courtready

R v Kehal, 2026 BCSC 2120

This decision forms part of Courtready.ca's Canadian Deepfake and Disputed Digital Evidence Database, which tracks Canadian court and tribunal decisions where the authenticity of a photo, video, audio recording or text message was disputed or decided. Inclusion in the database does not mean that any evidence in this decision was found to be fake. Courtready.ca obtained this decision from the Canadian Legal Information Institute (CanLII).

FULL DATABASE
https://courtready.ca/deepfake-evidence-in-canadian-courts/

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R v Kehal,*
2026 BCSC 2120

Date: 20260402
Docket: 35791-2
Registry: Vancouver

Rex

v.

Ravinder Bobby Kehal

Before: The Honourable Justice Ahmad

Oral Reasons for Judgment

Counsel for the Crown:	S. Gillespie A. Pachal, Articled Student P.F. Sebellin (February 6, 2026 only)
Counsel for the Accused:	D.M. Melville
Place and Dates of Trial:	Vancouver, B.C. February 2–6, 2026
Place and Date of Judgment:	Vancouver, B.C. April 2, 2026

2026 BCSC 2120 (CanLII)

Table of Contents

I. INTRODUCTION 3
II. GENERAL LEGAL FRAMEWORK 3
III. SUMMARY OF THE EVIDENCE 4
A. The Uber Pickup at YVR 4
B. The Shots at Burger King 6
Mr. Chhina 6
Mr. Patel 7
The Burger King Video 8
The Spent Casings 8
C. The Shots on the Freeway 8
D. At the Destination 9
E. The Firearms Expert — Sgt. Russ Miller 9
IV. DISCUSSION AND ANALYSIS 10
A. Identity 11
1. Issue 11
2. Legal Framework 12
3. Analysis 13
B. Was the Weapon Used a "Firearm"? 17
1. Legal Framework 17
2. Analysis 19
3. Conclusion re "Firearm" 27
C. Specific Offences Alleged 27
Count 1: Possession of a loaded restricted firearm, without holding authorization permitting possession or a licence and a registration certificate contrary to s. 95(1) of the Code 27
Count 2: *Intentional discharge of a prohibited or restricted firearm, knowing or being reckless as to the life and safety of others, contrary to s 244.2(1)(b)* 29
Count 3: Careless use, carrying or handling of a firearm contrary to s 86(1) 32
Count 4: Possession of a restricted firearm without a license or registration certificate contrary to s 91(1) 33
V. CONCLUSION 33

2026 BCSC 2120 (CanLII)

I. Introduction

[1] THE COURT: Mr. Kehal is before the Court on a four-count indictment for various firearm charges in violation of the *Criminal Code*, RSC 1985, c C-46 [the *Code*], all relating to events occurred on July 23, 2023.

[2] In brief, the Crown alleges at approximately 11:30 p.m. on July 23, 2023, Mr. Kehal intentionally and recklessly discharged a prohibited or restricted firearm, that is, a handgun in a reckless manner—first at a Burger King drive-through in Richmond, and subsequently while driving on a highway. It is alleged that at the time of the alleged offences, Mr. Kehal was the front-seat passenger in an Uber.

[3] Mr. Kehal disputes all of the allegations, including two critical elements that are common to all four charges: identity and whether a “firearm”, as defined in the *Code* was discharged. He argues that the Crown has failed to prove either beyond a reasonable doubt.

[4] Accordingly, he argues that he should be acquitted of all of the charges against him.

II. General Legal Framework

[5] Prior to turning to the evidence on the issues to be determined, I start with the reminder that the burden is on the Crown to establish Mr. Kehal's guilt beyond a reasonable doubt. Mr. Kehal is never required to prove anything or disprove the Crown's case.

[6] Proving a case beyond a reasonable doubt does not require proof to an absolute certainty. It is not proof beyond any doubt, nor is it imaginary or frivolous doubt. Rather, reasonable doubt exists where there is doubt that is based on reason and common sense. Reasonable doubt must be logically connected to the evidence or the absence of evidence. If there are reasonable inferences other than guilt that can be drawn from the facts, the Crown's evidence will fall short of meeting the proof beyond a reasonable doubt standard. Gaps in evidence can also result in inferences other than guilt, but all such inferences must be reasonable based on the evidence

2026 BCSC 2120 (CanLII)

and the absence of evidence, assessed logically and in light of human experience and common sense: *R v Lifchus*, 1997 CanLII 319, [1997] 3 SCR 320 (SCC).

[7] The burden of proof applies to each of the elements of the offences, but not to individual pieces of evidence. The trier of fact is therefore required to assess the evidence holistically in determining whether the Crown has proven its case: *R v D.F.*, 2020 BCSC 2215 at para 18.

III. Summary of the Evidence

[8] The Crown called 15 witnesses, including 11 police witnesses and four civilian witnesses. Through its witnesses, the Crown also tendered various photographs and videos, including videos from YVR, the Uber vehicle, and Burger King.

[9] The Crown also relied on the evidence of Sgt. Russ Miller, who provided expert opinion evidence in the examination, identification, and classification of firearms and ammunition.

[10] As he is entitled to do, Mr. Kehal did not call any evidence in his defence.

[11] I have considered all of the evidence, including the oral evidence, the photographs, videos, and all of the documentary evidence, before me. However, in these reasons I do not purport to canvass all the details in the evidence that was advanced, except as they specifically relate to an issue in dispute. A summary of the key points of the evidence, drawn in part from the Crown's written summary of facts, which I found to be fair and accurate, is set out below.

A. The Uber Pickup at YVR

[12] On July 23, 2023, Suhkvinder Singh Chhina was employed as an Uber driver. At the time, he had had a firearms licence for some 16 years and owned firearms. He had been trained in the use of firearms before then. He had fired his guns on several occasions at the fire range as a member of a hunting and fishing club.

2026 BCSC 2120 (CanLII)

[13] During the course of giving his evidence, Mr. Chhina was quite conversant and appeared to be quite knowledgeable about guns generally.

[14] Shortly after 11:00 p.m. on July 23, 2023, Mr. Chhina picked up three passengers at the Vancouver Airport ("YVR"). While the video footage taken from the CCTV camera at YVR is not crystal clear, it shows three passengers prior to getting into the Uber. I return to that video later.

[15] At trial, Mr. Chhina referred to the three passengers as "Paul", "Tees", and "Bobby". Bobby was seated in the front passenger seat of the vehicle; Tees and Paul were in the back.

[16] Mr. Chhina testified that he had installed a video camera in his vehicle, which he said records when the vehicle is on and running. He testified that the three video clips taken from that camera and introduced at trial accurately depict the individuals in his vehicle, including Bobby in the front seat.

[17] Mr. Chhina testified that after leaving YVR, he was really surprised and scared to see that the front seat passenger, "Bobby", had a handgun on his lap. Thinking about safety, Mr. Chhina said he looked to confirm the muzzle direction and where Bobby's trigger finger was. He asked Bobby to remove his finger from the trigger guard.

[18] At the time, Mr. Chhina did not know the make or calibre of the gun. He said that Bobby later told him it was a ".40 calibre Glock make gun".

[19] At trial, a photograph of a black Glock 27 gun was shown to Mr. Chhina. He confirmed that the item depicted in the photo was similar to the gun he saw, except that the gun he saw was "military green", not black, and that the gun he saw did not have an extended magazine as the gun in the photo. He recognized the Glock logo on the slider of the gun.

[20] On cross-examination, it was suggested to Mr. Chhina that he would not be familiar with a Glock starter pistol. He replied he knew that the gun was a firearm,

2026 BCSC 2120 (CanLII)

and that he could recognize the components of a firearm, including the magazine, bullets and slider, and he knew that they could be used to fire.

[21] Mr. Chhina testified that right after ‘Bobby’ had the gun on his lap, he removed the magazine from the holder, at which time Mr. Chhina saw a bullet on top of the magazine. He could not see how many bullets were in the magazine.

[22] At some point in that interaction, Mr. Chhina asked ‘Bobby’ to put the gun back. ‘Bobby’ put the gun back in his pocket.

B. The Shots at Burger King

Mr. Chhina

[23] After ‘Bobby’ had revealed the gun, one of the passengers said he was hungry, so Mr. Chhina drove the passengers to the drive-through at a Burger King located on Sea Island Way in Richmond.

[24] According to Mr. Chhina, when the passengers in the back seat were ordering food, ‘Bobby’ lowered the window and took a shot. Mr. Chhina did not see the shot fired, but he heard it—he said that it was “a ballistic sound like a bullet going out of the barrel”. He saw ‘Bobby’ bring the gun back inside the vehicle after the shot was fired.

[25] Mr. Chhina said that after the shot was fired, the other passengers were upset and said to ‘Bobby’, "What are you doing?" Mr. Chhina joined them in protesting "Why did you do this? Don't do it! It's a populated area”. Mr. Chhina said Bobby’ responded by saying, "Don't worry, don't worry. I'm not going to do it." Mr. Chhina described Bobby as being jovial and laughing when he said it.

[26] Mr. Chhina said that he told Bobby that if he had to shoot, he should do so in a safe place with no population, that there could be high-rise buildings, and that even if he was shooting into the sky, the bullet could get into somebody. He said that he told ‘Bobby’ he could discharge a firearm when they were on the freeway because “there was open sky”. Mr. Chhina was also "very worried" for himself.

2026 BCSC 2120 (CanLII)

[27] After that, Mr. Chhina moved the vehicle forward to the pickup window where they waited for roughly 10 to 15 minutes for their order. While there, ‘Bobby’ raised his hand outside of the car, pointed the gun to the sky, and took another shot into the air. This time, Mr. Chhina was looking at ‘Bobby’ when the shot was fired and he could see the spent cartridge fall into the windshield of his car on the outside. The cartridge landed near the wiper assembly.

[28] Again, Mr. Chhina and Bobby's friends were really upset and they were telling him, “What are you doing? We're not supposed to do this”. Again, Bobby was “jovial” in his response, saying, "Okay, okay. I won't do it again”.

[29] On direct examination, Mr. Chhina testified he only recalled two shots happening at the Burger King. However, after reviewing a Burger King CCTV video, he acknowledged there must have been three shots. He attributed his mistake to the passage of time.

Mr. Patel

[30] Aarsh Patel was working at the Burger King drive-through the evening of July 23, 2023. He testified that while he was in the kitchen, he heard a loud sound, like a “tire blast”, which he said was quite loud. He did not see what made the sound.

[31] Mr. Patel said that a short time later, he was preparing an order when a dark-coloured car with four people inside drove up so that the vehicle's rear window aligned with the order window. Two men were in the rear passenger seats. He could not see the driver or the face of the person in the front passenger seat, but he could see the front seat passenger’s hand.

[32] While he was preparing the order, he heard three loud sounds, like “somebody blew a firecracker” near the window. He did not see what caused the sounds but went to the window and heard the rear passenger shout “Stop, stop” to the front seat passenger. He also saw a gun in the front passenger's hand, near the handbrake.

2026 BCSC 2120 (CanLII)

[33] Mr. Patel described the gun as a black handgun/pistol, and that it looked like a “Glock”. Although Mr. Patel had never seen a Glock in real life before, he said that he had seen them in “Counterstrike”, a video game.

[34] Mr. Patel said that when he saw the gun, the front passenger was moving it from his right to left hand and appeared to be rolling up the front passenger-side window of the vehicle—he was holding the gun near the handbrake.

[35] After that, Mr. Patel said the men drove forward in the vehicle, and then they left.

The Burger King Video

[36] The events at the Burger King drive-through were captured on the CCTV camera. That video shows the Uber crawling up and through the drive-through as well as three shots being discharged from a gun protruding through the front passenger window of the Uber.

The Spent Casings

[37] On July 24, 2023, police searched both the area around the Burger King drive-through and Mr. Chhina's vehicle. As a result of that search, the officers located a spent casing on the east end of the drive-through and a spent casing in the hood area of the vehicle near the windshield wipers. The physical casings were not introduced as evidence. Photographs of the casings were.

C. The Shots on the Freeway

[38] After leaving the Burger King, Mr. Chhina drove onto Sea Island Way. According to Mr. Chhina, as he was merging onto the highway “Bobby” took out the firearm, lowered the front passenger side window and appeared to be shooting at the highway signs. Mr. Chhina did not hear any of the shots hit the highway signs. He estimated that ‘Bobby’ took six to seven such shots, but he did not know for sure.

[39] These shots happened in the vicinity of the intersection of Highway 99 and Number 4 Road in Richmond.

2026 BCSC 2120 (CanLII)

[40] Mr. Chhina said that after those shots, the “slider” on the gun locked, he said “like all of the bullets were out of the gun”. Noting that he did not appear to hit any of the highway signs, Mr. Chhina asked ‘Bobby’ why he had missed the shots, to which ‘Bobby’ replied he was a very good shooter and can take really good headshots. They had an enjoyable discussion in which they discussed guns, including about the Glock, and in which Bobby told Mr. Chhina that he had a firearms licence. At some point, Mr. Chhina also understood that Bobby worked for the Port of Vancouver.

[41] After the last shot was fired, Mr. Chhina said that he asked if “Bobby” was done, as he was trying to inquire if he had another magazine or another set of bullets. He said that ‘Bobby’ confirmed he was done firing the gun.

D. At the Destination

[42] When they reached their destination in Surrey, Mr. Chhina asked to see the gun, and ‘Bobby’ obliged. Because he was still concerned for his safety, Mr. Chhina said he checked to make sure the chamber and the magazine were empty. He described the process of “proving” the gun by pointing it in a safe direction, removing the magazine and checking underneath the barrel. He said the gun was "all clear".

[43] The gun felt lighter than Mr. Chhina's own, he surmised because it was probably made of polycarbonate. Other than that difference, Mr. Chhina described the gun as a "regular" gun and that it had all the equipment to fire a bullet.

[44] The day after the incident, Mr. Chhina did some research by looking the gun up online. He said that he found a picture of a Glock, a model 27 gun which he said looked similar to the gun he had seen.

[45] Mr. Chhina reported the incident to the RCMP that day.

[46] The gun was not recovered.

E. The Firearms Expert — Sgt. Russ Miller

[47] As noted, Sgt. Miller was qualified as an expert witness in the examination, identification, and classification of firearms and ammunition.

2026 BCSC 2120 (CanLII)

[48] Although two spent casings were found, Sgt. Miller did not have the benefit of physically examining them. Rather, his examination and opinion were based on photographs. Based on that examination, he concluded that:

a) both casings were .40 “pistol calibre” spent casings;

b) the casings were compatible with a variety of firearms chambered in .40 calibre;

c) both cartridges had been fired by a firearm that had a firing pin that is flat with a semicircular firing pin face, and that the “Glock” series of pistols have such a firing pin; and

d) the casings were consistent with having been discharged in a Glock 27—however, they could also have been fired from many other types of firearms.

[49] Sgt. Miller also considered the possibility that the casings were from a blank cartridge—that is, it did not contain a projectile. While he was unable to reach a conclusion with respect to one of the casings, he concluded that the second casing was not consistent with a blank cartridge.

[50] He was also asked about the possibility that the gun contained a wax bullet or projectile. He could not discount that possibility, but opined that, if so, it would have been discharged from a firearm.

[51] I discuss these opinions in more detail later.

IV. Discussion and Analysis

[52] As noted, two preliminary, but critical issues underlie all four charges on the Indictment:

a) Identity: Was the person in the front passenger seat of Mr. Chhina's Uber Mr. Kehal; and

2026 BCSC 2120 (CanLII)

b) Use or possession of a firearm: If yes, did Mr. Kehal discharge a prohibited or restricted “firearm”, as defined in s 2 of the *Code*?

[53] Before turning to the specific charged offences, I will consider those two issues first, starting with identity.

A. Identity

1. Issue

[54] With no admission regarding identity, the Crown is required to prove beyond a reasonable doubt that the person charged, Mr. Kehal, is the person who committed the alleged offences.

[55] In this case there are two components to identity:

a) That the person depicted in the Uber videos— identified by Mr. Chhina as “Bobby”— is a person who discharged the firearm at the Burger King drive-through and on the Highway 99; and

b) That person is Mr. Kehal.

[56] The Crown must prove each of those components beyond a reasonable doubt.

[57] On the first question, Mr. Chhina's unchallenged evidence is clear and unequivocal: “Bobby”, who was seated in the front passenger seat of the Uber, discharged the gun, both at the Burger King and on the highway.

[58] There is nothing to suggest that Mr. Chhina's evidence is not credible or reliable, particularly on that point. I find that it is.

[59] Mr. Chhina was a considered and extremely articulate witness, who was careful in his evidence, which was, in all respects detailed, thoughtful, and never overstated. Regarding Bobby's identity, Mr. Chhina's unchallenged evidence was that he did not know Bobby, or any of the three men, prior to the incident. Nor did he

2026 BCSC 2120 (CanLII)

appear to harbour any animus towards Bobby, despite the concern he had for his and other's safety as the result of Bobby's conduct. He even said that he enjoyed his conversation with Bobby.

[60] While Mr. Patel did not see the gun being fired, he confirmed that he saw the front seat passenger with a gun in his hand, who also appeared to be rolling up the front passenger-side window after the shots were fired.

[61] Finally, the Burger King video shows an arm/hand holding and discharging a handgun as protruding from the front passenger side window.

[62] There is no doubt, and certainly no reasonable doubt, that the person who Mr. Chhina identified as "Bobby" and who was sitting in the front passenger seat, is the person who discharged the gun.

[63] The remaining question is whether that person is Mr. Kehal.

2. Legal Framework

[64] In proving identity, eyewitness evidence—even when given by an independent, honest, and well-meaning eyewitness—is recognized as being subject to frailties: *R v Nikolovski*, 1996 CanLII 158, [1996] 3 SCR 1197 (SCC) at para 19 [*Nikolovski*].

[65] By contrast, the Supreme Court of Canada has recognized that video evidence is not subject to such frailties, noting:

> [21] The video camera on the other hand is never subject to stress. Through tumultuous events it continues to record accurately and dispassionately all that comes before it. Although silent, it remains a constant, unbiased witness with instant and total recall of all that it observed. The trier of fact may review the evidence of this silent witness as often as desired. The tape may be stopped and studied at a critical juncture.

[66] Accordingly, it has been held that identification by good-quality video footage of sufficient clarity and quality may provide the best evidence of identity and can "by itself be cogent and convincing evidence on the issue of identity", even where it is the only evidence available: *Nikolovski* at para 22.

2026 BCSC 2120 (CanLII)

[67] On that basis, the Supreme Court of Canada concluded that it was open to the trial judge to convict the accused solely on the basis of the trial judge's own comparison of the accused as he appeared in court at the time of trial and videotape evidence which was "of excellent quality and great clarity": *Nikolovski* at para 34.

[68] As this Court has held, the rule in *Nikolovski* also allows the trier of fact to compare good quality video with known photographs of the accused that were taken closer in time to the alleged offence: *R v Deo*, 2022 BCSC 1772 at para 110.

3. Analysis

[69] In this case, the Crown introduced three video clips taken from the video camera in Mr. Chhina's Uber of the evening of the alleged offences. While Mr. Chhina was unable to say whether the timestamps on the video are accurate, he testified those videos accurately depict the individuals in his vehicle, including “Bobby” in the front seat. The three video clips were authenticated at a mid-trial *voir dire*.

[70] Despite their authentication, in his closing submissions, Mr. Kehal suggests that the three video clips may have been manipulated, such that they cannot be relied on to prove identification. Specifically, noting Mr. Chhina's evidence that the camera would have recorded the entirety of the trip from YVR to the passengers' final destination in Surrey, he argues that it can be inferred that the three clips were taken from a longer video. On that basis, he argues that three further inferences are possible:

a) That the Uber video malfunctioned capturing only what he calculates to be approximately five percent of the entire trip;

b) The police received the entirety of the Uber video but lost, deleted or manipulated the video; or

c) Mr. Chhina manipulated the video, deleted most of it and then gave the police the manipulated footage. Urging this third possibility on the Court, Mr. Kehal

2026 BCSC 2120 (CanLII)

> argues that it follows that the same person who possibly manipulated the video clips, Mr. Chhina, also authenticated the video clips.

[71] I do not accept Mr. Kehal's argument. Simply, there is no evidence to support any of the possible inferences of manipulation.

[72] In that regard, two officers gave evidence regarding the Uber videos: Cpl. Reggin testified that she took possession of an SD card from the Uber camera. Because the content included Punjabi speakers, she assigned it to Cst. Mudhar for review. The possibility of manipulation or alteration was not put to either of the officers.

[73] The only relevant evidence before the Court is that of Mr. Chhina. Again, he testified that the three video clips truly and accurately depicted him and the three individuals he picked up from YVR. With no evidentiary foundation to suggest otherwise, and in particular, with no evidence to support the suggestion that the clips may have been manipulated, the argument is no more than mere speculation.

[74] As I concluded on the authenticity *voir dire*, on the basis of the evidence that is before the Court, I am satisfied that the three video clips accurately depict the front seat passenger in the Uber.

[75] Presumably because the Uber video clips were recorded at night, they are somewhat darker in lighting than the “known photographs”. The fact that they were recorded in a moving vehicle has caused fleeting shadows over the front seat passenger's face from time to time. Despite those observations, the Uber video clips are nonetheless of a very high quality, and provide a clear, detailed and plainly discernible image of the front seat passenger's face. The angle of the camera was just above eye level and provided a close-up view, from both the front and a more angled profile. I am satisfied that the Uber clips are of sufficiently high quality to allow for a definitive identification.

[76] The “known photographs”, which depict a partial side and front view of Mr. Kehal, were taken by Cst. Hersi on July 22, 2023, the evening before the alleged

2026 BCSC 2120 (CanLII)

offences occurred. The “known photographs” are of extremely good quality, in terms of clarity, colour and lighting; the features of the individual, that is Mr. Kehal, are very clearly discernible.

[77] I have compared the “known photographs” with the Uber videos. The individuals depicted in each are identical, both in their features and in several more distinct and non-generic ways, including the pattern of their facial hair, their eyebrows, which are square toward the centre of the face and rounded toward the temple, a “nick” in the facial hair under the left nostril, the angle of the top line of the beard and in the two blemishes on the right cheek and one high on the left cheekbone.

[78] I pause here to note that the known photographs were taken and introduced into evidence by a police officer. However, there is nothing in the photographs to indicate the circumstances in which the photographs were taken, nor did the officer give any evidence in that regard. It was only in closing submissions that the accused, through counsel, disclosed that the photograph may have been taken on Mr. Kehal's arrest for some unknown unrelated event. Ironically, and perhaps somewhat naïve-ly, but for the defence disclosure, that was not apparent to me.

[79] In any event, having raised the issue himself, Mr. Kehal refers to the "high risk of unconscious cognitive bias" that may be invoked on viewing arrest photos as discussed in *R v Benn*, 2026 ABCA 14 at para 42 [*Benn*].

[80] To be clear, it seems somewhat “odd” to me, if not untenable, that the defence can raise the circumstances of an arrest, not otherwise in evidence, in order to invalidate or taint any possible comparison for identification purposes.

[81] However, so there is no uncertainty, I have instructed myself on that possible bias, and I am mindful of the possible tainting that a previous arrest may have on identification. I am satisfied that neither is a factor on this analysis.

[82] I am also mindful of the repeated admonitions in the jurisprudence generally regarding frailties of identification evidence and the need to be cautious with it. While

2026 BCSC 2120 (CanLII)

this is not a case of recognition or stranger identification in which those admonitions are generally applied, I nonetheless bear it in mind.

[83] I am also satisfied that this is not a case described in *Benn* at paras 30 and 47 in which the identification evidence was based on "similarities" or, put another way, "no dissimilarities". In this case, the individuals are identical, including in respect of quite distinctive features that I have described. I have no difficulty in concluding that the person depicted in the known photographs, that is, Mr. Kehal, is the same individual in the Uber videos. I am wholly satisfied that this is a case in which the exceptional clarity and quality of the known photographs and the high quality of the Uber videos make that conclusion possible on this evidence alone.

[84] However, while not necessary, in my view, other circumstantial evidence supports that conclusion.

[85] First, Mr. Chhina understood the perpetrator's name to be “Bobby”; the same name listed as Mr. Kehal's middle name on his driver's licence.

[86] Second, from their discussion, Mr. Chhina understood that “Bobby” worked at a port and that he had a firearms licence. In the search of Mr. Kehal's residence on September 14, 2023, officers located what appeared to be a “Port Metro Vancouver” identification card, bearing the name “Ravinder Kehal”, as well as a firearms licence, bearing the name “Ravinder Bobby Kehal”. The photos on both the cards strongly resemble the person in the Uber videos.

[87] Finally, officers also located a pair of running shoes and a black sweatshirt with a distinctive “Harley Davidson Alaska” logo on the left chest and an image of a woman in a parka straddling a motorcycle in the back, both of which match the clothing worn by one of the passengers in the YVR video.

[88] Having compared the Uber video with the known photographs, and given the other evidence supporting identity, I am left with no doubt, and certainly no reasonable doubt, that the person that Mr. Chhina refers to as “Bobby” in the front seat of the Uber is Mr. Kehal.

2026 BCSC 2120 (CanLII)

[89] The Crown has proven beyond a reasonable doubt that:

(a) the person who Mr. Chhina identified as “Bobby” and who was sitting in the front passenger seat is the person who discharged the handgun; and

(b) that person is Mr. Kehal.

B. Was the Weapon Used a “Firearm”?

[90] The second element common to all four charged offences, and which the Crown must prove beyond a reasonable doubt, is that Mr. Kehal was in the possession or use of a “prohibited” or “restricted firearm”.

[91] Pursuant to s 84(1) of the *Code*, a “prohibited firearm” includes any handgun that has a barrel equal to or less than 105 mm in length or is designed or adapted to discharge a 25 or 32 calibre cartridge…. A “restricted firearm” includes any handgun that is not a “prohibited firearm”. As such, all handguns are either prohibited or restricted firearms.

[92] Thus, the only question is whether the Crown has proven that the item that Mr. Kehal discharged was indeed a "firearm".

1. Legal Framework

[93] Section 2 of the *Code* defines “firearm” to mean:

> … a barrelled weapon from which any shot, bullet or other projectile can be discharged and that is capable of causing serious bodily injury or death to a person, and includes any frame or receiver of such a barrelled weapon and anything that can be adapted for use as a firearm.
>
> [Emphasis added.]

[94] On this analysis I note, once again, that the alleged firearm was not recovered. However, that fact, by itself, does not preclude a finding that it was a “firearm”. I must consider whether, on the totality of the evidence that is available, the Crown has proven, beyond a reasonable doubt, that the object is a “firearm” as defined in s 2.

2026 BCSC 2120 (CanLII)

[95] In *R v Wills*, 2014 ONCA 178, the accused was convicted for robbery with a firearm. On appeal, he argued that "as the alleged firearm had not been fired during the robbery and as police had not recovered the alleged firearm, the Crown could not prove beyond a reasonable doubt that the alleged firearm was, in fact, a firearm", as opposed to an imitation. The Court rejected that argument, holding that "the normal rules of proof" apply such that:

> [50] … The Crown may prove that the alleged firearm fell within the definition by inference from the totality of the circumstances, even if the alleged firearm was not fired or recovered.

[96] This Court came to the same conclusion in *R v Neil*, 2019 BCSC 1153 at para 106 [*Neil*], in which it confirmed that "proof that a weapon is capable of being fired can be made by direct evidence or by inference from other evidence. In coming to that conclusion, the Court relied, in part, on the decision in *R v Gordon*, 2017 ONCA 436 at para 31 [*Gordon*]. In *Gordon*, the Court held that a trial judge could infer that a gun used in a robbery was a real gun capable of firing bullets based on the fact that the victim thought it was real and the robbers acted as if it was real. The Court in *Neil* summarized:

> [107] … The Court of Appeal [in *Gordon*] held that the trier of fact is entitled, although not clearly obligated, to take a robber at its word when, in the course of the robbery and to subdue the victims, the robber points what appears to be a gun at the victim and threatened to shoot them. It is a fair inference that the threat is not an idle one and that the robber has means at hand to make good on the threat.

[97] In *R v Charbonneau*, 2004 CanLII 9527, 61 WCB (2d) 301 (ONCA) [*Charbonneau*], the victim was equivocal as to whether or not the gun was fake or real and had no prior experience with firearms. Nevertheless, the Court of Appeal held the conviction was not unreasonable. It stated:

> [3] It is true that the complainant was equivocal on the question of whether she could tell for certain whether the gun was real or fake. However, the trial judge also had before him the evidence of the complainant's clear belief that it was a gun, her description of the object, the appellant's conduct in relation to it and his use of it together with the appellant's threat to shoot while holding it. Moreover, there was a complete absence of evidence to the contrary. Taken together, this is a sufficient foundation for the trial judge's finding that it was a handgun.

2026 BCSC 2120 (CanLII)

See also *R v Cater*, 2014 NSCA 74 at para 46.

2. Analysis

[98] I start with the evidence of Mr. Patel and Mr. Chhina, both of whom observed the alleged firearm in Mr. Kehal's hand around and at the time of the alleged offences. From his position at the drive-through window, Mr. Patel saw what he described as a "gun" and, more specifically, as a black-coloured pistol. While he had not seen a gun in real life before, he had an understanding of guns from video games. On that basis, Mr. Patel said it was more like a “Glock” or a “USB” which is a smaller pistol gun.

[99] The evidence of Mr. Chhina, who is familiar with guns, observed the gun in close proximity, and later had the opportunity to handle the gun, is more informative. While Mr. Chhina was not able to identify the make or calibre when he first saw it at YVR, his initial conclusion that it was a “handgun” which he described as "very similar to any firearm that is available in a number of calibres".

[100] As noted, Mr. Chhina confirmed that the gun he saw was similar to the photograph of a black Glock 27 gun shown to him at trial with two differences: the gun he saw was “military green”, not black, and the gun he saw did not have an extended magazine as did the gun in the photograph. Mr. Chhina recognized the “Glock” logo on the “slider” of the gun in the photograph. His ability to provide the details as he did is compelling.

[101] Notably, Mr. Chhina's evidence went significantly further than his observation of the gun. He also observed at least one “bullet” in the gun's magazine prior to the gun being discharged. He saw and heard the gun being discharged. The spent casing he saw fall into his windshield after the second shot was recovered. His subsequent hands-on inspection revealed that no bullets remained in the gun or the magazine.

[102] Indeed Mr. Chhina's conduct for the entirety of the encounter was consistent with his perception that the gun was “real” and posed a real risk to his and other's

2026 BCSC 2120 (CanLII)

safety: on first seeing the gun, he was attentive to the location of Mr. Kehal's trigger finger and encouraged him to take the finger away from the trigger guard; after the gun was discharged, he repeatedly admonished Mr. Kehal to put the gun away and to not discharge it, he said, because it was a populated area, and someone could get hit. Mr. Chhina subsequently confirmed that Mr. Kehal did not have another magazine or bullets and that he was “done” shooting. Finally, upon reaching their destination, Mr. Chhina felt the need, and took steps to inspect the gun to satisfy himself that was the case.

[103] Mr. Chhina's familiarity and clear knowledge of handguns and his proximity with the alleged firearm puts him in a unique and significantly better position than the witness in *Charbonneau*, for example, who had no prior experience with firearms and was unable to say with certainty if the gun was real or fake.

[104] Indeed, in my view, with the possible exception of *Neil* in which the evidence was obtained from the gunowner himself, Mr. Chhina's evidence is considerably stronger than the evidence in any of the cases that I have cited above. Given his familiarity with guns, his ability to observe the gun, his physical proximity when the gun was discharged, and his hands-on inspection, together with my favourable assessment of his credibility, make Mr. Chhina's evidence particularly compelling. I afford it considerable weight on this analysis.

[105] Mr. Chhina's evidence is well corroborated by the Burger King video which shows what appears to be a gun being fired from the front passenger side window of the Uber, a projectile of some sort emerging from the barrel, and a further object falling from the gun. The video also discloses what appears to be “recoil” when the gun is fired, “muzzle flash” emitting from the barrel of the gun, and small amounts of smoke emerging from the muzzle area of the gun as it was fired, all of which were described by Sgt. Miller as being indicative of gunfire.

[106] Further, Mr. Chhina testified Mr. Kehal told him that the firearm was a .40 calibre Glock made gun, a description that I accept connotes a “real firearm”. I recognize that statement was not made as a threat, as it was in *Gordon*. Indeed, it

2026 BCSC 2120 (CanLII)

was part of a discussion that Mr. Chhina enjoyed. Despite that difference, I see no reason why Mr. Chhina was not entitled to take Mr. Kehal at his word.

[107] That conclusion is reinforced by the fact that Mr. Kehal did not clarify the gun was not "real" when the opportunity to do so arose, for example, when Mr. Chhina and the rear-seat passengers raised concerns that the shot might hit somebody. One would have expected him to do so.

[108] Finally, because the spent casings had not expanded, Sgt. Miller was able to presume that they were discharged from a firearm, which he concluded was consistent with, even if not exclusive to, a Glock-pattern firearm.

[109] In my view, in its totality, all of the above is compelling evidence that Mr. Kehal discharged a s 2 firearm.

[110] However, that does not necessarily end the analysis. Mr. Kehal argues that none of the above evidence precludes the possibility either that: (a) the gun was a "starter pistol" that it contained blank cartridges, or (b) that it was loaded with wax, not lead, bullets. In either case, Mr. Kehal argues that the handgun does not come within the s 2 definition of "firearm".

[111] I will discuss each of those possibilities in turn.

Was the Gun a Starter Pistol?

[112] It is undisputed that, unlike a "firearm", a starter pistol does not contain a projectile. Accordingly, the Crown does not dispute that if a "starter pistol", the handgun does not fall within the s 2 definition of "firearm". There is also no dispute that the Crown bears the onus of proving beyond a reasonable doubt that the gun is not a starter pistol.

[113] In that regard, I accept, as Mr. Kehal argues, that many of the characteristics, the Crown argues are consistent with a gun being a "firearm", are also common to starter pistols. As Mr. Kehal argues: a starter pistol would look and sound like a real gun, it would load its rounds in the chamber like a real gun, and a starter pistol would

2026 BCSC 2120 (CanLII)

fire like a real gun. While Sgt. Miller suggested that the recoil created by the discharge of a blank cartridge would be “significantly less” than it would be for “real” ammunition, he did not say there would be no recoil for a starter pistol.

[114] Sgt. Miller also confirmed that “Glock”—the manufacturer Mr. Patel and Mr. Chhina associated with the subject gun—also manufactures a starter pistol, which he concluded would have the same firing pin as the Glock firearm.

[115] On that basis, I accept, as Mr. Kehal argues, that there are significant similarities between a “real” gun and a starter pistol, which could likely make it difficult to distinguish between the two on the basis of the exterior of the gun itself. However, as Sgt. Miller explains, the similarities do not extend to the cartridges used in each.

[116] Sgt. Miller explained that, like a real gun, the casing for a blank cartridge is loaded with primer and powder. However, as noted, the blank casing does not contain a projectile.

[117] Sgt. Miller testified that there are two types of blank casings, each of which differs from a standard one: (a) one that is crimped and sealed on one end; or (b) one that is not crimped, but is longer than normal casing, and has a plastic wad inserted to contain powder, and the leading edge of which is rounded over. He referred to that as the PAK round.

[118] Sgt. Miller provided an opinion regarding the nature of the spent casings found on the hood of Mr. Chhina's vehicle and in the Burger King drive-through. That opinion was based on his examination of photographs of the spent casings and not on the physical casings themselves.

[119] On cross-examination, Sgt. Miller was referred to a “stock photograph” of an undischarged cartridge. He agreed that, rather than relying on the stock photograph, he would prefer to physically examine the cartridge to determine if it was a live round, a replica, or a blank round. He noted that without actual testing, he would not

2026 BCSC 2120 (CanLII)

know "if it's an inert round or somehow made to be a prop". I take that to mean he could not know if it was capable of being discharged.

[120] He made no such qualifications regarding his ability to determine the nature of the spent casings that were discharged from the photographs in this case, nor was he asked about his ability to do so. Rather, based on the photographs in this case, referring to the absence of the characteristics associated with a blank cartridge—again, being a cramped front end or the round over and plastic wad of a PAK round—he concluded that the casing found on the hood of the vehicle was not consistent with a blank cartridge that would be chambered in a starter pistol. His evidence was unqualified and unequivocal.

[121] Given the damage to the front end of the second casing—where the characteristics of a blank case are most observable—he was unable to determine if it was consistent with a blank cartridge.

[122] Sgt. Miller's opinion based on the photographs was not the only evidence regarding the possibility that the gun may have been a starter pistol. The calibre of the ammunition—that is, the diameter of the projectile contained in the cartridge—was also relevant.

[123] Sgt. Miller confirmed that both the spent casings he examined were compatible with a variety of firearms chambered in .40 calibre, meaning they would contain a point-four inch—or approximately 10 millimetre—projectile. Sgt. Miller was not aware of any starter pistol chambered in .40 calibre. The only starter pistols of which he was aware are chambered in eight-millimetre or nine-millimetre PAK rounds, or for a projectile that is eight or nine millimetres in diameter. Given its size, a .40 calibre round, such as the ones in this case, is not compatible with a nine millimetre or eight millimetre starter pistol.

[124] As the defence notes, Sgt. Miller did acknowledge that a .40 calibre blank ammunition exists. However, he testified that not only would it be crimped, but it

2026 BCSC 2120 (CanLII)

would also be fired from a modified .40 calibre firearm, not from an eight millimetre or nine millimetre calibre starter pistol.

[125] I have also considered other evidence that, Mr. Kehal says, supports a possibility that the gun was a starter pistol. First, he argues the fact that Mr. Chhina did not hear the impact of a projectile against the highway signs is consistent with the possibility that the gun contained blank cartridges. He argues that possibility undercuts the Crown's contention, and burden, that the gun was a “firearm”.

[126] However, the absence of any impact is also consistent with Mr. Kehal simply “missing the mark” as Mr. Chhina surmised. Indeed, given that the vehicle was travelling at highway speed when the shots were taken, the possibility that Mr. Kehal simply missed is easily within the bounds of reason. In my view, this evidence is insufficient to raise reasonable doubt.

[127] The same is true of Sgt. Miller's evidence that the shells are expelled from the right side of a Glock 27 gun. Mr. Kehal says that the shell casing landing on the hood of a vehicle that is to the left of the front passenger seat raised the possibility that the gun may not have been a Glock 27 gun.

[128] However, Mr. Kehal's argument presupposes that the gun was held at a 90-degree angle straight out from the vehicle, so that the gun was facing forward. The Burger King video reveals that it was not. Rather, for the second shot, after which the casing landed on the vehicle, it appears that the gun was held at an angle, so that the right side was angled toward the vehicle. That being the case, while far from definitive, the fact that the casing landed on the vehicle is consistent with a gun being a Glock 27. In any event, it is insufficient to raise reasonable doubt in that regard.

[129] Even in light of the evidence raised by Mr. Kehal, on the totality of the evidence, including Sgt. Miller's evidence that:

(a) the undamaged spent casing did not have the characteristics of a blank cartridge;

2026 BCSC 2120 (CanLII)

(b) the recovered casings which were compatible with firearms chambered in .40 calibre were too large for the starter pistols which are chambered in eight or nine millimetre rounds; and

(c) the .40 calibre blank ammunition would be crimped and fired from a modified .40 calibre firearm,

there is no reasonable doubt that the gun was not a starter pistol.

[130] I now turn to the possibility that the gun contained wax bullets.

Was the Gun Loaded with Wax, Not Lead Bullets?

[131] As a starting point, there is no evidence to suggest that it did. At most, Sgt. Miller testified that wax bullets exist and that he could not eliminate the possibility that the spent casings contained wax projectiles. However, the evidence suggests they did not.

[132] First, Mr. Chhina testified to seeing a “bullet”, which he described as made of brass with led, not wax, in the front. It was not suggested to him that the projectile was, in fact, a wax bullet.

[133] Second, Sgt. Miller testified that, because they do not have the mass of lead, wax bullets generate significant less recoil than traditional rounds and do not generate sufficient recall for a recoil operated firearm, such as the Glock-pattern firearm. He explained that without that recoil, it would be difficult for the firearm to function.

[134] No such difficulty is apparent in this case. To the contrary, Mr. Chhina's evidence is that the gun was fired until empty, and the Burger King video shows the gun being discharged twice in quick succession without apparent difficulty. Both militate against the suggestion that the bullets were wax bullets.

[135] Ultimately, and more fundamentally, a finding that the gun contained wax bullets is irrelevant to the issue of whether the gun was a firearm. As Sgt. Miller

2026 BCSC 2120 (CanLII)

testified, because they are discharged, wax bullets cannot be fired from a starter pistol; they must be fired from a "real" firearm. Accordingly, whether the firearm was or may have been loaded with wax bullets does not support the assertion that the gun was not a firearm as defined in s 2 of the *Code*. In fact, it suggests that it was.

Other Possible Alternates to Firearm

[136] Finally, Mr. Kehal refers to decisions that have relied on s 84(3) of the *Code* to determine whether a gun was or was not a s 2 "firearm". In my view, that section and those decisions have no application to this case.

[137] Section 84(3) of the *Code* provides an exemption for certain specified offences, such that certain devices that would otherwise constitute "firearms" within the meaning of the *Criminal Code* are deemed not to be firearms for the purposes of specified offences, including possession offences under s 91 and 94. Those exemptions include under s. 84(3)(d), for example:

a) "where it is proved that the weapon is not designed or adapted to discharge…a shot, bullet, or other projectile at a muzzle velocity exceeding 152.4 metres per second or a muzzle energy exceeding 5.7 joules" (s. 84(3)(d)(i)), or

b) "where it is proved that the weapon is not designed or adapted to discharge… a shot, bullet or other projectile that is designed to attain a velocity exceeding [the same measures]" (s. 84(3)(d)(ii)).

[138] As I understand it, Mr. Kehal argues that because the Crown is unable to prove, beyond a reasonable doubt, that the gun in this case did not come within those categories, it has failed to discharge the burden on it. As I said, I do not accept that argument.

[139] As an exemption, s 84(3) is designed to allow, but does not require, an accused to prove that what appears to be a firearm is not. The words "where it is proved" indicates that in those cases where the section applies, the onus is to

2026 BCSC 2120 (CanLII)

positively prove the exemption, not that the Crown must prove that the exemption does not exist. In this case, where the gun has not been recovered, such proof is not available and cannot be available. The section, and the cases that refer to it, simply do not apply.

[140] To be clear, this is not to suggest that Mr. Kehal has any obligation to prove anything. Mr. Kehal does not have to prove that the handgun was a starter pistol, or that it contained wax bullets, or, in the circumstances of this case, that it came within the exemptions set out in s 84(3). I am mindful that, on this analysis, the burden remains on the Crown to prove, beyond a reasonable doubt, that the gun was a "firearm" as set out in s 2 of the *Code*.

[141] As the jurisprudence that I have referred to confirms, on that analysis, the Crown may prove that the gun meets the definition of a firearm on the totality of the evidence, including the observations and perceptions of the witnesses, the circumstances of the alleged offence, and any words uttered by and the conduct of the accused.

3. Conclusion re "Firearm"

[142] On the totality of the evidence in this case as I have set out above, I am satisfied that the Crown has proven beyond a reasonable doubt that the handgun is a "firearm" as defined in s 2 of the *Code*. As noted, by definition, under s 84(1) of the *Code*, it is a prohibited or restricted firearm.

[143] I now turn to the specific offences alleged.

C. Specific Offences Alleged

Count 1: Possession of a loaded restricted firearm, without holding authorization permitting possession or a licence and a registration certificate contrary to s. 95(1) of the Code

[144] Section 95(1) of the *Code* provides that, subject to subsection (3), every person commits an offence who possesses a loaded prohibited firearm or restricted

2026 BCSC 2120 (CanLII)

firearm, without being the holder of an authorization or a licence under which the person may possess the firearm and the registration certificate.

[145] The Crown must prove each of the three elements beyond a reasonable doubt: (1) that Mr. Kehal possessed a prohibited or restricted firearm, (2) that the prohibited or restricted firearm was loaded; and (3) Mr. Kehal is not the holder of either an authorization, licence, or registration certificate or the firearm, which in this case, would be issued under the *Firearms Act*, SC 1995, c 39: R *v Nur,* 2013 ONCA 677 at paras 46–48, aff'd 2015 SCC 15.

[146] The *mens rea* element requires the Crown to prove that the accused knew or was reckless with respect to the characteristics of the weapon that made it a prohibited or restricted firearm and knew, or was wilfully blind, that the firearm was loaded: *R v Eastgaard*, 2011 ABCA 152, aff'd 2012 SCC 11 at para 8. The Crown is not required to prove that the accused was aware of the firearm's prohibited or restricted status, nor that his possession was unauthorized: *R v MacDonald*, 2014 SCC 3.

[147] As set out above, I have concluded that the gun is a prohibited or restricted firearm. As I discuss below, Mr. Kehal had a possession and acquisition licence with a firearm. Having taken the steps required to obtain that licence, I am satisfied that Mr. Kehal was aware of its status as a prohibited or restricted firearm.

[148] I am also satisfied that Mr. Kehal discharged the firearm three times at the Burger King and a further six or seven times on the Highway 99. Prior to his doing so, Mr. Chhina saw a bullet and a magazine.

[149] I am satisfied, beyond a reasonable doubt, that Mr. Kehal was in possession of a prohibited or restricted firearm and that the firearm was loaded.

[150] Finally, regarding the final element of this offence, as noted, at the time of the offence, Mr. Kehal did have a possession and acquisition licence which permitted him to possess, and acquire, restricted and non-restricted firearms.

2026 BCSC 2120 (CanLII)

[151] However, based on the uncontradicted affidavits of:

a) Maria Di Tiero-Myers, Senior Registration Analyst with the Canadian Firearms Registry of the RCMP, and

b) John McRoberts, Firearm Officer for the Province of British Columbia,

I am satisfied that he did not have any registration certificate for the restricted firearms, nor had he been issued any authorization permitting him to transport or carry the firearm.

[152] The Crown has proven that Mr. Kehal's possession of a loaded handgun was contrary to s 95(1).

Count 2*: *Intentional discharge of a prohibited or restricted firearm, knowing or being reckless as to the life and safety of others, contrary to s 244.2(1)(b)

[153] Section 244.2(1)(b) of the *Code* provides that every person commits an offence who “intentionally discharges a firearm while being reckless as to the life or safety of another person”.

[154] To obtain a conviction under this section, the Crown must prove the following elements beyond a reasonable doubt:

(a) Mr. Kehal discharged a firearm;

(b) the discharge was intentional; and

(c) in discharging the firearm, Mr. Kehal was reckless as to the life or safety of other persons.

[155] Again, I am satisfied that the first element has been proven beyond a reasonable doubt.

[156] Regarding intention, it is notable that the gun was discharged in two distinct locations—at the Burger King and on the highway—and more than once at each of

2026 BCSC 2120 (CanLII)

those locations. Although one, or perhaps even two shots, may have been accidental, it defies logic to suggest that up to nine shots were all accidental.

[157] Moreover, Mr. Chhina describes Mr. Kehal as being “jovial” and laughing after the shots were discharged at the Burger King. There is no suggestion that he advised Mr. Chhina or the other two passengers that the shots were accidents when he was admonished to stop.

[158] On the highway, Mr. Kehal told Mr. Chhina he was going to hit the city or other highway signs, also indicating a clear intention to discharge the firearm.

[159] There is no doubt that Mr. Kehal intended to discharge the gun as he did.

[160] The final element requires proof that Mr. Kehal was reckless as to the life or safety of other persons.

[161] Proof of recklessness is a subjective test. As the Court concluded in *R v Sansregret*, 1985 CanLII 79, [1985] 1 SCR 570 (SCC) and as more recently re-stated in *R v Barca,* 2022 MBCA 80 at para 120 [*Barca*], in the context of this offence: Recklessness requires that “the Crown must prove that the accused knew that there was a risk that his conduct (intentionally discharging the firearm in the circumstances known to him) could bring about the prohibited result (danger to the life or safety of another person) and he proceeded despite that risk”.

[162] As the Court summarizes in *Barca*, there were two situations in which a finding of “recklessness” will require the accused's knowledge that the conduct creates a “substantial and unjustified risk”, that is, where the definition of the offence requires it and where the conduct at issue is “lawful day-to-day behaviour”: *Barca* at para 96.

[163] As neither of those situations apply to this case, the *mens rea* of recklessness is made out on proof that Mr. Kehal was aware of *any* risk that his conduct *could* produce danger to the life or safety of another person.

2026 BCSC 2120 (CanLII)

[164] The subjective awareness of risk may be proven through direct evidence and/or it may be inferred from conduct: *R v Hundal*, 1993 CanLII 120, [1993] 1 SCR 867 (SCC) at paras 16–17.

[165] In this case, Cpl. Reggin and Mr. Patel were familiar with the area around the Burger King. Collectively, they testified that it is located in an “urban residential area” within a strip mall that also includes numerous restaurants and stores, including a drive-through Starbucks, a liquor store, a KFC, a “Foodie World” grocery store, and near a SkyTrain station. Significantly, as the Burger King video shows, there was an occupied vehicle directly behind Mr. Chhina's Uber in the drive-through when the second and third shots were discharged.

[166] To the south of the Burger King is Sea Island Way, a major four-lane road. The Burger King video shows a constant stream of vehicles on that roadway when the shots were discharged. Beyond the roadway, there are a number of high-rise apartment buildings. Across Sea Island Way is a densely populated area, with multiple high rise residential buildings and several parks in the vicinity.

[167] To the west is No. 3 Road which, like Sea Island Way, is also a major roadway. A skytrain (the Canada Line) runs along No. 3 Road, with stations to the north and south of the Burger King.

[168] Highway 99, where Mr. Kehal discharged the second group of shots, is a major highway, running north-south through Richmond. The area to the southwest, the direction to which Mr. Kehal would have been shooting, is a residential area containing both parks and schools.

[169] I accept, as the Crown argues, that it would have been obvious to any person, and that it must have been obvious to Mr. Kehal, that discharging a firearm in these populated areas posed a risk to the lives and safety of others. Even without intending to harm anyone, discharging a firearm in either the area of the Burger King or on the highway, created a clear and obvious risk of harm.

2026 BCSC 2120 (CanLII)

[170] That the risk was obvious is highlighted by the fact that Mr. Chhina and other passengers responded to Mr. Kehal's actions with alarm, repeatedly telling him to stop. Despite this, Mr. Kehal proceeded to discharge the gun twice more in the Burger King drive-through and then to “empty the gun” whilst driving down the Highway 99.

[171] Even if oblivious to the risk of the first discharge, that Mr. Kehal continued to discharge the gun despite the admonitions of the others demonstrates that he was aware he was engaged in a dangerous and unacceptable course of conduct but nevertheless elected to proceed.

[172] I am satisfied, beyond a reasonable doubt, that, in discharging the firearm, Mr. Kehal was reckless as to the life and safety of other persons.

Count 3: Careless use, carrying or handling of a firearm contrary to s 86(1)

[173] Section 86(1) of the *Code* provides that every person commits an offence who, without lawful excuse, "uses, carries [or] handles" a firearm in "a careless manner" or "without reasonable precautions for the safety of other persons".

[174] The *mens rea* for the offence is objective. The Crown must prove that the accused's conduct constituted a marked departure from the standard of care of a reasonable person in the circumstances: *R v Penner*, 2019 BCCA 76 at para 30.

[175] A “marked departure”, in turn, requires a heightened fault requirement relative to civil liability; simple carelessness is not enough: *R v Roy*, 2012 SCC 26 at paras 37–38 [*Roy*].

[176] The modified objective standard means that, while the reasonable person is placed in the accused's circumstances, evidence of the accused's personal attributes is irrelevant unless it goes to the accused's inability to appreciate or to avoid the risk: *Roy* at para 38.

2026 BCSC 2120 (CanLII)

[177] For the same reasons I have concluded that Mr. Kehal was reckless as to the life or safety of other persons in discharging the firearms, I easily conclude that the same conduct was objectively careless and conducted without reasonable precaution for the safety of other persons.

Count 4: Possession of a restricted firearm without a license or registration certificate contrary to s 91(1)

[178] Section 91(1) provides that, subject to subsection (4), every person commits an offence who possesses a prohibited or restricted firearm without being the holder of (a) a licence under which the person may possess it and (b) in the case of a prohibited firearm or a restricted firearm, a registration certificate for it.

[179] In addition to possession, for a conviction under this section, the Crown must prove the accused had *knowledge* of the existence and nature of the firearm and had control of the firearm: *R v Anderson*, 1995 CanLII 1338, [1995] BCJ No 2655 (QL) (BCCA) at paras 13–14.

[180] As I have previously concluded, the Crown has proven, beyond a reasonable doubt, all of the elements of this offence.

V. Conclusion

[181] Mr. Kehal, please stand.

[182] In conclusion:

a) In respect of Count 1 on the Indictment: possession of a loaded restricted firearm, without holding an authorization permitting possession or a licence and a registration certificate, contrary to s 95(1) of the *Code*, I find you guilty;

b) In respect of Count 2 on the Indictment: intentional discharge of a prohibited or restricted firearm, knowing or being reckless as to the life and safety of others, contrary to s 244.2(1)(b), I find you guilty;

2026 BCSC 2120 (CanLII)

c) In respect of Count 3 on the Indictment: careless use, carrying or handling of a firearm contrary to s 86(1), I find you guilty; and

d) In respect of Count 4 on the Indictment: possession of a restricted firearm without a licence or registration certificate contrary to s 91(1), I find you guilty.

[183] You may be seated. Thank you.

[184] CNSL D. MELVILLE: Justice, we are going to ask for a presentence report with a risk assessment as part of the psychological risk assessment. I believe we are looking at anywhere from 10 to 12 weeks on an out-of-custody basis.

[185] THE COURT: Okay. Thank you.

[186] CNSL S. GILLESPIE: Yes, Justice. And I wonder, Justice, if the Court would like to address the application of the rule in *R v Kienapple*, 1974 CanLII 14, [1975] 1 SCR 729 (SCC) at this stage with regards to the careless discharge and the reckless discharge?

[187] THE COURT: My thought is that we would address that at the sentencing stage.

[188] CNSL D. MELVILLE: That would be preferable, Justice.

[189] CNSL S. GILLESPIE: Yes, Justice.

[190] THE COURT: Thank you.

"Ahmad J."

2026 BCSC 2120 (CanLII)