

Citation:

Date:

File No: 48847
Registry: North Vancouver

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

PROVINCIAL COURT OF BC
NORTH VANCOUVER

REGINA

FEB 26 2008

v.

FILED

ANDER WALKER-HURIA

**RULING ON COMMITTAL FOR TRIAL
OF THE
HONOURABLE JUDGE J. AUXIER**

Counsel for the Crown:

J. Nascou

Counsel for the Defendant:

M. Peters

Place of Hearing:

North Vancouver, B.C.

Dates of Hearing:

January 28, 29, 30, 31; February 4, 2008

Date of Judgment:

February 26, 2008

[1] The accused has been charged with the second degree murder of Samuel Eves and has elected trial by Judge and jury. A preliminary inquiry was held, at the conclusion of which I heard submissions as to whether there were grounds to commit the accused for trial on this charge.

[2] I'll begin with the law as to committal.

[3] Section 548 of the **Criminal Code** requires me to form an opinion as to whether there is sufficient evidence to put the accused on trial for the offence charged or any other indictable offence in respect of the same transaction. As McLachlin, CJC stated in *R. v. Arcuri* (2001), 157 CCC (3d) 21,

...a preliminary inquiry judge must determine whether there is sufficient evidence to permit a properly instructed jury, acting reasonably, to convict, and the corollary that the judge must weigh the evidence in the limited sense of assessing whether it is capable of supporting the inferences the Crown asks the jury to draw. As this Court has consistently held, this task does not require the preliminary judge to draw inferences from the facts or to assess credibility. Rather, the preliminary inquiry judge must, while giving full recognition to the right of the jury to draw justifiable inferences of fact and assess credibility, consider whether the evidence taken as a whole could reasonably support a verdict of guilty.

[4] It's not disputed that the accused cannot be committed for trial in the absence of evidence on an essential ingredient in a charge. No evidence on an essential element of the charge against the accused cannot amount to "sufficient evidence".

[5] I turn to the essential elements of a charge of second degree murder. I won't outline the relevant sections of the **Code** (sections 222 and 229) in their entirety – just the portions that the Crown relies on in the circumstances of this case. A person commits culpable homicide when he causes the death of a human being by means of

an unlawful act. Culpable homicide is murder where the person who causes the death of a human being “means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not”.

[6] So I must determine if there’s sufficient evidence to find this was culpable homicide. This requires me to find sufficient evidence to support the following:

- that his actions were unlawful, and
- that his actions were a significant cause of the death of Eves.

[7] If I do make those findings, then I must inquire whether the evidence taken as a whole could reasonably support a finding that the accused had the requisite mens rea – “subjective foresight of death”, to use the words of Lamer, CJC in *R. v. Martineau* (1990), 58 CCC (3d) 417. He stated:

The rationale underlying the principle that subjective foresight of death is required before a person is labelled and punished as a murderer is linked to the more general principle that criminal liability for a particular result is not justified except where the actor possesses a culpable mental state in respect of that result.

...murder should be reserved for those who choose to intentionally cause death or who choose to inflict bodily harm that they know is likely to cause death.

...a conviction for murder cannot rest on anything less than proof beyond a reasonable doubt of subjective foresight of death.

[8] If I cannot find some evidence to support this element, then the accused could be committed for trial on manslaughter.

[9] I turn to the evidence in this case, mindful of the limits of my role as the preliminary inquiry judge.

[10] On March 27, 2007 at about 9:30 p.m., Eves died of a stab wound to his abdomen. Five people were present who saw parts of the event unfold. No one, except the accused, saw the actual stabbing.

[11] We know that earlier in the day the accused, Eves, and Danielle Ladret had spent time at the Ladret home playing video games. Later they were joined by Brad Martin and the four of them sat around drinking beer in an area called the Smoke Bluffs. They then moved to a home that the accused shared with his brother. Initially, everyone was getting along fine. But at some point Eves apparently heard the accused say something derogatory about him and his mood changed. He was angry – angry at the accused (who he'd met for the first time just the previous day) and angry at his girlfriend, Ladret, who he suspected of cheating on him with the accused. He and Martin left, leaving Ladret and the accused in the residence.

[12] Eves and Martin subsequently returned to the residence. Eves attempted to enter the house but the accused had locked the door. He yelled, banged on the doors and windows, and threw planters at the house until eventually Ladret came out to speak to him. The accused locked the door behind her. Ladret and Eves had a verbal confrontation which then became physical. As Brad Martin stated, "He (Eves) really starting pushing her around. He really hurt her arm." Martin intervened and Eves punched him in the face, knocking him to the ground. (At some point Eves bit Ladret so hard that she still bore the scars at the time of the preliminary inquiry. It's unclear when this occurred. At one point in her cross examination, Ladret testified that the bite occurred **after** the incident of Martin being punched.)

[13] Ladret and Eves walked about 30 metres down the road with Martin trailing behind, then all three returned to the residence.

[14] Back at the house Eves once again began banging on the door, demanding that Ander (the accused) "get the fuck out here". Then the accused came out - with a knife. According to Martin, the accused told Eves he had a knife and that Eves had better watch out. At this point, Ladret grabbed Martin and the two of them moved quickly away. As Ladret stated, "I didn't expect Ander to use the knife. I thought there'd be a fight. I didn't want to bother with it, didn't want to witness it."

[15] (I interject to note that Ladret and Martin both testified to the fact of Eves being a scrapper who's often in fights. They were certain that Eves wanted to fight Walker-Huria. In the words of Ladret, "When Sam saw Ander, he bolted towards him to beat him up, something he'd been wanting to do for some time." There's no evidence that the accused was aware of this reputation – as I stated earlier, he'd met Eves for the first time the previous day.)

[16] Ladret described the moment that the accused exited the house. She explained that she and Eves were standing in the middle of the road. She was facing the house and Eves was facing the opposite direction. She saw Ander holding a kitchen knife, hands to his side. She thinks the knife was facing downwards. Eves saw her glance at the accused and, in Ladret's words, "he just bolted and ran towards Ander".

[17] (I note Ms. Nascou's submissions include the statement that the accused walked down his driveway to the road to confront and fight with Eves. I don't have a transcript – but I did listen to the tape of at least portions of Ladret's evidence and did not hear her

describe such an action on the part of the accused. Certainly when she was asked to mark Photo 9 in what became Exhibit 7 to show where the accused was when she first saw him, she put a mark close to the house. And from her description of Eves bolting and running towards Anders, the only inference is that the accused was still some distance from Eves.)

[18] Only a few seconds passed before she and Martin heard Eves scream "My intestines".

[19] Dr. Lee, a forensic pathologist, testified that Eves died from a single stab wound of his lower abdomen. The wound was consistent with someone being stabbed, but also consistent with someone running into a knife.

[20] When the accused was arrested, an undercover officer was placed in the same cell. In discussing why he (Walker-Huria) was in custody, the accused described hearing Eves hitting the girl and decided to go outside. Once outside, he stated that Eves charged at him. He claimed he had no memory of grabbing the knife but thinks he held his hands up defensively and Eves ran into the knife.

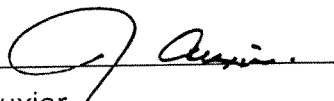
[21] In a subsequent interview with Cpl. Mumford, Walker-Huria's description of the event is the same – hearing Eves throwing his girlfriend around, walking outside, and Eves charging at him from the other side of the road. He stated "Of course I didn't want Sam to die. I didn't want him to get hurt at all. I didn't want any of this to happen." And elsewhere in the interview, "It was a freak thing that just happened... This whole time I'm thinking this is a friggin' dream. Because this is just not me. It's just not me."

[22] Mr. Peters submits that his client's actions were not a contributing cause of the death of Eves – that Eves caused his own death by running at the accused and impaling himself on the knife. In the alternative, he submits that his client did not commit an unlawful act because he was acting in self defence.

[23] The jury may well agree. But I find as a judge presiding at a preliminary inquiry that it's beyond my purview to draw those conclusions.

[24] However when I look at all of the above evidence, I must agree with defence counsel that there's no evidence upon which a jury could find or infer that the accused chose to cause the death of Eves. He did not have any subjective foresight of Eves' death. Nor is there evidence to prove any choice by the accused to cause bodily harm to Eves that he knew was likely to result in death. Rather, the evidence supports only the finding that the accused endeavoured throughout the evening to avoid any confrontation with Eves and that while he clearly held the knife that caused Eves' death, he did not do so with the requisite intent.

[25] Accordingly, I commit the accused to stand trial on the charge of manslaughter.



J. Auxier
Provincial Court Judge