CITATION: R. v. Hadfield, 2020 ONSC 5992
COURT FILE NO.: CR-19-70000534
DATE: 20201002

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
HER MAJESTY THE QUEEN	)	*Sean Doyle*, for the Crown
	)	
– and –	)	
	)	
JASON HADFIELD	)	*Andrew Stastny*, for the Accused
	)	
Accused	)	
	)	
	)	
	)	**HEARD:** September 21 and 22, 2020

A.J. O'MARRA J. (Delivered Orally)

REASONS FOR JUDGMENT

BACKGROUND

[1] Jason Hadfield is charged with robbery and second-degree murder of Edward Sharron on October 12, 2018.

[2] The trial proceeded as a judge alone trial on consent of the accused and the Attorney General pursuant to s. 473 of the *Criminal Code*.

[3] The prosecution case was presented largely by agreed statement of fact pursuant to s. 655 of the *Criminal Code,* in addition to a compilation of surveillance camera video obtained from various locations that show the events leading up to the fatal encounter between Mr. Hadfield and Mr. Sharron in front of the Esso gas station store at 241 Dundas St. Toronto.

[4] In the course of robbing Mr. Sharron, the accused without warning kicked him forcefully to the upper shoulder and head area, which propelled Mr. Sharron to fall backwards to the pavement, striking the back of his head, initially rendering him unconscious. Mr. Hadfield then proceeded to rifle through Mr. Sharron's pockets and steal his cigarettes and money before fleeing.

[5] Subsequently, Mr. Sharron was transported to the hospital by ambulance where he was initially clinically stable. However, his condition declined, and he was transitioned into palliative care. He died on October 21, 2018 as a result of the blunt impact trauma to his head. The pathologist observed that the bi-frontal brain injuries suffered were an example of a countercoup injury, in keeping with a fall onto the back of the head.

[6] The defence accepts that the proven facts as agreed establish beyond a reasonable doubt that Mr. Hadfield robbed Mr. Sharron and that he caused Mr. Sharron`s death. The issue on this trial is whether Mr. Hadfield had the requisite specific intent to have committed second-degree murder under s. 229(a)(ii) or committed the lesser and included offence of manslaughter.

The Law

[7] Section 229(a) states:

> 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…

[8] Recently in *R. v. Zoldi*, 2018 ONCA 384 at para. 18-19 Fairburn JJ.A. noted that the state of mind inquiry under s. 229(a)(ii) involves a nuanced inquiry of the three components: intent, knowledge and recklessness. The questions are: did the accused (a) intend to cause bodily harm; (b) know that the bodily harm would likely be fatal; and (c) show recklessness as to whether the victim died? (See *R. v. Moo*, 2009 ONCA 645 at para. 45.)

[9] The section requires that the accused must have subjective foresight of death. His intention under s. 229(a)(ii) must be to cause bodily harm that is so "grave and serious" that in inflicting the harm he knows *that the harm will likely kill the victim*. Requiring subjective foresight of death ensures that the accused's moral responsibility is commensurate with the serious stigma and life sentence attaching to a murder conviction.

> Accordingly, the principle actor must have subjective intent to cause bodily harm and subjective knowledge that the harm is of a nature that is likely to result in death: *R. v. Cooper*, [1993] 1 SCR 146, at p. 155. Recklessness merely involves having a deliberate disregard for the death that the appellant *knows is likely to result from his actions*. (Emphasis added)

[10] As Cory J. stated in *R. v. Cooper*:

> …to secure a conviction under this section it must be established that the accused had the intent to cause such grievous bodily harm that he *knew* it was likely to cause death. One who causes bodily harm that he knows is likely to cause death must, in those circumstances, have a deliberate disregard for the fatal consequences which are known to be likely to occur. That is to say he must, of necessity, be reckless whether death ensues or not.

[11] It is not sufficient that the accused simply foresee a danger of death, the accused must foresee a *likelihood* of death flowing from the bodily harm he inflicts on the victim. There must be subjective foresight that death is likely to occur as a result of the bodily harm inflicted.

Overview of the Circumstances

[12] On October 12, 2018 at approximately 5:55 p.m. Mr. Sharron, age 58 entered the Esso gas station store located at the intersection of Dundas and Church Streets in Toronto in order to use an ATM to withdraw funds. At the same time, as captured on video Mr. Hadfield entered the store, exited briefly and then re-entered, only to leave again. He remained outside near the front windows from which the ATM could be seen. He displays an obvious interest in Mr. Sharron while he was at the ATM.

[13] At approximately 6:00 p.m. Mr. Sharron left the store after withdrawing funds and proceeded to walk several blocks, approximately 300 meters west along Dundas Street to a shopping concourse at 10 Dundas Street, near Yonge Street.

[14] Mr. Hadfield, at a distance varying between 2-3 to 30 meters, followed Mr. Sharron from the gas station to and within the multi-level shopping concourse. After Mr. Sharron made a purchase at a beer store on the lower level, Mr. Hadfield continued to follow Mr. Sharron out of the shopping concourse, and back to the Esso gas station.

[15] At approximately 6:15 p.m. Mr. Sharron stopped briefly near the front entrance of the store on the raised concrete portion of the sidewalk of approximately 6 inches in height at the front of the Esso gas station store. As Mr. Sharron bent over toward the grey bag in which he carried his purchase from the beer store, Mr. Hadfield moved quickly up to him. From about a foot away, with his right leg, he delivered a forceful kick to Mr. Sharron's upper body, roughly in the shoulder to head area that knocked him off his feet. The force of the kick caused Mr. Sharron to fall backwards and strike the back of his head on the pavement, which rendered him motionless.

[16] Mr. Hadfield then proceeded to bend over the unconscious Mr. Sharron and rifle through his pockets stealing his cigarettes and money. When Mr. Hadfield tried to leave, he was blocked briefly by a passerby, Abib Touray who told him "you can't take that. Give him back his wallet". Mr. Hadfield told Mr. Touray, "get your fucking hands off me". He broke free, grabbed Mr. Sharron's money and wallet and fled east on Dundas Street, then north up Dalhousie Street.

[17] As Mr. Hadfield fled, he was observed by a motorist, Robert Johnson who followed him. When Mr. Hadfield reached a parking lot and began to walk, Mr. Johnson

asked him what he had been running from. Mr. Hadfield replied, "I had to do it man. I had to do it". Mr. Hadfield then took off his shirt and threw it on the ground and repeated: "I had to do it man, I had to do it."

[18] Mr. Hadfield was arrested on October 15, 2018. At the time of his arrest he was found to be in possession of a crack pipe. Mr. Sharron's wallet was not recovered.

[19] In October 2018 Mr. Hadfield, age 33 was homeless and had been living on the street for approximately a year. He has an extensive history of mental illness and psychiatric hospital admissions. He was not under treatment or follow up at the time of the occurrence.

[20] During his detention pending trial he "displayed psychotic symptoms such as significant disorganization and self-neglect and on three occasions during his incarceration he was admitted to the Centre for Addiction and Mental Health, Psychiatric Facility in Toronto".

[21] Mr. Hadfield was assessed on consent by Dr. Achal Mishra, a forensic psychiatrist from the Waypoint Centre for Mental Health Care in Penetanguishene, Ontario. In his report dated July 7, 2020 he noted that Mr. Hadfield's psychiatric records indicate that he has been diagnosed as schizophrenic and has suffered from psychotic symptoms since at least 2003. Dr. Mishra concluded that "Mr. Hadfield suffers from schizophrenia, antisocial personality disorder, cannabis use disorder and unspecified stimulate related disorder, and assessed the substance use disorders as an early remission in a controlled environment".

[22] Also, Dr. Mishra indicated that: "an individual suffering from schizophrenia suffers from symptoms of psychosis. Psychosis is generally defined as the presence of delusions, hallucinations, grossly disorganized thought and behavior, or some combination of these. The course of schizophrenic illness may be adversely affected by psychosocial stress, an unstructured living situation, alcohol or street drug use and non-compliance with psychiatric treatment."

[23] Dr. Mishra, in assessing whether Mr. Hadfield qualified for a s. 16 defence of being not criminally responsible as a result of a mental disorder (NCR), concluded that "on a balance of probabilities, purely from a psychiatric perspective, the defence of not criminally responsible on a count of mental disorder is **not supported**." (Emphasis added in the report.)

[24] On the question of whether the accused had the requisite intent to commit second-degree murder the defence's position is that in the circumstances of the robbery the accused could not have foreseen the likelihood that kicking Mr. Sharron in the shoulder/head area to disable him would likely result him hitting his head on the pavement causing the fatal injury.

[25] In the alternative, while he did not advance an NCR defence in this matter, he relies on the observation noted in *R. v. Hilton*, [1977] OJ No. 550 (OCA) at para. 5: "that evidence of mental illness or mental disorder falling short of insanity should be

considered along with all the other evidence in determining whether the accused had the intent requisite for murder, and in the event that a jury entertained a reasonable doubt on the issue of intent, the verdict would be one of manslaughter".

[26] Similarly, in *R. v. Baltzer* (1974), 27 CCC 2nd 118 at p. 141 MacDonald J.A. stated:

> In order to determine whether the appellant had the specific intent to commit murder the crucial problem for the jury is to determine what was in the mind of the accused. In order to determine what was in his mind, evidence of his whole personality and background including evidence of any mental illness or disorder that he may have suffered from at the material time, is relevant and must of necessity be examined so that the jury can consider such evidence together with all the other evidence in determining whether the Crown has established beyond a reasonable doubt that the accused did have the specific intent required, this apart altogether from the issue or defence of insanity.

[27] Here, the Crown contends that there is nothing in the behaviour of Mr. Hadfield in the events leading up to the assault and robbery of Mr. Sharron that indicates the effects of his mental illness undermined a capacity to have the requisite intent for murder. To suggest otherwise, he submits would be speculative. He argues that Mr. Hadfield engaged in a plan with five distinct elements, which cumulatively demonstrate his capacity to have intent:

(i) He identified a target, Mr. Sharron, age 58, 120 pounds, a much smaller man in stature than Mr. Hadfield, age 33 and 150 pounds.

(ii) He conducted surveillance of Mr. Sharron in watching him surreptitiously at the ATM, withdraw funds and then track him to the shopping concourse and his return to the Esso station.

(iii) There he attacked Mr. Sharron by kicking him forcefully to disable him.

(iv) He was not deterred by bystanders as he robbed him by rifling his pockets.

(v) He fled and to Mr. Johnson's inquiries declared, "I had to do it, I had to do it". Further, he removed his shirt and threw it to the ground which the Crown submits was the removal of part of the scene of the crime.

[28] These behaviours occurred over a 15-minute period, which suggests he intended to inflict grievous bodily harm and he was not suffering from any hallucinations or grossly disorganized thought and behaviour that would diminish his capacity to foresee the harm inflicted was of a nature likely to result in death.

[29] Here, the Crown relies on two certiorari cases that considered the committal after preliminary inquiry of an accused to trial for second degree murder in which the accused

administered blows to victims, causing them to strike their heads on concrete, resulting in their deaths from head injuries.

[30] In *R. v. Jenkins*, 2008 CANLII 44739 (ONSC) the accused, angered in being told to move at a concert so the victim's wife could see the stage, walked over to where they moved when he refused, to challenge him to a fight. The accused struck the victim in the head with one or two hard punches that caused the victim to fall back and hit his head on a paved surface. There was a loud or sickening sound heard by witnesses as his head hit the payment. The accused continued the assault even after the victim lay motionless on the ground. He struck him three or four times in the body before being pulled away.

[31] The reviewing court concluded on considering the evidence cumulatively and in context that there was some evidence that the trier of fact could reasonably infer that the accused had the requisite intent for murder:

> The cumulative effect of the evidence is such that a jury could reasonably conclude that the accused meant to cause bodily harm that he knew was likely to cause death and was reckless as to whether or not death ensued.

[32] However, the court also observed that it was not a case in which the accused merely punched the deceased.

[33] The other case the Crown relies on is *R. v. Olubowal*e, [2001] O.J. No. 961 an appeal from an order refusing certiorari to quash a committal for a trial on the charge of murder and replace it with manslaughter. In this instance, the evidence was that the accused, a trained Olympic boxer, twice the weight of the victim struck or kicked him three times at or about his head. On the last blow the victim fell to the sidewalk and struck his head. He died subsequently from his head injuries. The court observed that the last blow was delivered when the appellant was angry and had chased the victim who had been retreating.

[34] The Court of Appeal concluded that the facts supported a finding that it was at least reckless for the appellant a trained boxer to strike a smaller man on a sidewalk where he will probably fall and might hit his head on the concrete and might die as a result stating:

> This evidence, although weak, could also support an inference that the appellant knew his actions were likely to cause death. At this stage in the proceedings, this court cannot weigh the evidence. The inference that the appellant had the requisite knowledge is weak, but it cannot be said that there is not a scintilla of evidence to support it.

[35] While there were committals in *Jenkins* and *Olubowale* for second-degree murder on the basis the reviewing courts concluded there was some evidence a trier of fact could infer requisite *intent*, in both instances the ultimate result at trial were verdicts of manslaughter. The facts as to the nature of the assaults and circumstances of these cases serve to distinguish them from this one.

[36] I bear in mind the observation made in *R. v. Nygaard*, [1989] 2 S.C.R. 1074 at p. 1089 referenced in *Cooper* at para. 14 on the issue of intent required to found a conviction for second-degree murder under s. 229(*a*)(ii) that there is only a "slight relaxation" in the *mens rea* required as compared to murder committed under s. 229(*a*)(i), where the accused specifically means to cause death. "[T]he crime defined in s. 212(a)(ii) [now s. 229(*a*)(ii)] can properly be described as murder and on a 'culpability scale' it varies so little from s. 212(a)(i) [now s. 229(*a*)(i)] as to be indistinguishable."

[37] In this instance, considering the Crown's five element argument, while there is evidence Mr. Hadfield stalked the victim and he had intent to cause bodily harm by forcefully kicking Mr. Sharron to effect his plan of robbery, I am not satisfied that he had the requisite foresight to know that the harm was of a nature to likely result in death, which in this case was the result of Mr. Sharron falling back from the elevated sidewalk and his head hitting the pavement, not the forceful kick. It is not sufficient an accused simply foresee the danger of death, he must foresee a likelihood of death from the bodily harm he inflicts on the victim.

[38] Although Mr. Hadfield's kick to Mr. Sharron's upper body and head area caused him to fall backwards, there is an insufficient evidentiary basis to reasonably infer Mr. Hadfield knew there was a likelihood the kick would result in Mr. Sharron's head striking the pavement, causing the fatal brain injury.

[39] His psychiatric condition and lack of treatment may well have contributed to his circumstances of living on the street and motivation to plan a violent robbery. However, even in the absence of any of his mental health issues, in my view, while the evidence permits a finding that Mr. Hadfield had the subjective intent to cause bodily harm, the evidence does not permit a finding he had subjective knowledge that the harm was of a nature likely to result in death. This is not a case of an accused having diminished capacity due to his mental disorder failing to appreciate likely fatal consequences of the assault.

[40] This was an one blow attack that led to tragic consequences, the death of Mr. Sharron. The evidence in this case fails to establish beyond a reasonable doubt the necessary specific intent, the level of culpability required for a finding of murder under s. 229(a)(ii).

[41] In the result, I find Mr. Hadfield not guilty of second-degree murder, but guilty of manslaughter. Further, I find him guilty of robbery.

A.J. O'Marra

Released: October 2, 2020

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– and –

JASON HADFIELD

Accused

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A.J. O'Marra J.

Released: October 2, 2020