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Docket: CR 23-02-02483
(Brandon Centre)
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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING	)	Brett Rach
	)	for the Crown
- and -	)	
	)	
RENNIE KRISTYNA WILLIAMS	)	Robert D. Harrison
accused.	)	for the accused
	)	
	)	
	)	Judgment delivered:
	)	September 2, 2025

LEVEN J.

SUMMARY

[1] The accused was charged with second-degree murder. The accused testified and argued self-defence. She consumed alcohol and methamphetamine (meth) before the fatal events. For reasons explained below, I find her guilty of the included charge of manslaughter.

FACTS

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

[3] The trial was held on January 6 to 10, 2025, with closing arguments delivered on March 10, 2025.

Agreed facts

[4] The events in question occurred on or about December 10, 2022 in Manitoba. (All dates are in 2022 unless otherwise specified.) Jurisdiction was admitted**.**

[5] The accused is the person named in the Indictment.

[6] A First Nation security officer ("the Security Officer") arrived at the residence of CR a bit after midnight on or about December 10, in response to a call. [At the trial, it would emerge that CR was an acquaintance of both the accused and the deceased.]

[7] In response to a call, RCMP officers arrived at CR's residence at 12:52 a.m.

[8] An RCMP officer arrested the accused at 5:05 a.m. at a gas station near Griswold, Manitoba.

[9] RCMP officers lawfully seized various items from the accused upon her arrest. The items included clothing but no knives. [The Agreed Facts did not mention knives at all.]

[10] KT was a paramedic who arrived at CR's residence at about 1:10 a.m. He observed RCMP officers providing first aid to the deceased. The deceased was still alive, lying on the floor in the hallway between the kitchen and the living room. KT observed blood around the deceased.

[11] KT assessed the deceased. A few minutes later, the deceased became pulseless. Paramedics were unable to resuscitate her. The time of death was about 1:15 a.m.

[12] JB is a relative of the accused. In the early morning hours of December 10, the accused asked JB for a ride. He dropped the accused off at the home of NW (another relative).

[13] Corporal P is an RCMP officer who was involved in this investigation. On December 11, Corporal P executed a lawful search warrant for JB's residence. She seized an empty bottle of bleach near the washing machine. She also seized various wet women's clothes in the washing machine. Corporal P and another officer also seized some clothing on a mattress in a bedroom.

[14] A forensic biologist ("the Biologist") is an expert in the field of forensic DNA analysis. His expertise was not contested. He did a DNA profile of the deceased. He did a DNA analysis on three items of clothing seized from the accused upon arrest and one item from the washing machine. Blood was found on three of the items. The

deceased could not be excluded as being the source of the DNA profile from the blood.

[15] A qualified toxicologist ("the Toxicologist") analyzed peripheral blood and fluid samples from the deceased. He found elevated levels of sertraline and of a sertraline metabolite. One possibility for the elevated sertraline would be an incise wound to an organ.

[16] [The agreed facts imply that sertraline is a prescription medication, but there was no evidence about what it is prescribed for or what it does.]

[17] The Toxicologist found meth in the deceased's blood. The level suggested illicit use. An "experienced user" of meth "will need to ingest more of the drug to achieve the desired effects of the drug." [There was no expert evidence about the effects of meth, or of meth combined with alcohol.]

[18] RCMP Constable C testified. He arrived at the home of CR at about 1:00 a.m. He saw the deceased on the ground in the living room. The deceased was still alive. She couldn't breathe. There appeared to be a puncture wound on her left breast. He gave first aid for about 10 to 15 minutes until paramedics arrived. The paramedics declared her deceased.

[19] Safety Officer LM testified. She received a call that two drunk women were fighting. She went to CR's residence, arriving about

midnight. CR told LM that a girl named [first name of deceased] had been stabbed. LM told her partner to phone 911. LM didn't see any knives. She was still there when the RCMP arrived.

[20] Later that night, at about 2:13 a.m., LM went to a gas station and saw the accused. The accused approached LM and asked her how [name of deceased] was. LM changed the subject. LM could smell alcohol, though not a strong smell of alcohol, coming from the accused.

[21] RCMP Corporal SG testified. He attended CR's house after the deceased was pronounced dead. He photographed her obvious injuries, bagged her hands and put her in a body bag. He took photos of the scene which were entered as exhibits without objection. Some photos showed red staining, which might have been blood. No photos show any knives.

[22] GF testified. She knew the accused. She knew of the deceased, but did not know the deceased personally. In the early morning of the night in question, she gave the accused a ride to JB's house. She did not smell alcohol on the accused. There were red dots on the accused's face. The accused was crying hysterically. GF didn't understand what the accused was saying. GF gave a statement to police a few months later.

[23] AB testified. He was at CR's house on the night in question. He did not know the accused or the deceased. The accused and the

deceased arrived. AB didn't see them consume alcohol. They began fighting. They were yelling at each other, but AB doesn't know what they were yelling about. They wrestled, and the accused ended up on top of the deceased. He tried to pull the accused off. The accused bit his thumb. He went to tend to his thumb. He never saw any weapons. He made a statement to police months later.

[24] JW testified. She was related to both the accused and the deceased. At about 2:00 a.m. or 3:00 a.m. on the night in question, the accused barged into the house where JW was staying. The accused said, "I just stabbed [name of deceased] and saw her bleed out." JW didn't ask for details. The accused was shaking. JW didn't smell alcohol coming from the accused. The accused said that she threw the knife in the bush on her way home. The accused was very emotional.

[25] NW testified. She is related to the accused [and the deceased]. She saw the accused at about 2:00 a.m. or 2:30 a.m. on the night in question. The accused said that she stabbed the deceased. The accused said that she knew she was going to jail. She said that she threw the knife on the road. The accused kept crying. At one point she said something about self-defence. NW got the impression that the accused was under the influence of something – maybe alcohol and maybe drugs.

[26] CR testified. He knew the accused through her late brother. He knew the deceased slightly. He was at home on the evening in question. He consumed some meth that evening. The accused and the deceased showed up. They began arguing about the accused's late brother. They began pushing and shoving each other. The deceased called the late brother a "bitch". At one point, the deceased pushed the accused into a bedroom closet.

DH

[27] DH testified. She was related to both accused and the deceased, and had good relationships with both. On the day in question before going to CR's house, the accused and the deceased came over to DH's home. Both the accused and the deceased drank a large quantity of vodka. DH saw them drink shots, but wasn't sure how many. They became drunk. They argued, but DH didn't know about what. The accused took out a knife in some kind of case or sheath. DH didn't remember what the knife looked like. DH knocked the knife from out of the accused's hands. It fell to the floor. The accused said that if she had to use it, she would. The accused put the knife inside her jacket. The accused left first, and the deceased left later.

[28] Defence counsel objected that DH's evidence about the knife was irrelevant and inadmissible. At that point in the trial, the Pathologist had not yet testified about the cause of death, and the

accused had certainly not testified. There had been passing comments about a knife, but I had not yet heard any evidence that a knife wound might have been the cause of death. I ruled the evidence inadmissible. After the Pathologist testified that the cause of death was a wound by a knife or something similar, the Crown asked me to reconsider my decision about the evidence of DH. Defence counsel agreed that I had the authority to reconsider my decision, but urged me not to. I did reconsider my decision, and I ruled the evidence admissible, subject to weight.

ES

[29] ES testified. She knew both the accused and the deceased. She saw them arguing at CR's home on the day in question. She was not sure what they were arguing about. The accused's dead brother was mentioned. ES did not want to get involved. ES, the accused, the deceased and a cousin shared about a gram of meth. ES commented that she herself was high [on meth] "all the time". ES said that the deceased seemed drunk and that the accused seemed psychotic.

[30] ES commented that the accused threatened to stab all of us with a black knife that she took out of her purse.

[31] Defence counsel objected that this evidence should be excluded on the basis of relevance. It would have little probative value, and it would be highly prejudicial. At this point in the trial, the Pathologist

had not yet testified about the cause of death, and the accused had certainly not testified. There had been passing comments about a knife, but I had not yet heard any evidence that a knife wound might have been the cause of death. I ruled the evidence inadmissible. (The Crown never asked me to reconsider my decision.)

The evidence of SD from the preliminary transcript

[32] SD was a Crown witness at the preliminary inquiry (the prelim), and he was cross-examined by defence counsel at the time. The Crown subpoenaed him to testify at the trial. He essentially disappeared. The Crown made various efforts to locate him, without success. The Crown argued that the transcript of his testimony at the prelim should be admissible, subject to weight [pursuant to section 715(1) of the ***Criminal Code,*** R.S.C., 1985, c. C-46 (the ***"Code"***)]. Defence counsel disagreed.

[33] Counsel cited ***R. v. Potvin***, 1989 CanLII 130 (SCC), ***R. v. Bradshaw***, 2017 SCC 35, ***R. v. Atkinson et al.***, 2018 MBCA 136, and other cases. I carefully considered all of them.

[34] After hearing arguments from counsel, I ruled orally that the transcript would be admissible, subject to weight. The Crown made reasonable efforts to locate SD, including some creative efforts and including the use of email. The Crown should not be held to a standard of perfection. The evidence was given under oath, and the witness was

cross-examined by experienced, veteran counsel. The evidence met the necessity and reliability tests.

[35] SD testified that he was at CR's home on the night in question (he lived there at the time), and he saw the accused and the deceased, although he did not know their names at first. The accused was upset, and she yelled at the deceased, perhaps something about the accused's brother. They wrestled in a doorway and pulled each other's hair.

[36] At one point, he saw one of the two women holding a knife. He was about six feet away. He wasn't wearing his glasses. He said he was "pretty shitty blind" without his glasses. He saw the shine of the knife. He wasn't sure who was holding the knife.

[37] SD went into a bathroom. He heard one of the two women say that she was hurt.

[38] When he emerged, he saw the deceased lying on her side on the floor, alive.

[39] SD thought the accused was under the influence of alcohol, but he couldn't articulate exactly why.

The Pathologist

[40] The pathologist who did the autopsy on the deceased ("the Pathologist") testified. There was no objection to his expertise.

[41] The cause of death was a stab wound to the chest. The wound might have been caused by a knife or something similar. The left lung

was punctured. It's hard to estimate how much force would have been needed.

[42] There were small cuts near the left ear. There were two small wounds on the lower lip. There were scratches on the neck, perhaps from fingernails. There were bruises/contusions on the hands. It's not clear whether the hands were used to attack or to defend. There were injuries to the mouth, which might have been caused by a head-butt.

The accused

[43] The accused testified. She and the deceased were cousins and were pretty close. They were a similar size.

[44] Earlier on December 9, 2022, the accused drank about half of a 26-ounce bottle of vodka. The two women shared a half gram of meth. They smoked a couple of joints of weed [marijuana].

[45] They went to DH's home. They used about half a gram, of meth. They drank more vodka. The accused bought a knife from a pawn shop. She though it was "cool". She took out the knife (in a sheath) and DH knocked it out of her hands. The accused picked up the knife and put it into her jacket.

[46] After about one to three hours at DH's, the two women went to CR's to get high [on meth]. They had gone there to get high before.

[47] They were both staggering. The accused felt woozy and couldn't stand up. The deceased helped her up. They were both laughing.

[48] At CR's place, the two women used about three grams of meth.

[49] The deceased got upset about her phone. She got it into her head that someone stole the phone. The accused let the deceased take her knife. The deceased swung the knife around and said she would stab everyone. The accused tried to persuade the deceased to leave but the deceased wanted to keep looking for her phone. The deceased threw a plate at the accused.

[50] The two women went into a bedroom. The accused asked for the knife back. The accused was still drunk. The accused didn't know what to do, so she knocked the knife out of the deceased's hands. The knife went under a bed. The two women began wrestling and they fell to the floor off balance. They pulled each other's hair and punched each other. The deceased bit the accused in the neck. The accused bit the deceased's nose. The accused hit the deceased at least two times with a broken CD stand. The accused was on top of the deceased. The deceased wouldn't let go of the accused's hair. The accused head-butted the deceased.

[51] The deceased pushed the accused into a closet. The accused got out.

[52] The deceased retrieved the knife. The accused was scared for her life. The accused grabbed the knife. The deceased said she was hit. The accused threw the knife on the ground. The accused felt scared for her life. She felt she had no option. She "just did it".

[53] The accused stayed with the deceased for about five minutes. The deceased told her to leave. She didn't know what to do, so she left. The accused left the knife in the hallway at CR's house.

[54] The accused left and went to her aunt's house. She stayed at her aunt's about 15 minutes, then she got a ride home. At home, the accused put her clothes in the washing machine. She grabbed about three points of meth and went to the house of the deceased, where JW was. The accused and JW used meth together. The accused went into shock and told JW that she (the accused) stabbed her cousin. The accused smoked about two points, and shared the third point with JW. The accused was crying hysterically.

[55] The accused decided she wanted to turn herself in to the police. The accused doesn't remember telling JW that she threw the knife on the road. When the accused last saw the knife, it was at CR's house. The accused went to the local gaming centre because there were always police there. While walking to the aunt's, she lost her shoes and was walking in the snow barefoot. She didn't realize it until she noticed that her feet felt cold.

[56] Meth makes the accused emotional. It makes her laugh, and makes her aggressive.

[57] In cross-examination, the accused said that she argued with the deceased about the accused's dead brother. At some point at CR's place, a plate was thrown. She didn't remember biting anyone's hand.

[58] The accused was eventually arrested at a gas station.

[59] The accused said she stabbed the deceased in SD's bedroom. Later in the trial, she said it happened in the hallway. When the Crown asked her about the contradiction, she replied, "I must have misheard you."

LAW

[60] ***R. v. Villaroman*,** 2016 SCC 33 ("***Villaroman***"), dealt with circumstantial evidence. At paragraph 35, the court pointed out:

> … Requiring proven facts to support explanations other than guilt wrongly puts an obligation on an accused to prove facts and is contrary to the rule that whether there is a reasonable doubt is assessed by considering all of the evidence. The issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. If there are reasonable inferences other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt.

[61] At paragraph 36, the court added "… that a reasonable doubt, or theory alternative to guilt, is not rendered 'speculative' by the mere fact that it arises from a lack of evidence".

[62] At paragraph 38, the court observed:

> 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.

[63] ***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.

[64] Later cases have elaborated upon ***W(D). R. v. Menow***, 2013 MBCA 72 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.

[65] 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."

[66] ***R. v. Khill***, 2021 SCC 37 ("***Khill***") was about self-defence and the modern ***Code*** provisions about this defence. The accused was in his house and thought that his vehicle was being stolen. He took his shotgun, loaded it, went outside, saw someone, shouted at him, then shot him dead. The deceased had no gun with him. The accused pled self-defence. The jury acquitted. The Supreme Court eventually ruled that the trial judge did not adequately instruct the jury about the phrase "person's role in the incident," [section 34(2)c] and ordered a new trial. At paragraph 53, the court looked at the word "reasonable" in section 34(1)(a):

> The reference to reasonableness incorporates community norms and values in weighing the moral blameworthiness of the accused's actions". It is "a quality control measure used to maintain a standard of conduct that is acceptable not to the subject, but to society at large."

[67] The court used the term "modified objective inquiry". At paragraph 56, the court pointed out that,

> …not all personal characteristics or experiences are relevant to the modified objective inquiry. The personal circumstances of the accused that influence their beliefs – be they noble, anti-social or criminal – should not undermine the *Criminal Code's* most basic purpose of promoting public order…

[68] At paragraph 63, the court observed the "transition to reasonableness under s. 34(1)(c) illustrates the new scheme's orientation towards broad and flexible language."

[69] At paragraph 65, the court added that "the trier of fact should not be invited to simply slip into the mind of the accused. The focus must remain on what a reasonable person would have done in comparable circumstances and not what a particular accused thought at the time."

[70] At paragraph 79, the court pointed out:

> The phrase "the person's role in the incident"…has no equivalent in the previous statute or case law and it lacks a generally accepted meaning in the criminal law. The plain language meaning of a person's 'role in the incident' is wide-ranging and neutral. It captures both a broad temporal scope and wide spectrum of behaviour, whether that behaviour is wrongful, unreasonable or praiseworthy.

[71] At paragraph 123, the court concluded that

> …fact finders must take into account the extent to which the accused played a role in bringing about the conflict or sought to avoid it. They need to consider whether the accused's conduct throughout the incident sheds light on the nature and extent of the accused's responsibility of the final confrontation that culminated in the act giving rise to the charge.

[72] ***R. v. Daley***, 2007 SCC 53 ("***Daley***") was about murder, intoxication and manslaughter. The accused got very drunk, stabbed the victim and was charged with first-degree murder. The accused had poor judgment and poor balance, and no memory of the events. A toxicologist testified about the effects of alcohol. The jury convicted the accused of second-degree murder. The supreme court upheld the

verdict. Much of the decision dealt with jury instructions. At paragraphs 41 to 43, the court reviewed the three levels of intoxication. The first is mild intoxication. The third is intoxication akin to automatism. The second is the level that juries often have to grapple with. The second level of intoxication might negate *mens rea*. The court reviewed earlier cases about which type of jury charge is best. At paragraph 53, noted that "the main determination in cases involving a defence of intoxication to a second-degree murder charge will be whether the accused's degree of intoxication affected" his ability to foresee the consequences of his action. The court quoted from a 1999 British Columbia appeal decision, endorsing this type of jury instruction:

> …the Crown must… prove beyond a reasonable doubt that the accused intended to cause bodily harm and was reckless whether death ensued or not, but that despite his consumption of alcohol he knew what he was doing was likely to cause death.

[73] In ***Daley***, the question was whether the trial judge erred by deferring to the findings of the toxicologist on the subject of intoxication. The accused couldn't remember the crucial events because of alcohol consumption. At paragraph 85, the court commented that it "is questionable whether loss of the capacity to form judgments and judge the appropriateness of one's actions equates with loss of the ability to foresee the consequences of one's actions."

[74] At paragraph 104, quoting from a 2001 British Columbia appeal decision, the court endorsed these comments:

> It is equally good sense and common experience that the effect of alcohol on thought processes is a continuum …The more intoxicated a person becomes, the greater the likelihood that drink will result in uninhibited conduct, and ultimately in unintended conduct. It is proper to remind the jury that they may use their common sense with respect to this, even if intoxication is advanced, provided the reminder includes the admonition that the inference is permissive and subject to a consideration of the evidence of intoxication.

[75] ***R. v. Assi***, 2021 MBQB 36, was about the provocation defence, and a second-degree murder charge. The victim and the accused exchanged vulgarities and insults and pushed each other in a café. The victim left. The accused went into the kitchen, found a knife, put it down the back of his pants, ignored the advice of co-workers to go home, went around to the front of the café, and stabbed the victim. The provocation defence failed. The accused was angry, but the court found that the Crown proved beyond a reasonable doubt that the victim's conduct was not sufficient to deprive an ordinary person of the power of self-control (paragraph 92).

[76] ***R. v. Mousseau,*** 2023 MBKB 7 ("***Mousseau***"), was also about self-defence and provocation. The victim and the accused argued about money. The victim hit the accused with a mop handle and threatened to hit him again. The accused took out a large knife and stabbed the victim fatally. At paragraph 116, the court observed that, while the use of force by the victim was imminent, there were other means available to the accused to respond. There were others nearby and the accused could have called for help, or called for someone to call 911. He could

have shouted at the victim or directed him to stop. He could have warned the victim that he had a knife. He could have brandished the knife. Instead, without warning, he stabbed the victim. The court concluded that this was not a reasonable response.

[77] The self-defence argument failed (the accused's response was not reasonable under the circumstances). However, the victim was more of an aggressor than the accused, and the accused did have a defensive purpose. At paragraph 133, the court commented that, although it did not accept that the accused's response was reasonable, the court did accept his evidence that he did not intend to cause the death of the victim. The accused's "actions were undertaken for a defensive purpose." Therefore, the accused was not guilty of murder, but was guilty of manslaughter. In light of its findings, the court did not have to make a decision about provocation.

[78] ***R. v. Bradburn***, 2016 MBQB 28 (CanLII) ("***Bradburn***") dealt with a murder charge and a single, fatal stab wound. The accused was at least mildly intoxicated. At paragraph 61, the court observed that it had "some uncertainty as to the amount of force used." An expert witness testified that, but for the rib bone, the knife would have met very little resistance between the skin and the heart. With respect to cutting the rib, he explained that this would require significant force or a fairly sharp knife. He also explained that the serrated knife used in

this case would have cut through bone more readily that a straight-edged knife. Based on this evidence, it may be that, given the kind of knife used, [the accused] did not use significant force when stabbing [the victim] despite the rib being cut. At paragraph 63, the court concluded that it was not satisfied to the standard of proof beyond a reasonable doubt that the accused had the requisite state of mind for murder. Therefore, he was guilty of manslaughter.

[79] In ***R. v. McKay*****,** 2021 MBQB 256 (CanLII) ("***McKay***"), the accused and others were charged with first-degree murder. There was strong evidence that they collectively confined and assaulted the victim several times over a few days. The accused would have been guilty of assault, perhaps as a party to the offence. Some of the victim's injuries were minor. The victim died. The accused was under the influence of alcohol and cocaine. At paragraph 105, the court considered ***Daley*** and concluded that it was "satisfied that the accused's level of intoxication by virtue of alcohol and/or drugs was sufficient to impair foresight of the consequences of his actions or those of his co-accused so as to raise a reasonable doubt as regards the requisite *mens rea*."

[80] **In *R. v. Caribou*****,** 2022 MBQB 137 (CanLII) ("***Caribou***"), the accused killed the victim by hitting him on the head with a rock. The accused was very drunk. Witnesses described him as unsteady on his feet and unable to get up by himself after falling down. He testified

that he had no memory of the events. He also testified that it must have been one of his "personalities" that took over and committed the crime. An expert witness testified that that the accused's ability to "comprehend the situation and make decisions would be severely impaired." The court applied ***Daley***. At paragraph 63, the court concluded that it had a reasonable doubt regarding the accused's subjective foresight of the consequences of his actions as a result of his impairment at the time of the killing such that the permissible inference that the accused intended the natural consequences of his actions may not be drawn to prove the necessary intent for murder. Therefore, the accused was convicted of manslaughter.

[81] In ***R. v. Cassan (E.R.)***, 2012 MBCA 46 (CanLII) ("***Cassan***"), the court considered a murder charge and a possible intoxication defence. At paragraphs 70 and 72, the court held that it was permissible to consider the accused's post-incident conduct to shed light on his state of mind at the time of the incident.

[82] In ***R. v. Proulx***, [1998] BCJ No. 1708 (CA), the court considered the old wording of the self-defence provisions. There was some analysis of the obligation of the accused to retreat under those provisions. The court ruled that the jury had not been instructed properly, and it ordered a new trial.

[83] ***R. v. Clow***, [1985] OJ No. 43 (CA), dealt with faulty jury instructions about provocation.

[84] ***R. v. Desveaux***, [1986] OJ No. 64 (CA) dealt with the old self-defence provisions, provocation, and an incomplete answer to a specific inquiry from the jury about the difference between first-degree murder, second-degree murder and manslaughter.

[85] ***R. v. Petel,*** [1994] SCJ No. 1, dealt with the old self-defence provisions, and an incomplete answer to an inquiry from the jury about whether certain past events could be considered.

[86] ***R. v. Antley***, [1963] OJ No. 853 (CA) dealt with the old self-defence provisions. It was a highly fact-specific decision.

[87] ***R. v. Harris,*** 2023 ABCA 90 was about the modern self-defence provisions, but was also very fact-specific. A new trial was ordered.

[88] In ***R. v. Scopelliti*** [1981] OJ No. 3157 (CA), the court considered the old self-defence provisions, a jury charge, and previous violent acts by the victim. Under certain circumstances, certain previous acts could be properly considered.

Criminal Code

[89] Relevant sections of the ***Code*** include:

> **Offences of violence by negligence**
> **33.1 (1)** A person who, by reason of self-induced extreme intoxication, lacks the general intent or voluntariness ordinarily required to commit an offence referred to in subsection (3), nonetheless commits the offence if

(a) all the other elements of the offence are present; and

(b) before they were in a state of extreme intoxication, they departed markedly from the standard of care expected of a reasonable person in the circumstances with respect to the consumption of intoxicating substances.

Marked departure — foreseeability of risk and other circumstances
(2) For the purposes of determining whether the person departed markedly from the standard of care, the court must consider the objective foreseeability of the risk that the consumption of the intoxicating substances could cause extreme intoxication and lead the person to harm another person. The court must, in making the determination, also consider all relevant circumstances, including anything that the person did to avoid the risk.

Offences
(3) This section applies in respect of an offence under this Act or any other Act of Parliament that includes as an element an assault or any other interference or threat of interference by a person with the bodily integrity of another person.

Definition of *extreme intoxication*
(4) In this section, *extreme intoxication* means intoxication that renders a person unaware of, or incapable of consciously controlling, their behaviour.

Defence — use or threat of force
34 (1) A person is not guilty of an offence if

(a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;

(b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and

(c) the act committed is reasonable in the circumstances.

Factors
(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

(a) the nature of the force or threat;

(b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;

(c) the person's role in the incident;

(d) whether any party to the incident used or threatened to use a weapon;

(e) the size, age, gender and physical capabilities of the parties to the incident;

(f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;

(f.1) any history of interaction or communication between the parties to the incident;

(g) the nature and proportionality of the person's response to the use or threat of force; and

(h) whether the act committed was in response to a use or threat of force that the person knew was lawful. [underlining added]

…

Murder
229 Culpable homicide is murder

(a) where the person who causes the death of a human being

- **i.** means to cause his death, or
- **ii.** means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

…

Classification of murder
231 (1) Murder is first degree murder or second degree murder

Planned and deliberate murder
(2) Murder is first degree murder when it is planned and deliberate.

…

Second degree murder
(7) All murder that is not first degree murder is second degree murder.

Murder reduced to manslaughter
232 (1) Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.

What is provocation
(2) Conduct of the victim that would constitute an indictable offence under this Act that is punishable by five or more years of imprisonment and that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section, if the accused acted on it on the sudden and before there was time for their passion to cool.

Questions of fact
(3) For the purposes of this section, the questions

(a) whether the conduct of the victim amounted to provocation under subsection (2), and

(b) whether the accused was deprived of the power of self-control by the provocation that he alleges he received [underlining added]

are questions of fact, but no one shall be deemed to have given provocation to another by doing anything that he had a legal right to do, or by doing anything that the accused incited him to do in order to provide the accused with an excuse for causing death or bodily harm to any human being.

ARGUMENT

[90] Defence counsel did not try to advance a defence of automatism. His primary focus was on self-defence. In the alternative, he submitted that the finding should be manslaughter, rather than murder. Defence counsel did not raise provocation, but the Crown made submissions about provocation out of an abundance of caution. Defence counsel tried to portray the accused as a "peacemaker" as opposed to an aggressor. The deceased was the real aggressor.

[91] The Crown submitted that the finding should be second-degree murder. In the alternative, the finding should at least be manslaughter.

The Crown focused on the contradictions within the accused's evidence and between the accused and other witnesses. For example, the accused said she stabbed the deceased in SD's bedroom, but later she said it was in the hallway. The accused claimed she left the knife in CR's house, but two witnesses said the accused told them that she dropped the knife either in the bush or on the road.

[92] After the end of closing argument, I gave both counsel an opportunity to file additional case law about intoxication, murder and manslaughter. Neither counsel filed any.

FINDINGS

Provocation

[93] It is for good reason that defence counsel did not raise a provocation defence. Essentially, it would have been inconsistent with the self-defence defence. In very simple terms, the accused did not testify, "I stabbed her because she provoked me." Rather, she testified, "I stabbed her in self-defence."

[94] For practical purposes, to find provocation, I would have to conclude that the evidence of the accused was essentially non-credible and/or unreliable. Obviously, defence counsel did not advocate for such a conclusion.

[95] Even if I were to accept every word of the accused's testimony as credible and reliable, the major act that the deceased did to

"provoke" the accused during the evening of the stabbing was to insult the dead brother of the accused. It is possible that the deceased struck the accused with a plate earlier in the evening, but even the accused did not claim that there was any connection between the plate and the later stabbing.

[96] Insulting the dead brother would certainly have been rude and insensitive, but it is hardly a "provocation" for stabbing someone fatally with a knife. If we were to set the bar that low for a provocation defence, it would invite a world of mischief. Every accused could easily dream up some rude comment that the deceased might have directed at them.

[97] To use the words of the ***Code***, insults about the brother were not sufficient to deprive an ordinary person of the power of self-control. Nor is there any evidence that the insults deprived this particular accused of the power of self-control.

[98] Therefore, I will say no more about provocation.

Self-defence

[99] No one is alleging that the stabbing was accidental, and there would be no evidence to support such a notion. Essentially, the accused confessed to the *actus reus* of an offence (either manslaughter or second-degree murder).

[100] The Pathologist's evidence was crystal clear, and defence counsel did not try to suggest that death might have been caused by something other than a stab wound.

[101] The new self-defence provisions are set out in section 34 of the ***Code***. Significantly, the word "reasonable" appears three times.

[102] The onus is on the Crown to negate the self-defence argument beyond a reasonable doubt.

[103] Although ***W(D)*** has been subject to some academic criticism, it is still a useful tool for analyzing reasonable doubt in cases where the accused testifies. Unlike many ***W(D)*** cases, in the case at bar there is no dispute that the accused committed the *actus reus* (i.e. she stabbed the deceased, and the deceased died of the stab wound). The issue is *mens rea*. As the onus is on the Crown to negate the self-defence defence, I will start by looking at ***W(D)*** and self-defence.

[104] Firstly, I did not believe the accused. Courts have warned about the limits of using demeanor to assess credibility. However, that does not mean that demeanor is totally irrelevant. For what it is worth, I did not find the demeanor of the accused consistent with credibility.

[105] Also, at least some of her evidence was obviously inaccurate.

[106] She said she left the knife behind at CR's house. The police did not find it there. There is no suggestion that someone other than the accused showed up after the accused left and took the knife. Two

witnesses mentioned the accused telling them that she took the knife and left it on the road or in the bush. There was no evidence about what searches the police did in an attempt to locate the knife.

[107] Neverthelss, it is extremely unlikely that it was in the house and the police somehow missed it. The notion that the police might have simply missed the murder weapon while searching a well-lit, indoor murder scene is preposterous. In short, the accused was either lying, or her memory was so badly impaired by alcohol, marijuana and meth that her evidence was inaccurate.

[108] There was no expert evidence about the effects of alcohol and meth on human perception and behaviour. However, I can safely infer that they do not enhance good judgment and precise memory. There was also evidence that the accused was under the influence of marijuana. Although marijuana may now be sold legally in licenced stores, it is still a drug that affects perception.

[109] Moving to the second leg of ***W(D),*** nothing in the evidence of the accused raised a reasonable doubt in respect of self-defence. She did claim that she feared for her life and that she stabbed the deceased in self-defence. At this stage, we must look at section 34(1) of the ***Code***:

> **34 (1)** A person is not guilty of an offence if
>
> **(a)** they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;

> **(b)** the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
>
> **(c)** the act committed is reasonable in the circumstances.

[110] Even if the accused somehow believed that the deceased was using force against her, I am not certain that it would have been a reasonable belief.

[111] However, I will give the accused the benefit of the doubt and move on to section 34(1)(b).

[112] The accused claimed she stabbed the deceased in order to defend herself from being stabbed by the deceased. Again, I am not at all certain I believe this, but I will give the accused the benefit of the doubt, and move on to section 34(1)(c).

[113] At a minimum, I do not accept that the stabbing was "reasonable in the circumstances". I must consider section 34(2):

> **(2)** In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:
>
> **(a)** the nature of the force or threat;
>
> **(b)** the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
>
> **(c)** the person's role in the incident;
>
> **(d)** whether any party to the incident used or threatened to use a weapon;
>
> **(e)** the size, age, gender and physical capabilities of the parties to the incident;

(f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;

(f.1) any history of interaction or communication between the parties to the incident;

(g) the nature and proportionality of the person's response to the use or threat of force; and

(h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

[underlining added]

[114] To begin, the alleged "threat" was the threat that the deceased would stab the accused with the knife. The knife belonged to the accused. She brought it to the scene on the night in question. She voluntarily gave it to the deceased, knowing the deceased had consumed a lot of alcohol and meth. If the accused had never brought the knife, or if she had never given it to the deceased, there would have been no threat at all.

[115] The accused and the deceased were both female and were roughly the same age and size. The two parties were relatives and were also friends. There was no evidence that they ever had physical altercations in the past. There was evidence that they argued verbally, wrestled and pulled each other's hair in the hours before the stabbing.

[116] The actions of the accused were not at all proportional to the alleged threats of the deceased. Firstly, the accused was not a captive at any point. She could easily have left CR's house at any point in the

evening prior to the stabbing. If she had left before giving the deceased her knife, there would have been no stabbing at all. The court's observations in ***Mousseau*** are also helpful. There were other people in the house. The accused could have called for help, but did not.

[117] The accused's version of the stabbing is vague and frankly confusing. She claimed that the deceased intended to pick up the knife from the floor and stab her. Claiming that she feared for her life, she somehow had to take the knife and stab the deceased. This is not a case (like ***Mousseau***) where there were two weapons and the accused felt she had to use her weapon before the other party could use their weapon. Nor, according to the accused's version of events, was this a case in which two people wrestled for a knife and one ended up accidentally stabbing the other.

[118] Even if the accused had initially feared that the deceased might pick up the knife and stab her, it is hard to understand how that fear could have persisted even after the accused had the knife in her own hands. Again, there was only one weapon. How could the person holding the weapon have had a reasonable fear of the person not holding that weapon? In short, it is just not possible to characterize the stabbing itself as either reasonable or proportionate.

[119] The self-defence argument must fail.

Manslaughter

[120] The accused consumed a large quantity of alcohol, marijuana and meth before the stabbing. She described not being able to stand without help. Her memory was obviously impaired. I found AB's evidence that the accused bit his hand to be both credible and reliable. The accused said she did not remember this irrational act. I did not get the sense that the accused was being deliberately insincere about this. I got the impression that her behaviour was irrational and her memory was badly impaired by drugs and alcohol (i.e. she was unreliable).

[121] The accused testified that she walked barefoot in the snow in December and did not realize it until she noticed that her feet were cold. Again, she was obviously severely impaired by alcohol and drugs.

[122] Her behaviour was profoundly irrational. She had no motive to murder her cousin. They were friends. However, when they both consumed copious quantities of alcohol and drugs, they both became irrational. They argued and physically fought over, essentially, nothing. The deceased insulted the accused's dead brother, and the accused became upset. They wrestled and pulled each other's hair. They had opportunities to stop. Either one could have easily left the premises. However, badly impaired and irrational, they both stayed and kept fighting. Add a knife to this dangerous mix, and a stabbing happened. It was not an innocent accident, and it was not self-defence. It was a

profoundly irrational action by a person badly impaired by alcohol and drugs.

[123] Post-incident conduct may be properly considered (per ***Cassan***). The accused said she left the knife at the scene of the stabbing. Unless police were unbelievably incompetent (and I do not believe that they were), that is just not accurate. Two witnesses mentioned the accused telling them that she dropped the knife in the bush or by the road. That is likely what happened. If the accused lied about this fact, it would have been a foolish and pointless lie. It is more likely that she did not remember this point accurately, because of the alcohol and drugs. In other words, she lacked reliability (rather than credibility) on this point.

[124] The accused threw her bloodstained clothes into a washing machine as soon she had the opportunity. This is the behaviour of someone who wants to conceal their involvement in a stabbing. On the other hand, she claimed she wanted to turn herself into police (by going to the gaming centre where she expected to find police). The best explanation for this irrational, inconsistent behaviour must be the severe impairment by alcohol and drugs.

[125] To be clear, this was the second level of intoxication as outlined in ***Daley***.

[126] Taking all of this into account and considering section 229(a) of the ***Code*** and cases like ***Bradburn***, ***McKay*** and ***Caribou***, I find that the accused did not have the requisite intent to support a finding of second-degree murder. Therefore, I find her guilty of the included offence of manslaughter. The Crown has proved manslaughter beyond a reasonable doubt.

[127] I thank counsel for their courtesy and for agreeing to many agreed facts.

_____ J.