

Date: 20250416
Docket: CR 22-02-02326
(Brandon Centre)
Indexed as: R. v. Lepine
Cited as: 2025 MBKB 52

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING)	<u>Richard Lonstrup</u>
)	for the Crown
- and -)	
)	
HAILEY LEANNE LEPINE,)	<u>Andrew Synyshyn</u>
accused.)	for the accused
)	
)	
)	Judgment delivered:
)	April 16, 2025

LEVEN J.

SUMMARY

[1] The accused was charged with manslaughter (***Criminal Code*** s. 236), criminal negligence cause death (***Criminal Code*** s. 220), and drug trafficking (***Controlled Drugs and Substances Act*** s. 5(1)). The drug in question was methylenedioxymphetamine (MDA).

[2] The girlfriend of the deceased ("the Girlfriend") testified that she contacted the accused by Facebook Messenger trying to purchase drugs. The Girlfriend claimed that she deleted all the text messages immediately. The accused was the former girlfriend of the Girlfriend's

brother ("the Brother"). The Girlfriend claimed that they arranged to meet, and the accused sold the Girlfriend a gram of a white powder that turned out to be MDA. The Girlfriend went to the home of the deceased. They shared the MDA, with the Girlfriend using a bit more than half. Eventually, the deceased began having seizures and foaming at the mouth, the Girlfriend checked for a pulse and found none. They were in the Girlfriend's car at the time. Rather than phoning 911 or driving to a hospital, the Girlfriend drove to the house of her mother ("the Mother"). The Mother phoned 911, but it was too late. The autopsy and the toxicology report showed no apparent causes of death other than the very high levels of MDA in the blood of the deceased. The pathologist wrote that the cause of death was "drug overdose".

[3] It was an agreed fact that the deceased died on July 25, 2020.

[4] The accused testified that she personally used marijuana, cocaine and "magic mushrooms" regularly. She and the Girlfriend had used these drugs together at various times. The Brother sometimes participated. The accused flatly denied selling the MDA (or any other drug) to the Girlfriend on the day in question. She denied ever meeting or texting the Girlfriend on the day in question.

[5] The trial was held on March 25, 26 and 27, 2025. For reasons explained below, I find that the Crown has not proved the accused guilty beyond a reasonable doubt. The accused is acquitted on all charges.

FACTS

[6] This is not a comprehensive recitation of all evidence and argument; it is a concise summary of certain important matters.

[7] Several facts were agreed. Jurisdiction, the date of death and continuity were admitted. The evidence of Constable "M" was agreed, so that he did not have to testify. The Certificate of Analysis was admitted by agreement. The expertise of the pathologist and the toxicologist were admitted.

[8] It was agreed that Constable "M" attended a house in Brandon on July 25, 2020. He found the deceased's body under a white blanket beside a parked car outside the home. He spoke to the Girlfriend. Later that day, he and other officers executed a search warrant at the home of the deceased and found a wallet agreed to be the accused's containing identification belonging to the deceased. He was present with Constable "D" and saw certain things along with "D". At the home of the deceased, the constables found a plastic shopping bag hanging on the doorknob in the deceased's bedroom. In the shopping bag was a small red "dime bag" containing a very small amount of a powder residue. The Certificate of Analysis showed the residue to be MDA.

[9] Constable "D" testified briefly. He took some photos of the deceased's residence, and they were tendered as exhibits. He testified about some of the agreed facts.

The Girlfriend

[10] The Girlfriend testified that, on July 24, 2020, she was living with the Mother. The deceased was her boyfriend at the time.

[11] The Girlfriend only used Facebook Messenger; she used no other message platforms.

[12] The accused used to date the Brother. They had a bad breakup in about June 2020.

[13] The accused and the Girlfriend both worked at a casino at the same time in 2020. The Girlfriend was not sure when this job ended. It might have been as late as May 2020. The Girlfriend used to drive the accused to work and back. The Girlfriend stopped picking up the accused for work. She was asked if they had a fight, and she answered that she didn't remember.

[14] The accused, the Brother and the Girlfriend sometimes shared drugs from time to time. They didn't sell the drugs to each other; they just shared them. The Brother was a drug dealer at the time.

[15] On July 24, 2020, the Girlfriend wanted drugs. She messaged the accused and asked for cocaine. The accused replied that she had none, but would get other drugs later that day. At about 2:00 a.m., the Girlfriend messaged the accused again. The accused said she had Xanax and MDMA (methylenedioxymethamphetamine). The Girlfriend wanted MDMA. They agreed to the transaction and agreed on the price

of \$60 for one gram. They agreed to meet at a specific hotel parking lot.

[16] The Girlfriend drove to the hotel and parked in the parking lot. While her head was down, the accused approached her on foot. The accused got into the passenger seat, and they exchanged the one gram for \$60. The accused said it was "deadly". She didn't elaborate and the Girlfriend did not question her. The accused left the car, and the Girlfriend didn't watch to see where she headed. The Girlfriend didn't remember what the accused was wearing. The Girlfriend said she promptly deleted all the messages about the drugs, as was her habit. (No one questioned the Girlfriend about whether one can recover deleted messages on Facebook Messenger.)

[17] The Girlfriend went to the home of the deceased. He was outside, smoking a marijuana joint. She didn't see him consuming any other drugs or drinking alcohol that day.

[18] They went inside. The Girlfriend divided the drugs she had purchased. It was a white powder with one or more chunks in it. It was in a pinkish baggie (a "dime bag"). She divided it approximately in half, perhaps taking a bit more for herself. They both consumed it orally with water, by "parachuting" it.

[19] The Girlfriend had used MDMA before. The effects of the drug she took seemed more intense than the MDMA she had used before. The deceased began sweating heavily. He also began talking to himself.

[20] The Girlfriend wanted to go out to buy cigarettes. She had a car outside. She had to help the deceased walk to the car. He had no trouble walking earlier. She had to help him get into the car. They just began driving when he began convulsing as if having seizures. He began foaming at the mouth. The Girlfriend pulled over. She got a sweater and wiped the foam from his mouth. She had her phone with her. She took his pulse but he had no pulse. He wasn't breathing. She was "freaking out". She didn't know what to do. She eventually drove to her mother's home. The Mother phoned 911, and the paramedics and police arrived.

[21] The Girlfriend spoke to police on July 25 and again on July 29, 2020. On July 25, 2020, the police asked her who sold her the drugs. At first, she said "a friend of a friend". Later, when the police told her that, if she gave them the name of the dealer, they could prevent future deaths, she gave them the name of the accused.

[22] The police searched the Girlfriend's room in the Mother's home. They found some unused clean baggies. The Girlfriend said there would have been between five and 100 baggies. She testified that they were not hers, and that she didn't know whose they were. She testified that

she didn't know the baggies were in her room until Constable "M" asked her about them.

The experts

[23] The pathologist and the toxicologist testified. Their reports went in by consent. The pathologist found no signs of anything in the body of the deceased that might have caused death. There were no visible injuries. There were no natural signs related to heart attack (e.g. plaque in the coronary arteries). However, the toxicology report mentioned the high levels of MDA in the deceased (see below). She described the MDA level in the blood of the deceased as "very, very, very high". As there were no apparent causes of death other than the MDA, the pathologist gave the cause of death as "drug overdose".

[24] The toxicologist summarized the scholarly literature about the effects of MDA. It is ethically impossible to deliberately give humans lethal doses of MDA. Therefore, the scholarly research discusses studies about amphetamine's effects on mice, and analysis of people who took MDA. MDA has "toxicity comparable to that of amphetamine itself. This is inclusive of convulsions at high doses."

[25] The toxicology study of the deceased showed no evidence of alcohol. It showed trace levels of cannabinoids, but too little to measure. It found an MDA level of 3,722 ng/mL. This is within the toxic range of MDA based on the scholarly literature. It found a trace

of MDMA, but too little to measure. MDA gradually breaks down into MDMA, so this is not surprising.

The accused

[26] The accused met the Girlfriend in about 2017. The accused dated the Brother. They broke up some time between late 2019 and about May 2020. It was bad breakup. She saw the Brother for about two weeks after the breakup, but never after that.

[27] She texted the Girlfriend from time to time. The accused and the Girlfriend worked at the same casino for awhile. The Girlfriend gave the accused lifts to and from work. They had a disagreement. The Girlfriend kicked the accused out of her car, and didn't show up to drive the accused to work the next day. After missing work for two days, the accused was fired.

[28] The accused, the Girlfriend and the Brother shared drugs together on occasion. The accused never sold drugs to anyone, ever.

[29] The accused liked to use marijuana regularly. (No one asked her if she bought it from a legal cannabis store.) She used cocaine about monthly. She used magic mushrooms about twice a year. She said she was sure that she had taken Percocet (a prescription drug sometimes used as a street drug).

[30] The accused admitted that she had a minor criminal record, including a few breaches of release conditions. She had a youth conviction for mischief (providing a false name to police).

[31] The accused testified that she sometimes arranged to buy drugs by way of text message. She was not in the habit of deleting those messages. She does not still have any messages from 2020. (No one asked her if the police asked to see her phone when they arrested her or, if so, whether she agreed.)

[32] The accused denied selling any drug to the Girlfriend or anyone else on any occasion. She did not learn about the death of the deceased until about December 2020, when a police officer told her.

LAW

[33] ***R. v. Maybin***, 2012 SCC 24 ("***Maybin***"), dealt with manslaughter and intervening causes. At paragraph 1, the court observed that:

The causal link between an accused's actions and the victim's death is not always obvious in homicide cases. In cases involving multiple causes of death or intervening causes between an accused's actions and the victim's death, determining causation is more challenging. An accused's unlawful actions need not be the only cause of death, or even the direct cause of death; the court must determine if the accused's actions are a significant contributing cause of death.

[34] At paragraph 17, the court added that "causation issues are case-specific and fact-driven."

[35] At paragraph 23, the court continued:

The doctrine of intervening acts is used, when relevant, for the purpose of reducing the scope of acts which generate criminal liability...other causes may intervene to 'break the chain of causation' between the accused's acts and the death. This is the concept of an 'intervening cause', that some new event or events resulted in the accused's actions not being a significant contributing cause of death.

[36] At paragraphs 30-44, the court discussed reasonable foreseeability. At paragraph 30, the court explained that:

An intervening act that is reasonably foreseeable will usually not break or rupture the chain of causation so as to relieve the offender of legal responsibility for the unintended result. This approach posits that an accused who undertakes a dangerous act, and in so doing contributes to a death, should bear the risk that other foreseeable acts may intervene and contribute to that death...it accords with our notions of moral accountability. This approach addresses the question: Is it fair to attribute the resulting death to the initial actor?

[37] At paragraph 38, the court added,

...it is the general nature of the intervening acts and the accompanying risk of harm that needs to be reasonably foreseeable. Legal causation does not require that the accused must objectively foresee the precise future consequences of their conduct...the intervening acts and the ensuing non-trivial harm must be reasonably foreseeable in the sense that the acts and the harm that actually transpired flowed reasonably from the conduct of the [accused]. If so, then the accused's actions may remain a significant contributing cause of death.

[38] ***R. v. Haas (CJ)***, 2016 MBCA 42 ("***Haas***") was a case about intervening causes and a drug overdose. At paragraphs 52 to 54, the court cited ***Maybin*** with approval. At paragraph 62, the court observed that:

Whether a deceased's voluntary consumption of drugs constitutes an intervening act will depend upon the facts and the circumstances found by the trial judge, and the trial judge's assessment of those facts and circumstances in light of the legal principles regarding causation. In other words, voluntary consumption is simply one of many contextual

considerations in the circumstances of any given case to determine whether or not the chain of causation has been broken.

[39] In *Haas*, the accused supplied the deceased with morphine pills. He saw her take some, but did not count the number. It turned out that the deceased took 16 pills and died of a morphine overdose. The accused was convicted of unlawful-act manslaughter, and the conviction was upheld on appeal.

[40] *R. v. Pheasant*, 2013 ONSC 7138 ("*Pheasant*"), also dealt with manslaughter and a drug overdose. At paragraph 35, the court cited *Maybin* with approval. At paragraph 33, the court commented that:

The mental or fault element of unlawful act manslaughter requires evidence of objective foreseeability of the risk of bodily harm, which is neither trivial nor transitory. It is a common sense inference which may be drawn from the nature of the unlawful act and the circumstances in which it took place. Can that inference be reasonably and logically drawn in the circumstances of this case? In my view, the same evidence upon which trafficking could be found to be a dangerous act is sufficient to establish a factual basis for this finding. Indeed, it is difficult to envisage a situation in which an unlawful act may be found to be dangerous but for which the risk of bodily harm would not be reasonably foreseeable...

[41] In *Pheasant*, the accused gave a friend a jar of methadone, and warned the friend about the danger of consuming it. The accused did not warn the friend that it was crucial to keep the methadone in a locked container or a secure location. The friend left the methadone in an unsecured location; the victim consumed it and died; and (at a preliminary inquiry) the accused was committed to trial on

manslaughter and criminal negligence cause death charges. The accused unsuccessfully applied to have the committal quashed. At paragraph 33, the court commuted that:

...in this case, given the potency of methadone and that it was left unsecured, without inquiry into how it would be safeguarded, a reasonable person would foresee the risk that it would be consumed by someone and would cause bodily harm of more than a trivial or transitory nature.

[42] ***R. v. W.(D.)***, [1991] 1 SCR 742 [***W(D)***] was a sexual assault trial in which the accused testified. The court outlined a useful approach for analyzing the credibility of an accused and the principle of reasonable doubt. At page 758, the majority set out the framework for instructing a jury:

First, if you believe the evidence of the accused, obviously you must acquit.

Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.

Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[43] Later cases have elaborated upon ***W(D)***. ***R. v. Menow***, 2013 MBCA 72 (***Menow***) was also a sexual assault case involving a ***W(D)*** analysis. At the appeal stage, the accused argued that the trial judge had erred by considering the evidence of the complainant and of a witness in concluding that the accused was not credible. At paragraph 23, the appeal court observed:

...To assess the evidence of the accused in a vacuum ignores the fact that the whole purpose of the trial is to determine whether or not the accused is guilty...It is impossible for an accused's evidence to be considered without a factual or contextual backdrop for the charge itself...

[44] In *R. v. Vuradin*, [2013] 2 SCR 639, the court considered the **W(D)** framework. At paragraph 21, the court pointed out:

The order in which a trial judge makes credibility findings of witnesses is inconsequential as long as the principle of reasonable doubt remains the central consideration.

Criminal Code

[45] Relevant sections of the ***Criminal Code***, RSC 1985, c C-46 (the "***Code***") include:

Criminal negligence

219 (1) Every one is criminally negligent who

(a) in doing anything, or

(b) in omitting to do anything that it is his duty to do,

shows wanton or reckless disregard for the lives or safety of other persons.

Definition of *duty*

(2) For the purposes of this section, ***duty*** means a duty imposed by law.

Causing death by criminal negligence

220 Every person who by criminal negligence causes death to another person is guilty of an indictable offence....

Homicide

222 (1) A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.

Kinds of homicide

(2) Homicide is culpable or not culpable.

Non culpable homicide

(3) Homicide that is not culpable is not an offence.

Culpable homicide

(4) Culpable homicide is murder or manslaughter or infanticide.

Idem

(5) A person commits culpable homicide when he causes the death of a human being,

(a) by means of an unlawful act;

(b) by criminal negligence;

...

DECISION

[46] In closing argument, defence counsel said that he would not argue causation.

[47] Although **W(D)** has been subject to some academic criticism, it is still a useful framework. On the first leg of **W(D)**, I believed the accused. She was not evasive, and she did not contradict herself. There was no physical evidence (e.g. text messages) contradicting anything she said. She freely made admissions that were unflattering to herself, including admissions that she used marijuana, cocaine and magic mushrooms on a regular basis. (She was not questioned about whether the marijuana was purchased legally at a legal cannabis store). Her free admission of these unflattering facts bolstered her credibility to some extent. Courts have warned about the limits of using demeanor

to assess credibility. That being said, for what it is worth, I found the demeanor of the accused to be consistent with sincerity.

[48] The fact that the accused has a minor criminal record, including a youth offence, does not strengthen her credibility, but I find that it does not significantly weaken it. It is not as if she has any convictions for perjury, or any drug trafficking convictions.

[49] Moving on the second leg of **W(D)**, I found that the evidence of the accused raised a reasonable doubt about her guilt. This was an “all or nothing” fact scenario. The accused did not claim that she sold the Girlfriend a different illegal drug or a smaller quantity of some illegal drug. She flatly denied selling the Girlfriend any illegal drug (or anything else) on the day in question. For that matter, she denied having any contact of any kind with the Girlfriend on the day in question. I believed her evidence.

[50] Given the comments in **Menow**, the second and third legs of **W(D)** can be examined together, to some extent.

[51] I did not find the Girlfriend to be a credible or reliable witness. For what it is worth, I did not find her demeanor to be consistent with sincerity.

[52] I was troubled by the Girlfriend’s explanation of the baggies in her bedroom. She claimed that they were not hers and that she had no idea whose they were. She admitted that the Brother sold drugs at

the time. I did not find the Girlfriend to be credible on this subject. I find it more likely that she knew who brought the baggies into the bedroom and was hiding the truth. She has had four and a half years to investigate the "mystery". It is unlikely that she did not know as of the trial date. It is not necessary to determine whether the baggies belonged to the Girlfriend, herself, or to the Brother. The point is that this matter damaged the Girlfriend's credibility.

[53] With the benefit of hindsight, it is obvious that the Girlfriend exercised extremely poor judgment after the deceased began convulsing and foaming at the mouth. A person with good judgment would have immediately phoned 911, or driven the accused to the nearby hospital. Whether or not these actions might have saved his life is not the point. The point is that the Girlfriend obviously made a terrible choice. One reasonable explanation for her terrible judgment might be that she knew that possession of MDMA (and MDA) was a crime. She might have worried that she would be charged with a crime if she identified herself by phoning 911 or driving to the hospital. She herself was under the influence of MDA at the time. That might have impaired her judgment. It is possible that she simply panicked and drove to the Mother's residence because she trusted her mother in a crisis situation.

[54] However, that was four and a half years ago. Four and a half years later, at the trial, the Girlfriend was not in a panic and was

(presumably) not under the influence of MDA. She did not express any remorse for her terrible judgment. To be fair, she was not questioned explicitly about the subject of remorse. Nevertheless, I would have expected at least a brief, passing expression of regret.

[55] More importantly, the Girlfriend testified that, when the police first asked her where she got the drugs, she said she got them from a “friend of a friend”. We now know that this was dishonest. Firstly, the accused was not really a friend of a friend. More importantly, the Girlfriend’s answer was calculated to hide something from the police.

[56] The Girlfriend testified that the reason she eventually named the accused to the police was because they spoke to her about trying to prevent other people from dying as a result of taking the drug that the deceased took. To be sure, that is a neat and tidy explanation.

[57] A more plausible explanation is that, when she realized that the police were intent on pursuing the subject, the Girlfriend realized that her “friend of a friend” answer would no longer be sufficient, and she had to provide a name. The first name that came to mind was that of the accused. The accused had a bad breakup with the Brother. The accused had some sort of disagreement with the Girlfriend when they both worked at the casino. The accused was very familiar with illegal drugs. Providing the name of the accused was a convenient solution to a difficult problem.

[58] Of course, the defence does not have to prove that the Girlfriend had a plausible motive to lie. However, in doing a **Menow** analysis, and considering the credible evidence of the accused along with the less credible evidence of the Girlfriend, there is obviously a reasonable doubt about the guilt of the accused.

Vetrovec

[59] In closing argument, defence counsel mentioned in passing that the Girlfriend was a **Vetrovec** witness. The reference of course was to **R. v. Vetrovec**, 1982 CanLII 20 (SCC). In simple terms, a **Vetrovec** witness is an “unsavory” witness. Their evidence requires “special scrutiny”. If their evidence is unconfirmed, it is dangerous to act upon it. In a jury trial, the trial judge must give the jury a proper **Vetrovec** warning.

[60] I note that nothing was said about **Vetrovec** witnesses in the pretrial briefs or memorandums.

[61] In theory, the Girlfriend might have qualified as a **Vetrovec** witness. She admitted to possessing illegal drugs many times in the past. She was dishonest when she told the police that she got the drugs from a “friend of a friend”. However, given my findings about the Girlfriend’s general lack of credibility, and my **W(D)** analysis explained above, **Vetrovec** is essentially academic. Even if the Girlfriend was not a **Vetrovec** witness, the accused must be acquitted.

[62] Given these findings, it is not necessary to make any findings about causation and intervening acts.

Conclusion

[63] For the above reasons, I find that the Crown has not proved the accused guilty beyond a reasonable doubt. The accused is therefore acquitted of all charges.

[64] I thank counsel for agreeing on several agreed facts, and for their courtesy.

_____. J.