

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Rowsell, 2007 NSPC 62

Date: October 15 and 16, 2007

Docket: 1691013 and 1691014

Registry: Sydney

Her Majesty the Queen

v.

Gerald Brenton Rowsell

DECISION ON COMMITTAL TO TRIAL

Restriction on Publication: Ban on publication of evidence heard at the preliminary inquiry pursuant to s. 539(1)(b) of the Criminal Code.

Judge: The Honourable Judge Anne S. Derrick

Heard: October 15 and 16, 2007, Sydney Provincial Court

Decision: November 19, 2007

Revised Decision: This decision replaces the original decision on which the publication ban was left off inadvertently. A publication ban does apply.

Charges: *Criminal Code* section 220(b) and section 252

Counsel: Richard MacKinnon - Crown Attorney
Tony Mozvik - Defence Counsel

By the Court:**The Charges**

[1] Gerald Rowsell is charged with criminal negligence in the operation of a motor vehicle in a manner dangerous to the public causing the death of Ann Margaret Knockwood, contrary to section 220(b) of the *Criminal Code*.

[2] Mr. Rowsell is also charged with failing to stop at the scene of an accident, with intent to escape civil or criminal liability, contrary to section 252 of the *Criminal Code*.

[3] These offences are alleged to have occurred on the 105 Highway at Millville, Cape Breton Regional Municipality on May 20, 2006.

Committal to Trial - Legal Principles

[4] On December 19, 2006, Mr. Rowsell elected to be tried by a judge and jury. His preliminary inquiry occurred on October 15 and 16, 2007. Civilian and police witnesses were called by the Crown. No evidence was tendered by Defence. This is my decision on the issue of Mr. Rowsell's committal to trial on the two charges.

[5] Section 548(1) of the *Criminal Code* provides that an accused shall be committed to trial, following a preliminary inquiry, if there is sufficient evidence and shall be discharged if, on the whole of the evidence, "no sufficient case is made out." The question that must be asked is "whether or not there is any evidence upon which

a reasonable jury, properly instructed, could return a verdict of guilty." (*United States of America v. Sheppard*, [1977] 2 S.C.R. 1067) Where there is direct evidence as to every element of the offence, the accused must be committed to trial. Where there is

no direct evidence as to every element of the offence, the court must engage in a limited weighing of the evidence in the sense of assessing whether it is reasonably capable of supporting the inference that the accused committed the offence. The question to be asked is whether the evidence if believed could reasonably support an inference of guilt. (*R. v. Arcuri*, [2001] 2 S.C.R. 828) The court does not draw inferences from the facts or assess credibility.

The Evidence

[6] On May 20, 2006, Gerald Rowsell, a long-haul trucker from Newfoundland headed across the Canso Causeway toward the North Sydney ferry driving a Freightliner tractor-trailer with a load of six cars on a car carrier. He was accompanied by John Clarence Dowden who had travelled with him from Newfoundland to help with loading and unloading freight. Mr. Rowsell had broken his arm and was wearing a cast. Both he and Mr. Dowden worked for East-Can Transport and the company's name was stenciled on the side of the white Freightliner Mr. Rowsell was driving. They had been to Eastern Passage and Halifax and were headed back with their load to catch the boat to Newfoundland. The evidence indicates that somewhere near Baddeck they stopped and picked up a female hitchhiker. That hitchhiker was Ann Margaret Knockwood.

[7] On May 20, 2006, Ms. Knockwood and her boyfriend, Jerry Sack, had checked into the Trailsman Motel in Baddeck. They had been travelling around the area when Ms. Knockwood fell asleep in the car. Mr. Sack left her there to rest, went into the motel and nodded off. Ms. Knockwood woke him up asking for \$44 which he didn't have. He told her he would need to go to a banking machine. When he woke up again around 8 p.m., Ms. Knockwood was gone.

[8] After picking Ms. Knockwood up, Mr. Rowsell stopped at a liquor store in Baddeck. A videotape from the liquor store shows that Mr. Rowsell and Ms. Knockwood went into the store together. Mr. Rowsell purchased Smirnoff coolers. A receipt of the purchase shows that it occurred at 19:53 hours (7:53 p.m.) After this there was another brief stop at a nearby look-off. The next stop was at an Irving station in Millville, beside Highway 105. Ms. Knockwood had said she needed to use the washroom.

[9] Mr. Rowsell pulled the truck over on the side of the road opposite the Irving station to let Ms. Knockwood out. Mr. Dowden and Mr. Rowsell wanted to use the washroom stop as an opportunity to leave Ms. Knockwood behind. They did not want her to continue with them to the ferry which was about 10 - 15 minutes away. Mr. Dowden recalls a conversation with Mr. Rowsell lasting 2 - 3 minutes after Ms. Knockwood had got down from the truck.

[10] Mr. Dowden let Ms. Knockwood out the passenger side door where he had been sitting. She took nothing with her. A few minutes after she had gone, Mr. Dowden

took Ms. Knockwood's backpack and the liquor bag and set them down on the side of the road by the passenger side of the truck. When the police attended at the scene later, they found a black backpack and a liquor bag on the road with a lime

green windbreaker lying neatly over the backpack.

[11] After setting Ms. Knockwood's belongings down on the side of the road, Mr. Dowden and Mr. Rowsell then went around the back of the truck. They went by the wheels and looked around. Everything looked fine. They saw no one around the front of the truck. There was a four foot ditch along the road by the passenger side which they did not check.

[12] Mr. Rowsell gave a statement to police in Newfoundland on September 20, 2006 that was admitted into evidence by consent, Defence waiving, for the purposes of the preliminary inquiry, the need for a *voir dire*. Mr. Rowsell said Ms. Knockwood had not wanted to get out of the truck but they could not take her down to the ferry with them. Knowing there was a gas station down the road, Mr. Rowsell figured Ms. Knockwood would go in there to use the washroom and then he and Mr. Dowden could drive away. Mr. Rowsell told police that he and Mr. Dowden thought Ms. Knockwood must have gone into the Irving station to use the washroom or was behind the cars in the parking lot. He said that they got out of the truck and checked to see that Ms. Knockwood wasn't around the trailer. They suspected she might have only gone behind some cars to relieve herself and not into the station itself. When they didn't see her after looking around, they decided there was time to make their getaway

and they left. Mr. Rowsell saw nothing in his mirrors as he pulled the truck away. He looked in the passenger side mirror again as he pulled onto the road to see if Ms. Knockwood was around the trailer but he saw nothing. He admitted in his statement that he probably was trying to get away from the station in a hurry so that

Ms. Knockwood couldn't catch up with them "even if she was running."

[13] William LeBlanc, a stationary engineer at the Northside General Hospital was driving with his wife, Christine LeBlanc toward North Sydney when they came upon the parked Freightliner by the Irving station. It was before 9 p.m. and not yet dark. It was a "nice night." The LeBlancs were both struck by the fact that the truck was pulled over by the side of the road which seemed like an odd place to park although it was safe to pass. Mr. LeBlanc saw a man running around the front of the truck and get up on the passenger side. Ms. LeBlanc, looking out of the side mirror, saw what she thought was a man coming around the back of the truck to the driver's side.

[14] Another local driver passed the big truck about 8:45 p.m. Valerie MacDonald lived in Millville and passed the Irving station on her way to town and the liquor store. She saw a car transport tractor-trailer parked on the side of the road right in front of the driveway into the Irving. She saw a person, walking at a normal rate of speed, come around the front of the truck and reach up to the driver's door.

[15] Kenneth Dunlap was at the Irving about 8:45 p.m. filling a gas can for his lawn maintenance business. He saw a white tractor-trailer with a load of cars parked by the side of the road. There was a "duffle bag" on the road and a passenger on the fuel tank

of the truck. The person he saw had a fairly tall build wearing a ball cap, jeans and a white T-shirt, possibly with red stripes around the sleeves. Mr. Dunlap noticed the man get down and back up on the passenger side of the truck. He did not see the driver's side of the truck at all. Mr. Dunlap's description of the clothing bore some

resemblance to Sgt. Rehill's observations of Mr. Dowden at the North Sydney detachment in the early morning hours of May 21, 2006.

[16] Looking around as he pumped gas, Mr. Dunlap also saw what he said were grocery bags. He went into the Irving to pay for his gas and then as he was getting into his vehicle, he saw the truck pulling away "very fast." His exit from the Irving lot was blocked by the truck and he noticed clothes coming from around the truck's front drive wheels. Then he saw it was a person, a body being run over by the truck. He had not seen the person before they were under the wheels of the truck. He had not seen anyone try and get up on the truck. He heard no screaming or hollering. He went a little closer to see if there was any movement and concluded he could not help the person. The truck kept going. Mr. Dunlap figured the driver "didn't know or something." He decided to follow the truck and call 911. He thought the truck must be headed for the ferry and followed it there, talking to 911 as he drove. He testified that the truck did not seem to be trying to avoid him, and did not run any red lights on its way to the ferry terminal.

[17] Mark Penny, the lone employee at the Irving on May 20, 2006, was getting ready to close the Irving station at 9 p.m. Two friends, Jacob Ryan-MacAskill and

Lucas Beddow, were with him, waiting for him to get off work. Mr. Penny saw the parked tractor-trailer around 8:45 - 8:50 p.m., just before he closed the station. He thought someone from the truck might come in before the station closed. No one did. The truck pulled away at a regular rate of speed out on to the road and headed toward Bras d'Or. Mr. Penny saw bags on the road that he thought was garbage jettisoned

from the truck. When he and his friends went to collect what they thought was garbage, they saw shoes, one on one side of the entrance to the station and another on the other side. Then Mr. Ryan-MacAskill said there was a body there and Mr. Penny looked up the road and saw a body. It was obvious the person was dead. Mr. Penny went back to the station and called 911.

[18] Lucas Beddow also saw the truck parked in front of the Irving. His vantage point was through the front window while he sat at the store counter. He testified that he noticed someone on the back by the front wheel well, trying to get off. It looked to him as though they fell. He said he noticed the truck when it pulled away and "it looked like someone fell." Mr. Beddow saw the person on the passenger side of the trailer in front of a Honda Civic that was loaded onto the car carrier. Mr. Beddow went out underneath the station's canopy and saw someone right in front of the "third set of wheels". He "froze up...I didn't think it actually happened." He noticed there were "liquor store bags" at the back of the truck on the road. Mr. Beddow testified that he did not go outside before Mr. Penny called 911. Although Mr. Penny did not recall seeing Mr. Dunlap, Mr. Beddow knows Mr. Dunlap and testified that he came into the store.

[19] Jacob Ryan-MacAskill, also waiting in the store at the Irving station for Mr. Penny to get off work, saw a transport truck with a car carrier pull up and let someone out. Somebody came around the back of the truck from the driver's side and put some stuff beside the road by the passenger side. Mr. Ryan-MacAskill recalls a liquor store bag and a few garbage bags "maybe".

[20] Once the truck pulled away normally, about 5 minutes after it had arrived, Mr. Ryan-MacAskill and Mr. Penny went to see what the bags were and put them in the garbage. As they walked toward the bags, Mr. MacAskill saw a lifeless body, lying to the side of the road. Mr. Ryan-MacAskill went back to the garage and told Mr. Penny who called 911. Mr. Ryan-MacAskill had heard no noise as the truck pulled away, no hollering and no voices.

[21] Witnesses had somewhat varied recollections of the weather around 8:45 p.m. on May 20, 2006. Valerie MacDonald recalled it being "really foggy." Mark Penny, recalled that it was "a little foggy" and "damp" but that the area was well-lit. Lucas Beddow did not recall that it was foggy in the evening although he said it had been foggy that morning. Despite the LeBlancs thinking that the truck had picked a strange place to park, opposite the Irving station, the boys at the station, Mr. Penny and Mr. Ryan-MacAskill, testified that it was not uncommon to see a truck pulled onto the side of the road there.

[22] Soon after the truck reached the ferry terminal in North Sydney the police arrived, dispatched as a result of the calls to 911. Mr. Rowsell and Mr. Dowden were informed that they had run over a woman and she was dead. Detained for 5 - 6 hours,

they returned to Newfoundland the next day. At the ferry terminal, Sgt. Brian Rehill of the RCMP looked under the Freightliner and observed denim material caught on a sharp part of the truck and what he thought was human blood, flesh and skin near the rear tandem wheels. Cst. Roland Morrison of the Cape Breton Regional Police, Forensic Identification Unit, also observed, on the passenger side, about three feet up

from the back wheels almost on the vehicle's underside, what looked to him to be blood and body tissue.

[23] Cst. Calvin Thomas of the Cape Breton Regional Police Integrated Traffic Services arrived at the Irving station at Millville on Highway 105 about 9:15 p.m. on May 20, 2006. He observed "massive amounts of blood" and tire marks in the blood. Not an accident reconstruction expert, he was subsequently involved in an experiment conducted with the Freightliner hauling a six car load and being driven over a mannequin obtained from a local fire department. Sitting in the passenger seat, Cst. Thomas felt nothing the first time the experiment was run but through the long side mirrors could see the mannequin going under the truck's wheels. When the experiment was conducted again with Cst. Thomas in the truck's bunk, he felt the truck hit a bump. Sgt. Rehill, also not an expert in accident reconstruction, participated in the experiments with the mannequin, which got caught up in the wheels of the tractor-trailer when it was doubled up to resemble, in the opinion of the police, the thickness of Ms. Knockwood's body. Sgt. Rehill observed the car carrier rocking and shaking, creating a lot of noise. Sgt. Rehill testified that the purpose of the mannequin experiments was to determine if the driver of the tractor-trailer would have had

knowledge that he was passing over a person's body.

[24] Raymond Beaton, a motor vehicle officer with motor vehicle compliance section of the Department of Transportation and Public Works, testified to driving the Freightliner over the mannequin and feeling a bump which rocked his seat a bit. Mr. Beaton said the second test with the mannequin placed in front of the drive wheels

caused "quite a turbulent bump" and "quite violent rocking" of his seat. Watching in the truck's mirrors, Mr. Beaton could see flailing, something rolling. He saw nothing in the mirrors during the first experiment with the mannequin.

[25] Both Mr. Dowden and Mr. Rowsell were subsequently questioned by police in Newfoundland. Mr. Dowden gave a statement to police on September 20, 2006, which was the subject of a section 9(2) *Canada Evidence Act* application. Although Mr. Dowden had told police at the ferry terminal he had been asleep in the truck while Mr. Rowsell drove, at the preliminary inquiry he admitted that was a lie. He claimed to have lied to the police again on September 20, 2006 when he told them that "there was a draw and a thump and we sort of knew" when Mr. Rowsell was pulling away from the Irving station. Mr. Dowden testified that they had not thought it was the woman they had dropped off. He said he told the police in his statement what they wanted to hear so they would leave him alone.

[26] Mr. Rowsell in his police statement of September 20, 2006 at first denied noticing anything as he pulled away from the Irving station. He said they left because

they thought Ms. Knockwood had gone behind the cars in the Irving station parking lot. He eventually told the investigator he might have felt "a change in gear...like dragged a bit..." and Mr. Dowden may have said "holy fuck or something like that." He went on to say he figured it "might be like a pothole or something [because] we're on the shoulder of the road..." When he heard the ambulance as he was getting the ferry ticket at the terminal, he knew then "it was something wrong...something wasn't right."

Criminal Negligence Causing Death

[27] After getting down from the truck at the Irving station, Ms. Knockwood was next seen caught in the wheels of the Freightliner as it pulled away from where it had been parked, back on to the highway. The Crown submits that her death was a consequence of Mr. Rowsell's criminal negligence; the Defence says there is no evidence of it being anything other than a tragic accident. It is the Crown's position that there is sufficient evidence for a reasonable jury properly instructed to find that Mr. Rowsell was criminally negligent in the death of Ms. Knockwood.

[28] Section 219(1) of the *Criminal Code* provides that everyone is criminally negligent who

- (a) in doing anything, or
- (b) in omitting to do anything that it is his duty to do,

shows wanton or reckless disregard for the lives or safety of other persons.

[29] Section 219(2) provides that the duty referred to in section 219(1) means a duty imposed by law.

[30] The Crown argues that as a matter of law, a person operating a motor vehicle, especially a large, dangerous vehicle such as a tractor-trailer, has a duty of care with respect to persons on the highway and persons in the area using the highway. Mr.

Rowsell, submits the Crown, was under a positive obligation not to run over people, particularly someone, such as Ms. Knockwood, who had been a passenger in his truck.

The Crown asserts that when pulling away from the Irving station, it was Mr. Rowsell's duty to ensure that his passenger was not on or around the truck. When he ran over Ms. Knockwood, Mr. Rowsell failed in his duty to her and his conduct amounted to criminal negligence. It is the Crown's position that Mr. Rowsell's liability lies both in his driving over Ms. Knockwood (criminal negligence by commission) and his failure to ensure she was not in danger when he pulled the truck away. (criminal negligence by omission)

[31] The Defence argues that there is no evidence to indicate that Mr. Rowsell either acted or failed to act in a way that showed a wanton or reckless disregard for Ms. Knockwood's life or safety.

[32] The offence of criminal negligence causing death is "at the high end of a continuum of moral blameworthiness." (*R. v. J.L.*, [2006] O.J. No. 131 (Ont. C.A.)) Criminal negligence is made out where it is proven that the conduct of the accused

showed a marked and substantial departure from the standard of behaviour expected of a reasonably prudent person in the circumstances. (*Waite v. The Queen* (1989), 48 C.C.C. (3d) 1 (S.C.C.)) The higher level of moral blameworthiness associated with criminal negligence is the wanton or reckless disregard for the life or safety of others.

Did Mr. Rowsell Do Anything that Showed a Wanton or Reckless Disregard for Ms. Knockwood's Life or Safety? (Section 219(a) CC)

[33] The evidence is that Mr. Rowsell wanted to proceed on to the North Sydney ferry to Newfoundland without Ms. Knockwood on board. He did not however just deposit her in an isolated spot on the side of the road when she said she needed to use the washroom: he knew there was a service station just up the road and pulled over in front. The service station was still open. Witnesses said it was not unusual for trucks to pull over on the highway and no one testified to the truck being parked unsafely. Mr. Rowsell thought Ms. Knockwood would go into the station to use the washroom. Mr. Rowsell saw the opportunity, while Ms. Knockwood was occupied, to leave her belongings by the road and drive away. Once Ms. Knockwood's things were placed by the side of the road, Mr. Rowsell and Mr. Dowden checked around the back and sides of the truck. Independent witnesses noticed them outside the truck. They looked into the Irving station parking lot to see if they could spot Ms. Knockwood. When they could not see her, they concluded she might have gone behind a parked vehicle to urinate. Mr. Rowsell drove off, checking in the side mirror as he pulled out onto the

highway. Mr. Rowsell indicated in his statement to police on September 20, 2006 that he probably tried to leave quickly so that Ms. Knockwood could not catch them as they left. How quickly Mr. Rowsell was able to pull away would have been relative to the fact that the loaded Freightliner weighed approximately 32,000 kilograms, as established by the evidence. There is no evidence that Mr. Rowsell was operating the Freightliner at any time with wanton or reckless disregard for Ms. Knockwood's life or safety. In fact, Mr. Rowsell took steps to

ensure that Ms. Knockwood was not around the truck before he and Mr. Dowden got back in and left. To be criminally negligent, Mr. Rowsell's conduct must have constituted a marked departure from that of a reasonable person in the circumstances. Even the act of putting a vehicle in gear with a person on the hood has not been held to constitute a marked and substantial departure from the standard of care of a reasonable person. (*R. v. J.L.*, [2006] O.J. No. 131, (Ont. C.A.)) There is no evidence that Mr. Rowsell's conduct amounted to such a departure and I do not see how a reasonable jury, properly instructed, could convict Mr. Rowsell under section 219(a) of the *Criminal Code*.

Did Mr. Rowsell Fail to Do Anything that It Was His Duty to Do and If So, Did He Show a Wanton or Reckless Disregard For Ms. Knockwood's Life or Safety? (*section 219(b) CC*)

[34] Determining whether Mr. Rowsell should be committed to trial for criminal negligence in Ms. Knockwood's death for omitting to do something that it was his

duty to do requires an examination of whether he was under a legal duty that he failed to satisfy. A driver of a motor vehicle on a public highway is under a duty to take care in its operation so as to avoid injury to people using the highway. If he/she fails in that duty and his/her acts amount to a wanton or reckless disregard for the lives or safety of others, then that amounts to criminal negligence. (*Waite v. The Queen*, *supra*) There is also a duty under the provincial *Motor Vehicle Act*, to operate a motor vehicle on a highway "in a careful and prudent manner having regard to all the circumstances." (*section 100(1) Motor Vehicle Act*) Careless driving is driving with

"a measure of indifference, a want of care for the matter at hand and an indifferent regard for the rights of others." (*R. v. MacKinnon*, [1998] N.S.J. No. 404 (N.S.P.C.) *adopting R. v. Beauchamp* (1953), 106 C.C.C. 6 (Ont. C.A.))

[35] There is no evidence that Mr. Rowsell failed to take care in the operation of the Freightliner nor is there evidence that he operated the Freightliner with an indifferent regard for Ms. Knockwood. As I noted earlier, he parked the Freightliner in daylight opposite an open service station that was well-lit, let Ms. Knockwood off, and checked, before departing, to make sure she was not around the truck. There is no evidence on which a reasonable jury could conclude that Mr. Rowsell omitted to do something that it was his duty to do and consequently acted with wanton or reckless disregard for Ms. Knockwood's life or safety. Even if it could be established that, having let Ms. Knockwood off safely by the side of the road (she was not killed when she descended from the truck as it was stationary at that time), Mr. Rowsell's duty included checking to make sure that Ms. Knockwood was not near the truck when he

pulled away, he in fact did so, getting out of the truck and looking around with his passenger for Ms. Knockwood. This does not amount to evidence of the heedless disregard for consequences that the wanton or reckless standard requires.

[36] There was no direct evidence led as to how Ms. Knockwood ended up under the wheels of the Freightliner. There was no evidence of where Ms. Knockwood went when she got out of the truck and no evidence as to when she returned to the vicinity of the truck. There was some suggestion, from Luke Beddow's evidence, that Ms. Knockwood may have got up on to the car carrier and slipped off. Sgt. Rehill testified

the police theorized that Ms. Knockwood was standing when she was knocked down and went under the wheels. When Ms. Knockwood was seen by Mr. Dunlap, the truck was pulling away and her body was already caught up in the wheels. There is no evidence however that any act or omission by Mr. Rowsell caused Ms. Knockwood to slip or fall under the wheels of the Freightliner.

[37] If Ms. Knockwood did clamber up on to the car carrier just before or as the Freightliner pulled away, this was highly dangerous on her part. She would have to have done so after Mr. Rowsell and Mr. Dowden got back into the cab of the truck or they would have seen her when they were looking around. Mr. Dowden specifically testified that he and Mr. Rowsell checked the back of the truck and the cars.

[38] Mr. Dowden admitted in his evidence at the preliminary inquiry that he and Mr. Rowsell did not check the ditch by the side of the road, next to the passenger side of

the tractor-trailer. There was no evidence that Ms. Knockwood was ever in that ditch. It would not be reasonable to suggest that a properly instructed jury could find that Mr. Rowsell was criminally negligent in Ms. Knockwood's death because he did not check this ditch. The evidence discloses that he discharged his duty to carefully and prudently operate the Freightliner so as to avoid injuring Ms. Knockwood once she had left the truck. I conclude that a reasonable jury properly instructed could not return a guilty verdict against Mr. Rowsell for criminal negligence and accordingly I am discharging him on this charge.

Leaving the Scene of the Accident (*section 252 of the Criminal Code*)

[39] Mr. Rowsell has been charged that once Ms. Knockwood was hit, he failed, with intent to escape civil or criminal liability, to stop the Freightliner. The evidence suggests that he may have known that he had run over Ms. Knockwood as he pulled away from the Irving station. Although during police questioning on September 20, 2006 Mr. Rowsell was resistant to the suggestion that he knew he had run Ms. Knockwood over, he eventually said he had noticed something when he drove the truck off. He said Mr. Dowden may have exclaimed at that time. The fact that they subsequently reacted to the sound of the ambulance siren with a sinking feeling that "something was wrong" supports Mr. Rowsell having noticed a change in the Freightliner's driving characteristics as it ran over Ms. Knockwood. Mr. Rowsell drove on to the ferry even after sensing something, by his own admission, akin to the truck going over a pothole or puddle. Mr. Dowden told police he noticed a bump as the truck pulled away although he now says that he was lying when he described this.

The issue of his credibility is an issue for a jury, not an issue to be determined at the committal stage.

[40] The mannequin experiments were controversial and it was the position of the Defence that they should be accorded no weight. The position of the Defence was that the experiments were so unreliable and unscientific as to be of no use, essentially the equivalent of not being evidence at all. This may have been a more difficult issue if it had been the only evidence of the truck's reaction to driving over something. However the evidence of Mr. Rowsell in his police statement of September 20, 2006

and the evidence of Mr. Dowden is evidence that a jury can assess. The issue of the mannequin tests is an issue most appropriately dealt with at trial. I am satisfied that there is evidence, even leaving aside the mannequin experiment evidence, on which a reasonable jury, properly instructed, could return a conviction against Mr. Rowsell on the section 252 charge.

[41] The death of Ann Margaret Knockwood on May 20, 2006 was a terrible tragedy. She lost her life in horrifying circumstances and her family and friends have had to cope with the shocking and untimely loss of someone they loved and cherished. The preliminary inquiry process does not have a mandate to deal with their heartache. The preliminary inquiry is a pre-trial screening procedure. (*R. v. Sazant*, [2004] SCJ No. 74) Its purpose is to consider whether there is evidence that justifies committing Mr. Rowsell to trial. Where the prosecution lacks the evidence to warrant a continuation of the process, the purpose of a preliminary inquiry is to protect an

accused from an unnecessary trial. (*R. v. Skogman*, [1984] SCJ No. 32) In this case I have determined that there is no evidence of criminal negligence on the part of Mr. Rowsell and hence, on that charge, there is no legal basis for a continuation of the criminal process against him.

[42] In conclusion, I am discharging Mr. Rowsell on the criminal negligence charge and committing him to stand trial on the charge of leaving the scene of the accident.