Citation: R v Hastings, 2026 MBCA 11
Date: 20260206
Docket: AR25-30-10196

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Jennifer A. Pfuetzner
Madam Justice Janice L. leMaistre
Madam Justice Lori T. Spivak

***B E T W E E N**:*

	)	***S. Brennan** and*
	)	***J. E. Smith***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Respondent	)	***A. Y. Kotler** and*
	)	***M. E. Lavitt***
- and -	)	*for the Respondent*
	)	
JON PRESTON HASTINGS	)	*Appeal heard and*
	)	*Decision pronounced:*
(Accused) Appellant	)	***January 23, 2026***
	)	
	)	*Written reasons:*
	)	***February 6, 2026***

On appeal from *R v Hastings*, 2024 MBKB 171 [*Hastings*]

LEMAISTRE JA (for the Court):

Introduction

[1] The accused appealed his conviction, by a judge alone, for first degree murder.

[2] This was a focussed appeal. The accused conceded that the evidence was sufficient to establish intent to commit murder. However, he argued that the judge erred by concluding that the murder was planned and deliberate.

[3] After hearing the appeal, we dismissed it with reasons to follow. These are those reasons.

Background

[4] S.B. testified that on May 8, 2022, she was at the accused's residence, a one-room shack near his uncle's house (the shack). The accused, who was her boyfriend at the time, began questioning her about her activities earlier that day and people she had seen. She stated that he appeared paranoid and, as a result, she believed he might be "high on something". She further testified that he accused her of having been with someone else and, although she denied this, he continued to question her about it "over and over all night."

[5] S.B. said the accused became angry and assaulted her by slapping her on the face and arms with the flat side of a knife. He also poked and sliced her, causing cuts to her face and arms, struck her arms and legs with a hatchet, and bound her wrists, arms and mouth with tape. He confined her in the shack for approximately eighteen hours.

[6] After binding S.B., the accused laid out knives and an axe on the floor and told her he was going to use them. He then cooked food for them and gave her two pills from a bubble pack. When asked on direct examination what he did with the bubble pack of pills, S.B. responded, "He took them."

[7] While assaulting S.B. and questioning her about whom she had been seeing, she eventually named the deceased. She testified that the accused then told her he had sent the deceased a Facebook message asking him to "come help [him with] something quick", and he showed her the message. Later,

when the deceased was coming down the road near the shack, S.B. saw the accused go out to meet him and bring him inside.

[8] When the deceased entered, S.B. heard him ask, “what’s happening or what’s going on” and immediately saw the accused strike him on the head with the axe. The accused continued hitting and kicking the deceased with the axe and a knife for approximately twenty minutes. When S.B. asked the accused to give the deceased water, he said that “he was going to let [the deceased] bleed out” and something to the effect that “nobody was going to touch or bother what’s [his].”

[9] After the accused determined that the deceased was dead, he rolled the body in heavy plastic sheeting. S.B. said the accused became concerned that someone might come looking for her and he allowed her to leave to “show [her] face at home”, provided she agreed to return within an hour. After leaving, she sought help, which led to the discovery of the deceased’s body and the accused’s arrest.

[10] The deceased suffered severe blunt and sharp force injuries to his head and body. The cause of his death was blunt and sharp force head trauma.

[11] At trial, the accused conceded guilt on the offences relating to S.B. (forcible confinement and aggravated assault). He also acknowledged that he had unlawfully caused the deceased’s death.

[12] However, the accused argued that the Crown had not proven beyond a reasonable doubt either the *mens rea* for murder or that the murder was planned and deliberate. He submitted that his intoxication negated the intent required for murder and that the evidence indicated he acted instinctively. He

further argued that his intoxication and anger impaired his ability to plan and deliberate. Finally, he contended that S.B.'s testimony regarding the Facebook message used to lure the deceased should be rejected.

[13] The judge concluded that the evidence established beyond a reasonable doubt that the accused intended to cause the deceased's death. He found no air of reality to the defence of advanced intoxication because the necessary factual foundation was absent.

[14] The judge found that, although there was some evidence of drug paraphernalia in the shack, there was no evidence that the accused was intoxicated by drugs or alcohol. He attributed the accused's paranoia to his belief that S.B. was involved with the deceased and his concern that the police would come looking for her, rather than to drug use.

[15] In addition to finding that the accused intended to kill the deceased, the judge also found that the murder was planned and deliberate.

[16] In doing so, he stated (*Hastings* at para 65):

> I have considered all of the evidence, including:
>
> - what the accused did or did not do;
> - how the accused did or did not do it;
> - what the accused said or did not say;
> - the accused's condition;
> - the accused's state of mind, including any evidence of how that may have been affected by his consumption of drugs, or by his mental state;

- the effect of any real or imagined provoking words or conduct from the [deceased] on the accused's state of mind; and

- any evidence of similar act or after-the-fact conduct from which I can properly draw permissible inferences.

[17] Addressing the argument that there was no proof the accused actually sent the Facebook message, the judge stated that "the importance of the message is not whether it was sent or not. Its importance is that the text of the message together with the conversation the accused had with [S.B.] when he showed it to her on a phone screen, provides insight into the intention of the accused with respect to the deceased" (*ibid* at para 73).

[18] The judge determined that the evidence established that the accused intended to lure the deceased to the shack "to deal with him 'worser' than he treated [S.B.]" (*ibid* at para 74). He found that this, combined with the fact that the accused laid out the weapons and attacked the deceased almost immediately upon his entry, demonstrated "deliberation and planning well in advance of the attack" (*ibid*), rather than an impulsive act.

[19] The judge concluded that the only reasonable inference on the totality of the evidence was that the accused intended to kill the deceased and that the murder was planned and deliberate (see *ibid* at para 76).

Issues on Appeal

[20] The accused's primary ground of appeal is that the judge misapprehended evidence that formed the basis of his finding that the murder was planned and deliberate, resulting in a miscarriage of justice. His second ground is that the judge failed to consider whether the accused's ability to plan

and deliberate was affected by his consumption of drugs and his level of intoxication.

[21] On his first ground of appeal, he submits that the judge misapprehended the evidence in two respects. He argues that these errors led the judge to find "there [was] no evidence of intoxication by drugs or alcohol" (*ibid* at para 59) despite evidence capable of supporting a finding that his ability to plan and deliberate was impaired. He says that because the verdict was dependent on these misapprehensions of the evidence, a miscarriage of justice resulted.

[22] First, the accused argues that the judge erred in finding that he "may also have taken a pill" (*ibid* at para 12) when S.B.'s evidence was that he took them, which he says indicates consumption of more than one pill and thus was evidence supporting intoxication.

[23] Second, the accused argues that the judge misapprehended the evidence by attributing his paranoid behaviour to "his belief that [S.B.] was involved in a relationship with the deceased" and to his fear that "the police would come back to [the shack] looking for [S.B.] after he had killed the deceased" (*ibid* at para 59).

[24] The accused notes that S.B. testified he was acting paranoid from the outset and therefore his behaviour could not have been caused by either his suspicion that she was seeing the deceased or his fear that the police would come looking for her, as both arose only after the paranoia had already begun. He submits that this shows the judge failed to consider whether his paranoid behaviour was indicative of drug-induced intoxication.

Discussion

[25] Absent proof beyond a reasonable doubt that a murder was planned and deliberate, it constitutes second degree murder (see *R v Whiteway (BDT) et al*, 2015 MBCA 24 at paras 8-12 [*Whiteway*]).

[26] A misapprehension of evidence may undermine the validity of the verdict, giving rise to a miscarriage of justice under section 686(1)(a)(iii) of the *Criminal Code*, RSC 1985, c C-46 (see *R v Morrissey* (1995), 97 CCC (3d) 193, 1995 CanLII 3498 (ONCA) [*Morrissey*]).

[27] A failure to consider all the evidence in relation to issues central to guilt or innocence is a misapprehension of evidence that engages a question of law (see *R v Rioux*, 2025 SCC 34 at para 119; see also *R v DNS*, 2016 MBCA 27 at paras 28-30).

[28] The standard for establishing a misapprehension of evidence is stringent. The misapprehension must go to the substance of the evidence, must be material to the reasoning of the trial judge and must play an essential part in the reasoning process resulting in a conviction (see *R v Lohrer*, 2004 SCC 80 at para 2, citing with approval *Morrissey*). As explained by Mainella JA in *Whiteway*, "A misapprehension of the evidence is not to be confused with a different interpretation of the evidence than the one adopted by the trial judge" (at para 32).

[29] We are not persuaded that the judge misapprehended the evidence regarding intoxication.

[30] We agree that S.B. testified that the accused had a bubble pack of pills and he took them. However, there was no clarification sought or provided as to whether the phrase "he took them" meant that he removed the pills or consumed them. The evidence was open to more than one interpretation.

[31] Furthermore, in our view, even if the judge misapprehended this evidence, it was not material.

[32] There was no evidence as to what the pills were or, assuming consumption, that they had any effect on the accused. Although there was no evidence about the pills or their effects, there was evidence the accused did not appear intoxicated, including from two band constables who went to the shack looking for S.B. There was also evidence the accused was able to cook food before the murder and shower and wash S.B.'s pants shortly afterwards.

[33] Regarding the accused's behaviour described by S.B. as "paranoid", she testified it began before she saw him taking any pills and continued throughout the eighteen hours she was confined. When she first went into the shack, he was looking out the window and turning off lights; she described this as paranoid. From the outset, the accused was concerned that S.B. was involved with someone else. The accused was paranoid about S.B. cheating well before he extracted a name from her. After the deceased's name was mentioned, he told her he was going to lure the deceased to the shack. Following the murder, she said, "He was looking out the window and getting worried that the cops might come there again, looking for [her]." She also described this as paranoid.

[34] The judge was not required to accept S.B.'s view that the accused's behaviour "maybe" indicated he was high on something. In our view, the

judge's finding about the reasons for the accused's paranoid behaviour was not the result of a misapprehension of the evidence.

[35] In our view, the judge made no readily obvious error as to the substance of the evidence. Moreover, the evidence amply supported the judge's findings, and he reasonably concluded that the only rational conclusion on the evidence was that the murder was planned and deliberate.

[36] At the hearing of the appeal, defence counsel conceded that, if we found the judge did not misapprehend the evidence of intoxication, that would resolve the second ground of appeal. The argument that the judge failed to consider whether the accused's ability to deliberate was impaired by intoxication was contingent on a finding that the judge erred in determining there was no evidentiary foundation for intoxication.

[37] As we have concluded that the judge did not misapprehend the evidence, we need not address this additional ground.

Conclusion

[38] In the result, the appeal was dismissed.

leMaistre JA

Pfuetzner JA

Spivak JA