

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R. v. Riley*, 2024 NSPC 32

**Date:** 20240607

**Docket:** 8711798 - 8711800

**Registry:** Windsor

**Between:**

His Majesty the King

v.

Jeffrey Riley

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| <b>DECISION</b> |
|-----------------|

**Judge:** Associate Chief Judge Ronda van der Hoek

**Trial:** May 27, 2024, in Windsor, Nova Scotia

**Decision:** June 7, 2024

**Charges:** Sections 267(a) x 2, 88(2) of the *Criminal Code of Canada*

**Counsel:** Nathan McLean, for the Crown  
Carbo Kwan, for the Defence

**By the Court:**

***Introduction***

[1] Mr. Jeffrey Riley is charged with assaulting Roxana Nicholl, a houseguest, with a knife, and the next day shooting her with a pellet gun, contrary to section 267(a), and s. 88(2) of the *Criminal Code of Canada*. The Crown proceeded by indictment, and Mr. Riley elected trial in this court.

[2] The Crown called two witnesses, Roxana Nicholl, the complainant, and Constable Justin Smith, the investigating officer who responded to the 911 call and photographed the complainant's injuries before sending her hospital. The book of photographs was entered by consent of the parties and chronicled the injuries and blood on the floor. Identification, date, and jurisdiction were admitted by the defence.

[3] The issues are credibility and reliability of Ms. Nichol and, to some extent, whether Mr. Riley's actions were excusable in the context of evicting her from his house.

***The Burden of Proof in a Criminal Trial:***

[4] Every person charged with a criminal offence is presumed innocent. The Crown carries the burden to prove the offences charged beyond a reasonable doubt. This criminal burden is the heaviest in our justice system. The onus of proof never

switches from the Crown to Mr. Riley asking him to instead prove that he did not commit the offences with which he is charged. Following careful consideration of the whole of the evidence, I may only convict him if I am satisfied that the Crown has established the charges beyond a reasonable doubt.

[5] A reasonable doubt “does not involve proof to an absolute certainty, it is not proof beyond any doubt nor is it an imaginary or frivolous doubt” (*R. v. Lifchus*, [1997] 3 S.C.R. 320). Instead, the Crown’s burden of proof lies “much closer to absolute certainty than to proof on the balance of probabilities” (*R. v. Starr*, [2000] 2 S.C.R. 144). Finally, a “reasonable doubt does not need to be based on the evidence; it may arise from an absence of evidence or a simple failure of the evidence to persuade the trier of fact to the requisite level of beyond reasonable doubt.” (*R. v. J.M.H.*, 2011 SCC 45 (CanLII))

[6] In assessing the reliability and credibility of witness testimony, the Court considered such things as general capacity to make specific observations, ability to recall what was observed or heard, and to interpret what was perceived and testify accurately about what was recollected. The assessment also considers whether the witness was sincere, candid, biased, reticent, or evasive. (*R. v. D.D.S.*, 2006 NSCA 34)

*Elements of the offences:*

[7] Assault with a weapon requires proof Mr. Riley used or threatened to use a weapon, a pellet gun, and a knife, to apply force to Ms. Nicholl knowing she did not consent to the application of force.

[8] Section 88 says any person commits an offence who carries or possesses a weapon or imitation of a weapon for the purpose of committing an offence. Weapon is defined at section 2, and it need not be a firearm. A handgun that fires BBs propelled by compressed air is a weapon for these purposes: *R v. Dunn* (2013) 305 CCC (3Dd 372 ONCA affirmed (2014) 3 SCR 490.

*The evidence and findings of fact:*

[9] The Court will not detail every word of testimony, but I listened carefully to all of it, took decent notes, and considered the final submissions of counsel who identified the issues of concern. Only after a complete review of all the foregoing did the Court make findings of fact.

[10] Constable Justin Smith testified that he was dispatched to a 911 call and arrived at the house of Mr. Riley's father. His evidence was at times confusing, somewhat vague, but overall accorded with that of Ms. Nichol. He located Ms. Nichol sitting in a chair bleeding, noted blood on her arm and possibly her face and called EHS. He spoke to Ms. Nichol and photographed her injuries. He described her as "very upset, crying and complaining of pain". EHS arrived and took her to the

hospital, and the officer went next door to the residence of Mr. Riley and arrested him for assault.

[11] On cross-examination, he could not recall the state of Mr. Riley's house and explained that he did not attend there to collect evidence. He did however testify that it was his intention to secure the scene until he obtained a search warrant. A warrant was not obtained, and the pellet gun was not seized.

[12] Roxana Nichol testified that she was homeless in 2023, and had been staying at Mr. Riley's house, sleeping on his couch, for approximately a week.

[13] On June 27, 2023, she and their friend Greg were at Mr. Riley's house having a few drinks of rum, and Mr. Riley was "getting mad". Since they were all friends, she was surprised when Mr. Riley came at them with a knife in a threatening manner.

[14] Ms. Nichol explained that she had not consumed more than two or three drinks because she had been at the doctor that day. She did however assume Mr. Riley was intoxicated mainly because of what happened with the knife, adding this behaviour was "not like him".

[15] On cross-examination she denied being "highly intoxicated or drunk" and explained that she was mixing juice and drinking Mr. Riley's alcohol and, for that reason, did not consume much more than two or possibly three drinks.

[16] On direct examination, she was unable to recall exactly what preceded Mr. Riley coming forward with the knife but was given a recess to review her statement and refresh her memory. She returned to the witness stand and testified that she recalled Mr. Riley telling her and Greg, “if you don’t get out of my house, I’m gonna slit your throat”. (There is no threat charge before this court.) Upon uttering those words, Mr. Riley “came out with a knife” described as a 3-to-4-inch silver blade “used as a dagger”, and she demonstrated the stabbing motion.

[17] Before he took out the knife, Mr. Riley told them he was going to bed, and “why don’t you guys leave”. She knew he was frustrated because they were drinking his alcohol, adding that the week prior Mr. Riley had benefited from her supplying the alcohol until she ran out of money. On cross examination it was suggested another named person had been present earlier that evening, Ms. Nichol thought about it and accepted that proposition. She also agreed with defence counsel that Mr. Riley mentioned his daughter’s graduation the next day, so it would be an early night.

[18] Ms. Nichol testified that after he wielded the knife, she followed him to his bedroom to find out why he was “freaking out so badly”. She heard him get up from the bed and, concluding he was approaching her once again with the knife, pushed a dresser, breaking a mirror in an effort to protect herself.

[19] She and Greg quickly left the house, after which Mr. Riley slammed and locked the door with Ms. Nicholl's belongings left inside the house, including her shoes, cigarettes, and cell phone.

[20] On cross-examination, she was not evasive but continued on as she had during direct examination. She testified that she believes she was cooking Kraft dinner when Mr. Riley came out of his bedroom and asked them to leave. She explained that while staying there she had bought food and was paying her own way. The only difference between this night and others was that they were drinking his alcohol, and she was not, instead, providing it. She also agreed that Mr. Riley may have said "Greg take her home, you guys are getting along". She also candidly agreed that Mr. Riley was insisting that they leave, and she did not. She rejected the defence counsel's suggestion she had been at Mr. Riley's home for only one or two nights, instead maintaining that she had been there for a week. She also disagreed with the suggestion she was "mad", testifying that his request to leave left her feeling hurt and bothered as she tried to understand why he was getting so angry, noting once again that everything was fine until she ran out of money for alcohol. She added, "this did not give him the right to shoot me". She also denied "smashing into his bedroom" because she was upset. She said she thought he was coming at her with a knife and that was why the mirror was broken.

[21] Also on cross-examination, asked if he had threatened her with a knife, Ms. Nichol reconfirmed her testimony adding he said, "I'll fucking cut you, slit your throat". She explained that she was still trying to make sense of what was going on with Mr. Riley and the knife. She maintained that she went down to the bedroom to calm him down and try to understand what was going on. She says it was dark in the bedroom and she put the mirror up in front of her when she thought that he was going to come after her with the knife and did so only because she still remembered him swinging it in the kitchen. Ms. Nicoll says she went there because she thought he may have calmed down, but he came after her once again with a knife. She also explained that she knew he was doing so because she could hear him getting out of the bed.

*The next day:*

[22] Ms. Nichol testified that she returned to Mr. Riley's house the next day to obtain her belongings. At the house she tried the door, and finding it locked opened the screen on the window and climbed through. She had done this before, and assumed he may have left it open for her.

[23] Once inside, she began looking for her belongings - cigarettes, shoes, and cellphone. The only thing she located was her package of cigarettes, and because she had not had one for quite some time, sat in a kitchen chair to smoke. She was not



there long before Mr. Riley came through the door and said, “what the fuck are you doing in my house!”. Ms. Nichol told him, “I want my stuff” and Mr. Riley said, “I’ll shoot you. You don’t believe me?” and reached above the rafters taking down what appeared to her to be a 22-gauge shotgun. He proceeded to a drawer from which she assumes he withdrew pellets.

[24] Ms. Nichol was still seated in the chair when Mr. Riley shot her three times. She was very emotional at this point in her testimony, and said she was thinking, or said, “Really. Seriously?”, just prior to being shot. Mr. Riley said “yeah, I’ll fucking shoot you”.

[25] She explained that she could not understand how she could be sitting there with a gun pointed at her face. Mr. Riley was 4 - 5 feet away when he shot her while she held her arms up to protect her face. She was shot in the wrist, hand, and cheek. She says he reloaded the gun twice between shots, delivering each one in “the time it takes to cock the gun in between”. After the third shot hit her, she got up and ran through the open door, to his father’s house, leaving Mr. Riley standing in the kitchen.

[26] Ms. Nichol backtracked explaining that initially, Mr. Riley came toward her swinging his fist as though he was going to hit her before reaching for the gun.

[27] Due to shock, she was unable to testify about any sounds emitted from the gun.

[28] Ms. Nichol says she was bleeding from her face when police and EHS arrived. At the hospital she was told they were unable to remove the pellets from her body because it would be more damaging to do so. Once again, she was extremely emotional when she testified that the pellets remain in her body, and “hurt every day”.

[29] On cross-examination she agreed that she assumed Mr. Riley was away when she returned to gather her belongings adding, she thought it would be fine to go there and do so. She reconfirmed her thought that he may have left the window open for her as he had done so on a prior occasion. She reminded defence counsel that she did not have her cell phone and had left without shoes, and all her belongings were still in his house.

[30] She also explained that she was not in the house for long before Mr. Riley walked in, and she told him she wanted her stuff. She took no issue with the suggestion he wanted her to leave but added that she just wanted her belongings. She also maintained that she was unconcerned about Mr. Riley because she thought he had sobered up from the night before and presumed his previous actions had been influenced by “some kind of drug”.

[31] She said she initially felt safe, and just wanted to get her belongings. She added, “you think I’d go there if I thought what was going to happen would happen”. She also maintained that even when he threatened to shoot her, she did not believe he was serious. She also reconfirmed her testimony that he said, “I’ll shoot you in the fucking face!”. She also agreed the door was wide open at the time and denied being intoxicated.

[32] When asked if she sat down to wait for Mr. Riley after she first arrived, Ms. Nicoll testified “not necessarily, I looked, sat down for a cigarette from my pack that I found”. She explained that he had been smoking her cigarettes the night before and while she could not find her personal belongings, her cigarettes were on the table.

*Position of the parties:*

[33] The Crown says the evidence is clear, Mr. Riley pulled a knife on Ms. Nichol while asking her to leave his house, and in doing so assaulted her with a weapon. The evidence was clear it was a 3-to-4-inch blade that he used in a slashing-like motion as he proceeded toward her. If that is not enough, he repeated his actions a brief time later in his bedroom. That is evidence sufficient to support the first charge.

[34] The next day Mr. Riley took down his pellet gun and shot Ms. Nichol in the face, wrist, and hand, all supported by the reliable and credible testimony of Ms. Nichol, as well as the bloodied photographs taken by the investigating officer.

[35] Her evidence also supports a conclusion the weapon was an air gun, and not a 22-gauge shotgun, given the pellets remain in her face and arms.

[36] The Crown says there is no available defence for Mr. Riley's actions. There was absolutely no legal foundation allowing him to shoot Ms. Nichol in an effort to have her leave his house. There were many legal options available to him, including calling the police, and she did not present any threat whatsoever to him.

[37] With respect to the s. 88 *Cr. C.* charge, the Crown reminds the Court that he is not required to prove the pellet gun was a firearm, instead the evidence of Ms. Nichol supports a conclusion it was, and particularly given the air gun sent pellets into her body. As such, the Crown says he has proven all the offences beyond a reasonable doubt.

[38] Defence counsel says the Court should reject the evidence of Ms. Nichol with respect to Mr. Riley's use of a knife. It simply did not happen, it is illogical to assume that it did, and after all he was entitled to ask her to leave his home. After conducting a credibility assessment, the Court should determine that this assault did not occur.

[39] With respect to the other two charges, the defence counsel says it makes no sense that Ms. Nichol would come back to Mr. Riley's house the next day. She did not have to enter instead she could have waited for him in aid of obtaining her belongings. If the Court accepts that she did attend there, she once again refused to leave when directed to do so.

[40] Defence counsel says the Crown did not prove that the item Mr. Riley held in his hand was a pellet gun. She also points to the lack of a medical record of Ms. Nichol's injuries, noting the Court is left to rely on only the testimony of Ms. Nichol with respect to the hospital visit and the pellets in her body.

*Analysis:*

[41] Ms. Nichol presented as a frank and reflective witness. She was emotional and appeared to struggle with her testimony about being shot. Her testimony was at times delivered in a backtracking manner, and by that I mean that she would state what happened and then back up to testify about what led to the incident. While an unusual way of testifying, it still conveyed all that occurred that day. In my assessment, while she added more information during cross-examination, none of it was particularly surprising such as the additional words spoken by Mr. Riley. Overall, she was frank in explaining her shock and surprise that these incidents happened at all. She was prepared to explain the knife situation as a possible drug interaction, adding all of

Mr. Riley's behaviours were out of character for the man she had known for 6 to 7 years. Overall, she was a balanced and fair witness. I am not concerned that she was hesitant to go to the hospital, her explanation that she was frightened at the suggestion that she could end up with blood poisoning made sense. And the evidence of her injuries is inescapable and solid. Overall, I found her evidence candid and truthful.

[42] I also found her evidence fairly reliable. As with any witness who has experienced a traumatic event, it was not surprising that she did not retain a 100% recall of every moment. It is clear that she is still shocked about what happened to her and very emotional about the outcome - she is in pain every day because of the pellets left behind in her body. Despite consuming some alcohol on the evening when the knife was wielded, her ability to recall events was not impaired and she provided as much detail as could be expected, given she had not reviewed her statement and the passage of time. Overall, she was both a reliable and credible witness.

[43] I find Mr. Riley wielded a knife in the direction of Ms. Nicoll in an effort to ask her to leave his house, the action continued in his bedroom. There is no legal justification for such an action. I also find that Ms. Nicoll returned to Mr. Riley's house the next day at which time he shot her three times with the pellet gun. As such,

the Crown has proven all three charges beyond a reasonable doubt and will have convictions.

[44] Judgment accordingly.

van der Hoek ACJ