**AMENDED ORIGINAL**

*R v Aleekuk, 2024 NWTTC 06* **T-1-CR-2022-000803**

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HIS MAJESTY THE KING**

**- v -**

**WILLIAM ROBERT ALEEKUK**

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**Transcript of the Reasons for Judgment delivered by the Honourable Chief Judge R.D. Gorin, sitting in Yellowknife, in the Northwest Territories, on the 31st day of March, 2023**

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**APPEARANCES:**

C. Brackley: Counsel for the Crown

K. Oja: Counsel for the Defence,

appearing via teleconference

Charges under s. 239, 244(1), and 268(2) of the *Criminal Code*  
*Amended Original to add citation May 31/2024*

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(TELECONFERENCING COMMENCES)

THE COURT: Please be seated. I see that Mr. Aleekuk is in the dock.

THE ACCUSED: Good morning.

THE COURT: I see Ms. Brackley is in the courtroom. Good morning.

A. DEPARDE: Good morning, Your Honour.

THE COURT: And, Ms. Oja, you are in the courtroom in Inuvik. I see that as well.

K. OJA: Yes. Good morning, Your Honour.

THE COURT: Good morning.

(DECISION)

THE COURT: William Aleekuk stands charged with attempted murder, using a firearm with intent to wound, and aggravated assault contrary to sections 239, 244, and 268, respectively. All three charges arise from the same physical act on the part of the perpetrator. The events are alleged to have occurred on October the 10th of 2021, at or near Inuvik.

The victim in this case, Jeremy Tyler, was sitting in the driver's seat of his truck located outside the Mad Trapper bar in Inuvik. It was dark out. An individual armed with a shotgun came out from a space located between the Mad Trapper and the Quick Stop Convenience Store that is next door. That person walked up beside the driver's side of Mr. Tyler's truck, carrying a shotgun. From short range, he shot at the side of the vehicle twice.

In addition to shattering the driver's side window, he injured Mr. Tyler with a number of pellets that struck the left side of his head and shoulder area. As well, the shooter shot the 'B' pillar located immediately behind the driver side window at the same height where the driver's head would typically be located. The two shots were fired two or three seconds apart.

The issues I have to determine are whether it has been proved beyond a reasonable doubt that Mr. Aleekuk was the shooter, and if so, whether the other essential elements of each of the charged offences, in particular their requisite intent, have all been proved beyond a reasonable doubt. I will deal first with the issue of identification.

I will not review the evidence of Mr. Tyler in its entirety. However, he testified that he was sitting in his truck immediately in front of the Mad Trapper on MacKenzie Road in Inuvik, where he was employed, during a break while on his shift as a doorman. The truck does not have a rear seat and therefore no rear side windows. Mr. Tyler was seated with his manager, Dan Marshall, who was in the passenger seat next to him.

Mr. Tyler said he saw Mr. Aleekuk go by in his vehicle. From his testimony, their vehicles were pointed in the same direction. He said he saw Mr. Aleekuk driving, and Mr. Aleekuk turned off MacKenzie Road and turned right, driving into an area between the Mad Trapper and the Quick Stop Convenience Store next door. He lost sight of the vehicle when it drove into the area.

From the evidence that was provided, it has been established that the area is only accessible from MacKenzie Road and cannot be entered or exited from any other direction. The space that the car entered was essentially a driveway with a dead end that appears to run roughly the same depth as the Quick Stop and Mad Trapper buildings. Mr. Tyler would not have been able to see exactly where the vehicle parked since it drove out of view, past the corner of the Mad Trapper building so that the building blocked his view.

Mr. Tyler testified that a person named Daphne Francis then came out of the space between the Mad Trapper and the Quick Stop. She talked with Mr. Tyler through the passenger's window. Both Ms. Francis and Mr. Marshall then left and went to the Mad Trapper. Mr. Tyler was about to go into the Mad Trapper when he saw Mr. Aleekuk at the window of his vehicle.

He testified that he was able to see his face and eyes. The gun was pointed at him. He was shot and then left the scene in his vehicle. However, on cross-examination, he said that Mr. Aleekuk had his face hidden with some sort of covering and that he was able to recognize him from his eyes.

Daphne Francis testified that she had gone to the Mad Trapper bar with Mr. Aleekuk. She went in a white car Mr. Aleekuk was driving. She has known Mr. Aleekuk for years. There was no one else. in the car. She said they proceeded in the same direction described by Mr. Tyler and parked in the same area that Mr. Tyler saw the vehicle enter before it disappeared from his view.

She got out of the vehicle and went to Mr. Tyler's truck, where she spoke with Mr. Tyler through the passenger side window. There was another male on the passenger side who she doesn't remember. She then went to the bar. She remembers people rushing out of the bar around this time. While she was testifying, she seemed very tired and disinterested in the proceedings, at some points staring off into space and being nonresponsive, and at others, appearing to fall asleep.

Dan Marshall testified that immediately before the shooting he was in Mr. Tyler's truck, along with Mr. Tyler. The truck was parked in front of the Mad Trapper. He stayed there for about 10 minutes. The truck was running. He saw an older white Ford, or what he describes as an older white Ford, pull into the space described by Mr. Tyler and Ms. Francis. He did not recall Ms. Francis or anyone else being present beside the truck, talking to Mr. Tyler.

However, at one point, about three to four minutes after the car pulled in the space while he was in the truck with Mr. Tyler, Mr. Marshall saw Mr. Aleekuk come out from around the corner of the Mad Trapper bar, next to the space that the car had entered. He described him at one point poking his head around the corner. However, during cross-examination, after being shown a video of someone stepping out at that same location, he allowed that the whole body of Mr. Aleekuk was around the corner and that he was not acting suspiciously. The video recording evidence that I will refer to establishes that the person observed by Mr. Marshall returned to the white vehicle he had been driving.

Mr. Marshall said he saw the face of Mr. Aleekuk, who he had known for a year or two, and said that Mr. Aleekuk was 10 to 20 feet away. Mr. Aleekuk had been in the Mad Trapper earlier that day before shift change and was drinking at that time. I note that the truck would have been pointed in the direction of the person he described as being Mr. Aleekuk when he stepped out from the space next to the Mad Trapper.

Mr. Marshall would have been facing the direction of the person he saw. The area where he saw Mr. Aleekuk was a little lit up, according to Mr. Marshall. He also said Mr. Aleekuk, as I have said, had been in the bar earlier that day before shift change. Mr. Aleekuk then returned to the space he had come from and went out of sight.

Mr. Marshall then returned to the bar and heard three bangs. He also said that Mr. Aleekuk came back to the bar about 20 minutes after the shooting. Mr. Marshall was not in the vehicle when the shots were fired. He recalled hearing three shots very soon after leaving the truck while he was approaching the entrance of the Mad Trapper.

A number of security videos taken from the Quick Stop were entered as evidence. A video from the Quick Stop taken from its side depicting the area between the Quick Stop and Mad Trapper, which is indicated as Cam 15 in the video evidence and which I will refer to as the Quick Stop side video, shows a white sedan vehicle pulling into that area and parking. The side video is taken from behind where the white sedan parked and shows the back and left side of the sedan after it was parked.

The only way a vehicle can enter or exit that space is from MacKenzie Road. The video evidence clearly establishes that the vehicle entered from MacKenzie Road. While the individuals in the video cannot be clearly identified from the video, someone from the passenger side gets out and walks back toward the front of the Mad Trapper, ultimately walking out of the video frame.

A video from the front of the Inuvialuit Development Corporation building across the street from the Mad Trapper and Quick Stop, which I will refer to as the IDC front video, then shows that individual proceeding from the space to the right side of Mr. Tyler's truck and apparently interacting with the people inside it. The time stamps indicated on the Quick Stop videos and the IDC videos are very close. The Quick Stop side video shows someone getting out of the driver's side of the white sedan after the passenger left. The driver goes toward MacKenzie Road and the side of the Mad Trapper. This is toward the spot where Mr. Marshall says he saw the accused.

A video taken from the front of the Quick Stop building, which is indicated as Cam 1 and which I will refer to as the Quick Stop front video, shows that person proceeding toward the same spot at that time. His entire body cannot be seen, but his feet are still in the video frame at the time he stops at the same spot described by Mr. Marshall and then almost immediately proceeds back in the general direction where the white sedan would have been.

From that video, one can see that there was light coming from the Mad Trapper area and that the area is lit, although not particularly brightly. However, someone who was seated as Mr. Marshall was would have been able to see the face of the individual he described. The IDC front video is consistent in this regard. The IDC front video also shows that individual proceeding to the spot described by Mr. Marshall. Unfortunately, it then skips ahead a moment so that he simply disappears out of frame. However, the Quick Stop side video shows that that person then went back to the white sedan he had parked.

He appears to have a toque on his head. He opens the front door of the sedan and he pulls the toque off. He puts his head and upper body in the vehicle, bending over. He then pulls out something that looks like a balaclava and shuts the door. He walks toward the front of the vehicle, stops, and puts the balaclava on over his head.

He then walks back to the front driver's side, opens it, reaches his hand in, and then takes it out, closing the door. It is difficult to see exactly what he is doing at this point. However, he then goes to the rear driver's side door, opens it, and takes out an object entirely consistent with the shape of a long gun. He closes the door and walks towards MacKenzie Road with that object and walks out of frame.

One cannot see what he has on his head at this point. However, at no point does he take off the balaclava he had put on earlier. The IDC front video then shows that person leaving the space between the Mad Trapper and Quick Stop at around the same time Ms. Francis and Mr. Marshall proceed from the truck to the Mad Trapper. The individual walks in front of Mr. Tyler's truck. While on the sidewalk, he takes out what appears to be a long gun and walks to the driver's side, perhaps a foot away from the front fender. He then angles away from the truck, toward the middle of MacKenzie Road, and is beside the truck.

The truck begins to move forward and he fires into the side of the vehicle twice while aiming the shotgun. At the time he shot at the vehicle, he had the stock of the rifle at shoulder height and was holding it in a posture one would assume if aiming a long gun. He appears to have been aiming the shotgun at Mr. Tyler.

Between the first shot and second shot, the shooter takes a couple of steps, attempting to follow along with the truck while on its left-hand side at the time the vehicle is driving away. There appears to be a distance of around five feet between the muzzle of the long gun and the driver's side window when it is discharged the first time. The distance at the time of the second shot appears to be around 15 to 20 feet.

The IDC front video shows that the shots were fired two to three seconds apart. The truck was not yet moving rapidly when either of the shots were fired. However, it then continued to accelerate, eventually crashing through and taking out the front steps of the Quick Stop. It crashed into a parked car and then stopped in front of the Roost Restaurant located further down MacKenzie Road. The Quick Stop front video shows Mr. Tyler's truck taking out the front step of the Quick Stop. So does a separate Quick Stop video, marked Cam 3, also taken from the front of the Quick Stop, but which points away from the space next to the Mad Trapper and in the direction of the Roost Restaurant located on the other side of the Quick Stop further up the street.

Yet another Quick Stop video, marked Cam 16, shows the vehicle, after it took out the front step, proceeding by the front of the Roost, crashing into a white vehicle and finally stopping. The IDC, a front video, shows that immediately after the shooting, the shooter appeared to place, pick up or attempt to pick up an object or objects from the road around where he had fired the shots. The IDC front video then shows him running back to the space where the white sedan would have been located.

He proceeds out of view. However, the Quick Stop side video shows him running to the parked white sedan and getting into it rapidly, immediately after Mr. Tyler's truck is shown as finally stopping, as depicted in the Quick Stop video marked as Cam 16. The Quick Stop side video then shows the white sedan backing out and leaving the space depicted in that video. The sedan proceeds out of frame. However, the IDC front video shows the sedan then back out of the space onto MacKenzie Road and proceed forward, leaving the scene, driving by the front of the Quick Stop, away from where Mr. Tyler had previously been parked.

The Quick Stop front videos also show the white sedan driving by the Quick Stop after backing out. The vehicle was being driven in a normal and controlled manner. I note that all the videos indicate at least roughly the same time in their timestamps. The IDC front video shows that between 20 and 25 minutes after the shooting a white sedan proceeded from the direction where the white sedan driven by the shooter had left.

The sedan appears to have a black spare wheel located on the rear left side of the sedan, so it was on the sedan being used. The evidence of the police was that the black wheel appeared to be a spare. One can see the same sort of black spare wheel on the left rear of the sedan and the Quick Stop side video. Also, the two videos show that the vehicle has a badge, presumably indicating the vehicle's make or model in the same location of the front left quarter panel. From the angle, it is not possible to see whether, like the sedan in the Quick Stop side video, it had a sunroof. The IDC front video shows that after returning to the area, the white sedan parked across the street from the Mad Trapper.

After parking it, the driver then gets out of the sedan and proceeds toward the Mad Trapper bar. Although the video is not completely clear, the individual seems to have a gait similar to the person depicted in the Quick Stop side video. He also appears to be dressed in a consistent manner, with a black jacket. However, the clothing is not distinct. I also note that when the IDC front video showed the point in time immediately before the shooting, when the white car drove by Mr. Tyler's truck pulled into the space between the Mad Trapper and the Quick Stop, one can see the left rear wheel is black like a spare wheel and is different from the right front, which appears to be a regular wheel. This is also the case with the sedan that later parked across the street from the Mad Trapper.

Once again, due to the angle from which the IDC front video was taken, one cannot see whether there is a sunroof. Mr. Aleekuk was arrested in the Mad Trapper shortly after the white sedan was parked across the street from the Mad trapper. Hours later, an empty shell casing was found on the street around the spot where the shooting had occurred.

The white sedan that was parked across the street from the Mad Trapper following the incident was determined to belong to Mr. Aleekuk. It was photographed by the police and appears to have been similar to the white sedan that is depicted in the videos passing Mr. Tyler's truck, pulling into the scene next to the Mad Trapper, or the space next to the Mad Trapper, and leaving the scene. Like the sedan depicted in those videos, it was white. It had lights and styling on the back of the sedan that appear to be identical. It had a black wheel on the left back that was different from the wheels on the front. It had a make or model badge that was identically located and similar in shape and size on the front left quarter panel.

The sedan in the Quick Stop side video had a sunroof. Unfortunately, when the police finally photographed the sedan parked across the street from the Mad Trapper the next day, there was a layer of snow over the top of the sedan and the roof of the sedan that cannot be seen in the photographs. Nevertheless, given the small population of Inuvik and the unique aspects of the sedan that I have referred to, I am satisfied it is the same sedan that the shooter was driving earlier.

Shortly after the incident, the police observed a soft long gun case in the sedan parked across the street from the Mad Trapper. They searched the sedan, as a result of their public safety concerns. The case was empty.

However, because they were unsure what type of firearm had been used in the shooting, they also searched a black duffel bag located in roughly the same spot. The duffel bag had no firearms in it. However, three shotgun shells were found inside. One of them had previously been discharged. The other two had not been discharged. They were all 12-gauge shells, which were of the same red colour and had the same markings on them, indicating the type of shot, the number of pellets, the total weight of the pellets. Not only did the plastic portion of the shell have the same red colour, the base of the shell was a metallic silver colour in all cases.

All shells were marked as being Winchester brand, 12 gauge, on the base. As stated, those shells were identical to the spent cartridge found on the road in the approximate location where the firearm had earlier been discharged. While pellets were extracted from Mr. Tyler's wounds, which are depicted in the photographic evidence that was entered, the type of shot was never analyzed. That said, the pellets were photographed, and I think it is very apparent from the appearance of the wounds and the circumstances of the actual shooting that the wounds were from a shotgun.

Crown counsel suggests that the presence of the spent cartridge in the sedan is consistent with the video depiction of the shooter twice picking up or attempting to pick up an object or objects from the ground following the shooting and before departing the scene on foot. She suggests that all of the factors I have referred to prove beyond a reasonable doubt that it was Mr. Aleekuk who shot Mr. Tyler.

Defence counsel suggests that there were problems with the evidence referred to by the Crown. She suggests that Mr. Tyler's identification evidence is suspect. He testified he saw Mr. Aleekuk driving by him before pulling into the space beside the Mad Trapper. She says this would have been unlikely given the height of the truck compared to the height of the sedan. I agree with her on this point. From the video footage, I do not see how Mr. Tyler would have been in a position to view the driver from where he was seated.

Defence counsel points out that it would have been difficult for Mr. Tyler to identify the shooter as Mr. Aleekuk based simply on his eyes immediately before he fired the shots. I agree with her on this point as well. Additionally, his evidence appeared inconsistent on whether or not he was able to identify Mr. Aleekuk from his whole face or just his eyes.

Mr. Tyler also testified to other observations that are contradicted by the video evidence. He said that he turned on the truck and left after the shot, or at the time of the first shot, Mr. Marshall said that the truck was running when he was in it. It appears from the video that the truck was already running. One can see vapour appear to be emanating from the exhaust. The vehicle was in motion before the shots were fired.

Mr. Tyler said the white sedan was driving recklessly and fast. I did not observe any reckless driving by the white sedan in the video evidence. Mr. Tyler said he was not sure if the driver's side window was open or closed at the time of the shooting. I think it is pretty clear it was closed, based on the evidence that it was completely smashed out following the shooting. The glass was blown into the interior of the truck.

Mr. Tyler testified to three shots being fired but had described only two shots in a statement he had provided earlier. While testifying, he admitted that he was not sure. He testified he was shot more than one time. The video shows only two shots, and one of those shots hit the 'B' pillar behind the driver's side window. And from the pattern of shot on the window, the indentations that were made, it appears that the shot was concentrated on the pillar and did not spread further.

Mr. Tyler also admitted on cross-examination that all of the shotgun pellet wounds to his head and other parts of his body could have been caused by only one shot, depending on how he was positioned at the time. That said, Mr. Tyler was testifying about an extremely rapidly unfolding set of circumstances, which would have been highly traumatic. He was shot in the side of the head. It is not surprising that there are some discrepancies in his evidence. Although he has a significant criminal record, I find that when he was testifying he was doing his best to remember things accurately.

I also agree with defence counsel when she says that Daphne Francis was not an impressive witness. She appeared reluctant to attend. Her demeanour in testifying was striking in that she did not appear to take the proceedings seriously. While testifying, she stared off into the distance and at times closed her eyes, appearing to fall asleep. She had to be reminded repeatedly to verbalize her answers.

Defence counsel submits that I should not accept her evidence without external corroboration. Defence counsel also states that the evidence of Mr. Marshall is suspect since he does not remember Ms. Francis being present. He did not identify Ms. Francis as being the person next to the truck depicted in the IDC front video. However, there was clearly someone in that video at the time he was there.

He said that he saw Mr. Aleekuk peer around the corner of the space next to the Trapper and then go away. Defence counsel points out that he was 10 to 20 feet away and that it was nighttime. She points out that there was a lot of foot traffic and vehicle traffic around the scene of the shooting between the time of the shooting and the time the shell off the road was recovered hours later. She also submits that following the shooting but before the shell on the road was recovered, an ATV drove through the scene and that ATV's are often used in hunting.

The concerns that defence counsel has raised might result in a reasonable doubt on identity if I were viewing any of the identification evidence I have referred to in isolation; however, I am not. When I view all of the foregoing evidence in its totality, I find that the chances of the shooter being anyone other than William Aleekuk are miniscule. The video and photographic evidence establish striking similarities between the vehicle of the shooter and the vehicle which is owned by Mr. Aleekuk and which was driven to a spot across the street from the Mad Trapper before the person driving it exited and proceeded to the Mad Trapper where Mr. Aleekuk was arrested shortly afterwards.

The video evidence is consistent with what Mr. Marshall described when he said that he saw Mr. Aleekuk peering around or standing around the corner of the space where the Quick Stop side video shows that the white sedan had parked and later proceeded to back out. The Quick Stop side video and Quick Stop front video are consistent with this, as is the IDC front video. The Quick Stop side video shows the driver exit the driver's side door shortly after the female occupant exited the passenger side of the vehicle. It shows that he walked in the direction that was toward the spot where Mr. Marshall said he saw Mr. Aleekuk. He kept walking, stepped out of view on the Quick Stop side video, but proceeded back to the white vehicle very shortly afterwards.

The Quick Stop front video shows that same individual's feet and shows that he stopped around the spot described by Mr. Marshall before proceeding back to the vehicle. The IDC front video shows the individual proceeding to and standing at that spot. Based on that video, he would have been in complete view of Mr. Marshall.

There is the momentary glitch in the video where it skips forward so that one cannot see him proceeding back to the vehicle; he simply disappears. However, it is apparent from the Quick Stop side video and Quick Stop front video that the portion that is missing as a result of the glitch is very brief in duration. The parts of the IDC front video that I have just described are entirely consistent with the Quick Stop side video and Quick Stop front video. The videos strongly corroborate the testimony of Mr. Marshall.

I will note that when Ms. Francis was shown the Quick Stop side video where the driver of the white sedan is shown walking, she was asked if she could identify the driver. She identified that person as Mr. Aleekuk, but seem to do so based primarily on his gait. There was no *voir dire* on her ability to provide video recognition evidence, and I therefore give no weight whatsoever to that aspect of her testimony.

However, Ms. Francis testified that she was driven to the space next door to the Mad Trapper by Mr. Aleekuk. She has known him for many years. She testified that she spoke with Mr. Tyler from the passenger side of his vehicle. Mr. Tyler's evidence and the video evidence is consistent with this.

Even though Mr. Marshall does not remember her there, it is clear in the IDC front video that someone was standing beside the vehicle at the spot described by both Mr. Tyler and Ms. Francis, while Mr. Marshall was in the vehicle. It also seems clear that that person was talking to a person or persons in the vehicle. Someone consistent with the appearance of Ms. Francis can be seen in the video evidence depicting the place where the white sedan was parked and the video of the spot where Mr. Tyler had been parked.

Her evidence as to what she did immediately following being driven to the Mad Trapper is completely consistent with the videos. The videos show that a vehicle stopped where she said it stopped. Someone got out of the passenger side, as she said she did. That person proceeded to the passenger side of Mr. Tyler's truck, as she said she did. She appeared to talk to people in the truck, as she said.

Ms. Francis says she talked through the passenger side window with Mr. Tyler, who is on the driver's side. The video evidence shows someone speaking to a person or persons in the truck from the passenger side. She said that someone was seated on the passenger side in the vehicle. The video shows that. The video also shows that the person who was talking to the people inside the vehicle then proceeded toward the Mad Trapper bar before the shooting, just as Ms. Francis testified she did.

I find her evidence is largely corroborated by the video evidence and by the evidence of Mr. Tyler on where she was and what she was doing around the time leading up to the shooting. I accept that she is the person depicted in the video footage I have just described. I also accept her evidence that it was Mr. Aleekuk who drove her to the Mad Trapper and parked in the space next door to the Mad Trapper at that time.

Also, the close match of the gauge, colour, and descriptors on the outside of the shell casings retrieved from the scene and in Mr. Aleekuk's vehicle are important. They were all the same gauge, colour, and markings. They appear physically identical. They are all marked as being heavy game. They all have identical markings, indicating that the shot was number four. The weight of the shot is one and one-quarter ounces and that the case is two and three-quarter inches long. The base of the shells were the same metallic colour. They were all marked as being Winchester brand and 12 gauge.

In the video evidence, the shooter is seen to be attempting to pick up an object or objects from the ground immediately after the shooting. We know from the video that two shots were fired. While there was a danger of the scene being contaminated, the presence of one empty shell at the scene and an identically empty shell in a black bag in the back of Mr. Aleekuk's vehicle is still significant evidence of him being the same person as the shooter under the circumstance.

The video and photographic evidence establishes striking similarities between the shooter’s vehicle and the vehicle owned by Mr. Aleekuk and driven to and parked across the street from the Mad Trapper. Although Mr. Marshall described it as being a white Ford and the police officer's evidence was that it was a white Pontiac Bonneville, I am satisfied that the vehicle they saw across the street from the Mad Trapper was the same vehicle that the shooter drove. I find that the rear of the vehicle driven by the shooter and the vehicle owned by Mr. Aleekuk are identical. There are also other similarities I have noted.

After parking the vehicle across the street from the Mad Trapper, the driver exited and proceeded toward the Mad Trapper. Mr. Aleekuk was arrested in that establishment shortly thereafter. Under all of the circumstances that I have described, I am of the view that there is no other reasonable conclusion other than it was Mr. Aleekuk who shot Mr. Tyler. There is no reasonable possibility that the shooter was somebody else. The entirety of the evidence leads inexorably to that conclusion. The chances of the number of errors and coincidences that would be required to come to any other conclusion are extremely low.

In spite of carefully listening to defence counsel's very capable submissions and considering them at length, I have no uncertainty in finding that identity is established. I am satisfied it has been proved beyond a reasonable doubt. I find that the case is not at all close on this issue.

The elements of the offence. First, I will deal with the issue of whether or not the Crown has proven beyond a reasonable doubt that a firearm was used in the commission of the offences. The use of a firearm is an essential element of the offence, contrary to section 244(1) of the *Criminal Code*: Discharging a firearm with intent to wound. The attempt murder charge has also been particularized to have been committed with a firearm.

I find it has been proven beyond a reasonable doubt that there was a weapon used and that it was a firearm. The IRC front video shows flashes of light coming out of the end of the muzzle that Mr. Aleekuk was pointing at the side of Mr. Tyler's truck. People could hear shots being fired, although Mr. Marshall initially thought he was hearing a car backfiring.

The weapon completely blew out the driver's side front window. Numerous pellets were found in the left side of Mr. Tyler's head, following the wounds being inflicted. Another shot appears to have hit the 'B' pillar of the driver's side, with the shot pattern similar to the pattern on Mr. Tyler's head. A spent shotgun casing was found at the scene and another very similar spent shotgun casing was found in the black duffel bag in Mr. Aleekuk's vehicle.

I will now deal with the other essential elements of the offences charged, in particular their requisite intent. I will first deal with aggravated assault. Aggravated assault is a general intent offence. There must simply be an intention to apply force to the victim, directly or indirectly. As well, because aggravated assault is a general intent offence, if the accused is reckless under the circumstances as to whether such force will be applied, that is sufficient to make out the requisite criminal intent. Recklessness occurs where the accused behaves in a specific manner, knowing that his conduct could result in the prohibited conduct. Therefore, in the case of an assault, knowingly running the risk that force will be applied to the victim without consent will suffice.

Additionally, in the case of an aggravated assault, there is no need to actually intend to maim, wound or disfigure the victim. The desire to bring about the consequences of the assault is unnecessary so long as any reasonable person would inevitably realize that the victim would be subject to a risk of bodily harm. So the risk of bodily harm is objective (See *R v Nanemahoo*, 2011 ABCA 182 (CanLII), *R v DeSousa,* [1992] 2 SCR 944, per Sopinka, J.)

All of that having been said, it is unnecessary to consider whether there was recklessness on the part of Mr. Aleekuk. I find that the Crown has proven beyond a reasonable doubt that there was actual intent on the part of Mr. Aleekuk to apply force to Mr. Tyler when he discharged the shotgun. The direction that the shotgun was aimed, along with the short range that was present at that time, makes that clear. At least one shot hit the window. At least one shot put pellets in Mr. Tyler's head and shoulder. One of the shots hit the 'B' pillar immediately behind Mr. Tyler's head. If Mr. Aleekuk was not trying to apply that force, why not aim the shotgun at different parts of the truck or over top of the truck? If it was his intent to simply scare Mr. Tyler, it would have been very easy for him to do that.

The necessary elements are made out. Mr. Aleekuk intentionally applied force to Mr. Tyler. Any reasonable person in Mr. Aleekuk's position would have been able to see that firing the shotgun, as Mr. Aleekuk did, would have subjected Mr. Tyler to a risk of bodily harm. The bodily harm suffered by Mr. Tyler was sufficient to make out an aggravated assault wounding.

Mr. Tyler suffered serious injuries. Numerous pellets hit his body and head. His skin was perforated in a number of places. Pellets had to be removed from his body, including his head. Both the *actus reus* and *mens rea* of the count of aggravated assault have been proven beyond a reasonable doubt.

Section 244 of the Code states (as read):

Every person commits an offence who discharges a firearm at a person with intent to wound, maim or disfigure, to endanger the life of or to prevent the arrest or detention of any person, whether or not that person is the one at whom the firearm is discharged.

I conclude that section 244 creates a specific intent offence. Actual intent to wound, maim or disfigure must be established, according to the wording of the section. Traditionally, words and phrases such as "with intent to," "for a fraudulent purpose," "corruptly" or "willfully and knowingly," indicate that Parliament wishes to require specific intent; see *Leary v The Queen*, [1978] 1 SCR 29, per Dickson, J., as he then was, at pages 40-41. In *Leary*,while Justice Dickson was dissenting from the majority, it was only on other issues.

Since discharging a firearm with intent is a specific intent offence, recklessness will not suffice, although I note parenthetically that willful blindness would. However, it is sufficient if the accused carries out the discharging of the firearm knowing that it will result in the wounding, maiming or disfiguring of the victim. In other words, the intention can be oblique as well as direct. If the consequences are virtually certain from the subjective perspective of the accused, that is sufficient, whether or not he commits the act with that specific purpose in mind.

As I have said, I find that Mr. Aleekuk intentionally fired the shotgun at Mr. Tyler. He fired through the driver's side window at one point. As I have said, any reasonable person would have known that bodily harm would occur. However, that is not dispositive of the issue as to whether Mr. Aleekuk shot Mr. Tyler for the purpose of wounding him or knowing that his actions would wound him.

Nevertheless, given the range of the shots and the type of weapon and ammunition used by Mr. Aleekuk, and also taking into account the part of the body that was shot, I find that Mr. Aleekuk must have known that the blast would wound Mr. Tyler, even though one of the shots was fired through the closed driver's side window. I find that this has been proven beyond a reasonable doubt. I find, as I have said, he was aiming at Mr. Tyler. I find he was aiming at his head. As stated, this has, in my opinion, been proved beyond a reasonable doubt.

Mr. Tyler was shot in the head and the vehicle he was driving also received another blast that was in close proximity to his head. When the shotgun was discharged, it was being aimed by Mr. Aleekuk in the usual manner long guns are aimed with the stock at his shoulder and the barrel at the same level as his eyes. He was in close range to Mr. Tyler and the truck. If Mr. Aleekuk simply intended to scare Mr. Tyler and intended to miss or simply intended to damage the truck, it would have been very easy for him to direct his shots away from Mr. Tyler.

Even taking into account that the shot that hit Mr. Tyler's head appears to have been fired through a closed window, I find that it has been proven beyond a reasonable doubt that Mr. Aleekuk was aiming at the head of Mr. Tyler with intent to wound him at the times that he pulled the trigger. Once again, I can find no other rational or reasonable conclusion than that at that particular moment he wanted Mr. Tyler dead. In other words, he was shooting to kill.

Attempted murder is set out in section 239 of the Code. 239(1) states that "every person who attempts by any means to commit murder is guilty of an indictable offence." It is very well established that attempted murder, like all attempts, is a specific intent offence. Unlike murder itself, only an actual intention to kill will suffice to make out the *mens rea* of the offence. Whether or not that *mens rea* is established in a situation where a firearm is used will depend upon a number of factors, including the type of firearm that is used, the part of the body at which the shot was aimed, the type of ammunition used, and any barriers between the accused and the victim, and, in my opinion in particular where a shotgun is used, the distance from the firearm to the victim at the time of the shooting.

As I have stated, in the present case, Mr. Aleekuk shot at the victim twice. One of the shots hit the 'B' pillar between the driver's side window and the box located immediately behind it. Mr. Aleekuk fired one shot when there was about five between the firearm's muzzle and the driver's side window. The second shot was taken from 10 to 15 feet away. The shots fired resulted in the driver's side window being completely blown out. As stated, the shots were fired at close range and the accused received multiple pellets in his head.

Once again, I note the pattern of the shot appears to be concentrated around the back of Mr. Tyler's left ear. The pattern appears similar to that of the shot that hit the 'B' pillar. Once again, if it was not Mr. Aleekuk's intention to shoot Mr. Tyler in the head, why would he have not fired over the truck or at another spot on the truck? Why would he not have fired at the rear or front fenders of the truck or other spots less close to Mr. Aleekuk's head? If that was his intention, it would have been easy to intentionally miss hitting Mr. Tyler while at that range. Also, why fire two shots, and why pursue the vehicle to get closer before taking the second shot?

He was aiming the gun at Mr. Tyler's head and doing so from close range. I appreciate that the shot that was in the shells that were expended was not the heaviest shot available. The evidence with which I was provided and to which no objection was taken was that that type of shot is used for killing rabbits or birds such as ducks or even geese. However, given the short range from which the gun was fired on both occasions, given that it was aimed at the victim's head, and given the number of shots fired, I am satisfied that it has been proven beyond a reasonable doubt that Mr. Aleekuk fired the shotgun at Mr. Tyler with the intention to kill him. I am satisfied that the evidence establishes that there is no other reasonable conclusion under all of the circumstances.

Other than the elements of identification, the weapon being a firearm, and the criminal intent required for each of the offences, the further elements of the offence are not an issue. In any event, I find that all of the necessary elements of each of the offences have been proven beyond a reasonable doubt. The evidence clearly establishes that the offences occurred in Inuvik, in the Northwest Territories, in the time frame alleged in the information before me.

I find Mr. Aleekuk guilty of all three charges, and convictions will be entered accordingly.

I wish to thank both Ms. Oja and Ms. Brackley for their very capable assistance during this trial. Now, counsel, before we deal with a date for sentencing, I do not -- I certainly do not propose to do it today, I am going to ask that the victim impact statement, which is attached to the court file, be unsealed and provided to counsel. I will also take a look at it. Ms. Oja, you are not here right now, but it will be a scanned and sent to you.

K. OJA: Oh, thank you, Your Honour.

THE COURT: All right. And I will review it later. I am wondering if the Crown's going to be alleging a criminal record. I see no reason why that cannot be tendered at this time.

C. BRACKLEY: Yes, Your Honour, I do have a record. Just for Ms. Oja's benefit, because I can't physically show it to her --

THE COURT: Sure.

C. BRACKLEY: -- it is two pages in length. The last conviction would have been September 27, 2017.

THE COURT: All right.

K. OJA: Your Honour, I just -- I don't have any way of reviewing that with Mr. Aleekuk right now and so --

THE COURT: You have not reviewed it with him previously?

K. OJA: Not before today, Your Honour.

THE COURT: Okay. All right.

K. OJA: I'm sure we did at the bail stage. But just because I can't see what Ms. Brackley is handing up --

THE COURT: Okay.

K. OJA: -- I'd prefer to be able to do that at sentencing.

THE COURT: Well, I will stand court down for half an hour and I will allow you to do that. But I would like to see it today.

I note that there are three victim impact statements, Madam Clerk?

THE CLERK: Says there is three.

THE COURT: Yeah, three separate ones. All right. Thanks. Okay. So once that is done, we can set a date. I will stand court down for half an hour to give you that opportunity, Ms. Oja. And I am wondering, are you going to be requesting a pre-sentence report under the circumstances?

K. OJA: Yes, I am, Your Honour.

THE COURT: Okay. All right. So this matter will be stood down for the time being.

(ADJOURNMENT)

THE COURT: Please be seated. Counsel, Ms. Oja.

K. OJA: Thank you, Your Honour. I was -- yes, I was able to confirm that the criminal record the Crown has handed up to the Court is the same copy I had previously of that.

THE COURT: All right. Thank you. So Exhibit S-1 at this point then. That has been reviewed --

K. OJA: And --

THE COURT: -- and it is admitted?

K. OJA: Yes, Your Honour.

THE COURT: Great. Just give me a second, please.

EXHIBIT S1: CRIMINAL RECORD.

THE COURT: All right. Thank you. You were saying?

K. OJA: With respect to the Victim Impact Statements, there are two of them -- I'd like the opportunity to review those with Mr. Aleekuk and potentially make comments at a later point if there is anything that I see as perhaps going further than the scope of a victim impact statement.

THE COURT: Oh, absolutely, of course.

K. OJA: Okay. Great.

THE COURT: But there is no reason why I cannot take a look at them in the interim.

K. OJA: No.

THE COURT: Good. Thank you.

K. OJA: Absolutely not.

C. BRACKLEY: I also just wanted to advise Your Honour, the -- I spoke to the Victim Services worker briefly and I understand that there may be one or two more Victim Impact Statements coming as well.

THE COURT: Sure. And that is fine as well. I just want to get as much before me as I can --

C. BRACKLEY: Yes.

THE COURT: -- today. I think that makes sense. So you are asking for a pre-sentence report?

K. OJA: Yes, I am.

THE COURT: All right. I am going to direct that a pre‑sentence report be prepared and filed with the Clerk of the Court. I will figure out the deadline for that when we figure out a date for sentencing submissions. Counsel had an opportunity to discuss those with each other?

C. BRACKLEY: We have, Your Honour. Firstly, I think we both take the position it makes sense for this matter to be heard in Inuvik where the incident occurred.

THE COURT: I agree.

C. BRACKLEY: And also, I believe, given availability, we are likely looking at some point in the summer. I'd -- I'll let Ms. Oja speak to her availability in May and June.

THE COURT: All right. Well, you know what would be a great idea, I think, is if you discuss your available dates, the dates on with -- which you are both present with Madam Clerk --

C. BRACKLEY: Okay.

THE COURT: -- and come up with a list of available dates. I can deal with that later today, perhaps at 2:00. Does that make?

C. BRACKLEY: It does. Thank you.

THE COURT: Okay. Does that make sense to you, Ms. Oja?

K. OJA: It does, Your Honour. I do know that the sheriff here is -- there is an issue of flights.

THE COURT: All right.

K. OJA: And so I could perhaps just call in.

THE COURT: Well, sure. We could deal with that perhaps in half an hour then.

K. OJA: That is agreeable, Your Honour.

THE COURT: I think that makes sense too.

C. BRACKLEY: Yes, it does. Thank you.

THE COURT: Okay. So half an hour. This matter is stood down for now. Mr. Aleekuk can be taken away from the time being. But you will be back here, Sir, in half an hour when we set the date for your sentencing.

THE ACCUSED: Can I just go to NSCC and appear from video from there?

THE COURT: No, it is only going to be half an hour.

THE ACCUSED: Okay.

(ADJOURNMENT)

THE COURT: Please be seated. All right, counsel. Ms. Oja, I understand that you are going to be unavailable from May the 15th to June the 15th approximately?

K. OJA: Yes, that's right, Your Honour, with jury trials on either side of that period.

THE COURT: Sure. Right. And it is likely to take six weeks to get the pre-sentence report done. What I am going to do is I am going to add an additional date to the Fort McPherson circuit that is set, I believe, during the week of July the 10th — that is correct — and I will add a Friday on to that. I will do that circuit. And it will therefore be July the 14th, at 9:00 in the forenoon that we deal with the sentencing in Inuvik. Deadline on the pre-sentence report, I am thinking June the 30th at 4 p.m. Anything further, counsel?

C. BRACKLEY: Nothing for today, Your Honour.

THE COURT: Okay. Form 19, of course, to that date --

C. BRACKLEY: Yes.

THE COURT: -- in person, Madam Clerk. And, counsel, once again, thank you very much for your hard work in relation to this matter.

K. OJA: Thank you, Your Honour.

C. BRACKLEY: Thank you, Your Honour.

THE COURT: Okay. So we will adjourn until 2:00 now. Great.

(PROCEEDINGS ADJOURNED TO JULY 14, 2023,

AT 9:00 A.M., IN INUVIK, IN THE N.W.T.)

**CERTIFICATE OF TRANSCRIPT**

Veritext Legal Solutions, Canada, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings transcribed from the audio recording to the best of our skill and ability. Judicial edits have been applied to this transcript.

Dated at the City of Toronto, in the Province of Ontario, this 27th day of May, 2024.

Veritext Legal Solutions, Canada

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