

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING,)	<u>Sivananthan Sivarouban</u>
)	for the Crown
)	
- and -)	
)	<u>Saul B. Simmonds, K.C.</u>
)	<u>Adam R. Hodge</u>
DAVID ALLAN MORRISSEAU,)	for the accused
)	
accused.)	
)	JUDGMENT DELIVERED
)	ORALLY:
)	February 13, 2025

LANCHBERY J.

INTRODUCTION

[1] The accused, David Allan Morrisseau (Morrisseau), stands charged:

THAT HE, the said DAVID ALLAN MORRISSEAU, on or about the 8th of April, 2022, at or near the City of Winnipeg in the Province of Manitoba, did kill FRANKLIN TOBACCO and thereby commit murder in the second degree, contrary to the Criminal Code of Canada.

[2] The live issues in the trial are whether Morrisseau is the person who illegally caused the death of Franklin Tobacco (Franklin), and if so, whether he possessed

the requisite intent to kill. In the event Morrisseau caused the death illegally absent the requisite intent, he is guilty of the included offence of manslaughter.

[3] The Crown's case is based on circumstantial evidence. The leading case is ***R. v. Villaroman***, 2016 SCC 33, [2016] 1 S.C.R. 1000. The court enunciated the applicable principles of the standard of proof required in circumstantial cases, which are as follows:

[38] Of course, the line between a "plausible theory" and "speculation" is not always easy to draw. But the basic question is whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty.

[39] I have found two particularly useful statements of this principle.

[40] The first is from an old Australian case, *Martin v. Osborne* (1936), 55 C.L.R. 367 (H.C.), at p. 375:

In the inculcation of an accused person the evidentiary circumstances must bear no other reasonable explanation. This means that, according to the common course of human affairs, the degree of probability that the occurrence of the facts proved would be accompanied by the occurrence of the fact to be proved is so high that the contrary cannot reasonably be supposed.

[41] While this language is not appropriate for a jury instruction, I find the idea expressed in this passage — that to justify a conviction, the circumstantial evidence, assessed in light of human experience, should be such that it excludes any other reasonable alternative — a helpful way of describing the line between plausible theories and speculation.

[42] The second is from *R. v. Dipnarine*, 2014 ABCA 328, 584 A.R. 138, at paras. 22 and 24-25. The court stated that "[c]ircumstantial evidence does not have to totally exclude other conceivable inferences"; that the trier of fact should not act on alternative interpretations of the circumstances that it considers to be unreasonable; and that alternative inferences must be reasonable, not just possible.

[43] Where the line is to be drawn between speculation and reasonable inferences in a particular case cannot be described with greater clarity than it is in these passages.

[emphasis in original]

[4] Reasonable doubt comes from the evidence or lack of evidence. However, a conviction can only rest on evidence, not lack of evidence.

EVIDENCE

Agreed Statement of Facts

[5] An Agreed Statement of Facts was entered into evidence as Exhibit No. 2 pursuant to section 655 of the ***Criminal Code***, R.S.C., 1985, c. C-46. These facts are attached hereto as an Appendix A to these reasons.

Civilian Witnesses

[6] In the early evening hours of April 7, 2022, a party occurred at *Location A* in the City of Winnipeg, Manitoba. This was the residence of Morrisseau and his brother Lawrence.

[7] Although there were contradictions between the evidence advanced by the partygoers, the underlying facts are this was a party where alcohol and marihuana were consumed. There is some evidence Morrisseau consumed crack cocaine and/or methamphetamine (meth). Some of the partygoers “shotgunned” beer. Shotgunning is when a hole is punched in the side of a beer can, the can then placed to the mouth of the drinker, and the beer is then opened by popping the tab off the top. The effect is to speed up the flow of the beer through the hole in the side of the can, causing it to quickly drain into the drinker’s mouth.

[8] I find those in attendance underestimated the level of their sobriety and that of other partygoers. It is not unusual for those who consume alcohol and/or drugs to misjudge sobriety. Questioning those who consumed alcohol and/or drugs to rate their sobriety on a scale of one to ten does not provide any satisfactory or reliable evidence to the trier of fact. The variables in such a scale are dependent on the frequency of the user's consumption, the ability of the consumer's body to process alcohol, the size and weight of the person consuming the drugs and alcohol, as well as whether that person consumed any food contemporaneous to the time drugs and/or alcohol were consumed.

[9] As the trier of fact, I may accept some, none, or all of a witness's evidence. As the partygoers displayed various levels of sobriety, I am prepared to accept only some of the witnesses' evidence as noted herein.

[10] Lawrence testified he witnessed Morrisseau consuming meth at one point during the party. He also testified Morrisseau stared out the kitchen window, presuming he was only staring but not seeing anything. Lawrence averred witnessing this behaviour on other occasions.

[11] At 1:55 a.m. on April 8, 2022, Lawrence, Megan Houle (Megan), Cassandra Nepan (Cassandra), and Desmond Ferland (Desmond) left the party at *Location A*, Winnipeg for the purpose of moving the party to the residence of Megan's and Cassandra's at *Location B*.

[12] Upon the departure of the four individuals, Franklin and Morrisseau remained at *Location A*. I accept the evidence of Lawrence and Megan that

Franklin was alive when they left *Location A*.

[13] Lawrence and Megan stopped at the Lipstixx beer vendor to purchase more alcohol before arriving at *Location B*. Lawrence was observed on the video camera inside Lipstixx beer vendor. He appeared to have great difficulty with his balance. From my observation of the video entered into evidence, I would describe Lawrence's overall behaviour as extremely intoxicated.

[14] I accept Megan's evidence, the party resumed when she and Lawrence arrived at *Location B*. I accept Megan's and Lawrence's evidence that Lawrence continued to drink after he arrived at *Location B*. I also accept Megan's and Lawrence's evidence that Lawrence and Desmond argued some time later, causing Lawrence to leave *Location B*.

[15] I reject all of Lawrence's evidence after he left *Location B*, due to his extreme state of intoxication captured on the Lipstixx beer vendor camera. I accept Megan's evidence, that Lawrence continued to consume the alcohol he purchased from Lipstixx vendor, which maintained, or potentially increased, his level of intoxication.

[16] I accept some of the evidence of Laura Spence (Laura). I am alive to her relationship with Morrisseau, as she is Morrisseau's and Lawrence's mother. I accept her evidence she knew machetes were present at *Location A* prior to the events in question.

[17] After leaving *Location B*, Lawrence met his father when he arrived at his

parents' house in the *** *block of M.A.* Before going to bed, Lawrence removed his clothing, leaving the clothes on the main level. I accept Laura's evidence, this was Lawrence's habit when he visited her home, and she would wash his clothes whenever she found them discarded.

[18] I infer Lawrence went inside *Location A* some time after leaving *Location B* and prior to arriving at his parents home as his jean cuffs were stained by blood. *Location A* was the only location where there was significant blood present.

[19] Lawrence, Megan and Laura testified to Morrisseau holding the two machetes in his hands as he sat on the front steps of *Location A*, prior to members of the Winnipeg Police Service (WPS) arriving at the scene on April 8, 2022. On a review of cellphone text messages (Exhibit No. 2 (A-F)), it is reasonable anyone reviewing those texts to believe Morrisseau may be upset, but the texts themselves are vague, given the code terms often used in texts.

[20] The evidence I do accept is Lawrence and Morrisseau spoke to each other by cellphone at approximately 1:30 p.m. on April 8, 2022, and Morrisseau told Lawrence, "I guess I killed Frankie". The telephone calls made are found in Exhibit No. 2(A). There is a phone call made at 13:32:14, lasting seven minutes and four seconds, followed by another call at 13:39:19, lasting seven minutes and five seconds, or 14 minutes and 9 seconds in total.

[21] I do accept Lawrence's evidence, once he woke up at approximately 1:00 p.m. on April 8, 2022, phone calls and texts were exchanged between he and

Morrisseau. At one point, Morrisseau asked Lawrence for \$40 or \$50. Lawrence agreed he would give some money to Morrisseau. Morrisseau then arrived at his parents' house in a taxi. Lawrence handed the money to Morrisseau, and Morrisseau left as soon as the money was exchanged.

[22] Lawrence was upset by these events and phoned Megan and asked her to come to his parents' home. Megan did so and the two of them walked back to *Location B*. Lawrence testified, as he and Megan walked by *Location A*, they noticed blood on the front door. Lawrence said neither of them entered *Location A*, but they did leave cigarettes in the mailbox as Morrisseau requested cigarettes in one of the telephone calls.

[23] It is impossible for me to know why so much time elapsed before 911 was called after Lawrence and Megan observed the bloodlike stain on *Location A's* front door. It was not until after Lawrence told his mother what he believed had happened, a 911 call was made.

Police Witnesses

[24] Constable Andrew Fyfe testified to being a 12-year veteran of the WPS. He also testified:

- (a) His initial involvement began with a dispatch call at 18:17 on April 8, 2022;
- (b) The initial calls reported threats of suicide, a person was armed with a machete, there was blood on "the door", and the person wanted to die;

- (c) Cst. Fyfe arrived at the location of *Location A* at 18:23;
- (d) Cst. Fyfe testified that Morrisseau appeared intoxicated, and drank a two litre bottle of alcohol in his presence;
- (e) Cst. Fyfe drew his service pistol, as it was his opinion Morrisseau was passive-aggressive and would not answer any of his questions or follow his directions;
- (f) Cst. Fyfe and other WPS officers were able to secure Morrisseau with handcuffs;
- (g) Cst. Fyfe believed Morrisseau was uninjured; and
- (h) The other WPS officers placed Morrisseau in custody.

[25] Constable Gilbert Sawatzky testified he was on scene at approximately 6:23 p.m., accompanied by his partner. Cst. Sawatzky testified he secured two machetes from the bushes in front of the address of *Location A*. He determined, given the blood stain on the door required the WPS officers under exigent circumstances to enter *Location A* to search to determine if anyone inside *Location A* was injured.

[26] The WPS officers broke up into two teams to conduct the search. The first walkthrough did not discover anyone. The officers switched search locations and performed a second walkthrough. Cst. Sawatzky testified, during his second walkthrough, he discovered a body in the basement. His discovery occurred after he moved an empty box for a television, as well as a blanket. It was at this point he observed another blanket with what appeared to be a human form underneath.

[27] Constable Sawatzky noted that the person's eyes were open, the mouth was open, blood was not present on the body, or around the body.

[28] Constable Sawatzky testified he was with Lawrence outside the residence. He and his partner transported Lawrence to police headquarters. Cst. Sawatzky was not aware if Lawrence was charged and cautioned at any time prior to him being transported.

[29] Constable Myles Winter, of the Forensic Identification Unit of the WPS, averred to bloodlike staining in many places within *Location A*. Cst. Winter described Franklin's visible wounds on the back of his left hand, cuts and abrasions on his right hand, and his right finger was almost severed from the hand. On his head he had bloodlike staining on the hair, head and face, to the point of being "coated". Franklin's jeans showed a heavy deposit of what Cst. Winter believed to be blood. Cst. Winter testified there did not appear to be any blood on the floor underneath Franklin's body.

[30] Constable Winter testified as to the damage done to the cabinetry and furniture in *Location A*. He also noted a significant amount of blood on the main floor in *Location A*. There was also blood on a workout machine, three walls of the main room, the floor and walls of the kitchen.

[31] Constable Winter testified he performed a Bluestar test, which is a chemical visualization agent deployed to assist in showing blood where clean up was attempted. Cst. Winter testified as to where he observed any smearing after the chemical was applied to the walls and the floor.

[32] Constable Winter described how the photographs were taken, with each area having three separate photographs: a long-range shot, a mid-range shot and a closeup.

[33] Constable Matthew Hazeu testified as the Exhibit Officer at the crime scene. All members of the forensic team could seize exhibits, but it was Cst. Hazeu's responsibility to document the items seized. A photobook containing 54 photographs documenting the scene was entered into evidence as Exhibit No. 14.

[34] The forensic team seized the following items from Morrisseau:

- (a) a 15" blade with a 5" handle. Blood was noted on the blade and on the paracord on handle. A hemastix test was presumptive for blood (Exhibit No. 15);
- (b) a 15" blade with a 5" handle. A bloodlike substance was on both sides of the blade (Exhibit No. 16);
- (c) Air Jordan shoes, US size 11, with outsole blood staining on the right shoe as well as the tongue, confirmed by using a Hemastix (Exhibit No. 22); and
- (d) Bloodlike staining on pants, with staining on the interior side of both cuffs, as well as near the thigh area, shin area and up by the pockets.

[35] Items seized from Franklin, or near where his body was discovered:

- (a) Bloodlike staining from several items found on top of Franklin, including a grey comforter, blue comforter, white fitted sheet, yellow sheet and the empty television box;

- (b) Blue Adidas shoes, US size 8, with bloodlike staining on each shoe;
and
- (c) Four beer cans were seized, one with a bloodlike stain on an
American Vintage can.

[36] Exhibit No. 14 showed many areas of bloodlike staining. Cst. Hazeu also noted the only item seized from Morrisseau's bedroom upstairs was a pair of bloody shoes. The only blood shown upstairs was in the hallway outside Morrisseau's bedroom.

[37] Under cross-examination, Cst. Hazeu admitted that not every item discovered was sent for testing, including what is commonly known as drug paraphernalia.

Expert Evidence

[38] Dr. Angela Miller (Dr. Miller) was qualified as an expert and testified for the Crown with expertise on the causes of death. Her testimony was very straightforward. Mr. Franklin Tobacco died as a result of injuries inflicted by a sharp instrument or instruments. There were 13 blunt force injuries to Franklin's scalp, with nine of those injuries being severe. As a result of those injuries, Franklin's cause of death was exsanguination. She averred there were also a number of bruises, abrasions and lacerations; 33 in total to Franklin's body.

[39] Dr. Miller testified that exsanguination occurs within minutes or even an hour, but there are occasions where the literature suggests a longer time for the

body to completely be drained of blood. She also averred the wounds on the scalp were only visible when she peeled Franklin's hair from his scalp. As Franklin's hair was black in colour, it was possible someone would not have known death was imminent until exsanguination was complete.

[40] Dr. Miller reported, although it is possible the wounds to the arms and torso of Franklin may have been inflicted as a consequence of the machete wounds inflicted to Franklin's head, these wounds were not responsible for his death. I further accept Dr. Miller's evidence that Franklin's death was caused by the severe wounds to his scalp.

[41] Dr. Miller could not determine the direction of the blows or the position of the person who inflicted the blows. She opined one of the injuries to Franklin's scalp was substantial, and a single blow from a sharp instrument would cause a significant amount of blood loss, sufficient to cause death.

[42] Dr. Miller opined if Franklin received immediate medical care, he could have survived as no major organs were impacted.

[43] Dr. Miller commented the wounds to Franklin's hands were defensive in nature. She opined these wounds were not responsible for his death.

[44] Dr. Edward Cetaruk (Dr. Cetaruk) was called as a witness by the defence. I qualified him as an expert in medical toxicology and pharmacology, with specific emphasis on the toxic effects of Xanax, meth, crack cocaine, alcohol, Gabapentin and marihuana. Dr. Cetaruk stated he is not qualified to provide expert evidence in psychiatry or psychology.

[45] Dr. Cetaruk testified he considered Morrisseau's long history of drug use, including meth, crack and other drugs, were the basis for him to form his opinion. Additional context was included by Morrisseau's past history of violence when intoxicated, emergency room visits, and blackouts.

[46] I find Dr. Cetaruk was forthright in his expressed opinions. He readily admitted there could be differing circumstances that could cause a change in his opinion. He refused to speculate in areas where he could not provide an expert opinion. He was clear throughout his evidence that it is my responsibility to reach conclusions as to whether Morrisseau possessed the requisite intent to commit second degree murder.

[47] Dr. Cetaruk opined that due to the history of Morrisseau's medical treatment for drug abuse, including hospitalization, a prior lengthy stay in a treatment facility, and his continued use/abuse of meth, crack cocaine and prescription pills, Morrisseau could not possess the requisite intent to commit murder, but reiterated that is my decision, not his.

[48] Dr. Cetaruk also distinguished between alcohol abuse resulting in blackouts, and drug abuse where blackouts are rarely seen. Under cross-examination, he did admit when the cocktail of alcohol and drugs are used in combination, blackouts may occur.

DNA Evidence

[49] DNA was entered into evidence by way of an Agreed Statement of Facts (Exhibit No. 1). A summary of the report from the blood samples taken at the

crime scene at *Location A* confirm:

- (a) The handle of a machete seized at the scene confirms the presence of blood with a mixed DNA profile of Morrisseau and Franklin;
- (b) The handle of another machete seized at the scene shows blood, “on the handle of the machete is mixed DNA profile with Morrisseau”, found to be the major contributor to this mixed profile;
- (c) Black jeans, seized from and worn by Morrisseau at the time of his arrest, contained the blood of Franklin on the upper front right leg and the inside front leg;
- (d) Blood of Franklin was confirmed on swabs taken from the following areas of *Location A*: the west wall of the rear entry door, the east wall of the kitchen, the north wall of the livingroom, and the middle of the east wall of the livingroom;
- (e) Franklin’s blood was present on a swab taken of a stain on the west fence post in the rear yard of *Location A*; and
- (f) At the time of Morrisseau’s arrest, the only wound found to be on him was a bleeding scab to his forehead.

Position of the Defence

[50] The defence submits there is no evidence of intent, and to conclude that Morrisseau possessed the requisite intent would be based on speculation, which is impermissible.

[51] Further, the evidence shows there is an “air of reality” to both drunkenness and intoxication.

[52] The defence also questions the actions of the WPS in not maintaining all the evidence present in *Location A* for further testing.

Position of the Crown

[53] The Crown submits Morrisseau’s state of intoxication does not support he lacked the intention to kill. (*R. v. Daley*, 2007 SCC 53, [2007] 3 S.C.R. 523, at paras. 41-43; and *R. v. Keeper*, 2024 MBKB 19, at para. 85)

[54] Citing Joyal, A.C.J.K.B. (as he then was) in *R. v. Cassan*, 2010 MBQB 241:

III. DID THE ACCUSED HAVE THE STATE OF MIND REQUIRED FOR MURDER?

[333] The crime of murder requires proof of a particular state of mind. For unlawful killing to be murder, Crown counsel must prove that the accused meant either to kill the deceased or meant to cause the deceased bodily harm that the accused knew was likely to kill the deceased, and was reckless whether the deceased died or not. The phrase “was reckless whether the deceased died or not” means that the accused saw the risk the deceased could die from the injury or injuries caused by the stabbing, but went ahead anyway and took the chance.

[334] Either of the above states of mind is sufficient for second degree murder if proven beyond a reasonable doubt. The two states of mind are alternatives. The Crown does not have to prove both. One is enough. What is required is that one of the states of mind be proven beyond a reasonable doubt. For ease of reference, I may use the phrase “the state of mind for murder” rather than repeating the two alternative states of mind that I have already mentioned. In so doing, it should be assumed that I am referring to the two states of mind that I just set out and that the Crown need only prove one of them.

[335] If the accused did not mean to do either, in other words, if he had neither state of mind, then the accused committed manslaughter.

[336] To determine the accused’s state of mind, I must, as a trier of fact in this case, consider all of the evidence including:

- what he did or did not do;
- how he did or did not do it; and
- what he said or did not say.

[337] I must look at the accused's words and conduct before, at the time and after the unlawful act that caused the deceased's death. All these things, and the circumstances in which they happen, may shed light on the accused's state of mind at the time he caused the deceased's death. They may help me decide what he meant or did not mean to do.

[55] The Crown submitted, the actions of Morrisseau, after the death of Franklin, supports an inference that his post-offence conduct suggests he was capable of forming the requisite intent.

[56] The Crown also submits the text messages between Morrisseau and Laura, and Lawrence, and Megan, supports its position that Morrisseau possessed the requisite mind.

Second Degree Murder

[57] For Morrisseau to be convicted of second degree murder, or in the alternative, the included offence of manslaughter, the Crown shall prove beyond a reasonable doubt the following elements:

- (a) That Morrisseau caused Franklin's death;
- (b) That Morrisseau caused Franklin's death unlawfully;
- (c) That Morrisseau had the state of mind required for murder; and
- (d) If Morrisseau caused Franklin's death unlawfully but did not possess the state of mind required for murder, he is guilty of manslaughter.

Did Morrisseau Cause Franklin's Death?

[58] The Crown suggested Morrisseau had the exclusive opportunity to cause Franklin's death. The evidence before me confirms only Morrisseau and Franklin were in *Location A* after 1:55 a.m. on April 8, 2022, except for the time Lawrence was present when his jean cuffs absorbed blood, and when the WPS officers arrived at approximately 6:30 p.m. on April 8, 2022.

[59] Any suggestion Lawrence, or an unknown third party, or parties, entered *Location A* is speculation. Mr. Franklin Tobacco died by exsanguination from blows to his scalp delivered by a sharp instrument. These blows are consistent with wounds from the two machetes seized from the scene, both of which were in Morrisseau's hands at approximately 6:30 p.m. on April 8, 2022. Both of these machetes contained mixed DNA profiles of Morrisseau and Franklin and one machete where Morrisseau's blood was the major contributor. Morrisseau's jeans were covered in blood. Lawrence's jeans had staining to the cuffs consistent with walking through the bloody crime scene.

[60] The defence counsel allege either Lawrence, or an unknown third party, may have participated in Franklin's death. The defence submitted the WPS officers responsible for collecting DNA samples did not take a sample of every blood stain in *Location A*, making it impossible to exclude Lawrence's, or an unknown third party's involvement.

[61] I find if Lawrence, or an unknown third party, were responsible for Franklin's death, Lawrence's, or the unknown third party's DNA would be present at the crime scene. As Morrisseau's and Franklin's DNA were the only DNA profiles found on the handles of the machetes, any suggestion Lawrence, or an unknown party, is speculation. The only reasonable inference is that Morrisseau was responsible for Franklin's death.

Did Morrisseau Cause Franklin's Death Unlawfully?

[62] It is *not* always a crime to cause another person's death. It is a crime, however, to cause the death of another person by an *unlawful* act. The defence position is it was someone else who committed the *unlawful* act, and that someone may be Lawrence or an unknown third party.

[63] The unlawful act alleged in this case is the striking of multiple blows to Franklin's head with a blunt forced instrument. Dr. Miller testified the two machetes seized were consistent with a blunt forced instrument. These multiple blows were administered by the machetes seized. Therefore, I find the cause of death resulted from an unlawful act.

Who Killed Franklin?

[64] I considered all the circumstances of Franklin's death. Dr. Miller testified as to the blows from a machete being consistent with Franklin's cause of death by exsanguination, and in turn, caused the multiple wounds to his scalp. I also considered, from when Lawrence, Megan, Cassandra and Desmond left *Location A*

at 1:55 a.m. on April 8, 2022, except for when Lawrence was present and blood was transferred to his jean cuffs, Franklin and Morrisseau were alone in *Location A*.

[65] I also considered whether Lawrence was the person who killed Franklin, as suggested by defence counsel during Lawrence's cross-examination. Lawrence vehemently denied his involvement in Franklin's death.

[66] Dr. Miller testified Franklin died by exsanguination indicating the blood rapidly drained from Franklin's body. Morrisseau's DNA on the handles of both machetes and a large pool of blood on his jeans demonstrates Morrisseau held the machetes, not Lawrence.

[67] Based on ***Villaroman***, given the absence of DNA evidence in *Location A* from Lawrence or an unknown third party, I find the defence's suggestion that it was either Lawrence or an unknown third party caused Franklin's death to be an unreasonable inference.

[68] The only reasonable inference remaining, by the evidence adduced and testimony gathered at trial, is Morrisseau caused the death of Franklin. Also, I find it reasonable to conclude that Morrisseau was the person who struck Franklin with multiple blows to the head, consistent with blows by machete, resulting in Franklin's death. Two machetes were seized at the scene, both of which contained only Morrisseau's DNA. The evidence I accept is consistent that Morrisseau was the person with the exclusive opportunity to kill Franklin.

[69] I also accept Dr. Miller's evidence, the machetes, with the presence of Morrisseau's and Franklin's blood and DNA, establishes beyond a reasonable doubt the sharp instrument that inflicted the machete wounds to Franklin were the same machetes held by Morrisseau as he sat outside *Location A* on the late afternoon of April 8, 2022.

[70] Therefore, I find the Crown has proven beyond a reasonable doubt Morrisseau caused the death of Franklin.

Did Morrisseau Have the State of Mind Required for Murder?

[71] Murder requires proof of a particular state of mind. For an unlawful killing to be murder, the Crown must prove beyond a reasonable doubt that Morrisseau either meant to kill Franklin, or Morrisseau meant to cause bodily harm to Franklin, which he knew was likely to kill him and was reckless whether Franklin died or not.

[72] In ***Daley***, the Supreme Court of Canada found three legally relevant degrees of intoxication:

[41] Our case law suggests there are three legally relevant degrees of intoxication. First, there is what we might call "mild" intoxication. This is where there is alcohol-induced relaxation of both inhibitions and socially acceptable behaviour. This has never been accepted as a factor or excuse in determining whether the accused possessed the requisite *mens rea*. See *Daviault*, at p. 99. Second, there is what we might call "advanced" intoxication. This occurs where there is intoxication to the point where the accused lacks specific intent, to the extent of an impairment of the accused's foresight of the consequences of his or her act sufficient to raise a reasonable doubt about the requisite *mens rea*. The Court in *Robinson* noted that this will most often be the degree of intoxication the jury will grapple with in murder trials:

In most murder cases, the focus for the trier of fact will be on the foreseeability prong of s. 229(a)(ii) of the *Criminal Code*, R.S.C., 1985, c. C-46, that is, on determining whether the accused foresaw that his or her actions were likely to cause the death of the victim. For example, consider the case where an accused and

another individual engage in a fight outside a bar. During the fight, the accused pins the other individual to the ground and delivers a kick to the head, which kills that person. In that type of a case, the jury will likely struggle, assuming they reject any self-defence or provocation claim, with the question of whether that accused foresaw that his or her actions would likely cause the death of the other individual. [para. 49]

A defence based on this level of intoxication applies only to specific intent offences.

[42] It is important to recognize that the extent of intoxication required to advance a successful intoxication defence of this type may vary, depending on the type of offence involved. This was recognized by this Court in *Robinson*, at para. 52, in regards to some types of homicides:

[I]n cases where the only question is whether the accused intended to kill the victim (s. 229(a)(i) of the *Code*), while the accused is entitled to rely on any evidence of intoxication to argue that he or she lacked the requisite intent and is entitled to receive such an instruction from the trial judge (assuming of course that there is an "air of reality" to the defence), it is my opinion that intoxication short of incapacity will in most cases rarely raise a reasonable doubt in the minds of jurors. For example, in a case where an accused points a shotgun within a few inches of someone's head and pulls the trigger, it is difficult to conceive of a successful intoxication defence unless the jury is satisfied that the accused was so drunk that he or she was not capable of forming an intent to kill.

Although I would hesitate to use the language of capacity to form intent, for fear that this may detract from the ultimate issue (namely, actual intent), the point of this passage, it seems to me, is that, for certain types of homicides, where death is the obvious consequence of the accused's act, an accused might have to establish a particularly advanced degree of intoxication to successfully avail himself or herself of an intoxication defence of this type.

[43] The third and final degree of legally relevant intoxication is extreme intoxication akin to automatism, which negates voluntariness and thus is a complete defence to criminal responsibility. As discussed above, such a defence would be extremely rare, and by operation of s. 33.1 of the *Criminal Code*, limited to non-violent types of offences.

[73] I accept the evidence of Dr. Miller as to the number of blows inflicted to Franklin and the severity of those wounds. I accept Dr. Miller's evidence that Franklin's body showed defensive wounds. The blows were not glancing blows.

Dr. Miller described them as severe blunt force trauma causing exsanguination. She opined one blow may have been sufficient to cause Franklin's death.

[74] I ask myself, was there an air of reality to the intoxication defence. In **Daley**, the severity of the intoxication was described as:

[42] an accused might have to establish a particularly advanced degree of intoxication to successfully avail himself or herself of an intoxication defence of this type.

[75] The primary evidence as to Morrisseau's state of mind is determined by the expert evidence of Dr. Cetaruk. Dr. Cetaruk provided expert opinion evidence in this court on the effect of intoxication by alcohol and drugs. In **R. v. Belyk**, 2021 MBQB 12, McKelvey, J. qualified Dr. Cetaruk as an expert based on the same qualifications presented here. What is relevant is how Dr. Cetaruk's opinion applies to the facts of this case, not those in **Belyk**.

[76] Dr. Cetaruk opined the chronic use of alcohol consumption, in combination with various drugs ingested, was sufficient to support a finding that Morrisseau lacked the requisite state of mind.

[77] There is some evidence before me that Morrisseau was a frequent user of alcohol and drugs, as noted herein. He previously experienced episodes where he blacked out as a result of his use of alcohol and drugs, resulting in his admission to hospitals and/or treatment facilities. Although Lawrence testified, prior to his leaving *Location A*, Morrisseau stared out the kitchen window. However, there is no evidence Morrisseau blacked out at that time. I reject, staring out the window can only infer Morrisseau had blacked out at that time. I accept Dr. Cetaruk's opinion that form of black out is from alcohol, and not drug use identified by

Lawrence on April 8, 2022. Although Dr. Cetaruk did not eliminate the possibility of a black out from alcohol and drugs, he suggests those incidents are rare. **Villaroman** does not require me to consider every possibility. I find, based on Dr. Cetaruk's opinion, and the evidence of Lawrence, Morrisseau did not black out on April 8, 2022.

[78] Dr. Cetaruk's report identified Wellbutrin as one of the drugs Morrisseau may have consumed. When confronted with this information from his report during trial, Dr. Cetaruk readily admitted he wrote this, but there was no evidence supporting the presence of Wellbutrin. I find such an admission in an expert report raises some doubt about his opinion.

[79] I accept Lawrence's evidence, at approximately 1:30 p.m. on April 8, 2022, Morrisseau told him during a phone conversation the words, "I guess I killed Frankie". The two phone calls, one at 13:32 and another at 13:39, were placed one second apart.

[80] I considered the severity and number of blows by Morrisseau striking Franklin were not a single, impulsive act. The amount of blood strewn about the floor on the main level, walls and furnishings are indicative of a determined attack. I find the number of blows administered by Morrisseau to Franklin's body is not consistent with a person who was blacked out. I find the evidence of the number of blows and the severity of the attack is one indicia of intent.

[81] I considered the arm of the main floor couch was soaked with blood. Although the arms and cushions of the couch were never sent for testing, it is clear this was the location of the killing. With exsanguination, the blood exits the body

rapidly, as confirmed by Dr. Miller. The rapid flow of blood is also indicative of the amount of bloodlike substance found on Morrisseau's jeans, as well as the couch.

[82] The presence of significant quantities of blood on the arms of the livingroom couch are consistent with the rapid loss of blood, and death ensued at this location. Some time after Franklin died by exsanguination on the main level, his body was moved to the basement.

[83] The autopsy reported Franklin weighed 50 kilograms (approximately 110 pounds). Morrisseau was physically capable of moving the weight of Franklin's body to the basement. As Morrisseau was the only person in *Location A*, it is a reasonable inference Morrisseau moved Franklin's body at some point after death and prior to the WPS officers searching *Location A*. This 18-hour period provided ample opportunity for Morrisseau to move Franklin's body from the livingroom to the basement some time after exsanguination was complete.

[84] There is a question of how Franklin's body was discovered in the basement of *Location A*. Any suggestion Franklin ambulated downstairs, covering himself with comforters and an empty television box, is not a reasonable inference given he died from exsanguination. The fact Franklin's blood was not found on the floor under his body is indicative complete exsanguination occurred prior to his body being placed on the basement floor and then covered with those objects. I find, due to the exsanguination, Franklin could not pull these objects over his own body. The only reasonable inference is when Franklin's body was placed in the basement by Morrisseau. This post event conduct demonstrates an intentional act.

[85] Although the photographs show some blood on the stairs to the basement of *Location A*, this blood is insufficient to establish the killing took place in the basement.

[86] The evidence before me shows there were bloodstains found on the basement wall, as testified to by the identification officers, but none of those bloodstains were fresh or wet. The only reasonable inference is the blood was present on the walls prior to the events of April 8, 2022.

[87] In order to accept Dr. Cetaruk's opinion, I must be satisfied that the effect of the intoxication was such that Morrisseau was unable to form the specific intent and lacked the necessary *mens rea* for murder.

[88] Applying the principles of ***W(D)*** (see ***R v W(D)***, 1991 SCC 93, [1991] 1 S.C.R. 742), Dr. Cetaruk was the defence's only witness. I find the evidence of Dr. Cetaruk does not support Morrisseau's position he lacked the requisite intent. Dr. Cetaruk based his opinion on the facts presented. I reject that consuming drugs during the party are sufficient to compare this incident to previous incidents relied on by Dr. Cetaruk. I find there is no evidence supporting Morrisseau was ever on the verge of being blacked out on April 7 or 8, 2022.

[89] The machete blows that caused Franklin's death were 33 in total and 9 severe scalp wounds. This attack was especially outrageous. Following Franklin's death, Morrisseau was the one person with the opportunity to move Franklin's body to the basement. Once in the basement, he covered Franklin's body. I find the only reasonable inference for absence of blood under Franklin's body is the

killing occurred on the main floor of *Location A*; exsanguination was complete prior to Franklin's body being moved.

[90] However, the actions of Morrisseau do not show he was so drunk or high to negate intent. Dr. Cetaruk's opinion was based upon the evidence presented to him. To repeat, Dr. Cetaruk was clear that a finding of intent is my responsibility. Based on this evidence, I find Morrisseau possessed the requisite intent to commit second degree murder based on his actions, including the severe attack, as well as moving Franklin's body. Therefore, I do not believe Dr. Cetaruk's evidence Morrisseau lacked the intention to commit murder.

[91] As to the second step, does Dr. Cetaruk's evidence raise a reasonable doubt? The facts presented to me do not support Dr. Cetaruk's opinion based on the facts as I have found them. Although Morrisseau was intoxicated, there is no evidence before me to support his intoxication was so severe to negate intent. Therefore, I find Dr. Cetaruk's evidence raised a reasonable doubt.

[92] Turning to the third step in the ***W.(D)*** analysis, has the Crown proved beyond a reasonable doubt that Morrisseau intended to cause the death of Franklin or was reckless whether death ensued or not?

[93] I considered all the evidence from April 7 and 8, 2022. I find, staring out the window and using crack cocaine or meth, does not support a finding that Morrisseau lacked intent. Morrisseau was a constant user of meth and alcohol.

The sheer number of blows delivered by Morrisseau shows this was a deliberate attack on Franklin. The after-offence conduct of moving the body to the basement, and covering the body in an effort to prevent the body from being discovered also demonstrates intent.

[94] Therefore, the Crown has proved beyond a reasonable doubt that Morrisseau had exclusive opportunity and intended to cause Franklin Tobacco's death or was reckless as to whether death ensued or not. Therefore, David Allan Morrisseau is guilty of the offence of second degree murder.

_____ J.

APPENDIX A
(excludes exhibits)

CR23-01-39535

THE COURT OF KING'S BENCH
WINNIPEG CENTRE

BETWEEN:

HIS MAJESTY THE KING,

- and -

DAVID MORRISSEAU

Accused

AGREED STATEMENT OF FACTS

Manitoba Justice
Prosecution Service
510 – 405 Broadway
Winnipeg, Manitoba R3C 3L6
Facsimile: (204) 948-1211

SIVANANTHAN SIVAROUBAN

CR23-01-39535

THE COURT OF KING'S BENCH
WINNIPEG CENTRE

BETWEEN:

HIS MAJESTY THE KING,

- and -

DAVID MORRISSEAU

Accused

AGREED STATEMENT OF FACTS

Pursuant to Section 655 of the *Criminal Code*, the following admissions of fact are hereby made by the accused for the purpose of dispensing with proof thereof:

Accused's Cellphone

1. On April 9th 2022, a Pink Apple iPhone 7 belonging to the Accused was seized by Winnipeg Police Service (WPS) from the front yard [REDACTED].

2. A forensic extraction of that phone was completed by the WPS. The following information was located on that phone.
 - a. The Accused is listed as "Dave Moreso" on his Facebook Account. It is agreed that "Dave Moreso" is the accused.
 - b. It is agreed that the Facebook account "Laura Spence" belongs to the Accused's mother Laura Spence
 - c. It is agreed that the Facebook account "Lawrence Paquette" belongs to the Accused's brother Lawrence Morrisseau.
 - d. The person listed as "Kay De Niro" was never identified.
3. There were several calls made to and from Lawrence Morrisseau on April 8th 2022.
 - a. Attached as Exhibit "A" is a call log between Lawrence Morrisseau and the Accused
4. Attached as an Exhibit labelled "B" are communications between the Accused and Laura Spence between April 7th 2022 and April 8th 2022 via Facebook Messenger.
5. Attached as and Exhibit labelled "C" are communications between the Accused and "Kay De Niro" on April 8th 2022 via Facebook Messenger.
6. Also located on the Accused's cellphone was a photograph taken on April 8th 2022 at 17:07 which depicts the accused lying on the floor next to a machete. Attached as Exhibit "D" is that photograph.

Lawrence Morrisseau's cellphone

7. On April 9th 2022 at 04:42, a Samsung Galaxy A10E phone belonging to Lawrence Morrisseau was provided to police by his girlfriend at the time, Megan Houle.

8. A forensic extraction of that phone was completed by the WPS. The following information was located on that phone.
 - a. It is agreed that the Facebook Account "Dave Morso" belongs to the accused.
 - b. It is agreed that the contact "Megan Morrisseau" and "The Love of my life" both refer to Megan Houle, Lawrence Morrisseau's girlfriend at the time.
9. Attached as Exhibit "E" are communications between Lawrence Morrisseau and David Morrisseau between April 7th 2022 and April 8th 2022 via Facebook Messenger. These same messages were also located on the Iphone of David Morrisseau.
10. Attached as Exhibit "F" are communications between Lawrence Morrisseau and Megan Houle between April 7th 2022 to April 8th 2022 via Facebook Messenger.

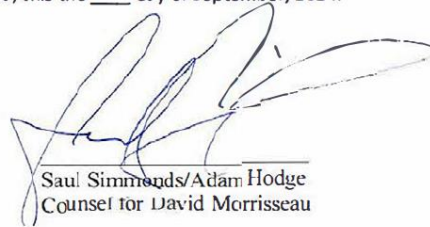
Video Surveillance

11. The WPS obtained a number of surveillance videos from various taxis in Winnipeg.
12. On April 7th 2022, Lawrence Morrisseau and Desmond Ferland get into Unicity Taxi #229 in front [REDACTED] at 22:24:57 hours. Attached as Exhibit "G" is the surveillance video from that cab.


13. The cab drives to the Northern Hotel. Both individuals are seen exiting the taxi, going into the hotel, and returning. Desmond Ferland is carrying a 30 can pack of Budweiser and Lawrence Morrisseau is carrying 2 2L bottles of Iced Tea.
14. At 22:35:50, the cab returns to [REDACTED] and both individuals exit the cab.
15. On April 8th 2022, Lawrence Morrisseau and Megan Houle get into Unicity Taxi #420 at [REDACTED]. Attached as Exhibit "H" is the surveillance video from that cab.
16. The cab drives to the Lipstyx Beer vendor at 1105 Arlington Street, Winnipeg, Manitoba. Lawrence Morrisseau exits the cab to go inside the beer vendor while Megan Houle remains in the cab.
17. Video surveillance was obtained by WPS from Lipstyx Beer Vendor. Attached as Exhibit "I" is the surveillance video from the beer vendor.
18. Lawrence Morrisseau is seen at the front door of the beer vendor approaching on foot at 1:59:49 on April 18th 2022.
19. He is seen on surveillance purchasing 2 cases of Hard Iced Tea at 02:05:11 and leaving the store at 02:05:41.

20. Once Lawrence Morrisseau returns the cab goes back to [REDACTED] and the two individuals disembark at 02:08:42 per the video surveillance of Unicity Taxi #420.

DATED at the city of Winnipeg, Manitoba, this the 9th day of September, 2024.



Saul Simmonds/Adam Hodge
Counsel for David Morrisseau



Sivananthan Sivarouban
Crown Attorney