

Citation: ☀ R. v. Burns  
2025 BCPC 231

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File No: 19165-1  
Registry: Sechelt

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA**

**REX**

v.

**PATRICK BURNS**

**ORAL REASONS FOR JUDGMENT  
OF THE  
HONOURABLE JUDGE S. MERRICK**

Counsel for the Crown:  
Counsel for the Accused:  
Place of Hearing:  
Dates of Hearing:  
Date of Judgment:

T. McKelvey  
S. Janicki  
Sechelt, B.C.  
December 10 & 11, 2025  
Devember 19, 2025

## **Introduction**

[1] Patrick Burns is charged with assaulting Debra Shields with a baseball bat. This is alleged to have occurred July 20, 2024, and is contrary to s. 267(a) of the *Criminal Code*. Ms. Shields has known Mr. Burns for approximately 18 years. She has known Trevor Boule for approximately nine years.

[2] In July of 2024, Ms. Shields went to Fort St. John for 17 days. While she was away, Mr. Boule was taking care of her house and her pets. When Ms. Shields returned on July 17, 2024 she discovered that Mr. Boule had taken her pets to Mr. Burns' house. That same day, Mr. Boule's truck was vandalized.

[3] A day after Ms. Shields returned, police went to Mr. Burns' home because he reported to police that Ms. Shields was at his home, in the lane behind his home, looking at items. When Constable McIntosh arrived, he saw Ms. Shields moving something to her vehicle. Ms. Shields was loud, and she was warned that she could be arrested for causing a disturbance. Constable McIntosh, based on Ms. Shields' behaviour, considered apprehending Ms. Shields under the *Mental Health Act*. Ultimately, he determined the threshold had not been met.

[4] On July 20, 2024, Mr. Boule was walking down the street when he was approached by Ms. Shields, who was in her vehicle. They talked. Mr. Boule told Ms. Shields that his truck had been vandalized. In response, Ms. Shields said she would take a look at it. It was parked in front of Mr. Burns' residence. Mr. Boule told Ms. Shields to "leave his f'ing truck alone". Undeterred by this, Ms. Shields went to inspect Mr. Boule's truck. She opened the hood of the truck and, using her phone, she took a picture of the engine. As she was doing this, she says Mr. Burns struck her on the elbow and back with a baseball bat.

[5] In addition to Ms. Shields, Mr. Boule, Constable McIntosh, Mr. Burns' neighbour Justin McKimm, and Constable Dherdi testified. Mr. Burns did not testify.

[6] This case raises issues of credibility and reliability and involves the application of the presumption of innocence. This presumption, enshrined in the *Canadian Charter of*

*Rights and Freedoms* provides that a person accused of an offence cannot be convicted of the offence unless each essential element of the offence has been proven beyond a reasonable doubt.

### **Position of the Crown**

[7] Crown counsel submits that, despite Ms. Shields being "verbose" while testifying and "having a flair for the dramatic", her testimony should be accepted. Crown counsel further submits that much of Ms. Shields' testimony is corroborated by the other witnesses.

[8] In response to defence counsel's submission that Mr. Burns was acting in defence of property in accordance with s. 35 of the *Criminal Code*, Crown counsel says Mr. Burns' response was not reasonable in the circumstances. Therefore, Crown counsel submits that the charge has been proven beyond a reasonable doubt.

### **Position of the defence**

[9] Defence counsel submits that, due to the significant inconsistencies in Ms. Shields' testimony, the Crown has failed to prove beyond a reasonable doubt that Mr. Burns struck Ms. Shields with a bat.

[10] In the alternative, defence counsel submits that Mr. Burns was defending property when he struck Ms. Shields. Defence counsel emphasizes that Mr. Burns struck Ms. Shields once, in response to her opening the hood of a vehicle that had been vandalized earlier in the week. Defence counsel says that Mr. Burns' actions were reasonable in the circumstances. Defence counsel, therefore, submits that the Crown has failed to prove the case against Mr. Burns beyond a reasonable doubt.

### **The Testimony of Debra Shields**

[11] Ms. Shields says she has known Mr. Burns for approximately 18 years and Mr. Boule for approximately eight years. She says that she and Mr. Boule were a couple for approximately seven months, and then he moved into her basement.

[12] In early July 2024, Ms. Shields says she went to Fort St. John for 17 days. While she was away, she says Mr. Boule looked after her house and pets. When she returned, she discovered that Mr. Boule had taken her pets to Mr. Burns' house.

[13] On July 18, 2024, in the early morning hours, Ms. Shields was in the laneway, she says, behind Mr. Burns' home. She says police arrived and told her to go home. She says she complied with that request.

[14] On July 20, 2024, Ms. Shields says she was driving to Mr. Burns' house. Enroute, she saw Mr. Boule. She says they talked, and this is when she learned Mr. Boule's truck had been vandalized. She says she learned that Mr. Boule's truck was parked in front of Mr. Burns' home. Ms. Shields says that she did not believe that Mr. Boule's truck had been vandalized, so she drove to Mr. Burns' home and parked her vehicle in front of Mr. Boule's truck.

[15] She says she opened the hood of the truck and was taking a picture when Mr. Burns "flew through the bushes like a superhero four feet high in the air, his eyes like daggers". Ms. Shields says that Mr. Burns wound up and struck her on the elbow and back, causing her to make a full turn. She says that the bat also hit her truck. Ms. Shields says she then fled and collapsed to the ground when she saw police arriving.

[16] In cross-examination, Ms. Shields says the following: She says that Mr. Boule gave her permission to look at his truck. Ms. Shields also says that she did not tell the 9-1-1 operator that she had to get into Mr. Boule's truck to see what was in there. Ms. Shields admitted that she was at Mr. Burns' home the day before, in the early morning hours. Ms. Shields says she was not yelling and screaming and that, when police arrived, they swore at her.

### **The Testimony of Trevor Boule**

[17] Mr. Boule says that while Ms. Shields was in Fort St. John he looked after her house and pets. Mr. Boule says Ms. Shields returned from Fort St. John July 17, 2024, and that evening his truck was vandalized. Mr. Boule says on July 20, 2024, he was on the sidewalk when Ms. Shields came by in her vehicle. He says he told her that his

truck had been vandalized. Mr. Boule says that Ms. Shields said that she would have a look, to which he replied, "Leave my f'ing truck alone". At this point, Mr. Boule says he decided to go to Mr. Burns' home. When he got there, Mr. Boule says there was a huge kafuffle.

[18] In cross-examination, Mr. Boule said the following: Mr. Boule says that he and Ms. Shields were boyfriend and girlfriend for approximately six years. He says he moved the pets to Mr. Burns' house for their well-being. Mr. Boule says he did not see Ms. Shields get hit with the bat, nor did he recall seeing a bat.

### **The Testimony of Justin McKimm**

[19] Mr. McKimm says that he lives at [omitted for publication], which is across the street from Mr. Burns' residence. He says on July 20, 2024, he was watching a game and that he heard a scream. Mr. McKimm says that he saw his neighbour, Mr. Burns, with a bat and that Mr. Burns was chasing somebody. He says that he went outside, and that he could see Mr. Burns in the street, and that Ms. Shields had crossed the street. Mr. McKimm says that Mr. Burns had a bat at that point, went back to his house, and then returned to the street without a bat. He says that Mr. Burns was holding the bat in the swing position. Mr. McKimm says he was across the street from Mr. Burns, between 30 and 50 feet away.

[20] In cross-examination, Mr. McKimm said the following: He says that his house is almost directly across the street from Mr. Burns' house, but the houses do not quite line up. He says he saw Mr. Burns with a bat and a woman running and screaming. That was the first thing he saw. Mr. McKimm says that he did not see Mr. Burns strike Ms. Shields and that when he saw Mr. Burns and Ms. Shields, they were 20 feet apart.

### **The Testimony of Constable Dherdi**

[21] She says she was dispatched at 8:27 p.m. on July 20, 2024, and arrived at the scene at approximately 8:30 p.m. When she arrived, she says she saw a large crowd. Constable Dherdi says she saw Ms. Shields holding her arm and screaming that Pat had hit her. Constable Dherdi says she saw a scratch on Ms. Shields' arm close to the

elbow. Constable Dherdi says that she arrested Mr. Burns. She says she was the officer who took pictures of Ms. Shields.

[22] In cross-examination, Constable Dherdi says that: Her recollection is that Ms. Shields did not say how she obtained the scratch to her elbow. Constable Dherdi's police notes were put to her. She made a note that it was not clear if Ms. Shields obtained the injury because of Mr. Burns' actions. Constable Dherdi says that she never saw a baseball bat. She also says that on July 19th she noted that she received a phone call from Mr. Boule about his van being vandalized. Cst. Dherdi says she did not have a recollection of the call when she testified.

### **The Testimony of Constable McIntosh**

[23] Constable McIntosh says on July 18, 2024, he was dispatched in the early morning hours to 5812 Medusa to do a wellness check on Ms. Shields. He says while enroute he got another call to attend Mr. Burns' home. He says he got to Mr. Burns' home after 4 a.m. At that time, Constable McIntosh says he encountered Ms. Shields in the back of Mr. Burns' residence. He says that he could see Ms. Shields' vehicle and that Ms. Shields was moving something large.

[24] Constable McIntosh says that he told Ms. Shields to quiet down because she was loud and abrupt. Constable McIntosh says that he warned Ms. Shields that she was arrestable for causing a disturbance. Constable McIntosh says that Ms. Shields was rambling quite a bit and that he believed that she was either encroaching on Mr. Burns' property or was on Mr. Burns' property. He says that Ms. Shields left the property at approximately 4:30 a.m.

[25] Constable McIntosh says that Ms. Shields' mental state at the time was of concern, that she was rambling, that she lacked focus, and that he considered apprehending Ms. Shields pursuant to s. 28 of the *Mental Health Act* but ultimately concluded that the threshold had not been met. Constable McIntosh says he spoke with Mr. Burns that morning and, based on that discussion, he believed that Mr. Burns did not want Ms. Shields there.

### **The Presumption of Innocence**

[26] This most fundamental rule in the criminal justice system is that the burden of proving the guilt of an accused is upon the prosecution. Before an accused can be convicted of an offence, the trier of fact must be satisfied beyond a reasonable doubt of the existence of all of the essential elements of the offence. (See *R. v. Vaillancourt*, 1987 CanLII 2 (SCC), at paragraph 29.)

### **The Reasonable Doubt Standard**

[27] The reasonable doubt standard is a single, objective, and exacting standard of proof. It is not the same as proof of probability and it is not like the subjective standards of care that we apply in important everyday situations. It is not proof of certainty. It is not proof beyond any doubt, nor is it an imaginary or frivolous doubt. It is based on reason, common sense, and not sympathy or prejudice. (See *R. v. Lifchus*, 1997 CanLII 319 (SCC), at paragraphs 23 to 36.)

### **The Definition of Assault With Weapon**

[28] Assault with weapon is an assault within any one of the definitions of that concept in s. 265(1) of the *Criminal Code* that is committed when a person carries, uses, or threatens to use a weapon, or imitation thereof, in committing the assault.

### **Credibility and Reliability - The Legal Principles**

[29] This case requires me to assess the credibility and reliability of all of the witnesses. Credibility and reliability are not the same. Credibility concerns the veracity of the witness; reliability involves the accuracy of the witness's testimony. Accuracy engages consideration of the ability of the witness to observe, recall, and recount. (See *R. v. Khan*, 2015 BCCA 320, at paragraph 44.)

[30] The Supreme Court of Canada has explained that, "Assessing credibility is not a science. It is very difficult for a trial judge to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and

attempting to reconcile the various versions of events". (See *R. v. Gagnon*, 2006 SCC 17 (CanLII), at paragraph 20.)

### **Assessing Credibility and Reliability**

[31] When assessing a witness's credibility and reliability, I will consider a witness's testimony from the following perspectives:

- (1) their truthfulness - whether they were trying to tell the truth or were they intentionally lying while testifying;
- (2) their objectivity - whether they have been influenced by assumptions or emotions which may affect the accuracy of their perceptions;
- (3) the accuracy of their observations - a witness's ability to observe, remember, and communicate accurately;
- (4) the internal consistency of the testimony - does the witness's own statements and accounts of events contradict themselves;
- (5) the external consistency of the testimony - is the testimony consistent with other independent evidence which is accepted; and
- (6) the sense of the evidence - when weighed with common sense, does it seem impossible or unlikely or does it make sense?

[32] Factors relevant to truthfulness include previous inconsistent statements or occasions on which the witness has been untruthful; inconsistencies in testimony during direct and cross-examination; and reliable evidence that conflicts with the witness's testimony.

[33] A witness's objectivity may be influenced by the witness's expectations, assumptions of unproven facts, or subsequent events. Attentiveness, duration, and the circumstances surrounding a witness's observations may affect accuracy. The witness's reasons for recalling an event and the length of time between the event and testifying may affect reliability. Some witnesses may have difficulty communicating their evidence clearly because of nervousness.

[34] I have cautioned myself about relying too much on testimonial demeanour. While demeanour is a fact to be considered, it is simply one factor amongst many to be considered and should not be accorded significant weight. Standing alone, demeanour is a notoriously unpredictable determinant of credibility. (See *R. v. Gladue*, 2005 BCPC 365 (CanLII), at paragraphs 3 to 5; see also *R. v. Parent*, 2000 BCPC 11 (CanLII), at paragraphs 4 to 5; and see also *R. v. Khosravi*, 2018 BCSC 2163, at paragraph 34.)

[35] I must consider Ms. Shields' motive to fabricate. Ms. Shields was cross-examined in an attempt to demonstrate that she has a motive to fabricate the allegations against Mr. Burns. Restating the principle, Mr. Burns is under no obligation to explain why Ms. Shields might fabricate the allegations against him. Such an obligation reverses the burden of proof. However, even if it is demonstrated that Ms. Shields has a motive to lie, it does not mean that her testimony is fabricated.

[36] Finally, there is no requirement that a trier of fact believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier of fact may believe none, part, or all of the witness's testimony and may attach different weight to different parts of the witness's testimony.

### **Did Mr. Burns Strike Ms. Shields With a Baseball Bat?**

[37] Defence counsel submits that the court should reject Ms. Shields' testimony because of the significant contradictions in her testimony. Defence counsel listed a number of contradictions. I have considered those contradictions.

[38] Based on their testimony and the principles I have referred to, I am satisfied that Mr. Boule, Mr. McKimm, and Constables Dherdi and McIntosh are credible and their testimony is reliable.

[39] While I am satisfied that Ms. Shields is a credible witness, I agree with defence counsel that there are concerns with Ms. Shields' reliability. Specifically, I am satisfied that Ms. Shields did not have permission to look at Mr. Boule's truck. I prefer and accept the testimony of Mr. Boule. This is a significant contradiction.

[40] Second, initially, Ms. Shields told the court she did not tell the 9-1-1 operator she needed to look into Mr. Boule's truck to see what was inside. The 9-1-1 recording was played in court; and, in fact, Ms. Shields had told the 9-1-1 operator that on three occasions. It was only when the recording was played that Ms. Shields agreed.

[41] Third, I prefer and accept the testimony of Constable McIntosh about what occurred when police attended and found Ms. Shields in the laneway behind Mr. Burns' house in the early morning hours of July 18th. Again, this is a significant contradiction in Ms. Shields' testimony.

[42] Fourth, I agree with Crown counsel's characterization of Ms. Shields' testimony as being dramatic at times, as exemplified by her description of Mr. Burns "flying through the air four feet off the ground like a superhero". This causes the court to question Ms. Shields' ability to accurately communicate her observations.

[43] That said, Crown counsel says that other portions of Ms. Shields' testimony are corroborated by the other witnesses. I agree with that submission. Most notably, Mr. McKimm saw Mr. Burns with a baseball bat shortly after Ms. Shields says she was struck.

[44] After careful consideration of the testimony, I am satisfied that the Crown has proven beyond a reasonable doubt that Mr. Burns struck Ms. Shields with a baseball bat. However, due to my concerns about Ms. Shields' reliability, I am only satisfied beyond a reasonable doubt that Mr. Burns struck Ms. Shields on the back with the baseball bat. I am not satisfied that Mr. Burns "wound up", as described by Ms. Shields, before she was struck with the bat. Nor am I satisfied that Mr. Burns struck the truck.

[45] Further, I am not satisfied Mr. Burns struck Ms. Shields on the elbow as she described. Constable Dherdi noted, at the time she attended, an uncertainty regarding Ms. Shields' injury. I also note that Ms. Shields described "collapsing" when police attended.

[46] Based on those factors and the concerns about Ms. Shields' reliability, as I have noted, I am not satisfied the Crown has proven the injury to the elbow beyond a reasonable doubt.

### **Defence of Property**

[47] Defence counsel submits that the Crown has failed to prove that Mr. Burns was not acting in defence of property when he struck Ms. Shields. Crown counsel concedes that the first three requirements noted in s. 35 of the *Criminal Code* respecting defence of property have been satisfied.

[48] Crown counsel submits that Mr. Burns' act of striking Ms. Shields with a baseball bat was not reasonable in the circumstances. Crown counsel submits Mr. Burns should have called police like he did on July 18, 2024. I agree with Crown counsel that that is a significant point when considering this factor.

[49] Further, I accept that when Mr. Burns confronted Ms. Shields, she was taking a picture of the engine of the truck. Mr. Burns, at that point, did not need to strike Ms. Shields to protect the truck. Mr. Burns could have closed the hood. He could have told Ms. Shields to get away from the truck. It was not necessary for Mr. Burns to strike Ms. Shields at that point to protect the truck. Striking Ms. Shields was not reasonable in the circumstances.

[50] Consequently, I am satisfied beyond a reasonable doubt that Mr. Burns was not defending property when he struck Ms. Shields. Accordingly, I find Mr. Burns guilty as charged in Count 1 on Court File 19165-1.

(REASONS FOR JUDGMENT CONCLUDED)