IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. May, 2006 NSSC 329

Date: 20060920
Docket: CRSD265963
Registry: Digby

Between:

Her Majesty the Queen

Plaintiff

v.

Glynn Beverly May

Defendant

Judge:	The Honourable Justice Allan P. Boudreau
Heard:	September 19 and 20, 2006, in Digby, Nova Scotia
Oral Decision:	September 20, 2006
Counsel:	Rosalind Michie, for the Crown Philip J. Star, Q.C. , for the Defendant

By the Court:

[1] This is the Court's decision in Her Majesty the Queen versus Glynn Beverly May. Mr. May is charged on an eight count indictment dated May 10th, 2006. Mr. May has plead not guilty to all counts. I shall summarize the charges as follows: All charges are alleged to have occurred on September 2nd, 2005 at Hillgrove, Digby County, Province of Nova Scotia. In this case, identity, date and place are not in issue.

[2] The counts are as follows: First account, attempt to murder Tracey Dawn Theriault. Second count, without lawful excuse entering the dwelling house of Tracey Dawn Theriault with the intent to commit an indictable offence. Third count, breaking and entering a place, that same dwelling house and therein committing the indictable offence of theft. Fourth count, without lawful excuse pointing a firearm, a shot gun, at Tracey Dawn Theriault. Fifth count, carrying a weapon, a twelve gauge shot gun, for the purpose of committing an offence. Sixth count, committing an assault on Tracey Dawn Theriault while carrying a weapon, to wit: a shot gun. Seventh count, by words and by actions uttering a threat to cause death to Tracey Dawn Theriault and count number eight, without lawful excuse, entering a dwelling house of Michael John Haight with intent to commit an indictable offence therein.

[3] As stated by both parties the most serious of the charges is the first count, the attempted murder charge. The evidence was all heard yesterday and it is fresh in our minds. I can say at the outset that there is really no significant disagreement on the pertinent facts; that is, what occurred on the morning of September 2nd, 2005.

[4] The disagreement centres primarily on what that evidence, the established facts, actually prove. I will briefly review the evidence of the various crown witnesses. The accused, Mr. May in this case, did not testify and the Defence has elected not to present any evidence except by cross examination of crown witnesses and some of the admissions that were made on the record.

[5] The first Crown witness was the complainant, or the alleged victim, Tracey Theriault. She testified of her thirteen year common-law relationship with Mr. May. They lived in the Tusket area of Yarmouth County. There are no children of that relationship.

[6] In June of 2005, Ms. Theriault told Mr. May that she was unhappy in the relationship and that she wanted to separate. By the end of July 2005, Ms. Theriault

had moved in with her sister at 1810 Ridge Road, Hillgrove, Digby County, Nova Scotia. Although she had continued prior to that time to go back to Tusket to perform bookkeeping type services for Mr. May's business. She testified that both she and Mr. May were seeing therapists and that Mr. May was very distraught over the break up. She said that Mr. May had confessed he did not want to live without her and that she told this to Mr. May's therapist.

[7] Ms. Theriault decided it was not safe to continue going to the house in Tusket and she discontinued that around the end of July 2005. Ms. Theriault testified she went back to the house in Tusket just around that time, and got her motorcycle, some furniture items that belonged to her and her personal effects.

[8] The couple had a Florida residence and she also went there to remove a motor vehicle that was registered in her name. Ms. Theriault testified that she did not initially want or claim anything else from the relationship; however, she said that changed after lawyers got involved, but the timing of these claims is not clear. That is, we don't know if it was before or after September 2nd, 2005. That is in regard to the claims arising from the relationship.

[9] Ms. Theriault testified that she had had no face to face contact with Mr. May in August of 2005, although there were some telephone conversations and that these conversations were usually calm and civil. She said there was such a conversation during the evening of September 1st, 2005.

[10] She testified that Mr. May, unbeknownst to her, arrived at 1810 Ridge Road the next morning at 9:05 a.m, this being September 2nd, 2005. She was still in her upstairs bedroom. She said she believes the screen entry door was latched because the dog was in heat. She had heard and seen Mr. May's vehicle, a white Montana, parked in the driveway when she looked out of her bedroom window. She said Mr. May came in and right upstairs and that he looked and walked around her bedroom. They both then walked downstairs, she carrying a laundry basket, apparently intending to do laundry that morning. "They were just talking", she said.

[11] They then went out on the veranda. She said that Mr. May kept asking her about her car and how is was working. He wanted her to start her car, which was parked in front of his van. She eventually agreed to do this. She went in the house to get her car keys and she was halfway into the car when she saw Mr. May coming by his van with a gun pointed at her and she testified that he said, "this is where

you're going to die." She testified Mr. May was some distance from her when she first saw him with the gun. The distance indicated in the courtroom appears to be anywhere from 20-25 feet when she first saw him with the gun pointed at her. She said he was coming towards her and that she lunged at or pushed at the gun and that the shell came out. She said this was only about two or three seconds from the time she saw the gun.

[12] In her statement to the police she had indicated that Mr. May cocked the gun and that the shell had come out. In any event, the shell came out of the shot gun at that time and it fell to the ground. She testified that both she and Mr. May struggled for the shell all the while Mr. May was holding the gun. She succeeded in grabbing the shell and she ran in the woods adjacent to the house.

[13] Ms. Theriault had seen a man go by on a tractor but she could not hear any sounds indicating where he might be. She then saw some old cars and she ran to a mobile home at 1840 Ridge Road. She knocked and entered the mobile home, which is the residence of Michael and Kendra Haight. They were present there with their three young children and a visiting child. Ms. Theriault asked to use the phone and

called 911. She also told the Haights that they should take the children out of the livingroom and Mr. Haight took them to his bedroom just off the livingroom.

[14] While Ms. Theriault was on the phone talking to 911 for a couple of minutes, she saw Mr. May arriving on the doorstep of the Haight's mobile home. She could see him through the screen door. She testified that Ms. Haight told Mr. May not to come in but that he ignored her and came in and pointed the gun at her at which time, she said a matter of seconds, Mr. Haight grabbed the gun and he and Mr. May went out the screen door and that Mr. Haight took the gun from Mr. May and took off with it.

[15] Exhibit number two is an aerial photograph which shows in red the path taken by Ms. Theriault to get to the Haight residence. When Ms. Theriault eventually returned to the residence at 1810 Ridge Road, she noticed that her purse was missing. This was eventually retrieved from Mr. May's van by the police. Ms. Theriault testified it is approximately one hour to one hour fifteen minutes drive from Mr. May's home in Tusket to her residence in Hillgrove.

[16] On cross examination, Ms. Theriault agreed that Mr. May could have probably shot her by her car before she lunged at the gun. She said she was not sure of the same at the mobile home because Mr. Haight intervened quickly and grabbed the gun. However, she had agreed at the preliminary inquiry that this was possible.

[17] Ms. Theriault could not recall having observed Mr. May cocking the gun or having his finger on the trigger during these two incidents, except that in her statement to the police she stated that the shell came out during the first incident when Mr. May cocked the gun. However, at that time, she did not appear to know how the gun worked, she learned this later.

[18] The second Crown witness was Sergeant Thomas Sharkie, an RCMP Firearms Forensic Expert and he was accepted as such. He testified that both the shell which Ms. Theriault had run in the woods with and the one which Mr. Haight testified he had removed from the shot gun had in fact been chambered in the shot gun in question. He testified that both the sawed off shot gun and the ammunition were in working order and that the gun met the requirements for a firearm. He testified that such a gun could be cocked and fired within a second or even less.

[19] The third and fourth Crown witnesses were Kendra and Michael Haight, respectfully. They reside in the mobile home at 1840 Ridge Road and are neighbours of 1810 Ridge Road. They both testified as to Ms. Theriault coming to their residence and asking to use the telephone and calling 911.

[20] Kendra testified that Ms. Theriault was in her bare feet. She stated that Ms. Theriault called 911 and she testified what she overhead her saying to 911 about her ex. She said Ms. Theriault kept looking out the window. She said that Mr. May appeared on their doorstep some two to three minutes after Ms. Theriault had arrived. She said she went to the door and told Mr. May not to come in and she said Mr. May acted like she was invisible, that he had a gun in his right hand but pointed down. She testified that he came in the house and saw Ms. Theriault standing there and that he started to raise the weapon and that her husband, Michael said, “you don’t want to do this.” She testified that Mr. May then pointed the gun at Ms. Theriault. She testified Michael then grabbed the gun and both he and Mr. May went out the screen door. She said Mr. May was still hanging on to the gun when they went out the screen door. She said her husband took the gun in the direction of their other neighbour. Kendra testified the gun was pointed at Ms. Theriault for not very long, but may have been as long as thirty seconds.

[21] On cross examination, Ms. Haight testified the gun was brought up and pointed at Ms. Theriault in what she described as kind of a slow motion. She said she had not seen the gun cocked and could not recall if Mr. May had a finger on the trigger.

[22] Michael Haight testified that Ms. Theriault came to their door in an obvious panic and called 911. Mr. Haight said that when he came back out from placing the children in the bedroom he saw someone coming near the front steps holding something. He said he saw the gun when Mr. May entered the house. He said Mr. May started raising the gun towards Mr. Theriault while she was talking on the phone. Mr. Haight said that he was in the kitchen by then and that he grabbed the gun and put it in the air as he described it and that both he and Mr. May went out the door, with Mr. May still holding onto the gun.

[23] Michael Haight said he did not recall Mr. May saying anything. He said Mr. May was focussed on Ms. Theriault. Mr. Haight said he took the gun, unloaded it and hid the gun and the shell in the woods and later gave both of these to the police.

[24] On cross examination, Mr. Haight said that everything happened very quickly and that he did not know if Mr. May would have had time to fire the gun, although he had conceded such at the preliminary inquiry in May of 2006 when he indicated that it could have in fact been done. Mr. Haight testified that the gun was not cocked when he unloaded it after he had taken it from Mr. May.

[25] The fifth Crown witness was Brenda Lewis who has been a friend of Ms. Theriault for some seventeen years. She testified that early on in the separation she met Ms. Theriault and Mr. May in a restaurant and that Mr. May was very distraught. She testified Mr. May had told her that he wanted to end his life. Later in the parking lot after that meeting, Mr. May told Ms. Lewis that if he could not have Ms. Theriault, no one else would. Ms. Lewis also testified that close to the end of August, Mr. May had called her wanting to know the whereabouts of Ms. Theriault. She said he got very angry when she would not tell him.

[26] The final Crown witness was Constable Christian Thibaudeau of the RCMP. He testified having been called to investigate on the morning of September 2nd, 2005. When the police arrived at 1810, 1840 Ridge Road, they could not find Mr. May at the scene. His vehicle was later spotted on highway 101 heading in the direction of

Yarmouth. Apparently someone had called and advised that Mr. May was going to turn himself in to the RCMP in Yarmouth, and he did so. A search of Mr. May's Montana van revealed Ms. Theriault's purse and the contents, as well as, a very large kitchen chef's knife with a ten inch blade.

[27] Mr. May was brought to the Meteghan Detachment of the RCMP where he was met by Constable Thibaudeau. Constable Thibaudeau arrested Mr. May for attempted murder and read him all of his rights and provided him with the primary and secondary police warnings. Mr. May declined to contact legal counsel at that time saying he wanted to wait and see if his son had contacted counsel on his behalf. He was advised against this by Constable Thibaudeau but he persisted in wanting to wait to talk to counsel.

[28] On the way back to the Digby Detachment, without any questioning or prodding on the part of Constable Thibaudeau, Mr. May said that he was in love with Tracey and that if he could not have her he did not see why anyone else should have her.

THE LAW:

[29] With regard to the law, as I said earlier, the more serious charge is the first count, attempted murder by shooting, contrary to Section 239(b) of the **Criminal Code**. The law is clear that in an attempt to kill, *mens rea*, together with some action beyond preparation, the *actus reus*, are required for a conviction on this charge. A conviction for attempted murder requires proof of the specific intent to kill. No lesser *mens rea* will suffice.

[30] This was made abundantly clear in the case of **R. v. Boudreau**, [2005] N.S.J. No. 78, NSCA 40. It was a case on appeal from a Judge alone conviction of this Court. The facts of that case and the present case have striking similarities. However, the Defence points to some differences because in the **Boudreau** Case, the accused was found to have one hand in the trigger area of the gun and had spoken belligerently to the victim threatening her to back up and not to leave the house when he pointed the gun at her, and that when pursuing the victim in that case, after she had bolted from the residence, he had told neighbours he was going to shoot her.

[31] While every case is different, there is no question that the **Boudreau** case has some very applicable similarities to the present case, especially considering the principles set out in that case.

[32] It is obvious that a charge of attempted murder by shooting does not require an actual shot or firing of the weapon and that can be seen in paragraphs 19 to 24 inclusive, of the **Boudreau** Case.

[33] The question of when preparation ends and an actual attempt to commit the offence begins was commented upon by MacDonald, C.J. N.S., at paragraphs 28, 30, 31 and 32 of the **Boudreau** Decision. In that case, the Judge said;

> "The question of when preparation ends and an actual attempt begins has, over the years, been a subject of significant commentary by both judges and academics. The leading authority on this issue is the Supreme Court of Canada Decision of **R. v. Deutsch** [1986] 2 S.C.R 2. Here, Le Dain, J., beginning at paragraph 26, found the distinction to be a "qualitative one" premised on "common sense".
>
> "Several different tests for determining the *actus reus* of attempt, as distinct from mere preparation to commit an offence, have been identified as reflected at one time or another in judicial decisions and legislation. All of them had been pronounced by academic commentators to be unsatisfactory in some degree. For a thorough analysis of the various tests, with suggestions for an improved test, see Meehan, in The Law of Criminal Attempt. There is a succinct appraisal of the various tests in the English Commission's Report No. 102 of 1980 entitled, Criminal Law: Attempt, and Impossibility in relation to Attempt,

> Conspiracy and Incitement. It has been frequently observed that no satisfactory general criterion has been, or can be, formulated for drawing the line between preparation and attempt, and that the application of this distinction to the facts of a particular case must be left to common sense judgment."

[34] After citing some examples, Le Dain, J., went on to say:

> "despite academic appeals for greater clarity and certainty in this area of the law, I find myself in essential agreement with this conclusion."

[35] Le Dain, J., went on at paragraph 27;

> "In my opinion the distinction between preparation and attempt is essentially a qualitative one, involving the relationship between the nature and quality of the act in question and the nature of the complete offence, although consideration must be given, in making that qualitative distinction, to the relative proximity of the act in question to what would have been the completed offence, in terms of time, location and acts under the control of the accused remaining to be accomplished. I find that view to be compatible with what has been said about the *actus reus* of attempt in this Court and in other Canadian decisions that should be treated as authoritative on this question."

[36] At paragraph 30, MacDonald, C. J. N.S. went on to say;

> "These facts provided the trial judge with ample justification to conclude that the *actus reus* had been established. In reaching this conclusion, I am mindful that the appellant's actions did not progress beyond pointing the gun. In other words, the trial judge found no reliable evidence to conclude that the appellant tried to fire a shot. Yet, there need not necessarily be an attempt to shoot in order to sustain a conviction for attempted murder. Again, there need be only one step following the preparation to establish the *actus reus*."

[37] On this point I can turn to Le Dain, J., in the **Deutsch** case, where at paragraph 28 he approved the oft-quoted Ontario Court of Appeal decision **R. v. Cline**, where he said at paragraph 28;

> "MacIntyre, J. referred with approval to the judgment of Laidlaw, J.A. and **R. v. Cline**, supra, particularly for what it said concerning the relative importance of *mens rea* in attempt, but that judgment has also been treated as helpful for what it said concerning the application of the distinction of the preparation and attempt. With reference to this question Laidlaw, J.A. said at page 28;
>
> > The consummation of a crime usually comprises a series of acts which have their genesis in an idea to do a criminal act; the idea develops to a decision to do that act; a plan may be made for putting that decision into effect; the next step may be preparation only for carrying out the intention and the plan; but when that preparation is in fact fully completed, the next step in the series of acts done by the accused for the purpose and with the intention of committing the crime as planned cannot, in my opinion, be regarded as remote in its connection with that crime. The connection is in fact proximate."

[38] And further at paragraph 31, MacDonald. C.J.N.S., said;

> "Furthermore, most of the appellant's impugned acts were proximate in time, thereby giving them a quality of implementation as opposed to preparation."

Again I refer to the **Deutsch** case, at paragraph 31;

> "In my opinion, relative proximity may give an act which might otherwise appear to be mere preparation the quality of attempt. That is reflected, I think, in the conclusion of the majority in

> **Henderson** and the conclusion of the Ontario Court of Appeal with respect to the *actus reus* in **R v. Sorrel** and **Bondett**. But an act, which on its face is an act of commission, does not lose its quality as the *actus reus* of attempt because further acts were required or because a significant period of time may have elapsed before the completion of the offence."

Chief Justice MacDonald said at paragraph 32;

> "Finally on this issue, any analysis of the *actus reus* practically speaking, must be viewed in conjunction with the *mens rea*. It is impossible to separate the two."

And then he quotes from Professor Kent Roach, as follows:

> "Determining whether the accused has gone beyond mere preparation and committed an *actus reus* for an attempted crime is difficult to predict. In a practical sense, much will depend on the strength of the evidence of wrongful intent. Going through the glove compartment of a car has been held to be the *actus reus* for its attempted theft when the accused indicated he was searching for keys to steal the car. On the other hand, making a plasticine impression of a car key has been held to only be preparation to steal a car."

[39] With regards to *mens rea,* or intent, our Court of Appeal had the following to say at paragraph 9 of **R. v. Lake,** [1996] N.S.J. No. 277, CAC No. 124021, apparently approving the trial judge's comments:

> "The trial judge in an oral decision delivered shortly after the submission of counsel, found the accused intended to kill Constable Reid. He described the necessary proof of the element of intent as follows:

> As regards the offence of attempted murder, there is no doubt that this is a specific intent offence. That is to say, before the accused can be found guilty, the Court must be satisfied beyond a reasonable doubt, based on consideration of all the evidence, that the accused intended to commit murder. That is intended to murder Constable Reid. The Crown must prove more than mere recklessness or accident. The Crown must prove that the accused had the subjective intent . . . subjective foresight to intend to commit the offence of murder. The offence of attempted murder is one of the few charges in the **Criminal Code** which requires proof of subjective intent. That is, the Court is not asked to simply ascertain what a reasonable person might infer from the accused's acts. The Court must be satisfied on the evidence that the accused, himself, actually intended to commit murder. This is an onerous burden for the Crown to prove beyond a reasonable doubt, as often only the accused knows what is going on in his mind."

[40] And further in that case at paragraph 23;

> "I am in agreement with the respondent's submission that there was overwhelming evidence of intent that consisted of three crucial components; motive, planning and execution of the plan. The evidence of his acquaintance that the appellant was of the view that the "government" should be shot, the evidence of his hatred of the gun legislation and the notes which referred to the Chief of Police of Halifax whom the appellant had watched on television a few days prior to the shooting, all point to an animosity towards police. The hostility he voiced towards the police could have assisted the trial judge in arriving at the conclusion that the Crown had proven not only intent to shoot, but intent to kill. The planning and preparation for the trip to the police station supports a conclusion that the appellant's intention was not only to be killed by the police. The two guns, and the abundant supply of ammunition is consistent with a plan to do something more than draw the gunfire of the police. Thirdly, the actions of the appellant, an experienced hunter, as described by several witnesses, as he went down on his knees, put the rifle to his shoulder, operated the bolt of the high powered 303, fired, hit the officer with the first shot and then seconds

> later hit the lamp post behind which he had taken cover are all indicative of intent to kill."

[41] In the **Boudreau** case, supra, Chief Justice MacDonald said the following at paragraph 38, with regard to *mens rea*:

> "This issue goes primarily to the Crown's duty to prove *mens rea*. I begin with the premise that, in order to secure a conviction for attempted murder, the Crown must prove that the appellant had a specific intent to kill his victim. This was confirmed by the Supreme Court of Canada in **R. v. Ancio** (1984), 1S.C.R. 225, 10 C.C.C. (3d) 385, 39 C.R. (3d) 1. McIntyre, J., for the majority, explained at page 402:
>
> The completed offence of murder involves a killing. The intention to commit the complete offence of murder must therefore include an intention to kill. I find it impossible to conclude that a person may intend to commit the unintentional killings described in Section 212 and 213 of the **Code**. I am then of the view that the *mens rea* for an attempted murder cannot be less than the specific intent to kill."

[42] With regards to *mens rea* or intent and a change of heart, if a specific intent existed at some point, Chief Justice MacDonald said the following at paragraph 43 and 44 of the **Boudreau** Case:

> "The appellant also suggests that the trial judge ignored or gave insufficient weight to important evidence suggesting that the appellant had no intention to kill his victim. For example, he refers to the appellant's apparent "unused opportunity" to kill his victim in the kitchen and elsewhere, had he really wanted to. As well, there is evidence that the appellant told Ms. Swaine to call the police and he told other neighbours that he was waiting for the police to come. Further, when the police did arrive, he was in the process of unloading the gun. In other words, the appellant asserts that he voluntarily desisted before any real harm was done. The appellant asserts that the trial judge ignored this aspect of the defence."

[43] Chief Judge MacDonald went onto say at paragraph 44;

> "In considering this issue, I agree that the defence of voluntary desistance may be considered by the trier of fact in an appropriate case."

Analysis and Conclusions:

[44] With regard to the analysis of the evidence in this case and my findings and conclusions, on the whole of the evidence, I am satisfied beyond a reasonable doubt that Mr. May had the specific intent to kill Ms. Theriault on September 2nd, 2005, when he attended at her place of residence at 1810 Ridge Road, Hillgrove, Digby County, Nova Scotia.

[45] Mr. May had expressed to Ms. Lewis, in late August 2005, that if he could not have Ms. Theriault, then no one else would, and to Constable Thibaudeau, after the incident on September 2nd, 2005, that he loved Ms. Theriault and he did not see why, if he could not have her, why anyone else should. Of upmost importance is the utterance of Mr. May himself at 1810 Ridge Road when Ms. Theriault was half in and half out of her car, when he said, "this is where you're going to die." There can be no question that Mr. May was distraught and upset at Ms. Theriault over the separation.

[46] The Defence strongly contends that there may be other explanations for Mr. May's behaviour and actions on September 2nd, 2005, such as a desire or intent to commit suicide or probably just scare Ms. Theriault.

[47] As stated in the jurisprudence cited earlier, the *mens rea* and *actus reus* of the offence of attempted murder are so intertwined that it is difficult to separate the two. Therefore, my following comments and findings apply to *mens rea* and to the *actus reus*:

[48] I am satisfied beyond a reasonable doubt that the actions of Mr. May on September 2nd, 2005 went far beyond preparation to commit the offence. He equipped himself with a sawed off 12 gauge shotgun and two live shells. He drove one hour to one hour and fifteen minutes to Hillgrove where Ms. Theriault resided. He went inside the house, uninvited and unannounced. Although, I'm not satisfied beyond a reasonable doubt that he broke in. There is a dearth of evidence on that point. He went directly to Ms. Theriault's bedroom and looked around.

[49] After having gone back downstairs, he, in effect, lured Ms. Theriault outside asking her to start her car, a rather bizzare demand on his part. As she was entering her car, he went directly to his van where he obtained the loaded gun or where he loaded the gun. While she was entering her car he pointed the gun at her and said, “this is where you’re going to die.”

[50] The Defence contends that if Mr. May intended to shoot Ms. Theriault he could have done so before she lunged at him. It also contends the shell may have been removed by Mr. May before it fell to the ground.

[51] Both these arguments lose any credence when one looks at the subsequent events. Mr. May not only struggled with Ms. Theriault for the fallen shell, but when those efforts failed, he obviously reloaded the gun and pursued Ms. Theriault to the Haight residence, a considerable distance away. There he entered, over the objections of Ms. Haight, and again pointed the loaded shotgun at Ms. Theriault.

[52] All of those actions belie any intention on the part of Mr. May to only commit suicide. They go far beyond that. Any doubts that the actions of Mr. May may raise

on that day must be reasonable. In other words, they cannot be fanciful, but must be based on the evidence.

[53] Also, the finding of specific intent to kill must be a subjective and not an objective one. The overwhelming evidence in this case satisfies me beyond a reasonable doubt that Mr. May had a specific intent to kill Ms. Theriault. The overwhelming evidence points to no other reasonable conclusion.

[54] The evidence also satisfies me beyond a reasonable doubt that the actions of Mr. May on September 2nd, 2005, went far beyond preparation. All that was left was a split second firing of the gun. Fortunately, for Ms. Theriault, for whatever reason there may have been a slight hesitation on the part of Mr. May. It is surely not easy to shoot and kill another person in cold blood. Any hesitation on the part of Mr. May coupled with the quick and courageous actions of Ms. Theriault and Mr. Haight prevented a more serious tragedy.

[55] The Defence would argue in the alternative that if a specific intent to kill existed together with actions beyond preparation, that the Court could consider the evidence of a change of heart, what Chief Justice MacDonald referred to as the

defence of voluntary desistence. The only minute room for such an argument would have to hinge on the argument that Mr. May intentionally and involuntarily ejected the shell from the gun when he first pointed the gun at Ms. Theriault. Of course, at that time, he was telling her that was where she was going to die.

[56] I find that any such argument is nullified by all the other actions of Mr. May both before, during and after the shell falling to the ground.

[57] In the final analysis, I am satisfied beyond a reasonable doubt that Mr. May had a specific intent to kill Ms. Theriault, and that he did everything in preparation and execution, right up to and the only thing being left, was shooting the loaded gun, which is only a matter of a split second. There can be no closer proximity to an actual murder than that, except for shooting and missing or shooting and not killing.

[58] As I said, I'm satisfied beyond a reasonable doubt that both the *mens rea* and the *actus reus* have been proven by the Crown and therefore, I find Mr. May guilty on the first count.

[59] With regard to the second count, I am not satisfied that Mr. May entered the dwelling at 1810 Ridge Road, with the intention of committing an indictable offence therein. The operative word is therein. There was no assault or any other offence proven to have occurred in that residence. The evidence that I have heard also leaves me with a doubt as to the location of the purse, or the intent to steal the purse upon entering the residence.

[60] The same reasoning applies to the third count, which is entering the residence and committing an indictable offence and I therefore find Mr. May not guilty on both the second and third counts.

[61] The fourth count will be stayed under the Kineapple principle being part of the *actus reus* of the first count.

[62] With regard to the fifth and sixth counts, the evidence recited for the first count satisfies me beyond a reasonable doubt of all the elements of those offences. Namely, carrying a weapon for the purpose of committing an offence and committing an assault while carrying a weapon, and I accordingly find Mr. May guilty of the fifth and the sixth counts.

[63] With regard to the seventh count, uttering a threat to cause death to Tracey Theriault, I'm satisfied beyond a reasonable doubt, that Mr. May told Ms. Theriault when she was by her car that that was where she was going to die, while pointing the gun at her. I therefore, find Mr. May guilty of the seventh count.

[64] With regard to the eighth count, I'm satisfied beyond a reasonable doubt that Mr. May entered the residence of Michael John Haight without lawful excuse, in fact, he was told not to do so, with the intent of shooting Ms. Theriault. I, therefore, find Mr. May guilty of the eighth count as well.

Boudreau J.