

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. MacLeod, 2013 NSSC 137

Date: 20130426

Docket: CRH346785

Registry: Halifax

Between:

Her Majesty the Queen

v.

Clarence Michael MacLeod

Judge: The Honourable Justice Felix A. Cacchione

Heard: April 26, 2013, in Halifax, Nova Scotia

Written Decision: April 30, 2013

Counsel: Cheryl Byard, for the Crown
Christopher Manning, for Mr. MacLeod

By the Court: (Orally)

[1] **THE COURT:** Mr. MacLeod, is there anything you would like to say before I sentence you?

[2] **MR. MACLEOD:** I had so much I wanted to say.

[3] **THE COURT:** Now is your chance.

[4] **MR. MACLEOD:** Well My Lord, I am innocent. I didn't do this crime. You have to be an evil type person and I'm...that's not me. Anybody that knows me on the inside knows what type of person I am. I...I haven't done a lot of good things in my life, but I have done some, and one of the things was to take care of Roxanne. She had a problem and I stuck with her for the 18 months, and it seems to me the only two times that woman actually needed my help I wasn't available and she got in trouble both times, and the last time she wouldn't listen to me when I told her to go get a check up. She was too scared to find out what was wrong, but she did mention a lot of times about her heart bothering her and she would have to lay down. But, right to this day, if I could trade myself to see her walk the earth again, I would do it in a heartbeat. And I miss her. She taught me a lot, and I hope that in amongst the time we were together that I taught her a little bit too. But one thing I knew about Roxanne and that... Roxanne never lied. When Roxanne used to tell me things, she always went right into the littlest of detail about abuse and stuff like this from her...that she received in the past. She was scared to be alone, but yet she wanted to be the type of person that wanted to be alone because she never had too much aloneness in her life. I loved her and she loved me in a way that she loved me and that's the way I accepted it. I had no reason on this earth to hurt that woman, and I know I didn't. So, this is just another point in my...another chapter in my life as well as hers. All I can say is that I hope she is at rest, and I hope her pain and suffering is finally over. Thank you.

[5] **THE COURT:** Thank you Mr. MacLeod. Have a seat sir.

COURT'S DECISION

[6] Mr. MacLeod was convicted by a jury on the sole count on the indictment, that being second degree murder of Roxanne Page.

[7] Section 724(2)(a) of the *Criminal Code* provides that where an accused has been convicted by a jury the Court shall accept as proven all facts, expressed or implied, that are essential to the jury's verdict of guilty and in s.724(2)(b) may find any other relevant fact was disclosed by evidence at trial to be proven or hear evidence presented by either party with respect to that fact.

[8] The jury, by its verdict, concluded that Mr. MacLeod unlawfully caused the death of Roxanne Page and that either meant to cause her death or meant to cause her bodily harm that he knew was likely to cause death and was reckless about whether or not death ensued.

[9] The evidence led at trial disclosed that in the bedroom of Ms. Page's apartment the police found a garbage bag within a garbage bag which contained, amongst other things, a rolling pin, a leather belt, a pillow case that was stained, and female underwear that had been torn or cut.

[10] The belt contained a mixed DNA profile with the major component being that of Mr. MacLeod. Ms. Page's DNA could not be excluded as a possible contributor to the DNA found on the belt. The pillow case also contained a mixed DNA profile with Ms. Page's DNA being present and Mr. MacLeod's being one that could not be excluded as a contributor.

[11] As I stated, the underwear had been cut. The DNA typing profile on the outside back gusset area of the panties showed the DNA of two contributors. The major component being Ms. Page's DNA and Mr. MacLeod's DNA could not be excluded as the minor contributor to that mixed profile.

[12] The forensic pathologist who conducted the autopsy, Dr. Bowes, initially could not determine the cause of death, subsequently determined that death was caused by strangulation. He noted that the structures of Ms. Page's neck showed quite a bit of bruising on the right side, and also bruising near the pharynx. There was also bruising of the intrinsic muscles of the voice box and bruising of the tongue.

[13] The evidence also disclosed that when the police entered Ms. Page's apartment Mr. MacLeod was sitting on a couch near Ms. Page's body which was on the floor next to the couch. Mr. MacLeod was holding a knife. My recollection of the evidence is that he had stabbed himself with the knife and was holding it to his abdomen when the police entered. Police officers drew their weapons, told him to drop the knife, at which point Mr. MacLeod replied that they should shoot him and proceeded to plunge the knife further into his abdomen.

[14] After he was released from the hospital Mr. MacLeod contacted the police to find out what had happened to Ms. Page. He was interviewed by the police. The interview was recorded. During that interview he advised the police that he had left Ms. Page's apartment that evening because she was trying to find cocaine, or crack cocaine, and that he did not want to have any part of her ingesting that drug. He told the officers that he left. He went to get a slice of pizza but the place was closed. The buses were not running, so he returned to the apartment and found Ms. Page on the floor. At first he assumed that she had passed out, but then realized that she was dead. Upon realizing this, he told the officers that he had decided that if she was dead he would be dead as well. He then took Ms. Page's medication in an attempt to end his own life. He could recall nothing after that except for waking up in the hospital.

[15] Mr. MacLeod gave a second statement to the police on April 22, 2010. In that statement he acknowledged that he had not left Ms. Page's apartment. He acknowledged that because he was confronted with the fact that video surveillance cameras showed Ms. Page and Mr. MacLeod entering the building and never exiting the building. A canvass of the various apartments in the building also disclosed that no one had exited or had gone into another apartment.

[16] In his April 22nd, statement he told the police that he took all of Ms. Page's medication, about 60 pills at least. The toxicological evidence presented at trial did not confirm this, nor did Mr. MacLeod's interaction with the EHS personnel. He answered questions that were asked of him, mind you he did not answer any questions that the police were asking of him. He was cooperative with the EHS personnel.

[17] The evidence indicated that the relationship between Mr. MacLeod and Ms. Page was somewhat volatile. It appeared to be an on again off again relationship.

Ms. Page was seen with bruises on her body after she had spent time with Mr. MacLeod. There is also evidence from Ms. Page's son, Mr. Glasgow, indicating that there had been a threatening message left on Ms. Page's answering machine.

[18] I am mindful of the principles of sentencing as set out in s.718 to 718.2 of the *Criminal Code*, and in particular I am mindful of the principle set out in s.718.2(b) that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[19] The Pre-sentence Report as noted by counsel indicates that Mr. MacLeod is 58 years of age. He has been on remand for three years, three days shy of three years. He has a grade 10 education. He is divorced. He was married three times, twice to the same person. He has a prior criminal record. Two of those offences on his record indicate some degree of violence. There is a sexual assault. There is also a weapons conviction and some unrelated convictions.

[20] He is one of 13 children. He has only maintained contact with one of his siblings. He described himself as the black sheep of the family and according to Mr. MacLeod, through the Pre-sentence Report, he grew up in a physically and mentally abusive environment. His father was the dominant one. He moved out of the family home at age 18.

[21] Mr. MacLeod's sister says that he has no mental health issues, no anger management or substance abuse issues. She described their childhood as "a pretty good childhood" and contradicted Mr. MacLeod with respect to abuse in the family. Mr. Manning has commented on that and I will say nothing further about that. His sister does not believe that he committed this offence. She could not remember him ever being violent.

[22] His sister-in-law described him as "a little different, but having a good heart". She indicated that he had a dysfunctional upbringing with both mental and physical abuse. She described him as a loner and she says that he had issues with anger but his demonstration of anger would be by upsetting furniture.

[23] He has a 38 year old son from his first marriage. He has had no contact with him since 2008. He also has two other children, ages 20 and 25, and has had no contact with them for eight years.

[24] His employment history was outlined. He is someone who maintained employment. He had employment as a bus driver, but left that because of the stress. As indicated by Mr. Manning, the self diagnosis has not been confirmed but he believes, that is Mr. MacLeod believes that he suffers from bipolar disorder, since he goes from happy to sad and describes himself as a walking time bomb. That statement is of concern, given the nature of the charge, given the circumstances of this offence.

[25] He has been on medication and perhaps is on medication for anxiety disorder. He did have alcohol or substance abuse problem with alcohol from the age of 16 to 30. He last consumed any alcohol at the time of this offence. He has never sought any counselling or addiction support services.

[26] Mr. MacLeod described himself as having a temper and sometimes doing things, but not remembering that he did them. That, in my view, is particularly telling given the circumstances of this offence.

[27] Mr. MacLeod, when initially interviewed by the police, attempted to..well he did not attempt, he lied to them. He told them that he was not in the apartment, that he returned to the apartment and Ms. Page was dead on the floor. Some months later, after being confronted with evidence that showed he had not left the building, he acknowledged that he did not leave the building.

[28] Since being incarcerated he has had five incident reports at the Correctional Centre. He was described by the author of the report as polite, cooperative and engaged in the Pre-sentence Report interview. As indicated by his counsel and by Mr. MacLeod himself, he does not accept responsibility for the offence. He maintains his innocence. He believes that Ms. Page died as a result of a coronary disease and not as a result of strangulation. He told the author of the report, as he did to the police officers, that he blacked out. He had no memory. He has no memory of the evening in question. He also commented that had he done something wrong, he would not have stayed around in Nova Scotia.

[29] The Victim Impact Statement filed by Lamar Glasgow, Ms. Page's son, was read into the record by Crown counsel. Mr. Glasgow described his mother as a loving mother who suffered from manic depression, who attempted suicide on a

number of occasions, but not since the birth of her first grandchild. He described a very close relationship with his mother. They confided in each other and spoke to each other daily. Her grandchildren miss her. Mr. Glasgow continues to question what he could have done differently to assist his mother, and he described her as giving him unconditional love.

[30] Mr. Glasgow has, as a result of the incident and the emotional trauma, dropped out of university and has been burdened with the financial consequences of having to make funeral arrangements and pay for those arrangements.

[31] I agree with the proposition as set out by Mr. Manning and contained in the *Queen v. Hawkins*, [2011] N.S.J. No. 33 decision that there are three categories with respect to parole ineligibility. The first being 10-15 years. The second being 15-20, and the final category, 20-25.

[32] The Crown is looking for 15 years parole ineligibility. Mr. Manning, on behalf of Mr. MacLeod, is urging the Court to fix parole ineligibility at 10 years.

[33] The evidence presented at trial had some troubling aspects. There was evidence that was not put before the jury. Evidence which I heard during the course of a *voir dire* regarding Ms. Page's contact with her psychiatrist, Dr. Jha, and her contact with Bryony House.

[34] Mr. MacLeod indicated, when asked this afternoon if he had anything to say, one of the comments that struck me in light of what I heard on the *voir dire* was his comment that Roxanne Page never lied. Accepting, as Mr. MacLeod has, that Roxanne Page never lied, then her comments to the psychiatrist and to the people at Bryony House would indicate that Ms. Page did suffer abuse at the hands of Mr. MacLeod on prior occasions. Her circumstantial evidence of that coming from Ms. Simmonds the daughter-in-law if I can use that terminology, observing Ms. Page returning from having spent a weekend at a hotel with Mr. MacLeod and having bruises on her body. Ms. Glasgow also observed a black eye, I believe, but could not say where that came from. His mother did not tell him where or how she got the black eye.

[35] Mr. MacLeod's lying to the police; the circumstances of being found in the apartment attempting to harm himself and then continuing to harm himself; his

deceitfulness with respect to the medications taken when the toxicological evidence does not support that, lead me to conclude, as did the jury, that Mr. MacLeod either intended to kill Ms. Page or intended to cause her bodily harm. And I would probably say intended to cause her bodily harm rather than intended to kill her.

[36] Certainly Ms. Page had an underlying coronary disease issue which showed that two of her three arteries were blocked - 70 to 80% blockages, I think was the evidence. Mr. MacLeod was not happy with Ms. Page's use of drugs, continued use of drugs, and I accept that they had an altercation as a result of her seeking drugs that evening.

[37] I am mindful that Mr. MacLeod has been on remand for three years. I am also aware that his sentence begins to run from the date of his arrest.

[38] In the present case I am not satisfied that fixing parole ineligibility at 10 years would be appropriate given his record, given the circumstances of the offence. I am also not satisfied that this is a case that should reach the upper end of the first category in *Hawkins*. As I have stated he has been on remand for three years. He can continue to maintain his innocence. That cannot be viewed as an aggravating factor and I do take it as such. It is his right to do so. But it must be brought home to Mr. MacLeod that behaviour involving a degree of physical violence, whether it is minimal or very big, cannot be condoned.

[39] Mr. MacLeod, if you would stand please sir.

[40] The sentence of this Court on the charge of second degree murder is that you be imprisoned for life. I am fixing your parole ineligibility date at 12 years. You will have to serve 12 years before you are eligible to apply for parole. Do you understand that sir?

[41] **MR. MACLEOD:** Yeah, but apparently you didn't understand what I said.

[42] **THE COURT:** Well, you can save that for another court Mr. MacLeod.

[43] **MR. MACLEOD:** Yeah, but you took everything that I said and screwed it around.

[44] **THE COURT:** Anything further counsel?

[45] **MS. BYARD:** Nothing, My Lord.

[46] **MR. MANNING:** No, thank you My Lord.

Cacchione, J.