

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

STEVEN SAYINE

Transcript of the Reasons for Judgment delivered before
The Honourable Justice L. A. Charbonneau, in Hay River,
in the Northwest Territories, on October 29, 2014.

APPEARANCES:

Mr. M. Lecorre: Counsel on behalf of the Crown

Mr. C. Davison: Counsel on behalf of the Accused

Charge under s. 236(b) C.C.

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R. v. Steven Sayine

October 29th, 2014

Reasons for Judgment by Charbonneau, J.

THE COURT: Steven Sayine faces a charge of manslaughter in the death of his common-law spouse, Mary Laboucan. He is alleged to have caused her death by means of an unlawful act on June 16th, 2012.

I heard evidence on this case over a period of five days last month. I have now had an opportunity to review that evidence in detail and to consider it carefully, and to consider the submissions I heard from counsel.

There was a lot of evidence to cover and a lot of issues to address arising from those submissions, and for that reason there is quite a lot I need to say this morning and it will take some time.

I know that many have waited for the conclusion of this matter for quite some time – Mr. Sayine himself, as well as others from his family, as well as relatives of Ms. Laboucan and members of the community. And although it is not what I normally do when I give reasons for judgment, because I know I have to speak for some

1 time this morning, I do not want to leave
2 everyone hanging for another hour and a half or
3 however long it will take me to give my decision.
4 So I will say at the outset that I have concluded
5 that Mr. Sayine is guilty of this charge. I will
6 now try to explain why I have reached that
7 conclusion.

8 I am not going to go over every detail of
9 the evidence in these Reasons. Some of the
10 evidence touched on matters that were not really
11 disputed, or that do not have a significant
12 bearing on the issues I have to decide. There
13 were some inconsistencies in this trial, as there
14 are in every trial, but there are aspects of the
15 evidence that are more crucial and those are the
16 ones I am willing to spend more time on.

17 I also will not spend a lot of time talking
18 about the law and the requirements to prove the
19 charge of manslaughter because Crown and defence
20 were essentially in agreement about what those
21 elements are, and it is fairly straightforward:

- 22 1. The Crown has to prove that the accused
23 committed an unlawful act.
- 24 2. The Crown has to prove that this unlawful act
25 was a significant contributing cause of death;
26 sometimes this is referred to as "a cause beyond
27 the de minimis" range.

1 3. The Crown has to prove that the accused
2 intended to commit the unlawful act.
3 4. There is also a requirement that the unlawful
4 act committed involved a reasonable
5 foreseeability of the risk of bodily harm which
6 is neither minor or transitory.

7 These requirements come from case law,
8 various cases that were referred to by counsel
9 and that I do not intend to quote from because in
10 this case there is really no issue about the
11 applicable legal principles. The issues in this
12 case are really factual ones.

13 I will start with the non-contentious
14 matters.

15 Dealing first with the unfolding of events
16 on June 16th, there are events about which there
17 is little or no issue. Again there were some
18 inconsistencies here and there about some of the
19 details but on the whole, a fairly clear scenario
20 emerged about what happened that day and about
21 the general context in this matter.

22 Mr. Sayine and Ms. Laboucan were common-law
23 spouses and they lived in a house in Fort
24 Resolution. Mr. Sayine 's son, Evan, also lived
25 there. Mr. Sayine's grandmother also lived
26 there, although she sometimes stayed somewhere
27 else. She was not at the house when these events

1 occurred.

2 Ms. Laboucan worked at a mine on a two weeks
3 in, two weeks out rotation. She was a very heavy
4 drinker.

5 On June 16th, in the early morning hours,
6 Ms. Laboucan and Mr. Sayine were at home. June
7 16th was the birthday of Jason Larocque and he
8 wanted to celebrate. He and his spouse Jennifer
9 Singerling decided to go to the Sayine home.
10 Fred Lafferty, whose nickname is "Chico", and
11 Kevin Fabien also came at one point. Nothing of
12 note happened during this period of time. People
13 were just there, visiting and drinking.

14 Jason and Jennifer left and went home. Some
15 time after that Mr. Lafferty and Mr. Sayine left
16 Mr. Sayine's house to go get more alcohol. I
17 accept Mr. Sayine's account that they went to
18 Jennifer and Jason's place to get that alcohol.
19 Jason and Jennifer were bootleggers and there had
20 been discussions earlier in the night about them
21 selling the others more alcohol.

22 When Mr. Sayine and Mr. Lafferty got to
23 Ms. Singerling's and Mr. Larocque's house, those
24 two were arguing. Mr. Sayine picked up the
25 bottle of alcohol and left shortly thereafter.
26 Mr. Lafferty stayed a little while longer,
27 apparently to try to help calm things down as far

1 as the argument that was going on between Jason
2 and Jennifer. Mr. Lafferty then returned to the
3 Sayine house. Mr. Sayine by then was already
4 there.

5 At some point after Fred Lafferty arrived at
6 the Sayine home, something happened that made Mr.
7 Sayine upset at Mr. Lafferty. There is a
8 conflict in the evidence of the two about what
9 the dispute was about. Mr. Lafferty said that
10 when he returned to the house there was an
11 argument going on between Mary Laboucan and Mr.
12 Sayine and that Mr. Sayine got mad when Mr.
13 Lafferty told him to take it easy. Mr. Sayine
14 says there was no argument between him and Mary
15 Laboucan and the reason he got upset at Mr.
16 Lafferty is that Mr. Lafferty was cursing and
17 talking down to his son Evan.

18 Whatever the reason that led to Mr. Sayine
19 being mad, it is undisputed that he brought an
20 axe inside the house. Mr. Lafferty was sitting
21 on a couch in the living room and there was a
22 coffee table in front of him. Mr. Sayine struck
23 that table with the axe and the corner of the
24 table broke.

25 Mr. Lafferty alleges that Mr. Sayine said to
26 him "you're next". Mr. Sayine denies saying
27 that. Mr. Sayine said he just told Mr. Lafferty

1 to get out of his house. Mr. Lafferty did leave,
2 saying that he was going to call the police. He
3 went to a relative's house, used the phone and
4 contacted the RCMP. Mr. Lafferty said at that
5 point he was scared and concerned about what had
6 happened, and he was scared for Ms. Laboucan's
7 safety.

8 After Mr. Lafferty left, Mr. Sayine took the
9 table outside the door of his residence. He said
10 he threw the table outside because it was broken
11 and there was no point keeping it in the living
12 room.

13 Corporal Pernell St. Pierre was on call that
14 morning. He received the complaint that
15 originated from Fred Lafferty at eight o'clock in
16 the morning. He attended the Sayine home with
17 another officer, Constable Matt James, shortly
18 thereafter. There they found Mr. Sayine,
19 Ms. Laboucan, and Mr. Sayine's son Evan sitting
20 in the living room. Nothing unusual seemed to be
21 going on.

22 There is no evidence of what discussions
23 took place between the officers and Mr. Sayine,
24 but the net result of the interaction was that
25 the officers did not see or hear anything during
26 that visit that caused them any concern or gave
27 them any grounds to arrest anyone. As Constable

1 James put it, they had a report of a coffee table
2 being broken with an axe. There was a coffee
3 table in the living room but it was intact, and
4 there was no sign of an axe. No one appeared
5 injured or at risk of being injured. So the
6 information the police officers had received from
7 dispatch did not match up with the information
8 they were obtaining and observing at the scene.

9 The two officers did not have exactly the
10 same way of describing where they considered the
11 investigation of this complaint to be at when
12 they left the house. Corporal St. Pierre
13 testified that they deemed the complaint false.
14 Constable James was much more nuanced. He said
15 the investigation would be ongoing until they had
16 a chance to speak to Mr. Lafferty again. He said
17 the investigation was put on standby. Constable
18 James also said that after the visit at the
19 Sayine home he had a message to call Fred
20 Lafferty back and he did so. Mr. Lafferty
21 sounded intoxicated and he was, in Constable
22 James' words, "pretty worked up". They had a
23 conversation and Mr. Lafferty eventually hung up
24 on him. Constable James' intention was to speak
25 to him again later once he had sobered up.

26 The evidence suggests that shortly after
27 eight o'clock in the morning when these police

1 officers went to the Sayine home, whatever
2 situation had erupted with Mr. Lafferty while Mr.
3 Lafferty was there had calmed down and resolved
4 itself. There was nothing messy or unusual about
5 the appearance of the house. Ms. Laboucan did
6 not appear hurt and she seemed to the officers to
7 be the same way as she always was. And Evan was
8 there, as I have already mentioned.

9 At some point Evan left, and Mr. Sayine and
10 Ms. Laboucan were alone in the residence. What
11 happened in the following hours is what is at the
12 heart of this trial. It is undisputed that at
13 some point something happened while they were
14 alone that resulted in Ms. Laboucan falling and
15 hitting her head. One key issue at this trial,
16 the main issue really, is what caused that fall,
17 and more specifically, whether it was an accident
18 or whether it was the result of Mr. Sayine
19 striking her. I will deal with the evidence that
20 bears on that specific issue later, because that
21 is very much a contentious point, the contentious
22 point, and my assessment of the evidence that
23 relates to that point is crucial to the outcome.

24 However the fall happened, it is undisputed
25 that at some point after that, Jason Larocque and
26 Jennifer Singerling came by. They were coming by
27 in fact to get paid for the bottle of alcohol

1 that they had sold to Mr. Sayine and Mr. Lafferty
2 the night before. The house was not in the
3 condition that they had seen it the previous
4 night. They saw what they believed to be blood
5 on the floor. Jennifer also saw what she
6 believed to be blood in the bathroom when she
7 went to use it. One of the coffee tables in the
8 living room was missing. There was broken glass
9 on the floor. Jennifer saw a boot mark on the
10 wall behind the couch.

11 It is also undisputed that while they were
12 there Mr. Sayine told them that he kicked
13 Ms. Laboucan and that she fell and hit her head.
14 He recounted how it happened and reenacted it.
15 Mr. Sayine was upset as he was talking about
16 this, he was crying. He told them that he
17 "fucked up".

18 Jason and Jennifer were shaken by what they
19 heard and saw at the house. They did not stay
20 there very long. They did ask Mr. Sayine if
21 Ms. Laboucan was okay and he replied that she
22 was. Jennifer wanted to go check on her and Mr.
23 Sayine did not let her go to the bedroom. Jason
24 and Jennifer left shortly after this. They both
25 used similar language when they talked about
26 leaving the house, saying that they "just wanted
27 to get out of there".

1 It is undisputed that at 6 p.m. that day Mr.
2 Sayine called the nursing station and spoke to
3 nurse Gail Beaulieu. He reported to her that
4 Ms. Laboucan had gone to sleep at about 2:30 p.m.
5 and that he was not able to wake her up. He did
6 not say anything to the nurse about Ms. Laboucan
7 having hit her head. Nurse Beaulieu said she
8 would be there as soon as she could. Constable
9 James happened to be at the nursing station for
10 an unrelated matter, and the nurse asked Mr.
11 Sayine if it was okay if Constable James came
12 along. Mr. Sayine said yes.

13 But he called back ten minutes later and
14 told the nurse that Ms. Laboucan was awake and
15 was all right. Nurse Beaulieu testified that he
16 used the expression "she's five fingers" and she
17 got him to clarify that because she was not sure
18 what it meant. She understood him to say that
19 Ms. Laboucan was awake, responsive, doing fine,
20 and that there was no need for nurse Beaulieu to
21 come. So she did not go.

22 Mr. Sayine called again shortly after 8 p.m.
23 He reported that Ms. Laboucan had vomited a few
24 times and that he was not able to wake her up.
25 As a result of that call, nurse Beaulieu attended
26 the house and she found Ms. Laboucan
27 unresponsive. She sought the assistance of the

1 RCMP to take her from the house back to the
2 nursing station. On that second visit, Mr.
3 Sayine again did not say anything to nurse
4 Beaulieu about Ms. Laboucan having hit her head
5 in any way.

6 Ms. Laboucan was medivaced to Yellowknife
7 later that night, and later medivaced to
8 Edmonton. It was determined that she had an
9 acute subdural hematoma, which is basically
10 bleeding inside the skull. Her condition
11 continued to deteriorate. She was pronounced
12 dead in Edmonton on the morning of June 19th.

13 There is no issue as to what caused
14 Ms. Laboucan's death in the medical sense. The
15 bleeding inside her skull caused irreparable
16 damage to her brain, including damage to the part
17 of the brain that controls the vital functions.
18 The medical and forensic evidence is largely
19 undisputed. It cannot tell us how Ms. Laboucan
20 suffered her injury, but it provides a clear
21 framework against which the rest of the evidence
22 can be examined.

23 Dr. Monica Henry and Dr. Graeme Dowling were
24 qualified as expert witnesses and gave opinion
25 evidence in this trial. This engages special
26 considerations for a trier of fact, and I want to
27 make a few comments about that.

1 Expert evidence is only admissible when
2 certain criteria are met. Here, defence was not
3 taking issue with the admissibility of the
4 evidence but of course, the determination of that
5 must still be made by the Court. I had no
6 difficulty in this case in finding that the
7 witnesses were qualified in the areas that their
8 opinion evidence was sought to be adduced, that
9 the evidence was necessary to assist the Court,
10 and that it was relevant. There was no
11 exclusionary rule that would prevent it being
12 admitted.

13 But even when expert opinion evidence is
14 admissible, it has to be approached with caution.
15 Expert evidence has to be assessed and weighed,
16 just like any other evidence.

17 I found both Dr. Henry and Dr. Dowling very
18 cautious and precise in their testimony. They
19 were very careful not to overstate anything in
20 their evidence – for example, when he testified
21 about a possible time line for when this injury
22 occurred, Dr. Dowling went to great lengths to
23 make it clear that all he could offer was an
24 approximation, not certainty. He was very honest
25 about the limits of science.

26 These two experts were also very careful
27 about limiting their evidence to their area of

1 expertise. They did not hesitate to say so when
2 they felt they were not qualified to answer a
3 question posed to them. For example, Dr. Dowling
4 was asked certain questions about the symptoms
5 that a patient who has a subdural hematoma might
6 present. He gave some general answers but he
7 noted at the outset that this was a question
8 better answered by a clinician – someone who
9 works with living patients. He gave a similar
10 answer in response to questions about the
11 possible link between Ms. Laboucan's alcohol
12 consumption habits and her body's ability to
13 coagulate blood. He was also very careful when
14 he answered questions about some of the
15 hypotheticals presented to him by Crown counsel.
16 Some of the questions put to him by Crown counsel
17 were questions he simply could not answer. And
18 he said so.

19 Similarly, there were times during Dr.
20 Henry's evidence where she said she did not think
21 the question asked was within her area of
22 expertise. She was asked whether she could
23 extrapolate what Ms. Laboucan's blood alcohol
24 level might have been on June 16th, based on what
25 it was when it was tested at the hospital in
26 Yellowknife. Dr. Henry answered without
27 hesitation that this was not within her area of

1 expertise and she was not comfortable answering
2 that question. There were other questions where
3 she responded that the issues raised would be
4 better dealt with by the forensic pathologist.

5 On the whole both these witnesses impressed
6 me as having a good understanding of the role of
7 an expert witness and understanding the
8 importance of confining their evidence to the
9 area of expertise that they had been qualified
10 for and within the parameters under which they
11 were permitted to give that opinion evidence.
12 Their evidence was precise, and it was measured.
13 They were called as part of the Crown's case but
14 their evidence was not slanted towards the Crown.
15 And finally, they did not merely set out their
16 conclusions: they explained how they arrived at
17 those conclusions.

18 And all that makes me confident that this
19 evidence is highly reliable.

20 Starting with Dr. Monica Henry, she is an
21 intensive care physician and general internist,
22 and she works, among other places, as a neuro
23 intensivist at the University of Alberta
24 Hospital, in the Neuro Surgery Neuroscience
25 Intensive Care Unit. She was involved with the
26 care of Ms. Laboucan after Ms. Laboucan was
27 transferred to that unit.

1 Dr. Henry explained that by the time she saw
2 Ms. Laboucan, there was already serious damage to
3 her brain and her prognosis was very poor. She
4 was already in a state of deep coma.

5 I find the most useful and relevant aspects
6 of Dr. Henry's evidence, for my purposes, were
7 the following:

8 1. She explained the difference between an acute
9 subdural hematoma and a chronic subdural
10 hematoma. Acute subdural hematoma occurs within
11 a few minutes or hours of the trauma that has
12 caused it (depending on the force of the blow and
13 how much bleeding there is, the blood will
14 accumulate more slowly or more rapidly). By
15 contrast, a chronic subdural hematoma is one that
16 has been present for a number of weeks or months.
17 These types of hematomas will present differently
18 on a CT scan. Dr. Henry said that Ms. Laboucan
19 had an acute subdural hematoma, and that is also
20 one of the facts agreed to in the Agreed
21 Statement of Facts.

22 The second area she talked about was the
23 symptoms of an acute subdural hematoma.

24 She explained that the initial symptoms
25 associated with this injury, as the blood begins
26 to accumulate inside the skull, would be headache
27 and confusion, and then progressively, difficulty

1 speaking, weakness, and unsteady balance. The
2 pressure caused to the brain can also result in
3 nauseousness and vomiting.

4 As the condition progresses there is a
5 progressive decrease in the level of
6 consciousness, which eventually leads to deep
7 unconsciousness. The damage to the brain also
8 affects the patient's response to various
9 stimuli. Eventually, there is no response at
10 all.

11 She also talked about the fact that heavy
12 intoxication can mask the symptoms of a subdural
13 hematoma because some of the symptoms of
14 intoxication are similar to those of a subdural
15 hematoma, symptoms such as confusion, slurred
16 speech, or lack of balance.

17 Dr. Henry was asked about the link between
18 chronic alcoholism and susceptibility to
19 suffering subdural hematoma. She talked about
20 two ways that chronic alcoholism could be
21 relevant to susceptibility to this injury: the
22 first is that alcohol consumption can interfere
23 with the liver function and that can lead to an
24 impairment of the coagulation function. The
25 second way is that chronic alcoholics may have
26 brain atrophy, which means shrinking of the
27 brain, and that puts more pressure on the blood

1 vessels that are inside the skull, they get more
2 stretched. And this can make them more easily
3 subject to tearing when there is impact.

4 As far as the first aspect, though, Dr.
5 Henry performed tests on Ms. Laboucan's blood and
6 the results did not suggest that there would be
7 problems with her coagulation levels.

8 Dr. Graeme Dowling is the forensic
9 pathologist who performed the autopsy on
10 Ms. Laboucan.

11 His evidence establishes a number of things.

12 First, he confirmed that the cause of death
13 was a subdural hematoma, which was the result of
14 blunt force trauma to the head. He explained, as
15 Dr. Henry had, that a subdural hematoma is an
16 accumulation of blood inside the skull, which
17 eventually puts pressure on the brain.

18 Dr. Dowling found two areas in the
19 examination of Ms. Laboucan's head which could be
20 where her head hit something or was hit by
21 something and caused the hematoma. He called
22 these "possible impact sites": the first is near
23 her left eye, where he found bruising, and the
24 second was at the back of her head at the base of
25 her skull, where he found a deep tissue bruise on
26 the back of her head. This was not an external
27 bruise, it was a bruise that could only be

1 visible upon examination of the inside of the
2 skin on Ms. Laboucan's head during the autopsy.

3 He also said the location of the impact site
4 is irrelevant to where the hematoma is located in
5 relation to the brain. So to be clear, there is
6 no significance to the fact that there was a
7 bruise near her left eye and the hematoma formed
8 on the left side of her brain. He said there was
9 no rhyme or reason to where the hematoma might
10 form.

11 He also said there were no lacerations or
12 cuts on Ms. Laboucan's body, be it on her head or
13 anywhere else on her body. There was no evidence
14 of any injury on her head or anywhere else that
15 would have bled; (this is consistent with nurse
16 Beaulieu's findings during her examination of
17 Ms. Laboucan).

18 Dr. Dowling was asked whether it was
19 possible to determine when the subdural hematoma
20 would have been caused, and he explained that
21 what can give an indication of a time line for
22 this type of injury is the degree or stage of
23 healing that can be observed under microscopic
24 examination. Evidence of clotting or coagulation
25 suggests that the body had started the process of
26 healing. The more time passes, the more there
27 would be such indications of healing.

1 In this case, Dr. Dowling observed that the
2 blood was barely clotted. His estimate, based on
3 those observations, is that the injury would have
4 occurred three to five days before the time of
5 Ms. Laboucan's death. But he emphasized that
6 this was an approximation. He was asked on
7 cross-examination if the injury could be more
8 dated than that, and his answer was that his
9 estimate of three to five days was "generous";
10 that if the injury dated further back than three
11 or five days there are things he would have
12 expected to have seen in his examination that he
13 did not see. But he also made it very clear that
14 he could not say it was impossible that the
15 injury dated further back than three to five
16 days. He said that dating these types of
17 injuries is just like trying to date bruising; it
18 is fraught with errors and must be approached
19 with extreme caution.

20 Dr. Dowling was asked about the significance
21 of heavy chronic consumption of alcohol in the
22 context of hematomas. He said that, as a matter
23 of common sense, intoxication could be a
24 contributing factor in the sense that a person
25 who is heavily intoxicated may have poorer
26 balance and coordination and that may increase
27 the risk of sustaining a head injury. He said

1 the consumption of alcohol in and of itself
2 cannot cause a hematoma. There has to be some
3 force, there has to be an impact of some sort on
4 the head.

5 He was also asked about how chronic
6 alcoholism might make a person more susceptible
7 to suffering this type of injury. His evidence
8 on those points was consistent with the evidence
9 of Dr. Henry, namely, the potential effect on the
10 body's coagulation function, and the potential
11 effects from the brain shrinking and causing
12 added stress to the vessels.

13 Dr. Dowling was asked hypothetical questions
14 by the Crown about various scenarios. He was
15 asked, for example, to express an opinion about a
16 scenario where a person receives two separate
17 blows to the head during a certain time frame,
18 and whether it was possible to estimate the
19 effect of a second blow on a subdural hematoma
20 caused by the first blow. From his answer, I
21 take his opinion to be as follows about some of
22 these scenarios that were put to him:

23 1. He could say that if someone was struck, fell
24 back and hit their head on the floor, this could
25 cause a subdural hematoma.

26 2. He said that if a person received several
27 blows to the head within a certain time frame,

1 and was later found to have died of a subdural
2 hematoma, it would be impossible to tell which of
3 the blows caused it.

4 3. He said that if a person was already
5 suffering from a subdural hematoma, suffering a
6 further blow to the head would not be a good
7 thing; obviously, it would not help. It might
8 aggravate the condition, and it might have no
9 effect. But working backwards after the fact, it
10 would be impossible to tell if the person would
11 have died if they had only received the first
12 blow and not the second one.

13 So really, beyond the general proposition
14 that hits on the head are dangerous and not a
15 good thing, he could not venture further in
16 expressing opinions about many of the
17 hypotheticals that were put to him, particularly
18 the ones involving scenarios where there are
19 multiple blows to the head.

20 I turn now to the evidence of nurse
21 Beaulieu.

22 Nurse Beaulieu was a nurse practitioner who
23 worked in Fort Resolution and she was the one who
24 first attended to Ms. Laboucan on the evening of
25 June 16th. I have already referred to the
26 evidence about the calls that she received from
27 Mr. Sayine. She explained what she did when she

1 got to the residence, and later on at the nursing
2 station, until the point when Ms. Laboucan was
3 medivaced.

4 The most relevant aspects of her testimony,
5 as far as Ms. Laboucan's condition, in my view
6 were that:

7 At the residence and again at the nursing
8 station, she did a thorough examination of
9 Ms. Laboucan's head, both visually and by
10 touching, and she found no external evidence of a
11 head injury.

12 The second element is that Ms. Laboucan was
13 already deeply unconscious when nurse Beaulieu
14 started caring for her. Nurse Beaulieu explained
15 how she monitored Ms. Laboucan's level of
16 consciousness using something called the Glasgow
17 Coma Scale, and that her score on that scale was
18 consistently very low, and corresponded to a deep
19 state of unconsciousness.

20 The third thing about nurse Beaulieu's
21 evidence is that there is absolutely nothing to
22 suggest from her evidence, or from any other
23 evidence, that she did anything or failed to do
24 anything that contributed to aggravating
25 Ms. Laboucan's condition. Specifically, great
26 care was taken when Ms. Laboucan was moved from
27 the house to the nursing station. This is not a

1 situation where there can be any doubt that
2 different treatment could have led to a different
3 result from the point in time when Nurse Beaulieu
4 was involved.

5 Another aspect of what I would term
6 generally "forensic evidence" came from Sergeant
7 Chris Self who is with the Forensics
8 Identification Section of the G Division of the
9 RCMP. After a voir dire I permitted him to give
10 opinion evidence about crime scene examination
11 and the identification of bodily fluids. The
12 comments I made about the two other experts apply
13 to Sergeant Self's evidence. He too was very
14 precise, and careful to delineate the limits of
15 the topics that he could or could not speak to.

16 There were really two aspects to his
17 testimony. One was to describe the scene as he
18 found it. He described the various areas of
19 interest that were examined. He described what
20 can be seen in the large book of photographs that
21 was filed as an exhibit. The second aspect of
22 his evidence was to explain various testing he
23 did at the scene to identify areas that should be
24 the subject of more testing. He used various
25 methods, for example, to identify areas where
26 there might be blood. But the tests that he used
27 are presumptive only. He was very clear about

1 that. The Crown chose not to adduce any evidence
2 of further laboratory testing that might have
3 been conducted on any samples seized at the
4 scene. Sergeant Self took great care to note
5 that only laboratory tests could establish, for
6 example, that there was in fact blood at the
7 scene. That type of testing would also be
8 required to determine whether blood is human
9 blood. I find that the results of the
10 presumptive test they Sergeant Self conducted
11 proves nothing, really, especially in light of
12 his evidence that other substances do react to
13 this testing. Cleaning products may present a
14 presumptive positive result. So it really is
15 evidence that, other than explaining what he did,
16 is really of no use to me because it has no
17 probative value as to what any of the substances
18 seen in the home actually were.

19 On the other hand, the observations he made
20 at the scene, the explanations of what can be
21 seen in the book of photographs that was filed,
22 was very helpful to better understand the scene
23 and the various locations that witnesses were
24 talking about, where certain items were found. I
25 bear in mind of course that these photos were
26 taken at the scene as the officers found it on
27 June 20th, which was some days after the events.

1 So passage of time has to be borne in mind when
2 attributing weight to any of the things seen in
3 those photographs.

4 I have spent some time talking about things
5 that are not particularly disputed or contested
6 and in light of what I referred to so far, it is
7 very clear that the issue in this case boils down
8 really to one thing: whether the Crown has
9 proven beyond a reasonable doubt that
10 Ms. Laboucan's head injury was the result of an
11 unlawful act committed by Mr. Sayine.

12 The only direct evidence as to how she fell
13 came from Mr. Sayine. He was the only one there
14 who is still here and able to talk about this.

15 The Crown's position is that his evidence on
16 that point, that the fall was the result of an
17 accident, should be rejected. The Crown says
18 that Mr. Sayine's guilt is established through
19 circumstantial evidence, including evidence of
20 his conduct after the fact, and by the admissions
21 that he made to Mr. Larocque and Ms. Singerling.

22 The key, therefore, is the analysis of the
23 evidence that can be helpful in determining how
24 Ms. Laboucan's injury occurred. That is where
25 the testimony of the various people who were in
26 the house that day becomes crucial and must be
27 examined closely.

1 I now turn to that evidence, it is the
2 evidence of four people: Fred Lafferty, Jason
3 Larocque, Jennifer Singerling, and Mr. Sayine
4 himself. First, I want to outline in general
5 terms what each of them say.

6 By way of preliminary remarks, I should also
7 say that all these individuals were drinking and
8 intoxicated to various degrees at points of time
9 on June 16th. There were also points where some
10 of them, Mr. Larocque and Mr. Sayine in
11 particular, used marihuana. There is evidence
12 that alcohol was consumed in some of the days
13 before, and in some of the days after these sad
14 events. People's intoxication, inevitably, would
15 affect their ability to recollect precise details
16 of events. So does the passage of time. As a
17 result, and not surprisingly, there are many
18 inconsistencies in the evidence. But
19 inconsistencies about certain details does not
20 necessarily mean that the witness is mistaken
21 about everything they say. Some aspects of an
22 event would impact a person more than others.
23 That is a matter of common sense and human
24 experience.

25 There was also evidence that some of these
26 witnesses have criminal records. This is not a
27 case where I find those records are particularly

1 significant or useful. No one has convictions
2 for perjury, or for offences that are
3 particularly significant from the point of view
4 of dishonesty. Convictions for breaches of court
5 orders, to an extent, speak to a person's respect
6 for the court process and their respect for
7 promises made to the court, and Mr. Larocque has
8 quite a few of those. But in the end this is one
9 factor among many when assessing credibility and
10 in this case I do not find it particularly
11 significant.

12 Another factor that sometimes impacts on
13 credibility is the connection between the various
14 people involved. Ms. Singerling is Mr.
15 Larocque's spouse. She had not been in Fort
16 Resolution for a very long time so she had not
17 known Mr. Sayine and Ms. Laboucan for very long
18 but they were "drinking buddies", as she
19 described. Neither her nor Jason Larocque seemed
20 to have any particular stake in this matter.
21 Jason was a friend of both Ms. Laboucan and Mr.
22 Sayine and had known them both for many, many
23 years. Mr. Lafferty also knew Ms. Laboucan quite
24 well and had known Mr. Sayine for a very long
25 time. He is actually Mr. Sayine's cousin. So
26 there is really no basis here to conclude that
27 any of these witnesses would have had a bias for

1 or against anyone or any particular reason to be
2 deceitful.

3 Mr. Lafferty's evidence, I have already
4 referred to somewhat, but I will get back to it
5 in a bit more detail. He explained that he
6 returned to the Sayine house in the morning.
7 This would have been after he was at Jason and
8 Jennifer's place and tried to calm them down
9 during their argument.

10 What he said happened was he walked in on an
11 argument between Ms. Laboucan and Mr. Sayine; he
12 told Mr. Sayine to take it easy; in response, Mr.
13 Sayine told him to stay out of it, went to get an
14 axe, and struck the coffee table that was just in
15 front of where Mr. Lafferty was sitting. He said
16 that Mr. Sayine said "you're next" and so he ran
17 out the door. And then he called the police.

18 As for Mr. Larocque, I am going to focus
19 here on what he said happened when he and
20 Ms. Singerling returned to Mr. Sayine's house in
21 the afternoon of June 16th. That evidence is
22 important because it relates to what he observed
23 at that time, and about his discussions with Mr.
24 Sayine, and this is at a time where Ms. Laboucan
25 had sustained her injury.

26 Mr. Larocque and Ms. Singerling knocked on
27 the door and Mr. Sayine let them in. Mr.

1 Larocque says he saw what looked to him like
2 dried blood on the floor near the couch by the
3 door. He noticed one of the two coffee tables
4 that had been there the night before was missing
5 from the living room. He said Jennifer went to
6 the bathroom, and then both he and Mr. Sayine sat
7 down. Mr. Larocque rolled a joint and they
8 started smoking. He said Mr. Sayine was drinking
9 vodka.

10 Mr. Larocque said that then Mr. Sayine began
11 talking to him. He talked about having found
12 Ms. Laboucan laying outside the house
13 unconscious; about having chased Mr. Lafferty
14 with an axe and about getting into an argument
15 with Mary, and Mr. Lafferty getting "into their
16 business". Then Mr. Sayine started crying and
17 said he "fucked up". Mr. Larocque asked him what
18 he meant and Mr. Sayine said that Mary had thrown
19 an ashtray at him and he kicked her and she fell
20 back and hit her head. Mr. Larocque asked if she
21 was okay and Mr. Sayine said she was.

22 At some point during this exchange Mr.
23 Larocque said Jennifer came out of the bathroom,
24 so she was there for part of the exchange about
25 what had happened. He said she asked to see Mary
26 but Mr. Sayine would not let her. Mr. Larocque
27 said that he did not hear Mary speaking but he

1 heard her "groan or make a little noise" at one
2 point.

3 He said at that point he just wanted to get
4 out of there and so they left. They never did
5 ask for the money for the bottle they had sold to
6 Mr. Sayine the night before, which was the whole
7 point of them stopping in at that time.

8 It is very clear from Mr. Larocque's
9 testimony, including what he said on
10 cross-examination, that he did not have a word
11 for word or precise memory of the discussion with
12 Mr. Sayine. He was pressed in cross-examination
13 about the clarity of his memory. He was pressed
14 about whether he was telling the court what he
15 remembered or whether he was telling the court a
16 combination of what he remembered Mr. Sayine
17 saying and rumours he might have heard around
18 town.

19 While Mr. Larocque acknowledged being unsure
20 about some things, he was very firm about his in
21 court testimony being his own recollection of
22 what Mr. Sayine told him that day, not something
23 he heard from other people.

24 Ms. Singerling's description of what
25 happened that afternoon is, in some ways,
26 consistent with what Mr. Larocque says, although
27 there are some differences in some of the details

1 they remember and how they repeated the words
2 they say Mr. Sayine said to them.

3 She did say that when they walked into the
4 house she noticed that it was a mess; there was
5 broken glass on the floor; there was a coffee
6 table missing; she saw what she thought was blood
7 on the floor in front of the couch and on the
8 wall; she saw a boot print on the wall. She went
9 to the bathroom and saw what looked like blood in
10 the bathroom, on the counter, and on a towel.
11 She saw what she believed to be leftover bubbles
12 from a bubble bath in the bathtub, and said some
13 of them were tinged in red or pink.

14 She was not there for the whole conversation
15 between Mr. Sayine and Mr. Larocque because, as I
16 said, she was in the bathroom for a period of
17 time. But she did testify about hearing Mr.
18 Sayine saying certain things.

19 She said when she walked in she asked whose
20 blood it was and he said that Mary had hit him
21 with an ashtray.

22 When she returned from the bathroom the
23 conversation with Jason was underway; she heard
24 Mr. Sayine talk about an argument with Mr.
25 Lafferty, about having tried to kick him and
26 leaving a print on the wall, and that then Mary
27 had gotten up really fast from where she was

1 sitting behind him and he had back kicked her
2 reflexively and she fell back. She, too, said
3 that Mr. Sayine was crying, was saying that he
4 screwed up and that he should not have done that
5 to her.

6 Jennifer said she also asked about the
7 coffee table, and Mr. Sayine said that he chased
8 Mr. Lafferty outside the house and then chopped
9 up the coffee table because he was so mad. She
10 does not recall him saying what he and Mr.
11 Lafferty were arguing about.

12 Jennifer asked if Mary was okay, she wanted
13 see her but Mr. Sayine would not let her go check
14 on her. At that point, she said she just wanted
15 to get out of there.

16 The last person who can talk about what went
17 on in the house that afternoon of course is Mr.
18 Sayine himself. He testified that after the
19 morning visit by the police, his son Evan went
20 back to bed. Mr. Sayine said he started playing
21 a game on the computer and Ms. Laboucan, who
22 didn't like it when he played games on the
23 computer, just went outside and she took with her
24 a bottle of alcohol that was left from the
25 previous night. Mr. Sayine said Evan got up, Mr.
26 Sayine cooked him breakfast, and then Evan left.
27 Mr. Sayine said that he laid down and

1 Ms. Laboucan came and laid next to him.

2 He said he then woke up at around 1:30 or
3 1:45 that afternoon to the noise of someone
4 stumbling up the steps. He got up, came out of
5 the bedroom and saw Mary coming into the house,
6 holding a 60 ounce bottle of vodka, which looked
7 half full, saying "look what I found."

8 Mr. Sayine says he was concerned about what
9 was in the bottle because he had stored paint
10 thinner and antifreeze in similar bottles in his
11 smokehouse shed. He said he was worried Mary may
12 have found it, so he wanted to smell the bottle
13 to make sure that it was not those products.

14 He said he grabbed the bottle and
15 Ms. Laboucan tried to grab it out of his hands.
16 He said he did not realize how much force she was
17 using. Her hands slipped, and she fell backwards
18 and banged her head on the hardwood floor.

19 He said that two, three or four seconds
20 after falling she "shot up really fast", and
21 tried to grab the bottle again. He got out of
22 the way and then she fell face forward on the
23 couch.

24 Mr. Sayine showed on the photographs where
25 Ms. Laboucan fell and hit her head, and he showed
26 an area near the doorway to the bedroom, visible
27 on photo 27. He said he saw blood coming from

1 her head and that there was blood near the
2 bedroom doorway as well as in front of the couch
3 that came from her head.

4 He said that after she fell forward
5 Ms. Laboucan laid on the floor, and then moved a
6 bit to get some fresh air that was coming from a
7 fan that was operating in the living room. He
8 said because she was bleeding from the head he
9 wanted to phone the nurse but she did not want
10 him to do that.

11 He said she asked him to help her to the
12 room and she asked him to just pull her by the
13 legs, and so he did that. She asked him to run
14 her a bath, and he did that. He said she got
15 into the bath herself. And while he was in the
16 kitchen making coffee, he heard a noise as though
17 she had slipped. She asked him to give her a
18 hand and so he went and helped her wash her hair.
19 He brought up the idea of calling the nurse again
20 and she did not want him to. He then helped her
21 put on pyjamas and put her to bed. He also said
22 she asked him to make her some juice and he did,
23 and that she fell asleep.

24 He said he laid down on bed beside her and
25 starting drinking from the bottle alcohol. He
26 said he drank quite a bit of it, over a period of
27 about two hours, and that was when Jennifer and

1 Jason showed up.

2 Mr. Sayine admits that they asked what
3 happened and that he told them various things.

4 He admits he told them Mary hit him with an
5 ashtray, and that he kicked her. But he said
6 that was a lie.

7 He said he might have also said he kicked
8 her, and that she fell backwards. But that was
9 not true either.

10 Mr. Sayine confirms there was a shoe mark on
11 the wall but said it was from him throwing a shoe
12 at his dog who had come in wet and jumped on the
13 couch, earlier on, while he was busy in the
14 kitchen. And he said at the same time there was
15 a picture that was on the wall that fell, and the
16 glass broke. Mr. Sayine also said that an
17 ashtray did get broken that afternoon, but not
18 because Mary threw it at him, but rather because
19 he just tried to put it on the stove and it fell
20 off the stove and it broke on the floor.

21 Mr. Sayine was asked by his counsel why he
22 told Jason and Jennifer he had kicked Mary if
23 this was not true. The first time he was asked
24 this question he answered "I'm not sure." He was
25 asked a little bit later again by his lawyer and
26 he answered that he was intoxicated, and was not
27 thinking properly. Later, still in his

1 examination-in-chief, he was asked if there was
2 any other reason and he said that if he had told
3 Jason and Jennifer the truth about the fact that
4 Mary fell during this struggle with the bottle,
5 they would have laughed at her, and then she
6 would have been mad at him and would have swore
7 at him and not spoken to him for days.

8 Mr. Sayine said that after Jennifer and
9 Jason left he cleaned the house and then he went
10 and laid down with Mary again. He woke up at
11 around 6:00 and was not able to wake her. He
12 said he phoned the nurse and asked her to come
13 over. But then Mary, in his words, sort of moved
14 her hand, and it sounded like she said "I love
15 you." So he phoned back to the health centre and
16 said he thought everything was okay. He
17 testified that at that point he thought she was
18 simply still drunk and he decided to let her
19 sleep some more. But by nine o'clock when he
20 still could not wake her up he called the nurse
21 again. Mr. Sayine said at that point he thought
22 Ms. Laboucan was suffering from alcohol
23 poisoning.

24 Mr. Sayine was also asked questions about
25 the days leading up to June 16th. He said that
26 the day before, Friday, June 15th, he and Mary
27 were not drinking; he said they were not drinking

1 on the Thursday either. I understood from his
2 evidence that they did not have any money to buy
3 alcohol so they watched movies all of that day.
4 They had been drinking on the Wednesday night.

5 Late in the evening on the Wednesday night
6 or early morning hours of Thursday, Mr. Sayine
7 talked about an incident where he had been in the
8 bedroom watching movies and when he got up he
9 noticed that Ms. Laboucan was not in the house.
10 He said he went outside and found her at a picnic
11 table, her feet on the bench and her back on the
12 ground. He carried her back inside the house.

13 This is an outline of what these witnesses
14 said.

15 As I have already said, the central issue in
16 this case is how Mary Laboucan sustained her head
17 injury. If that injury happened as a result of a
18 simple accident, as Mr. Sayine described in his
19 trial testimony, then he did not commit a
20 criminal offence. But if she fell and hit her
21 head as a result of being kicked by him, then her
22 death is the result of an unlawful act committed
23 by him, and he is criminally liable for her
24 death. A kick in the head, and I would say any
25 strike to the head, is an objectively dangerous
26 act that meets the legal requirements that I have
27 outlined at the start of my reasons. So if this

1 unlawful act caused her to fall and hit her head,
2 and that resulted in the subdural hematoma,
3 causation is established as well.

4 Because Mr. Sayine testified that the fall
5 happened by accident, if I believe his testimony
6 he would have to be found not guilty. Even if I
7 do not believe him, if his trial testimony leaves
8 me with a reasonable doubt about his guilt, I
9 must also find him not guilty. And even if I
10 reject his evidence completely I cannot stop
11 there. I must consider whether the Crown's
12 evidence establishes his guilt beyond a
13 reasonable doubt. And because that is the
14 analytical framework that the law demands that I
15 work with, the first step, as defence counsel
16 rightly pointed out, is to consider Mr. Sayine's
17 testimony.

18 Defence counsel argued that I should accept
19 Mr. Sayine's evidence because there are various
20 aspects of it that are confirmed by other
21 evidence. Of course an accused person does not
22 bear the onus of proving anything ever, so there
23 is no requirement that Mr. Sayine's evidence be
24 corroborated in order for me to accept it. But
25 defence points to various things that Mr. Sayine
26 said that are confirmed by other evidence and he
27 said that is an indication that he was truthful

1 in his testimony and that should serve to elevate
2 my confidence about his truthfulness in
3 describing what happened and how Ms. Laboucan got
4 hurt.

5 I have no trouble whatsoever accepting that
6 Mr. Sayine told the truth about many of the
7 things he said in his evidence. It is true that
8 aspects of his evidence are supported by other
9 evidence. There were several examples given in
10 submissions, but I will refer to a few just to
11 illustrate the point:

12 His version that Evan was present in the
13 house on the morning of June 16th is confirmed by
14 the observations of the two police officers.

15 Ms. Laboucan's drinking habits, and the fact
16 that she consumed on a regular basis enormous
17 quantities of alcohol, is confirmed by several
18 other witnesses, and to an extent by the large
19 quantity of empty vodka bottles that are in the
20 shed (although as I noted during submissions, the
21 presence of that number of bottles in itself
22 would not establish necessarily much because we
23 do not know how many people would have shared in
24 drinking them or over what period of time they
25 accumulated) but it is certainly part of the
26 evidence, along with testimony of other
27 witnesses, that confirms that Ms. Laboucan was a

1 very heavy drinker.

2 On a more peripheral matter, Mr. Sayine's
3 description of the argument between Jason and
4 Jennifer that night, and the rather unusual fact
5 that during that argument Mr. Larocque jumped on
6 top of a car, was confirmed by Ms. Singerling.

7 Mr. Sayine's testimony that he did not have
8 an argument with Ms. Laboucan, and that Mr.
9 Lafferty was not there where she fell, seems to
10 be confirmed by other evidence suggesting that it
11 was a period of time before the fall occurred
12 that Mr. Lafferty was in the house. There is
13 absolutely no evidence that would support the
14 notion that Mr. Lafferty would have been present
15 when Ms. Laboucan fell and most notably, there is
16 certainly nothing from Mr. Lafferty that would
17 suggest that he was there when any assault was
18 committed upon Ms. Laboucan. So in that respect
19 Mr. Sayine's version is corroborated by the rest
20 of the evidence.

21 Triers of facts must weigh all aspects of
22 the evidence of witnesses and can accept none,
23 all, or some of what witnesses say. Few
24 witnesses come to court and lie about everything
25 they say. Usually, if they are not truthful, it
26 is about matters that are most significant to
27 their position. While I agree with defence

1 counsel that there are indications of Mr.
2 Sayine's truthfulness about some aspects of
3 things and that this can serve as an indication
4 of his truthfulness on other things, that type of
5 reasoning can only go so far, because, in my
6 view, the more peripheral a fact is, or the less
7 contentious it is, the less significant
8 truthfulness about it becomes. I say that
9 bearing in mind that Mr. Sayine did admit to
10 things that did not put him in a great light but
11 that, too, has to be weighed against the relative
12 importance of those facts in the broader context
13 of this case.

14 I have kept all that in mind, and I have
15 considered Mr. Sayine's evidence carefully. I
16 conclude that there are significant problems with
17 that testimony, and some of those problems are
18 very, very closely connected to the central
19 issues in this case.

20 First, in a general way, I found Mr.
21 Sayine's testimony about these events exceedingly
22 precise, as far as time, and some seemingly
23 innocuous facts, which I have difficulty
24 accepting that he would remember so well under
25 the circumstances. As far as the time line, he
26 literally recounted some of these events down to
27 minutes. To illustrate, I have difficulty

1 accepting that so long after the fact he would
2 remember that he got to his mother's house at
3 7:00 or 6:40 and that he stayed there 20 minutes;
4 that he would remember the detail of asking his
5 mother what time it was, and that she looked at
6 her wrist watch and said "it's 7:00 my boy"; or
7 that it was 10:30 when Evan asked him to cook for
8 him and 11:00 when Evan left; or that it was 1:30
9 or 1:45 when he heard Ms. Laboucan stumble up the
10 steps. This level of preciseness is surprising
11 to say the least, under the circumstances. That
12 does not mean that the things he talked about did
13 not happen, but it did give his evidence
14 overtones of being something that was somewhat
15 "rehearsed" and not based on an actual
16 recollection of events.

17 More importantly, there are serious concerns
18 about several aspects of the plausibility of his
19 version of events.

20 First, there is the issue of his concern
21 about what was in the bottle that Mary brought
22 in, which was what, according to him, ultimately
23 led to the struggle and the fall. There is a
24 photograph of the inside of this shed, where Mr.
25 Sayine said he kept the antifreeze and the paint
26 thinner. He said he kept it behind the blue
27 plastic and the stove. All this can be seen in

1 photograph 132. The photo shows the stove and
2 the blue tarp at the very back of the shed and
3 numerous bags with empty bottles and other
4 things, creating quite a few obstacles between
5 the shed door and where Mr. Sayine said he kept
6 his antifreeze and paint thinner. So there is a
7 question about the plausibility of him thinking
8 that Mary Laboucan would somehow go all the way
9 inside the shed and over all those obstacles and
10 find these products and think it was alcohol.
11 But I also find it highly implausible that having
12 just woken up and seeing Mary Laboucan walk in
13 with a bottle, Mr. Sayine would immediately think
14 of the possibility that she might have found
15 these poisonous products, considering where they
16 were tucked away. I also find it implausible
17 that anyone would think that she would had gone
18 there looking for alcohol because clearly, the
19 shed was where the empties were kept.

20 I also find that Mr. Sayine's description of
21 how she fell back, hitting her head hard enough
22 to say "ow" or "oo", and then shooting back up as
23 fast as he said she did and to lunge again for
24 the bottle and fall forward, does not seem very
25 plausible, especially if she was as intoxicated
26 as he claims she was.

27 Mr. Sayine's description of where she fell,

1 which is towards the inside of the house, also
2 seems inconsistent with the position they would
3 have each been in if he was coming from the
4 bedroom at the back of the house and she was just
5 walking in the door. If Mr. Sayine met her and
6 tried immediately to get the bottle from her
7 right away because of his concerns, it seems to
8 me their positions would have been reversed and
9 she would have fallen backwards towards the door
10 as opposed to toward the inside of the house.

11 I have difficulty with Mr. Sayine's account
12 of how the boot print ended up on the wall and
13 how the picture got broken. That explanation
14 seems odd. On his version this happened when he
15 threw a boot at his dog because the dog was wet
16 and had jumped on the couch. Mr. Sayine said he
17 threw the shoe at the dog because he was busy in
18 the kitchen. But as the photographs show, this
19 is not a big house and the kitchen and living
20 room are virtually one large room. Mr. Sayine
21 described his boots being by the heater, which is
22 almost part of the living room a few steps away
23 from the couch. It is perhaps a minor point but
24 it seems odd that if he had to walk to pick up
25 his boots, it would have been just as easy for
26 him to get the dog to come off the couch rather
27 than throw the boot in the general direction of

1 the wall where he had several family pictures
2 hanging.

3 Various witnesses said they saw things in
4 the house that they thought might be blood. As I
5 said, there is no forensic evidence establishing
6 conclusively that there was in fact blood in the
7 house when the police examined the house. But
8 Mr. Sayine testified very specifically that after
9 Mary Laboucan fell he saw blood coming from the
10 back of her head. He said, "I could see blood
11 coming out of her." He was asked where the blood
12 was coming from and he answered "from the back of
13 her head." This is completely inconsistent with
14 the medical and forensic evidence. Nurse
15 Beaulieu checked for external injuries on
16 Ms. Laboucan's head and she was very thorough
17 because she suspected that there might be a head
18 injury. She did this check with her hands, and
19 visually; she did those checks at the scene, and
20 at the health centre where there was adequate
21 lighting. She found no injury. Her findings are
22 unequivocally confirmed by the results of Dr.
23 Dowling's examination. There were no lacerations
24 or cuts on Ms. Laboucan's body, including her
25 head.

26 Of course people can be honestly mistaken
27 about what they tell the Court. And the whole

1 question of whether there was blood at the scene
2 and whose blood it was, and whether it was even
3 human blood, is up in the air because it has not
4 been conclusively established. But Mr. Sayine's
5 evidence was very specific about seeing blood
6 coming out of her head and this was one of the
7 reasons he wanted to call the nurse. That
8 evidence is conclusively established as untrue.
9 Mary was not bleeding from the back of the head.
10 This calls into serious question Mr. Sayine's
11 description of what happened. Perhaps it is an
12 attempt to explain the presence of blood that was
13 there for another reason. But he cannot have
14 told the truth about having seen blood coming
15 from the back of her head.

16 Finally, there is a significant problem, in
17 my view, with Mr. Sayine's explanation for having
18 told Jason and Jennifer what he did,
19 specifically, that he kicked Mary and she fell.

20 He gave three different answers to the
21 questions on this topic when he was asked
22 questions by his own lawyer. The first time he
23 said he did not know; the second time he said he
24 was not thinking properly because he was
25 intoxicated; and the third time he said that if
26 he told the truth it could have been embarrassing
27 for her, the others would have laughed at her and

1 then she would have been mad at him.

2 There is a definite contrast between this
3 part of Mr. Sayine's evidence and other parts
4 because for most of his evidence, he was very
5 precise and his narrative flowed very freely.
6 But when he was asked if he acknowledged saying
7 those things to Jason and Jennifer, he was far
8 more vague and equivocal in his answers. He used
9 language as "perhaps", "I might have" and
10 "probably". To me that reluctance is quite
11 telling because it shows discomfort in having to
12 explain something he actually did not have an
13 explanation for.

14 I find that the explanations he gave are not
15 credible at all. The second and third
16 explanations are completely contradictory with
17 one another: "not thinking properly" is the
18 exact opposite of the kind of strategic thinking
19 that would be required to make up a story to
20 avoid telling an embarrassing story that could
21 make one's spouse upset.

22 The third explanation, to me, does not make
23 sense. If the objective was to avoid telling his
24 friends that Mary was so drunk she fell twice
25 during the struggle over a bottle, and if the
26 objective was to avoid embarrassing her, there is
27 a host of things Mr. Sayine could have said, much

1 more simple scenarios than one where he falsely
2 admitted to assaulting her. In addition, the
3 story he told them also was potentially
4 embarrassing and put her in a bad light because
5 he said she threw an ashtray at him. If that was
6 false, presumably, she would be very mad at him
7 for falsely accusing her of having done that.

8 There would also be no reason for him not to
9 tell the truth about how the boot print got on
10 the wall and how the picture fell if the dog
11 story was true.

12 Mr. Sayine acknowledged that he told his
13 friends that he had "fucked up". He said he
14 meant "fucked up" when he wanted to smell the
15 bottle and grabbed it and caused this struggle.
16 I find that implausible, too. If this was an
17 accident it would be logical for the person to
18 describe it as an accident, not as having "fucked
19 up", and not as something he "should not have
20 done to her".

21 In summary, I find that the explanations
22 that Mr. Sayine gave for saying those things
23 simply do not hold together. They are
24 inconsistent, they are illogical, and I do not
25 find them at all credible.

26 So while I accept he told the truth about
27 certain aspects of the evidence that were more

1 peripheral or less incriminating, I do not think
2 he told the truth about what happened at his
3 house after the police were there on the morning
4 of June 16th. And specifically, I reject his
5 account that Ms. Laboucan fell and hit her head
6 during a struggle over a bottle. I do not
7 believe him when he says that is how she fell,
8 and his evidence about how she fell does not
9 leave me with a reasonable doubt on that point.

10 That takes me to the evidence that was
11 adduced by the Crown. As I said already,
12 rejecting Mr. Sayine's evidence is not a reason
13 to find him guilty. The Crown bears the onus of
14 proving beyond a reasonable doubt that he is
15 guilty.

16 The Crown's case rests on circumstantial
17 evidence and on the evidence about Mr. Sayine's
18 out of court admissions. I think it is fair to
19 say that without the evidence of the out of court
20 admissions the Crown cannot succeed on this case.

21 One aspect of the circumstantial evidence is
22 what is called after the fact conduct. The Crown
23 relies on certain aspects of the evidence to
24 suggest that Mr. Sayine had done wrong and knew
25 he had done wrong. There is a lot of case law on
26 after the fact conduct. Essentially, it is just
27 a form of circumstantial evidence. To be used as

1 evidence to support guilt, that evidence has to
2 be consistent with guilt and it has to be
3 inconsistent with any other reasonable
4 explanation.

5 Specifically, the Crown has asked me to draw
6 an adverse inference against Mr. Sayine based on
7 three things:

8 The first is what he did with the coffee
9 table, and the fact that the coffee table was
10 found on his property in a location different
11 than where Mr. Sayine said he put it. But as
12 defence noted, Mr. Sayine was not asked any
13 questions about how the table went from being
14 near his sewage tank to being in the location
15 where it was seized a few days later. The
16 evidence is lacking on this point and so I would
17 have to be very careful before I drew any kind of
18 inference based on where the table was found.

19 It is clear that Mr. Sayine removed the
20 table from the living room on the morning of the
21 16th before the police came. It may be that Mr.
22 Sayine did not want to leave it there because it
23 was broken; he may also have been concerned about
24 the police seeing it there, as Mr. Lafferty did
25 say he would call the police. But it is neither
26 here nor there because all this happened before
27 Ms. Laboucan was injured. So those facts cannot

1 be of any assistance in establishing Mr. Sayine's
2 frame of mind in relation to what happened to
3 her, and that is what he is charged with.

4 The second element of after the fact conduct
5 the Crown points to is that when Mr. Sayine
6 called the nurse the first time, she told him
7 that a police officer would be coming with her
8 and that shortly after that Mr. Sayine called
9 again to say that everything was okay. I am, I
10 have to say, suspicious about Mr. Sayine's
11 explanation that Ms. Laboucan moved, said
12 something to him and he thought she was okay. He
13 may well have been concerned about the police
14 coming to his house. But he could be concerned
15 about that even if she did fall accidentally
16 during a struggle with him for the bottle. I
17 cannot say that the only explanation for his
18 conduct is that he knew he had committed a crime.
19 And on that point I must give him the benefit of
20 the doubt, so I draw no inference from his having
21 called the nurse and told her not to come.

22 The third element that the Crown points to
23 is also something to do with the nurse and, more
24 specifically, Mr. Sayine's failure to tell her
25 about the fact that Ms. Laboucan hit her head.
26 Mr. Sayine did not really provide an explanation
27 as to why he did not tell the nurse that

1 Ms. Laboucan hit her head. He maintained that
2 when he called the nurse that evening he still
3 thought Ms. Laboucan only had alcohol poisoning.
4 On that point I do not believe him. On his own
5 version he knew Ms. Laboucan had hit her head.
6 On his own version he was concerned enough about
7 that, that he had wanted to call the nurse
8 earlier that day. I do not accept that he
9 thought alcohol poisoning was the problem several
10 hours later when he could not wake her. I think
11 the reason he did not tell the nurse about
12 Ms. Laboucan hitting her head was he was worried
13 there might be questions about how that happened,
14 questions that might get him into trouble. But
15 again, I do not think this can assist me in
16 deciding whether he is guilty of this offence,
17 because he might have been just as afraid of
18 implicating himself whether she fell during the
19 struggle with him or whether she fell as a result
20 of being kicked. In either scenario, he might be
21 afraid of the consequences to him and might
22 choose to stay silent after the fall. He did not
23 testify to that effect, as the Crown noted. But
24 I cannot say that I am sure that the reason he
25 did not tell the nurse about Mary hitting her
26 head was because he was guilty. I find that that
27 conduct is consistent with another explanation.

1 And again, when there is a doubt about that he is
2 entitled to the benefit of it.

3 The same is true for other things he did
4 that afternoon, such as cleaning the house. That
5 could be interpreted as an attempt to cover up
6 what happened. It could also be interpreted as
7 simply the actions of someone putting a house
8 back in order after an unfortunate event – even
9 an accidental one – has occurred. So on this
10 point of the after the fact conduct, I do not
11 find that there is any here that assists the
12 Crown.

13 As far as Mr. Lafferty's evidence, I think
14 it is also of limited assistance in making
15 findings as to what happened to Ms. Laboucan.
16 There were problems with Mr. Lafferty's evidence.
17 He was intoxicated. There were significant
18 inconsistencies between his evidence-in-chief and
19 his cross-examination; for example, whether Mr.
20 Sayine chased him out of the house, and about how
21 long he actually was in the house before the axe
22 incident happened.

23 But some aspects of Mr. Lafferty's evidence
24 are not in issue: first, Mr. Sayine did get very
25 mad at him; second, Mr. Sayine did bring an axe
26 in the house and he hit the coffee table with it;
27 third, Mr. Lafferty was scared, he left in a

1 hurry, he called the police, and he was scared
2 enough, albeit intoxicated, scared enough to call
3 Constable James and follow up to find out what
4 was going on.

5 There is this conflict about what Mr. Sayine
6 was mad about.

7 If one accepts Mr. Lafferty's version that
8 there was an argument going on between Mr. Sayine
9 and Ms. Laboucan, it could be argued that this
10 suggests that he was angry at her, and one could
11 try to use that as evidence supporting the fact
12 that he assaulted her later. Mr. Larocque says
13 that one of the things Mr. Sayine told him was
14 that he had become mad at Mr. Lafferty because
15 Mr. Lafferty was getting "into their business".
16 That could mean Mr. Lafferty butting in on an
17 argument between Mr. Sayine and Ms. Laboucan.
18 But it could also mean talking badly to his son,
19 in a broad sense, and getting involved into their
20 family business or whatever it was that could
21 have happened.

22 In the end, I do not think it matters what
23 the argument was about, because there was clearly
24 a passage of time between the axe incident and
25 the time when Mary Laboucan sustained her injury.
26 Whatever prompted the argument with Mr. Lafferty,
27 things had calmed down by the time the police

1 were there. Maybe they calmed down because the
2 police were expected, but the fact is that they
3 had calmed down. I think that whether or not Mr.
4 Sayine was having an argument with Ms. Laboucan
5 that morning, that fact would have very little
6 probative value as to what transpired in their
7 house some hours later.

8 For the same reason, I do not think that
9 much can be made of the fact that after the
10 morning visit, the police officers had no
11 concerns about what was going on in the house.
12 The only conclusion I draw from that is that
13 based on what they saw, they did not think there
14 were any problems at that precise moment.

15 As I said, the Crown did not seek to adduce
16 evidence about the conversation that took place
17 between the officers and Mr. Sayine at that
18 point, but I can draw certain inferences from
19 what Constable James said. He specifically
20 referred to the contradiction between the
21 complaint they had received (a coffee table
22 smashed with an axe) and what they saw of the
23 house (an intact coffee table and no axe).
24 Constable James said that things did not match
25 up. I infer that the officers were not aware
26 that there was a second table and that it had in
27 fact been broken with an axe. They would have

1 had no reason to know there was a second coffee
2 table there, and no reason to know that it had
3 been smashed.

4 I find it difficult to imagine that two
5 police officers responding to a complaint of
6 someone having broken a coffee table with an axe
7 would not have any concern at all if they
8 attended the scene of the alleged incident and
9 became aware that in fact Mr. Sayine had armed
10 himself with an axe and had smashed a table that
11 morning. I do not think that would qualify as
12 observations that would give rise to no concerns.
13 So I infer from Constable James' testimony that
14 they were unaware of the second table, otherwise
15 I do not think he would have expressed himself
16 the way he did in his testimony.

17 The bottom line is that there was a break in
18 time between the axe incident and the time when
19 Mary Laboucan sustained her injury. A lot could
20 have happened during those intervening hours.
21 Certainly there were no problems at the Sayine
22 home earlier in the night when everyone was
23 drinking there, yet some time after Mr. Lafferty
24 returned Mr. Sayine became very, very angry, and
25 a short time after that when the police were
26 there he was calm again. If anything, this
27 evidence shows that Mr. Sayine's mood that day

1 could change rapidly.

2 So Mr. Lafferty's evidence I conclude is not
3 determinative or probative as to what happened
4 later on in the house but it does provide some
5 measure of context.

6 The key evidence here really is the evidence
7 about Mr. Sayine's out of court admission, as
8 relayed by Mr. Larocque and Ms. Singerling.
9 Without that admission as to how Ms. Laboucan was
10 hurt, Mr. Sayine's guilt could not be
11 established.

12 When this type of evidence is adduced, to me
13 there are three potential questions: the
14 credibility of the person who says they heard the
15 admission; the accuracy of the evidence as to
16 what was said; and the truthfulness of the
17 admission itself.

18 Here, Mr. Sayine acknowledged, albeit
19 someone reluctantly, that he made those
20 admissions. So that is not the issue.

21 On the second point, the issue of accuracy,
22 neither Mr. Larocque nor Ms. Singerling remember
23 what Mr. Sayine said verbatim, and their accounts
24 are not entirely consistent. If their accounts
25 coincided perfectly, to me it would make them
26 less credible. It would increase my concern
27 about these people having discussed things and

1 having contaminated each other's evidence or
2 about the possibility of collusion.

3 Intoxication is a factor but I do not find
4 it as a significant factor despite the drinking
5 of the previous night. By the time they returned
6 to Mr. Sayine's house, Mr. Larocque and
7 Ms. Singerling had had some sleep and there is no
8 evidence they had resumed consuming alcohol that
9 day.

10 Passage of time is an issue as always, as
11 well as Mr. Larocque's consumption of alcohol in
12 the day that followed these events. He said that
13 after "this all went down" – and by "this" I take
14 it he means the afternoon visit at the Sayine
15 home – he did not drink that day. But he said he
16 drank in the following days.

17 He was cross-examined about what he said to
18 police when they took a statement from him.
19 Being referred to his statement seemed to help
20 him remember some things. On other things, he
21 said he thought what was in his statement was not
22 accurate. He was not sure about many things.
23 But he said he was not trying to mislead the
24 police and he did not want to mislead the Court.
25 He was not happy about coming to court to testify
26 about this. This was apparent in his demeanour
27 when he testified, but he also said so himself,

1 he did not really want to be here. He had known
2 both Mr. Sayine and Ms. Laboucan for a long time.
3 I have no doubt that he would have preferred
4 staying out of his whole matter completely. But
5 he was firm that the things he told the court
6 were the things that he himself remembered Mr.
7 Sayine telling him in that living room that day.

8 I am satisfied Mr. Larocque did his best to
9 honestly recount the things that he could
10 remember. I come to the same conclusion with
11 respect to Ms. Singerling. I think they each did
12 their best to try to recount their own
13 recollection of events. And I accept that they
14 both clearly remember Mr. Sayine saying that he
15 kicked Ms. Laboucan and caused her to fall.

16 That leaves the question of assessing the
17 truthfulness of this admission.

18 I have rejected Mr. Sayine's explanation for
19 making those admissions. But again, it is the
20 Crown who bears the onus of proving his guilt,
21 and the Crown has to prove that those admissions
22 are true. False confessions sometimes occur.
23 Admissions, whoever they are made to, have to be
24 assessed and weighed very carefully.

25 Defence urges me to attribute no weight to
26 Mr. Sayine's out of court admissions because they
27 are inconsistent with certain things that are

1 established by other evidence.

2 And of course the biggest discrepancy is
3 about the incident with Ms. Laboucan being part
4 and parcel of a dispute with Mr. Lafferty. The
5 incident with Mr. Lafferty and Mr. Sayine kicking
6 Ms. Laboucan cannot have happened at the same
7 time, and that is clearly established. Because
8 we know that shortly after Mr. Lafferty left the
9 house, the police attended the house and there
10 was no blood, no broken glass, no boot mark on
11 the wall, and everything was fine. And Mr.
12 Lafferty himself never testified that he saw any
13 assault on Ms. Laboucan.

14 So does that discrepancy taint the weight
15 that can be given to the fact that Mr. Sayine
16 admitted striking Ms. Laboucan deliberately? I
17 do not think so.

18 I conclude that Mr. Sayine, who, according
19 to Mr. Larocque, was drinking, and even Mr.
20 Sayine admits he was drinking that afternoon,
21 started telling his friends about a whole series
22 of events and he strung them all together. This
23 is apparent from the fact that, as part of what
24 he told them, he talked about having found Ms.
25 Laboucan lying outside on the ground. This is
26 clearly something that had happened days earlier.

27 I think he was telling Mr. Larocque and

1 Ms. Singerling about many events and maybe all
2 meshed up together, maybe combining some of them.
3 He was upset, he had been drinking, and he was
4 smoking a joint. In assessing what he told them,
5 and what can be made of it, I do not think the
6 specific details are what I should focus on.

7 The most important thing at that moment that
8 he was communicating to his friends, and what he
9 was upset about, what he felt bad about, is that
10 he had hurt Ms. Laboucan. To me this was
11 primarily what he was trying to communicate to
12 them: He might have embellished, he might have
13 used language like "reflexive kicking" in an
14 attempt to minimize his responsibility. But the
15 crux of what he told them was that she threw an
16 ashtray at him and in response he kicked her and
17 she fell, and he "screwed up" or "fucked up" and
18 he should not have done that to her. Those to me
19 are the most significant parts of his admission.

20 Defence pointed out, rightfully so, that
21 there is no forensic evidence showing a kick to
22 Ms. Laboucan's chin; she did not have any bruises
23 on her chin, and that would be consistent with
24 her having received a kick forceful enough to
25 send her flying up and back. Dr. Dowling said
26 not every blow results in a bruise. There is a
27 host of other possibilities. Mr. Sayine's kick

1 may not have connected that hard on her body. It
2 may have been enough to cause her to lose her
3 balance, but not enough to cause a bruise. Or it
4 may have actually landed elsewhere on her face,
5 near her eye, where there in fact was a bruise.
6 Again, I conclude that the details of the
7 description is not what matters here.

8 Assessing out of court statements by accused
9 persons, similarly to assessing in court
10 evidence, is not an all or nothing proposition.
11 In order to conclude that his admission to them
12 that he kicked her is true, I am not required to
13 find that every single word he told them was
14 true, and that every detail he gave them was
15 accurate. I am satisfied that he told them the
16 truth about causing her to fall. I am satisfied
17 that he kicked her in anger because she had
18 thrown an ashtray at him. And there are a few
19 reasons apart from those I have already given why
20 I have come to this conclusion.

21 The first is quite simple: He was talking
22 to his friends, he was saying something that was
23 putting him in a bad light. He had no reason to
24 invent this story. And it makes sense that,
25 feeling bad about what he did, he would confide
26 in his friends. Especially since at the time I
27 am sure he was concerned about Ms. Laboucan but

1 he did not realize how seriously she was hurt.

2 His demeanour as described by the witnesses
3 when he made these admissions is consistent with
4 him being truthful and feeling sorry and upset
5 about having harmed her. The evidence about his
6 demeanour is consistent with that of someone who
7 admits a real wrongdoing, not the demeanour of
8 someone who is recounting a made up false story.

9 I also take into account that Jennifer and
10 Jason evidently were strongly impacted by what
11 Mr. Sayine told them and how he told them. They
12 certainly believed him. That is not
13 determinative, but it is a factor. They knew
14 him. Mr. Larocque to me seemed upset in his
15 evidence when he was remembering this
16 interaction. It seemed to be affecting him
17 still. He said he was "stunned" and "freaked
18 out" about what Mr. Sayine told him. He just
19 wanted to leave. And he never asked to be paid
20 for the bottle which he had sold the day before.

21 Clearly, Mr. Larocque and Ms. Singerling
22 both took Mr. Sayine very seriously. They
23 believed what he was telling them. They were
24 there, they heard him speak and they saw him
25 speak. That is an indication, although it is not
26 determinative, it is an indication that he was
27 convincing and to them appeared to be telling the

1 truth. The impression of these witnesses who
2 knew Mr. Sayine well, especially Mr. Larocque,
3 cannot be discounted easily.

4 Finally, the things that Mr. Sayine, or some
5 of the things that Mr. Sayine told them actually
6 accounts for the state that the house was in at
7 that point. The shoe mark on the wall and the
8 broken picture came from some sort of commotion
9 in the house, the details of which may never be
10 completely clear, and from an argument, not from
11 throwing a shoe at a wet dog. The ashtray was
12 broken because it was thrown, not because it
13 accidentally fell off the stove. The account of
14 these things happening as a result of a commotion
15 and a fight is credible, much more credible than
16 the series of unfortunate and coincidental
17 mishaps that Mr. Sayine described in his in-court
18 testimony to describe these various aspects of
19 the state of the house.

20 Those are the reasons why I conclude that
21 the portion of Mr. Sayine's conversation with his
22 friends where he described this fight with
23 Ms. Laboucan – and by "this" I mean her throwing
24 an ashtray at him and him kicking her and her
25 falling – are true.

26 There are a few final comments I want to
27 make about some aspects of the evidence.

1 The first is that I have considered, and
2 rejected, the possibility that Ms. Laboucan may
3 have suffered her injury at some point earlier
4 than June 16th. I have, because Dr. Dowling's
5 evidence did leave it open as a possibility that
6 the injury could have dated further back than his
7 approximation of three to five days before death.
8 And there was this evidence about Mr. Sayine
9 saying that he found Ms. Laboucan lying on the
10 ground at the picnic table on the Wednesday
11 before this happened. There were also questions
12 put to witnesses about Ms. Laboucan falling when
13 she is intoxicated, although there was nothing as
14 specific as the picnic table incident.

15 The reason I reject the possibility that the
16 injury happened at a different time than what I
17 have been talking about is that from the medical
18 evidence and from the admission, Ms. Laboucan's
19 injury was an acute subdural hematoma. The
20 symptoms of that would have appeared relatively
21 quickly. It is true that those symptoms can be
22 masked by alcohol consumption. But Mr. Sayine
23 explained that he and Ms. Laboucan did not drink
24 alcohol during the day on the Thursday or the
25 Friday before these events. I conclude that if
26 Ms. Laboucan had suffered an acute subdural
27 hematoma on the Wednesday evening, symptoms would

1 have started to appear in the following days and
2 they would not have been masked by alcohol. And
3 she showed no signs of not being well during the
4 early morning hours at her house. She showed no
5 sign of illness or distress when the police were
6 at her house that morning. So I conclude that it
7 has been established that her injury was the
8 result of a fall caused by being struck by Mr.
9 Sayine the afternoon of June 16th.

10 I also want to make it clear that I did hear
11 a comment in Mr. Larocque's evidence when he was
12 talking about all of this, it was a brief comment
13 but it needs to be addressed clearly by me. He
14 made some comment along the lines that he thought
15 Mr. Sayine had just "slapped her around again".
16 Obviously this is not admissible evidence, it is
17 prejudicial, and I have disregarded that comment
18 by Mr. Larocque. As well, I have specifically
19 taken care not to speculate about what he meant
20 when he said, at another point, that "a lot of
21 things have happened over the years that aren't
22 being brought up here" or words to that effect.

23 I have also given serious consideration to
24 whether this is a case where a reasonable doubt
25 might arise due to the absence of evidence,
26 because there do remain some unanswered questions
27 in this case, areas where evidence could have

1 been presented and was not. Given the meaning of
2 the standard of proof beyond a reasonable doubt,
3 I have to consider whether any of those areas
4 where there is an absence of evidence gives rise
5 to a doubt.

6 The first area relates to Evan. I do not
7 recall there being specific evidence as to his
8 age. I think I can infer from the evidence that
9 he is not an adult but I do not know how old Evan
10 is. He was at the house for part of that day and
11 he was not called by the Crown. He may not have
12 been very interested in cooperating with the
13 Crown, I do not know because there is no evidence
14 before me of that, and there may have been other
15 reasons why he was not called and about that I
16 cannot speculate.

17 If he had been called he might have been
18 able to shed at least some light on certain
19 aspects of the case, particularly what was going
20 on in the first part of the day in the morning,
21 around the time the police saw him at the house.

22 But for the reasons I have already given, I
23 have concluded that whatever happened earlier in
24 the day would be of little assistance in
25 establishing what transpired later on. I have
26 decided that that absence of evidence from Evan
27 is not a factor here and does not raise a doubt.

1 The second area I have considered is the
2 shortcomings of the forensic evidence, which I
3 have referred to several times already. Despite
4 what appears to have been a very thorough
5 examination of the scene by the RCMP's Forensic
6 Identification Team, and several areas of
7 interest being identified, including areas where
8 there was the possibility that there was blood,
9 there was no evidence called at this trial about
10 any samples being taken or the results of any
11 testing that might have been done, which I have
12 to say I find surprising on a case as serious as
13 this. I am not sure I understand the point of
14 adducing evidence of presumptive testing if the
15 evidence of the actual laboratory testing is not
16 submitted. Because for reasons I have already
17 given, I do not think I can make anything of the
18 results of the presumptive testing.

19 There was reference to blood or what people
20 thought was blood in the evidence. There was no
21 sign of an injury on Ms. Laboucan that would have
22 bled, and so the obvious question is: whose
23 blood was this? And where did it come from?
24 Maybe forensic evidence could not have answered
25 those questions, maybe it could have. It would
26 have been helpful to know either way. But on the
27 overall circumstances of this case that

1 shortcoming in the forensic evidence does not
2 raise a reasonable doubt in my mind because, as I
3 said, what this case really boils down to is the
4 admissions that Mr. Sayine made to his friends,
5 and my rejection of his explanation for making
6 those admissions, as well as some of the other
7 circumstantial evidence that narrows down the
8 context, the nature of the injury and how it
9 might have occurred.

10 So in conclusion, having considered all of
11 the evidence, I do accept, as I have said, that
12 Mr. Sayine's admission to Jason and Jennifer
13 about having kicked Ms. Laboucan in the head and
14 causing her to fall was true. I find that this
15 unlawful act meets the objective foreseeability
16 requirement that I referred to at the start of my
17 remarks. I also find that in all circumstances
18 causation is established, and that the elements
19 required to prove the charge of manslaughter have
20 been proven beyond a reasonable doubt.

21 It is implicit in the charge that Mr. Sayine
22 faced in this trial, but I want to make it clear
23 that I accept unequivocally that he did not
24 intend for these very serious consequences to
25 occur. I also accept that he did not realize
26 until many hours later how serious Mary
27 Laboucan's condition was, and that after she was

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hurt he did everything that he could do at the time to help her, to help her get cleaned, to comfort her, and to help her get into bed.

But the intent to cause death is not an element that the Crown has to prove on a charge of manslaughter. For the reasons I have given, I do conclude that those elements have been proven.

I find Mr. Sayine guilty, and a conviction will be entered.

.....

Certified to be a true and accurate transcript pursuant to Rule 723 and 724 of the Supreme Court Rules of Court.

Annette Wright, RPR, CSR(A)
Court Reporter