

In the Court of Appeal of Alberta

Citation: R v Wilson, 2026 ABCA 303

Date: 20260924
Docket: 2403-0128A
Registry: Edmonton

Between:

His Majesty the King

Respondent

- and -

Christopher William Wilson

Appellant

The Court:

**The Honourable Justice Bernette Ho
The Honourable Justice Jane Fagnan
The Honourable Justice Karan M. Shaner**

Memorandum of Judgment

Appeal from the Conviction by
The Honourable Justice R.P. Belzil
(Sitting with a Jury)
Convicted on the 10th day of November, 2023
(Docket: 230945735Q1)

Memorandum of Judgment

The Court:

I Introduction

[1] The appellant and his co-accused Yalahow were convicted by a jury of second-degree murder under s 235(1) of the *Criminal Code*, RSC 1985, c C-46. The appellant argues the trial judge should have cautioned the jury regarding use of evidence of his post-offence conduct and should have instructed the jury to ignore the Crown's argument that he was aware of a plan to target the victim.

[2] We dismiss the appeal for the following reasons.

II Background

[3] The appellant and Yalahow had been friends since 2018. After 11:00 p.m. on August 28, 2021, the appellant met Yalahow and a number of other men at a bar on Jasper Avenue. They left the bar as a group after midnight and drove to a ticketed public party at a community hall. In the vehicle, the appellant saw an individual pass a gun while speaking Somali. The appellant testified he did not understand what was being said.

[4] CCTV footage from the hall shows the appellant, Yalahow, Mussa and another individual entering the hall around 12:30 a.m. They were screened for weapons by a security guard using a metal-detecting wand. After 3:00 a.m., Yalahow, Mussa and the other individual left the building and re-entered without being screened.

[5] Just before 4:00 a.m., the victim arrived with others. Mussa spoke to the appellant and pointed in the victim's direction. Minutes later, Mussa became involved in a physical altercation with the victim, during which Mussa fired a gun, causing the victim and other attendees to flee. Mussa pursued the victim and fired additional shots, one bullet striking the victim and causing him to collapse to the floor, immobile. Mussa then walked toward the center of the hall and was approached by Yalahow, who had witnessed the shooting. The two spoke briefly and exited the hall. The appellant walked around the hall in an aggressive manner, raising one arm in the air like he was holding a gun, grabbing his crotch, kicking tables, and gesturing aggressively toward people as they fled.

[6] Yalahow re-entered the hall against the flow of people exiting the building and approached the victim. A security guard was dragging the victim away from the door. Yalahow approached, stood over the victim and fired a gun, striking the victim in the pelvis. He attempted to shoot the victim a second time, but the gun jammed and the security guard swatted it away. Yalahow

retreated into the hallway, re-racked his gun, and attempted to re-enter the main hall. The security guard placed himself between Yalahow and the victim, but Yalahow managed to re-enter the hall. The victim fired multiple shots at Yalahow, striking him in the abdomen and causing him to fall back into the hallway. Yalahow and the victim exchanged gunfire through the open doorway while the security guard stood between them and attempted to close the hall doors.

[7] Upon seeing the shootout, the appellant circled behind the victim and punched him in the head. The victim dropped the gun. The appellant jumped on the victim, grabbed the victim's gun, raised it toward the ceiling and yelled "Yo, where you at?" Yalahow shouted back "Yo, hit him. Grease him." The appellant pointed the gun at the victim's head and fired four rapid shots, three of which struck him in the head. After the appellant moved out of the way, Yalahow fired another shot towards the victim.

[8] Following the shooting, the appellant dragged Yalahow's body out of the line of fire. He then pistol-whipped the victim in the head on four occasions a total of 17 times within one to two minutes, walking around after each beating. When a bystander told him to stop, he told her to "suck my dick." He walked over to Yalahow and said: "I shot that guy." He kept showing his handgun to people in the hall, intimidating them. He threatened to shoot the DJ and the security guards in the face and warned the security guard not to speak to the police. He left the hall and threw his handgun in some bushes near the community hall. He told the 911 operator that a "Jamaican guy" was the shooter.

[9] The appellant testified that he had consumed a significant amount of alcohol that night and remembered nothing after 2:00 a.m. A civilian had observed him to be stumbling, drunk, and slurring his words. When he was arrested around 4:15 a.m., the officer noticed that he was sweaty, had watery eyes, was stumbling, and smelled like alcohol. He vomited in the police cruiser. While he was in the holding cell, he defecated and fell on his excrement. At 7:00 a.m., the police determined that he was too drunk for them to question him. When they finally did question him, he was surprised to be under arrest for murder.

[10] The appellant and Yalahow were charged with second degree murder and other related offences. At trial, the appellant argued he had acted in self defence or defence of others; he had been provoked; he was so intoxicated that he lacked the subjective understanding of the likely consequences of his actions; and all the evidence relating to self defence, provocation and intoxication raised a reasonable doubt that he had the required subjective understanding of his actions for second degree murder.

III Standard of Review

[11] It is an error of law for a trial judge to omit an instruction which is necessary to accurately and sufficiently instruct a jury: *R v Abdullahi*, 2023 SCC 19 at paras 30, 37, 48–49. The reviewing court must consider the whole trial including the evidence, counsel's closing arguments and any objections by counsel: paras 57–59. Trial counsel's silence is relevant but not determinative: paras

67, 68. Counsel's silence may be particularly significant where there are indications it was a tactical decision: para 69. An accused is entitled to a jury that is *properly* instructed based on the trial as a whole - the standard is not perfection: para 35.

IV Analysis

A Post-shooting conduct evidence

[12] At trial, both the Crown and defence counsel argued certain post-shooting conduct was relevant to the issues raised.

[13] Defence counsel argued post-shooting conduct showed the appellant was severely intoxicated and had no memory of events after 2:00 a.m., including: his repeated pistol-whipping of the dead victim; telling Yalahow that he shot the deceased, repeatedly; the bystander's observations of signs of intoxication; vomiting in the police car; defecating on himself in the holding cell; and his apparent shock when told by the police that he was being arrested for murder. Defence counsel suggested that the appellant appeared to be coordinated immediately after the shooting because he was extremely stressed by the shooting.

[14] The Crown argued the appellant was not so drunk that he could not understand the consequences of his actions, noting: his good motor control after the incident despite a slippery floor with numerous obstacles; the repeated pistol-whipping without missing a blow; the appellant's response to Yalahow's request to pull him out of the room; his response to environmental stimuli, such as the woman imploring him to stop pistol whipping the deceased; the appellant telling Yalahow that he shot the deceased; his threats to shoot certain people, and his demands to them not to speak to the police while brandishing a firearm; his incorrect statement to the police over the phone; and his hiding of the gun in a bush.

[15] The Crown also argued that certain post-shooting conduct was relevant to the issue of self-defence or defence of others: he acted in an intimidating manner around the hall after the shooting, threw away his gun, and threatened others not to speak to the police.

[16] Although Crown counsel suggested a limiting instruction regarding post-offence conduct, the trial judge concluded it was not necessary and Yalahow's counsel took no position. The appellant's trial counsel, acknowledged by his appellate counsel to be very experienced, remained silent during that discussion.

[17] The trial judge's lengthy jury instructions covered the charges of second-degree murder, the lesser and included offence of manslaughter, the defences of provocation, self-defence and defence of others, and the question of intoxication. He reviewed the relevant evidence and pointed to specific pieces of evidence - including the post-shooting evidence relied on by the Crown and defence counsel - in relation to each defence. He also instructed the jury that they must consider all the evidence related to the defences of intoxication, self-defence and defence of others, and

provocation cumulatively to determine whether the appellant had the state of mind required for murder, or merely manslaughter. The trial judge presented the Crown and defence's prepared positions to the jury which addressed inferences to be drawn from the post-shooting conduct evidence.

1 No general requirement

[18] Post-offence conduct is circumstantial evidence and is subject to the same principles around exclusion, relevance and probative value: *R v White*, 2011 SCC 13 at para 22. There is no general rule that a court *must* provide a jury with instructions as to the use of post-offence conduct evidence. A limiting instruction or caution is only required where the evidence could reasonably lead a jury to jump to erroneous conclusions about guilt and innocence: paras 137–140.

[19] Post-offence conduct can be useful to prove much more than simply whether the accused acted like a guilty person; it may support many other inferences: *R v White*, 1998 CanLII 789 at para 20, [1998] 2 SCR 72. For example, parties may rely on post-offence conduct to show that the accused committed the *actus reus* (through act or identity), that the accused had the requisite *mens rea* to commit the offence, or to prove or rebut defences, such as intoxication or self-defence: D M Paciocco, “Simply Complex: Applying the Law of ‘Post-Offence Conduct’ Evidence” (2016) 63 Crim LQ 275 at 7–8.

[20] Post-offence conduct evidence is problematic where a jury may erroneously use it to draw inferences around guilt and innocence. Some post-offence conduct is particularly prejudicial, including evidence of demeanour; false alibis and lies; silence, refusal or readiness of the accused to participate in an investigation; and evasive behaviour such as destroying evidence or covering up tracks: Paciocco at 2. In these cases, the evidence can lead to inferences that because the accused acted in a guilty manner, they must have committed the crime (“consciousness of guilt”), or they must have committed murder rather than manslaughter (“level of culpability”). A person may act in a guilty manner but not be guilty of the particular crime charged, or may act without appreciating they had a defence: Paciocco at 7. As the Court in *White* (1998) explained:

22 [A] jury may fail to take account of alternative explanations for the accused's behaviour, and may mistakenly leap from such evidence to a conclusion of guilt. In particular, a jury might impute a guilty conscience to an accused who has fled or lied for an entirely innocent reason, such as panic, embarrassment or fear of false accusation. Alternatively, the jury might determine that the conduct of the accused arose from a feeling of guilt, but might fail to consider whether that guilt relates specifically to the crime at issue, rather than to some other culpable act.

[21] However, even if post-offence conduct may on the surface allow the jury to draw prejudicial inferences (such as the accused's level of culpability), it may not require a special warning if the evidence would not raise a real risk of prejudicial reasoning in the circumstances of the trial: Paciocco at 18; *R v Cornelius*, 2011 ONCA 551.

[22] The appellant argued that *R v Calnen*, 2019 SCC 6 at para 117 stands for the principle that such an instruction is *always* required for post-offence conduct evidence presented to a jury. However, Martin J in *Calnen* merely reiterated the law from both *White* decisions, noting that an instruction is required in relation to post-offence conduct evidence that creates “unique reasoning risks”: para 116.

2 No requirement in the circumstances

[23] Upon reviewing the trial record as a whole, we conclude no caution or limiting instruction was necessary. The jury saw the appellant in high-quality CCTV footage shooting the deceased at point-blank range multiple times. Neither party sought to use the appellant’s post-shooting conduct to prove that he was guilty of murder on the reasoning that he behaved like a guilty person following the shooting. That inference did not naturally arise on the facts.

[24] Both parties encouraged the jury to draw opposing inferences based on the same post-offence conduct relating to defence of a person, intoxication, and provocation. The closing arguments of the defence and the trial judge’s explanation of the defence’s theory of the case invited significant permissible uses of the evidence of the appellant’s post-offence conduct.

[25] The trial judge’s instructions pointed the jury towards specific pieces of post-offence conduct evidence that they should consider in relation to the live issues. The jury charge further mitigated the possibility that the jury would draw improper prejudicial inferences about the appellant’s level of culpability through instructions on reasonable doubt, consideration of the evidence as a whole and through general instructions on how to approach circumstantial evidence.

[26] The appellant argues that in the absence of a caution about post-offence conduct evidence, the jury could have drawn prejudicial and illogical inferences to conclude that the appellant must have committed murder, not manslaughter, because he acted like a guilty person. He submits this type of evidence has the potential to be ambiguous or complex, leading to imprecise reasoning and leaps in logic. For example, the pistol-whipping, threats or disposal of the gun might have been found to establish consciousness of guilt or bad character.

[27] In all the circumstances, a caution to the jury against moral prejudice reasoning was not necessary and would have risked confusion. There was no risk of propensity reasoning. The post-offence conduct relied on in this case was relevant to all three of the defences. The dangers due to ambiguity, complexity, and possible illogical inferences and imprecise reasoning were addressed by the discussions of the evidence in counsel’s addresses to the jury and the jury instructions. The jury was presented with argument on possible inferences, both from the Crown and defence perspective. Appellant’s counsel concedes that the Crown did not suggest any problematic uses of the post-shooting evidence. A caution risked leading the jury to speculate about non-permissible inferences. It is not surprising in the circumstances that appellant’s trial counsel did not request a specific limiting instruction.

[28] Based on the functional approach to reviewing jury instructions, we are satisfied that the jury had an accurate and sufficient understanding of the law. We find no reviewable error.

B Crown's theory about a plan

[29] Significant deference is owed to the trial judge when making determinations about counsels' remarks to the jury: *R v McGregor*, 2019 ONCA 307 at para 182. However, it is an error of law for a trial judge not to intervene when Crown counsel makes sufficiently prejudicial statements. A two-part test applies: (1) whether the Crown's conduct was improper, and (2) whether in the context of the trial as a whole the Crown's closing address has caused a substantial wrong or miscarriage of justice, including by prejudicing the accused's right to a fair trial: *R v EF*, 2022 ABCA 366 at para 10, citing *R v Clyde*, 2021 ONCA 810 at paras 32–33; *McGregor* at paras 171, 184.

[30] In closing submissions, the Crown argued the appellant was aware of a plan to target the victim at the event to rebut the defences of self-defence, defence of others and provocation. The Crown made various comments in this regard:

So you have to ask yourself why are Mr. Yalahow and Mr. Mussa arming themselves at this point, and the obvious answer is they expect an armed confrontation. That's very clear.

...

So [the victim and the woman] immediately pass by Yalahow at this -- at this point. Now, we know that she must be friends with Mr. Yalahow, as -- as later we know that she is distraught upon seeing Mr. Yalahow shot. She cries out in hysterics, "No, no. Bishop. Bishop." Yet, curiously, at this point when they pass one another, there's absolutely no acknowledgement between them. This, again, fits with the Crown theory that [the victim] came to the hall with the expectation on Mr. Yalahow and Mr. Mussa's part that there would be an armed confrontation.

...

They have a brief chat about something. So he's going over for purposes of an armed confrontation, we submit. And on the way, he stops to talk to [the appellant]. We don't know what they talked about. But we would suggest that you need to view this in context ... So this idea that Mr. Bottos suggested yesterday that [the appellant] was like oblivious to what was going on, that's contradicted by the evidence from this point forward. And we'll get to it, but [the appellant] walks around acting aggressively trying to intimidate, grabbing his crotch, kicking tables. He obviously knows what's going on. He doesn't feel unsafe, and the reason for that is because he knows that he and his buddies are in control of the situation.

...

His claim that he wasn't aware of a plan to shoot [the victim] or confront him with a gun, despite that fact that every single person he attended with that night was apparently involved and didn't show one ounce of surprise or fear when the shots broke out, including [the appellant]. You can and should reject his evidence.

...

From the time [the victim] arrived, Mr. Yalahow and Mr. Mussa set out on a course of conduct designed to end his life while [the appellant] first watched confidently and then finally participated in once he realized [the victim] was not simply going to accept his fate and die at the hands of his friends. There was no defensive purpose on Mr. Yalahow's part or on [the appellant's], and, again, this element cannot be checked off.

[31] Defence counsel objected to this aspect of the Crown's closing address after both parties' closing arguments but before the jury charge, submitting that the theory was overly speculative and tantamount to suggesting first-degree murder; it created a cloud of suspicion over the appellant's actions and encouraged a form of reasoning prejudice.

[32] Crown counsel responded the theory was that the appellant was aware of a plan to target the victim, not necessarily that there was a plan to shoot him or that the woman would lure him to the venue. The Crown's theory was simply that Mussa and Yalahow planned to confront the victim at the hall while armed, and the appellant was generally aware of that plan. In cross-examination, Crown counsel did ask the appellant whether there was a plan to lure the victim to the hall through the woman. However, it was defence counsel who repeatedly referred to a theory of "luring" during the trial.

[33] The trial judge found the Crown's theory was not speculative. However, he cautioned the jury that there was no evidence of any interaction between the woman and the victim prior to entering the hall, she did not testify, the jury should not draw any inferences from her emotional reaction to Yalahow's injury, and there was no evidence as to how Mussa and Yalahow got guns into the hall. The trial judge specifically noted multiple alternative explanations for much of the evidence on which the Crown relied to suggest there was a plan to target the victim. Further, the trial judge presented the defence's theory of the case in which it was specifically argued that the Crown's evidence of a plan was insufficient - "so thin as to be useless". The jury was reminded that neither the appellant nor Yalahow had been charged with first-degree murder.

[34] The appellant submits the Crown's theory crossed the line from reasonable inference to speculation; it essentially turned the case into a first-degree murder case which undermined all available defences, including defence of another, provocation, and intoxication; and the trial judge's limiting instructions on the evidence relating to a plan to target the victim were insufficient.

[35] In general, the Crown is not entitled to “corrupt the fair reach of the evidence” by inviting the jury to speculate: *McGregor* at para 179. However, drawing an inference based on circumstantial evidence alone is not speculation: paras 172–177. Any inference drawn must be reasonable according to the measuring stick of human experience: *Calnen* at para 112. An inference need not be conclusive or exclude all other possibilities to be reasonable.

[36] The appellant’s submissions suggest that because there was no *direct* evidence about a plan to target the victim, the Crown could not advance this theory to the jury. However, the Crown relied on a significant amount of circumstantial evidence (much of it captured by CCTV) to support this theory of the case.

[37] The decision in *R v Trotman*, 2006 BCCA 366 illustrates this point. The Crown theorized that the accused murdered the victim after the victim resisted his sexual assault. The defence argued that the Crown’s theory was speculative. The trial judge gave the jurors a limiting instruction, telling them to completely ignore the Crown’s theory due to “slim” evidence. The Court of Appeal disagreed, finding there was ample circumstantial evidence that supported this theory: the neighbours heard a woman protesting “no,” “don’t”, and “stop” multiple times, the victim’s panties were torn, the accused had knife wounds to his hands consistent with him grabbing the blade of a knife and being attacked by the victim with a knife in self defence (at paras 22, 28, 33–36, 52). The Court stated:

52 ... The point of the Crown’s theory was not to establish that there had been a sexual assault, but to demonstrate that the evidence was not barren with respect to a possible underlying cause of the murder. The jury did not have to accept the Crown’s theory to convict.

...

54 ... The Crown is entitled to argue any theory that reasonably emerges from the evidence. The evidence of female protest heard by the occupants of other suites and the torn panties (plus the calling by the Crown of the expert to establish that the panties were recently torn) should have served as notice to the defence that unwanted and resisted sexual advance was a possible argument as to the underlying cause of the murder.

[38] In light of the evidence at the appellant’s trial, the Crown’s theory was not speculative and was grounded in the evidence. The trial judge properly instructed the jury regarding the limits of the evidence in relation to that theory. At no point did the Crown suggest to the jury that the appellant engaged in planning, nor that he was party to a plan to target the victim - only that he was generally aware of a plan to target him. The Crown’s theory of a plan fell far short of the type of evidence associated with first-degree murder and pre-meditation. Again, the jury was reminded that the accused had not been charged with first degree murder.

[39] Nor was the defence caught off guard in this case. The Crown put its theory to the appellant in cross-examination. Defence counsel was aware of the theory throughout much of the trial and made efforts to downplay or disprove it to the jury. He examined the appellant with respect to his knowledge of a plan to attack the victim. In closing submissions, and in defence's theory of the case presented to the jury by the trial judge, defence counsel reiterated the position that there was no plan, and that the appellant knew nothing of any such plan. The trial judge's limiting instruction to the jury ensured that even if the Crown's submission had overreached, there was no substantial wrong or miscarriage of justice. The jury was not left with a speculative or uncontested Crown theory of the case to which they could give undue weight.

[40] In all the circumstances, the Crown's closing address did not prejudice the accused's right to a fair trial. Even if the appellant had established the Crown address regarding the plan was improper, there was no unfairness that would have deprived the appellant of his right to a fair trial or affected the decision of the jury: *R v McKnight*, 2022 ABCA 251 at para 189.

V Disposition

[41] The appeal is dismissed.

Appeal heard on September 1, 2026

Memorandum filed at Edmonton, Alberta
this 24th day of September, 2026

Ho J.A.

Fagnan J.A.

Shaner J.A.

Appearances:

J. Russell
for the Respondent

D. Coulson
for the Appellant