

Court of Queen's Bench of Alberta

Citation: R v Dhillon, 2018 ABQB 638

Date: 20180831
Docket: 161213491Q1
Registry: Edmonton

Between:

Her Majesty the Queen

Crown

- and -

Arman Dhillon

Accused

**Judgment
of the
Honourable Madam Justice J.M. Ross**

Introduction

[1] Arman Dhillon stands charged with three counts: first degree murder of Amin Mohammed Abdullahi, aggravated assault on Maim Bilal Mohammed Abdullahi, and using a firearm in the commission of the offence of aggravated assault.

[2] The Crown has conceded that the evidence does not prove planning and deliberation. The Crown seeks a conviction on the first count of the lesser and included offence of second degree murder.

[3] Amin Mohammed Abdullahi was killed by multiple gunshot wounds. The primary issue is identity: whether the Crown has proven beyond a reasonable doubt that the Accused was the shooter who killed Amin Mohammed Abdullahi and wounded Bilal Mohammed Abdullahi.

Background

[4] The shooting took place outside the Tribute Lounge [“Tribute” or “the Club”], just south of Whyte Avenue in Edmonton, Alberta on March 27, 2016 at approximately 2:38 a.m., shortly after the Club had closed. There were numerous people on the street. There were multiple people involved in a verbal and physical altercation before the shooting. A number of people present in the Club and on the street gave evidence.

[5] A number of witnesses gave evidence regarding their observations of a man in a white jacket with a black satchel carried over his shoulder who was noticeable in the Club, because he was carrying and spraying the crowd with bottles of expensive champagne, he was throwing money to the crowd, and he was dancing on top of an elevated area.

[6] These witnesses included Nancy Winter, who spent most of the evening in close proximity to the man, who had introduced himself to her as “Jason.” Ms. Winter identified the Accused as Jason. She also identified the white jacket that he wore that night. The white jacket was located in the area of the Club and seized by police. The Accused’s DNA was present in a blood stain on the jacket. There was a receipt from the Club in the pocket of the jacket. The Accused’s DNA was also found on the mouth of a champagne bottle found in the Club. Ms. Winter and friends who were with her identified the man on video recordings from surveillance cameras and on cell-phone videos.

[7] Ms. Winter’s identification was not challenged by the Defence, who concede that the Accused was present in the Club that night, and was the man who spent the evening with Ms. Winter, and who later sent and received text messages with her.

Accused’s Denial and the WD Test

Submissions

[8] In a text message to the Accused, Ms. Winter asked him if he had shot anyone. He responded with a denial. The Defence argues that the Accused’s denial is exculpatory evidence that engages the analysis in *R v W(D)*, [1991] 1 SCR 742, 63 CCC (3d) 397 [*W(D)*]; see also *R v BD*, 2011 ONCA 51, 226 CRR (2d) 92 [*BD*].

[9] The Defence submits that there is no basis to conclude that the Accused was not telling the truth in his text message to Ms. Winter. This submission is based on the following: (i) the Accused was not under arrest when the text was sent; (ii) the message in the text was not like a statement to the police which might be made in self-serving circumstances; (iii) the statement in the text was made fairly shortly after the Accused and Ms. Winter parted company at the Tribute; and (iv) there was mutual affection between the Accused and Ms. Winter.

[10] In terms of “some delay” between the time Ms. Winter sent her text question to the Accused and the time he replied, the Defence says “it could simply have been because attention was not being paid to the phone” by the Accused.

[11] The Crown submits that there could be no cross-examination of the Accused because he did not testify. Nonetheless, the Crown maintains, the law does not require a successful cross-examination of the Accused before rejecting his exculpatory evidence under a *W(D)* analysis: *R v Vuradin*, 2013 SCC 38 at paras 6, 20-28, [2013] 2 SCR 639; *R v OM*, 2014 ONCA 503 at paras 36-49, 318 OAC 390.

[12] The Crown argues that the Accused's denial is not believable and does not raise a reasonable doubt because the evidence also shows that: he lied to Ms. Nancy Winter that his name was 'Jason'; he lied to Rogers Wireless that his name was 'Jason Gill'; and he lied to Rogers Wireless about his place of residence, by providing a non-existent address.

Analysis

[13] The test in *W(D)* prescribes that the trial judge must consider the following principles on the question of credibility:

- First, if you believe the evidence of the accused, you must acquit.
- Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.
- Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[14] The Ontario Court of Appeal in *BD* at para 114, held:

[T]he principles underlying *W.(D.)* are not confined merely to cases where an accused testifies and his or her evidence conflicts with that of Crown witnesses. They have a broader sweep. Where, on a vital issue, there are credibility findings to be made between conflicting evidence called by the defence or arising out of evidence favourable to the defence in the Crown's case, the trial judge must relate the concept of reasonable doubt to those credibility findings. The trial judge must do so in a way that makes it clear to the jurors that it is not necessary for them to believe the defence evidence on that vital issue; rather, it is sufficient if – viewed in the context of all of the evidence – the conflicting evidence leaves them in a state of reasonable doubt as to the accused's guilt...

[15] The Accused in this case did not testify.

[16] Nonetheless, the Crown concedes, and I conclude, based on *BD*, that the Accused's denial of the shooting in his text message response to Ms. Winter's inquiry engages the *W(D)* analysis.

[17] The relevant text messages were:

Ms. Winter: "did you shoot someone."

The Accused: "What"

"Noooo why"

“What happened u okay”

Ms. Winter: “No idea my friends were freaking the fuck out”
“they almost got shot”

The Accused: “Ohh fuk no way”

[18] At the first step of the *W(D)* analysis, I do not believe the Accused’s denial of involvement in his text message to Ms. Winter. I do not believe this exculpatory statement given the evidence that the Accused provided a false name to Ms. Winter and false information to his cell-phone service provider. In light of this evidence of untruthfulness, the Accused’s denial of the shooting is not believable.

[19] At the second step of the *W(D)* test, I am not left in reasonable doubt by this evidence. This is a statement to a potential romantic partner. A statement made in these circumstances could well be self-serving. Further, the Accused did not only deny that he was the shooter; he suggested that he was unaware of what had happened. This is in the face of substantial evidence that he was in the area at the time of the shooting. Finally, the text message offers nothing more than a bare denial. The Accused offered no exculpatory version of the events, either in the text message or in defence evidence. For all of these reasons, the Accused’s denial in his text message does not, in itself, leave me in reasonable doubt as to the identity of the shooter.

[20] Given my conclusions above, I must proceed to the third step of *W(D)* and ask whether, based on the whole evidence that I accept, I am satisfied beyond a reasonable doubt of the Accused’s guilt.

Witnesses to the Shooting and the Altercation

[21] Ms. Winter left the Club before the events leading up to and including the shooting.

[22] A number of witnesses saw the Accused leave the Club and on the street outside. He is also seen on surveillance video leaving the Club and on the street.

[23] A number of witnesses saw the Accused, among other individuals, involved in a verbal and physical altercation.

[24] Five witnesses may have seen the shooter. Their evidence lies at the heart of the Crown’s case. While there was evidence that a number of persons were involved in the altercation that culminated with the shooting, the Crown concedes that it has not proven any common intention in relation to those persons. Section 21 of the *Criminal Code*, RSC 1985, c C-46, regarding parties to offences, is not in issue. The Crown must prove that the Accused was the actual shooter.

[25] I commence, therefore, with a summary and consideration of the evidence of each of the witnesses who may have seen the shooter, including whether and how they identified the Accused.

Brad Blaszkiewicz

[26] Brad Blaszkiewicz testified that he first saw the man who he referred to as the “suspect” in the line up to enter the Tribute. He heard the man mumble something like “if someone disrespects me tonight I’m gonna pop them tonight.” He described the man as “Arab-looking, clean shaven guy, 200 pounds maybe” and “6 feet probably,” “26, 28, 25” years old, and wearing a satchel or man-purse and a white “sweater thing.”

[27] He noticed the same man inside the Club, “buying bottles,” and involved in a fight.

[28] At the end of the evening, outside the Club, he saw the man chasing a car, saying something like fuck you, come back. The car sped away and the man went in the same direction, leading Mr. Blaszkiewicz to conclude that he “must have gone to his car and got the gun.”

[29] Mr. Blaszkiewicz then went with his friends to a nearby parking lot to the south of the Club to wait for his ride. When the ride arrived, there were four of them in the car: John Varty driving, Alexis Job in the front passenger seat, Brandon Fraser in the back behind the passenger seat, and Mr. Blaszkiewicz in the back behind the driver.

[30] The car headed north in front of the Tribute. They slowed and stopped; there were cars ahead that had stopped. Another man came running in from behind them. This man was also an Arab. He was in a fight with the black man who got shot. The black man was on the ground, and there was a “skinny black guy” trying to help him up. At this point, the “suspect” came running up from behind the car. He shot the man on the ground. He shot over the shoulder of the man who had done the pushing.

[31] Mr. Blaszkiewicz testified that this took place about three steps from the car, and he saw everything. He saw the man running through the back window. He saw a small black handgun. The man was holding the gun with two hands, over his friend’s shoulder.

[32] Mr. Blaszkiewicz was interviewed by police on March 27, 2016. He had told them he didn’t see the weapon. On re-examination, Mr. Blaszkiewicz explained that he saw the man running with it, so it had to be a small gun, and that he kind of saw the shooting but not really, it happened so fast.

[33] After the shooting, Mr. Blaszkiewicz didn’t know what the shooter did, the car he was in “just got out of there.”

[34] During his interview, Mr. Blaszkiewicz told police that if they showed him suspects, he might be able to point out the man he had seen. However, he was never presented with a photo lineup.

[35] When asked on direct examination whether he would recognize the man, Mr. Blaszkiewicz said “maybe, maybe not,” but he thought he had “a pretty good idea,” and he had “probably” seen him. He then identified the Accused in the dock.

[36] He also picked out the Accused from a book of “Servall” photos, taken by security when customers entered the Club.

[37] Mr. Blaszkiewicz had seen images of the Accused on a number of occasions. His friend, Samantha Jajczay had a snapchat video of the Accused. He also saw the Accused's photo in the media.

[38] He testified that he probably had seven drinks over four to five hours. On cross-examination, he said it could have been up to ten drinks from 6 p.m. to 2 a.m. He believed that he was not affected by the alcohol.

[39] When it comes to his dock identification of the Accused, I would put no more weight on this evidence than Mr. Blaszkiewicz himself did in his initial assessment – “maybe” he recognized the Accused, “maybe not.” However, the real question is not whether Mr. Blaszkiewicz recognized the Accused in court years after the event, it is whether he noticed the Accused in the lineup to the Club and inside the Club, and then saw and recognized the same man at the time of the shooting.

[40] There are a number of features in the evidence that corroborate Mr. Blaszkiewicz's testimony that he recognized the Accused. He is corroborated in his evidence that the Accused was behind him in line to enter the Club by surveillance video. His evidence about the Accused's appearance and behaviour inside the Club is corroborated by surveillance video and the evidence of other witnesses. His evidence that the Accused was involved in a fight in the Club is also corroborated by other witnesses and video.

[41] At the time of the shooting, there were many factors at play that may have affected Mr. Blaszkiewicz's ability to see and remember what happened. He had consumed “probably” seven drinks that evening, possibly up to ten. It was dark outside, there were many people milling about, and the shooting took place without warning and very quickly. He was in the back seat of the car, behind the driver. Brandon Fraser, who was sitting beside him, is a large man (Mr. Blaszkiewicz estimated over 200 pounds), and would very likely have impeded his vision out the side window, particularly if Mr. Fraser were leaning out the side window (as Mr. Fraser testified). Mr. Blaszkiewicz's view out the back window may have been obscured if the window were tinted. Mr. Blaszkiewicz did not believe that the window was tinted, but Mr. Fraser testified that it was.

[42] Mr. Blaszkiewicz demonstrated a tendency to speculate, for example, when he commented that the Accused, on leaving the scene, must have gone to get his gun. His evidence about whether he saw a gun, or saw the shooting, varied. In fact, at the conclusion of cross-examination he appeared to admit that he did not see the shooting:

Q And you didn't – with respect, you didn't see anybody shooting is my suggestion, sir. It was just too brief a time?

A It happened fast, yeah.

Q Yeah. And you didn't see who was doing any shooting if there was any, sir. Isn't that right?

A I – sure.

[43] The Crown submits that Mr. Blaszkiewicz was being sarcastic at this point, after an exhausting cross-examination. That is my recollection of his demeanour, as well. But when the matter was raised again in re-examination, the following exchange occurred:

Q ...And then the last thing we're talking about is you were – towards the very end there, defence suggested to you you didn't see anybody shooting. I think you said "sure"; is that right?

A I didn't see anyone shooting?

Q Yeah.

A Not overly. I kind of seen it but not really. Like it happened so fast. Like you're kind of, like, looking around, and then just seen them coming, and then boom, boom, I don't know.

[44] Mr. Blaszkiewicz's evidence about how the shooting happened also differed significantly from the evidence of other witnesses. I will return to this point, later.

Brandon Fraser

[45] Brandon Fraser is a friend of Mr. Blaszkiewicz's and was at the Club with him.

[46] Mr. Fraser testified that he first saw the man he identified as the Accused when he glanced back in line at the Club entrance. He described the man as 18-25 years, with short straight hair, a short beard, about 6' tall, thin, and Arabic or brown-skinned.

[47] He did not notice the Accused inside the Club. He was aware that a fight broke out in the Club, but he didn't see who was involved, he wasn't paying attention.

[48] When the Club closed, he left with his friend, Samantha Jajczay and her cousin, Kat. They went to the parking lot. Ms. Jajczay was parked there and Mr. Fraser was with Mr. Blaszkiewicz, waiting for their ride. Ms. Jajczay said something to him and he glanced up and saw the Accused running across the street. He did not see his face at this time.

[49] His ride arrived. He was in the same car as Mr. Blaszkiewicz. He was in the back seat, on the right. Ms. Jajczay and her cousin, Kat, were in her car, behind them.

[50] He put his car window down, and heard a commotion. He leaned out the window.

[51] This happened in front of the Club. The car that he was in had stopped; a cab had stopped in front of them. There was a group of guys between his car and Ms. Jajczay's car behind them.

[52] He saw a man in a white short-sleeved shirt push another man into the back of a red SUV and onto the ground. The man who was pushed was Somalian, and wearing dark clothes and a black hat. Then a friend of the man on the ground, also Somalian, a bigger man wearing red, started fighting with four men. The man in the white shirt hit the man in red, then reached into his pants or a pocket, pulled out a handgun and shot the man in red four or five times.

[53] The shooter was about 7' away from him, he saw his face. Mr. Fraser identified the shooter as the man he had earlier seen in the lineup to the Club, and later seen running across the road. He identified the Accused in the dock, saying "he looks similar to the guy."

[54] On cross-examination, Mr. Fraser agreed it would be difficult to identify the shooter if he had not seen him earlier in the lineup to enter the Club.

[55] Mr. Fraser spoke to police on April 8, 2016. Mr. Blaszkiewicz had given them his name. In his statement to police, Mr. Fraser was asked whether he had a good look at the guy, and he answered "in the lineup, no." He explained that he was first in line, some guys got in line behind him, but then his friends joined him in front of the other men.

[56] Mr. Fraser told police that a friend told him that same guy who shot the guy said "if anybody messes with us, someone is going to get shot." The police officer asked him, if he got a good look at the guy, and that is when Mr. Fraser said, "in the lineup, no."

[57] Mr. Fraser saw the Accused's photo in media, and had talked to Mr. Blaszkiewicz and others about the incident.

[58] Mr. Fraser testified that he had about six to seven drinks total; he felt the effects, but was not drunk. On cross-examination, he said it might have been more drinks than that, up to fourteen. When he spoke to police, he said "I was pretty, like you know, drunk."

[59] I do not accept Mr. Fraser's identification of the Accused in the dock, or his evidence that he recognized the Accused at the time of the shooting. As to his dock identification, he testified only that the Accused looked "similar" to the man in the white shirt. As to his identification of the man in the white shirt as someone he had seen earlier in line for the Club, I reject this evidence. Mr. Fraser was asked specifically by police if he got a good look at the guy, and he said, "in the lineup, no", there were other people between him and the man. When this was put to him on cross-examination he repeated that he had looked back in line, added that he couldn't "100 percent" identify the man, and finally agreed with counsel's suggestion that he did not see anybody in the lineup that he later recognized other than his friends. I also note that Mr. Fraser was unable to identify the Accused in Servall photographs. Mr. Fraser and Mr. Blaszkiewicz are good friends and had discussed the events frequently. It is my view that, over time, Mr. Fraser's recollection has been affected by Mr. Blaszkiewicz's identification of the Accused as the shooter.

[60] In argument, Crown counsel played surveillance video of Mr. Fraser in the Club lineup, suggesting that there was a portion of the video which might depict Mr. Fraser looking back and seeing the Accused. It was not clear on the video where Mr. Fraser was looking or what he might have seen. The video was not put to Mr. Fraser. I reject this submission as based on speculation, not evidence.

[61] While I do not put weight on Mr. Fraser's purported identification of the Accused, I do find his description of how the shooting took place helpful. Mr. Fraser was affected by alcohol, as was Mr. Blaszkiewicz and by the lighting and suddenness of the events. However, he was better positioned to see what happened than Mr. Blaszkiewicz, as he was leaning out the window

of the car. His description of the two Somalian men involved in the fight – their respective sizes and what they were wearing - matches Amin and Bilal Mohammed Abdullahi. His description of the shoving of Bilal into the red SUV is corroborated by the evidence of Bilal Mohammed Abdullahi and of Emma Frith.

Jerry Creighton

[62] Jerry Creighton was at the Tribute with a group of friends including Colin, Keneesha, Andrea and Samantha Novero. He was aware of a group of men in a booth near them shaking champagne bottles and throwing money around. People grabbed the money, including the girls in his group.

[63] At the end of the evening, he walked with Samantha and a tall blond woman to a parking lot to get Samantha's bag from a car. They walked back to the front of the Tribute. The tall blond woman left, and Mr. Creighton and his friends were standing in front of the Club.

[64] He saw three men from the booth walk across the street, talking or whispering, and then come back a few minutes later. The men had darker skin; they could be African, Lebanese or East Indian. They were about the same size as him (5'11") or maybe taller.

[65] When the three men returned they singled out a man standing alone next to them, a bigger guy in a red jacket, who was standing behind a Jeep. One of the three men, the one in the middle, ran up and two-hand pushed the man in red to the ground. The man in red jacket stumbled back and caught himself. He saw the man in the middle's shirt go up; he saw flashes, and he saw a handgun.

[66] The shooter was wearing a windbreaker and a baseball cap. He had not seen the shooter before and could not identify him. He did not identify the Accused in court, or in photos or video from the Club. He saw the shooter hop into what looked like a black 2004 or 2006 Nissan Maxima or Altima or Honda Civic.

[67] Mr. Creighton had one or two drinks that evening.

[68] The Crown submits that Mr. Creighton is an unreliable witness because he did not identify either Amin Mohammed Abdullahi (who was distinctive) or Samantha Novero (whom he knew and was with that night) on surveillance video. I place little weight on this. Amin was distinctive, but he was also unknown to Mr. Creighton. As to Ms. Novero, the video was taken from a high angle and the lighting was not ideal. If Mr. Creighton did not know Ms. Novero well or did not remember what she was wearing at the Club that night, it is not surprising that he would not pick her out on the video. Further, it is not Mr. Creighton's ability to recognize people that is in issue, but his ability to observe and recall events. On these points, he was in a better position than others. He had only one or two drinks, and he was standing outside near the altercation. His evidence about men who left the area together and returned and got involved in an altercation is corroborated by the evidence of other witnesses. His description of a big man in a red jacket being pushed and then shot by the same man is quite consistent with Mr. Fraser's evidence, other than his evidence that the shooter was wearing a windbreaker and a baseball cap.

[69] The Crown submits that Mr. Creighton saw flashes, not the shooting itself, and did not see who fired the shots. I reject this submission. Mr. Creighton was clear that he saw the man's shirt go up, he saw flashes, and he saw the gun. He saw the shooting and the shooter.

Edres Maygag

[70] Edres Maygag told police he had seen the shooter; however, at trial he testified that he did not. I earlier ruled that Mr. Maygag's statement to police was admissible. The issue of the weight of Mr. Maygag's statement to police and his testimony at trial remains to be determined.

[71] In his statement to police on March 27, 2106, Mr. Maygag said that he had attended the Tribute with his friend, Bilal Mohammed Abdullahi, and his friend's brother, whom he referred to as Hamza Mohammed Abdullahi (the Deceased).

[72] While inside the Club, he observed a man in a white jacket with a Gucci shoulder bag. The man was noticeable because he was buying \$1000 bottles of champagne, throwing money, and dancing on top of a couch. Mr. Maygag pointed out a man in white in a video that he had recorded in the Club, saying "that's him."

[73] When the Club closed, he saw the same man outside on the street. The man spoke with a young woman in a red Hummer. This was the woman he had been dancing with throughout the night.

[74] Subsequently, the man argued with Hamza. The man gestured to his bag, indicating there was a weapon in it. He ran away for a brief time, and returned.

[75] The man pushed Bilal, who fell to the ground. Hamza ran towards the man, and the man shot him multiple times.

[76] At trial, Mr. Maygag confirmed that he was with Hamza that evening, and when he died. Bilal was with them. However, he did not see what happened.

[77] The things he told police were due to conversations that he had with others in the hours before he spoke to police. He himself did not see the shooting. Others said it could be the guy who was buying bottles because he was fighting inside the Club.

[78] Hamza was arguing with a tall person, there was a commotion, and two guys ran towards Hamza. He would not know the two guys.

[79] He saw Bilal on the ground, then shots went off, and Hamza was on the ground. He didn't see the shooter because he was looking at Bilal.

[80] At the time of the interview, he had not slept; he was up 24 hours and still drinking. He had lots of information from other sources. The difference between what he told police and his testimony is that he thought he saw it at the time because he was drunk.

[81] The Crown argues that Mr. Maygag's prior statement should be preferred because his demeanour during the police interview was open and candid, and appeared to be based on a desire to help police. In contrast, his state of mind leading up to his testimony suggests various

reasons for a lack of candour. In a pre-trial meeting, he told Constable Greening that he was afraid for his safety. When he was arrested on a witness warrant, he said he was going to lie in court. He did not say, on either of these occasions, that he had been repeating hearsay.

[82] I have concerns about relying on the evidence regarding Mr. Maygag's statements to police as evidence of his state of mind because these statements were not put to him and he, therefore, had no opportunity to comment on the accuracy or otherwise of these reported statements or to explain his thought process at the time or afterwards.

[83] As to the argument that Mr. Maygag did not tell police in advance of his testimony that he was repeating hearsay, there is no suggestion that there was any discussion on these occasions regarding the source of his knowledge. The subject certainly did not come up when he was arrested on a witness warrant. It is also not particularly surprising that the issue of the source of information would first become apparent at trial. That is precisely what happened with another witness, Samantha Novero, who both the Crown and Defence accept was an honest witness.

[84] Ms. Novero had also given a statement to police, which the Crown did not seek to enter in evidence. During her direct examination, when describing events outside the Club including the altercation and shooting, she referred several times to what "we," i.e., she and the group of friends she was with, were doing and observing. When directed to speak to her own observations only, and asked whether she saw the shooter, she said "No. I – I saw the gun, but I didn't see the man." She explained that there were a lot of people in the area, and things happened quickly, she could see some things but not others. She saw people involved in a scuffle, but didn't recognize them at the time. After the shooting, she stayed with her friends Andrea and Colin who were trying to help the man who had been shot. They told her things that changed her view about what happened. As Andrea described the shooter, she had a realization about who it "may be," it "clicked" in her head that the shooter may be the man she had seen earlier in the Club. So when she described the shooter to police, she was giving a description of the man she saw in the Club.

[85] Mr. Maygag did commence his testimony with an uncooperative attitude, but this changed during the time that he was in the courtroom. He reviewed the transcript of his police interview when directed to do so, and he appeared to do this sincerely, taking time to read it. When he answered questions from both Crown and the Defence after reviewing the transcript, he seemed open, answering questions fully. The Crown did not seek leave to cross-examine him pursuant to s 9 of the *Canada Evidence Act*, RSC 1985, c C-5. Defence questions confirmed his trial testimony. He had ceased to be dismissive of questions; he appeared to be making an effort to explain his recollection of the police interview and its antecedents. His testimony was not inherently incredible. For example, when asked by Crown counsel whether, having gone over the interview transcript, he was assisted in remembering what happened, he said:

I don't remember the shooter, but I kind of remember, like, what happened and – like – like, to make things clear, after reading all of this, I remember him talking about somebody arguing with Hamza or this, that, or an argument, right. There was an argument. There was a guy he was arguing with, but if I see that guy, do I remember him? No, I don't remember him. I know I talked about a car. I went to the police station about 6 hours, 7 hours later. I went to the hospital. I went to a

friend's house, so everything I was telling the police officer, everything I hear from people in the hospitals, like, talking about somebody buying a lot of bottles, in the nightclub, maybe it might be him, but I would just say whatever I hear from people and that person, I don't remember his face.

[86] When asked whether he saw the shooting, he said no, but when asked whether he saw things happening around that time, he said:

Before I do remember Hamza arguing with some tall person, light skin. They going back and forth. I think I went in between them and tried to stop it, but it was other commotion going on on the left side, on the right side. There was a whole lot of fighting going on, and then I just seen Bilal get pushed and two guys running towards him and then the shorts [sic] go off.

[87] Further, in regards to whether he was speaking at trial from his own memory:

The reason why I said that is before I went to the police station, I was at a friend's house, I was at the hospital, people were talking, people were saying the guy that did it is maybe – there was one guy that was buying bottles in the night Club, all – and – and maybe that could be him because he was fighting inside, and then some other guys see that same person arguing with Hamza. So all of the stuff that I told the police, I assume at the time, it was that person, but I don't know that person. I don't remember that person. It's just from what I hear from people I just told the cop because I was so sure. I was still drunk, and I'm like, okay, you know what, maybe that was him, so I'm going to tell the cops what I heard. I'm going to say it's him, that's it, but I don't even know who this person is.

[88] Mr. Maygag did appear to be coherent at the time of his police interview. But it is very likely that he had a lot to drink the night before, and was affected by alcohol at the time of the shooting. He was with Bilal and the Deceased, and said that together they drank two bottles of Hennessy. Blood alcohol levels taken from the Deceased ranged between 200 and 290 milligrams per 100 milliliters of blood. Bilal described his memory of the night as a "blur" because he was intoxicated. This is important, because Mr. Maygag's credibility is not the only issue, the reliability of his evidence that he not only saw, but also recognized the shooter, is just as important.

[89] Assessing the credibility and reliability of Mr. Maygag's statement to police is difficult, as it was not subject to contemporaneous cross-examination. But there are aspects of the statement that do bring into question both the credibility and reliability of this evidence.

[90] In his police interview, Mr. Maygag said that there were no issues between his group while they were inside the Club, and a group of guys, which included a man in a white sweater, who were buying \$1000 bottles of champagne and making themselves noticeable. Mr. Maygag believed that Club management was reluctant to deal with the behaviour of this group because of the amount of money they spent. Mr. Maygag felt that he had been rudely treated by police and management after the shooting, when they focused on him instead of a member of the other group that he tried to point out. He also expressed during the interview, and confirmed in cross-examination at trial, that he was angry, "so angry" when he spoke to police.

[91] By his own description, Mr. Maygag was not close to the group of men buying bottles. He said, “we didn’t talk, they were far away, we were in this corner.” He was never asked by police how he could recognize the man outside the Club. This is particularly significant because Mr. Maygag described seeing the man in the white sweater outside the Club in circumstances that are not consistent with the observations of any other witness. He said that the shooter was outside the Club standing by a red Hummer, and talking to a girl inside the Hummer, who was the girl he had been dancing with all night. None of the other witnesses who testified to seeing the Accused outside the Club mentioned this. Further, it is clear that Nancy Winter, the girl who had been dancing with the Accused all night, was not in the Hummer, as she left the Club earlier and returned home in a different vehicle. This observation in Mr. Maygag’s police statement suggests that he did not recognize the Accused, which in turn suggests that he may have relied on the observations of others when identifying the Accused as the shooter.

[92] I am not prepared to rely on Mr. Maygag’s statement to police that he saw the shooter and recognized him as the man in the white sweater that he had earlier observed in the Club. It is, at least, as likely as not that Mr. Maygag either did not see the shooter, or did not recognize him, and was reporting to police the observations of other people. I do, however, accept Mr. Maygag’s trial evidence about the altercation, which is corroborated by the evidence of other witnesses: that Hamza was arguing with a tall man. There was a commotion, Bilal got pushed, two guys ran towards him and then shots went off.

Katarina Simon

[93] Ms. Simon went to the Tribute with her cousin Samantha Jajczay. She was driving, and did not drink any alcohol that evening.

[94] She saw a fight in the bar, and saw bouncers escort a male out of the Club. She heard another man screaming, “you’re dead” several times. He was wearing jeans, a white sweater, and a black satchel. He had brown skin and appeared to be in his 20s.

[95] Later she went to her car in the parking lot, and waited for Ms. Jajczay. She and Ms. Jajczay left together, and drove north towards Whyte Ave. They stopped before the intersection to the south of the Club, at which point they noticed a fight.

[96] Two guys ran up in front of the Tribute. One was the man in the white sweater. They were a distance away from the fight; she estimated it was the whole distance of courtroom. It was dark, with just street lights, and she couldn’t see faces, just clothing. She noticed two guys running up to the Tribute. She saw two guys involved in a fight. She had noticed the man in a white sweater, jeans, and a satchel in the bar and noticed the same outfit on a man in the fight. All of a sudden, she heard gunshots and saw sparks. The man in white came running towards her and she backed up and drove away. She never saw a gun.

[97] Ms. Simon was questioned in direct examination about where the sparks came from. She first said, when she heard gunshots, she looked and “there was just sparks everywhere.” On repeated questioning, she said the sparks were near the two guys fighting, and finally, when asked where the sparks “came from...exactly,” she said from the guy in white.

[98] On cross-examination, Ms. Simon confirmed what she had earlier told police, that she was not 100% sure she recognized the man in the white sweater, because of the distance. She also confirmed that there were lots of people on the sidewalk and the street. On re-examination, she clarified that there were a lot of people on the sidewalk and maybe four to six on the street.

[99] In my view, Ms. Simon's testimony provides, at best, only indirect evidence that the Accused was the shooter. She first said she saw sparks everywhere, and only pinpointed the sparks as coming from a man in white after repeated questioning. She focused on the location of the sparks in relation to two men fighting, but also she also said there was another man nearby "his friend was by him, close to him", and later she estimated there were four to six men in the street. Evidence of other witnesses confirms that there were other men in close proximity when the Deceased was shot.

[100] In assessing Ms. Simon's testimony, I have also had regard to the evidence of Samantha Jajczay, who was in the front passenger seat of Ms. Simon's car. She also testified to seeing a fight, and seeing the man in white run towards the car. As to the moment of hearing gunshots and seeing sparks, she said:

It was just a large group of people. You couldn't really see faces. You could see clothing, but you couldn't see what was going on. We were pulling closer and that's when we heard the gunshots go off. We saw sparks coming off the gun. I couldn't tell you whose hand was on the gun. I couldn't tell you who was in possession of the gun, but we did hear it. That's when we stopped. Then everybody that was coming out of the Club was running everywhere, so there was people everywhere. We took off down the one-way the wrong way...

[101] The Crown submits that I should infer from Ms. Simon's evidence about the location of the sparks that the Accused was the shooter. I am not prepared to draw this inference. There are weaknesses in both the evidence and the logical connection between the evidence and the suggested inference that make it unsafe.

[102] The difficulties and limitations involved in inference drawing were discussed by Justice Ducharme of the Ontario Superior Court of Justice in *R v Munoz*, [2006] OJ No 446 at paras 26-31, 86 OR (3d) 134:

26 The first step in inference drawing is that the primary facts, i.e., the facts that are said to provide the basis for the inference, must be established by the evidence. If the primary facts are not established, then any inferences purportedly drawn from them will be the product of impermissible speculation...

...

28 The second way in which inference drawing can become impermissible speculation occurs where the proposed inference cannot be reasonably and logically drawn from the established facts. This possibility stems precisely from the fact that an inductive conclusion is not necessarily valid...

...

30 It is difficult, if not impossible, to define with any precision a bright line distinction between the drawing of reasonable inferences and mere speculation. However, in this regard I would adopt the language of Aldisert J. in *Tose v. First Pennsylvania Bank, N.A.* 648 F. 2d 879, 895 (3rd Cir.), cert. denied, 454 U.S. 893 (1981) at 895:

The line between a reasonable inference that may permissibly be drawn by a jury from basic facts in evidence and an impermissible speculation is not drawn by judicial idiosyncrasies. The line is drawn by the laws of logic. If there is an experience of logical probability that an ultimate fact will follow a stated narrative or historical fact, then the jury is given the opportunity to draw a conclusion because there is a reasonable probability that the conclusion flows from the proven facts. As the Supreme Court has stated, “the essential requirement is that mere speculation be not allowed to do duty for probative facts after making due allowance for all reasonably possible inferences favoring the party whose case is attacked.” *Galloway v. United States*, 319 U.W. 372, 395, 63 S.Ct. 1077, 0189, 87 L.Ed. 1458 (1943).

[103] I have concerns about Ms. Simon’s evidence that the sparks originated from the man in white, given her initial evidence that there were sparks “everywhere” and the fact that it took repeated, and somewhat leading, questions before she replied that the sparks came from the man in white. I have even greater concerns about whether an observation as to the location of sparks, made from a significant distance in a dark environment, and where there were multiple people in the area, leads reasonably and logically to an inference about the origin of the sparks. For both of these reasons, I am not prepared to draw the inference suggested by the Crown.

[104] I move on to witnesses who gave evidence about the altercation leading up to the shooting.

Samantha Novero

[105] Samantha Novero was at the Club with her friends Andrea and Colin, where they met Ms. Winter.

[106] She had two drinks, and drank from a champagne bottle that was passed to her by Ms. Winter.

[107] She saw a man in a white jacket standing on a bench and handing out money. Ms. Winter talked to him throughout the evening.

[108] When the bar was closing, a male friend of Colin’s and a female walked Ms. Winter to her car. She stayed with Andrea and Colin. They were standing in front of the Club, when the two people who had walked with Ms. Winter returned.

[109] There was a commotion. She saw at least three men run up, but did not recognize anyone. There were people around her and she was shorter than them, so she did not see people in the area of the scuffle. Then a commotion started up again. There was yelling and shoving. She saw

a man pushed toward a Jeep, he lost his balance, she saw a gun pulled out and heard shots. She did not see the shooter. When she described him to police, she was relying on things Andrea told her, and was describing the man she saw in the Club.

Emma Frith

[110] Emma Frith went to the Tribute with her friend, Nancy Winter. Ms. Winter met other friends there, including Sammy.

[111] She had two drinks, or possibly up to five or six.

[112] Ms. Winter spent most of the evening with one man. She was dancing on a ledge with him, and sometimes sat with him. The man was very tall (perhaps 6'1"), had very dark hair, and wore jeans, a white sweater, and a Louis Vuitton bag that he carried across his body. He looked about 21 to 25 years old. She took Snapchat videos of Nancy and the man.

[113] At the end of the evening she walked with Ms. Winter and a male friend to Ms. Winter's car. She then walked back to the Club, where Sammy and her friends were waiting for a cab. There were up to 50 people on sidewalk and street at that time.

[114] She saw four or five people, perhaps more, running from 81st Avenue towards the Club. The man with the white jacket and purse was yelling at a black male, "what's up, what's good." This was about five feet away from a red Jeep parked outside Tribute. She was about five feet away, and recognized the man as the man who had been with Nancy. She saw the man push a black man, who was tall, and had a bigger build, and was wearing a hat. She saw him reach into his purse. Then she turned to Sammy, at which point she heard gunshots and ran. She didn't see the shooter or gun.

[115] Ms. Frith reviewed the transcript of her police statement during the lunch break, and corrected her evidence afterwards. She had first said that when she turned to Sammy just before the gunshots, she was asking her if there was a fight. After reviewing her statement, she said that she had asked that question of Sammy earlier, but had turned again to look at Sammy just before the gunshots.

[116] Ms. Frith texted or spoke with Ms. Winter on her way home from the Club, and again the next morning before she was interviewed by police. Ms. Winter had also been in communication with Sammy (Samantha Novero) and shared information with Ms. Frith.

[117] I found Ms. Frith a credible witness, who I believe was trying to tell the truth. I do not believe that either the fact that she reviewed her statement over lunch (she had not been directed not to do this), or that she corrected her evidence afterwards, were negative indicators regarding her credibility. However, the reliability of her evidence is qualified by the amount that she had to drink, and by the common conditions of poor lighting, numerous people in the area, and an event that happened quickly and without warning. In addition, Ms. Frith's recollection may have been affected by information that she received that night from Ms. Winter, who had received information from Ms. Novero.

Aubrey Nousek

[118] Aubrey Nousek was at the Tribute with her sister and some friends.

[119] She had at least three or four drinks that evening; it could have been five to ten.

[120] In the Club she noticed a man who was standing on a booth, and throwing money. She picked up a \$20 bill that he threw out. He wore a white shirt, jeans, and side pouch with a strap. He looked Lebanese, had a lighter skin color, and was shorter than her, perhaps 5'9."

[121] She was standing with friends outside the Club after closing, chatting. There were lots of people in the area, perhaps 50 to 100. She heard a man come out of the bar shouting "where's that black guy, where's that black guy?" She turned and saw the man she had noticed earlier. She was not 100% certain he was the man who had spoken.

[122] About five minutes later, she heard gunshots from behind her, and turned and saw a body lying in the street. She saw people running away, including the man in the white shirt.

Samantha Jajczay

[123] Samantha Jajczay was at the Tribute with her cousin, Katarina Simon. They met people she knew, including Brad Blaszkiewicz and Brandon Fraser.

[124] She had one drink that evening.

[125] She saw a fight that broke out in the Club, which involved a Lebanese-looking man who was pacing back and forth on top of a ledge. He was clean cut, wearing a white top, a man purse and jeans. She had noticed him earlier throwing money. After the fight, he was making threats, saying "you're fucking dead, bro."

[126] After the Club closed she went to the parking lot with others including Mr. Blaszkiewicz and Mr. Fraser. She could tell that both men had been drinking.

[127] While in the parking lot, she saw the man in white run down the street, then come back towards the Club, then do it again. She didn't see him carrying anything. She couldn't see his face, only his clothing.

[128] She got in Ms. Simon's car. Mr. Blaszkiewicz and Mr. Fraser got in another car (John Varty's car). Ms. Simon's car was behind Mr. Varty's, stopped at an intersection. She saw a large group of people, nine or more, fighting.

[129] She heard gun shots, saw sparks, and then everyone was running. She does not know who had the gun. Ms. Simon turned the car and they left, going the wrong way down a one-way street.

Cory Griffiths

[130] Mr. Griffiths was not at the Tribute, he and friends had gone to Hudson's on Whyte Avenue. After they left Hudson's and were walking in front of the Tribute, they saw some sort of a disturbance or fight going on. They continued to walk and reached 81st Avenue. They saw a car come from the west down 81st Avenue and make a U-turn. Two men got out and the car stopped by the side of the road.

[131] The men were both around 6' tall, one was wearing a white jacket, and they had totes over their shoulders. The men started walking toward the Tribute.

[132] Mr. Griffiths and his friends were leaving, when they heard gunshots. They hid behind a tree. He saw the two men walk back to the car. One got in the car, which drove away. The other ran across the street.

[133] Mr. Griffiths testified that the car was not travelling at an unusual speed, and that he first saw the car headlights from a block or two away.

After the Fact Conduct

[134] After the gunshots, many witnesses describe a general scattering of people. Detective Jason Lapointe was working that night. He was wearing a suit and tie, and in an unmarked police car. He was parked across the street from the Tribute, having just dealt with an unrelated call.

[135] He heard the gunshots and saw people running and screaming. He noted the time, 2:38 a.m. He ran towards the incident. People on the scene pointed him towards two men running southwest of the bar, saying, that's them. A third man was running east. He followed the men running southwest, but lost them.

[136] Constable Kelly Lang was qualified to give expert dog tracking evidence, regarding how tracking dogs respond to scent and how they communicate findings. Constable Lang had been training his second dog, Fozzy, since 2015. He and Fozzy arrived on the scene at about 3:00 a.m. He met with Detective Lapointe. He was told that suspects had run southwest from the Club.

[137] He started "casting" Fozzy at the corner of 81st Avenue and 105th Street, where Detective Lapointe said he had last seen the suspects. Fozzy indicated and followed a track heading southwest. At 10529 81st Avenue, Fozzy indicated a scent coming from above. Constable Lang looked on top of a nearby garage and located a white jacket. Fozzy then tracked eastbound on an alley to 105th Street, and lost the track. Constable Lang returned to the garage and cast again. This time Fozzy tracked over a fence to the yard of an apartment building, after which he again lost the track.

[138] The white jacket was seized. Ms. Winter identified it as the jacket that the Accused was wearing that night. The Accused's DNA was present in a blood stain on the jacket. There was a receipt from the Club in the pocket of the jacket. The Deceased's DNA was not found on the jacket.

[139] Jeffrey Lafleche lived in an apartment at 10520 80 Avenue. He testified that, around 3:00 a.m., he heard talking outside his window in the fenced yard of the apartment. The voice sounded stressed. He couldn't make out any words. He looked out and saw a male, of average height and build, with light skin, wearing jeans and a light hoodie.

[140] I find that the white jacket belonged to the Accused, and I infer that he discarded it that night by throwing it on the roof of the garage. There is no evidence that anyone else was wearing his jacket at any time. There is evidence that he was wearing it at the time of the shooting. He is seen on surveillance video in the jacket only a few minutes before the shooting. There is also a limited period of time between the shooting and the discovery of the jacket. The shooting took place at 2:38 a.m. The police dog and handler arrived at the scene at 3:00 a.m. and the jacket was recovered by Constable Carson and formally seized by Constable Omilian between 3:15 a.m. and 3:18 a.m.

[141] The potential significance of after-the-fact conduct is addressed in *R v White*, [1998] 2 SCR 72 at para 58, 125 CCC (3d) 385:

In this case, the trial judge properly instructed the jury that the appellants' acts of flight and concealment constituted evidence "which may be considered and weighed by you as triers of fact, together with all the evidence, in deciding the guilt or innocence of the accused". He reminded the jury that flight or concealment does not necessarily imply guilt, but can arise from any number of innocent motives, and he gave examples of such motives. He further instructed the jury that there might be "very valid reasons" for the appellants' conduct other than their guilt for Chiu's murder; again, he reviewed the alternative explanations put forth by the defence, namely the parole violations and the bank robberies. The trial judge did make several references to drawing an "inference of consciousness of guilt," which, in light of these reasons, was not ideal; he did not, however, categorize the evidence in terms of that inference, but rather referred to "the evidence of flight and concealment". On the whole, as the Court of Appeal concluded, the jury charge relating to the evidence of post-offence conduct was adequate as given. Had the trial judge imposed an artificial threshold of reasonable doubt on this isolated aspect of the jury's analysis, he would have been in error.

[142] The Crown notes that after-the-fact conduct is of reduced value when the contentious issue in the trial is the degree of responsibility, but submits that where the contentious issue in the trial is identity, it can be very relevant.

[143] There is, in my view, an issue of degree of responsibility in this trial, in addition to the issue of identity. The Crown has presented a strong case that the Accused, among other persons, was present and in some way involved in a verbal and physical altercation during which gunshots were fired. That does not mean that the Crown has proven beyond a reasonable doubt that the Accused was the shooter. But it does provide another reason for the Accused's conduct in discarding his jacket. The Accused was not a mere witness. He would have been aware that he was implicated in a street fight in which at least potentially deadly force had been used. That could explain a desire to get rid of an item of clothing that he had been wearing at the time.

Summary and Conclusion

[144] Of the witnesses who claimed to have seen the shooter, only one, Mr. Blaszkiewicz, gave evidence that I accept that he had noticed the Accused earlier during the evening, and was able to recognize him. While I accept that Mr. Blaszkiewicz had noticed the Accused, his identification of the Accused as the shooter is problematic. His ability to see events from his position in the car would not have been as good as that of either Mr. Fraser or Mr. Creighton. Mr Blaszkiewicz testified that the Accused ran up behind another man involved in the altercation. He testified that the other man pushed the Deceased, and the Accused shot the Deceased over that man's shoulder. Both Mr. Fraser and Mr. Creighton testified that the man who pushed or hit the Deceased was the shooter. This is also consistent with Ms. Novero's evidence.

[145] The Crown urges me to accept Mr. Fraser's evidence about how the shooting took place, and Mr. Blaszkiewicz's evidence about who the shooter was, submitting that, as the shooter neared the car that Mr. Blaszkiewicz was seated in, Mr. Blaszkiewicz's view would have been impeded and Mr. Fraser's view would have improved. That does not, in my view, account for Mr. Blaszkiewicz's evidence that he saw another man between the Accused and the Deceased.

[146] It is my view that, taken together, the evidence of Mr. Blaszkiewicz, Mr. Fraser and Mr. Creighton, suggests that, while the Accused was involved in the altercation, it was another man who pushed the Deceased and shot him afterwards. Mr. Blaszkiewicz recognized the Accused, heard the shots and saw sparks, and concluded that the Accused was the shooter. He did not have as good a view of the shooting as did either Mr. Fraser or Mr. Creighton.

[147] Mr. Blaszkiewicz's evidence that the Accused was holding a gun out as he ran towards the fight is inconsistent with the evidence of both Mr. Fraser and Mr. Creighton that the shooter reached under his shirt to get the gun. It is also inconsistent with the evidence of other witnesses, who observed the Accused walking or running towards the fight. None of them saw the Accused holding a gun as described by Mr. Blaszkiewicz.

[148] The evidence of witnesses who saw a man in a white jacket in the Club and then on the street at the time of the altercation provides further evidence that the Accused was present during and in some way involved in the altercation, but not that he was the shooter.

[149] Ms. Frith testified that just before she heard gunshots, she saw the Accused reach into his purse. This does not assist in identifying the Accused as the shooter. Neither Mr. Fraser nor Mr. Creighton referred to the shooter wearing a purse, and both said that the shooter reached under his shirt for the gun.

[150] All of the witnesses described multiple people involved. Ms. Frith said there were four or five people, running towards the Club. Ms. Jajczay saw the Accused running before the fight, and said nine or more people were fighting. Ms. Simon said there were four to six people on the street. Mr. Creighton saw three men fighting with the Deceased; Mr. Blaszkiewicz and Mr. Maygag both saw two men.

[151] As to Mr. Griffith's evidence, he also saw two men, and he did not see the shooting. Even assuming that the man in a white jacket that he observed was the Accused, that does not assist in identifying the Accused as the shooter.

[152] Evidence about things said by the Accused, and belligerent behavior on his part, is equivocal and not clearly related to Bilal or Amin Mohammed Abdullahi. Mr. Blaszkiewicz said he heard the Accused say he would "pop" someone in the lineup to the Club. Mr. Blaszkiewicz did not see the Accused say these words, he just saw the Accused when he turned around after hearing the words. This was some hours before the shooting. The Accused was observed fighting in the Club, and heard making threats, but Bilal and Amin Mohammed Abdullahi and their friends were not involved in this altercation. Ms. Nousek heard someone say "where's that black guy" as they were leaving the Club, and saw the Accused, but was not sure it was he who had spoken.

[153] I note as well, that the evidence is not consistent that the Accused was exhibiting a belligerent attitude. Ms. Winter, who spent most of the evening with him, testified that he seemed happy and eager. She knew he was drinking, but couldn't tell if he was affected by alcohol. Ms. Novero testified that there was nothing "off" about the behavior of the Accused and his friends throughout the night; they were "really kind." The Accused is also seen on surveillance leaving the Club. He walks right by the Deceased. There is no interaction between them, and nothing unusual about the Accused's behavior.

[154] There is a complete lack of evidence of animus between the Accused and Bilal and Amin Mohammed Abdullahi before the altercation. There is no evidence of motive for the shooting.

[155] Evidence that the Accused discarded his jacket after the fight may be explained as his reaction to having been involved in a street fight in which a man was shot.

[156] The Accused's DNA was found in a blood stain on the jacket. The evidence does not indicate the source of this blood stain. The timing of the deposit of the DNA cannot be determined.

[157] There was no DNA of the Deceased on the jacket.

[158] No gun was found.

[159] I find that the evidence that the Accused was the shooter falls short of the required standard of proof beyond a reasonable doubt.

[160] There is a strong case that he was involved in the altercation that culminated in the shooting, but it is clear that others were involved as well. The two witnesses who had the best view of the shooter gave descriptions that were not consistent with each other and not consistent with the evidence about the Accused's appearance that night: that the shooter was wearing a short-sleeved shirt (Mr. Fraser) or a windbreaker and a baseball cap (Mr. Creighton). These witnesses did not report seeing a white jacket or sweater, and a black purse with a cross-strap, items which were noticed by virtually all of the witnesses who saw the Accused that night and identified him as being involved in the altercation. The evidence of Mr. Blaszkiewicz, who identified the Accused as the shooter, is inconsistent with other evidence about how the shooting

took place. Mr. Blaszkiewicz may have seen the Accused, and seen sparks, and come to an honest but mistaken conclusion that the Accused was the shooter.

[161] In the end, based on the evidence presented at trial, I am simply not sure that the Accused was the shooter. The evidence of his presence during the altercation does not demonstrate liability as a party to the charged offences, or any included offence.

[162] For these reasons, I find the Accused not guilty on all three counts in the Indictment.

Heard on the dates of January 22-31, February 1-15, March 20-21, May 22 and 24, and July 3-4, 2018.

Dated at the City of Edmonton, Alberta this 31st day of August, 2018.

J.M. Ross
J.C.Q.B.A.

Appearances:

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