

[89] Alternatively, the defence submits that even if it is proven beyond a reasonable doubt that the accused fired the fatal shot, the appropriate verdict is manslaughter. In sum, the circumstances raise a reasonable doubt as to whether the accused intended to kill Mr. Baker or cause bodily harm he knew was likely to cause death.

## APPLICABLE LEGAL PRINCIPLES

[90] Pursuant to s. 229 of the ***Criminal Code***, the Crown must prove the following essential elements beyond a reasonable doubt to establish a conviction for second degree murder:

i) that the accused caused the death of Mr. Baker by an unlawful act and that he did so with either;

ii) the intention of killing Mr. Baker; or,

iii) the intention of causing Mr. Baker bodily harm that the accused knew was likely to cause Mr. Baker's death, and was reckless as to whether Mr. Baker died or not.

[91] The Crown must thus prove beyond a reasonable doubt that the accused not only killed Mr. Baker, but that he either meant to do so or meant to cause him bodily harm that he knew was likely to cause death and was reckless whether or not Mr. Baker died. If the Crown fails to prove intent beyond a reasonable doubt, then the accused can only be found guilty of the included offence of manslaughter.

### CREDIBILITY AND RELIABILITY

[92] Credibility relates to whether a witness is telling the truth, while reliability concerns a witness's accuracy and their ability to observe and recall events. A credible witness may thus give unreliable evidence (see ***R. v. H.C.***, 2009 ONCA 56, at para. 41 and ***R. v. Gold***, 2021 MBQB 5, at para. 38). The court can accept all, some, or none of a witness's testimony (see ***R. v. W.H.***, 2013 SCC 22, at para. 32 and ***Gold*** at para. 41). Included in this consideration is whether the witness' evidence is consistent with any independent

evidence that has been accepted by the court (see ***Persaud v. Manitoba***, 2022 MBKB 209, at para. 66).

***Vetrovec***

[93] In ***Vetrovec v. The Queen***, [1982] 1 S.C.R. 811, 1982 CanLII 20 (SCC), the Supreme Court of Canada observed that the testimony of an unsavory witness must be approached with great care and caution. In such a scenario, a trier of fact should look for independent confirmatory evidence capable of convincing it that the witness is telling the truth. Confirmatory evidence does not, however, need to implicate the accused (see ***R. v. Khela***, [2009] 1 S.C.R. 104, at paras. 39 – 46). Moreover, if the trier of fact finds an unsavoury witness's testimony to be trustworthy, the trier of fact can rely on it even if it is not confirmed by other evidence (see ***R. v. Brooks***, [2000] 1 S.C.R. 237, 2000 SCC 11 (CanLII)).

[94] The Manitoba Court of Appeal has recently addressed the issue of what ***Vetrovec*** requires in the context of a judge alone trial. In the decision of ***R. v. Musa***, 2026 MBCA 72, at paras. 53 – 54, the court provides as follows:

> [53] It is useful to review exactly what the *Vetrovec* caution requires. Although *Vetrovec* cautions are a form of jury instruction, a judge sitting alone also must remain alive to the frailties of such evidence. However, in their reasons, judges need not expressly articulate the principle or its application to the case before them (see *R v Newman*, 2009 NLCA 32 at para 16). Here, the trial judge made specific reference to the need to scrutinize David's evidence and to seek confirmatory evidence if possible. As stated earlier, the trial judge was alive to the frailties of David's evidence.
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> [54] In *R v Nelson*, 2020 BCCA 204 [*Nelson*], also a judge-alone case, the Court recognized that there may be overlap between the *Vetrovec* and overall reliability analyses, particularly where the witness' memory was impaired due to substance use. In that case, the parties disagreed about whether a particular witness was a *Vetrovec* witness. Justice Griffin, for the Court, opined as follows (*Nelson* at para 81):

> On appeal the parties disagree as to whether the judge did or did not consider Mr. Vieira to be a *Vetrovec* witness. I see this debate as formalistic and missing the point. The important issue is whether the judge appreciated and considered the defence arguments going to Mr. Vieira's credibility, before accepting his evidence. In my view, he did so.

[55] In *R v Stevenson*, 2024 SKCA 40 at para 43, aff'd 2024 SCC 41, the Saskatchewan Court of Appeal recently made the following comments regarding the application of *Vetrovec* in judge-alone trials:

> *Vetrovec* does not compel triers of fact to assess evidence in a prescribed way. It simply requires them to recognize that the evidence of certain witnesses must be approached with particular caution, to understand why that is the case, and to be wary of accepting such testimony in the absence of confirmatory evidence. But *Vetrovec* does not impose a legal requirement that the testimony of an unsavoury witness be confirmed before it can be accepted by a trier of fact. The important question is *whether* a trier of fact's confidence in an unsavoury witness is restored, not *how*. In a judge-alone case, as long as a trial judge is mindful of the need to exercise the appropriate degree of caution, and is properly oriented to the factors that give rise to the need for such caution, they are entitled to find that an unsavoury witness's evidence is worthy of belief even if it stands on its own.
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> [emphasis in original]

[95] Finally, given some of the evidence led at trial, I am mindful of the considerations that must be applied to circumstantial evidence. The leading case remains ***R. v. Villaroman***, 2016 SCC 33, where the Supreme Court of Canada 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. …
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> . . . . .
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> [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.
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> . . . . .
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> [35] … In assessing circumstantial evidence, inferences consistent with innocence do not have to arise from proven facts: *R. v. Khela*, 2009 SCC 4, [2009] 1 S.C.R. 104, at para. 58; see also *R. v. Defaveri*, 2014 BCCA 370, 361 B.C.A.C. 301, at

> para. 10; *R. v. Bui*, 2014 ONCA 614, 14 C.R. (7th) 149, at para. 28. 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.
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> . . .
>
> [37] When assessing circumstantial evidence, the trier of fact should consider "other plausible theor[ies]" and "other reasonable possibilities" which are inconsistent with guilt … [and which] must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.
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> . . . . .
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> [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. …

[96] Further, in ***R. v. Meier***, 2025 MBCA 74, the Manitoba Court of Appeal stated what when dealing with circumstantial evidence the court must look at the totality of the evidence:

> [31] Rarely will a circumstantial case turn on a single piece of evidence. As such, a trial judge must look at the totality of the evidence, rather than examining each piece of evidence individually. This point was made by the Nova Scotia Court of Appeal in *R v Downey*, 2018 NSCA 33 at para 100:
>
> > What the trier of fact (whether judge or jury) is obliged to do is have regard to the whole body of evidence in its totality and decide whether the essential elements of the offence have been proven beyond a reasonable doubt. It is a serious error of law for the decision-maker to isolate every particular piece of evidence and examine it forensically through the lens of criminal proof beyond a reasonable doubt.

## ANALYSIS AND DECISION

### DID THE ACCUSED FATALLY SHOOT MR. BAKER AT CLOSE RANGE?

[97] I will first address the evidence that is uncontroverted or which I readily accept.

[98] There is no dispute that on March 18 and 19, 2024, several people gathered in the Suite. Among those present were Mr. Baker, Mr. Spence, Ms. Hall, Ms. Hudson and the accused. I reach this conclusion easily given the testimony heard at trial, the surveillance video, the forensic and DNA evidence.

[99] The surveillance video shows Mr. Spence and Ms. Hall returning to the Suite at around 11:20 p.m. on March 18, 2024. It also shows Mr. Baker returning to the Suite for the last time at 3:23 a.m. on March 19, 2024. I accept that Mr. Baker was shot shortly after he can be seen entering. This is based on the surveillance video showing all the people leaving the Suite between approximately 3:34 a.m. and 3:40 a.m. Although the footage does not depict the shooting, it provides an objective chronology against which the witnesses' accounts may be assessed.

[100] Having reviewed the surveillance video at trial and thereafter, I am satisfied that it shows the accused wearing red clothing earlier on March 18, 2024, and that he was subsequently wearing dark or black clothing thereafter. The same can be said for the surveillance video which depicts the accused changing footwear in the fifth-floor hallway and wearing a blanket over his shoulders at different points. This can all readily be seen on the surveillance video.

[101] The forensic evidence establishes that Mr. Baker died from a gunshot wound to the left side of his head. It also confirms that a .22-calibre projectile was recovered from his head. The trajectory of that projectile was left to right, slightly upward and front to back. The presence of stippling establishes that the firearm was discharged at close range, although the precise distance could not be determined.

[102] However, none of this evidence establishes that the accused discharged the firearm that killed Mr. Baker. Therefore, it is necessary to consider the balance of the evidence.

**Shane Chubb**

[103] Mr. Chubb's evidence was essentially a recantation of his statement and a denial of any knowledge of the shooting or of those involved. The Crown abandoned its ***KGB*** application, and I have not relied upon his statement to the WPS. Therefore, his testimony provides no meaningful assistance to my analysis.

**Abby Hall and Abel Spence**

[104] I will deal with the evidence of Ms. Hall and Mr. Spence in tandem. Both acknowledged drug and alcohol consumption on March 18, 2024. Ms. Hall also described a prolonged period without sleep, and a recollection consisting of "bits and pieces". Mr. Spence acknowledged substantial alcohol consumption and marijuana use on March 18, 2024. He also acknowledged using methamphetamine on March 17, 2024. These circumstances raise concerns about their ability to perceive and accurately recall events. Their evidence therefore requires scrutiny.

[105] I accept their evidence that they returned to the Suite in the evening of March 18, 2024, after drinking and purchasing alcohol at the Northern Hotel with the intention of going to bed. Their return to the Suite is consistent with the unfolding of events as seen in the surveillance video. Ms. Hall testified that she awoke to a "big bang", while Mr. Spence described a "loud bang". Both recalled their ears ringing. Ms. Hall described

being shocked and screaming. Mr. Spence recalled that Ms. Hall was screaming in a manner he had never heard before.

[106] Both testified that after being woken up they observed the accused standing a few feet away and pointing a firearm at them. Ms. Hall recalled the accused saying words to the effect of "If you say anything, I'll fucking kill you", to which she responded with words to the effect of "Why are you doing this?". Mr. Spence recalled the accused saying words to the effect of "Fuck you guys". Both testified that they left the Suite immediately after being permitted to do so by the accused. Both said that they were followed by Ms. Chubb. Their departure from the Suite (including Ms. Hall leaving while carrying one of her shoes in hand) is consistent with the unfolding of events in the surveillance video.

[107] Both had previously met the accused. Ms. Hall testified that she had met the accused once or twice previously. She recalled that the accused had shared alcohol with her on March 18, 2024, and that he had given her a hug. Ms. Hall also testified that the accused made her feel uncomfortable. Mr. Spence knew him as "Dice", having met him through Mr. Chubb, and recalled his previous attendance at the Suite. Both subsequently identified the accused in a WPS photo lineup as the one holding the firearm.

[108] Applying ***R. v. Tatham***, 2002 MBQB 241, at paras. 9 – 17, I have considered their prior familiarity with the accused, the description of the lighting, their sudden awakening, their state of shock and their opportunities to observe him. Ms. Hall testified that although the kitchen was dimly lit, the hallway lights were on, and she could see the accused's face. She remained adamant that she would recognize someone pointing a firearm at her. Mr. Spence testified that some lights were on and that the accused was

standing about two or three feet away. While he was primarily focused on the firearm, Mr. Spence maintained that he also looked at the person holding the firearm and recognized the accused. Finally, Mr. Spence testified that he had never woken up with a firearm pointed at him. In considering their prior familiarity, proximity and opportunities for observation, I am satisfied that both had a sufficient basis to recognize him.

[109] I have also considered Ms. Hall and Mr. Spence's relationship and opportunities to discuss the incident before providing statements to the WPS and giving evidence at trial. This requires caution in treating their accounts as independent confirmation. However, having assessed their evidence individually, I find no basis to conclude that they fabricated or agreed upon a false identification of the accused.

[110] There are inconsistencies and limitations in their evidence. Ms. Hall testified that she saw the accused waving a firearm before the shooting, a detail that she omitted from her WPS statement because she feared getting into trouble. I attach little weight to that aspect of her testimony. She also maintained that the accused wore red clothing throughout the evening. This is contrary to the surveillance video which shows that the accused changed into dark or black clothing. I likewise attach little weight to that recollection.

[111] The defence emphasizes that neither of them mentioned the accused wearing a baseball style cap. However, the evidence does not establish that the accused wore the cap continuously. I have already found that the accused changed his clothes at some point. Further, Ms. Hall testified that she recalled that, at some point during the night, the accused mentioned taking a shower at some point. It is doubtful that he would have

kept his cap on while changing or taking a shower. The defence also emphasizes that neither of them could recall whether the accused had hand tattoos. I accept the Crown's submission on this point. There is no evidence to suggest that the accused had those hand tattoos at the time. I therefore attach limited significance to these omissions.

[112] The witnesses also differed on the firearm's colour and length and the words spoken by the accused. Mr. Spence described an approximately eight-inch, brown or wood-coloured firearm, while Ms. Hall gave a somewhat different description and acknowledged that she had never previously seen a firearm. These discrepancies limit the precision of their recollections. However, there is no evidence of another firearm being present in the Suite. Nor is there evidence of another shot being fired. Therefore, considering the context of their sudden awakening and what Mr. Spence described as a "chaotic" scene, I do not find that their central observations are materially undermined.

[113] I have also considered their drug and alcohol consumption, Ms. Hall's sleep deprivation and memory difficulties, the circumstances of their observations and the inconsistencies in their evidence. These concerns warrant scrutiny, but do not render all of their evidence to be unworthy of belief. I find that Ms. Hall and Mr. Spence are credible and their evidence reliable concerning their central observations. Both awoke to a "big bang" or "loud bang" and saw Mr. Baker lying on the floor. Both recognized the accused holding a firearm pointed toward them. Both testified that the accused made a remark of some sort towards them and both fled the Suite shortly after the accused said that they could leave and were followed by Ms. Chubb.

**Nichelle Hudson**

[114] The defence submits that Ms. Hudson is a ***Vetrovec*** witness. This characterization is disputed by the Crown. I need not resolve that issue. However, Ms. Hudson is the only witness who testified seeing the accused shoot Mr. Baker and her evidence raises legitimate concerns respecting credibility and reliability. Accordingly, I have approached her testimony with the caution that would be warranted if she were a ***Vetrovec*** witness. As stated in ***Musa***, in a judge-alone trial, the essential requirement is to recognize the particular dangers affecting the witness's evidence and to carefully assess its credibility and reliability.

[115] The defence has raised many concerns regarding Ms. Hudson's evidence. I will not address all of them. The principal concerns arise from:

- Her consumption of methamphetamine, fentanyl, alcohol and pills on March 18 – 19, 2024, and her acknowledgment that she was under the influence of methamphetamine when she provided her WPS statement on March 28, 2024.
- Her evidence that she told the WPS what she wanted to tell them when she gave her statement and that she wasn't going to get into all the details.
- Her evidence that she ordinarily wears glasses and was not wearing them when she witnessed the shooting.
- Her friendship with Mr. Chubb and her failure to disclose her discussion with him before providing her statement to the WPS.

- Her statement for the first time at trial that the accused subsequently threatened to kill her and Mr. Chubb if they disclosed the shooting.
- She also stated for the first time at trial that she believed that Mr. Baker's shooting was a "set up" involving Mr. Chubb and the accused.

[116] There are also aspects of Ms. Hudson's testimony that address some of these concerns and impact favourably on my assessment of her credibility and reliability:

- She has no criminal record and has limited experience of being interviewed by the WPS.
- She was forthright about her drug consumption, including having consumed fentanyl and methamphetamine before being apprehended on a warrant and brought to court.
- She testified that she has high tolerance, given her longstanding drug addiction. She assessed her intoxication on March 18 – 19, 2024, as approximately 5 out of 10.

[117] Ms. Hudson testified that she sensed a "weird vibe" upon Mr. Baker arriving at the Suite. She described seeing the accused pacing in the Suite when Mr. Baker arrived and hearing him make threatening remarks to Mr. Baker before drawing a firearm and shooting him in the head at close range. She placed herself approximately five feet behind the accused and maintained that she could see what happened despite the dim lighting and her not wearing her glasses. I note that there was no meaningful evidence at trial to refute her evidence regarding her ability to see without having her glasses.

[118] Ms. Hudson testified that she was the first to flee the Suite with others following. Her leaving first and being followed by the others is consistent with the unfolding of events as seen in the video surveillance. Ms. Hudson had known the accused for approximately two years and considered him a friend. She identified him in a WPS photographic lineup and, during her statement, described him as the one who shot Mr. Baker.

[119] Applying the guidance in ***Tatham***, I have considered her prior familiarity with the accused, her stated vantage point, her description of the lighting conditions and her ability to observe. Although her intoxication and her lack of glasses require caution, this was the recognition of someone well known to her rather than identification of a stranger. I am satisfied that she had a sufficient opportunity to recognize the accused.

[120] The defence emphasizes that Ms. Hudson, like Ms. Hall and Mr. Spence, did not describe the accused wearing a baseball-style cap or having hand tattoos. For the reasons previously given, I attach limited significance to those omissions. Ms. Hudson also gave varying descriptions of the firearm and had some uncertainty concerning the number of shots fired. However, I do not rely on her description of the firearm to establish the firearm's precise characteristics. Here, I note that the forensic evidence establishes one gunshot wound to Mr. Baker's head involving a .22 calibre projectile, and there is no evidence of a second shot being fired in the Suite. In sum, the discrepancies do not materially undermine her central observation.

[121] The defence further submits that Ms. Hudson falsely implicated the accused to protect Mr. Chubb. It relies on several grounds: (i) Ms. Hudson's relationship with

Mr. Chubb (ii) her return to the Suite and varying explanations for doing so (iii) the absence of a recovered firearm and her acknowledgment that she had previously seen Mr. Chubb carrying a weapon, and (iv) her undisclosed discussion with him before providing her WPS statement.

[122] I have considered this theory. However, it must be assessed against the evidence as a whole. Although Ms. Hudson testified that she had seen Mr. Chubb with a weapon on past occasions, there is no evidence placing a firearm in his possession at the relevant time. Further, as discussed below, while the inability to recover the firearm presents a limitation, it does not materially diminish the accepted evidence of Ms. Hall and Mr. Spence identifying the accused holding a firearm, immediately after the shooting.

[123] While I find Ms. Hudson's allegation that Mr. Chubb participated in a "set up" regarding Mr. Baker's shooting to be speculative, it is difficult to reconcile with the suggestion that she harboured an intention to protect him. The defence also suggests that Ms. Hudson falsely implicated the accused in retaliation for stabbing her cousin during the summer before Mr. Baker's shooting. I have also considered this possibility. However, there is no evidence to conclude that this did influence her evidence. First, she denied it. Second, I find her explanation that she provided a statement to the WPS and testified because Mr. Baker did not deserve what happened to him to be more persuasive.

[124] Finally, I attach little weight to Ms. Hudson's allegation, first raised at trial, that the accused subsequently threatened her and Mr. Chubb outside the Northern Hotel. Nor do I rely on her belief that the shooting was a "set up" as proof of any plan. Neither allegation forms part of the basis for my finding on identity.

**CONFIRMATORY EVIDENCE**

[125] As explained in ***Khela***, at paras. 39 – 44, confirmatory evidence must be sufficiently independent and capable of providing a rational basis for increased confidence that the witness is telling the truth. However, the confirmatory evidence need not independently establish the accused's guilt. The court must consider be satisfied that it is independent evidence that can provide comfort to the trier of fact that the witness is being truthful. Further, the court must consider the materiality of the confirmatory evidence, that is, whether it is the kind of evidence that is capable of supporting the trier of fact's faith in relevant aspects of the witness' account (***R. v. Ponce***, 2012 MBCA 87, at paras. 62 - 75).

[126] Here, I find the following evidence to be confirmatory:

- The surveillance video is consistent with Ms. Hudson's testimony that she was the first to flee the Suite as she stated.
- The surveillance video is also consistent with Ms. Hudson's testimony that the accused was wearing black or dark clothing.
- The forensic evidence establishes that Mr. Baker sustained a gunshot wound to the head at close range. This is consistent with her description of the shooting.
- Ms. Hall and Mr. Spence testified that, immediately after awakening to loud noise, they observed Mr. Baker lying on the floor and the accused holding a firearm. As noted at various points in these reasons, their observations place the firearm in the accused's hand at the critical time. There is no other evidence of someone else having or holding a firearm.

[127] I find that the foregoing is confirmatory evidence that is independent and material and it provides me with confidence that Ms. Hudson is telling the truth regarding what she saw and heard as it relates to Mr. Baker's shooting. I have assessed Ms. Hudson's credibility and reliability separately, while considering the concerns raised by the defence. Having considered the frailties in her evidence and the confirmatory evidence, I find Ms. Hudson credible and her evidence reliable on the central issue that she heard the accused make threatening remarks to Mr. Baker and saw him shoot Mr. Baker in the head at close range.

[128] I have considered the possibility that someone else, including Mr. Chubb, fired the fatal shot or that Ms. Hudson, Ms. Hall and Mr. Spence mistakenly or deliberately identified the accused. I have also considered whether the accused's possession of a firearm immediately afterward could be consistent with someone else having fired it.

[129] Given Ms. Hudson's accepted eyewitness account, however, along with Ms. Hall's and Mr. Spence's observations and the forensic and surveillance evidence, the evidence does not leave me with a reasonable doubt that someone other than the accused shot Mr. Baker on March 19, 2024.

[130] I am satisfied that the Crown has proven beyond a reasonable doubt that the accused caused the death of Mr. Baker by an unlawful act.

[131] I will now address the next question.

## INTENT FOR SECOND-DEGREE MURDER

### DID THE ACCUSED HAVE THE STATE OF MIND REQUIRED FOR MURDER?

### INTOXICATION

[132] The defence argues that the accused's level of intoxication is a relevant consideration. In that connection, as stated by the Manitoba Court of Appeal in ***R. v. Forbister***, 2024 MBCA 53, at paras. 16 - 17:

> 16. The extent of intoxication required to negate the specific intent required for murder may vary depending on the circumstances of the homicide. As stated in *R. v. Robinson*, [1996] 1 SCR 683, 1996 CanLII 233 at para 52 (SCC):
>
> > [I]n cases where the only question is whether the accused intended to kill the victim…while the accused is entitled to rely on any evidence of intoxication to argue that he or she lacked the requisite intent and is entitled to receive such an instruction an instruction from the trial judge (assuming of course there is an "air of reality" to the defence), *it is my opinion that intoxication short of incapacity will in most cases rarely raise a reasonable doubt in the minds of jurors.*
>
> 17. In ***Daley*** at para 42, the Supreme Court expanded on the concept in stating, 'where death is the obvious consequence of the accused's act, an accused might have to establish a particularly advanced degree of intoxication to successfully avail himself or herself of an intoxication defence of this type."

[133] The issue therefore is whether the accused was in a state of advanced intoxication that he lacked the requisite intent. I am mindful that the onus is on the Crown to disprove this beyond a reasonable doubt.

[134] There is no dispute that those present in the Suite consumed drugs and alcohol. Constable Foidart testified that the accused's fingerprints were found on a Breezer bottle. Also, Ms. Hall testified that at some point the accused shared some of his alcohol. That is the extent of the evidence as to how much alcohol the accused may have consumed. While there is some evidence of others consuming drugs and evidence of drug

paraphernalia in the Suite, there is no evidence whether the accused consumed any drugs.

[135] I am mindful that Ms. Hall testified that the accused was acting weird and that he did not "seem right". She also recalled seeing him "flailing" around looking at clothes while in the Suite and said that he was either drunk or high. Further, Mr. Spence recalled that the accused was walking around the Suite and exhibiting strange behaviour and Ms. Hudson said that the accused was "in a mood".

[136] That being said, none of this evidence speaks to the following: (i) how much and what type of alcohol or drugs the accused may have consumed; (ii) the accused's level of tolerance for alcohol and drugs; and, (iii) the timing of the accused's consumption of alcohol or drugs relative to the timing of Mr. Baker's shooting.

[137] I have considered and applied ***Forbister*** and ***Daley*** to address whether there is an evidentiary foundation that is reasonably capable of supporting that the accused had a level of intoxication that was sufficient to negate intent. In considering the evidence as whole, I am not satisfied that there is an "air of reality" to conclude that the accused had reached the necessary level of intoxication. This conclusion does not alter the Crown's continuing burden to prove beyond a reasonable doubt that the accused possessed the required intent for murder under s. 229(a) of the ***Criminal Code***, notwithstanding the evidence of consumption and/or intoxication. I will therefore continue with that analysis.

[138] The Crown submits that the accused confronted Mr. Baker before fatally shooting him at close range. It relies on Ms. Hudson's evidence that she heard the accused make threatening remarks to Mr. Baker before shooting him. I accept her evidence.

[139] Moreover, Mr. Baker was shot in the head at close range – between a few inches and a few feet. This suggests that the location of the entry wound was not an accidental, further suggesting awareness of the likely consequences of the shooting.

[140] I also find that the accused's conduct after the shooting is a relevant consideration. He did not assist Mr. Baker or seek medical assistance. There is no evidence to suggest that he treated it as an accident or something unintended. Rather, immediately after the shooting occurred, the accused said to Ms. Hall and Mr. Spence words to the effect of "If you say anything, I'll fucking kill you" or "Fuck you guys". Then he left the Suite at approximately 3:40 a.m. making no attempt to contact 911 or an ambulance.

[141] As previously noted, I find that the defence of advanced intoxication lacks an air of reality. Nevertheless, I have also considered any evidence of the accused's consumption of intoxicants, together with all other evidence bearing on his state of mind, in determining whether the Crown has proven the requisite intent. Although accident was not advanced as a defence, I have considered whether the evidence provides a reasonable basis for concluding that the firearm discharged accidentally. Having regard to the evidence as a whole, I find no reasonable basis for that conclusion.

[142] In ***R. v. Walle***, 2012 SCC 41, the Supreme Court of Canada held that a trier of fact may draw the common sense inference that a person ordinarily intends the natural and probable consequences of their actions. The inference is permissive, not mandatory,

and must be considered together with all evidence realistically bearing on the accused's state of mind. Applying that principle, I have considered the evidence cumulatively, and I find that when the accused shot Mr. Baker in the head at close range, he either intended to cause his death or intended to cause bodily harm that he knew was likely to cause death and was reckless whether Mr. Baker's death would ensue.

[143] In addition, I have again considered whether the evidence supports any reasonable alternative inference inconsistent with guilt. Such alternative inferences must be assessed through logic and experience applied to the evidence or the absence of evidence, rather than speculation (***Villaroman***, at para. 37). I have evaluated other plausible possibilities which are inconsistent with the accused's guilt, but I remain satisfied that the accused shot Mr. Baker in the head at close range on March 19, 2024, and that he had the state of mind required for murder pursuant to s. 229 of the ***Criminal Code***.

[144] Accordingly, I am satisfied beyond a reasonable doubt that the accused is guilty of second degree murder.

_____ J.