

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Smith*, 2022 NSPC 61

Date: 20221116

Docket: 8460976,
8460977, 8460978,
8460979, 8460980,
8460981, 8460982,
8460983, 8460984

Registry: Dartmouth

Between:

His Majesty the King

v.

Araya Smith

Judge:	The Honourable Judge Theodore Tax,
Heard:	June 1, 2022, June 7, 2022, June 14, 2022, June 15, 2022, in Dartmouth, Nova Scotia
Decision	November 16, 2022
Charge:	Section 221, 87(1), 95(1), 92(1), 91(1), 90(1), 88(1), 86(1), 86(2) of the Criminal Code of Canada
Counsel:	Robert Fetterly, Q.C., for the Nova Scotia Public Prosecution Service Nicholas Fitch, for the Defence Counsel

By the Court:

[1] Mr. Araya Smith faces a total of nine firearms charges. The first alleging that he was criminally negligent in having shot a firearm and causing bodily harm to Cameron Brown contrary to section 221 of the **Criminal Code**. He is also charged with unlawful pointing of a handgun at Cameron Brown, contrary to section 87(1) **Code**, possessing a loaded restricted or prohibited firearm without being the holder of an authorization or license to possess the firearm in that place, contrary to section 95(1) **Code**, possessing a firearm knowing that he was not the holder of a license to possess it or a registration certificate for a prohibited or restricted firearm contrary to section 92(1) **Code**, possession of a firearm without being the holder of a license to possess it or a registration certificate in the case of a prohibited or restricted firearm contrary to section 91(1) **Code**, carrying a concealed weapon, a handgun, contrary to section 90(1) **Code**, having a weapon for purpose dangerous to the public peace or for the purpose of committing offence contrary to section 88(1) **Code**, use of a firearm in a careless manner or without reasonable precaution for the safety of other persons contrary to section 86(1) **Code** and finally, that he did store, handle or transport a firearm, contrary to the *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations*, thereby contravening the regulation made under para. 117(h) of the **Firearms Act**, contrary to section 86(2) **Code**.

Introduction:

[2] The nine firearms offences were alleged to occurred on or about August 13, 2020, at or near Dartmouth, Nova Scotia. The Crown proceeded by way of indictment, with Mr. Smith making his first appearance in court on August 19, 2020. Following a change in defence counsel, Mr. Smith elected to have his trial in the Provincial Court and entered not guilty pleas on May 26, 2021. At that time, the trial was originally scheduled to be heard on February 22, 23rd and 24th 2022. The Court also scheduled a status date for those trial date on June 28, 2021.

[3] On the June 28, 2021, status date for those trial dates, the trial of this matter was transferred to Dartmouth Courtroom #5 and three new days for trial had to be secured. The three-day trial was then set for May 17, 18 and June 7, 2022, with a pre-trial conference to be held on September 21, 2021. At the pre-trial conference,

the May dates were released, and the case was then scheduled for a four day trial on June 7, 8, 14 and 15, 2022.

[4] During the further pre-trial conference, Defence Counsel indicated that he would be filing a **Charter** application that Mr. Smith's section 10(b) **Charter** right had been breached by the police which directly impacted his right to counsel. The Defence sought the exclusion of the statements or comments made by Mr. Smith during an audiovisual interview with Det/Const. Veinotte on August 15, 2020. Dates were set for the filing of **Charter** briefs by the Defence in late October 2021 and the Crown response by mid-November 2021. A further status date was set for the **Charter** application and the trial itself on January 5, 2022.

[5] The Defence **Charter** Brief had been received by the Court and the Crown Attorney on January 3, 2022. As a result, during the January 5, 2022, status date, it was agreed that the Crown Attorney would file his Respondent's Factum to the **Charter** application by February 4, 2022. In addition, on January 5, 2022, the Court re-confirmed that the trial dates would be on June 7, 8, 14 and 15, 2022.

[6] Prior to the first day for trial, the Court was advised that the Chief Firearms officer for Nova Scotia would not be available on any of those trial dates. As a result, the Court was able to schedule an additional day for the hearing of the trial evidence of Mr. John Parkin on June 1, 2022.

[7] At the same time, on June 1, 2022, the Court entered into a *voir dire* with respect to the Defence section 10(b) **Charter** application to exclude the statement of Mr. Araya Smith. The only witness called on the Charter *voir dire* was Det/Cst. Matthew Veinotte of the Halifax Regional Police. With respect to the **Charter voir dire**, the Parties agreed that there was no need to hold a common-law voluntariness *voir dire*. The issue with respect to the **Charter** application was whether Mr. Smith, having been informed of his right to retain and instruct counsel without delay, actually understood that information and then made an informed decision to speak with the police officer.

[8] At the outset of the *voir dire* on June 1, 2022, Defence Counsel agreed that if the Court was to rule that there had been no breach of Mr. Smith's section 10(b) **Charter** right and that the statement was admissible evidence, there would be no need to recall any evidence heard on the *voir dire*. The Crown filed two exhibits on the *voir dire*, one being a CD of the audiovisual statement of Mr. Araya Smith taken on August 15, 2020, and the second being a certified copy of a 48-page

transcript of that audiovisual recording as an aide memoire, which had been prepared by a certified court transcriber.

[9] The only witness called on the **Charter** *voir dire* on June 1, 2022, was Det/Cst. Matthew Veinotte. Following his direct and cross-examination, the parties supplemented their written submissions with brief oral submissions. Having found the earlier date for the hearing of the **Charter** *voir dire* and the evidence of Mr. Parkin, the Court adjourned its decision until June 7, 2022, which was the next day scheduled for trial.

[10] After reviewing the totality of the facts and circumstances of the interview, and referring to **R. v. Evans**, [1991] 1 SCR 869 and **R. v. Sinclair**, 2010 SCC 35 that Mr. Araya Smith had an “operating mind,” had the requisite information to make a choice whether he would speak to a police officer or not. The officer had not undermined his ability to make that choice, the interview was conducted in a clear manner and Mr. Smith was certainly aware that he was speaking with the police officer and that anything he said would be noted and in fact, recorded and potentially used as evidence later in court.

[11] In the final analysis, on June 7, 2022, the Court determined that there was no breach of Mr. Smith’s section 10(b) **Charter** rights.

[12] The trial evidence of the other witnesses who were called by the Crown was heard on June 7 and 14, 2022. At the conclusion of the Crown Attorney’s case where he tendered his exhibits and closed his case, he advised the Court that he was not tendering the audiovisual statement of Mr. Araya Smith taken on August 15, 2020 as part of the Crown’s case, but rather, would be holding that statement back for purpose of cross-examination if Mr. Smith chose to testify during the trial.

[13] Following that statement by the Crown Attorney, Defence Counsel indicated that he would not be calling any Defence evidence.

[14] It was initially considered that the next day, June 15, 2022 might be utilized for the counsel to make oral submissions on the trial evidence. Instead, after consultation with the Court, the parties agreed to provide written submissions and thereafter, the court would provide a date for the decision. The Crown Attorney filed his written submissions on June 24, 2022, and Defence Counsel provided his written submissions on behalf of Mr. Smith on July 18, 2022. On a hearing to set a decision date on July 26, 2022, the Court’s decision was reserved until today’s date.

Positions of the Parties:

[15] As a result of admissions made under section 655 of the **Criminal Code** and entered as an Exhibit in the trial, several of the essential elements of the various offences before the court are not in dispute between the parties. The date, time and location of the firearms incident are acknowledged as proven. The parties have acknowledged that in the Dartmouth, Nova Scotia hotel room where Mr. Cameron Brown was located on the evening of August 13, 2020, he was shot in the left scapula [shoulder blade] with a bullet discharged from a handgun which the parties acknowledge has not been located.

[16] There is no dispute between the parties that the evidence established that Mr. Brown was admitted to the Dartmouth General Hospital on August 13, 2020 [I note here for the record that Exhibit 10 which is the Agreed Admissions, inadvertently contains a typographical error, as the document states that the hospital admission was on April 13, 2020]. The parties have agreed that, at the hospital, a radiological examination confirmed that Mr. Brown had a fracture of his spine at the C5 and C6 secondary to a gunshot wound at his left scapula which was a penetrating wound. The injuries and residual limitations suffered by Mr. Brown as a result of the gunshot and penetrating wound are agreed by the parties to meet the definition of “bodily harm” as defined in the **Criminal Code**.

[17] Notwithstanding the fact that the handgun involved in the incident has not been located, from the nature of the injuries, the parties agree that the handgun was a “firearm” as defined by the **Criminal Code**. Furthermore, from the description of the firearm provided by the witnesses, there is no dispute between the parties that firearm would also meet the definition of a “restricted or prohibited firearm” in section 84(1) of the **Criminal Code**.

[18] Finally, there is no dispute between the parties that, at the time of the incident in question, Mr. Araya Smith was a friend of Cameron Brown and Ethan Tibbo, and as such, no witness was required to make any in dock identification of Mr. Araya Smith.

[19] The parties have acknowledged that all other elements of the charges before the court are in issue, but in reality, the main issue with respect to each of the nine offences before the court is whether the Crown has established, beyond a reasonable doubt, that Mr. Araya Smith was, in fact, the person who took the various actions alleged in the Information, namely, the person who fired the

handgun, used or handled the handgun, pointed the handgun, possessed the handgun and handled, stored or transported the handgun.

[20] It is the position of the Crown that the evidence of the Chief Provincial Firearms Officer established that Mr. Araya Smith did not possess a firearms licence or a restricted firearms license or permit for any specific restricted firearm and was therefore not permitted to possess or own restricted firearm. Mr. Parkin's evidence established the key essential elements of several of the firearm's charges, assuming that the identity of Mr. Smith as the person who, used, pointed, carried, etc. the firearm was established beyond a reasonable doubt.

[21] He submits that, with respect to the pointing offence contrary to section 87 of the **Code**, the Information was not amended to indicate that the firearm was pointed at anyone in particular, however, the court could find that the firearm was pointed at Mr. Tibbo and in combination with the trigger pull while pointed, that would establish "careless use" which would not be "Kienappled" with the criminal negligence charge. However, if the court was to conclude that the only person at which the handgun was pointed was Cameron Brown, then count 2 [pointing at Cameron Brown] would be "Kienappled" with count 8 [careless use]. "Careless handling" pursuant to section 86(2) **Code** [count 9] involves a different regulatory breach and therefore, would not be "Kienappled" with "careless use."

[22] The Crown Attorney submits that there are different levels of *mens rea* and that the *actus reus* of each offence is quite different. An offence like pointing a firearm, contrary to section 87(1) **Code**, is one of general intent, not requiring the firearm to be loaded, restricted or prohibited, but must be intentionally pointed at another person. The *mens rea* required is either knowledge or wilful blindness when speaking to the intent, in the sense that the pointing was an action of choice rather than by accident.

[23] As for the unlicensed possession charges contrary section 91, 92 and 95 of the **Code**, they all require the Crown to prove that the accused did not have a license to possess the firearm or restricted or prohibited firearm and the Crown submits that that was established by the affidavit evidence of Mr. Parkin and his testimony. The Crown Attorney submits that they are not required to establish that the accused person knew that the handgun was actually restricted or prohibited, simply, that the accused knew it was a firearm, since all handguns are prohibited or restricted firearms, as established by the evidence of Mr. Parkin.

[24] Furthermore, it is the position of the Crown that, given the similarity of the essential elements of the section 91 and section 95 **Code** offences, those offences may be established by the accused person having possessed a loaded restricted or prohibited firearm, without requiring any knowledge that it was loaded or being wilfully blind to that fact, but by simply being in possession of it at any time prior to the firing, which also established that it was a working firearm.

[25] With respect to count 4, which is a charge contrary to section 92(1) **Code**, that the accused possessed a firearm “knowing” that he was not the holder of a license under which he may possess it or in the case of a prohibited or restricted firearm without being the holder of registration certificate for the firearm, the Crown Attorney concedes that, in the circumstances of this case, that requires more than a person being “presumed to know that the law requires licensing.” As such, the Crown concedes that they have not been able to establish that additional level of knowledge as an essential element of the section 92(1) **Code** offence.

[26] Finally, with respect to the criminal negligence causing bodily harm offence contrary to section 221 **Code**, the Crown Attorney submits that, based upon the description of criminal negligence in section 219 of the **Code** as interpreted by the Supreme Court of Canada and our Court of Appeal, the Crown must establish, beyond a reasonable doubt, the *actus reus* as : (1) the act or an omission to do something that is the accused’s **duty** to do; (2) the act or omission demonstrated a wanton or reckless disregard for the lives or safety of other persons and (3) the act or omission caused bodily harm. Parliament has also defined “**duty**” for the purpose of that provision in section 219 (2) **Code** as being “a duty imposed by law.”

[27] The Crown Attorney submits that in terms of the *actus reus*, they have established beyond a reasonable doubt that the acts or omissions of Mr. Araya Smith showed a wanton or reckless disregard for the life or safety of Cameron Brown and that his acts and omissions on that standard caused bodily harm. Furthermore, in terms of the *mens rea* for that offence, it is the position of the Crown that Mr. Smith’s actions represented a marked and substantial departure from the standard of care of a reasonably prudent trained and licensed restricted firearms handler in the accused’s circumstances, including what they knew or ought to have known.

[28] In particular with respect to the *actus reus*, the Crown Attorney submits that in addition to not being licensed to carry the firearm, Mr. Smith did not check to

see if the firearm was unloaded, or safe to handle, omitted to store the handgun safely in an approved container, brought the firearm to a hotel room, producing it for others to touch, handle and even point that other people, engaging in horseplay with the gun by pulling the trigger and ultimately pulling the trigger when it was pointed and discharged a bullet which hit Mr. Brown.

[29] It is the position of the Crown that all of those factors and several others established by the evidence constituted a marked and substantial departure from the duty of care of reasonably prudent licensed and trained firearm owner would follow. The criminal negligence of Mr. Smith was not a momentary lapse in judgement but a course of conduct in bringing the gun in his possession into a small room in the presence of several other people and then acting in the manner which he did, demonstrated a wanton and reckless disregard for the safety and lives of those other persons. The Crown Attorney submits that Mr. Smith should be convicted of all charges, but also submitting that a few of the charges may be subject to the “Kienapple” principle.

[30] For his part, Defence Counsel agrees with the Crown Attorney that the key issue in dispute are whether the identification of the person who possessed, used, pointed and ultimately fired a handgun has been established beyond a reasonable doubt. Secondly, he takes issue with the Crown as to whether the requisite standard for the offence of criminal negligence causing bodily harm has been established beyond a reasonable doubt.

[31] It is the position of the defence that the evidence of Cameron Brown who acknowledged being drunk and under the influence of controlled substances and marijuana at the time of the incident impacted his testimony which was neither credible nor reliable. All of the witnesses who testified during the trial were either in a location or looking in a direction where they had no idea who had the gun when it was fired and a bullet struck Mr. Brown. Once Mr. Brown was shot and wounded, people either quickly moved over to help him or immediately left the hotel room. In addition, no one saw the gun after it was fired, and the handgun has never been located.

[32] In those circumstances, it is the position of the defence that all of the civilian witnesses called by the Crown could be considered as differing degrees of an “unsavoury” witness, whose evidence was not credible or reliable and their evidence should be considered with the special caution provided by the Supreme Court of Canada in **R. v. Vetrovec**, [1982] 1 SCR 811. The one exception to that

caution might be Ms. Teirah Slawter but certainly the Court should regard Cameron Brown as an “unsavoury witness” as well as Ethan Tibbo and Antwoine Clarke. Mr. Smith elected not to call evidence and there was one other young man in the room, with the given name Traydell, but he was not called by the Crown as a witness.

[33] Prior to being shot, Mr. Brown had consumed copious amounts of alcohol cocaine and cannabis, he had not made any statement or cooperated with the police at the time of the incident which might be used to refresh his memory and his recollection of having seen Mr. Smith with the gun a few days before which was not corroborated by any other witness. Mr. Brown claims to have seen the gun in the car when he was not in a position to do so. Neither Mr. Tibbo nor Mr. Clarke stated that they saw the gun in the car as they drove to the hotel that evening and Ms. Slawter does not believe she was in the car on the way to hotel. Traydell was not called as a witness by the Crown, despite others stating that he was seated in the backseat near Mr. Smith as they drove to the hotel.

[34] In terms of a message that Mr. Cameron Brown stated that he had received over two years ago from Mr. Smith, which Mr. Brown alleged was an apology to him, Mr. Brown could only provide a very vague description of the message, and it was certainly not a specific apology for shooting him. Moreover, Mr. Brown never produced that message in court to support his speculated interpretation of the words allegedly stated in it by Mr. Smith.

[35] Defence Counsel submits that there may be many possible interpretations for the words used and caution should be exercised in these circumstances where the note and the exact words are not available to be reviewed in detail and potentially interpreted. He submits that the court should bear in mind the Supreme Court of Canada comments in **R. v. Villaroman**, [2016] 1 SCR 1000, that a certain gap in the evidence may result in inferences other than guilt, but those inferences must be reasonable given the evidence and the absence of evidence, when assessed logically and in the light of human experience and common sense.

[36] Moreover, it is the position of the defence that there is no statement from the accused before the court in evidence. **Villaroman** sets out the standard required for proof beyond a reasonable doubt in circumstantial cases. It is a standard well known to the court that guilt must be the only reasonable inference. In this regard, Defence Counsel submits that there is an alternative reasonable inference that the Crown Attorney has not addressed in his submissions nor in the evidence. The

Crown did not call Traydell Brown, yet all of the witnesses who did testify place him as being near the gun and behind Mr. Cameron Brown just prior to the shot being fired. The witnesses indicated that Traydell immediately fled from the scene and it is the position of the defence that this evidence leaves the court with a reasonable alternative inference - that is, that the shooter was Traydell.

[37] In fact, Defence Counsel points out that the Crown Attorney, at para. 10 of his closing submissions after reviewing all of the testimony in relation to the positioning of the people who said they did not fire the gun, then based on their positioning and their evidence as to who last had the gun, the Crown Attorney submitted that “the shooter has to be one of two persons, Araya Smith or Traydell Brown.”

[38] Defence Counsel submits that the Crown’s reliance on some video images that show Mr. Smith may have had something in his waistband when he left the hotel is speculation at best. In addition, those same video images show Traydell leaving the hotel with a bag after the shooting. The contents of the bag are unknown as are the object or objects potentially in the waistband of Mr. Smith as he exited from the hotel and as such, any inference from that is highly speculative and not of material weight. With respect to almost all of the firearms charges, it is the position of the defence that the Crown has not established beyond a reasonable doubt that Mr. Smith has been identified as the shooter and he should be acquitted on all of the charges before the court.

[39] In the case of the one charge where Mr. Brown claims to have seen Mr. Smith taking bullets out of the handgun, given the fact that Mr. Brown was an unsavoury witness and his evidence was not corroborated by any other witness, it should not be accepted by the court and Mr. Smith should also be acquitted of that charge.

[40] Defence Counsel also submits that if the Court was to find that Mr. Smith was identified as the shooter, then, the Crown has not established beyond a reasonable doubt the modified objective standard of criminal negligence. Multiple witnesses described the gun as being in poor condition and expressed surprise that it worked at all. There were statements with respect to the fact that the trigger had been pulled several times but no bullets fired and, in those circumstances, it would be reasonable to assume that the gun was inoperable rather than unloaded.

[41] In those circumstances, Defence Counsel submits that the Crown has not established the *actus reus*, that is, an act or omission which demonstrated a wanton

or reckless disregard or safety of other persons nor the *mens rea* for the offence that required the Crown to establish that the accused's conduct was a marked and substantial departure from the requisite standard of care that a reasonably prudent person would observe in similar circumstances.

Trial Evidence:

[42] The Crown called the Chief Firearms Officer for Nova Scotia, Mr. John William Parkin as a witness, not to be qualified as an expert witness, but rather to speak to his role as the Chief Firearms Officer, his responsibility to administer the **Firearms Act** for the province and the federal government and provide information with respect to any authorizations a person may have under that **Act**.

[43] Mr. Parkin also provided evidence with respect to his responsibility for the delivery of suitable training for persons that is required for them to apply to obtain the relevant licenses and for overseeing the training and licensing requirements for the safe handling of firearms. In discussing that role, he identified two RCMP manuals which are in current use in Nova Scotia for training in the Initial Firearms Safety Course [Exhibit 3] and the one required for the more advanced restricted or prohibited firearms safety course [Exhibit 4] And speak to training and licensing requirements for safe handling of firearms.

[44] In addition, Mr. Parkin also prepared a Canada Firearms Program Affidavit dated February 17, 2022, which was filed as Exhibit 1 in the trial. The affidavit established that Mr. Parkin, as Chief Firearms Officer in the province of Nova Scotia, and designated as such under the **Firearms Act**, S.C. 1995, C-39, has access to the records on the Canadian Firearms Information System established under section 87 of the **Firearms Act**. The affidavit confirms that after having conducted a search of those records, Araya James Smith, 2001-11-16, does not possess a Possession and Acquisition License issued under the **Firearms Act** and did not possess a Possession and Acquisition License on August 13, 2020.

[45] Furthermore, Mr. Parkin's affidavit dated February 17, 2022 [Exhibit 1] confirmed that Araya James Smith, 2001-11-16, does not possess a license or authorization to possess nonrestricted firearms, restricted firearms, prohibited firearms, prohibited weapons or prohibited devices. In addition, Mr. Parkin's affidavit states that no current application for a firearms license or a firearm registration bearing the name Araya James Smith, 2001-11-16, has been found in the Canadian Firearms Information System.

[46] During his testimony, Mr. Parkin explained that all handguns are either restricted or prohibited under section 84 of the **Criminal Code** and that the distinction between the two is that the “prohibited firearm” is generally shorter than a “restricted firearm” and has different magazine capacities and in some cases calibre of the firearm itself. Prohibited firearms, generally being smaller than restricted firearms, in his opinion would be more easily concealed.

[47] Mr. Parkin explained that transportation of restricted or prohibited firearms must only be done by persons with authorizations to possess them, carried in a hard case with a trigger lock. They may only be used in approved shooting ranges unless being utilized by a public officer, in the performance of his, her or their duties, for example, police, military or armed security guards.

[48] He also provided information with respect to the provisions of the *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations*, SOR/98-209. In particular, he pointed out that section 15 of those *Regulations* state that an individual may load a firearm or handle a loaded firearm **only in the place** where the firearm may be discharged in accordance with all applicable Acts of Parliament and of the legislature of a province, regulations made under such Acts and municipal bylaws. He confirmed that with respect to the definition of authorized “**places**” where a firearm may be loaded, handled or discharged does not include any hotel located in Nova Scotia.

[49] Furthermore, pursuant to sections 5, 6 and 7 of those same *Regulations* which deal with the Storage of Non-Restricted Firearms, Storage of Restricted Firearms and Storage of Prohibited Firearms, Mr. Parkin stated that all three must be stored on loaded, rendered inoperable by a secure locking device and stored in a securely locked appropriate container and not readily accessible to ammunition.

[50] In terms of the safe handling of firearms, Mr. Parkin also highlighted the training requirements under the statute and regulations. In particular, he referred to two acronyms as vital parts of the training courses, the first being **ACTS** and the second acronym being **PROVE**.

[51] The acronym **ACTS** is taught in the manual and the safety course as being: **A** – assume every firearm is loaded and is a potential danger; **C** – control the muzzle direction at all times – keep it pointed in the safest direction never pointed at anyone including yourself; and out of the trigger guard; **T** – trigger finger must be kept off the trigger and out of the trigger guard and finally, **S** – see that the firearm is unloaded – prove it safe do not handle unless it is safe, check to see that

both chamber and magazine are empty every time weapon is handled and only pass or accept open and unloaded firearms.

[52] The acronym **PROVE** which is also taught in those safety manuals stands for: **P** – pointed in the safest available direction; **R** remove all ammunition; **O** – observe the chambers; **V** – verify the feeding path; **E** – examine the bore for obstruction.

[53] Mr. Parkin pointed out that the bottom line from those training manuals and the two fundamental Acronyms for handling firearms – **Acts** and **Prove** highlight the inherent danger of firearms and special precautions and care needed to handle them in a safe manner. He provided several examples of poor handling choices that create dangerous situations such as horseplay and pulling the trigger or when handling firearms under the influence of alcohol or other intoxicants.

[54] On cross-examination, he agreed that firearms can accidentally discharge and do degrade over time if they are not maintained. He also agreed with Defence Counsel that revolvers typically do not have a safety on them. Mr. Parkin stated that it is always prudent to treat a firearm as if it is loaded, even if it was recently cleared. He stated that the prudent practice is to always check to see if the firearm is loaded and recheck the firearm if it was put down for a moment, as someone else may have handled it in the interim.

[55] Mr. Parkin also stated that firearms are mechanical devices and must be maintained in order to avoid dirt getting into the mechanism and causing a jam. He stated that he would not trust any gun found by someone on a beach after a period of time as being mechanically sound. In his opinion, the hammer may be misaligned or there may be problems with the firing pin. In that situation, once again, a person should make sure the gun is clear when handling it and pointing it only in a safe direction, never at people, and especially, never with the person's finger on the trigger as if ready to shoot.

[56] On further cross-examination, Mr. Parkin was asked about the difference between a "misfire" and a "hang fire." He stated that a misfire can occur with all firearms and could be an issue with respect to the firearm or the ammunition or perhaps something mechanical as a reason for not firing at all. On the other hand, in his opinion, "hang fire" may be a factor of old surplus ammunition, casings, powder or primer that may be in the firearm that does not ignite instantly. There could be a delay of a few seconds or even a minute and for that reason, if someone has pulled the trigger, the firearm should always be kept pointed in a safe direction.

[57] Cameron Brown testified on June 7, 2022 and stated that he was 22 years old at that time. He confirmed that on August 13, 2020, he and a few of his friends arranged to “hang out” together at the Dartmouth Crossing location of the Hampton Suites Hotel, located in Dartmouth, Nova Scotia. The people who attended with him at that hotel that evening were Ethan Tibbo, Bobbi, being a nickname for Antwoine Clarke, Traydell, Araya Smith and a girl, whose nickname was “Peaches” who was later identified as Teirah Slawter. He has known Ethan since high school and met the others through him.

[58] Earlier in the day on August 13, 2020, Cameron Brown and Ethan were in Halifax together at his house and then, between 1:00 and 2:00 PM. they went over to North Preston and first picked up Araya Smith. About a half-hour to one hour later, they got Traydell. Ethan was driving his car, with Cameron Brown in the front passenger seat, while Araya Smith sat in the back seat behind him. They drove around, smoked some weed, listened to music and just generally had a “good time.” When Traydell got in the car, he sat behind the driver, Ethan. Later that night, they got together with the other people at the hotel.

[59] When the four of them were driving around in the car, smoking some weed and listening to music, Mr. Brown stated that they were “fucking around with a gun.” He stated that Araya had the gun, and he had seen it when he had it in his pants. Mr. Brown added that Araya Smith had the gun but “a number of us did hold or touch the gun,” but said that was not done in the car, rather it was “somewhere else.” He did not recall any specific place where they stopped as they had “cruised” in Dartmouth as well as in Halifax for a while, as Ethan lived in Halifax.

[60] As they continued to drive around, they went to the Baker Drive area of Dartmouth where they picked up Antwoine and “Peaches.” Mr. Brown stated that he was “friends” with both of them and after they got in the car, they went to an NSLC to buy some liquor, and then went to get the hotel room. They had not made a reservation, but the plan was to get a room for the night, drink alcohol and have some fun. They had done that on previous occasions, as a group, but he had not previously gone to the Hampton Suites Hotel in Dartmouth Crossing.

[61] When they got to the hotel, it was about 8:00 PM or a little bit earlier in the evening. Mr. Brown had given his ID for the room to be put in his name, but he split the cost of the room with Mr. Smith. They got a room on the fifth floor of the hotel and once everyone got in the room, they chilled, partied, drank alcohol, did

some drugs and just generally hung out together. Once in the room, they did some drugs and he mentioned that they were “Molly” as a reference to MDMA as well as some “blow” referring to 2 g of cocaine that he had purchased and brought to the hotel room. They had also purchased some Hennessy Cognac and vodka.

[62] Mr. Brown was not able to recall the amount of cocaine that he or anyone else used that evening but stated that “all of us” did some. He added that after he was shot, he still had ½ g of cocaine in his pocket and he had mentioned that fact to one of the police officers who attended. In terms of the MDMA, he is not sure who brought it or who actually used it. People were drinking the Hennessy Cognac and vodka.

[63] During the evening, they were just “chilling” and hanging out together. With respect to the gun, Mr. Brown said that the “original plan” was to put the gun in a drawer so that nothing happened and just to continue to chat, drink and do some “blow.” When asked to provide a little more detail about that “original plan” with respect to the gun, Mr. Brown said that they were all drinking and that the responsible thing to do was to put it away so that “nothing stupid would happen.” He said that the gun had been placed in a drawer, but then, a little later, he saw it on a table when he was “pretty drunk.”

[64] In terms of what happened next, Mr. Brown stated that he was standing by the exit door and on the phone with an aunt, after he saw the gun on a table. A few moments later, Mr. Brown noticed that Mr. Araya Smith was holding it. He added that, prior to Mr. Smith picking up the handgun, Mr. Brown himself had held the gun, but he stated that he held it with the sleeves of his shirt touching the gun so that his fingerprints would not be on it.

[65] Mr. Brown described the gun as being a “22 Special” revolver which he recalled having seen that inscription on the “nose” of the gun, referring to the barrel of the handgun. He identified it as a 22 special revolver. In terms of its size, he described it as a regular size revolver, not having a “stub nose” or a short barrel as it was about 9 to 10 inches long with about a 5-inch barrel. The gun that he had seen was about 3 to 5 inches longer than a stub nose gun, which has a shorter barrel that is approximately 2 to 3 inches long and the overall length of the handgun was 6 to 7 inches. Mr. Brown described the gun as being a black revolver, which had a “busted handle” with some duct tape on it and that it was “a little rusty” too.

[66] Mr. Cameron Brown confirmed that the evening of August 13, 2020, was not the first time that he had seen that handgun. He stated that he had seen the gun about a day or two before the night that he was shot, when he was with Araya Smith, Ethan and possibly Traydell at Araya Smith's house in North or East Preston. He confirmed that the gun was at the house where Araya Smith was living, but he was not sure who else lived in that house with him. Mr. Brown stated that Araya Smith "pretty much showed us the gun" a day or two before the incident at the hotel.

[67] He added that, when he was at Araya Smith's house a day or two before the incident at the hotel, he had seen ammunition in the gun and had not seen a holster for the gun. Mr. Brown stated that, when he was at Araya Smith's house, he had seen the ammunition in the handgun "through the crack where the bullets go in and then closes."

[68] Mr. Brown added that he had also seen the ammunition in the handgun during the evening when he was shot at the hotel. He stated that, while they were at the hotel, he saw Araya Smith take ammunition out of the gun. He also saw Mr. Smith pull the bullets out a little bit from the metal casing of the gun where the bullets sit and it spins.

[69] For further clarification with respect to his description of the handgun, the Crown Attorney referred Mr. Brown to Exhibit 4, the Canadian Restricted Firearms Safety Course Program, 2014 prepared by the RCMP. In particular, the Crown Attorney asked Mr. Brown to look at pages 254 and 255 which show the common types of handgun actions. Having done so, Mr. Brown stated that the handgun that he had seen looked like the one shown in Figure 105 - a Break Action Revolver, shown on page 255 of Exhibit 4.

[70] Mr. Brown repeated that he had seen that revolver a couple of days before the incident and again at the hotel, and the gun had a part that you needed to revolve and turn to put in or take-out a bullet. He was familiar with 22 calibre bullets and the one that he saw in the gun had a copper casing on it. It was a small bullet about fingertip size which also had a bit of a gold casing as well.

[71] Mr. Brown repeated, as he had mentioned before, that he "handled" the gun himself in his hands. He believed that he was waving it around a little bit and looking at it from different angles as he was circling it on his hand. He did not touch the spinning part or for that matter any other part of the gun, and as he had mentioned before, he had not put his fingerprints on a gun that could be used for a

crime. He added that he did not put his finger on the trigger, as he “is not careless with guns.” He also believed that Traydell may have held the gun for a short time while they were at the hotel.

[72] Coming back to describe the incident itself, Mr. Brown stated that Araya Smith did “more or less” the same handling of the gun that he had done. He repeated what he had earlier said, that is, that he was on the phone talking to his aunt, while he was standing near the front entry door to the hotel room. The hotel room as documented by photo #1 in Exhibit 5 was room 503. Mr. Brown said that Traydell and Araya Smith were sitting on the bed at the other end of the room. The next thing he knew, there was a bang, he fell to the ground, and he could not move. Traydell and Araya Smith ran out of the room, while Antwoine (“Bobbi”) put a towel on him to stop the bleeding.

[73] In addition to stating where Traydell and Araya were in the moments before he was shot in the back, Mr. Brown also stated that Ethan was standing near the table with the sink in the washroom area of the hotel room. He stated that there was also a table against the wall next to the entry to that bathroom area where “Bobbi” [Antwoine] and “Peaches” [Teirah Slawter] were standing. Araya and Traydell were on the bed. He was near the entry area of the room and he was facing the exit door when he heard a “lone bang” took 2 steps back after being hit in the back by the bullet and then fell to the ground.

[74] After verbally stating that information, the Crown Attorney then directed Mr. Brown’s attention to certain photographs contained in Exhibit 5 which had been taken by Const. Katelyn Cherwonick on August 13, 2020. In referring to photo #10, Mr. Brown stated that he was facing the exit door, standing essentially on the edge of the carpet near the ceramic tile at the room entry.

[75] Mr. Brown stated that from where he was standing, facing the exit door while he was on the phone, Antwoine and “Peaches” were located to his right, standing by the table facing the wall next to the washroom area, when he was shot. After he was shot, he took a couple of steps backward and then fell on the floor, landing essentially in front of the smaller table which had been moved in front of the bed as shown in photographs #13 and #22. He pointed out to where there was blood on the carpet floor and where there were pieces of paper towel with his blood on the floor.

[76] Mr. Brown stated that Antwoine picked him up off the floor and put him facedown on his chest on the couch shown in photo #13 and then applied pressure

with a towel to stop the bleeding until an ambulance arrived. He also asked Antwoine to call his aunt and let her know what had happened. Mr. Brown also commented on the red Adidas tracksuit in photos #13 and #20 that he was wearing when he was shot. It was cut off by the EMS personnel when they attended to treat him.

[77] With respect to photo #29, Mr. Brown stated that the lamp located on the table on the left side table of the bed as we view it, has a drawer where the gun was initially placed when it was not in plain view. Then, once the gun was removed from the drawer in that table, it was placed on the table which is against the wall next to the washroom area.

[78] With respect to photograph #27 in Exhibit 5, Mr. Brown confirmed that the brass knuckles shown in the photographs were his. Next, he noted that the cognac bottle was on the table on right side of the bed and that the vodka bottle on the table next to the wall where Antwoine and "Peaches" had been standing. The marijuana and tobacco leaf which had been rolled by him and Traydell was on the office type chair which had been moved over to the right side of the bed as shown in photo #33. He also confirmed that the iPad on the left side of the washstand shown in photo #40 belonged to Ethan and that was where he was doing "blow" or cocaine off of it.

[79] In describing his injuries, Mr. Brown said that he was shot on the left side of his back around the shoulder blade and the bullet ricocheted into his neck and in fact is still in the C5 section of his spine. He stated that he was almost paralyzed from the neck down and had to relearn how to eat, talk, walk as it was determined to be too serious to remove the bullet. Although he was able to communicate briefly as he was removed from the hotel on a stretcher, he was going in and out of consciousness and the next day he was not able to move anything from the neck down. Mr. Brown was in the hospital for two months and then did a further three months of rehab to recover.

[80] Mr. Brown confirmed that he had a vague recall of meeting with the police at the hospital, but he did not recall any questions asked by them. He did not make a statement that night other than a couple of words because he "did not want to be part of it and that he was going through enough shit as it was."

[81] Going back to the circumstances after he was shot, and before he was placed on the couch, Mr. Brown confirmed that Araya Smith ran out of the room and Traydell left the room shortly thereafter. Ethan left the room with Traydell after he

told Ethan to leave so that he would not get in trouble. It was Ethan who called 911. As a result, while he was lying on the couch, the only people left in the hotel room with him were “Bobbi” [Antwoine] and “Peaches.” She was crying and scared, while Antwoine put pressure on the towel over the gun wound, until he was ordered to step aside and taken to the ground when the police arrived.

[82] Mr. Brown stated that the shooting occurred sometime between 12 midnight and 1 AM when everyone was “pretty drunk” and intoxicated. He estimated that he had been shot about 5 to 10 minutes before Ethan called 911.

[83] Finally, he confirmed that he does have a criminal record with a few adult convictions and some youth convictions. He agreed that he has an adult conviction for assault with a weapon, which he says involved the defence of his mother, he is facing a theft of motor vehicle charge which is still before the court, and he has a couple of convictions for driving while disqualified and breach of conditions in a Probation Order in 2018.

[84] Mr. Brown also confirmed that he has prior Youth Court convictions for assault in December 2017, breaches of bail conditions, theft of a motor vehicle, trespass at night, possession over and a theft under charge, a further assault charge, and assaulting a police officer.

[85] In concluding his direct examination, Mr. Brown stated that since the incident, Araya Smith did apologize to him, in a message sent to his phone. However, he did not have his phone after the incident for a few weeks, but his recollection of what Araya had said was that it “was a mistake” and that he wanted me to forgive him.

[86] On cross-examination, Mr. Brown confirmed that he never initially gave a statement to the police, he had only indicated to them what had occurred in the preceding couple of weeks. On the day in question, he confirmed that Ethan picked him up first and that he was driving his VW Jetta with Mr. Brown seated in the passenger seat. The next person who they picked up was Araya Smith and then they drove around town for a while. Mr. Smith sat behind him and short time later, they picked up Traydell. He confirmed that the NSLC where they went to purchase the alcohol was on 650 Portland St. in Dartmouth, NS. They purchased vodka, Hennessy cognac and 12 case of beer and all of them shared the purchase price.

[87] Mr. Brown stated that, during the evening at the hotel, he was only drinking the Hennessy cognac, but everyone was drinking alcohol and were intoxicated.

They arrived at the hotel around 8 PM and he recalled that the 911 call was made around 12:35 AM, with him being shot about 5 to 10 minutes before that 911 call. He agreed with Defence Counsel that everyone had been drinking alcohol between about 8:00 PM and midnight, with the heaviest drinking being between 10:00 PM and 10:30 PM, then he switched to more “casual drinking” which involved, mixed drinks and shots.

[88] Mr. Brown agreed with Defence Counsel that he had also done some cocaine and agreed that he had told the EMS personnel that he was “superhigh” on cocaine to ensure that they provided the right medications for him. In terms of the consumption of cocaine, Mr. Brown said that, in total, the people who were in the hotel room with him and who used cocaine, had consumed about 1.5g of cocaine. He still had about ½ g of cocaine left in the package in his pocket. He did not think that “Peaches” did any drugs and he had not used any MDMA but had been using “weed” all day. He agreed with Defence Counsel that alcohol and drugs can affect a person’s memory, but it really depends on the individual and the consumption.

[89] Mr. Brown said that when he was shot in the back, he was on the speakerphone with his aunt and at the same time, he had been sending a text to a friend. He agreed with Defence Counsel that he was not looking around, but rather his concentration was on the phone at that time.

[90] Mr. Brown agreed with Defence Counsel that, at different times, different people did handle the gun. In his case, he had held the gun, but he only held it with the sleeves of his jacket. He was not sure whether Antwoine had handled the gun, but it was a “definite no” with respect to whether “Peaches” ever touched the gun. Mr. Brown stated that the “original plan” for the gun was that it was to be left in the drawer beside the bed. He did not recall who took the gun out of the drawer and put it on the table in the middle of the room.

[91] With respect to the description of the gun itself, he confirmed that the gun looked “rusty,” the handle was broken and was wrapped in duct tape. Finally, with respect to the timing between hearing the shot and the gun being placed on the table in the middle of the room, Mr. Brown said that he last saw the handgun on the bed where Traydell and Araya Smith were sitting. He saw them with the gun, and they were “handling it and chilling with it within five minutes of being shot.”

[92] Const. Scott Martin testified that, on August 13, 2020, he and Const. Devon Norris responded to a weapons complaint at the Hampton Suites Hotel, located at 65 Cromarty Drive, in Dartmouth Crossing. He did not go into the hotel but was

there for “containment” prior to the start of a K-9 track. On the K-9 track, they found a white T-shirt with blood on it, in the parking lot. The white T-shirt with bloodstains seized by the police in the parking area of the hotel is shown in a series of photographs by Const. Cherwonick, filed as Exhibit 6.

[93] Ethan McRobbie-Tibbo testified by video link from a Canadian Forces base as he had recently joined the Canadian forces and was on training for the trade of a marine engineer/technician. He indicated that on August 13, 2020, he was present when an incident occurred at the Hampton Suites Hotel and Dartmouth, Nova Scotia. He confirmed that, at that time, he also went by the nickname “Ethan M. T.” which used the initials of his hyphenated family name.

[94] As for the evening in question, he initially stated that he could not recall all of the people who were in the room, however, he recalled that Araya Smith was there as well as Antwoine and his girlfriend and a few others. On further reflection, he confirmed that Cameron Brown was the person who was injured, Antwoine was in the room with his girlfriend, but he did not remember her name and recalled that Traydell and Araya Smith were also there.

[95] Ethan Tibbo confirmed that he has known Cameron Brown for a few years and the other people for a shorter period. The group were like “brothers” to him and he spent most of his days primarily with Araya and Traydell and then some time with Cameron Brown and Antwoine. On the day in question, Mr. Tibbo said that he was with Cameron Brown all day and they drove around town in his 2012 VW Jetta with Mr. Brown seated in the front passenger seat. He did not specifically recall what the two of them had done during the day.

[96] Mr. Tibbo confirmed that later, in the day, they met up with the rest of the group. He did not recall who he picked up next, but he did recall that all the people who he picked up after Mr. Brown were in the backseat. As they drove around town, nothing unusual happened, but Mr. Tibbo did confirm that someone in the car had a firearm. He looked back to see, but he was not sure who “owned” it. When asked, on direct examination, if he found out who did “own the firearm,” Mr. Tibbo said that it was Araya Smith’s gun. He recalled that the gun had been pulled out and shown to the others then put away in a bag, while it was on his side of the car before they all went to the hotel.

[97] Everyone in his car went into the hotel room, including the bag which had the firearm in it. Once inside the hotel, the group of friends were just “hanging out, drinking, and talking.” Mr. Tibbo confirmed that the firearm came into view again

in the hotel room and, at a certain point, everyone held it and that “everybody pretty much touched it.” He could not say for sure that everyone had touched the handgun, but he did recall that it was taken out of a drawer and put back in that drawer a couple of times.

[98] Mr. Tibbo stated that he had touched the handgun and that he had pulled it out of the drawer and had opened it up. When he did that, he pulled the release a little bit and saw that a round was loaded. He was not sure of the brand of gun, but after seeing the bullet, he was satisfied it was a 22-calibre firearm. He is aware of 22-calibre firearms having recently gone into the military and having had the opportunity to fire 22 calibre guns at a shooting range.

[99] When Mr. Tibbo looked at the gun, he had one hand on the pistol grip, and he pulled the release to break it and then looked inside the chamber. He noticed that the chamber had a “few rounds,” but could not recall the specific number, and then he reattached the barrel. When he closed the gun, he pointed it towards the wall and away from everyone else in the room to ensure that nothing happened to impact the safety of the people.

[100] Mr. Tibbo did not recall whether Cameron Brown had handled the gun. However, he did recall having given the gun to Traydell to put back in the drawer and he also recalled seeing Traydell with the gun a little later. Mr. Tibbo stated that the first person who had the gun in the hotel was Araya Smith and he saw him “playing with it.” As Araya Smith was doing that, he said something and, as a result, Mr. Tibbo thought that the gun was unloaded.

[101] Mr. Tibbo recalled seeing the firearm and that he saw bullets loaded in it. He seemed to recall that someone unloaded it at a certain point, but he also recalled Araya Smith “playing with it” while he was sitting on the bed. In addition, he recalled hearing someone say before the incident that the gun was unloaded, but he did not recall who had said that.

[102] In terms of where everybody was when the handgun fired a bullet, Mr. Tibbo said that Mr. Brown was near the entrance of the room where there is a kitchen, just on the carpet side before the ceramic floor of the kitchen area. He did not specifically recall where everybody else was before the incident.

[103] Mr. Tibbo stated that the last time he saw the gun before it fired a bullet, Araya Smith had it while he was on the bed in the centre of the room. He recalled having thought, at that point, that the gun was unloaded because Mr. Smith was

“playing with it and pulling the trigger and pointing it around.” Mr. Tibbo recalled making that observation while he and Cameron Brown were near the door to the hotel room. He was not sure whether Antwoine was also near the front door.

[104] He stated that when Mr. Smith was pointing the firearm, he was “not comfortable” because he knew that you should not be pointing a firearm at people, especially your friends. Then, Mr. Tibbo said that he heard some “clicking sounds” but he was not sure whether Mr. Smith was pointing the firearm at him or whether he had also pointed it at other people in the room. Mr. Tibbo recalled that after Mr. Smith pointed the firearm at him, he then pointed it at Cameron Brown and that was when the shooting occurred, because Cameron had been hit.

[105] Mr. Tibbo was certain that a shot had been fired because he heard the hammer being hit and then fired the bullet which hit Cameron Brown. He looked at Mr. Brown just as he fell to the ground and he saw blood on his back, so he picked up Mr. Brown and put him on the couch. He confirmed that he did not have his eyes of the shooter when the gun was fired but stated that Araya Smith had the gun just before Cameron Brown was hit by the bullet from the gun. He did not see the shot fired, but he heard the gunshot sound, saw his friend Cameron Brown get hit in the back with a bullet. The last person who had the gun before the shot was fired, was Mr. Araya Smith.

[106] After Cameron Brown fell to the ground, Mr. Tibbo heard him call for help and Mr. Tibbo picked him up and put him on the couch. Mr. Tibbo noticed that Mr. Brown could not move his arms or legs after he put him down on the couch. Then, Antwoine came over and applied pressure to the bullet hole. Shortly after that, Mr. Tibbo left the hotel room, but he called 911 for the ambulance while Antwoine stayed with Mr. Brown.

[107] When Mr. Tibbo left the hotel, he went to his car and drove over to his girlfriend’s house to stay overnight. No one else came with him. He did not know where Araya Smith or Traydell had gone. He had not seen any police officers arrive at the hotel, but he knew that an ambulance was on the way.

[108] On further direct examination, he was again asked, who was handling the firearm just before the shot was fired. Mr. Tibbo stated that Mr. Smith was the last person who he saw handling the firearm before the shot was fired. He added that when it was pointed at him, he saw the gun, but after that, he did not have “full eyes” on Araya Smith. Mr. Tibbo added that when Mr. Smith was holding the

firearm, he felt that it must have been unloaded, because “it was not safely handled.”

[109] In making that comment, Mr. Tibbo added that he has since had firearms training in the military and has been on a shooting range. He is aware of what you are supposed to do with a firearm as he had done the safety course at a firing range as well as with the military. He did not pull the trigger at any time and was certain that he probably never would have, no matter how drunk he was, based upon him always maintaining “basic safety rules” for handling a firearm.

[110] With respect to the amount of alcohol that he had consumed that evening, Mr. Tibbo stated that he did not really have that much, and he was okay to drive, having had maybe 1 to 2 drinks of Smirnov vodka mixed with the pop. He did not recall having consumed any drugs and that evening; he had only consumed a couple of drinks of alcohol. He was not sure of the amount of alcohol that Araya Smith or anyone else had consumed that evening.

[111] On cross-examination, Mr. Tibbo confirmed that he had given a statement to the police on the same day as the incident, which had occurred after midnight. He went to the police station after midnight with Antwoine and indicated that his comments were truthful and accurate at the time but indicated that it has been two years since he made that statement. He agreed with Defence Counsel that what he said in the statement might be a more accurate statement of the events than his recollection of the events during this trial.

[112] In particular, Defence Counsel pointed out that he had said to the police that he had picked up Mr. Brown in his Jetta, they drove around for a while and then picked up Araya Smith. He agreed that while he was driving, he did not look in the back, but he had said something about seeing the gun in the bag in the backseat. In drawing Mr. Tibbo’s attention to his police statement, he corrected himself and acknowledged that he had told the police that he had not seen the gun until they got to the hotel room as he remembered that fact better at the time of his statement to the police.

[113] After he picked up everybody, he recalled that Mr. Brown was in the front passenger seat and the others were in the backseat, but he could not specifically recall where each one of them was sitting. As for the stop at the NSLC, Mr. Tibbo confirmed that he did not go into the store to purchase alcohol himself, because he was only 18 years old. He did confirm having one or two drinks of alcohol at the hotel, arriving there around 8:00 PM and that he called 911 at 12:35 AM.

[114] When asked again about the amount of alcohol that he had consumed, Mr. Tibbo reiterated that, although he was at the hotel with his friends for about four hours before the shot was fired, he had only finished one drink and was working on the second drink when the bullet was fired. One drink was a vodka mix and the other was a Hennessy mix, he did not drink any beer. He did not recall consuming any marijuana that day or consuming any cocaine with the others at the hotel.

[115] On further cross-examination, when the shot was fired, Mr. Tibbo said that Mr. Cameron was in the centre of the room. When Defence Counsel suggested that Mr. Smith might have been sitting on the bed with Traydell, Mr. Tibbo was not 100% sure whether Mr. Smith was on the bed or standing in the centre of the room. He was also not sure where Traydell was, but he certainly recalled Mr. Smith and Traydell “played with the gun” prior to it being fired. Mr. Tibbo said that he thinks that everyone had held the gun at a certain point but was not certain. He added that if he told the police that he had touched it at that time, that was probably accurate.

[116] Mr. Tibbo confirmed that he had taken the gun out of the drawer where it had been placed at one point in time. He described the gun as looking “old” with duct tape on the pistol grip, which had been damaged. He recalled telling the police that the gun “looked like it wouldn’t even work” because it was old, and it looked like it had come “out of water.”

[117] On re-examination by the Crown Attorney, Mr. Tibbo stated that his comment that “it looked like it wouldn’t even work” was an opinion made at a time when he had no training with respect to the operation of firearms. He had assumed that it would probably not work because “of the rust all over it which might affect the firing process.”

[118] Finally, with respect to the general question on cross-examination by Defence Counsel, whether his statement to the police that he had seen the gun in the car on the way to the hotel was more accurate than today’s evidence, Mr. Tibbo confirmed that, in his statement at that time, he did not tell the police that he had seen the gun in the car on the way to the hotel. During his trial testimony, he had stated that he thought that he had seen the gun in the car on the way to the hotel, but “that was an error today.” Mr. Tibbo confirmed that his original statement to the police on that point, was “correct.”

[119] Const. Dylan Carter was one of the first officers to respond to the 911 call and attend at the Hampton Inn Hotel on August 13, 2020. He confirmed that they had received the notification about the incident at 12:35 AM on that date and

arrived at the hotel within 10 minutes and immediately went to room 503. When he got on scene, he immediately saw the bullet wound in the upper left side of the back of Mr. Brown. He and his partner then placed towels on the wound and applied pressure to stop the bleeding until the paramedics arrived a few minutes later. Const. Carter went with the ambulance which took Mr. Brown to the QEII Hospital where he was seen by the trauma team in the emergency department. Const. Carter confirmed that photo #15 in Exhibit 5 shows where he located the wallet of the victim which had his ID and a large sum of cash.

[120] Const. Devon Norris also responded to the weapons call on August 13, 2020, at the Hampton Inn Hotel in Dartmouth, Nova Scotia. He was with Const. Martin when he located a white T-shirt which had a few bloodstains on it, in the parking lot just outside the hotel. In order to determine whose T-shirt that was, he reviewed security video footage and made still images of the people believed to be involved in the incident. A series of still images which had timestamps to indicate when they were taken by the security camera, were filed as Exhibit 9.

[121] Const. Norris stated that some of the still images from the security video to identify people were taken when those people happened to be in the hotel lobby on August 12, 2020. In the case of Araya Smith and Traydell Brown, the photo image was at about 10:01 PM, with Const. Norris stating that he believed that the other person was Antwoine Clarke. However, after reviewing this image, I find, based upon other video evidence and the witnesses' descriptions of the people who came to the hotel that evening, that the other person in that image who was also in the lobby at 11:34 PM on August 12, 2020, was Ethan Tibbo, who is the white male wearing the black jacket.

[122] On the first page of Exhibit 9, the other still images which were taken from the security video camera #04, shows a young black male, who was identified as Araya Smith, wearing a white T-shirt, which on close examination, appears to have bloodstains on the front just under the neck. Mr. Smith enters the hallway after exiting from an internal hotel staircase and then turns left to proceed down the hall. According to the timestamp on those still photographs from the security video, he enters the hallway from the staircase exit door at about 12:39 AM on August 13, 2020. Mr. Smith appears to be on his cell phone as he goes into the hallway.

[123] Const. Norris also indicated, after refreshing his memory from supplemental disclosure, that Traydell Brown is the person who is shown in the other still images contained in Exhibit 9 on that same camera #4, coming out of the internal staircase

exit door and into the hallway. After doing so, he turns right and proceeds through an interior hallway door, just over a minute after Araya Smith at about 12:41 AM on August 13, 2020. Traydell Brown is wearing the same white hoodie that he was wearing when his image was captured by camera #1 in the lobby area at 11:34 PM on August 12, 2020.

[124] Following the entry of those photographs and the comments of Const. Norris, the parties confirmed that with respect to the photographs taken by Const. Cherwonick in Exhibit 5 and Exhibit 6, they were true and accurate representations of the T-shirt with the bloodstains, which were taken on June 2, 2022. They also agreed that the photos in Exhibit 5 show how and where everything was located in room number 503 at the Hampton Inn Hotel when police officers arrived there around 12:45 AM on August 13, 2020. They agreed that the photographs had been authenticated and could be filed as Exhibits, as neither counsel had any additional questions for that officer.

[125] Teirah Slawter was the next witness called by the Crown Attorney. When she testified on June 14, 2022, Ms. Slawter stated that she was 20 years old and presently in training with the Canadian Forces. She confirmed that the people who were in the hotel room when the shooting occurred were herself, her boyfriend Antwoine, Araya, Cameron, Traydell, and Ethan. She had met Cameron and Ethan a couple of times before this night as they are friends with Antwoine. As for Araya Smith and Traydell, she stated that was the first time that she met the two of them.

[126] In terms of the description of the people who were in the hotel room with her at the time of the shooting, Ms. Slawter stated that Araya Smith was a short black man with curly short hair. He did not wear glasses and had a young-looking face, estimating that he was between 18 and 20 years old. Traydell was a tall, black man with curly hair and beard who she estimated to be 18 and 20 years old. Ethan was a white male with dark brown hair with possibly some chin hair, estimating that he might have been 21 or 22 years old. Cameron was a white male with dark brown hair and no facial hair who she estimated to be 20 or 21 years old. She was dating Antwoine at the time, and she described him as being a tall black man with curly hair, who had a little beard on his chin and was then 20 or 21 years old.

[127] On the day of the incident, Ms. Slawter and Antwoine had been together in the afternoon at the mall and then, in the evening, they went to the hotel to get together with friends. She said that the two of them took a cab from his house and arrived at the hotel between 10 and 10:30 PM. When they arrived, she said that the

other guys were trying to book a room and that Antwoine helped them do that. They were trying to pay with cash, but the hotel wanted a credit card, and the other guys did not have one, however, her boyfriend Antwoine did have one. She was standing to the side of the lobby, while Antwoine, Ethan and Traydell were at the desk dealing with the hotel clerk.

[128] Once they all got into the hotel room, everyone just “chilled,” talked and drank alcohol and some people may have used some other intoxicants. She was sitting by a desk near the entry door and had a few drinks of vodka. People were sitting in pairs, with Cameron and Ethan sitting together, Araya and Traydell as a second grouping and her and Antwoine staying by the desk.

[129] Ms. Slawter stated that the shooting occurred about 1 to 2 hours after they got into the hotel room and the police arrived about 10 to 15 minutes after the shooting. Prior to the shooting, she said that there was nothing unusual happening other than seeing Araya and Traydell on the bed with the gun. They were holding the gun and looking at it, but she never thought that they would “play with” a loaded gun. When asked to clarify what she meant by “playing with the gun,” she stated that they were twirling it, pointing it and then Araya shot it as he had his finger on the trigger. Cameron Brown was to her left.

[130] Once again, for clarity, she was asked what was happening just before the shooting and Ms. Slawter stated that they were holding, looking at the gun playing with the gun and pointing the gun with it in their hands. Based upon the way they were handling the gun, Ms. Slawter did not think it was loaded. When questioned about who she was referring to when she had stated that “they” were handling the gun, she stated that she was referring to Araya and Traydell, but then added, that she was not really sure if Traydell had held the gun, but she “knows Araya did.”

[131] Ms. Slawter was asked to provide a description of the gun that she had seen, and she stated that it was a “little handgun” with the handle that may have been broken or wooden. She was not sure of the description, because she was not that close to it, however she described it as being a “average size handgun” with a brown handle. She was not familiar with handguns at that time but added that the part of the gun where the bullets go, rotates.

[132] Ms. Slawter was asked to describe where everybody was in the moments just before Mr. Brown was shot in the back. She and Antwoine were by the desk close to the entry door to the hotel room, Ethan was by the washroom while Araya and Traydell were on the bed. Cameron Brown was standing by the wall where you

enter the room near the sofa in the room. Araya Smith was on the right side of the bed, closest to the windows of the room.

[133] At the moment when Mr. Brown was shot, Ms. Slawter stated that she was facing the wall with her back to everyone, and she was talking on the phone with someone. She heard the noise and immediately thereafter heard Cameron Brown say that he had been shot. She turned and saw that Cameron had been shot and that it was a serious situation and then someone else called 911. With respect to the gun, she initially turned to see what had happened to Cameron Brown, but then she saw the gun thrown on the bed by Araya Smith.

[134] Ms. Slawter stated that, after the 911 call to report that Cameron Brown had been shot, everyone in the room was panicking and she went to Cameron to try to attend to his injury. Ethan, Traydell and Araya ran out of the hotel room, but Antwoine stayed with her to take care of Cameron until the police arrived. The two of them used towels to put pressure on the wound so that Cameron would not “bleed out.” The police arrived and then they took over care of Cameron.

[135] When asked what happened to the gun after Mr. Brown was shot, Ms. Slawter stated that she initially saw the gun on the bed and then “they” may have put the gun in a backpack or a pocket, when they left the room. The gun was not in the hotel room, and she was not sure where it went after seeing it on the bed. She confirmed that, during the evening, she never touched the gun and had no interest whatsoever in touching the gun.

[136] Finally, with respect to general questions about the amount of alcohol that she or any of the others had consumed, Ms. Slawter recalled only having about four shots during the evening as she is not a heavy drinker. She was able to focus on what was happening and was not drunk, only having a “little buzz.” With respect to Araya Smith, she was not sure how much he had to drink, but she estimated that he may have had a “little buzz” like her. She added that the others were drinking some alcohol, but no one, in her opinion, seemed that drunk at the time of the shooting.

[137] On cross-examination, Ms. Teirah Slawter confirmed that she had made a statement to the police within a few hours after the incident and that she had reviewed it prior to her testimony. In her view, it remained accurate and there were no corrections. She stated that she was pretty sure that she arrived with Antwoine and met the others at the hotel. She did not recall all six of them getting to the hotel

at the same time and being in Ethan's car. The key to the hotel room was not obtained until all six of were in the lobby.

[138] In terms of what she had to drink, she said that she had some vodka shots with pop as a chaser. She drank with Antwoine, but she did not buy or bring any alcohol to the hotel room, the others brought the alcohol. She had not consumed any alcohol before getting to the hotel and was not drunk after the few drinks that she had there. She did not consume any marijuana and did not personally see anyone do any cocaine, but there were a couple of people in the washroom area, who were out of her sight for a period of time.

[139] She confirmed that, in her statement to the police, she had said that Ethan, Traydell and Araya were behind her and that, after Cameron Brown was shot, everyone ran over to aid him. She had also told the police that, after initially doing that, those three people left the hotel room, leaving her and Antwoine to look after Cameron until medical personnel arrived.

[140] On further cross-examination with respect to her description of the gun, she said that the handle seemed to be wooden and was brown in colour. She was approximately 10 feet away from where the gun was located, so she could not really "see the details of the gun." She agreed that she could not see or tell if there was ammunition in the gun or whether it was loaded. Ms. Slawter said that she had seen the gun earlier in the evening, but then thought that it had been placed "in a drawer for the night" until she saw it again, a little later. She did not see who took the gun out of the drawer.

[141] On re-examination, Ms. Slawter was asked who she last saw with the gun just before Mr. Brown was shot. She said that Araya Smith, Ethan and Traydell were in the general area of the gun prior to the shooting and that Mr. Smith had it in his hands for about 5 to 10 minutes before Cameron Brown was shot. When she saw the gun sitting on the bed, it was closest to Araya Smith who was on the right side of the bed as she was looking at the bed from her vantage point in the room. Mr. Smith was closest to the gun, perhaps being about a half meter away from it, whereas it was about 6 to 7 feet away from where Ethan Tibbo was located and about 4 to 5 feet away from where Traydell was located.

[142] Antwoine Clarke also testified on June 14, 2022, at which time, he indicated that he was 20 years old. He indicated that, on the day in question, he got together with some of his friends to go to a hotel in Dartmouth Crossing to spend the evening and that during the evening someone got shot. He stated that everything

“happened fast” and he “blacked out” for a second and then a short time later, the police arrived, and he was under investigation for five hours that evening. He confirmed that the people present in the hotel room when Mr. Cameron Brown was shot were himself, Cameron Brown, Traydell, Teirah Slawter, Ethan and Araya.

[143] In terms of prior knowledge of those other people, Mr. Clarke stated that he has known Traydell Brown for several years, had met Araya Smith, Teirah Slawter and Ethan Tibbo that year and on the evening in question, it was the first time that he had ever met Cameron Brown. He stated that he had been with his girlfriend, Teirah Slawter at his house earlier in the day and then he heard from either Ethan or Traydell that they were going to get a hotel room and hang out together for the evening. Mr. Clarke stated that Ethan came over to his house and then they all went to the hotel in Ethan’s car.

[144] Mr. Clarke indicated that that nothing unusual occurred in the car as they went to the Dartmouth Crossing hotel. He did not specifically recall stopping on the way but indicated that they may have stopped for some reason prior to arriving at the hotel. When they got to the Dartmouth Crossing hotel, he recalled using his credit card as he was the only one who had one with him, and generally, he always ended up paying for room when they did something like that.

[145] Once they got the room, they all drank some alcohol and just generally had “fun.” He drank Hennessy, not recalling the specific amount but stating that he was drunk. Everyone else was drinking the alcohol that had been brought to the room.

[146] Prior to the shooting, Mr. Clarke “realized” that there was a gun in the bedroom, but he was not sure whether it was a prop or a toy. Obviously, after the shooting, he realized that it was a weapon. In addition, he stated that he was not sure who brought it, or who had it in the hotel room or who carried it, he simply stated that, at a certain point, he saw the gun. When he saw the gun, he stated that “we were looking at it” but that was all he noticed, because he was focused on drinking and speaking with his girlfriend.

[147] In terms of a description of the gun, Mr. Clarke said that it was all metal, but not like the type of gun used by the police, it was “far from that.” Although he had never been around guns, he saw that the gun was metal, had some rust on it and the handle looked like it had been wrapped with something. He did not touch the gun, and he stayed away from the gun.

[148] Furthermore, with respect to his observations of the gun, Mr. Clarke stated that when he first saw it, the others were showing it around. After that, he did not see the gun again and did not recall where it had come from or where it had been placed when it was out of his sight. He did not see the gun again until Mr. Brown was shot. In addition, he was uncertain as to who had touched the gun, as it has been a couple of years since the incident occurred.

[149] Mr. Clarke described the room set up, there was a couch near the entry door and a table facing the wall in the middle of the room where he was sitting with his girlfriend. Just before he was shot, Cameron Brown was by the couch facing the entry area to the hotel room. Mr. Clarke said that he was to the right of Mr. Brown, while Teirah Slawter was in front of him, sitting on a chair with her back to Mr. Brown and she was facing the bed. He said that Ethan was behind him towards the bed and that Traydell and Araya were also behind him.

[150] After describing where everybody was in the moments before the shot was fired, Mr. Clarke said that he was talking with his girlfriend and then he heard a “pow” sound and thought that someone had popped a balloon. He turned and saw Cameron Brown had fallen to the floor and heard him say “you shot me.” Mr. Clarke saw that the gun was present and obviously someone had used it, but he maintained that he did not see who used it as he was focused on Mr. Brown and when he saw the blood, he had “Tunnel vision” and was in shock as he continued to focus on Mr. Brown.

[151] Within a few moments of that happening, “everyone” left the room and apart from Mr. Brown who had been wounded, only Mr. Clarke and Ms. Slawter remained. Mr. Clarke stated that he had wanted to leave the room as well and had grabbed his girlfriend to do so, but she insisted that they could not leave Mr. Brown in that state. Ms. Slawter “made him stay” and then he picked up Mr. Brown and put him on the couch and started pressing down on the wound of his left shoulder. Mr. Clarke stated that Mr. Brown was talking to him although he was in shock. He maintained that position until the police arrived about 10 minutes later. Once the police took over looking after Mr. Brown, Mr. Clarke said that the police took him and Ms. Slawter to the police station for questioning before being released.

[152] On further direct examination as to who had shot Mr. Brown, Mr. Clarke stated that he was not sure because his back was to Araya Smith, Traydell and Ethan when the shot was fired. As he had previously mentioned, it was a “surprise”

that a gun was actually there in the first place. In terms of his “belief” as to who shot Mr. Brown, Mr. Clarke stated that Mr. Smith had said “something,” but he was not sure what he said, because his back was to him. However, when Mr. Clarke looked at Mr. Smith’s face, it seemed to have a “reaction” and then he said “something.” Since there were three people behind him, based upon Mr. Smith’s “reaction,” in his “opinion,” Araya Smith had shot Cameron Brown.

[153] In terms of his sobriety when Mr. Brown was shot, Mr. Clarke stated that he was drunk. He is not sure how much he had to drink, and he could not comment on what the others had to drink, as he was not really watching them. He was not aware of any drugs being present and he could not comment on anyone else’s sobriety. He confirmed that Traydell and Ethan were his closest friends.

[154] On cross-examination, Mr. Clarke confirmed that Ethan had picked him and his girlfriend up in his car, he was not sure where Araya Smith was seated, but he was pretty sure that he and Teirah Slawter sat in the backseat. He and his girlfriend were the last two picked up before they got to the hotel, and he is not sure whether they stopped anywhere on the way to the hotel. At the hotel, he drank Hennessy Cognac which the others had brought with them.

[155] Mr. Clarke said that he was having a fun evening with his friends and when he saw the gun, he did not think that it was real, possibly being a BB gun. He saw that the handle was wrapped with something but did not get a clear look at it. He added that when someone was showing it, without mentioning any names, and he thought that someone had said that it was not loaded. Mr. Clarke mentioned, again, that he was “buzzed” and drunk but not to the point of throwing up.

[156] On re-examination, he was asked to clarify who had showed the others the gun. Mr. Clarke stated that, although the other people who were in the room with him were only a few feet away, but he could not recall who had showed the gun to the others. However, he added that he believed that the person who was showing the gun, was the person who had said “it’s not loaded” as that “made sense” to him. In terms of his location in the room, at certain points, he did walk around the room, and he recalled sitting in a chair and for the most part, Teirah Slawter was beside him. The gunshot occurred about “a couple of hours” after they got the hotel room.

[157] The final witness called during the trial was Det/Const. Matthew Veinotte of the Halifax Regional Police. Det/Const. Veinotte had obtained and made copies of short video clips from the Hampton Suites Hotel, at different locations and times

which were filed as Exhibit 11. The parties agreed that there was no issue with respect to the authentication or continuity of the short video clips and the Crown Attorney indicated that there was an employee from the hotel who would have been prepared to testify as to their authenticity if it was needed.

[158] The majority of the short video clips, in the range of 10 to 15 seconds, presented by Det/Const. Veinotte were of the front desk area of the hotel between 9:16 PM and 9:34 PM on August 12, 2020. Det/Const. Veinotte identified the prior witnesses in this trial who were at the front counter of the hotel for several minutes, dealing with the front desk clerk to obtain and pay for the hotel room.

[159] The three people who first arrived in the hotel and went to the reception desk at 9:16 PM were Traydell Brown, Antwoine Clarke and Teirah Slawter. Traydell appears to be the one who is talking with the clerk with the other two standing beside him. The video at 9:19 PM shows the clerk presenting Traydell with a credit/debit machine but Det/Const. Veinotte also observed that he had handed over some cash to the clerk, who is seen counting cash as Traydell walks away at the end of this clip.

[160] The next series of short video clips of the front desk area of the hotel start at 9:27 PM on August 12, 2020. In this clip, Det/Const. Veinotte pointed out that the video now shows 4 people coming back to the front reception desk, Teirah Slawter, Antwoine Clarke, Ethan Tibbo and Traydell. The video clearly shows that Ethan Tibbo has cash in his hand, and he puts an amount of money on the counter and then it appears that Ethan and Traydell continue speaking with the clerk for about a minute or so. As the video continues at about 9:29 PM, the same 4 people are at the reception desk, but Antwoine Clarke now joins in the conversation with the hotel clerk as the clerk is handling the cash which had been provided. A moment later, Traydell picks up some cash off the counter and the clerk appears to sign a form as that clip ends.

[161] As the next clip begins at 9:30 PM, the same 4 people are still at the reception desk speaking with the clerk. Det/Const. Veinotte notes that Ethan Tibbo has some cash or a card in his hand at this point and a few moments later, Antwoine appears to have a quantity of cash in his hand. At about 9:31 PM, those same 4 people are still at the hotel's reception desk and the clerk then provides Antwoine with the credit/debit machine for him to use. The next video clip at about 9:34 PM shows Ethan Tibbo and Traydell speaking with hotel staff for a moment and then first Antwoine Clarke, followed by Teirah Slawter, then Ethan Tibbo and

Traydell go out the front door of the hotel and turn to their left after going outside the hotel.

[162] The next series of video clips presented by Det/Const. Veinotte in Exhibit 11 start at 9:48 PM, on August 12, 2020, which shows the 4 people who had earlier been interacting with the hotel clerk at the reception desk, enter the hotel lobby and proceed to the elevators on the main floor. The video shows Ethan Tibbo, Traydell, Antwoine Clarke and then Teirah Slawter at the elevator. Det/Const. Veinotte pointed out that Traydell is wearing a white T-shirt and has a backpack, and that Mr. Tibbo is wearing a red shirt.

[163] The next couple of short video clips start just before 9:49 PM on August 12, 2020, and on video clip #4846 from hotel channel 4, Det/Const. Veinotte points out that this video shows Cameron Brown entering the hotel carrying a red box followed by Araya Smith. A second short video clip #4913 on hotel channel 1 which captures the images about 30 seconds after the previous video clip, show Cameron Brown and Araya Smith standing at the elevators in the lobby of the Hampton Suites Hotel at about 9:49 PM on August 12, 2020.

[164] The final series of short video clips capture some images of the hotel's hallway and then about a minute later the front entry of the Hampton Suites Hotel. Det/Const. Veinotte commented on the short video clip #3931 from hotel channel 4 which is time stamped 12:39:32 AM on August 13, 2020, Araya Smith opens the interior staircase door, turns left to go down the hallway. He appears to be talking on a cell phone held in his right hand. Det/Const. Veinotte pointed out that the video shows a red substance on the white T-shirt that he is wearing and that there appears to be what the officer referred to as a "heavy object" in the area of his right hip or right pocket. He then observes that the "protruding item" is covered by the T-shirt that Mr. Smith is wearing, which is not tucked into his pants and that "object" could be a firearm.

[165] The final short video clip which was part of Exhibit 11 was video #4016 from hotel channel 3, which captures a moment just after 12:40:12 AM on August 13, 2020, roughly 45 seconds after Araya Smith exits from the interior staircase exit door, showing him walking out the front door of the Hampton Suites Hotel. He still appears to be speaking on his cell phone as he starts walking through the parking lot of the hotel. Det/Const. Veinotte points out that Araya Smith is still wearing the same white T-shirt that he had described in the previous video clip and does not appear to be holding any bag or anything else in his other hand.

ANALYSIS:

[166] In a criminal trial, the most fundamental rule is that the burden of proving the guilt of the accused beyond a reasonable doubt, rests upon the prosecution and does not shift to the accused at any stage in the proceedings. The accused person is presumed innocent until proven guilty beyond a reasonable doubt. The trier of fact must be satisfied beyond a reasonable doubt of the existence of all of the essential elements of each of the offences in order to convict an accused person.

[167] Reasonable doubt has been defined by the Supreme Court of Canada in **R. v. Lifchus**, [1997] 3 SCR 320 and in **R. v. Starr**, [2000] 2 SCR 144. Those cases have determined that a “reasonable doubt” does not involve proof to an absolute certainty, but more is required than proof that the accused is probably guilty.

[168] The Supreme Court of Canada also pointed out that reasonable doubt is not based upon sympathy or prejudice, nor is it an imaginary or frivolous doubt. It is a doubt based upon reason and common sense which is logically connected to the evidence or the lack of evidence. Reasonable doubt may arise through the evidence presented by the Crown, if the Court determines that the evidence was vague, inconsistent, improbable or lacking in cogency. Of course, reasonable doubt may also arise from testimony of an accused, or any other evidence tendered by the defence from any other sources.

[169] In this case, there is no dispute between the parties and the evidence certainly established beyond a reasonable doubt that Mr. Cameron Brown was struck by a bullet that was fired from a firearm, which entered his body around his left shoulder blade. The bullet fragmented on entering his body and caused significant bodily harm, being almost paralyzed from the neck down and requiring treatment in a hospital for several weeks followed by therapy for several months. Fragments of the bullet remain in his spine as it was considered too serious an operation to attempt to remove them.

[170] In addition, there is, in reality, no dispute between the parties that the evidence established, beyond a reasonable doubt, that Mr. Brown was struck by that bullet at about 12:35 AM on August 13, 2020. The shot was fired from a firearm while Mr. Brown and five other people were in a hotel room at the Hampton Suites Hotel located in the Dartmouth Crossing area of Dartmouth, Nova Scotia. Furthermore, I find that the evidence established that Cameron Brown, who was the victim of the gunshot wound, had got together with 4 of his male friends - Ethan Tibbo, Antwoine Clarke, Traydell Brown and the accused, Araya Smith - to

visit and “hang out” together, as they had done on other occasions at other hotels, on other occasions. Ms. Teirah Slawter’s evidence confirmed that she was also present at the time of the gunshot with the five other males, as she had recently started dating Mr. Clarke. Ms. Slawter had previously met Mr. Cameron Brown on a couple of occasions prior to the incident, but only met Traydell Brown and Araya Smith for the first time on the evening of the incident.

[171] During the trial, in addition to the Chief Firearms Officer for Nova Scotia, Mr. John Parkin and three police witnesses who were involved in the investigation, the Crown Attorney called Cameron Brown, Ethan Tibbo, Teirah Slawter, and Antwoine Clarke. During his closing submissions, Defence Counsel submitted that the Court should approach the evidence of Mr. Brown with great care and caution as an “unsavoury” witness whose testimony was neither credible nor reliable. In those circumstances, especially in the case of Mr. Brown, and some extent the evidence of Mr. Tibbo and Mr. Clarke, he submitted that the Court should apply the warning for triers of fact established by the Supreme Court of Canada in **R. v. Vetrovec**, [1982] 1 SCR 811 that it would be dangerous to base a conviction on unconfirmed evidence of those witnesses.

[172] In **R. v. Khela**, 2009 SCC 4, at paras. 2 and 3, Fish J. stated that where the guilt of the accused is made to rest exclusively or substantially on the testimony of a single witness of “doubtful credit or veracity,” it is important to understand when and why it is unsafe to find an accused guilty on the unsupported evidence of witnesses who are “unsavoury” and using other words interchangeably to describe that witness as being “untrustworthy, unreliable or tainted.” Justice Fish then went on to state that those references included “all witnesses who, because of their amoral character, criminal lifestyle, past dishonesty or interest in the outcome of the trial, cannot be trusted to tell the truth – even when they have expressly undertaken by oath or affirmation to do so.”

[173] When I consider that definition of an “unsavoury” witness, and the fact that the civilian witnesses were the victim, who would not have had a personal interest in the outcome of the trial and all of the male witnesses who were youthful friends of the accused, I find that this is not the situation where I would have to specifically instruct myself on the “**Vetrovec**” warning. I find that the determination of the legal issues in this case does not rest exclusively or substantially on the testimony of a single witness of doubtful credit or veracity.

[174] However, the Court does have to carefully consider the credibility and reliability of all the witnesses who testified, to determine whether the Crown has established, beyond a reasonable doubt, that Araya Smith was the person who brought a firearm to that hotel room, carelessly used and pointed that firearm and was criminally negligent in firing the bullet which ultimately struck Mr. Cameron Brown in the back, causing serious injury and bodily harm.

[175] There are many tools for assessing the credibility and reliability of testimony and determining whether I am satisfied beyond a reasonable doubt as to the guilt of the accused person. First, I can consider whether there are any material inconsistencies with previous statements or testimony at trial. Second, I can assess the partiality of witnesses due to kinship, hostility or self-interest. Third, I can consider the capacity of the witness to relate their testimony, that is, their ability to observe, remember and communicate the details in their testimony. Fourth, I can consider contradictory evidence as well as the overall sense of the evidence and when common sense is applied to the testimony, whether it suggests that the evidence is impossible or highly improbable.

[176] As both counsel pointed out during their submissions, the Court's decision on whether all, some or none of the charges against Mr. Araya Smith have been established beyond a reasonable doubt will have to be determined by the direct evidence and circumstantial evidence. Circumstantial evidence may be considered by the Court to establish a fact in issue by an inference reasonably and circumstantially drawn from a fact or group of facts, which the Court has concluded to be established by the evidence.

[177] Given the fact that the decision of the Court will be based upon direct and circumstantial evidence, it is important to instruct myself on the issue of circumstantial evidence, and in particular, the facts in issue which may be inferred from that evidence. As with direct evidence, a piece of circumstantial evidence should be considered, not in isolation or by a piecemeal analysis of each piece individually, but rather, together with all the other evidence, taken as a whole, in reaching its decision.

[178] It is a well-established principle that a conviction based upon circumstantial evidence requires the trier of fact to be satisfied, beyond a reasonable doubt, that the guilt of the accused is the only reasonable or rational inference to be drawn from the proven facts: See **R. v. Griffin**, 2009 SCC 28 at para. 33; **R. v. Liberatore**, 2010 NSCA 82 at para. 14.

[179] In **R. v. Villaroman**, 2016 SCC 33 (CanLii), which was a trial based entirely upon circumstantial evidence and inferences from the circumstantial evidence in relation to a charge of possession of child pornography, the unanimous Court endorsed the comments of Charron J. in **Griffin**.

[180] In **Villaroman**, *supra*, at para. 35, Cromwell J. stated that, in circumstantial cases, it was often stated that “conclusions alternative to the guilt of the accused must be rational conclusions based upon inferences drawn from proven facts.” However, Justice Cromwell added, at para. 35, that “in assessing circumstantial evidence, inferences consistent with innocence do not have to arise from proven facts, as requiring proven facts to support explanations other than guilt wrongly puts an obligation on an accused to prove facts.

[181] The key issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. As Justice Cromwell noted, in **Villaroman**, *supra*, at para. 36 that “(A) certain gap in the evidence may result in inferences other than guilt. But those inferences must be reasonable given the evidence and the absence of evidence, assessed logically and in light of human experience and common sense.”

[182] The Supreme Court of Canada stated, in **Villaroman**, *supra*, at para. 37 that “when assessing circumstantial evidence, the trier of fact should consider “other possible theories” and “other reasonable possibilities” which are inconsistent with guilt. Thus, the Crown may need to negative reasonable possibilities, but certainly does not need to “negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused.”

[183] In **Villaroman**, *supra*, at para. 38, Cromwell J. said that the “line between a “plausible theory” and “speculation” is not always easy to draw, however the key question is whether the circumstantial evidence, viewed logically and in the light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty.” Cromwell J. added, in **Villaroman**, *supra*, at para. 42 that “the trier of fact should not act on alternative interpretations of the circumstances that it considers to be unreasonable; and that alternative inferences must be reasonable, not just possible.” The Court concluded that this would be a helpful way of describing the line between plausible theories and speculation.

[184] In this case, there is no dispute between the parties with respect to the essential elements of the date, time or jurisdiction in which the offences are alleged to have occurred. There is also no dispute between the parties that the Affidavit

evidence filed by the Chief Firearms Officer for Nova Scotia [Exhibit 1] confirmed that Mr. Araya Smith does not possess a Possession and Acquisition License issued under the **Firearms Act** and did not possess a Possession and Acquisition license issued under the **Firearms Act**, on August 13, 2020. In addition, that same Affidavit confirmed that there was no current application for a firearms license or a firearm registration bearing the name of Araya James Smith, 2001-11-16 in the Canadian Firearms Information System.

Was the Firearm a loaded restricted or prohibited firearm?

[185] As for the firearm itself which was used in the hotel room and discharged the bullet that ultimately struck Cameron Brown around his left shoulder, I find that Cameron Brown's evidence was credible being provided in a straightforward and detailed manner to describe that firearm. I also find that his detailed description of that firearm was equally reliable as it demonstrated an ability to observe, recall and relate those specific details to the court. Moreover, I find that the detailed description of that firearm provided by Cameron Brown was entirely consistent with and supported by the other civilian witnesses, who were present in the hotel room and had the opportunity to view the firearm.

[186] In terms of the description of the firearm involved in this incident, I find that Cameron Brown provided the most detailed description of the firearm as being a "22 special" revolver, which he had noted as being on the barrel of the handgun. He described the length of the revolver's barrel, with a "busted handle" and some duct tape on it, adding that it was black in colour and "a little rusty." Mr. Cameron Brown's description also included the fact that you had to revolve and spin the cylinder on the handgun to put in or take-out ammunition and that it resembled the "break action revolver" shown on page 255 of Firearms Safety Course Program [Exhibit 4].

[187] Mr. Cameron Brown's detailed description of the handgun in question was based upon having seen that firearm on a couple of occasions in the possession of Mr. Araya Smith. The first occasion was when he and Mr. Tibbo went over to Araya Smith's house in East or North Preston, one or two days prior to the incident in question. Mr. Cameron Brown's detailed description of that firearm was also based on his opportunity to observe that firearm while he and the others were in the hotel room at the Hampton Suites Hotel, on a few occasions during the evening, prior to being struck with the bullet fired from it.

[188] I find that Mr. Cameron Brown's evidence describing the firearm was supported by and entirely consistent with the evidence provided by the other civilian witnesses in that hotel room. Ethan Tibbo was not sure of the brand of the gun, but said it was a 22-calibre handgun with a pistol grip and required a break action to load ammunition. He also described the handgun as looking "old" with duct tape on the pistol grip and that the pistol grip had been damaged. He added that "it looked like it wouldn't even work" because it was old, looked like it had come "out of water" and there was "rust all over it which might affect the firing process.

[189] Ms. Teirah Slawter's evidence, although not as detailed as the descriptions provided by Cameron Brown and Ethan Tibbo, also supported the description the handgun provided by Cameron Brown. She had seen the handgun in the hotel room, but not being that close to it or familiar with handguns generally, simply noted that it was a "little handgun" with the brown coloured handle that may have been broken or wooden. However, she did describe, like Cameron Brown that the part of the gun where the bullets go, rotates.

[190] Mr. Antwoine Clarke was also in the hotel room when the bullet struck Cameron Brown. Like Ms. Slawter, Mr. Clarke stated that he has never been around guns but when this one was brought out in the hotel room, he described it as being metal, but not like the guns used by the police, which had rust on it. The handle looked like it had been wrapped with something. He did not know if it was a real gun, a prop or perhaps a BB gun, but stated that when it was being passed around in the hotel room, he did not get a "clear" look at it. Although his evidence with respect to the description handgun was certainly not his detailed as provided by other witnesses, his evidence was consistent with and supported the evidence of Mr. Cameron Brown.

[191] Based upon the relatively detailed and consistent descriptions of the handgun provided by Cameron Brown, Ethan Tibbo, Teirah Slawter and Antwoine Clarke, I have no doubt whatsoever that it was a loaded firearm from which the bullet was fired and caused bodily harm to Mr. Brown. Furthermore, based upon the descriptions of the handgun provided by those witnesses with respect to the length of the barrel, the calibre of the bullets as well as the testimony of Mr. Parkin, the Chief Firearms Officer for Nova Scotia, that all handguns are either restricted or prohibited under section 84 of the **Criminal Code**, there can be no doubt that the firearm which discharged the bullet that ultimately struck Cameron Brown was either a restricted or prohibited firearm.

[192] Although the gun itself has never been located by the police following this incident, based upon the descriptions of the length of the barrel provided by the witnesses, as Mr. Parkin had explained, during his testimony, that all handguns are either restricted or prohibited under section 84 of the **Criminal Code**. The distinction between the two is that the “prohibited firearm” is generally shorter than a “restricted firearm” and has different magazine capacities and in some cases calibre of the firearm itself. In Mr. Parkin’s opinion, prohibited firearms, being generally smaller than restricted firearms, would be more easily concealed. Considering Mr. Parkin’s evidence and the witnesses’ descriptions of the firearm, I find that the evidence established that the firearm in question was either a loaded restricted or loaded prohibited firearm as defined by section 84(1) of the **Criminal Code**.

Did the Crown Establish the Identity of the Person who Possessed and Transported the Firearm to the Hotel?

[193] Next with respect to the factual issue of who possessed the firearm and brought it to the hotel room on the evening in question, I find that the evidence of Mr. Cameron Brown was also supported by and consistent with the evidence of Ethan Tibbo, and certainly not contradicted in any way by the other two civilian witnesses. As mentioned, Mr. Cameron Brown stated that he had seen the firearm at Araya Smith’s house couple days before the incident at the hotel. He had also made a reference to having seen the gun in Mr. Smith’s possession while he was in Mr. Tibbo’s car on they were on their way to hotel for the evening.

[194] With respect to Cameron Brown having seen the firearm in Araya Smith’s possession while they were in Mr. Tibbo’s car on the way to the Hampton Suites Hotel, Mr. Brown did indicate on cross-examination that when Araya Smith got into Mr. Tibbo’s Volkswagen Jetta, Mr. Smith sat in the seat behind him. In those circumstances, he acknowledged that it would have been difficult for him to have seen the firearm from his vantage point in the car. However, Mr. Brown’s evidence that he had seen the firearm in Mr. Smith’s possession a day or two prior to that as well as Mr. Smith being in possession of the gun when they arrived at the hotel, were unshaken despite the vigorous cross-examination by Defence Counsel.

[195] In addition, Ethan Tibbo had initially stated that he too had seen Mr. Smith with a gun in his car on the way to the hotel, when Araya Smith pulled it out of a bag and was showing it to others in the car. However, on cross-examination, Mr. Ethan Tibbo retreated from that earlier statement and confirmed that the first time

that he actually saw the firearm which he had described was when it was pulled out of the bag in the hotel room. He also confirmed that is what he had told the police in his statement which was made very shortly after Mr. Brown was shot. However, Mr. Tibbo had also stated during his direct examination that he was not sure who “owned” the handgun, but when asked if he found out who did own that handgun, he stated that it was Araya Smith’s gun. In addition to those comments with respect to who owned or possessed the gun, Mr. Tibbo also stated that the first person who handled the gun in the hotel was Mr. Smith when Mr. Tibbo saw him “playing with it.”

[196] Although Ms. Teirah Slawter was able to provide some details in relation to the handgun which was brought into the hotel room, she made no comment with respect to observing the person who brought the gun to the hotel room. Antwoine Clarke’s evidence on this point was that he was not sure who brought the gun to the hotel room or who had it in the hotel room and for that matter, what anyone did with the gun when they were in the hotel room. He simply saw the gun for the first time in the hotel room.

[197] When I consider the evidence of Mr. Cameron Brown and Mr. Tibbo and the fact that the other witnesses who were in the hotel room gave a consistent description of the handgun which was brought into the hotel room, I find that is reasonable to infer from the direct and circumstantial evidence that it was Mr. Araya Smith who had possession of the “rusty” handgun, at a minimum, a few days before the incident, in Mr. Tibbo’s car and that he was the person who brought it into the hotel room. Moreover, I find that the evidence of Ms. Teirah Slawter and Antwoine Clarke, who both indicated that they had made no observations about who or how the handgun was transported to the hotel, does not put forward an alternate reasonable inference that someone other than Araya Smith brought the handgun to the hotel that evening. Based upon the evidence which I have accepted, I find that the direct evidence of the witnesses who made specific observations, which I find to have been both credible and very reliable, established that it was Araya Smith who brought the handgun to the hotel on the evening in question and that he was in actual possession of the handgun just before the shot was fired from that gun which hit Mr. Brown.

Time of Arrival at the Hotel and Sobriety of People in the Hotel Room

[198] In terms of the time of arrival of the group of 6 people at the Hampton Suites Hotel and when Mr. Brown and the others were able to enter room 503, there was

some disparity in the evidence as to the time of arrival at the hotel. Cameron Brown stated that Mr. Tibbo drove everyone in his car to an NSLC to buy alcohol and then they arrived at the hotel around 8 PM. He recalled that the group got into the room, visited drank alcohol throughout the evening until about midnight, also some of them doing some drugs, specifically mentioning the use of MDMA and some of the cocaine which Mr. Brown had purchased.

[199] Mr. Tibbo, like Mr. Cameron Brown had stated that he stopped at an NSLC prior to going to the hotel. However, he added that since he was only 18 years old, he did not go into the store to purchase any alcohol. He recalled arriving at the hotel around 8 PM, having a couple of drinks of alcohol during the evening and that he called 911 at 12:35 AM, shortly after Mr. Brown had been struck a bullet. He did not consume any marijuana or cocaine with the others at the hotel.

[200] The only other witness who spoke about the time of arrival at the hotel was Ms. Teirah Slawter, who recalled that she and Antwoine Clarke took a cab to the hotel and met with the others at the hotel and then actually getting into the room at the hotel between 10 and 10:30 PM. She recalled that when they arrived at the hotel, the others were already there trying to book the room but were trying to pay with cash and the hotel wanted a credit card. Her boyfriend, Antwoine Clarke had a credit card. Mr. Clarke and Ms. Slawter provided consistent testimony that she remained at the side of the lobby area while Antwoine, Ethan Tibbo and Traydell were sorting out payment for the room.

[201] For his part, Antwoine Clarke stated that Ethan Tibbo had picked him up and driven everybody in his car to the hotel. He did not estimate a time of arrival but indicated on arrival at the hotel, he had to use his credit card, as he was the only one who had a credit card with him at that time. He had got together with this group of his friends to party at a hotel before, but that evening was the first time that he had ever met Cameron Brown. He confirmed that he had been drinking some alcohol during evening.

[202] While there were different estimates of the time of arrival at the hotel and ultimately obtaining a room, I find that the series of video clips introduced by Det/Const. Veinotte, supports the evidence of Ms. Slawter and Mr. Clarke with respect to the fact that the registration at the front desk of the hotel took over 20 minutes as there was several interactions between Ethan Tibbo, Antwoine Clarke, Traydell Brown and the hotel clerk with Ms. Slawter standing to the side between 9:16 PM and 9:34 PM on August 12, 2020.

[203] I find that the video evidence in Exhibit 11 supports the evidence of Ms. Slawter and Antwoine Clarke as it clearly shows cash being handed to the hotel clerk and Antwoine Clarke being handed a debit/credit machine for him to provide a credit card as they had stated. Following conclusion of what appears to be the financial transactions to book the hotel room, as mentioned, around 9:34 PM, the 4 people who had been dealing with the clerk at the reception desk, then go out the front door of the hotel, turning their left, presumably going into the parking area.

[204] The next series of video clips in Exhibit 11 show the same 4 people, Ethan Tibbo, Antwoine Clarke, Teirah Slawter and Traydell Brown coming back into the hotel lobby and going into the elevator on the main floor at about 9:48 PM. The next video clip presented by Det/Const. Veinotte in Exhibit 11 which starts just before 9:49 PM on August 12, 2020, shows Cameron Brown in a red tracksuit, carrying a red box in his hands, followed by Araya Smith, wearing a white hoodie. The next short video clip shows Cameron Brown and Araya Smith standing in the hotel lobby at the elevators and then entering those elevators just after 9:49 PM on August 12, 2020, which is about one minute after the other four people entered the elevator to go up to their room.

[205] From this video evidence, I find that, although Ms. Teirah Slawter may have inaccurately recalled how she and Mr. Clarke were transported to the Hampton Suites Hotel in Dartmouth Crossing, her evidence of arriving at the hotel around 10 PM is completely supported by the video evidence. In addition, I find that the video evidence in Exhibit 11 also supports Ms. Teirah Slawter's recollection of the actual time when the group of six people were able to get into room #503 at the hotel. Mr. Clarke's evidence is also supported by the video evidence as it shows his interactions with the hotel's front desk clerk and the fact that, even though it appears that cash had been provided to pay for the room for the evening, the hotel clerk also required him to provide a credit card on file. Presumably, the hotel clerk required a credit card to ensure payment for any incidental charges or damage to the room, after cash had been paid in advance for the night, which was confirmed by Mr. Clarke and Ms. Slawter, as well as the video evidence.

[206] Based upon the evidence of Ms. Teirah Slawter which was supported by the video evidence of the interactions with the hotel clerk at the registration desk in the lobby of the Hampton Suites Hotel, I find that Cameron Brown, Ethan Tibbo, Araya Smith, Traydell Brown, Teirah Slawter and Antwoine Clarke obtained and entered room 503 at the hotel, shortly before 10 PM on August 12, 2020.

[207] In those circumstances, given the fact that the report of the gunshot was made at 12:35 AM on August 13, 2020, I find that the people who were drinking alcohol and/or consuming drugs in the hotel would have been doing so for, at most, for 2 ½ hours.

[208] In addition, with respect to that timeframe of arriving at the hotel, the amount of time it took to obtain the room and then actually getting into the room, with respect to Mr. Tibbo, I find that the group being in the room for at most 2 ½ hours is far more consistent with his evidence that he only had a couple of drinks of alcohol - one being vodka and one being Hennessy Cognac and that he was working on the second one when Mr. Brown was shot. In addition, Mr. Tibbo also stated that he had not consumed any marijuana or other drugs that evening and, in those circumstances, I find that it is unlikely that he was intoxicated to the point of not being able to observe, recall and relate key details what transpired during the evening.

[209] Similarly, with respect to the amount of time that everybody was in the room together, I also note that Ms. Teirah Slawter stated that she had only consumed “about four shots” during the evening as she is not a heavy drinker. She had stated that she was able to focus on what was happening during the evening and was not drunk, only acknowledging that she had a “little buzz.” Although Ms. Slawter stated that she could not specifically relate the amount of alcohol the others in the room had consumed during the evening, prior to the gunshot, she had stated that, in her opinion, no one seemed to be drunk at the time of the shooting.

[210] As mentioned, I find that Cameron Brown’s recollection of the arrival time at the hotel was inaccurate, and I find that the video evidence established that the group only obtained the hotel room around 10 PM. However, Mr. Brown did say that he drank some alcohol, did cocaine and some MDMA during the evening and that he was, in his words, “pretty drunk” when he made his observations in relation to Araya Smith’s handling of the handgun. While Cameron Brown had stated that he was “pretty drunk” when he made the observations which he related to the court, I find that he had not consumed those substances for as long as 4½ hours in the hotel room as he had originally estimated in his testimony, based upon his recollection of the group arriving and getting into the hotel room around 8 PM.

[211] In addition, I also find that, despite Cameron Brown’s stated consumption of drugs and alcohol, he was still able to make what I have found to be both very credible and reliable detailed observations during the evening, recall them and then

relate them to the court in an equally detailed, candid and straightforward manner, which was an unshaken despite a vigorous cross-examination by Defence Counsel.

The Handling of the Firearm by People in the Hotel Room

[212] Mr. Cameron Brown had testified that, although the handgun had been brought into the hotel room, there was an “original plan” to put the gun in a drawer so that “nothing stupid would happen.” He had seen Araya Smith handle the gun at a certain point and that he believed that Araya Smith had pulled out some of the bullets from the casing of the gun where the bullets are placed, and it spins. He also indicated that, at a certain point later in the evening, the gun was taken out of the drawer and placed on a table in the middle of the room, but he was not sure who had done that.

[213] Mr. Brown acknowledged that he had “handled” the gun himself at a certain point by holding it up and waving it around in his hands to look at it at different angles. However, because he did not want his fingerprints to be on the gun, he never actually touched it with his hands, he used his sleeves of his track jacket to touch the gun. He also believed that Traydell Brown held the gun for a short time while they were at the hotel. He agreed with Defence Counsel that, at different times, different people may have held the gun, but he was certain that Teirah Slawter had never touched the gun. Mr. Brown was not sure whether Antwoine Clarke had ever handled touched the gun.

[214] Mr. Brown stated that the last people who he saw with the gun just before he was shot in the back, while he was on his phone facing the entry door of the hotel room, were Traydell Brown and Araya Smith. The two of them were sitting on the bed and they had been “handling and chilling” with the gun in the moments before he was shot in the back. Obviously, being shot in the back and based upon the trajectory of the bullet, Mr. Cameron Brown was facing away from the person who fired the gun. However, when I consider the consistency in the evidence as to where everybody was located in the room in the moments before the shot was fired, I find that the trajectory of the bullet and where it hit Mr. Brown, it was likely fired by a person who was on the bed or just in front of the bed towards the front entry door where Mr. Brown was standing.

[215] Mr. Ethan Tibbo’s evidence was consistent with Mr. Cameron Brown’s evidence in the sense that he confirmed that “everybody pretty much touched” the gun although he was not sure if everyone had, in fact, touched the gun. Like Mr.

Brown, he recalled that the handgun had been placed in a drawer and taken out and put back in the drawer a couple of times during the evening. When he held gun, he pulled the release to break it, looked in the chamber and noticed that there were “a few rounds” in it before he reattached the barrel. He never pointed the gun at anyone, pointing only at the wall out of concern for safety of the people in the room.

[216] Mr. Tibbo did not recall if Cameron Brown handled the gun and at a certain point, after he held the gun for a moment, he gave it back to Traydell Brown to put it back in the drawer of a table. The first person who he saw handling the gun in the hotel room was Araya Smith and he stated that Mr. Smith was “playing with it” while he was sitting on the bed. Just before the gun went off a little later in the evening, Mr. Tibbo noted that Araya Smith was on the bed with the gun, and he was “playing with it and pulling the trigger and pointing it around.” Mr. Tibbo stated that he had heard a “clicking sound” as Mr. Smith pointed the firearm at him and then at Cameron Brown. Shortly after that, while Araya Smith was holding the gun, he heard the hammer being hit and that is when the shooting occurred, and Cameron Brown was struck in the back with a bullet.

[217] I find that that Mr. Tibbo’s evidence demonstrated an ability to observe, recall and relate details of what transpired in a straightforward manner, not minimizing the fact that he too had handled the gun and in fact had looked in the chamber to see if there were bullets loaded in the gun. However, it is interesting to note that, in stating that he had handled the gun, he also realized the danger involved, adding that he had handled it in a safe manner not pointing it at anybody, but rather, only at the wall. He clearly stated that the gun had been pointed at him and also at Cameron Brown by Araya Smith shortly before the bullet struck Cameron Brown in the back. Most importantly, he also stated, quite categorically, that the last person who he saw holding the gun in the moments just before Cameron Brown was shot, was Araya Smith.

[218] With respect to that detailed account provided by Mr. Tibbo, despite the vigorous cross-examination by Defence Counsel, he was unshaken in his specific recollection that Mr. Smith was the last person holding the gun prior to the bullet being fired which struck Cameron Brown in the back. However, Mr. Tibbo was not as certain on cross-examination where Cameron Brown was located, and he said that Mr. Brown may have been closer to the centre of the room rather than being closer to the door to the room. Mr. Tibbo also acknowledged, on cross-examination, that he was not 100% sure whether Araya Smith was seated on the

bed or standing just in front of it in the moments just before the bullet was fired. However, it is significant to note that his evidence was unshaken and did not change with respect to who had the gun in the moments before Cameron Brown was shot in the back.

[219] I also find that Teirah Slawter, a person who had no real prior connection to anyone in the hotel room except her boyfriend, Antwoine Clarke, provided a very credible and reliable account of what transpired, which was consistent with and supported the sequence of events as stated by Cameron Brown and Ethan Tibbo. She had provided, what I have previously determined to be the most credible and accurate timeline as to their arrival in the room, when the shooting occurred, that she and Mr. Clarke remained in the room with Cameron Brown to minimize the bleeding, that they did so until the police and medical personnel arrived about 10 minutes after the 911 call was made to report the shooting incident.

[220] Unlike a couple of the other witnesses who testified with some degree of hesitancy because they were too intoxicated or happened to be looking in a different direction at the critical moment and were unable to relate critical details of what transpired, Ms. Slawter stated that she was not intoxicated, and I found that she testified in a credible and reliable straightforward manner, with little or no hesitancy, in relating to the court what she had seen.

[221] Ms. Teirah Slawter stated that, in the moments before Cameron Brown was shot in the back, she had noticed that Araya Smith and Traydell Brown were on the bed and “playing with the gun,” twirling it around and then pointing it. In stating that Araya Smith was twirling and pointing the gun, she added that he had his finger on the trigger, Cameron Brown was to her left when he was shot in the back. Ms. Slawter’s evidence supported the specific location where Cameron Brown was standing, facing the front entry door, on the carpet but near the tile entry area, while he was talking on the phone.

[222] In addition, Ms. Teirah Slawter also clearly stated that when she turned to look back at the bed in the moments after Cameron Brown was shot, she saw the gun thrown down on the bed by Araya Smith. Shortly thereafter, she confirmed that Araya Smith, Traydell Brown and Ethan Tibbo left the hotel room, and when she looked over to the bed where the gun had been, it had been removed one of them, as she and Mr. Antwoine Clarke remained in the hotel room to attend to Cameron Brown until the police and emergency medical services arrived.

[223] As I previously mentioned, I found that Ms. Slawter testified in a candid, straightforward manner which demonstrated her ability to observe what was going on in the confines of a hotel room, then to recall and relate specific details to the court. In presenting what I found to be credible and reliable evidence, which was internally and externally consistent with the logical flow of events, it was evident that she did not have a personal connection to either the victim or the accused or any personal interest in the outcome.

[224] It is also worth noting, while Teirah Slawter acknowledged having a few drinks, unlike several others, she stated that she was not drunk and that her ability to observe and recall the events, was not affected by the consumption of alcohol. Moreover, during a thorough and detailed cross-examination by Defence Counsel, I found that her evidence was unshaken on the key details relevant to the determination of the essential elements in this trial and that she did not try to speculate on certain matters of which she was not certain. For example, on cross-examination, she candidly acknowledged that she could not tell from her location in the room whether there was ammunition in the gun, or it was loaded, adding that when she made that observation, she was about 10 feet away. She also said that, at a certain point in the evening, she recalled that the gun had been placed in the drawer of a side table by the bed, but acknowledged that she had not seen who had later taken that gun out of the drawer.

[225] When questioned further about who she last saw with the gun on re-examination, Ms. Slawter stated that Araya Smith, Traydell and Ethan Tibbo were in the general area of the gun in the minutes prior to the shooting. However, she went on to reiterate that, in the moments just before Cameron Brown was shot, Araya Smith was holding the handgun and when the gun was placed down on the bed, it was only one-half meter away from him, but about 4 to 5 feet away from Traydell and about 6 or 7 feet away from Ethan Tibbo.

[226] Mr. Antwoine Clarke, who based upon his evidence and the evidence of other witnesses in the trial, obviously had prior connections to both the accused and the victim. While Mr. Clarke would not have had a personal interest in the outcome of the trial, I found that his evidence probably reflected the prior personal connections to both Mr. Brown and the accused. Apart from a few peripheral details, Mr. Clarke's evidence was that while he was present with five other people in a relatively small space of a hotel bedroom, he was, for the most part, unable to observe what occurred because he was facing in the wrong direction or unable to recall and relate any key details due to the amount of alcohol that he had consumed

that evening. In terms of any key details of the events in question, he only “realized” at a certain point that there was a gun in the room, had no idea who had brought it to the hotel room and only recalled that everyone was “looking at it” when it was being shown around.

[227] Mr. Clarke stated that when the shooting occurred, he was seated in a position where Cameron Brown was to his left while he was near the desk by the wall next to the washroom. Ethan Tibbo, Traydell Brown and Araya Smith were behind him when the shot was fired. Immediately after the shot was fired and Cameron Brown was hit, Antwoine Clarke stated that he heard Araya Smith say something, but was not sure what was said. but when he looked at Mr. Smith’s face, Mr. Clarke believed that there seemed to be a “reaction.” Although he had not seen who had fired the bullet which hit Cameron Brown in the back, based upon the “reaction” that he had seen on Araya Smith’s face, it was his “opinion” that Araya Smith had shot Cameron Brown.

[228] I found that Mr. Clarke’s evidence that he was quite intoxicated and not necessarily paying attention to the others since he was with his girlfriend, resulted in several answers to key questions which indicated that he was simply unaware, uncertain or given the fact that it was a couple of years ago and he was drunk, he did not have a sufficient recollection of the events to provide an accurate account. Having said that, I found that he did present some evidence which was credible and reliable and I find that those portions of his evidence did support and were consistent with the more reliable and credible evidence of others as well as reasonable inferences from the totality of that evidence, that it was Araya Smith who had pulled the trigger of the handgun and fired the bullet that struck Cameron Brown.

[229] When I consider the credible and reliable detailed evidence of Ethan Tibbo and Teirah Slawter, in particular, which was certainly consistent with the evidence of Cameron Brown and Antwoine Clarke, I find that Araya Smith had taken the handgun out of a drawer where it had been placed at certain times during the evening, then he “played with” that handgun and that he had pointed it at Ethan Tibbo and Cameron Brown after having consumed alcohol and, in all likelihood, some drugs.

[230] I also accept the evidence of those witnesses who clearly stated, that in the moments before the handgun was fired, Araya Smith was pointing the gun in the direction of Cameron Brown and that he had pulled the trigger on at least a couple

of occasions causing a clicking sound which was heard by a witness and then the gun fired the bullet which struck Cameron Brown in the back.

[231] In coming to that factual conclusion, I have found that the evidence established that the gun had been on the bed where Traydell Brown and Araya Smith were seated, and that the trajectory of the bullet came from the direction of the bed or just in front of it towards where Mr. Cameron Brown was standing, facing the door to the hotel room, while speaking on his cell phone.

[232] I have also considered the evidence of the Cameron Brown that, at some point shortly after the incident, Araya Smith contacted him, and Mr. Brown's interpretation of the message was that Mr. Smith was apologizing for what had occurred on the evening in question. Cameron Brown recalled that Araya Smith had stated something to the effect that it was a mistake, and he would like it if Mr. Brown could forgive him. Of course, as I have previously indicated, Cameron Brown and Araya Smith had been friends for some time prior to this incident, so it may not be surprising that a message along those lines had been sent by Araya Smith.

[233] I find that the Crown introduced this evidence as after-the-fact or post-offence conduct as to what Araya Smith said or did after the alleged offence. Like other circumstantial evidence, I find that, in this case, the contents of a message being sent shortly after the incident from Mr. Smith to Mr. Brown could certainly be relevant to the specific issue in this trial, namely, the identity of the person who fired the bullet which struck Mr. Brown in the back.

[234] The Supreme Court of Canada has held in **R. v. White**, 2011 SCC 13 (Canlii) as well as more recently in **R v. Calnen**, 2019 SCC 6 that after-the-fact conduct may constitute circumstantial evidence of guilt remains good law. The Supreme Court of Canada had also held in **R. v. White**, [1998] 2 SCR 72 at para. 21 that evidence of post-offence conduct is not fundamentally different from other kinds of circumstantial evidence. In some cases, it may be highly incriminating, while in others it might play only a minor corroborative role. As with all other evidence, the relevance and probative value of after-the-fact conduct must be assessed on a case-by-case basis. As a result, it is still permissible for the prosecution to introduce evidence of after-the-fact conduct in support of an inference that the accused had behaved as a person who is guilty of the offence alleged - provided that, as with all circumstantial evidence, its relevance to that inference can be demonstrated.

[235] While the court was not presented with a copy of the message that Mr. Brown stated that he received from Mr. Smith, and therefore, the evidence of what it had said or purported to say is based solely upon Mr. Cameron Brown's recollection of a message exchanged approximately two years earlier, the Crown Attorney has submitted that it may be considered as an admission against a penal interest. Based upon Mr. Brown's recollection of what the message had stated, it would seem to imply or put another way, it would be reasonable to infer from the nature of the message, that it was Araya Smith who pulled the trigger on the handgun which shot him. In the final analysis, I simply consider this evidence of a message to ask for forgiveness being sent by Araya Smith to Cameron Brown, after-the-fact, as simply an additional piece of the circumstantial evidence. However, given the fact that Cameron Brown did not have a detailed and specific recollection of when the message was conveyed or more importantly, the wording of the message, since it was not able to be retrieved, I do not necessarily accord that piece of circumstantial evidence any significant weight.

[236] During the closing submissions, Defence Counsel submitted that it is a reasonable possibility to infer that Traydell Brown was the person who shot Cameron Brown. For his part, based upon the totality of the evidence, the Crown Attorney submitted that the Court would have to determine whether the person who shot Cameron Brown was Traydell Brown or Araya Smith. He submitted that the totality of the evidence established, beyond a reasonable doubt, that it was Araya Smith who carelessly handled the loaded, restricted or prohibited firearm, pointed it at Cameron Brown and ultimately pulled the trigger firing a bullet which caused bodily harm to Cameron Brown.

[237] However, in considering those comments made during the closing submissions, I am mindful of the Supreme Court of Canada's comments in **Villaroman** that the trier of fact should consider "other possible theories" or "other reasonable possibilities" which are inconsistent with the guilt of the accused for having handled a restricted or prohibited firearm in a careless and dangerous manner, pointed it at Cameron Brown and pulled the trigger on that firearm which caused bodily harm to Cameron Brown.

[238] In considering whether there are "other possible or plausible theories," I have concluded based upon the evidence which I have accepted and reasonable inferences from the totality of that evidence, that apart from a bare statement that, at some point Traydell Brown held the gun and was also "playing with it," there was no evidence that he had pointed the gun at anyone, but in particular, Cameron

Brown, nor any evidence that he had pulled or had been pulling the trigger of that handgun with his finger while he was pointing at Cameron Brown or anyone else.

[239] In those circumstances, looking at the totality of the evidence which I have accepted and reasonable inferences from the circumstantial evidence, viewed logically and in light of human experience in a situation such as this, I find that the suggestion that the person who shot Cameron Brown might have been Traydell Brown is more in the nature of unreasonable conjecture and speculation rather than being based upon the totality of the proven facts and circumstances of this case. As a result, looking at the totality of the direct evidence which I have accepted and reasonable inferences from the circumstantial evidence, I conclude that the Crown has established, beyond a reasonable doubt, that it was Araya Smith who carelessly handled, then pointed a loaded restricted or prohibited handgun at Cameron Brown and pulled the trigger which fired the bullet that caused bodily harm to Cameron Brown.

Has the Crown established beyond a reasonable doubt all of the essential elements of the firearms related charges?

[240] **Count #2** – *that Araya Smith, did without lawful excuse, use and point a firearm, to wit, a handgun at Cameron Brown contrary to section 87(1) of the Criminal Code.*

[241] I find that this is a general intent offence. It is not necessary for the Crown to establish that the firearm was loaded, or restricted or prohibited, but it must be intentionally pointed at another person. The conduct must be without a lawful excuse and the mental element requires an intention to engage in the conduct that constitutes the *actus reus* of the offence. In other words, the act of pointing requires the intention of knowing that the firearm was pointed at a person or being wilfully blind to that possibility, rather than being pointed by accident.

[242] In this case, I find that the evidence established, beyond a reasonable doubt, that while Araya Smith was holding a firearm, in a hotel room at the Hampton Suites Hotel in Dartmouth, Nova Scotia, he pointed it at Cameron Brown and pulled the trigger, which fired the bullet that struck Mr. Brown. I have also accepted the evidence of Mr. Ethan Tibbo, that Araya Smith also pointed the firearm at him. In his case, I find that the evidence, which I have accepted, only established that the firearm was pointed at Mr. Tibbo. Moreover, given the description of the firearm involved in this incident and the fact that it fired a bullet

which struck Mr. Cameron Brown, I find that that the Crown has established, beyond a reasonable doubt, that Araya Smith was holding and pointing a “firearm” as defined in section 2 of the **Criminal Code**, even though the firearm used by him in that manner, was never located by the police.

[243] Having come to those conclusions with respect to the offence of pointing a firearm at Cameron Brown as alleged, I find Araya Smith guilty of the offence contrary to section 87(1) of the **Criminal Code**.

Count #3, - *unlicensed possession of a loaded restricted or prohibited firearm without being the holder of an authorization or license to possess it and the registration certificate for the firearm contrary to section 95(1) of the **Criminal Code**.*

Count #4 - *unlicensed possession of a firearm knowing that he was not the holder of a license to possess it and in the case of a prohibited firearm or restricted firearm without being the holder of a registration certificate contrary to section 92(1) of the **Code**.*

Count #5 - *unlicensed possession of a firearm (a handgun) without being the holder of a license to possess it and in the case of a prohibited or restricted firearm without being the holder of a registration certificate for the firearm, contrary to section 91(1) **Criminal Code**.*

[244] One of the essential elements that is required to be established for all three of those **unlicensed possession** charges contrary to sections 91, 92 and 95 of the **Criminal Code** is that the Prosecution must prove that the accused **did not have a license to possess** a firearm or a restricted or prohibited firearm. I find that the affidavit evidence and the trial evidence of John Parkin, Chief Firearms Officer of Nova Scotia, established that Araya Smith did not have a Possession and Acquisition License issued under the **Firearms Act** on August 13, 2020, nor did he possess a license or authorization to possess any restricted or prohibited firearms.

[245] In considering these three unlicensed possession offences, I note that the Crown Attorney has referred to the case of **R. v. H.(J)**, 2010 ONCJ 231 at para. 9 that held that section 91(1) **Code** is a lesser included offence with the section 95(1) **Code** offence, but not with the section 92(1) **Code** offence. Moreover, I find that the section 92(1) **Code** offence is not an included offence in the section 95(1) **Code** offence, since it includes an additional element of proof, that is, proof that

the accused had **knowledge** that he or she was **not** in possession of a license or authorization.

[246] Then, with respect to the issue of possession of the firearm, I have found that the Crown has established, beyond a reasonable doubt, that Araya Smith was in possession of the firearm, in this case, a handgun, prior to transporting it to the Hampton Suites Hotel on the evening of August 12, 2020.

[247] Subsection 4(3) of the **Criminal Code** describes three ways in which a person can be in “possession” of something:

Possession

(3) For the purposes of this Act,

(a) a person has anything in possession when he has it in his personal possession or knowingly

(i) has it in the actual possession or custody of another person, or

(ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and

(b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.

[248] Based upon the definition of “possession” and the evidence which I have accepted, the key aspect in terms of this definition is that I have concluded that the Crown has established beyond a reasonable doubt, that Araya Smith had possession of the firearm in question a few days before the incident in question and that he was the person who transported it to the hotel room. In the hotel room, I have also accepted the evidence that, at certain points in the evening, for a few moments at least, Cameron Brown, Ethan Tibbo, Traydell Brown and Araya Smith did hold and handle that firearm in the hotel room, and in those circumstances, they did, knowingly, have personal possession of that firearm for a brief period of time.

[249] However, count #3 [section 95(1) **Code**] requires the Crown to establish that the accused was in possession of a **loaded restricted or prohibited firearm** and in that regard, those other people who may have briefly held or handled that firearm likely had no knowledge that the firearm was loaded. Cameron Brown’s evidence was that he believed, at a certain point, that he saw Araya Smith taking bullets out of the firearm. Given that evidence, I find it is reasonable to infer from my finding

that Araya Smith had possession of the handgun and that he was the person who brought it to the hotel room that, presumably Mr. Smith only took out some of the bullets from the firearm, either leaving one or more in the firearm or after that, put one or more bullets back into the firearm, as I have found, beyond a reasonable doubt, that a bullet was fired from that gun which struck Cameron Brown in the back. In addition, I have also accepted the evidence of Ethan Tibbo that he one or more bullets in the gun which was possessed, brought to the hotel room, and then handed around by Araya Smith for others to “play with” as several witnesses had described.

[250] With respect to this s. 95(1) **Code** charge, based upon **R. v. Nur**, 2015 SCC 15 the *actus reus* of this offence requires proof beyond a reasonable doubt that the accused possessed the firearm which was either a prohibited or restricted firearm, that the firearm was loaded or if unloaded, usable ammunition was readily available and that the accused did not have a license or authorization permitting possession at the place of the offence or a registration certificate for the firearm.

[251] Based upon the evidence of John Parkin and the definition of restricted or prohibited firearm in section 84(1) **Code**, I find that the Crown has established, beyond a reasonable doubt that the firearm, which was a handgun, was either a restricted or prohibited firearm. In addition, I find that the evidence which I have accepted, did establish that, during the evening while Araya Smith was with his friends at the hotel, he did, at a certain point in the evening, check the chamber of the handgun. With respect to Mr. Smith checking the chamber of the gun, Mr. Brown stated that he saw Araya Smith take bullets out of the gun’s casing, while Mr. Tibbo and Antwoine Clarke stated that they heard “someone” say “it’s not loaded” while Araya Smith “playing with” the handgun. Having concluded that Araya Smith had the initial possession of the handgun and brought it to the hotel room, and at the hotel, he checked the chamber of the gun and may have even pulled out some bullets, I find that it would be reasonable to infer from those facts that he was also the “unnamed” person who Mr. Tibbo and Antwoine Clarke heard say “it’s not loaded.”

[252] Furthermore, regardless of the steps taken by Mr. Smith to check the chamber to see if the handgun was, in fact, unloaded, and furthermore, the fact that he may have even taken out several bullets from the handgun’s chamber, those steps were clearly not sufficient to ensure that there were no bullets in the handgun’s chamber. I find that there can be no doubt whatsoever that, at the very

least, one bullet remained in the handgun's chamber, which was discharged by that handgun, striking Mr. Brown in the back, and causing him serious bodily injury.

[253] Finally, I find that the evidence of Mr. Parkin also established that Araya Smith did not have a license or authorization permitting him to possess that firearm at any place, let alone in a small indoor room of a hotel.

[254] Similarly, with respect to the mental element of the section 95(1) **Code** offence, the case of **R. v. Nur**, *supra*, established that the prosecution must prove, beyond a reasonable doubt, that the accused knew or was wilfully blind to the fact that he was in possession of the firearm alleged, that he knew or was wilfully blind to the fact that the firearm was a prohibited or restricted firearm, that the firearm was loaded and finally that he knew or was wilfully blind to the fact that he did not have required license or authorization to possess the firearm at any place and finally, that he knew or was wilfully blind to the fact that he did not have the required registration certificate.

[255] I agree with the Crown Attorney that, in this case, the section 95(1) **Code** offence was established, beyond a reasonable doubt, having concluded that, once the trigger was pulled by Araya Smith, the firearm discharged a bullet. However, as the Crown Attorney pointed out during his submissions, the proof of this offence does not require, as an essential element, that the firearm actually discharged a bullet. In that regard, I agree with the Crown Attorney that the evidence established, beyond a reasonable doubt, that the accused knew that he was in possession of a firearm, that he knew or was wilfully blind to the fact that the firearm was a prohibited or restricted firearm, that he knew or was wilfully blind to the fact that the firearm was loaded **with ammunition** and that he knew or was wilfully blind to the fact that he did not have an authorization, license or registration certificate for that firearm.

[256] Moreover, once Araya Smith pulled the trigger, the hammer drew back and struck the cylinder releasing the bullet, there could be no doubt that this was also a working firearm with ammunition. Given the evidence that I have accepted with respect to the fact that Araya Smith checked the firearm, removed some bullets and that he was likely the person who had said "it's unloaded," I find that he was wilfully blind or reckless to the fact that the firearm was loaded with at least one bullet. I find that his wilful blindness or recklessness as to whether the firearm was loaded with ammunition, is based upon his very careless and cavalier handling and as described "playing" with the firearm prior to it being discharged. In addition, I

find that his wilful blindness or recklessness is also established by apparently making a cursory check of the chamber to see if there were any bullets present, after having consumed alcohol and, in all likelihood, controlled substances and then failing to make a thorough and complete check of the firearm to ensure that there were no bullets in the chamber.

[257] Having come to those conclusions, I find that the Crown has established beyond a reasonable doubt, all of the essential elements of the section 95(1) **Code** offence of having unlicensed possession of a **loaded restricted or prohibited firearm** as well as the section 91(1) **Code** offence of having unlicensed possession of a **firearm**. In those circumstances, I find Araya Smith guilty of both the section 91(1) and section 95(1) **Code** offences. However, given the similarity and overlap between those two charges, based upon the **Kienapple** principle, I am prepared to enter a judicial stay with respect to the section 91(1) **Code** offence.

[258] Finally, with respect to the section 92(1) **Code** offence which required the Crown to establish, beyond a reasonable doubt, that in addition to the unlicensed aspect of the charge in relation to possession of a prohibited firearm or a registration certificate for a restricted firearm, the Crown Attorney noted that there was an additional element to this charge which required the Crown to establish, beyond a reasonable doubt, that Araya Smith had that possession “**knowing** that he was not the holder of a license or registration certificate.” With respect to this charge, the Crown Attorney conceded that they have not established, beyond a reasonable doubt that specific additional level of knowledge required to establish the section 92(1) **Code** offence, and in those circumstances, I find Araya Smith not guilty of that charge.

Count #6 - *Araya Smith carried a weapon, to wit, a handgun, concealed contrary to section 90(1) Criminal Code*

[259] With respect to this charge, the *actus reus* of the offence requires the Crown to establish, beyond a reasonable doubt, that the accused carried the handgun or “weapon”, which by definition in section 2 of the **Code**, includes a firearm and that the accused concealed that weapon in doing so.

[260] In **R. v. Felawka**, [1993] 4 SCR 199, the Supreme Court of Canada held that to prove concealment, the prosecution must prove, beyond a reasonable doubt, that the accused took steps to hide the weapon so that it would not be observed or come to the notice of others while he or she was carrying that weapon. The mental

element or *mens rea* of this offence requires proof beyond a reasonable doubt that the accused concealed an object that he or she knew to be a weapon.

[261] In this case, I have found that the handgun was seen at the house of Araya Smith a few days before the incident at the Hampton Suites Hotel on August 13, 2020, and that it was then transported or carried to the hotel by him. I find that there can be no doubt whatsoever that, in transporting what has been described as a 22-calibre handgun or revolver, given the definition of “a weapon” in section 2 of the **Criminal Code**, Araya Smith knew or was wilfully blind to the fact that he was carrying a “weapon” to the hotel.

[262] Moreover, regardless of whether it may have been seen by one or more people while Araya Smith was in Mr. Tibbo’s car when the group of people were being transported to the Hampton Suites Hotel, I find that the evidence established that Araya Smith transported that weapon from his house to the hotel. On arrival at the hotel, around almost 9:49 PM on August 12, 2020, the video surveillance shows Araya Smith and Cameron Brown entering the hotel and going to the elevator. On this view, Araya Smith walks into the hotel and enters the elevator, wearing a white hoodie and blue pants, without a backpack and holding a red box in his left hand, with nothing being in his right hand.

[263] About 40 seconds later, the video surveillance of the fifth floor shows Araya Smith and Cameron Brown coming through a door in the hallway towards room 503, now with Mr. Brown carrying the red box which had a clearly visible Budweiser beer marking on it. Mr. Smith appears to have a cell phone in his right hand and nothing in his left hand. I note here, parenthetically, that photographs of the washroom area of the bedroom 503 clearly show a couple of cans of Budweiser beer which had been consumed by one or more of the occupants in that room.

[264] Having found that Araya Smith was the person who possessed the firearm at his house and having previously found that Mr. Smith was the person who transported that firearm from his house to the hotel, I find that the evidence also established that the same firearm was the one which was seen by and “played with” by Mr. Smith and several other people in that hotel room. Ultimately, I have also found that the bullet which struck Cameron Brown was fired from that handgun.

[265] Having come to those conclusions and having previously determined that I have found that Araya Smith was the person who transported that firearm to the hotel, for the purpose of this charge, the issue is whether the Crown has established

that Mr. Smith carried that weapon in a concealed manner contrary to section 90(1) **Code**. After having carefully conducted a detailed review of the still images and the hotel's video surveillance of Araya Smith entering the hotel lobby, going into the hotel's elevator and then walking down the hall on the fifth floor, I find that the Crown has established, beyond a reasonable doubt, that Araya Smith took steps to conceal that weapon so that it would be not observed or noticed by any hotel staff as he brought that weapon into the Hampton Suites hotel room just before 10 PM on August 12, 2020.

[266] Based upon a detailed, frame by frame view of Araya Smith's entry into the hotel and then going up to the hotel room in the elevator, wearing a white hoodie, I find that there was nothing to indicate in any visible manner that he was carrying the handgun. Put another way, knowing that the handgun was eventually brought into the hotel room and having concluded that Mr. Smith was the person who brought the handgun to the hotel and that Mr. Brown was at a later point in the evening shot with the bullet from that handgun, I find that the evidence established that Araya Smith took active steps to conceal the handgun on his person or in some article that was carried by him into the hotel and then into the hotel room where Mr. Brown was later wounded by a bullet fired from that handgun.

[267] Based upon the evidence of John Parkin, Chief Firearms Officer for Nova Scotia, I find that it was also established that Mr. Smith did not have any authorization under the **Firearms Act** to have possession of that weapon, let alone to carry it concealed. Having come to those conclusions, I find that the Crown has established, beyond a reasonable doubt, all of the essential elements of the offence of carrying a concealed weapon. In those circumstances, I find Araya Smith guilty of the offence of carrying a weapon concealed, contrary to section 90(1) **Code**.

Count #7 - *unlawfully having possession of a weapon or an imitation of a weapon, to wit, a handgun for a purpose dangerous to the public peace or for the purpose of committing an offence, contrary to section 88(1) Code*

[268] In terms of the essential elements of this offence, I find that the external circumstances of the *actus reus*, which the Crown must establish beyond a reasonable doubt, are relatively straightforward. The Crown must establish that the accused carried or possessed a weapon, which includes a firearm, an imitation of a weapon or other regulated items, such as a prohibited device or any ammunition, which could include anything that could be used as a "weapon." The Crown is not required to establish that the weapon was actually used, as it is an offence with

respect to simply having had possession of that weapon. The *mens rea* or mental element of the offence involves the intent to achieve a particular result by carrying that weapon for either a purpose dangerous to the public peace or for the purpose of committing an offence: see **R. v. Kerr**, [2004] 2 SCR 371 and the definition of a “weapon” in section 2 of the **Criminal Code**.

[269] In this case, determining the mental element of the intent to possess that weapon for a dangerous purpose, according to **R. v. Kerr**, [2004] 2 SCR 371, the proper approach to mental element of the offence involves the application of a hybrid subjective-objective test. The first issue to determine in the context of this section is the intention of the accused person and whether the purpose was, objectively and in all the circumstances, for the purpose of committing an offence or for a purpose dangerous to the public peace.

[270] I find that it is highly unlikely that Araya Smith possessed that handgun in the hotel room for the purpose of committing an offence when I consider all of the facts and circumstances that he possessed the weapon in a hotel room with five of his friends while they were all “hanging out,” partying together, drinking alcohol and some of them were utilizing cocaine and/or MDMA during the evening.

[271] However, I find that Araya Smith’s possession of the firearm/weapon in those circumstances and in addition, having found that during the evening, he pointed it at some of the people in the hotel room and, on a few occasions, pulled the trigger, making a clicking sound, without firing bullets and then firing a bullet, created several opportunities for the firearm to be used for a dangerous purpose. Given the circumstances in which the firearm was handled and ultimately used by Araya Smith, with respect to the intention for this offence, which according to **R. v. Kerr**, *supra*, must be determined on a hybrid subjective-objective basis, although his intention may have been what was described as “just playing with” the firearm, I find that, on the objective basis unless he had made certain that there were no bullets in the handgun, it was reckless to pull the trigger on several occasions which could have, and in the end, did result in a bullet being fired, which caused bodily harm to Cameron Brown.

[272] I find that the Crown has established all of the essential elements of the section 88(1) **Code** charge of having possession of the weapon for a dangerous purpose, beyond a reasonable doubt, and I find him guilty of that charge. However, I also find that given the similarity and overlap in the essential elements to the previous offences for which I have found him guilty as a result of his use and

handling of that firearm, I find that it would be appropriate with respect to this charge to apply the **Kienapple** principle and judicially stay this offence.

Count #8 - *Araya Smith did use a firearm, without lawful excuse in a careless manner or without reasonable precautions for the safety of other persons, contrary to section 86(1) of the **Criminal Code**.*

[273] In terms of the section 86(1) **Code** offence of careless use of a firearm, it is interesting to note that the term “use” is not a defined term in the **Criminal Code**, but the section itself determines that the “use” may involve the carrying, handling, shipping, transport or storage of the firearm in a manner which must be careless or without reasonable precautions for the safety of others. I have previously found that there is ample evidence before the court to establish that Araya Smith handled or “used” the firearm in a careless manner. As I have previously indicated, I have found that Mr. Smith had transported the firearm without a trigger lock for safe transportation or to prevent an accidental discharge, he had failed to check the firearm properly to ensure that it was not loaded, pulled the trigger on two or three occasions after having consumed alcohol and/or drugs and, in all likelihood, being intoxicated while doing so, has established beyond a reasonable doubt, that Araya Smith had “used” the firearm or its components or fittings in a “careless manner” without reasonable precautions for the safety of the other people in the hotel room.

[274] In addition, I have found that the Crown established that the Araya Smith was, at times, “playing with” the firearm and in doing so, he pointed the firearm at other people a short distance away in the relatively small confines of a hotel room and that, on a few occasions, he pulled the trigger of the firearm while it was pointed at people. Although the firearm did not discharge a bullet on every occasion that Araya Smith pulled the trigger, I find that the evidence established that there was a “clicking” sound made by the hammer and on one occasion either immediately or very shortly after he pulled the trigger the firearm, it discharged a bullet which struck Cameron Brown in the back and caused bodily harm.

[275] As a result, I find that the Crown has established, beyond a reasonable doubt, that Araya Smith “used” the firearm in a careless manner, in particular, by pointing it at Cameron Brown and Ethan Tibbo. In addition, I find that the evidence established that the firearm was also handled or “used” in a careless manner by Araya Smith by virtue of what could be described as “horseplay” in twirling the handgun around his finger, while being in the presence of five other people in a relatively small hotel room. I find that those actions clearly

demonstrated that Araya Smith carelessly “used” the firearm in the hotel and also clearly demonstrated that he took no reasonable precautions for the safety of the other persons in the hotel room with him on the evening in question. In those circumstances, I find that the evidence established that Araya Smith “used” the firearm in a careless manner and without taking reasonable precautions for the safety of other persons in the area.

[276] In terms of the mental element of this careless use of a firearm charge, I find that the Crown established, beyond a reasonable doubt, that the actions of Araya Smith demonstrated the mental element of the offence, that is, they were a marked departure from what a reasonably prudent trained and licensed firearms handler would have done in the circumstances. Clearly, I find that a reasonably prudent firearms handler would not have brought a working firearm into a small indoor space like a hotel room, let alone taking all of the other careless actions, relating to the unsafe carrying of the firearm, “playing” with the dangerous weapon by twirling it around in a cavalier fashion, pointing it at people and on a few occasions, pulling the trigger after having consumed alcohol and/or drugs. When I consider the totality of those actions in those circumstances, I find that Araya Smith carelessly “used” the firearm without any regard for the safety of the other people in the room.

[277] In those circumstances, I find that the Crown has established, beyond a reasonable doubt, all of the essential elements of the careless use of a firearm charge contrary to section 86(1) **Criminal Code** and I find him guilty of that offence.

[278] However, when I consider the aspects of this charge which bring the “careless use” into play, I find that with respect to this charge, there is a great deal of overlap and similarity between this charge and the count #2 charge in relation to the pointing of a firearm at Cameron Brown. In those circumstances, I find that it would be appropriate to apply the **Kienapple** principle to this charge contrary to section 86(1) of the **Code** and I am prepared to enter a judicial stay for this offence.

Count #9 - *the storage, handling or transportation of a firearm, to wit a handgun contrary to the Storage, Display, Transportation and Handling of Firearms by Individuals Regulations contravening the regulation under para. 117(h) of the Firearms Act, contrary to section 86(2) Criminal Code.*

[279] The offence contrary to this section is like the charge under section 86(1) **Code**, but the section 86(2) **Code** offence relates to the improper handling of firearms or restricted weapons in accordance with the provisions of section 117(h) of the **Firearms Act**. The offences pursuant to the provisions of the *Regulations* are essentially ones of strict liability and are established where the Crown proves, beyond a reasonable doubt, that the accused's conduct contravened a *Regulation* made under that subsection of the **Firearms Act**. As an offence of strict liability with respect to compliance with certain provisions of the **Firearms Act**, it is open to the defence to raise a reasonable doubt based upon a mistake of fact or due diligence on the part of the defendant in his or her efforts to comply with the regulation.

[280] The Crown Attorney has submitted, based upon the evidence during the trial, which I have accepted as proven facts, that there was a breach of section 6 of the *Regulations* which requires the **storage of restricted firearms** to be unloaded, trigger locked and stored in a securely locked container or room separate and not with readily accessible to ammunition unless the ammunition is stored in a securely locked container.

[281] Based upon the evidence of the witnesses who were with Mr. Smith on the way to the hotel and then spending 2 to 3 hours with him at the hotel, I find that there was absolutely no evidence from any of those witnesses that the firearm was ever trigger locked prior to being fired at the hotel. In addition, with respect to the evidence that the firearm was temporarily "placed" or "stored" in a drawer of a bedside table at the hotel room, I find that putting or placing the firearm in that location, does not, in any way, meet the requirement that the firearm be "stored" in a "securely locked container."

[282] Furthermore, I find that there was no evidence from any of the witnesses or the video surveillance evidence from the hotel, that the ammunition for that firearm was ever stored separately in a "securely locked container."

[283] Based upon the undisputed fact that a bullet was fired from a handgun at the hotel, and given the fact that there was no evidence from anyone of secure storage or transportation of either the firearm or the ammunition to the hotel, I find that it is reasonable to infer from those facts, that either the firearm was already loaded with at least one bullet when it was transported to the hotel without a trigger lock or in the alternative, if the firearm was then transported to the hotel unloaded, but without a trigger lock, then at least one bullet was placed in the firearm by Araya

Smith at the hotel, which could only have occurred with readily available ammunition for that calibre of handgun being available at the hotel. In either of those circumstances, there was no evidence from any witnesses or the surveillance video that Mr. Smith had stored and transported any ammunition in a securely locked container.

[284] The Crown Attorney also submitted that the evidence established that Mr. Smith had breached section 11 of the *Regulations* which stipulates that when a person is **transporting a firearm**, the person must ensure that the firearm is unloaded, trigger locked and securely locked in a container.

[285] As I have already found that the Crown has established, beyond a reasonable doubt, that Araya Smith transported the firearm to the Hampton Suites Hotel in a concealed manner, possibly in his pants or in his hoodie, since he was not wearing a backpack when he arrived at the hotel. Having come to that conclusion with respect to a transporting the firearm in a concealed manner, I find that, in doing so, the firearm was not transported in a “securely locked container” as it most certainly would have been evident to the other people in Mr. Tibbo’s crowded Volkswagen Jetta car when they were travelling to the hotel, or on arrival at the hotel on the hotel’s surveillance videos or in the evidence of the witnesses once Mr. Smith revealed the firearm in the hotel room.

[286] In addition, as mentioned in my previous conclusions with respect to the fact that I have found that Mr. Smith had not properly stored the restricted or prohibited handgun in accordance with the *Regulations*, I also made certain findings of fact relating to both the storage of the firearm as well as Mr. Smith’s transportation of the firearm from his house to the Hampton Suites Hotel.

[287] Having regard to the totality of the facts and circumstances with respect to the transportation of the firearm as required by section 11 of the *Regulations*, I find that while there may be a possibility that it was transported to the hotel unloaded, there is no evidence from any of the witnesses that the firearm was trigger locked when transported nor any evidence from the witnesses or any video surveillance from the hotel that might indicate the firearm was transported in a securely locked container. In those circumstances, I find that the Crown has established, beyond a reasonable doubt, that Araya Smith also breached the section 11 of the *Regulations* dealing with the requirements for transporting a firearm by the manner in which he transported the firearm to the hotel.

[288] During the trial, there was a detailed review of the video surveillance of Araya Smith leaving the hotel within a few minutes after Cameron Brown was shot. Det/Const. Veinotte stated that, in looking at that video that there appeared to be an article protruding from the pocket or the waistband of his pants under the white T-shirt that Mr. Smith was wearing. Given the angle of view, the quality and brevity of the video, I find that it is not possible to conclude, beyond a reasonable doubt, that there was a firearm protruding under Araya Smith's T-shirt, when he left the hotel.

[289] However, the fact that the firearm was not located in the hotel room and, in fact, has never been located, there can be no doubt that someone who immediately left the hotel room after Cameron Brown was shot, being either Traydell Brown, Ethan Tibbo or Araya Smith, then transported that firearm out of the hotel room in contravention of section 11 of the *Regulations*. The evidence established that Teirah Slawter and Antwoine Clarke remained with Cameron Brown attending to his wound until the police and emergency medical personnel arrived at the hotel approximately 10 minutes after Mr. Brown was shot. While it may be reasonable to infer that the person who fired the bullet which struck Cameron Brown, was the person who "transported" the firearm to dispose of it in contravention of the section 11 of *Regulations*, I cannot conclude, beyond a reasonable doubt, that Araya Smith was that person, who also contravened section 11 of the *Regulations* in removing the gun from the hotel room.

[290] Finally, with respect to section 15 of the *Regulations*, which states that a loaded firearm may only be handled and discharged in a very small number of specific places, I find it was evident from the testimony and affidavit evidence of John Parkin that a hotel room it is not one of those specific authorized places.

[291] As a result, having previously concluded that Araya Smith was the person who transported the firearm to the hotel in a concealed manner and not in a proper storage container and using the gun in an unauthorized location, I find that the Crown has established beyond a reasonable doubt, that Araya Smith also contravened section 15 of the *Regulations* made under para. 117(h) of the **Firearms Act**. Having come to that conclusion and having concluded that Mr. Smith also contravened sections 6 and 11 of the *Regulations*, I find Araya Smith guilty of the offence contrary to section 86(2) of the **Criminal Code**.

[292] While a quick scan of section 86(2) **Code** and the offence contrary to section 86(1) **Code** relating to careless use of a firearm without reasonable precaution for

the safety of other people may appear to involve similar acts to establish the offences, I find that that they are, in fact, two separate and distinct offences. In that event, I do not believe that it would be appropriate to apply the **Kienapple** principle to this charge and therefore, I will not be entering a judicial stay for this section 86(2) **Code** charge, after having found Araya Smith guilty of the section 86(1) charge of careless use of a firearm.

Count #1 - *that Araya Smith by criminal negligence, to wit, shooting a firearm, did cause bodily harm to Cameron Brown contrary to section 221 of the **Criminal Code**.*

[293] The elements of a criminal negligence charge contrary to section 221 of the **Criminal Code** for the purpose of the charge of causing bodily harm by criminal negligence, are set out in section 219 of the **Criminal Code**. In section 219 of the **Code**, the *actus reus* requires the Crown to establish, beyond a reasonable doubt, the following:

- (a) a person was doing something or
- (b) in omitting to do anything that it was his or her duty to do, shows wanton and reckless disregard for the lives or safety of other persons.
- (c) In the case of an allegation of an offence contrary to section 221 of the **Code**, then, the Crown is also required to prove that the act or omission by the accused than caused death or bodily harm to a victim.

[294] The Nova Scotia Court of Appeal recently considered the framework for the analysis of criminal negligence cases in **R. v. Gardner and Fraser**, 2021 NSCA 52. In that case, Beveridge JA held, *supra*, at paras. 45-48 after considering several Supreme Court of Canada decisions, including Justice Abella's comments in **R. v. Javavanmardi**, 2019 SCC 54 on the framework for analysis on criminal negligence cases, as follows:

“[45] Abella J found no miscue by the trial judge's reference to the appellant's training and experience at the time she performed the allegedly negligent act or omission. This is because a court must take into account the activity in question and the standard of care associated with that activity:

[38] **Creighton's** activity-sensitive approach to the modified objective standard has been applied in a variety of contexts, including in cases involving driving, hunting and parenting (**Beatty**, at para. 40, **R. v. Gendreau**, 2015 QCCA 1910 at para. 30 (CanLII), **JF** at paras. 8-9).

These decisions confirm that while the standard is not determined by the accused's personal characteristics, it **is** informed by the activity. In this case, the activity in administering an intravenous injection, the standard of care to be applied is that of the reasonably prudent naturopath in the circumstances.

“[46] A common framework for analysis of criminal negligence allegations is to require the Crown to prove beyond a reasonable doubt the *actus reus* of the offence and then consider the fault element – the *mens rea* [see for example **R. v. Tayfel**, 2009 MBCA 124; **R. v. Harshbarger**, 2010 NLTD(G) 152; **R. v. Wood**, 2017 ONSC 3239; and **R. v. Doering**, 2019 ONSC 6360). This approach defines the *actus reus* as:

1. The act or an omission to do something that it was their duty to do;
2. The act or omission demonstrated a wanton or reckless disregard for the lives or safety of other persons; and,
3. The act or omission caused death or bodily harm to someone.

[47] The *mens rea* or fault element requires proof that the accused's conduct was a marked and substantial departure from the requisite standard of care.

[48] This approach enjoys ample jurisprudential support from the judgement of Charon J. in **R. v. Beatty**. Although **Beatty** was a case about dangerous driving, the difference between dangerous driving and criminal negligence is only one of degree – a marked departure is required for the former, while a marked and substantial departure from that of a reasonable and prudent driver for the latter.”

[295] In the final analysis, Justice Beveridge concludes with respect to the issue of “marked and substantial departure,” in **R. v. Gardner and Fraser**, *supra*, at paras. 77-80 as follows:

“[77] Criminal negligence is nonetheless negligence – a breach of the appropriate standard of care. Constitutional norms dictate criminal negligence be differentiated from civil negligence by requiring morally blameworthy behaviour – that is, behaviour that was a marked and substantial departure from the standard of care a reasonable person would have observed in all of the circumstances.

[78] The second thing that distinguishes penal from civil negligence is for the latter, liability is determined on a purely objective basis. The former operates under a modified objective test.

[79] The modified objective test requires the court to be alive to the possibility that the accused's honestly held and reasonable perception of the circumstances are such that a reasonable person might not have appreciated the risk or could and would have done something to avoid the danger (see **Beatty**, *supra*, at paras 37-38; **R. v. Tutton**, *supra*, at para. 45).

[80] That is, the state of mind of the accused is not, as in civil cases, irrelevant. It can lead to acquittal if it creates a doubt that a reasonably prudent person would have appreciated the risks with the act or failure to act (see: for example: **R. v. Beatty**, *supra* at para. 43; **R. v. Doering**, at para. 93; **R. v. Ibrahim**, 2019 ONCA 631 at paras. 33 – 34).

[296] Following those comments in **Gardner**, *supra*, at para. 82, Beveridge J.A. then summarized the “appropriate analytical framework” for a criminal negligence trial, in that case, dealing with the death of the victim [Corey Rogers] who had been arrested and detained for public intoxication, who ultimately died in police custody.

[297] Applying that “appropriate analytical framework” summarized by Justice Beveridge in **Gardner**, *supra*, at para. 82 to the facts and circumstances of this case, the Crown must establish beyond a reasonable doubt:

1. The acts or omissions by Araya Smith showed a wanton or reckless disregard for the life or safety of Cameron Brown and potentially the other people who were present at the same time;
2. The acts or omissions by Araya Smith caused bodily harm to Cameron Brown; and,
3. The acts or omissions that caused bodily harm to Cameron Brown were a marked and substantial departure from the standard of care of a reasonably prudent person who had been trained and licensed to handle restricted firearms in the accused’s circumstances, including what they knew or ought to have known.

[298] Based upon Justice Beveridge’s references to those Supreme Court of Canada cases and other cases, I find that, in this case, in determining whether there had been a marked and substantial departure from the requisite standard of care, Araya Smith’s actions should be measured on a modified objective standard on what a reasonably prudent person who had been trained and licensed to handle restricted firearms would do, rather than what an unlicensed and an untrained reasonably prudent person would do in the accused’s circumstances.

[299] In that way, using that modified objective standard, the Court would be able to assess and determine whether any breaches of that standard were simply negligent on a civil standard and as such, not meeting the criminal threshold; or in the alternative represented a marked departure of negligence, which would indicate

a careless use of the firearm; or represent a marked and substantial departure from that standard of care, which would amount to criminal negligence.

[300] With respect to the *actus reus* of the criminal negligence offence, I find that there were several significant acts and omissions which were done by Araya Smith which demonstrated, beyond a reasonable doubt, a wanton and reckless disregard for the safety of Cameron Brown and for that matter, the other people in the relatively small interior space of a hotel room.

[301] In particular, I have previously found that the evidence established that Araya Smith was not licensed to carry either a nonrestricted firearm or any restricted firearm, which included the handgun or revolver in this incident which has been described by the witnesses and I have concluded was a restricted or prohibited firearm.

[302] In addition, I have found that the evidence established that he either failed to check whether the firearm was unloaded or did not check properly to determine that the firearm was unloaded and safe to handle in the sense that the firearm did not have any bullets loaded in its chamber that could possibly fire.

[303] Then, with respect to Araya Smith's handling of the firearm itself, there was no evidence that the firearm was transported anywhere with a trigger lock for the firearm or that the handgun was stored separately from the ammunition as there was no evidence that it was brought to the hotel room in a secure and approved type of container. In fact, I have previously concluded, based upon the video surveillance evidence and the accounts of the witnesses who were present in Mr. Tibbo's Volkswagen Jetta as he drove Araya Smith and others the car on the way to the hotel and in the hotel, that the firearm was concealed by him in some location in order to bring it into the hotel room on the evening in question without anyone in the hotel noticing that weapon.

[304] While all those points would certainly highlight the inherent danger of the handling of the restricted or prohibited firearm in the first place, there are then what I have found to be a number of specific actions taken by Araya Smith once that restricted or prohibited firearm was brought by him into the hotel room.

[305] First, I have found that the restricted or prohibited firearm was transported by him from his house, then in a car with several people and eventually brought into a relatively small interior space like the hotel room. In those circumstances, there can be absolutely no doubt that any reasonably prudent person who had been

trained and licensed to handle restricted firearms would have known that a small space like a hotel room was not an “approved location” to utilize that firearm. Moreover, I have no doubt that a reasonably prudent person with proper training and legally licensed to handle a restricted firearm would have also realized that it would be totally unsafe and in fact, reckless to transport a restricted firearm in the close quarters of a small car, without a trigger lock, being uncertain whether it was loaded and not stored in a secured container and then to be “played with” in a small interior space of a hotel room, which based upon the evidence during the trial, could never meet the definition of being an “approved location” where that firearm could be legally utilized.

[306] In addition, having found that Araya Smith possessed and transported the firearm to the hotel room, at a certain point during the evening, at least on one occasion, he produced the firearm for others in the room to touch and handle it in the different manners which were described by them. Moreover, I have found that the Crown established beyond a reasonable doubt, that Araya Smith pointed the handgun at other persons, including Cameron Brown and I have accepted the evidence that he also engaged in what only can be regarded as dangerous “horseplay” with the firearm by twirling it around on his fingers or hand and pulling the trigger, without the firearm discharging a bullet, on a couple of occasions while it may have been pointed at someone other than Cameron Brown. Then, on another occasion, I have found as a fact that when that firearm was pointed by Araya Smith at Cameron Brown and the trigger was pulled, the firearm discharged the bullet which caused the bodily harm to Mr. Brown. I find that all of those acts by Mr. Smith demonstrated on and objective standard a wanton and reckless disregard for the safety of Cameron Brown and for that matter, several of the other people who were in that hotel room with him on the evening in question.

[307] Then, a further example of Araya Smith’s wanton and reckless disregard for the life or safety of Cameron Brown, in particular, was established by the fact that he produced the firearm in that relatively small interior space of a hotel room, where it was established that everyone had been consuming alcohol for a period of time, based upon what I had found as a fact, in all likelihood for up to 2 ½ hours, with some of the people in the room being described as being “pretty drunk” while others that they only had a few drinks and perhaps had “a little buzz” but were not intoxicated. There was also the evidence that the gun was produced in that environment where some but not all of the people in the room had also taken some controlled drugs and other substances being cocaine and/or MDMA.

[308] In those circumstances, I have no doubt that a reasonably prudent person who had been trained and licensed to handle restricted firearms would have been familiar with the restricted firearm [handgun] that was described in this case and would have realized the very significant risks in the way that Araya Smith transported, handled and ultimately utilized a prohibited or restricted firearm within the small confines of hotel room. I find that there can be no doubt whatsoever, that a reasonably prudent person who had been trained and licensed to handle restricted firearms would have recognized first, the inherent danger of simply bringing that firearm to anywhere other than an “approved location” in the proper and safe manner as required by the *Regulations* of the **Firearms Act**.

[309] Then, once the restricted firearm was transported to a small interior space like a hotel room, I have no doubt whatsoever that a reasonably prudent person who had been trained and licensed to handle restricted firearms would have undoubtedly recognized the inherent risk and what amounts to a reckless disregard to causing bodily harm or death of other persons as a result of the acts of “playing with” a restricted firearm after having consumed alcohol and/or controlled substances, pointing the firearm at people without knowing whether the firearm was loaded or unloaded, and then, taking the additional reckless action which demonstrated a complete disregard to the safety of other people by pulling the trigger on occasion while the firearm was pointed at Cameron Brown..

[310] When I consider the totality of Araya Smith’s acts or omissions of his possession and handling the firearm on the date in question, but especially within the small confines of a hotel room, I find that that those acts and omissions cannot be characterized as him being the result of mere negligence.

[311] Having considered the totality of the facts and circumstances of Mr. Smith’s possession, transport, handling and pointing of the firearm and pulling the trigger of that gun when it was pointed in the direction of Cameron Brown during the early morning hours of August 13, 2020 after Hampton Suites Hotel in Dartmouth, Nova Scotia, I find that the Crown has established, beyond a reasonable doubt, that Araya Smith’s acts and omissions constituted a marked and substantial departure from the standard of care that a reasonably prudent person who had been trained and licensed to handle restricted firearms would have taken in the circumstances. I find that the evidence clearly established that, as a result of Araya Smith pulling the trigger of the handgun while it was pointed in the direction of Cameron Brown, the firearm discharged a bullet which struck Cameron Brown in the back causing him significant bodily harm, and in doing so his acts and omissions demonstrated a

wanton and reckless disregard for the lives and safety of Cameron Brown and for that matter the other people in that hotel room on the evening in question.

[312] I find that Araya Smith's actions were in no way a momentary lapse in judgement, but rather, they clearly established a course of conduct during the entire evening which began when he took the restricted firearm into his possession, brought it to the hotel, put it away temporarily and took it out and handled it in a very dangerous, careless and cavalier fashion by pointing it at other people in the hotel room, pulling the trigger on a few occasions and by failing to ensure that there were no bullets in the gun which could be discharged at anyone.

[313] I find that all of Araya Smith's actions in the handling of the firearm established a course of conduct which I find to have demonstrated a wanton and reckless disregard for the safety of the people in the hotel room, but in particular, Cameron Brown. By Araya Smith handling the firearm in the manner described by the witnesses, and by pulling the trigger on as many as three occasions when it was pointed at people, his acts and omissions clearly demonstrated a wanton and reckless disregard to the ongoing assumption of the very serious risk of bodily harm to or death of another person in that hotel room.

[314] Furthermore, I also find that Araya Smith's acts or omissions in the handling and pointing of the firearm as well as pulling the trigger on a few occasions while everyone was together in the hotel room for a minimum of 2 to 3 hours, provided several opportunities for Araya Smith to cease and desist in "playing with" what turned out to be a loaded and restricted firearm, to avoid causing the bodily harm to Cameron Brown and the serious risk of injury to others in the hotel room. Unfortunately, for all people in the hotel room, but in particular for Cameron Brown, Araya Smith failed to do so. In those circumstances, I find that Araya Smith's acts and omissions which caused the bodily harm to Cameron Brown were not a momentary lapse of poor judgement, but rather, I find that they were acts or omissions that constituted a marked and substantial departure from the standard of care of a reasonably prudent trained and licensed restricted firearms handler in the accused's circumstances.

[315] Having come to those conclusions, I find that the Crown has established, beyond a reasonable doubt, all of the essential elements of the offence that Araya Smith did, by criminal negligence, to wit, shooting a firearm, cause bodily harm to Cameron Brown, contrary to section 221 of the **Criminal Code**.

[316] As a result, I find Araya Smith guilty of the offence of criminal negligence causing bodily harm to Cameron Brown contrary to section 221 of the **Criminal Code**.

Theodore K. Tax, JPC