

[2] The theory of the Crown is that Maple and Thunder Fontaine (Thunder) were parties to the killing of the deceased. The Crown relies on section 21(2) of the ***Criminal Code***, R.S.C., 1985, c. C-46:

Common intention

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

[3] The Crown alleges the common purpose was robbery of the deceased.

BACKGROUND AND FACTS

[4] The events occurred at one building of an apartment complex on [REDACTED], Winnipeg, Manitoba. The primary events occurred in suite 7 of that complex. The deceased occupied suite 7, where the killing took place. In the days before the killing, the deceased moved from suite 9 to suite 7. Suite 9 and suite 7 are located across the hall from each other.

[5] The evidence is clear the deceased consumed drugs. He also sold drugs to others whether from suite 7 or suite 9.

[6] The deceased also traded drugs for stolen merchandise. The best way to describe the deceased's activities are those of a "fence".

[7] The deceased was a diabetic requiring regular injections of insulin as well as blood sugar monitoring. The evidence reveals the deceased was also battling cancer although the type of cancer was not disclosed. At the time of the killing, Chelsea Paul (Chelsea) lived in suite 7 with the deceased. Chelsea was not in a romantic relationship with the deceased. She testified her purpose for living in suite 7 was to monitor the deceased's blood sugar, administer insulin, and to ensure he took his cancer drugs.

[8] The evidence demonstrates the interior of suite 7 was monitored with a Wyze Cam that captured both audio and video. The video was constantly recording the interior of suite 7, and the audio and video was recorded in one-minute time packets.

[9] The evidence before me is when the deceased lived in suite 9, there was a doorbell camera video recording what occurred in the hallway. The doorbell camera permitted the deceased to monitor who was outside his suite using his cellphone. The plan was for this camera to be moved from suite 9 to suite 7. At the time of the killing, the camera remained in suite 9. The doorbell camera recorded activity in the hallway, including those entering and exiting suite 7 at the time of the killing.

[10] Access to any recordings from the doorbell camera were only available on the deceased's cellphone, which he, or anyone in possession of the cellphone, could monitor who was in the hallway outside suite 9 and suite 7. As the suites were located across the hall from each other, the doorbell camera was equally effective in monitoring the hall outside both the suites.

[11] The Wyze Camera and doorbell camera functioned as silent witnesses. However, the Wyze Cam recordings were limited to audio recordings prior to 18:53:45 on November 24, 2021 (Exhibit No. 3). It evidences Chelsea in a discussion with Thunder and she immediately moved towards the Wyze Cam, reaching out to turn the camera lens on its face, flat against a solid object

preventing any further video images from being captured. This was confirmed by Chelsea in her testimony.

[12] Prior to the Wyze camera being turned down, the images captured by the camera show a number of people coming and going from suite 7. Some of these people appeared to be trying on clothes, consistent with Chelsea's evidence that stolen merchandise was being sold from suite 7.

[13] Chelsea's evidence is the deceased was not in range of the camera. He was in his bedroom, which was not in direct view of the camera. The deceased would not have been aware the Wyze camera was turned down.

[14] Chelsea was in a relationship with Thunder and he is the father of her two children. I do not find her evidence, she followed Thunder's instructions out of fear for herself and her two children, to be the only explanation for her conduct in moving the Wyze Cam.

[15] Chelsea spoke as she moved towards the Wyze Cam, "oops, my bad." Her words were spoken in a very casual manner bordering on a joke. I find her words not to be in keeping with the level of fear she described.

[16] At 19:51:17 on November 24, 2021, the Wyze Cam captured a sound I find to be consistent with a gunshot.

[17] Chelsea's evidence is, following the gunshot, Thunder began searching the deceased's bedroom. The deceased was known to keep a shortened illegal firearm

in suite 7 and Chelsea testified Thunder was motivated to rob the deceased of this firearm.

[18] When Thunder failed to locate the firearm, he demanded Chelsea tell him where he could find it. I accept, after her refusal, Thunder tasered Chelsea. I find the sound recording at 19:52:36 is consistent with that of a taser.

[19] Chelsea's evidence of the events following the killing of the deceased is inconsistent in a number of critical ways. I accept some of Chelsea's confusion may have resulted from her intoxication over a number of years, whether by drugs and alcohol, or both. I find it is clear why her evidence as to the details of the events at any specific time or times may be difficult. This is an acceptable explanation of her failed recollection of all events surrounding the killing due to the constant use of alcohol and drugs, such as meth.

[20] Chelsea testified, on the night of November 23, 2021, she consumed "a couple" of drinks. Under cross-examination, she admitted she drank two, two-litre bottles of coolers. This is a significant amount of alcohol that she attempted to minimize. Four litres of alcohol are not properly described as two drinks.

[21] Another inconsistency in Chelsea's evidence is her demonstrated inability to firmly identify people in suite 7 on November 24, 2021. She misidentified that Maple was Jimbo, a person known by the nickname Darren the Booster. When Chelsea provided the name Darren the Booster, it implied he was a person in suite 7 involved in the selling of stolen merchandise. The evidence is inconsistent with

Darren being present at the time of the killing. What is consistent is Darren the Booster was in suite 7 earlier on November 24, 2021.

[22] The Wyze Cam's silent witnesses clearly show different women trying on clothes in suite 7 in the hours before the killing. This evidence is consistent with stolen merchandise being offered for sale where the consideration was either cash or drugs. This evidence is of no assistance to confirm Darren the Booster's presence at the time of the killing.

[23] Another inconsistency in Chelsea's testimony is she provided two witness statements to Winnipeg Police Service (WPS) officers on November 25, 2021. As was noted in the *voir dire* ruling for admissibility of the statement of Amanda Bell (Bell) published contemporaneously with these reasons, Chelsea's two November 25, 2021 witness statements were taken as follows:

- (a) Initial interview was not audio or videotaped and the officers did not take notes;
- (b) Following this, what is described as a statement was taken by the WPS officers, but was not audio or videotaped, and notes were taken; and
- (c) Finally, the WPS officers conducted a witness statement where Chelsea was audio and videotaped.

[24] The WPS officers who took Chelsea's statement consulted with the WPS officers who were interviewing Bell. Those officers believed there were differences

between Bell's and Chelsea's statements. The officers returned to interview Bell and Chelsea for the purpose of exploring the inconsistencies.

[25] Chelsea's second statement was inconsistent with her first statement, which I find concerning. These suspicions were further compounded when Chelsea provided a third statement to the WPS in January 2022. Once again, there were inconsistencies between the three statements. At the third interview, the WPS officers learned Chelsea removed the doorbell camera from suite 9. During this interview, Chelsea also confirmed she removed the deceased's cellphone from suite 7 after his death. These two acts prevented anyone from viewing the images and hearing the audio captured by the doorbell camera, as the audio and video could only be accessed from the deceased's cellphone. The doorbell camera and cellphone were never found.

CROWN'S SUBMISSION

[26] To prove its case beyond a reasonable doubt, the Crown argues there is sufficient corroborative evidence to convict Maple of manslaughter.

[27] The Crown argues that although Chelsea's evidence is inconsistent, there are sufficient facts elicited from her such that I am able to convict, if I find some, part or all of her evidence establishes proof beyond a reasonable doubt.

[28] Chelsea is referred to as a *Vetrovec* witness (***Vetrovec v. The Queen***, 1982 SCC 20, [1982] 1 S.C.R. 811). *Vetrovec* stands for the proposition even a

witness with an unreputable background may provide evidence sufficient to convict an accused, but a trier of fact should proceed with caution.

[29] In ***R. v. Ponce***, 2012 MBCA 87, Monnin J.A. found:

70 While there is an obligation on the trial judge to guide the jury to evidence that is capable of being confirmatory, it is up to the jury to decide whether the confirmatory evidence relates to important or merely peripheral points. In *R. v. Thomas (E.T.)*, 2008 MBCA 75, 228 Man.R. (2d) 289, a decision of this court, although pre-*Khela*, Freedman J.A. stated (at para. 61):

As to the last objection under this heading, that the examples of potentially confirmatory evidence given by the judge did not relate to material points in issue, I will reiterate that the judge has a wide discretion in her determination of how best to assist the jury. She made it explicitly clear that it was important for the jury to consider whether or not the evidence confirmed material points in issue, and she then gave them examples of potentially confirmatory evidence. It was for the jury to decide the extent to which the potentially confirmatory evidence tended to support Hocaluk's credibility on the key elements in the case.

71 Even weak confirmatory evidence is properly left with a jury. See *R. v. Dhillon (S.)* (2002), 2002 CanLII 41540 (ON CA), 161 O.A.C. 231 at para. 26.

72 The decision in *Khela* has attracted some judicial commentary on whether it requires a trial judge to do more than was originally contemplated by Dickson J. in *Vetrovec*. In *R. v. Reiersen (B.E.)*, 2010 BCCA 381, 291 B.C.A.C. 205, Newbury J.A. said as follows (at para. 35):

Whether or not this requires that a finer line be drawn than was drawn in *Vetrovec* (where Dickson, J., rejected a technical approach to corroboration and said it would have been sufficient to have told the jury they should view the impugned witnesses' testimony "with great caution, and that it would be wise to look for other supporting evidence before convicting" (at 832)) is not, with respect, clear to me. I therefore take the more stringent approach that seems indicated by *Khela* and ask whether the jury was adequately instructed to look for evidence from another source that when considered as a whole, gives comfort or confidence that the accused committed the offence. (*Khela*, para. 37.)

73 Common sense suggests that the more problematic the evidence of the *Vetrovec* witness, the greater the need for the trial judge to highlight the need to find evidence capable of “restoring the trier’s faith in relevant aspects of the witness’s account” (*Kehler* at para. 34). This has been referred to as a form of proportionality principle. See Harris; and *R. v. Malik*, 2005 BCSC 350 (QL).

74 In short, the important elements with respect to the characteristics of confirmatory evidence are:

- a) individual items of confirmatory evidence need not implicate the accused;
- b) the materiality requirement is met where the confirmatory evidence, in the context of the case as a whole, gives comfort to the trier of fact that the *Vetrovec* witness can be trusted in his or her assertion that the accused committed the offence charged;
- c) the confirmatory evidence must be capable of restoring the trier’s faith in relevant aspects of the witness’s account and, where the only issue is whether the accused committed the offence, the trier of fact must be comforted that the witness is telling the truth in that regard before convicting on the strength of that witness’s testimony; and
- d) the confirmatory evidence must relate to an important and relevant aspect of the witness’s testimony.

75 In conclusion, two things should be noted with respect to confirmatory evidence. Firstly, the presence of confirmatory evidence does not remove the obligation of the trial judge to tell the jury that it should consider the evidence of the *Vetrovec* witness with caution. See *R. v. Fraser (G.) et al.* (1997), 1997 CanLII 10847 (NL SC), 151 Nfld. & P.E.I.R. 141 at para. 10 (Nfld. S.C. (T.D.)). Secondly, confirmatory evidence is not necessary for the jury to accept the *Vetrovec* evidence as long as there has been a proper *Vetrovec* warning. See *R. v. Sanderson (R.K.)*, 2003 MBCA 109, 177 Man.R. (2d) 260, and *R. v. Roks (A.)*, 2011 ONCA 526, 281 O.A.C. 235.

[30] The Crown submits the confirmatory evidence in this case is found in the videorecording from the Wyze Cam, confirming Thunder carried a gun into suite 7, and that is visible to the viewer.

[31] The person who enters suite 7 after Thunder is Maple aka Jimbo, who is seen carrying a shopping bag. This is captured at 18:53:39 (Exhibit No. 1). Chelsea identified this person as Darren the Booster.

[32] Chelsea confirmed the deceased is Thunder's cousin. Chelsea's evidence confirms Thunder gave Maple the deceased's firearm after Chelsea told Thunder of its location. This evidence was elicited from her when the court permitted further questioning under section 9(2) of the ***Canada Evidence Act*** (R.S.C., 1985, c. C-5). Previously, Chelsea's evidence was Thunder placed the "gun" in the waistband of his pants, not handing the gun to Maple.

[33] The Crown submits the audio recording is sufficient to hear a person calling out "Jimbo", inviting this person to enter the deceased's bedroom, before hearing any shot. The Crown questions why a person who Chelsea identified as Darren the Booster might respond to being called "Jimbo".

[34] A *voir dire* was held regarding the admissibility of Bell's statement. I admitted limited evidence from Bell. Crown and defence counsel agreed to the redactions entered into evidence as Exhibit No. 13. This evidence includes Thunder and Jimbo being in suite 6 - [REDACTED], Winnipeg, Manitoba prior to the killing of the deceased. Bell's evidence is she and the deceased were in a relationship at the time of the killing. Bell's evidence was Thunder and Jimbo

were going to see the deceased in "suite 8". I gave no weight to this evidence as there is no reference to suite 8 in any other testimony. Bell requested Thunder and Jimbo return to suite 6 after securing a "bong" from the deceased so they could smoke the marihuana in Bell's possession. There is sufficient evidence in the photographs and video entered into evidence confirming there were bongs located in suite 7.

[35] Bell also confirms Chelsea entered suite 6 - [REDACTED] after hearing the sound of a gunshot. Bell also confirms, Chelsea went back to suite 7 after having a conversation with a person named Tayesha. The Wyze Cam audio confirmed someone returned to suite 7 and made a 911 call. Bell's evidence also confirms she encountered a member of the WPS as she neared suite 7, while rushing to find out what happened. This is also confirmed by the others.

[36] The Crown submitted Bell's redacted evidence is sufficient to establish beyond a reasonable doubt Maple acted in a common purpose with Thunder and therefore, should be convicted of manslaughter under the provisions of section 21(2) of the ***Criminal Code***.

[37] Bell, although properly subpoenaed, failed to attend court. Bell's evidence was admitted in redacted form after the *voir dire*.

DEFENCE POSITION

[38] The defence submits Chelsea is not a credible and reliable witness. The submissions center around inconsistencies as to who was the shooter. Although

Chelsea's evidence is she was afraid of Thunder, the audio recording, "oops, my bad", is inconsistent with demonstrated fear.

[39] If Chelsea had not turned down the Wyze Cam, the video would confirm who entered and left suite 7 between the time she turned down the camera until the deceased's killing. The camera would also provide us with visual evidence as to all activities in suite 7 in the lead up to the killing. The absence of this evidence leads to speculation as to what occurred and therefore, the evidence is not credible and reliable evidence.

[40] Chelsea, by her evidence, asserts that she is clean from drugs and alcohol since February 2024. I should accept she had serious alcohol and drug abuse issues prior to being clean. The defence submits those issues should make her evidence unreliable establishing a reasonable doubt at the time of the killing. Therefore, I should acquit Maple of the charge of manslaughter.

ANALYSIS

[41] For the purpose of this analysis, I accept some of the evidence of Chelsea as reliable. Some suggestions by the Crown confirm certain events of November 24, 2021.

[42] One of the questions I must decide is, due to Chelsea's significant addictions at the time, and her ongoing daily use of drugs and alcohol, are her current memories of the events of November 24, 2021 reliable? I find her addiction to alcohol and drugs at the time of the killing gives me pause, limiting the weight I

may apply to her testimony due to the inconsistencies throughout. Her reference to consuming a couple drinks during the evening of November 23, 2021, or the early hours of November 24, 2021, became two, two-litre bottles of coolers, adds to my overall concerns about the reliability of her testimony.

[43] However, before I fully determine those issues, the largest consideration I have is Chelsea's two actions; one before and one after the killing.

[44] The first action is Chelsea's decision to turn the Wyze Cam on its face preventing the camera from capturing any video. I reject her assertion she was fearful of Thunder at the time that action occurred. I also reject her evidence she was the only person who knew there was a Wyze Cam in suite 7. The evidence is Thunder told her to turn the camera down when he entered the suite. How did Thunder know of the camera? It is because Chelsea either told him of the camera or Thunder came to know of the camera by other means. It is not relevant to this court how Thunder knew about it, but he clearly did.

[45] The second action is Chelsea's decision to steal the deceased's cellphone from suite 7, together with removing the doorbell camera from suite 9. It was not until she was interviewed for a third time, that she told the WPS officers of those actions. The cellphone and the doorbell camera were never recovered.

[46] There were two silent witnesses present on the evening of November 24, 2021. The steps the deceased took to protect himself from attack and/or robbery by placing the cameras as he did were defeated by Chelsea. Defence counsel

suggested she knew in advance about what was planned for the deceased, which she denied. However, her two actions give me pause.

[47] I will never know the truth. Chelsea's actions to defeat two silent witnesses makes her evidence unreliable. Chelsea's actions in turning down the Wyze camera in suite 7, removing the doorbell camera in suite 9, as well as removing the cellphone, denied the Crown of key evidence. Without this evidence, the remainder of the Crown's case is suspect as to what occurred in suite 7 after 18:53:45 p.m.

[48] Thunder calling out the name "Jimbo" does not mean the person who responded was in fact Jimbo. Without the doorbell camera video recordings of the exterior of suite 9, the Crown cannot prove beyond a reasonable doubt Jimbo did not leave suite 7 in the hour after the camera was manipulated and prior to the killing, absent the videorecording of the events inside suite 7.

[49] Chelsea's testimony that she "was to blame Jimbo" adds confusion. If Jimbo left suite 7 in the hour prior to the killing and after the Wyze camera was turned down, is it possible to blame Jimbo? Did Thunder call out the name "Jimbo" as a ruse? The removal of the doorbell camera from suite 9 and the deceased's cellphone, both of which were never recovered, creates a reasonable doubt as to who may have entered or exited suite 7 in this crucial hour. There is no ability for this court to confirm the conversation or whether Jimbo was present at all after 18:53:45 until the time of the killing.

[50] Bell's evidence is not helpful as it only places Thunder and Maple in the same suite at [REDACTED] on the night of the killing. The only purpose established by Bells's evidence was to bring back a bong from suite 7 so the three of them could smoke her marihuana.

[51] There are other reasonable inferences available to me based on the Crown's evidence.

[52] Therefore, the Crown's case results in the Crown failing to prove beyond a reasonable doubt Maple acted in a common purpose with Thunder to commit robbery.

[53] The entire inconsistencies, other than those times she is on video prior to 18:53:45, make any evidence incredible. Without having access to the video evidence Chelsea prevented the court from viewing, I am left with reasonable doubt that Maple was even present at the time of the shooting.

[54] Although Bell's evidence was admitted under the threshold reliability test in ***R. v. Bradshaw***, 2017 SCC 35, I find her redacted evidence fails to meet the substantive reliability test. I find Bell's relationship with the deceased impacted her impartiality.

[55] The majority of Bell's redacted evidence was admitted after a *voir dire* (***R. v. Maple***, 2025 MBKB 21). Although redacted, her evidence does not address the key issues before me. Therefore, I reject her evidence as being incredible and unreliable.

[56] The basis for the Crown's case is common intention, which is, "Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence". The absence of reliable evidence, specifically video evidence concealed by Chelsea, fails to establish there was a common purpose beyond a reasonable doubt.

CONCLUSION

[57] Therefore, I acquit Timothy Wilfred Christopher Lecoy Maple of the offence of manslaughter in the death of Angus John Maple.

_____ J.