

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. MacNeil*, 2024 NSSC 433

**Date:** 20241212

**Docket:** CRS, No. 522299

**Registry:** Sydney

**Between:**

His Majesty the King

v.

Tyler Anthony MacNeil

**Judge:** The Honourable Justice Patrick Murray

**Heard:** May 21, 22, 23, 24, 27, 2024, June 3, 4, 5, 6, 10, 27, 2024, October 18, 2024, and December 12th, 2024, in Sydney, Nova Scotia

**Oral Decision:** December 12th, 2024

**Counsel:** Kathryn Pentz, KC and Lisa MacPhee  
Chris Conohan and Stephen Jamael

**By the Court:**

**Introduction**

[1] The accused, Tyler Anthony MacNeil, is charged that on June 14<sup>th</sup>, 2022, he did commit second degree murder upon Leonard Groves, also known as “Lenny” Groves, at or near Beech Street, Sydney Mines, Nova Scotia.

[2] The charge as contained in the Indictment sworn March 23<sup>rd</sup>, 2023, reads:

Tyler Anthony MacNeil of 95 Sunrise Drive, Georges River, Province of Nova Scotia, stands charged that he, on or about the 14<sup>th</sup> day of June 2022, at or near Sydney Mines, in the Province of Nova Scotia, did commit second degree murder on Leonard Groves, contrary to Section 235(1) of the *Criminal Code* of Canada.

[3] On the evening of June 13<sup>th</sup>, 2022, there was a gathering of friends and associates, at the upstairs apartment of Justin LeBlanc and Shavon Powers MacFarlane (“Ms. Powers”). The apartment was located at 40 Beech Street. The residence is located at the crest of a hill, at the intersection of Beech Street and Cambridge Avenue.

[4] The accused arrived at the residence at approximately 8:30pm, with his motocross bike. He was dressed in full gear, with a helmet, jacket, motocross pants, and boots.

[5] Present at the gathering were the occupants of the apartment, Justin LeBlanc and Shavon Powers, as well as Fred Pye, and Tyler MacNeil. By all accounts, the mood was easy, and the company was relaxed.

[6] Mr. Pye was doing tattoos, and the conversation was friendly, persons were getting along, drinking, and doing “puffs” of crack cocaine or coke, a good time was being had into the early morning hours.

[7] Mr. MacNeil parked his bike near the front door, under a light on the step. He gave evidence that he disengaged the spark plug after concerns had been expressed that it might be taken.

[8] Shavon Powers testified that she had been home earlier in the day, when Leonard Groves dropped by looking for her boyfriend, Justin LeBlanc. She hollered down to him from the upstairs window that he was not at home, and to return later. She mentioned at that time that Mr. Groves has been “eyeing” the motocross bike of Mr. MacNeil. Outside of the residence were two (2) cameras, with one feed into the residence, where there was a monitor. Much evidence was given regarding the recordings of these cameras, and what they actually showed on the TV screen/monitor, inside the residence.

[9] At some point around 3:30 am, the home security camera showed that someone was taking the accused's bike and running off with it.

[10] All three men, Mr. MacNeil, Mr. Pye, and Mr. LeBlanc, left the house to give chase, running after the bike and the person who took it.

[11] The men caught up to the person with the bike, who had been trying to steal it. When they came into contact, an altercation ensued between the accused and the person with the bike. Mr. Groves tackled the man, and they went to the ground hard, said Mr. MacNeil. Mr. Pye and Mr. LeBlanc described the scuffle that ensued, during which it was realized that the person was "Lenny Groves."

[12] What appears to have started with a simple crime of bike theft ended with the tragic death of Mr. Groves. In his defence, Mr. MacNeil says he did not intend to kill Mr. Groves, nor cause him bodily harm that he knew was likely to cause Mr. Grove's death, nor was he reckless as to whether death ensued. Instead, he says he acted with a defensive purpose. He claims self defence.

[13] In addition to Self Defence, the Defence has raised the issue of provocation, as contained in s. 232 of the *Criminal Code*.

[14] Medical and expert evidence was introduced during the trial, as well as considerable photographic evidence. Among the 40 exhibits was evidence seized during the investigation, including blood spatter and DNA evidence.

[15] In particular, there is the clothing seized by the police, from Mr. MacNeil that included his pants and motocross boots.

[16] The Medical Examiner, Dr. Allison Edgecombe, gave opinion evidence, testifying that Mr. Groves died from blunt force injuries to the head, which were severe. I shall return to discuss her evidence, in more detail as well as the other evidence at trial.

### **Agreed Statement of Facts (Exhibit # 1)**

[17] On June 13<sup>th</sup>, 2022, into June 14<sup>th</sup>, 2022, Tyler MacNeil was visiting Justin LeBlanc and Shavon Powers-MacFarlane at their residence located at 40 Beech Street, Sydney Mines, Nova Scotia. Frederick Pye was also present. The four (4) individuals were socializing, the men were drinking alcohol, and some were using cocaine. Tyler MacNeil had arrived at the residence on his dirt bike and left it parked in front of the residence.

[18] As Frederick Pye prepared to do a tattoo on Justin LeBlanc's chest in the early hours of June 14<sup>th</sup>, 2022, it was noted through the home security cameras on the residence that an individual was taking Tyler MacNeil's dirt bike. Justin LeBlanc, Frederick Pye and Tyler MacNeil ran outside after them. Frederick Pye had taken a firearm with him from the apartment. The firearm was not used, it was dropped in the grass near the residence.

[19] The person taking the bike was intercepted a short distance from 40 Beech Street.

[20] An altercation occurred between Tyler MacNeil and the individual later identified as Leonard Groves. As a result of the altercation, Leonard Groves died. He was pronounced dead at the Cape Breton Regional Hospital shortly after arrival.

[21] Tyler MacNeil was located sitting on his dirt bike on the corner of Cambridge Avenue and Clyde Avenue, Sydney Mines, Nova Scotia. He was first placed under investigative detention, and arrested for aggravated assault shortly after. He was transported first to the crime scene on Beech Street, approximately one block away, then to the Central Division of the Cape Breton Regional Police Department at 865 Grand Lake Road, Sydney, Nova Scotia. He was arrested for

the murder of Leonard Groves that same morning at Central Division of the Cape Breton Regional Police Services.

### **Culpable Homicide**

[22] Section 222 of the *Criminal Code* states that a person commits culpable homicide when, directly or indirectly, by any means, he causes the death of a human being (s. 222(1)). Homicide is either culpable or not culpable. Homicide that is not culpable is not an offence (s. 222(2)(3)). Culpable Homicide is either murder or manslaughter or infanticide (s. 222(4)). A person commits culpable homicide when he/she causes the death of a human being by means of an unlawful act, among other means (s. 222(5)(a)).

### **Tyler MacNeil - (Direct Evidence)**

[23] Tyler MacNeil testified that he arrived at 40 Beech Street the evening before, after being at his cousin's, where he had shared some vodka, about 1/3 of a pint. He waited 45 minutes to 1.5 hours for Justin LeBlanc to arrive and was hanging out with Shavon Powers, who was getting a tattoo. He teased her about her complaining about the pain. They were having what he called a "treat" of crack cocaine, which were small amounts that gave a lightheaded feeling, but you

would return to normal after about 5 minutes, he said. “A treat to me is a pop of crack,” he said.

[24] He said that earlier someone had been at the front door, where Ms. Powers answered out of the spare bedroom. He confirmed he disengaged the spark plug on his bike.

[25] Justin LeBlanc had returned around 9:30 pm. When asked about his sobriety level, Tyler MacNeil testified, referring to himself, that he had “that little warm tingle, that little happy go lucky feeling that you get, but you know I wasn’t, I wouldn’t call myself drunk.”

[26] He testified he had known Justin for about 2 years. He worked with him at Needs and found him polite and respectful. Justin and Shavon were inseparable, he said. He found Shavon was pretty cool. She would ask him to share a cigarette with her. He treated her with respect he said.

[27] Tyler said he bought his motorbike new in 2020. It was in his mother’s name, but he made the payments of \$275.00 biweekly. He had some bad credit and financed it through her. He was very proud of it. He testified, that owning it showed just how far he’d come, with his troubled past, addiction and other of life’s difficulties.



[28] The accused went to the bathroom and then heard “cocksucker, he’s got your bike.” He ran out the door looking right and left and saw nothing. He said he was not doing much thinking, but was running hard, “like no tomorrow,” he just wanted his bike back. He assumed the person would just drop it. He was chasing the person with the bike running at “quite a clip,” he said.

[29] The man tried to jump start the bike and the accused caught up to him. He testified he dove into the man like you would “tackle a quarterback,” putting his arm up around over the man’s chest and slammed into motion, “like hitting a brick wall” he said, like the ground stopping him, and the accused fell down face forward. As he fell the bike caught the back of his leg.

[30] The accused testified he then saw something out of the corner of his eye, he didn’t know exactly what. He went to turn and heard “you are going to fucking pay for this” and a foot hit the side of his chest, pointing to his right side, his ribs.

[31] At that moment he saw someone sitting with their foot cocked, getting ready to hit him again. As hard as he could the accused lunged at him and tried to connect him in the face, hitting him directly in the nose.

[32] After this, the accused testified, the man went to his left, favouring his left side with his back exposed. The accused said he “glommed onto” the man’s back

and tried to put him in a chokehold position. “I grabbed him and kind of pulled him backwards,” he said. The man started punching at his face, backwards. It was at that moment that he heard a voice say, “oh fuck, it’s Lenny.” The accused said, at that moment, his heart went in his throat.

[33] The accused was asked if he had been aware of the press releases, Exhibits 33 and 34 that had been entered concerning Mr. Groves. He said he was, as they were posted on Facebook. The press releases warned of Mr. Groves being a high-risk offender.

[34] Mr. MacNeil testified that he had had dealings with Lenny Groves in prison, and he knew of his reputation in their community. “You hear things” he said. He always felt uneasy around Mr. Groves, stating that he was unpredictable.

[35] Turning back to the incident, Mr. MacNeil was asked to describe what he thought and how he felt, upon learning it was Lenny Groves. He stated he was concerned Mr. Groves might have a weapon. Up to that point he just wanted to grab his bike and go home. Upon discovering who it was, his intention changed he said. He no longer cared about his bike and was only concerned with his safety. He assumed he would be assaulted, that Mr. Groves would stab, shoot, stomp on his head, and beat him up. In cross-examination, the accused testified that in his

mind he had just encountered one of the most violent people he'd ever met in his life.

[36] At this point the accused still had Lenny Groves in a chokehold. He caught 2 or 3 punches to the corner of his eye, he said. He could hear voices but was not sure whose voices. He was trying to tuck his head in behind that of Mr. Groves.

[37] The accused testified the "zip" went out of Lenny's last punch, and his body relaxed. Mr. MacNeil assumed he was out, and rolled Lenny off of him, to get out of there, he said. The accused climbed to his feet, noticed his bike was gone, and that he was alone. He looked toward Justin's house and felt a hand grab the side of his pant leg and heard "you're fucking dead." Mr. Grove's was trying to pull himself up, using him, the accused, as leverage. Mr. MacNeil pulled his leg away, and as hard as he could, Tyler MacNeil kicked Mr. Grove's in a downward kicking motion, hitting him right in the face.

[38] Mr. MacNeil testified he saw Mr. Groves's head "cock back" and hit the road, and then Mr. Groves made a snoring sound.

[39] When asked what he was thinking at that time, Mr. MacNeil testified he saw this happen in prison, he saw people get "smucked" in the face. They stiffen up

like a board and start snoring, and they're out cold, he described. He said he was thinking, "he's out, I am out of here."

**Tyler MacNeil (Cross-Examination)**

[40] In cross-examination Mr. MacNeil confirmed what he said consistently that his intention changed when he realized that the person, he had tackled and placed in a chokehold was Lenny Groves. At this point, he no longer cared for his bike. His intent changed to doing what he could to extricate himself and avoid any further violence from this person, who he knew well as a fighter. He testified that his actions were for the purpose of incapacitating Mr. Groves long enough to delay him, in order to get away.

[41] He set out that evening to mow his cousin's lawn, he said, he never expected any of this would occur. It was suggested that he could have called the police. It would have taken them too long to get there, he said. He did say he might have called the police if he could get to his friend Steve's. He was stopped and detained by Cst. Martell.

[42] When he called out to the person to drop the bike, the accused testified he never thought the person would keep going. Mr. MacNeil maintained that the sequence was the tackle, the fall, the kick by Mr. Groves to his side, the punch to

Mr. Groves, the chokehold, the grabbing of the pant leg, and the kick to Mr. Grove's head. After the kick there was instantly a snoring sound. He had then only a small window, 30-60 seconds, to get to safety, he stated.

[43] Mr. MacNeil said he was caught off guard. He had never had anything stolen. This was different than what he said in his police statement, albeit the previous occasion was a minor thing, years earlier.

[44] Mr. MacNeil said that when Lenny Groves looked ready to kick again, he aimed for his head area, but couldn't see where he was hitting, he could see only an outline. He said Mr. Groves was sitting down when he threw the punch.

[45] He was asked why he did not simply run away. He said, if he turned his back, he would be hit from behind. He didn't know, what was going on, adding "better him then me."

[46] Mr. MacNeil said he didn't expect the person to fight for the bike, and when he grabbed him, he heard "oh fuck its Lenny." He was asked about Fred Pye saying to him "leave him alone," or words to that effect, but the accused said he didn't hear that.

[47] Mr. MacNeil said, "things got quiet," when he heard it was Lenny. There was no one there, when Lenny Groves grabbed his pant leg, and he kicked him

hard. The Crown asked why not stomp on or kick his arm. He didn't see his arm, he said he just saw his face and reacted. "I had to do what I had to do, to get out of there. I lifted my leg and pushed it down," he said.

[48] The Crown challenged him, saying he "went right for the head." Mr. MacNeil replied it was the closest thing to his foot, and the easiest way to throw the kick, based on their positions. Unlike the punch, the accused said he was not aiming for Lenny Groves' face when he made the one kicking motion. He said earlier that his face was right there, being at a convenient angle to strike it.

[49] Tyler MacNeil was asked in cross-examination about the blood on his boots. He stated he only saw a little red spot on the inside heel of his right boot.

[50] When cross-examined about his wearing motocross boots, the accused testified they are "one of the hardest you can get," they are "very, very hard, and very stiff." He said there were metal inserts in them, comparing them to a sledgehammer.

[51] The accused was asked about leaving Mr. Groves in the middle of the street, and not checking on him. He said he thought Mr. Groves had been knocked out and choked out. He referred to his experience in prison. He believed the snoring was his chance to get away. He assumed Mr. Groves would get up. It was pointed

out to Mr. MacNeil that Mr. Groves was unconscious and lying in the middle of the street. He said it was “pretty quiet in the neighbourhood,” and he did not see much traffic.

[52] Mr. MacNeil was shown the photo in Exhibit 5, Tab 5, Number 0026, which is a picture of the deceased’s face. The Crown suggested the picture showed the result of the altercation, and asked Mr. MacNeil, “did you really walk away from that individual thinking there was no major injury.”

[53] Mr. MacNeil replied in the affirmative, stating “oh yeah.” The accused said that when he saw the police vehicle, he was relieved. He was asked why he did not tell them about the incident. He said, he did not want to be the one to “rat” on Lenny Groves, and he believed that Lenny would not tell either, and they would go their separate ways.

[54] I note here that Lenny Groves being able to get up and leave would be a fairly big assumption. The accused was aware there were police at 40 Beech Street, as Cst. Martell drove there after he was detained. He said he knew the police were going to take him to the police station. Cst. Martell informed him they were going there, and “I said OK.”

[55] Mr. MacNeil was cross-examined on his statement to S/SGT. Oliver, given over a lengthy period. He knew it was serious. They had told him first degree murder was the charge. He was not in the right mindset, he said at trial.

[56] It was agreed in the Statement of Concessions that the statement given to police on June 14th, 2022, was voluntary, and admissible at trial. It was also agreed that the utterances of the accused to police officers, specifically to Cst. Martell, were voluntary and admissible.

[57] In the police statement at page 26, line 3, Tyler MacNeil was asked if he caused the injuries that led to Mr. Groves's death. He answered, "I didn't do anything last night, I went and got my bike." At page 65, line 3, the officer asked if this was a situation where there was something going on and things got out of control. The accused answered, "if I had any information I would give it to you, man."

[58] At page 172, line 9, he was asked, "are you sorry for what you did." He answered, "I haven't gotten anything (inaudible) to be sorry for." At page 182, line 8, he was asked "but Tyler you haven't really expressed any remorse for what you did, why is that?" He answered, "how can I be remorseful for something I have no knowledge of."



[59] It must be said that Mr. MacNeil expressed repeatedly that he wanted the opportunity to give his evidence in Court in front of judges, lawyers, and prosecutors. He maintained that he was never in this position before, and said he would tell the truth when he went to Court. He wanted to maintain that right he said, to have his day in court.

[60] The accused stated that he did not want to give the police the satisfaction of telling them what happened. He was overwhelmed, he said, and could not make sense of anything, and had been in the room for 12 hours.

[61] In cross-examination he stated that he never intended to kill anybody, and never tried to hurt anybody. If he had intended to kill, he said, there would have been no breathing when they (the police) arrived at the scene.

[62] There are some additional considerations with respect to the accused's evidence. Near the end of his cross-examination, he said he was not thinking about the impact, and that he did not know if he hit Mr. Groves in the face, the shoulder, or the chest. There was certainly evidence that it happened fast, but this seemed contrary to his earlier evidence that Mr. Groves's head was right there, and that he could see the outline of it.

**Dr. Allison Edgecombe, Medical Examiner**

[63] Dr. Allison Edgecombe gave evidence on the cause of death, and extensive evidence on the number of injuries suffered by Mr. Groves.

[64] Dr. Edgecombe is certified by the American Board (in the US) and the Royal College of Physicians in Canada, as an anatomical forensic pathologist. She was certified with both designations in the years 2012 to 2014.

[65] Since then, she has performed approximately 3300 autopsies and has testified in Court as an expert. Her qualifications in this area have been accepted forty-three (43) times, in the provinces of Nova Scotia, Ontario, Alberta, New Brunswick, and in the District Court in Texas.

[66] Dr. Edgecombe confirmed she was certified in forensic pathology in 2002. Entered into evidence as Exhibit 21 is the qualification of Dr. Edgecombe as an expert to give opinion evidence, in pathology in this case, including diagnosis, injury, and the cause of death of Mr. Groves.

[67] Dr. Edgecombe testified that she performed the autopsy over a period of two days, including external and internal examinations, and toxicology. Everything is looked at she explained, clothing, evidence of resuscitation, tattoos, scars, disease, eye and hair color, and weight. Evidence is taken, including nail clippings, scalp hair, and swabs of the neck and hands. The clothing is collected in sterile bags and

turned over to the police. Information is obtained from hospital and police reports, and information is observed over the course of the investigation, including further information from EHS. She indicated that all the information is interpreted, and a report is compiled. In this case the Report of Postmortem Examination is entered as Exhibit 22.

[68] In her testimony Dr. Edgecombe reviewed the definitions of the various medical terms in her report. She gave extensive evidence as to the many injuries sustained by Mr. Groves, which were predominately to his head, and injuries to the brain.

[69] Professional photos of the autopsy were entered into evidence as Tab 5 of Exhibit 5. In reviewing these, Dr. Edgecombe discussed the injuries that included a fractured skull, injuries to the scalp, and under the skin, due to hemorrhaging. There were hemorrhages to the face, ears (particularly the left), all sides of the head, to the back, as well as a fractured nose and a fractured jaw that left a gaping hole. These injuries are depicted in the autopsy photos.

[70] In addition, there were numerous bruises and abrasions, facial lacerations, for example, the left eye and laceration to the nose and face (as depicted in photo 343).

[71] The fracture to the jaw, and the injuries to both ears, were caused by blunt force trauma. Both ears have dark bruises. She described the left side of the face as being worse, which goes with damage to the left ear. The cause of this was blunt force trauma.

[72] There was extensive damage to the right frontal occipital scalp area caused by blunt force trauma, she said. This is shown in photo 357.

[73] In her report and in her testimony Dr. Edgecombe confirmed that it was the totality of the injuries, and not one in isolation that contributed to the cause of death. In the pathology report, Dr. Edgecombe concluded that the cause of death of Mr. Groves was “blunt force head trauma.” There were three mechanisms of death involved in the death of Mr. Groves.

[74] In cross-examination, she was asked about the role of other factors, such as toxicology, and drugs in the system, and whether earlier treatment would have had an effect. Dr. Edgecombe was clear, in her expert opinion, toxicology or earlier treatment would have played no role, stating that the head trauma suffered by Mr. Groves was too severe for him to have survived.

[75] In her testimony, Dr. Edgecombe said the force used to cause these injuries would have been quite significant and would have resulted from multiple blows to

the head, in her opinion. She was not able to quantify the number, but said it was the severe head trauma that proved to be fatal.

[76] In the Agreed Statement of Facts (Exhibit number 1), number 4 states that an altercation occurred between Tyler MacNeil and Lenny Groves that resulted in the death of Lenny Groves at the Cape Breton Regional Hospital.

[77] In addition, the Statement of Concessions in Exhibit # 2, states the Report of Dr. Edgecombe, and the toxicology report are admissible as evidence.

**Shavon Powers (Direct)**

[78] Shavon Powers testified for the Crown. She socialized with Tyler MacNeil the evening before the death of Mr. Groves, along with Fred Pye and her boyfriend, Justin LeBlanc.

[79] Things were flowing easy that evening. She was smoking in the bathroom with Tyler and doing puffs (hits) of crack cocaine.

[80] She described watching the outside cameras on the tv screen. The photo in Exhibit 11 shows one above the door, near the porch. The same photo shows a second camera above, outside the window of the spare bedroom on the second floor.

[81] Shavon Powers had been getting a tattoo, by Fred Pye. At some point she told him to stop. She had enough. She testified the evening was suddenly interrupted, when they saw on the tv screen that someone had taken Tyler MacNeil's motocross bike.

[82] She saw it in the living room first, and then went to the bedroom window and looked outside. She was able to see down the street (Beech Street), she said, adding there was a streetlight.

[83] When this happened all three (3) men ran out, she said, Tyler, then Fred, then Justin. They ran down the street after the person with the bike.

[84] Most of what she saw was from looking out the window, she said. She saw only the start of it, the bike being taken on the tv monitor.

[85] She testified she saw the accused, Tyler MacNeil, kick the person later identified as Leonord Groves multiple times. The Crown has referred to these as multiple stomps, by the accused to the victim.

[86] It was obvious Ms. Powers had difficulty giving her testimony. She was emotional and said several times that she was confused. She testified it was Fred Pye who kicked Lenny Groves off the bike. This is different from what Mr. Pye

said, as well as Mr. MacNeil. Both of them said it was Tyler. Justin LeBlanc also testified it was the accused who took Mr. Groves to the ground.

[87] Ms. Powers testified she suffered a stroke at the age of 19. This affected her speech, and her gait to some degree. The Defence submitted this may be a consideration for the Court in assessing her evidence, in terms of reliability. She admitted to having memory difficulties, stating for e.g., she may not remember what movie she watched, a week or two previously.

[88] The Crown submits the core elements of Shavon Powers's testimony remained intact following her cross-examination. They say that what the witness recalled, was traumatic, something that would remain with a person, unlike everyday occurrences that blend into a person's life, without them attaching much importance.

[89] The Crown argues the testimony of Ms. Powers should be given considerable weight despite what may appear to be lapses in memory. Clearly she saw Tyler MacNeil administer multiple blows to the deceased, the Crown says. She was not shaken on her ability to see down the street, despite evidence that it was damp, foggy, and dark, the Crown submits.

[90] Exhibits 3 and 4, are photos taken by Cst. Burns, who was the first police officer to arrive on the scene. It was he who first encountered Mr. Groves who he said, was snoring and breathing heavily.

[91] In terms of the weather, Ms. Powers said it was a fine morning, unlike the evidence of other witnesses. She also estimated the time of the incident at 2:30 am when other evidence suggests it was an hour later.

### **Shavon Powers – Cross-examination**

[92] Ms. Powers was cross-examined extensively in a number of areas. She was shown a portion of her evidence at the preliminary, entered as Exhibit 40, for the limited purpose of impeachment and credibility assessment.

[93] The Defence suggested in these passages that Shavon Powers stated that she saw the whole incident on the tv screen. Having reviewed Exhibit 40, and the relevant passage at page 163, the contradiction is not as clear as suggested by the Defence. She said she stayed in the house during the incident, watched it on the security footage, and was upset in the living room. She stated at trial she had dropped to her knees in the living room and then went to the window. A literal reading of this portion is not inconsistent with her evidence at trial, in my view.



[94] The next passage from the preliminary (page 171) goes more to the Defence's point about watching the whole incident on the tv. But even this passage does not suggest she watched the whole incident, on the tv screen, but that she had a clear recollection of the whole incident including the stomping on the head. She then states simply that it was on the tv screen, which she also said at trial, and once she saw it there she then went to the bedroom window.

[95] The Defence points to the questionable credibility of Shavon Powers evidence, including the improbability of her seeing the incident on the video feed, and the improbability of her having a clear line of sight to the incident.

[96] They suggest her evidence must be looked at in context of the evidence provided by Justin LeBlanc on cross-examination, where he said there was only one feed to the camera over the porch. There is a large inconsistency between the two versions, says the defence. The defence submits that Justin LeBlanc's should be accepted.

[97] In addition, the Defence says of the contradictions by Ms. Powers that she indicated to an officer in an initial statement that the cameras they had set up were "fake" (page 17 of Exhibit 40).

[98] Justin LeBlanc gave evidence that he handled the operation of the cameras. I will discuss his evidence in detail later in this decision. He maintained that the cameras could be switched by using the remote but was seriously challenged on that in cross-examination. Ms. Powers's had limited knowledge of the set up. Mr. LeBlanc indicated they did not record and that "he had to get the guy back." Nonetheless, the Defence noted her use of the word "fake."

[99] The Defence further challenged Shavon Powers's evidence, arguing it was improbable she had a clear line of sight and argued that her ability to see would have been impaired by the dark, foggy weather conditions, shown in the pictures, and described by the witnesses. They submit the conditions are also shown in the photographs, Exhibits 3 and 4, in particular.

[100] There are a number of photos in Exhibit 5 that are relevant, and show the location of the incident, the photos of the orange pylons placed in front of 40 Beech Street where the body was found. For e.g. Tab 2, photos 3, 6, 9 and the last two, one showing marked with a red dot "edited 40 Beech reference." There are also the photos in Exhibits 35, 36, 37 and 38. Exhibit 35 shows the distance from the intersection of the centre lines of Beech Street and Cambridge Ave. to the incident as 41 meters, or 134.51 feet. It would be further still from that point to the top left window of 40 Beech Street. Constable Dicks gave evidence that it was 196

feet between the two orange cones as shown in Exhibit 5, Tab 2, Photo 006. The distance between control point 1 and control point 2 in Exhibit 36 is 36.26 meters which translates to 118.96 feet.

[101] The Defence submits that Ms. Powers's evidence is once again compromised, in that another witness Marsha Johnston was only forty (40) feet from the scene and did not have a strong view of the men on the road, due to darkness.

[102] The Defence points to other discrepancies in Shavon Powers's testimony, such as when compared to that of Fred Pye. He testified that when he got back Shavon was asking all kinds of questions, and did not seem to know what happened.

[103] The Defence further submits that Shavon Power has memory issues, stating she might not remember having a conversation or what tv show she watched a couple of weeks earlier. I do not find that to be unusual, indeed it may be more common to not recall that. The same can be said about the Defence's point about Ms. Powers stating the incident occurred at 2:30am and not 3:30am.

[104] The same might be said about the weather, although that is an issue more prevalent in this case, given the time of day, and given the importance of various

witnesses' evidence about the visibility, rain, fog, mist, and darkness. They are all factors to be considered in assessing the testimony at trial, including that of Ms. Powers.

[105] None of these issues the Crown says go to the substance of the allegations in Ms. Powers's evidence about what she saw, specifically Mr. MacNeil jumping repeatedly upon Mr. Groves. Ms. Powers's core allegations remain intact, the Crown submits.

[106] The Defence however points out that no other witnesses saw multiple jumps and says the witness the Crown relies on for that proof is the one "with the most holes," or faults, in her testimony, which they say is not credible and unreliable.

[107] The Defence submitted a portion of Shavon Powers's preliminary transcript (page 155) in which she indicated she could hear what was being said, because the living room window was "open about 2 inches." The Defence says this differed from her evidence at trial.

[108] Another aspect that may be more significant is Ms. Powers's evidence that it was Mr. Pye who kicked Lenny Groves off the bike. This differs from the evidence of Mr. Pye, Mr. LeBlanc, and Mr. MacNeil. They were closer to Mr.

Groves at that point, but I concur this is troubling in terms of assessing Ms. Power's evidence, and in particular, her ability to see the incident.

[109] All of the evidence must be considered, there are consistencies in the evidence of Shavon Powers, as well. There are other witnesses, besides Ms. Powers who said it was a nice clear night, such as Alden LeBlanc, an elderly gentleman who lives on the corner of Beech Street and Cambridge Avenue. Similarly, Frank Fortune testified it was a nice clear morning.

[110] For his part, Mr. LeBlanc stated there is a pole with a light on it in front of his house at 46 Beech St., and he indicated the light was bright. Marsha Johnston's home is 45 Beech Street across the street and down toward Fraser Avenue, as shown in the aerial photo in Exhibit 5, Tab 2, Photo 35.

[111] Shavon Powers spoke about the light being there from her position on the second floor looking toward the intersection of Beech Street and Cambridge Avenue and down Beech Street.

[112] In addition, EHS witness Jenna Cox stated that flashlights were needed, and that there was no streetlight shining down where they did their interventions. She did not recall the weather being misty or foggy.

**Justin LeBlanc**

[113] Mr. LeBlanc rented the apartment at 40 Beech Street, and resided there with his girlfriend, Shavon. He had known Tyler MacNeil for about a year, having worked with him at Needs. He spoke highly of Mr. MacNeil.

[114] He said that the night before was relaxing up to the point that the bike was taken. Everyone had been drinking. He was not sure when Tyler MacNeil arrived. He said he was getting a tattoo, at the time. He was not sure who noticed the bike being taken, but said he, Tyler, and Fred all ran out of the house after it. He did not remember in which order.

[115] He said the guy was trying to kickstart the bike. Tyler MacNeil caught up to him and pulled him off the bike. Mr. LeBlanc said he grabbed the bike and saw the two men on the ground, Tyler MacNeil was underneath and the other man was on the laying on his back on top of Tyler who had the man in a chokehold.

[116] "Freddy" was there too he said, but Mr. LeBlanc was not sure what he was doing. Justin LeBlanc started walking back to the house with the bike. About halfway, he glanced back and saw Tyler make a downward motion and saw him kick the guy once. When he got back to the house, he said he went in, put on his shoes, and got dressed, stating he had his own issues to deal with. He later told police that he took his guns to a friend's house and got a ride back with Frank

Walker. When he got back, Fred and Shavon were at the house. Tyler was gone. Justin was unsure how long he, Justin, was gone.

[117] In cross-examination Mr. LeBlanc was examined at some length and in detail, in relation to the set up of the two cameras shown in Exhibit 11. He also confirmed that he was pushing the bike up the hill he said, looked over his shoulder, probably his left one, and saw a kick.

[118] Shavon Powers testified that she was looking out that same window shown in Exhibit 11, photo TLS\_0018 to the top left, containing the security camera, which is in addition to the camera above the porch, near the front door. Justin LeBlanc very clearly said there were two cameras, with one feed, which allowed one camera to be shown at a time, but with the ability to switch back and forth between the two cameras, such that each one could be shown, but only one at a time.

[119] In cross-examination Mr. LeBlanc's evidence was seriously challenged on the operation and the setup of the cameras, and how they functioned. He was questioned on his evidence at the preliminary hearing, where he stated that only one was set up, basically to see who was at the door. At trial he stated he understood the question to mean there was only one up on the tv. He was further

questioned on his evidence at preliminary, where he referred to only having time to hook up one camera and said he was in the process of hooking up everything, but was waiting for the hard drive. He was referred to his statement- “that night there was one feed, where Tyler had his bike.”

[120] He was further read a portion of the preliminary transcript, page 72, lines 11 to 16: “They asked which one I wanted hooked up. I picked the one in the porch because I pointed to the porch and the car.” He was then asked (at trial) if he agreed the other one was not hooked up.

[121] He answered, “I guess not,” but mentioned a couple of times that you could switch it. It had been over two years but he was pretty sure you could switch it. He agreed his memory at the time of the preliminary was probably better.

[122] He was further asked in what direction the second camera was pointing to and was referred to several portions of his preliminary evidence (pages 76, 77, 89, 90) where he agreed that the camera pointing to the incident was not hooked up. After repeated questioning he agreed it was impossible for the camera to pick up the incident regardless of where it was pointed. He answered “yes.” He agreed at trial it was him, and not Shavon who set it up.



[123] Throughout the questioning, Mr. LeBlanc kept saying you could switch it, but his evidence at trial clearly contradicted his evidence at the preliminary on this point.

[124] He was also asked about his relationship with Mr. Groves. They knew the same people and had common friends. They both grew up in Sydney Mines, and Lenny Groves was a friend of his brother, Johnny.

[125] Mr. LeBlanc was cross-examined on his statement that he did not know if it was Lenny Groves until the day after the incident, the Defence suggesting that he lied in his statement to police, because he knew it was Lenny when he arrived at the scene of the interaction with Fred Pye and the accused. He stated he was not lying (stating his hood was up) and that he didn't know until the police told him, but when pressed further he said he had a fight with Lenny's brother because of the incident, but he was not thinking about that at the time.

[126] He said, "I guess so," meaning that he knew it was Lenny when the fight with Lenny's brother was put to him. Everything with the police happened the very next day, he said.

[127] In re-direct, Mr. LeBlanc testified that one of the cameras pointed toward the incident, and he further confirmed that there was one camera showing at a time,

but “you could switch it.” He was not sure how far down the street the camera captured.

[128] He stated further in re-direct that he learned it was Mr. Groves at the police station. He said that on the night of the incident, there was a lot of adrenaline, and the man’s hood was up when he first saw him at the time of the incident.

### **Fred Pye**

[129] Mr. Pye was called as a witness by the Crown. He was present at 40 Beech Street with the others on June 13th, 2022, the evening before the alleged offence.

[130] He was taking part in the socializing, but mainly he was doing tattoos, first on Chevon, and then on Justin LeBlanc. He had just got the stencil on him, which took about an hour, when Justin hollered “holy fuck, the bike’s being taken,” Fred said.

[131] There was a tv monitor behind him, with a live feed pointing downstairs. He did not see it, but he inferred that Justin did. They ran downstairs, with Justin and Tyler in the lead, and Shavon stayed in the house, he said.

[132] He picked up a shotgun from the coffee table. He was unsure if it was loaded, but said he felt the gun was better off with him.

[133] When they went outside, he saw Lenny Groves running with the bike, trying to jumpstart it around the crest or peak of the hill. He did not know if it was Lenny at that time. Fred Pye said, “without a spark plug, the bike could not fire up.”

[134] Justin LeBlanc was right beside him watching, and Tyler caught up to him, and in one maneuver grabbed the fender, and pulled it in, and “kind of jumped” up and put his arm around Lenny and the two of them fell. He, Fred Pye, kind of jumped over the bike and landed on top of the two men. He said he “skipped over them.” Tyler’s arm was around Lenny’s neck, in a chokehold, he said.

[135] He described their position as a “square” used for carpentry, one lying this way, and the other one that way, Lenny was laying on his back, underneath Tyler. When asked if Tyler was face up or face down, he said Tyler’s face was “everywhere,” and he and everyone there were “scared.” The bike was to the right of them, they were to the left on the ground. Justin pulled the person’s hood down, and that is when they saw it was Lenny.

[136] Fred Pye said, “holy fuck, it’s Lenny,” and Tyler just held onto him, meaning Lenny. It was like Tyler wasn’t there, he said. He was blacked out, his eyes were black, looking up in space. Justin ran off with the bike.

[137] Fred said Tyler was “so nervous,” he thought because it was Lenny and Lenny could fight, and Tyler didn’t want to let go. He testified he told Tyler to “just end it, you got the bike.”

[138] Mr. Pye said when he skipped over them, he landed on top of the two men, a foot on each one, and then jumped off of them. At no point did he kick Lenny. He did not kick Lenny off of the bike.

[139] Mr. Pye said he wanted to get out of there. He saw the girl in the window, with the cellphone, meaning Marsha Johnston. He testified he gave the accused a nudge with his gun to his elbow.

[140] He turned around and started walking back to the house. He heard a noise, it was a crunch, from behind him, where Lenny and Tyler were. He described what he saw as a downward motion, it would be like a jump he said. He demonstrated it by jumping with both feet.

[141] When asked, Mr. Pye stated that Lenny was on the road at the time. The Crown further asked if contact was made, to which he replied, “its quite obvious contact was made,” indicating because he (Lenny) “is not here.”

[142] Here I would further note that Mr. Pye stated that he went to the house, after seeing the jumping. He said he saw Tyler jump in that manner once. He didn’t

actually see the jump but saw how he landed. He testified he panicked when he got to the house, stating he “assumed he was really bad.”

[143] In particular, Mr. Pye testified “while it was going on. I went into the house.” When asked what it was that was going on he stated, he only saw one downward motion, but he heard the noise.

[144] Mr. Pye was asked if he saw Lenny strike any blows to Mr. MacNeil. He said he was squirming but reaching for something. He didn’t know what, but that was it. He said he did not see Lenny in any other position, than lying on the ground.

### **Marsha Johnston**

[145] Marsha Johnston was awoken at 3:30am by yelling and arguing in front of her house. She looked out without her glasses to see three (3) men, 2 of them standing and one on the ground. One man was wearing a dark shirt and was holding something long. She was not able to describe the other as it was dark. She watched them for about 10 seconds, and then went to get her glasses and her phone. She called 911 and went downstairs, then outside, within a minute or two. She hid behind a truck. When she first looked out the man was lying on the ground and struggling to get up. When she went outside, the other 2 men had left,

leaving only the man on the ground. The police were quick on the scene, arriving there in about 5 minutes.

[146] She heard a comment or utterance to the effect of “what do you want me to do, kill him,” when she was upstairs. That is what made her jump out of bed. She testified it was dark and foggy. When she saw the two men, they were standing back from the body on the street. She said she sleeps with the window open. There was a streetlight to the right, and she said the streetlights there were really spaced out. There was no bike there, just Mr. Groves on the ground, she said.

### **Frank Fortune**

[147] Mr. Fortune testified that he had lived in a trailer behind 45 Beech Street for 45 years. Marsha Johnston is his niece. He was in bed that morning when he heard hollering outside, which was typical, he said, and at first he didn't pay a lot of attention but then heard, “you'll pay, you'll pay for this.” It was a male voice. Then he heard the police. He heard a female say, “get in, get in now,” and a motor bike revving up, then it was quiet. Ms. Powers testified she called to Justin to come in upon his returning with the bike. Mr. Fortune was at the very back of his trailer, with the window open. He was unable to say what time it was. He could not see from the window. He stated it was a beautiful night. He went to work at 5:00 am

[148] He was shown a drone photo where Marsha Johnston had placed her initials, with a yellow sticker on her house and a red sticker where the deceased was located. He estimated the distance from his window to the front of Marsha Johnston's house (the yellow sticker) to be about 300 feet. It was loud enough to hear he said. He listened to the voices for 5 to 10 minutes. He said he heard a noise coming from 45 Beech Street, and a female saying, "get in now." Her voice came from "the green house," which is how he described 40 Beech Street. He placed a green sticker on the photo 1715775410000 in Exhibit 5, Tab 2.

**Alden LeBlanc**

[149] Mr. LeBlanc resides in a large house with gray siding at the corner of Cambridge Avenue and Beech Street, opposite 40 Beech Street on the same side. He too was awoken by people yelling and fighting, he said. There is a large tree in front of his house, which was in full bloom. He could hear but not see what was going on.

[150] He did not have his hearing aid, but the voices were elevated. There is a pole with a bright light, in front of his house, he said.

[151] In addition to the yelling, he heard the noise of a dirt bike. There was a commotion on the road, like a fight. He could not make out the voices. They came down the road past his house and then stopped. He got up to look out the window.

[152] The voices appeared to be male, but there also appeared to be a female voice. He went to the washroom and stayed there. When things calmed down, he saw two guys walking toward Cambridge Avenue. One guy was pushing a bike. The guy on the sidewalk had no shirt.

[153] He tried to go to sleep but later went down on the deck when the police came, and later gave a statement.

### **Staff Sergeant Matthew Mader**

[154] Sergeant Mader is a forensic identification specialist. He was qualified by the Court to give expert evidence in Blood Stain Pattern Analysis (BPA). In addition to his CV, he provided a Report entered as Exhibit 14. He is employed by the RCMP “H” Division in Dartmouth, NS.

[155] In Exhibit 13, Sergeant Mader provided a power point analysis, which provided a basic explanation of what BPA is, and the examination of size, shapes,



locations, and distribution patterns of bloodstains, in order to provide an interpretation of the physical events that give rise to their origin.

[156] A bloodstain is a deposit of blood on a surface. A bloodstain pattern is a grouping or distribution of blood stains, characteristic of the mechanisms that created them.

[157] The three main categories of how blood stains occur are 1) Gravity, 2) Spatter (created by force), and 3) Transfer (through contact).

[158] I am not going to detail the report of Sergeant Mader, which is in evidence with related exhibits. There were some rules that he dealt with in his evidence, a general rule being that the greater or more significant the force, the smaller the droplets or spatter stains deposited on a surface. He spoke of shape of the drip, and spatter stain, such as one with a tail, resulting from an airborne blood drop, dispensed when travelling through the air.

[159] The key findings in the Report are summarized on page 2.

[160] Sergeant Mader examined evidence collected from the investigation, including six (6) pieces of clothing and apparel from Mr. Groves, which included under armour sneakers. He also collected four (4) items seized from the accused,

Tyler MacNeil, which included a pair of motocross boots, motocross pants, plaid pajama pants, and a black t-shirt.

[161] The items were tested for blood and the locations were marked by Sergeant Mader for DNA testing and sent to the lab for DNA analysis by Dr. Jennifer Heal. The photos show the green circles placed on the items for testing.

[162] Following analysis and testing the blood spatter expert concluded that:

1. The blood on the motocross boots came from Leonard Groves and matched his DNA profile. There was more blood on the right boot than on the left. The spatter stains were created by force being applied to liquid blood.
2. The blood on the motocross pants matched the DNA profile of Mr. Groves and was deposited on the left leg of the motocross pants below the knee and dispensed onto the back of the left leg of the pants.

[163] It is important to state that the expert could offer no opinion on the mechanism of the force, or how the force was applied, except to say that the stains (deposited) were smaller in nature and close in proximity. He stated that source of the spatter on the boots was almost right at the boot, within 4 to 5 feet.

[164] Photos of the boots were contained in Exhibit numbers 27 to 36, and the pants in photos 37 to 44 of Exhibit 15.

[165] In cross-examination, Sergeant Mader stated that nothing was done to determine the number of impacts or the sequence of events. He was asked about expiration blood stains, and satellite blood stains, and whether blood could have landed on the boots from another source. He was able to state that the blood on the boots came from another source and not from the boots themselves.

[166] In direct evidence the witness testified that he was not able to say how many impacts there were, or how many times the force was applied, or indicate a single or multiple blows. There was no way to tell, he said.

### **Self Defence s. 34 of the *Criminal Code* – Air of Reality**

[167] If the accused can demonstrate there is an air of reality to self defence, the burden then rests with the Crown to disprove one of the three (3) elements of the defence.

[168] The accused testified that he acted with a defensive purpose, a purpose that changed once he realized the person who stole his bike was Lenny Groves. Tyler MacNeil testified that in giving chase, he intended only to retrieve his bike.

However, he said, the incident that followed could not have been predicted. He was able to grab the person, tackling him as he described. He was kicked by Mr. Groves, and he responded with a lunge at Mr. Groves, and punched him in the face.

[169] Mr. MacNeil said he was fearful of Lenny Groves. He had spent time incarcerated with him, traded stories with him, and knew of his reputation as a fighter. Mr. MacNeil testified that he fully expected Mr. Groves would come after him. He said Mr. Groves was a dangerous man. Mr. MacNeil held an opinion of Mr. Groves, as did other witnesses, as someone not to mess with. Mr. MacNeil made a Scopelliti Application to permit disposition evidence of the deceased Mr. Groves at the trial. The Application was granted.

[170] Mr. MacNeil placed Mr. Groves in a chokehold so as to subdue him, in order to render him unconscious in order to get away, he said. Mr. MacNeil testified that once he had him in the headlock or chokehold, Mr. Groves was punching back at him, over his shoulder, Mr. MacNeil being in back or underneath.

[171] Mr. MacNeil said his intention was to render Mr. Groves unconscious, in order to get away. He said Mr. Groves did not give up, and that he reached up with his hand and grabbed Mr. MacNeil's pant leg at the knee.

[172] It was then that Mr. MacNeil said he delivered the kick to Mr. Grove's head.

He kicked him as hard as he could, he said, to allow himself to get away from Mr.

Groves:

Okay. So when you got up why didn't you just take off at that point?

A: Well that's what I went to do, I did go to take off and um, the way my boots go when I have my pants, they have vents in the knee, and they really bunch up like this on the top of the boot and he grabbed a hold of me and it's like he was trying to pull himself up he's like you're fucking dead, so I just reaction, I pulled away from the grip and he was kind of like in a sitting up position at that point, almost like completely sitting up and I just made a poor decision and kick him in the face I guess to try to get to separate that distance so I could go quick, quick kick and then get out of there. Um, but then I almost instantly I heard the snoring sound so I knew now I have that 30 second window to get the fuck out of here before he gets up and I'm sure knowing who it is, he's not just going to walk away, that was in my mind, I had to get the fuck out of there you know. So that's like...

Q: So...

A: ...when I asked, I went to the step and I asked for my shit twice when it was clear that nobody was really responding to me I was like I don't need my gear to get home, I need my bike to get out of this situation, I don't need my helmet, I don't need my chest protector, I don't need my book... all that stuff is irrelevant right now. I do not need this to drive my bike, I mean if I see the police if I was driving home and I seen the police I can stop oh there's safety for now for one, and as soon as I seen the police pull up to me it was just like a oh thank God moment.

Q: Okay. So, you said he was grabbing at your leg, was it one handed or two handed grab?

A: He grabbed me with one hand.

Q: And was it your right leg or your left leg?

A: My right.

Q: So why didn't you stomp on his arm or kick his arm?

A: Well when I pulled away, all I could kind of see was, I didn't see the arm, I had pulled away and his arm must have dropped down, I just seen the face and it was just a reaction to, you know I just choked this guy out and he's already getting back to his feet, it's like what am I dealing with the fucking terminator here or something, so I did yeah, so I kicked him in the face, I felt I had to do what I had to do to get out of there.

[173] The Crown submits, that there is not an air of reality to self defence. It submits the evidence shows that Mr. MacNeil was the aggressor throughout, and that he could not be held back from seeking revenge upon the victim, as evidenced by the multiple blows the Crown says Tyler MacNeil inflicted upon Mr. Groves.

[174] The Crown rejects Mr. Neil's evidence of the kick to his ribs as shown in the photo of him at Tab 3 of Exhibit 5. The Crown submits that this is obviously an abrasion or scrape mark, which is superficial and caused most likely by the fall when Mr. MacNeil tackled him, and they both fell on the pavement along with the bike.

[175] The Crown argues there is minimal evidence of violence or aggression on the part of the deceased, Mr. Groves. It is true that stealing or theft is an act of aggression, counsel says, but it is not a crime of violence.

[176] The Crown argues that just before the kick, in Mr. MacNeil's own evidence, Mr. Groves was only attempting to grab him by his pant leg, while still on the ground. If this was the perceived threat, then the evidence would not allow a jury reasonably instructed to return an acquittal based on self defence, says the Crown.

[177] The Crown submits there are credibility issues with the accused's evidence, and that he is not to be believed. The Crown refers to him not coming clean to the police, and his denial of any wrongdoing.

[178] There is also the evidence of Tammy Whitty, called by the Crown in rebuttal. She was an aggressive witness and clearly hostile to the defence, but adamant she had seen Mr. MacNeil buy "crack" from Mr. Groves in April or May, a month or two before the incident. The accused testified in direct that he had not met with Mr. Groves a month earlier.

[179] While there is a basis for the Crown's position, the agreed statement of facts states there was an altercation between the accused and the deceased, and there is some evidence that supports the accused's testimony that he delivered one kick. In addition, there is ample evidence of the deceased's disposition that emanates not only from Mr. MacNeil

[180] Self defence is a complete defence to murder and manslaughter, as there would be no unlawful act if the Defence is successful.

[181] Given the seriousness of the offence that Mr. MacNeil is facing, and in the context of his evidence and the other evidence at trial, I find there is an air of reality to the defence and that it should be considered.

[182] At this point I will provide a summary of the elements of self defence as contained in s. 34 of the *Criminal Code*.

### **The Elements of Self Defence:**

[183] The leading case on Self Defence is *R. v. Khill*, 2021 SCC 37. There are three elements that make up the Defence. The Crown must disprove at least one of these elements. If it does not, an accused may have caused death, but it was not by means of an unlawful act.

[184] *R. v. Khill* makes clear that the role the accused played, and the role of the deceased must be assessed from beginning to end in order to properly assess the defence in law.

[185] The three elements of self defence are:

- a) A reasonable belief that force is being used or that a threat of force is being made against the accused or another person. This takes into account, the accused's beliefs assessed from the perspective of an ordinary person, who shares the attributes and experiences of the accused where those are relevant. This element also takes into account community norms when weighing the blameworthiness of the accused's



belief or actions. An accused's prior encounters with the victim will be relevant to the analysis, as well as an accused's mental disabilities.

- b) The second element is that the actus reus of the offence must be committed for the purpose of defending or protecting the accused or other persons from force or the threat of force. If there is no defensive or protective purpose of the act taken, the defence fails.
- c) The third element requires that the act taken is reasonable in the circumstances. The focus is on what a reasonable person in comparable circumstances would have done. The law of self defence does not protect hot headedness and unnecessary resorts to violent self help. The role each person played, and the relationship between the parties and the accused's personal experiences, is necessarily analyzed from start to finish.

[186] Defence counsel proposed several scenarios to Dr. Edgecombe related to the cause of Mr. Grove's injuries.

[187] The first hypothetical described a sequence of events whereby a person is running with a motor bike, on a downward grade hill, and is grabbed or tackled off

the bike, with no helmet, hitting the ground forcefully. Could that type of force cause the injuries sustained by Lenny Groves?

[188] After seeking clarification, that the person chasing and the person running with the bike were both thrown to the ground, Dr. Edgecombe stated that such force could create some of the injuries. In the questioning, Defence counsel emphasized the pavement being hit, the hard surface.

[189] The second hypothetical put to the medical examiner was if the same two people were followed by another person, and, in the haste of running, the third person tried to avoid the two people on the ground but landed on them, could that also cause some of the trauma that was referenced to in the report.

[190] Once again, Dr. Edgecombe provided a qualified answer, stating it would depend on where the person landed and, what they had on their feet. The Defence clarified the scenario, by stating that two people are on the ground struggling, and one has his head on the pavement.

[191] Dr. Edgecombe was asked if the external forces suggested in the two hypotheticals could help explain some or all of the injuries in her report. Her evidence was that it would be a stomp or a kick to the head, or a jump on a

person's head that could cause blunt force injury to the head, as those type of forces are significant.

***R. v. W.(D).***

[192] This is a case where Mr. MacNeil testified in his own defence. Therefore, the well-known case of *R. v. W.(D)*. 1991 S.C.R. 742 applies and provides the proper guidelines in assessing credibility.

[193] In *R. v. Shyback*, 2017 ABQB 332, the Court set out the test as follows:

[27] As the accused testified at trial, the case of *R v W(D)*, 1991 CanLII 93 (SCC), [1991] 1 SCR 742 applies. It sets out the steps of the analysis when considering the determination of proof beyond a reasonable doubt when the accused testifies. Firstly, if I believe the accused, and his evidence establishes a full defence to the charge, I must acquit. Secondly, even if I do not believe the accused, but his evidence is such that it could be true and provide a defence, such that it raises a reasonable doubt of the proof of the Crown, then I must acquit. Thirdly, if I do not believe the evidence of the accused nor am I in doubt by his testimony, then I must carefully analyze the evidence, to see if the Crown has met its burden on the evidence and ask myself whether I am convinced beyond a reasonable doubt of the guilt of the accused on the basis of the balance of the evidence that I accept.

[194] I have considered the accused's evidence together with all of the evidence at trial in accordance with the *W.(D.)* directions.

**Analysis and Discussion**

[195] Mr. MacNeil is presumed innocent, and the burden of proving the offence is solely on the Crown. These are basic principles in criminal law.

[196] Further this is not a credibility contest. The Crown must meet its significant burden.

[197] There are a number of factual issues on the question of what the witnesses were able to see, including the weather on the evening of Mr. Groves's death, the operation of the cameras on the tv screen, and the lighting on the poles. A number of witnesses said it was a misty, dark, rainy, and foggy morning.

[198] The Defence says this incident unfolded so quickly, in seconds, and that it is therefore a leap of logic for the Crown to say that the accused intended to kill or cause bodily harm to Mr. Groves, that he knew was likely to cause death to Mr. Groves, and that he was reckless whether or not death ensued.

[199] Mr. MacNeil says the sequence involved a punch and a kick, with him acting in a defensive mode. He was kicked and punched in the head, and Mr. Groves kept coming. His personal knowledge of Mr. Groves, widely known he says, was that he was someone to fear. If Lenny Groves had gotten up, Mr. MacNeil believed, he would surely pay the price. He said that is what Mr. Groves said to him, "you'll pay for this."

[200] Mr. MacNeil testified he heard three utterances: 1) “you are going to pay,” 2) “oh fuck, its Lenny,” and 3) “you’re a dead man.”

[201] In terms of Mr. MacNeil’s actions, and his mental state at the time, the following exchange in cross-examination sheds some light upon the accused’s intent, his mental state, and the defence theory.

But what did you think was going to happen when you kicked someone in the face with a motocross boot on?

A: That he was going to be stunned for enough time for me to get, to get to Justin’s house, get my bike and get out of there.

Q: Would you, would you, from your experience with motocross boots and how hard they are, would you say they would have the same impact as the punch you had given earlier?

A: I’ve never really thought about it, but I know that that boot ah, is going to ah, is gonna survive a lot more damage than my hand will. I punch a wall I’m going to shatter my hand, ah, I hit, hit the wall with the boot, the boots probably going to go through the wall.

Q: So, what do you think that would do to a human head?

A: I didn’t even think of the fact that I was wearing boots. They were my footwear at the moment, you know, ah, I’m sure if I had shoes on it would have been different, but I was riding a dirt bike with two broken legs that’s I’ve had injuries for, I do not get on that bike without my boots. They were just my footwear at the moment and that’s, it’s a bad coincidence that that happened to be what I was wearing. But unfortunately, that’s what I was wearing, because I was on my motorbike I did have my gear on, I wear protective gear for the bike to prevent injuries, and that heat of that moment the last thing on my mind, and to be exact, it wasn’t even anything on my mind, is that I’m wearing motocross boots, this may cause damage. I just wanted to get the fuck out of there, I wasn’t thinking what’s going to happen, I wasn’t thinking after terms, I wasn’t thinking anything, I wasn’t thinking what just happened. I was thinking I need to get out of here.

[202] The Defence says when Mr. MacNeil speaks about his boots being hard, he is speaking against interest, and this is telling because it adds to his credibility. I agree it does.

[203] When he was picked up and detained by Cst. Martell, he told the officer he was getting his bike from a friend's place, and it was registered to his mother. At this point Mr. MacNeil did not know that the outcome of the injuries to Mr. Groves was fatal.

[204] There are additional aspects I have not mentioned. For example, at page 70 of his Statement to police. Mr. MacNeil informed the officer that he was not involved in any altercation, and that he was innocent and did nothing wrong.

[205] Again Mr. MacNeil gave a statement to Staff Sergeant Oliver that spanned a period of 12 hours. I have already discussed this statement and Mr. MacNeil's evidence in detail. It was obvious his main objective was to wait to give his evidence in a court of law, as he said repeatedly.

[206] The Crown submits, that Mr. MacNeil provided three false alibis: two to the police, and the third to his mother, when he spoke to her, this being included in Exhibits 31 and 32, which is the accused's statement to police.

[207] The Defence submits that the whole of the evidence confirms:

- i. The dark and foggy weather described by Mr. MacNeil is corroborated by every police witness and most of the civilian witnesses with the notable exception of Ms. Powers.
- ii. The propensity for violence and reputational evidence regarding Mr. Groves was repeatedly affirmed.
- iii. The short chronology of time and description of the altercation and aftermath is confirmed by witnesses such as Mr. Pye, and Marsha Johnston.

[208] Repeated stomps are not evident, says the defence, pointing to the evidence of Mr. Pye, Mr. LeBlanc, and Mr. MacNeil. The Defence says it is the less reliable version of Ms. Powers that the Crown relies on to establish its case.

[209] Ms. Powers testified in a very frank and candid manner. She obviously had some difficulty giving her evidence, and expressing herself, but she was determined to do so, and I accept that she did her best to be truthful. There is a level of independence to her evidence. She knew Tyler MacNeil through her boyfriend, had met him a number of times, and they got along. They were in fact socializing that very evening. She has little motivation to lie.

[210] The obvious difference between Ms. Powers's evidence and that of the other witnesses, including Mr. MacNeil, is the number of kicks inflicted on the deceased, Ms. Powers testified she saw multiple jumps upon Mr. Groves by the accused. She is not alone in this. Her evidence is consistent with the forensic evidence given by Dr. Edgecombe. Shavon testified, "I seen Tyler jumping on Lenny's head like over and over again."

[211] The Defence submits that Ms. Powers's credibility and reliability is severely impacted by her own evidence and the rest of the evidence at trial. They submit that Exhibit 40 shows the inconsistencies of Ms. Power's evidence at trial with the evidence she gave at the Preliminary Inquiry. For example, she said at preliminary that she watched the whole incident on the tv screen, but she told Staff Sergeant Boudreau, that the cameras were fake. Her boyfriend, Mr. LeBlanc, gave evidence that only one camera was hooked up, the one over the porch, from where the bike was taken.

[212] The Defence further questions how she could see, given the weather conditions, described by the officers, Marsha Johnston, and others. Cst. Kyle Dicks testified that the distance from the cone in front of 40 Beech Street to the alleged victim's body was 196 feet. At 3:30 am on this foggy, misty night, her ability to



see what happened is improbable at best says the Defence. She is probably mistaken in her description of Mr. Pye kicking Mr. Groves off the bike.

[213] On the other hand, there are aspects of the evidence that support Ms. Powers's testimony. While the pole light was not directly over the scene, it was bright, as confirmed by the homeowner where it was located, Mr. LeBlanc. She was in an elevated position, looking down the hill, which dropped in a decline of about 9 feet, according to Cst. Petrie's evidence. She would have been viewing this on an angle, at a distance which Cst. Petrie estimated was 118 feet from the light pole at the corner of Beech Street and Cambridge Avenue to a point that was Marsha Johnston's house.

[214] In terms of the weather, it was not only her that said the weather was nice. Both Frank Fortune and Alden LeBlanc gave similar evidence.

[215] Both she and Mr. Pye said that Mr. MacNeil used both feet, although Mr. Pye heard a crunch and then saw the jumping motion. In his cross-examination, Mr. Pye at one point said, "I think Tyler is jumping on him but don't remember exactly, I was too worked up." He also said that Shavon Powers was asking a lot of questions. I can accept the Crown's argument that this does not mean she did

not see what she said she saw. The Crown further submits that the white boots worn by Mr. MacNeil add to the plausibility of Ms. Powers's testimony.

[216] I can also accept that, in the circumstances, Mr. MacNeil did not want to "give up," as it were, Lenny Groves to the police when picked up by Cst. Martell. I can also accept that the events unfolded very quickly.

[217] As the events unfolded, it appears that Ms. Powers may have been the only person to see the incident unfold in its entirety, or nearly all of it. Mr. LeBlanc took the bike and left with his guns before Shavon Powers said she saw the kicks. Mr. Pye also said the altercation was still going on when he got back to the residence. This is confirmed by Mr. MacNeil's own evidence, when he said he was alone, things got quiet and it was only him with Mr. Groves.

[218] I have considered the cross-examination of Ms. Powers on her trial evidence, and the inconsistencies with her statement at the preliminary. She had very limited knowledge of the cameras. I have reviewed the transcripts in Exhibit 40, and find it is not all that clear, that she contradicted herself. For example, at page 172 she answers "yup, yup" to a question "and that's where you saw everything unfold." It could be, as the defence says, on the screen, but might have been referring to where the incident took place.

[219] All of the witnesses lived in closed proximity to 40 and 45 Beech Street.

Marsha Johnston clearly said it was too dark to make out one of the men. She did not have her glasses at that point but was the witness closest to where the altercation took place.

[220] Cst. Burns, the first officer on the scene, said it was raining slightly, and then heavily. They used their flashlights to search and to see. It is apparent the weather had changed throughout the morning.

[221] In *R. v. P.O.*, 2021 ABQB 318, the Court reviewed the general approach to assessing witness credibility. There is no set formula, and all the evidence must be considered. Triers of fact should use their life experiences, its perception of the evidence at trial, with experience, logic, and an intuitive sense of the matter.

[222] Ms. Powers has no interest in the outcome and displayed no evidence of bias. Her demeanour was forthright. She said no more and no less than what she saw or heard. Certain witnesses heard a female voice, likely hers, from the window.

[223] Regarding the central narrative, as opposed to other matters, her evidence was internally and externally consistent regarding what she saw and was able to see.

[224] In terms of what she saw, her evidence is the only account that is consistent with the medical findings of multiple injuries to the head of Mr. Groves. Ms. Powers stated in direct, it was Lenny on the ground, making snoring noises, “fighting for air” or something. This is consistent with medical evidence and evidence of the Police Officer’s that Mr. Groves was breathing heavily.

[225] There is no question that the blunt force injuries to the deceased, Lenny Groves, resulted from the altercation between him and Tyler MacNeil on the date in question. However, they did not result solely from Tyler MacNeil grabbing Lenny Groves and hauling him off the bike to the ground, as was suggested by defence in its first hypothetical. Nor did they result from Fred Pye entering the picture to step over the two men. He said he landed and skipped over them in an effort to stop himself when he caught up to them. It was not a stomp as submitted by the Defence.

[226] The medical examiner clearly explained the cause of death as blunt force trauma to the head caused by multiple blows to the head, neck, arms, torso, and extremities of Mr. Groves. The most severe of the injuries was brain injury which led to the two other mechanisms of asphyxia and cardiac arrest. Her response to the question by defence when the hypotheticals were put to her:

But in this particular case we know that we have a certain set of facts and its hard for me to speculate whether if x, y, or z happened immediately or not at all if this would have actually changed things. That's for me to comment on perhaps what actually happened in this case.

[227] Having considered the evidence of the medical examiner, I reject the submissions of the Defence, in the hypotheticals put to her, that some or all of the injuries received by Mr. Groves could have been caused by the fall with the bike of the two men, or with the two men being stepped upon by Mr. Pye. The opinion of the expert was that the death of Mr. Groves was caused by multiple blows/impacts to the head.

[228] The defence does not dispute that an altercation occurred and that it resulted in Mr. Groves death.

[229] Having weighed and considered the accused's evidence with all of the evidence, I find that he inflicted multiple kicks to the head of Mr. Groves by jumping on him. I reject his evidence that it was a single kick.

[230] I am satisfied beyond a reasonable doubt that Tyler MacNeil caused the death of Leonard Groves.

[231] The remaining issues to be decided are whether he acted in self defence, and whether he had the mental state to commit murder under s. 229(a)(ii), relied upon by the Crown in seeking a conviction for second degree murder.

**Self Defence – s. 34, *Criminal Code of Canada***

[232] I will preface this discussion by referring to my pre-trial ruling on the Scopelliti Application. In that decision I decided that the Court would consider whether there was some appreciable evidence of disposition in deciding what weight would be accorded to such evidence.

**s. 34(1)(a) – Reasonable Belief**

[233] In regard to the threats that Mr. Groves made, the Crown says this comment makes no sense coming from Mr. Groves in those circumstances. They submit it was Mr. MacNeil who said, “you’ll pay for this,” out of revenge for Mr. Groves taking his bike.

[234] No other witness heard Mr. Groves say, “you’re a dead man,” but that does not mean he did not say it. Whether or not it was said, there was an altercation between the men on the ground.

[235] The evidence of the kick to Mr. MacNeil is also in dispute, with the Crown arguing that the injury to Mr. MacNeil’s right side shown in Exhibit 5, Tab 3, Photo KJD0012, is merely “road rash.” Mr. MacNeil testified it was a hard kick that knocked the wind out of him.

[236] In regard to the first element, I am satisfied that the presence of Mr. Groves reasonably posed a threat to Mr. MacNeil. The evidence establishes that Mr. MacNeil was fearful when he realized it was him. An ordinary person in comparable circumstances, with the knowledge that Mr. MacNeil had, could have a reasonable belief that the threat of force was serious.

### **S. 34(1)(b) Defensive or Protective Purpose**

[237] This is a subjective inquiry which goes to the root of self-defence. If there is no defensive or protective purpose, the rationale for the defence disappears.

[238] I accept Mr. MacNeil's evidence that matters took only seconds or minutes (he said one minute), and that the altercation was totally unexpected.

[239] Mr. MacNeil testified that he responded to the first kick with a hard lunging punch to Mr. Grove's face. The Crown submits that after that, and even before that, there was minimal aggression shown by the deceased, only reaching in an effort to grab Mr. MacNeil's pant leg. This inquiry is also applicable to the third element, whether Mr. MacNeil's response was reasonable.

[240] There was evidence from Mr. Pye that he nudged Mr. MacNeil in the elbow to leave it, to end it, he said. Mr. MacNeil said he didn't hear that, which accords

with Mr. Pye's evidence to the effect that Mr. MacNeil was not responding to him and seemed to be "blacked out" and "staring into space."

[241] The suggestion by Mr. Pye that he should stop, prior to the kick, was not heeded by Mr. McNeil. It was after that Mr. Pye heard the crunch and saw the kicking motion.

[242] Mr. Pye said Mr. MacNeil did not say anything. While his intentions may have changed, his actions seem to suggest otherwise. He did not run away or leave.

[243] The accused responded to the alleged kick with a punch. The actions of Mr. Groves after that do seem to be minimal, even considering the words "you're a dead man."

[244] This element does acknowledge that an accused's purpose for acting may evolve as an incident progresses. The Court must consider the threat or use of force that existed at a particular time so as to assess Mr. MacNeil's actions in relation to their stated purpose.

[245] Self-defence is not available, as I have already stated, to the overly fearful or "hot-headed." The act must be taken to defend oneself or another.



[246] The evidence suggests that Mr. MacNeil went beyond this in kicking Mr. Groves as he was sitting down. The hesitation I have in reaching that finding is the speed or timing in which these events unfolded. Mr. MacNeil's evidence was that his actions were in the heat of the moment, without reflection.

[247] My impression of the evidence is that it was a quickly evolving incident, including its constituent parts.

[248] I am not satisfied that the Crown has disproved the second element beyond a reasonable doubt.

### **S. 34(1)(c) – The Accused's Response**

[249] The third element asks whether the accused's conduct was reasonable in the circumstances. It requires an objective assessment of a reasonable person with some of the accused's qualities and experiences.

[250] The relevant circumstances have already been discussed to some extent under the first two elements, including some of the factors listed in s. 34(2).

[251] In assessing the accused's role in the entire incident, there is a chokehold that he placed on Mr. Groves's, as confirmed by Justin LeBlanc and Fred Pye. It was Mr. MacNeil's evidence that Mr. Groves body relaxed, and the accused got

up. It was then he said the threat came with Mr. Groves reaching up. The response from Mr. MacNeil was to jump on him, as I have found.

[252] The nature of the force or threat has been discussed in some detail. The medical evidence confirmed the force applied to cause the blunt force trauma would be significant and repeated.

[253] In my view, there was no imminent force emanating from Mr. Groves, and there may have been other means available to respond to the force for example, had Mr. MacNeil heeded the advice of Fred Pye.

[254] Mr. MacNeil's role in the incident was central. He initiated the takedown, which, in the circumstances, was not unreasonable, having just been alerted that a valuable piece of property was taken in the wee hours. A struggle ensued between the two men, culminating in the actions of Mr. MacNeil that caused the death of Mr. Groves.

[255] Mr. MacNeil then returned to the house to retrieve his bike and in haste to get away, says he left his jacket, helmet, and bike gear. He was headed toward a safe place, his friend Steve's, he said.

[256] Mr. Groves was 36 years of age at the time, and Mr. MacNeil 31. There is little evidence of their physical capabilities prior to the incident except for evidence in relation to Mr. Groves.

[257] The evidence suggests that Mr. MacNeil had the upper hand in the incident, in my view. Mr. Groves, it seems, never stood up or left the ground. I have considered the accused's evidence that Mr. Groves was punching back at him in the struggle.

[258] There had been a previous history between the accused and Mr. Groves. They had spent time in prison and had conversations there. There was no evidence of any previous physical altercation between them.

[259] They also knew each other. Mr. MacNeil stated he always felt uneasy around the deceased, describing him as unpredictable.

[260] Among these factors, the nature and proportionality of Mr. MacNeil's response to the use or threat of force is certainly a relevant circumstance the Court must consider.

[261] Having considered the evidence, I find the nature of the response to the use or threat of force to be unreasonable in these circumstances.

[262] The amount of violence or aggression emanating from the deceased was minimal and did not warrant the violent response by Mr. MacNeil, which was disproportionate. He had other options, including leaving the scene. Instead, he inflicted a devastating degree of force, in my respectful view.

[263] In the result, I find the accused's response was unreasonable. The Crown has disproved the third element. Mr. MacNeil's defence of self-defence is not made out.

**Did Tyler MacNeil have the Mental Intent to commit murder under s. 229 of the *Criminal Code*?**

[264] The accused is charged with one count of second-degree murder. In order to obtain a conviction on this charge The Crown must prove beyond a reasonable doubt that Mr. MacNeil (1) caused the unlawful death of Leonard Groves and (2) either (i) intended to cause his death or (ii) meant to cause him bodily harm that he knew would likely cause his death and was reckless as to whether death ensued.

**Mens Rea**

[265] Section 229 of the *Criminal Code* defines culpable homicide as murder in three circumstances.

[266] Section 229(a)(i) provides the simplest definition, namely intentionally causing the death of a human being.

[267] In this case the Crown has not advanced an argument under s. 229(a)(i). The Crown in this case relies on s. 229(a)(ii) of the *Criminal Code* to establish that Mr. MacNeil had the requisite intent, the mens rea to commit murder in the second degree of Leonard Groves.

[268] My decision therefore will focus on whether the Crown has proven beyond a reasonable doubt that the accused had the intent under s. 229(a)(ii). In order for the Crown to discharge its burden, the Crown must prove a subjective intent to cause bodily harm and a subjective knowledge that the bodily harm was of such a nature that it would likely result in the death of Leonard Groves and that Mr. MacNeil was reckless whether death ensued or not.

[269] In *R. v. Cooper*, [1993] 1 S.C.R. 146, Cory J., for the majority, considered the issue of intent, stating:

The intent that must be demonstrated under s.212(a)(ii) has two aspects. There must be (a) subjective intent to cause bodily harm: and (b) subjective knowledge that the bodily harm is of such a nature that it is likely to result in death. It is only when these two elements of intent are established that a conviction can properly follow.

[270] I have found that Mr. MacNeil inflicted multiple blows to the head of Mr. Groves, causing his death.

[271] If death results from a series of wrongful acts that are part of a single transaction, then it must be established that the requisite intent coincided at some point with the wrongful acts.

[272] The Crown, referring to *R. v. Kruk*, 2024 SCC 27, asks the Court to apply reason and common sense in assessing the element of intent.

[273] In order to determine if Tyler MacNeil had the requisite intent, it is necessary that all of the evidence bearing on intent be considered.

[274] The Crown submits the injuries, and the cause of death have a bearing on the issue of intent. The cause of death, blunt force injuries to the head, involved several mechanisms of death, but they all stem from the blows to the head, as concluded by the Medical Examiner in her report. She could not say how many, but said significant force would be required to cause the injuries.

[275] Multiple injuries do not necessarily mean multiple blows, but the weight of the evidence in this case points to that, in my view.

[276] The Crown submits it is logical to conclude that the blood on the boots came from a source in direct contact with the boots and not some indirect source. The DNA expert confirmed the blood on the boots was that of Mr. Groves, with the odds against it being someone else's being astronomical. The boots did not have only a little red spot on the inside heel, as stated by Mr. MacNeil.

[277] The Crown submits this evidence goes to the issue of intent, and the accused's actions demonstrate that he intended to cause bodily harm to Mr. Groves of a kind that he knew was likely to cause the death of the deceased and was reckless whether or not death ensued.

[278] It is illogical, the Crown says, after having caused these injuries for Mr. MacNeil to expect that Mr. Groves would simply get up and leave.

[279] The theory of the Defence includes a number of submissions, and some of the pivotal issues have already been decided, such as causation, the numerous impacts delivered, who delivered them, and whether Mr. MacNeil was acting in self defence.

[280] The Defence submits a key aspect of this case, is the accused's awareness that it was Mr. Groves he had confronted, not just some John Doe.

[281] Another key feature from the Defence point of view is the alleged unreliability of the Crown witness Shavon Powers. At this point I will simply say that none of the inconsistencies which were said to exist in her testimony impacted my assessment of her credibility and reliability about what she saw. She had a different vantage point than other witnesses, many of whom were closer. In her testimony she described having witnessed, more of the events than the other witnesses. Despite frailties in her evidence, I found her to be credible and reliable, specifically on what she saw of the altercation itself.

[282] On the issue of Mr. MacNeil's state of mind, the common theme of the Defence is the quickness or speed in which the events unfolded. Upon discovering it was Lenny Groves, the accused became fearful and reacted very quickly. Time and again I have considered whether the accused's actions, which he says were in the heat of the moment, constitute either of the mental states for murder under s. 229 that must be proven by the Crown.

[283] In these circumstances, Mr. MacNeil argues that he had no time to form the intent to commit murder. He said reacted quickly, and in his own view poorly, but he did say he made a decision. That decision was to kick Mr. Groves, who was down, as hard as he could with hard, stiff motocross boots that the accused said are the hardest boots you can buy.



[284] In *R. v. Steele*, 2014 NSPC 123, Judge Derrick (as she was then) held that the “highly subjective element” for murder was not that Mr. Steele ought to have known but that he actually knew that stabbing Mr. B with the knife was likely to kill him, and he went ahead anyway.

[285] The accused gave evidence of what he was thinking. He said his intention changed between the time of chasing Mr. Groves and the time of realizing that it was him. After that he was only thinking of survival.

[286] Mr. MacNeil said other things; he said he had a knife on him, that he did not use; he said if he wanted to kill Mr. Groves, he would not have been breathing when he was found; he left him snoring, he said, and expected him to wake.

[287] The Defence says it comes back to what the Crown has proven, and they have failed to provide a version that aligns with their (the Crown’s) theory.

[288] The manner in which the accused caused the death can shed valuable light on intent for murder. In his evidence Mr. MacNeil showed he had an in-depth knowledge of his boots being potentially deadly tools. They were like sledgehammers, he said, this shows an awareness of their potential to cause significant harm. *R. v. Rodgers*, 2014 ONCA 366

[289] He testified that he never thought of this at the time, but I find on the whole of the evidence that Mr. MacNeil acted decisively to eliminate the threat by striking Mr. Groves repeatedly. A person's initial motive may not be to cause death, but he may eventually do something which he knows will kill or likely result in death. *R. v. Pirko*, 2023 BCCA 120

[290] I am mindful of the guidance *W.D.*, the burden of proof, and the presumption of innocence.

[291] I am satisfied having considered all of the evidence that the Crown has established that Mr. MacNeil unlawfully caused the death of Mr. Groves by intending to cause him bodily harm that was so serious that he knew it was likely to result in the death of Mr. Groves, and that Mr. MacNeil was reckless as to whether death ensued or not. I infer that Mr. MacNeil intended the natural consequences of his actions. He knew the potential for injury was significant, he was to some extent, encouraged to stop, but he repeated his actions multiple times. He continued in spite of the risk. I have considered *R. v. Hodgson*, 2024 SCC 25, put forth by the defence and find it is distinguishable from the facts of the present case.

## **Intoxication**

[292] There was some evidence of Mr. MacNeil's level of sobriety that evening. The witnesses said when he arrived he had a "buzz" on. Ms. Powers, Mr. Pye, and Mr. LeBlanc said he was drinking but seemed himself, there were no issues, slurred speech, or anything like that.

[293] Mr. MacNeil testified he had a warm, tingly feeling, happy go lucky, he said. Constable Martell said he could smell alcohol from the accused but said he was coherent, and understood him, stating he was relatively sober.

[294] I further find on the facts of the case that the accused's level of intoxication was such that it did not impact on his intent at the time he decided in that moment to inflict serious bodily harm. This was not advanced by the defence.

[295] This brings me to the issue of Provocation.

### **Provocation**

[296] Although the Defence asserted that Mr. MacNeil acted in self defence, they have also raised the Defence of Provocation. Mr. MacNeil says the conduct of the deceased, Mr. Groves, constituted an insult or wrongful act which was of such a nature as to deprive the ordinary person of self control.

[297] Section 232(1) of the *Criminal Code* provides that “Culpable homicide that would otherwise be murder, may be reduced to manslaughter if the person who committed it, did so in the heat of passion caused by sudden provocation.”

Provocation is defined in s. 232(2) as “a wrongful act or insult, that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section if the accused acted on it, on the sudden, and before there was time for his passion to cool.”

[298] Whether the conduct of the victim amounted to provocation or whether the accused was deprived of the power of self control by provocation are questions of fact. The ordinary person in the circumstances of an accused would have some of the attributes and knowledge of Mr. MacNeil, in relation to his interaction with the victim.

[299] In submitting his argument on self defence, Mr. MacNeil argued that the actions of Mr. Groves, were not minimally aggressive as was argued by the Crown. The Defence brief states that “Mr. Groves set out that night to deprive others of their property, by force if he had to.”

[300] Mr. MacNeil testified, upon learning it was Mr. Groves, he was in fear, and so he reacted quickly and in the heat of the moment, by kicking him in the head.

His intent he says was to incapacitate him to get away, before, Mr. Groves could carry out this threat. Mr. MacNeil claimed to be acting reasonably to protect himself, based on fear, and also claimed a loss of control from provocation.

[301] In this decision I referred to the evidence of Mr. Pye that upon learning it was Mr. Groves, that Mr. MacNeil, “just held onto him,” and “didn’t want to let go.” Mr. MacNeil said he choked him out and got up to leave. Mr. Pye said he nudged him to let it be. It was after that, Mr. MacNeil said, that he was grabbed by his pant leg and received a threat. It was only then that the accused delivered the kick, which I have found to be more than one.

[302] On the facts I have found that the accused acted to decisively eliminate the threat that Mr. Groves posed to him. (see para 289 herein )

[303] The Crown submits that if Mr. MacNeil was capable of reasoning out a perceived threat to his safety, then clearly, he had not lost self control.

[304] Paragraph 39 of this Decision reads:

[39] When asked what he was thinking at that time, Mr. MacNeil testified he saw this happen in prison, he saw people get “smucked” in the face. They stiffen up like a board and start snoring, and they’re out cold, he described. He said he was thinking, “he’s out, I am out of here.”

[305] While the events happened very quickly, I find there was an evolution to the altercation. Fred Pye and Justin LeBlanc were walking back when they respectively heard and saw the kick and jumping motion.

[306] There is evidence that the altercation impacted Mr. MacNeil. Fred Pye stated that he blacked out and was staring into space.

[307] The Crown cited *R. v. Krasniqi*, 2012 ONCA 561, where the Court held that there was no air of reality to the provocation argument where the testimony of the accused was to the effect that he was acting in self defence.

[308] Mr. MacNeil did not say he was provoked, but said he acted in self defence. He did say he acted in the heat of the moment, but to decide that he was provoked to commit this type of offence, by the theft of his bike, or even by fear knowing the deceased was capable of violence would set a dangerous and unjustifiable precedent.

[309] I have reviewed section 232 of the *Criminal Code*. The Defence argued that Mr. Groves was prepared to steal the bike and defend his action by force. I am not satisfied on the evidence that Mr. Groves's actions would cause a person to lose their grip on reason, even on the sudden.

[310] I appreciate that fear and anger are emotions that can overlap, but I am not satisfied the actions of the victim here would amount to provocation in these circumstances.

[311] The Crown submits the actions of the accused continued long after the taking of the bike. I concur.

[312] I find on the facts that no provocation defence is available to Mr. MacNeil, and therefore no basis to reduce murder to manslaughter.

[313] I have also considered the cumulative affect of these matters in reaching my decision. In conclusion I find the accused guilty of the offence as charged.

[314] For the record, I do not find an outright intent to kill under s. 229(a)(i).

[315] This concludes my decision.

Murray. J