

**CITATION:** R. v. Nahmabin, 2024 ONSC 2946  
**COURT FILE NO.:** CR-2169-22  
**DATE:** 20240523

**SUPERIOR COURT OF JUSTICE**

**HEARD:** October 10-13, 16-19, 2023,  
November 29, 2023, January 10, 2024, and  
March 20, 2024

### ***REASONS FOR DECISION***

[1] On October 25, 2020, Nada Court, aged 69 years was found injured, lying at the bottom of the stairs leading to her apartment at 915 Colborne Road in Sarnia, Ontario. She had no vital signs, and despite the efforts of first responders to resuscitate her, she died. Initially, the death was believed to be accidental. Following an investigation by the Sarnia Police, the accused, Timothy Shawn Nahmabin was arrested and charged with second degree murder in the death of his former neighbour, Nada Court, but that charge was later reduced to manslaughter, the charge he currently faces. At the commencement of this trial, the accused gave notice of his intention to re-elect to be tried by judge alone. Accordingly, the trial proceeded before me over the course of 11 days.

[2] The Crown submits that despite the fact that the death of Nada Court was initially believed to be accidental, on the totality of the evidence, including the statements made by Mr. Nahmabin, when he attended voluntarily at the Sarnia Police Station, it has been

established beyond a reasonable doubt that the accused unlawfully caused the death of Ms. Court and is guilty of manslaughter.

- [3] The Crown relies as well on the *ante mortem* statements of Ms. Court that disclose that she had a fear of Mr. Nahmabin and was concerned that he would do something to her. A fear which she communicated to a counsellor and many of her friends and neighbours.
- [4] The Crown submits that this case is unusual, but that there is circumstantial evidence before the court, which when considered in its entirety should lead the court to the only reasonable inference to be drawn, which is that Mr. Nahmabin committed a physical assault on Ms. Court which resulted in her death.
- [5] The defence submits that although much of the evidence is not contradicted, one of the central issues that has not been addressed by the evidence is whether what happened to Ms. Court was accidental or the result of a deliberate act.
- [6] The defence suggests that there is no evidence of a deliberate application of force to Ms. Court which caused her death by a fall down the stairs; to draw such an inference would require the court to engage in speculation. As for the statements of Mr. Nahmabin, the defence urges the court to find that they do not amount to an admission of responsibility, but rather speculation by the accused that he *must have* done something to Ms. Court.
- [7] Accordingly, the defence argues that the Crown has failed to prove its case beyond a reasonable doubt.

## II. THE EVIDENCE:

### The death of Nada Court

- [8] On October 25, 2020, Andrew Riddoch, who was a tenant in unit #12 at 915 Colborne Road in Sarnia returned to his home to use the bathroom. He was a friend of the deceased, and at that time, was employed as a Personal Support Worker. This was during the Covid-19 Pandemic. As part of his job, he would attend at patients' homes to provide them with personal and medical support. While he was working, he would often return home between appointments to use the bathroom due to the restrictions in place during the pandemic.
- [9] On this day, he returned home at about 10:15am and entered 915 Colborne through the rear entrance door. At that entrance, there is a landing and there are a set of stairs leading up to the apartments on the upper floor, and a set of stairs leading down to the lower-level apartments. As he entered, he observed his friend, Nada Court, at the bottom of the stairs leading to the basement, lying face down, motionless.
- [10] She lay at an angle with her head about six inches from the glass and metal door which led to the apartments on the basement level of the building. Ms. Court lived in apartment # 6 in the basement. She was dressed in pajamas and a jacket and was wearing slippers, one of which had fallen off her foot. Her glasses were on one of the stairs, with one of the lenses from the from her glasses found on the ground near her body.

- [11] There was damage observed to the glass insert in the metal door leading to the apartments that are located in the basement of the building. This was described as cracks to the glass consistent with some impact in that area.
- [12] Mr. Riddoch immediately attended to her and called 911. He then retrieved his first aid kit from his car and followed the instructions of the 911 operator by turning Ms. Court over onto her back and performing CPR. He noticed swelling on Ms. Court's face, as well as blood. He continued trying to resuscitate Ms. Court until the paramedics arrived and took over those efforts.
- [13] Mr. Riddoch was understandably upset by what he had seen.
- [14] After paramedics took over the care of Ms. Court, they found that she was VSA or vital signs absent, and despite their efforts, they were unable to resuscitate her. She was pronounced dead at 10:30am. The police who had by this time attended as well, contacted the coroner, Dr. Robert Hislop. Dr. Hislop arrived on scene at about 11:40am and examined the body of Ms. Court. He noted periorbital bruising, that is bruising around the eyes, and a laceration above her right eye. He also observed two small lacerations behind her left ear.
- [15] Dr. Hislop noted in his report that despite the lacerations observed, there was minimal blood on the floor. He noted that the glass in the door on the downstairs landing was broken and cracked about 30 to 40 centimeters from the ground which was adjacent to the body of Ms. Court. He also noted that there was nothing else concerning at the scene. He entered Ms. Court's apartment with the police and observed nothing relevant to his investigation.
- [16] As part of his investigation, Dr. Hislop reviewed Ms. Court's medical records with Bluewater Health-Sarnia and determined that she suffered from diabetes mellitus and hypertension and that she underwent a right knee replacement surgery in March 2020 and a left knee replacement surgery in May 2018.
- [17] Dr. Hislop concluded that a post-mortem examination was necessary to determine cause of death and to rule out foul play. He also wanted to determine whether a medical event had contributed to her fall down the stairs. Before the post-mortem examination was conducted, he presumed that the probable cause of the injuries to Ms. Court was due to an accidental fall down the stairs. Ultimately, he concluded that the manner of her death was undetermined.
- [18] Dr. Edward Tweedie testified and gave expert opinion evidence in the area of forensic pathology including causation and mechanism of death. His expert qualifications were admitted by the defence.
- [19] Dr. Tweedie conducted a post-mortem examination on Ms. Court at the London Health Sciences Centre on October 26, 2020. He was provided with photographs taken by Sarnia Police at the scene. He noted during his examination that Ms. Court had significant soft tissue damage to her head and face including what is described as a diffuse, boggy, red bruise to the left side of her face and head from the jaw to the scalp. Within that bruised area, there were lacerations behind her ear and an abrasion. There was bleeding under the

skin, but little external bleeding. She also had a cut above the right eye and to her upper lip. The post-mortem determined that her brain was not swollen, and there were no skull fractures.

- [20] Dr. Tweedie also noted a bruise on the left upper arm, the back of the left hand, a small abrasion on the left index finger and left little finger. She had a bruise on the right shoulder tip and a bruise on her right knee. She had also suffered three broken ribs on each side of her body.
- [21] In Dr. Tweedie's opinion, Ms. Court died of blunt force trauma injuries to her head and neck. Because those injuries were bilateral, that is on both sides of her head, he believed that that indicated more than one impact, perhaps several impacts to her head. These impacts could have been the result of inflicted trauma, that is her head being struck by an object or the result of her head striking against a fixed object such as the stairs, or the wall.
- [22] Dr. Tweedie noted that the stairwell where Ms. Court was found included many hard objects and/or surfaces. If her face and head had impacted any of those, it could result in blunt force injury. Alternatively, the injuries may have been caused by inflicted trauma.
- [23] Dr. Tweedie also indicated that since Ms. Court was found in a prone position, it is possible that she may have been unconscious from the injuries and positional asphyxia may have obstructed her airways and contributed to her death. He testified that there is a strong likelihood that her brain function was significantly disrupted by the head trauma which was likely the main mechanism causing her death. He also found that direct neck compression resulting in asphyxia could not be excluded as a factor contributing to her death due to an injury to the hyoid bone.
- [24] Accordingly, although he was able to conclude that the cause of death was multiple blunt force head and neck trauma, he was unable to determine the cause of those injuries.
- [25] In Dr. Tweedie's opinion there was at least one impact on each side of Ms. Court's head and perhaps multiple impacts resulting in the injuries she suffered. A fall down the stairs could result in multiple impacts being sustained, as could inflicted trauma by punching or kicking.
- [26] Dr. Tweedie indicated that these injuries suggest the combined effect of multiple blows to the head or a fall with significant momentum and no ability to stop herself, or a combination of both.

#### The Investigation

- [27] The police arrived at 915 Colborne Road shortly after the call was made to 911. After the paramedics determined that Ms. Court could not be resuscitated, and the coroner attended, the police took photographs of the hallway, including where Ms. Court was located in the stairwell.



- [28] The police quickly determined that no one had witnessed how Ms. Court came to be at the bottom of the stairs. The building was not equipped with any cameras or video surveillance system. No forensic evidence was gathered from the stairwell where Ms. Court was found, and nothing was observed on the stairs that might have been involved in Ms. Court's fall.
- [29] The police then conducted a canvas of the apartments located in the basement of the building. Constable Scott Oosterhof and Constable Green spoke to the accused on October 25, 2020, and he did not display anything unusual in his behaviour or demeanor. He was not able to provide any other assistance and said he was unaware of the situation.
- [30] Constable Oosterhof spoke with Jesse Duguay on October 25, 2020, and found him to be "not pleasant and quite confrontational".
- [31] At the time of Ms. Court's death, Jesse Duguay was a tenant in apartment #3 in that building. Ms. Court lived in apartment #6 across the hall from him, and Mr. Nahmabin lived in apartment #5 which was on the same side of the hall as Mr. Duguay's apartment. He testified that he had a good relationship with Ms. Court prior to her death.
- [32] His initial statement given to police on October 25, 2020, was introduced into evidence and made an exhibit at the trial, not for the truth of its contents, but for the purpose of considering whether there were inconsistencies between that statement and his evidence at trial. In that statement, he indicated that he woke up around 9:20am. He thought he woke up to a bang and then a painful scream. He did not investigate and did not leave his apartment until one half to one hour later when he observed the paramedics working on Ms. Court.
- [33] At trial, he testified that on the relevant date, he was sleeping in his living room rather than in the bedroom, when he heard "a yell and a glass smashing and doors and a bunch of running". He said that the scream he heard was definitely female. He believed that this was at about 9:00 am but acknowledged that the time he mentioned in his statement would be more accurate.
- [34] There were obvious inconsistencies between his statement and the evidence given at trial and at the Preliminary Hearing. He agreed that he did not initially tell the police that he heard running down the hall after the scream and smashing noise.
- [35] He gave a second statement to the police on November 20, 2020. He acknowledged that between giving the first statement and the second, he was told that Mr. Nahmabin "went and confessed".
- [36] He acknowledged that he had consumed marijuana on the date that he testified in chief, and that he uses marijuana daily. His evidence was paused to continue the following day and he was asked not to consume any marijuana prior to testifying.
- [37] On the second day of his evidence, Mr. Duguay testified in chief that given his work in music he is very attuned to sounds. He testified that on October 25, 2020, he heard a smash together with a painful scream, like someone pushing someone. Then he heard a bunch of

doors closing, which he believed to be the back door, "his" door, meaning Mr. Nahmabin's apartment door opening and closing, running footsteps and the front door opening and closing. He was adamant that he could distinguish the sounds that the various doors made.

- [38] Mr. Duguay testified that he heard Mr. Nahmabin's door open and close, but he did not provide this information to the police when he first spoke to them.
- [39] He also testified that he heard some mumbling which he interpreted to be the accused speaking with his son "after he pushed an old lady down the stairs".
- [40] Mr. Duguay testified that he was affected by what happened to Ms. Court and felt like killing himself afterwards. He also felt guilty for not doing anything after hearing those sounds on that date.
- [41] In cross-examination, Mr. Duguay was argumentative and difficult. Despite testifying in chief that he was "stoned or high" on the night before Ms. Court died, he refused to adopt his own words during cross-examination.
- [42] In cross-examination, he acknowledged inconsistencies between his evidence at trial and his evidence at the Preliminary Hearing on January 12, 2022. At the Preliminary Hearing he testified that he woke up to a scream and a smash or a smash and a scream and he was unsure which came first. At trial, he insisted that it was a scream first and a smash followed despite his answers previously.
- [43] Mr. Duguay testified that he did not recall speaking to the police to give them a statement. He testified that he felt that the officer rushed the statement.
- [44] It was obvious from the tone of the evidence and the answers given by Mr. Duguay that he had determined that Mr. Nahmabin had pushed Ms. Court down the stairs which resulted in her death and his evidence was embellished to fit with his opinion. His evidence was unreliable and is of very little assistance to the court. I do not accept his evidence that PC Oosterhof rushed him in providing his statement. Nor do I accept his evidence that he heard doors opening and closing and mumbling from Mr. Nahmabin's apartment. These would have been important details to provide to the police. Also, given the position of Ms. Court's body at the bottom of the stairs, it would have been difficult for someone to open the door to get past her.
- [45] The police determined through the statements obtained from the neighbours, that part of Ms. Court's daily habits included going outside to smoke. She apparently left her apartment and climbed the stairs to the rear exit of the building four to five times a day or more to smoke. She had a chair set up outside, which was adjacent to her window. Mr. Nahmabin was a smoker as well and he would go outside to smoke also, and he sat outside his own window.
- [46] Further, at the time of her death, Ms. Court was recovering from her second knee replacement surgery. Although she initially used a cane to assist in walking, it appears she

was not using one at the time of her death. Mr. Riddoch described her as not yet 100% and described how she would walk down the stairs one at a time.

The ante-mortem statements of Nada Court

- [47] The Crown brought an application to introduce into evidence certain statements made by Ms. Court about the accused to her friends, neighbours and to her counsellor prior to her death. The court granted the application and admitted the statements to establish Ms. Court's state of mind.
- [48] Ms. Court expressed feelings of fear and apprehension about Mr. Nahmabin to a number of people.
- [49] Mr. Riddoch testified that he had had conversations with Ms. Court about Mr. Nahmabin on a number of occasions. He testified that Ms. Court had expressed to him that she felt unsafe with Mr. Nahmabin and that he would hold the door open for her and then follow very closely behind her on the stairs, which she felt was meant to intimidate her. She was afraid he was going to push her. Mr. Riddoch advised her to call the police, and to report the accused for failing to keep a safe distance in accordance with Covid protocols in place at the time. She advised him that she had, although there is no evidence that she did. Mr. Riddoch did not personally witness any conflict between Mr. Nahmabin and Ms. Court.
- [50] He knew that she had had knee replacement surgery about two and a half to three months earlier according to him. He described her mobility as "not 100%" but improving following her surgery. She did sometimes use a cane to get up and down the stairs and would hold onto the railing for support. Ms. Court had also complained to Mr. Riddoch that she found stones, sticks, water, and other debris on the stairs which she felt was put on the stairs deliberately for her to trip on. In cross-examination, Mr. Riddoch acknowledged that Ms. Court told him that she did not observe the accused put water or other debris on the stairs, but she presumed that he did so.
- [51] Matteo Tersigni testified that he resided in the building at 915 Colborne Road prior to Ms. Court's death. He knew that at one time she was friendly with Mr. Nahmabin and they would often share food with each other. Ms. Court told him of her fear that the accused would push her down the stairs. She told Mr. Tersigni that peanuts had been left on the stairs and water spilt on them which she suspected was done by the accused.
- [52] He also described an incident told to him by Ms. Court that occurred before her surgery which was in March 2020, when she said that the accused nudged past her on the stairs one time and let go of the door which struck her on her forearm. He did not know whether this was accidental or not.
- [53] He testified that he himself cleaned up peanuts on the stairs on two occasions. He testified that Mr. Nahmabin never said anything critical about Ms. Court, but she said things that were critical about Mr. Nahmabin. At one point he spoke to Mr. Nahmabin about Ms. Court

and asked him to “back off” because she was scared and the accused said, “she’s turning everyone against me”.

- [54] Robert Michaud testified that Ms. Court told him about one to two months before her death that she was scared of Mr. Nahmabin.
- [55] Lucille Frayne was a friend of Ms. Court’s for many years. She testified that Ms. Court told her that she was feeling more and more uncomfortable with her neighbour Mr. Nahmabin. She described an incident that she said was communicated to her by Ms. Court. In the summer of 2020, Mr. Nahmabin physically pushed her up against the door jamb to the laundry room. She did not know whether this physical interaction was intentional or an accident.
- [56] Melynda Subinski was the property manager at 915 Colborne Road. She testified that Ms. Court told her that there was sometimes water or peanuts left on the stairs that she thought were put there to make her fall. Her daughter also testified to being told similar things by Ms. Court.
- [57] Ms. Court expressed to her fears about the accused and that he might push her down the stairs. Ms. Subinski testified that Ms. Court expressed those fears to her at least 20 or 30 times. She said that when she went outside to smoke, the accused followed her. Ms. Court told Ms. Subinski “If anything happens to me he did it”. The last time she mentioned it was a few days before her death. She testified that she herself never observed any verbal conflict between the two and Ms. Court never advised her of any physical incidents. Initially she testified that Ms. Court was “paranoid” but then corrected herself and said she was “petrified”.
- [58] Margaret Shaw, a friend of Ms. Court’s testified that she spent quite a bit of time with Ms. Court at her residence. She slept at Ms. Court’s residence at least 130 to 140 times a year. She said that Ms. Court did not feel comfortable with Mr. Nahmabin because he suddenly stopped speaking to her. She described an incident when Ms. Court found water on the steps and observed Mr. Nahmabin cleaning it up. She described that Mr. Nahmabin seemed apologetic about it. She also described that she was present when Mr. Nahmabin carried down a heavy bag of kitty litter for Ms. Court a week before she passed away.
- [59] Ms. Court told Ms. Shaw, that if she was found at the bottom of the stairs, she would know where to start looking.
- [60] Ms. Shaw also testified that Ms. Court was acting oddly before her death and Ms. Shaw felt she wasn’t thinking quite straight, and was having some health issues.
- [61] Ms. Court told her counsellor, Lisa Hodgins, who made notes of the statements, that she was afraid of her neighbour and what he might do. She did not name the individual but said that “he has poor mental health” and she said he leaves peanuts on the steps or walks close behind her. These statements were made on June 18, 2020, but on September 2, 2020, Ms. Court reported to Ms. Hodgins that she was dealing better with the neighbour.

- [62] This evidence reveals that Ms. Court had concerns for her safety from Mr. Nahmabin, but it does not assist the court in determining whether she had a genuine basis for her fears. For instance, although Ms. Court expressed that she thought that the accused intentionally left peanuts or water on the stairs, she did not observe him do so except for the single occasion testified to by Ms. Shaw, who indicated that Mr. Nahmabin was actually cleaning up the water and that he was apologetic about it, which suggests that he may have accidentally spilled water on the stairs.
- [63] None of the neighbours ever heard Mr. Nahmbain say anything critical about Ms. Court, but she was critical of him. The two incidents of alleged physical contact between them may have been accidental.
- [64] This evidence falls short of establishing that Mr. Nahmabin was threatening towards Ms. Court. Many of the complaints made by her are based on assumptions, that is that the accused was leaving debris on the stairs to intentionally cause her to fall. It appears that except for one incident when he spilled water on the stairs, there is no indication that Mr. Nahmabin ever left anything on the stairs with the intention that it would cause Ms. Court to fall.

The statements and notes of the accused

- [65] Mr. Nahmabin was arrested after he attended at the police station on October 31, 2020. At the time, he was not suspected of involvement in the death of Ms. Court and the investigation was ongoing.
- [66] The Crown introduced into evidence surveillance video from the Sarnia Jail and the Sarnia Police Station which was taken in the early morning hours of October 31, 2020. At approximately 5:20am the video reflects that an individual who is admitted to be the accused attend at both locations but did not speak to anyone.
- [67] It is conceded that at approximately 12:15pm on that same date, the accused attended again at the Sarnia Police Station. At that time, PC Oosterhof was working behind the front desk. As a result of Covid protocols in place at the time, the front door to the police station was locked and anyone who attended had to be let into the lobby by a police officer.
- [68] Mr. Nahmabin entered the vestibule and picked up the telephone that was affixed to the wall immediately outside of the entry door to the lobby of the police station. The phone was answered at the front desk by PC Oosterhof. He testified that the accused said the following words: "I have a confession to make. I may have done harm to my neighbour." The officer asked, "what do you mean?" and he replied by saying: "I may have killed my neighbour".
- [69] The questions asked and answers given by the accused after he was allowed entry into the lobby of the police station were the subject matter of a *Charter voir dire* which resulted in the court excluding that evidence pursuant to s. 24(2) of the *Charter* as a result of a violation of the accused's rights pursuant to s. 10(b) of the *Charter*.



- [70] After speaking to P.C. Oosterhof the accused was arrested for second degree murder. Thereafter, the accused provided two statements which were recorded and were acknowledged to have been voluntarily made. During the first interview, Mr. Nahmabin is emotional and crying. In that first statement taken by Detective Constable Kent Jamieson, the following exchange takes place when they discuss what he initially said on the phone to P.C. Oosterhof<sup>1</sup>:

**D/C Jamieson:** And what did you say on the phone?

**T. Nahmabin:** I said I had a confession; I believe I undid [ended] my neighbour.

- [71] He also explained the incident when he spilled water on the stairs. The accused told D/C Jamieson that he spilled water as he was going outside in the summertime to put water into the back of the air conditioner to keep it cool. Apparently, Ms. Court made a complaint accusing him of spilling water deliberately, despite the fact that he wiped it down with a rag. He then went into his apartment and retrieved a bucket and a mop to clean it up further.
- [72] When D/C Jamieson asks him to explain what happened in relation to the death of Ms. Court, and whether he was going downstairs or upstairs when it happened, he responds "I don't know". When asked if Ms. Court was alone when he encountered her, he answers: "I don't know".
- [73] When asked what he does remember, Mr. Nahmabin says he was sitting on his windowsill drinking his coffee and his heart was racing. When he stood up everything went fuzzy and then he was in his apartment with a coffee watching YouTube.
- [74] D/C Jamieson then asked the accused if he "snapped" when he pushed her down the stairs. He responds by saying "I think so". He describes everything as "fuzzy" and says, "it must've been me".
- [75] D/C Jamieson questions whether Mr. Nahmabin generally has no memory of the incident and says:

"You're not just gonna make an assumption that, well I don't have a memory for half an hour or whatever the period of time is and then come in and say, well it was me because I don't remember anything."

- [76] In the exchange that follows, Mr. Nahmabin said: "My hands were full. I would've had to kick her to push her". When he was asked if he kicked her, he answers "I blacked out".
- [77] The following exchange then takes place<sup>2</sup>:

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<sup>1</sup> Transcript of Statement #1 of Timothy Nahmabin, October 31, 2020, p. 16

<sup>2</sup> Transcript of Statement #1 of Timothy Nahmabin at p.48



**D/C Jamieson:** ...but I'm asking you what you remember. If you kicked her?

**T. Nahmabin:** I had my book, I was reading, my heart started racing, trying to finish what was left of my coffee, dumped out my grinds, stood up, vision went fuzzy, I blacked out. Carrying a book and a mug. I would have had to have kicked her to push her.

[78] The accused also says: "Reasonable deductions. That was me. I have to own up to it." And later he says: "If I blacked out it must've been me that pushed her".

[79] A second interview is conducted later the same evening. During that interview, Mr. Nahmabin says: "What drove me here is that if I felt such hurt and annoying tension, and if I blacked out it must be me".

[80] The following exchange takes place later in the interview<sup>3</sup>:

**D/C Jamieson:** Then why did you tell them earlier that you, you pushed her down the stairs? [*n.b. this statement was excluded from admission at trial but is referred to here to give context to the next statement*]

**T. Nahmabin:** Cause that's that's all, that's everything that's been deducted and shown. Like that's what I don't remember, and she's laying at the bottom of the stairs and I've got this gut feeling that just won't stop knowing on me. And it has to do with me if I've got hurt feelings, I must've done something. I can't deny how I feel.

[81] At no time does Mr. Nahmabin actually describe the events that lead to the death of Ms. Court.

[82] The Crown also introduced into evidence notes that Mr. Nahmabin brought with him when he attended at the Sarnia Police Station on October 31, 2020. Some of those notes have references to Ms. Court and to his attendance at the police station.

[83] One of the notes dated October 26, 2020, appears to say "scared a.f. -what do I do now? \*yesterday 3 huge police officers knocked @ my door to say unit 6 had tumbled/fell in stairs and past[sic]". A note from the same date at 2:25 pm says: "I don't feel right, I feel this is going to be on me".

[84] The notes confirm that Mr. Nahmabin walked to the jail at 5:30am and then to the police station and no one was there.

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<sup>3</sup> Transcript of Statement #2 of Timothy Nahmabin at p. 22-23

- [85] Some of the earlier notes appear to disclose animosity towards Ms. Court. On September 8, 2020, he referred to her as a “two faced KUNT” and on May 1, 2019 he writes “would you feel irritated enough to kill with an average of 3 or less hours of sleep?”.
- [86] On May 26, 2020, he writes at 12:06am “If at some point she asks “why don’t you like me?” I fear, I will cause her harm, for “experienced” redundant questions.”
- [87] None of the notes contain any admissions about causing Ms. Court to fall down the stairs.

### III. ANALYSIS

#### The Relevant Legal Principles

##### *i) The Burden of Proof*

- [88] The accused is presumed innocent of the charge unless and until the Crown proves all the essential elements of the offence and thereby satisfies the court of his guilt beyond a reasonable doubt. That burden never shifts. There is no onus on the accused to prove anything.
- [89] The term “beyond a reasonable doubt” has a special meaning in a criminal trial. It is a fundamental component of a fair trial. It imposes a high standard. A reasonable doubt is not based on sympathy or prejudice but is based on common sense and reason, and is logically connected to the evidence or absence of evidence.<sup>4</sup>
- [90] Recently in *Rex v. Kruk* 2024 SCC 7 at para. 60 Martin J. says:
- Various protections relating to the assessment and weighing of evidence flow from the presumption of innocence and the right to silence. Notably, an accused’s silence at trial may not be treated as evidence of guilt, as such reasoning would violate both principles (*Noble*, at para. 72).
- [91] The court must consider the totality of the evidence in determining whether the Crown has proven its case beyond a reasonable doubt. In *Rex v. Abdelrahman* 2022 ONCA 798 at para. 7 the Court says:

The approach the trial judge takes to the evidence must be correct in law to ensure that the ultimate weighing of the evidence is not flawed. It is an error of law to examine individual pieces of evidence in isolation, subjecting each of them to the standard of proof beyond a reasonable doubt; they must be considered in the context of all the evidence: *B.(G.)*, at pp. 76-7, *Scott*, at para. 47; *Palmer*, at para. 61. *R. v. Button*, 2019 ONCA 1024, at para. 9.

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<sup>4</sup> *Regina v. Starr* 2000 SCC 40 at paras. 230-231

*ii) Circumstantial evidence*

- [92] In *Regina v. Villoroman* 2016 SCC 33 Cromwell J. speaking for the Court identifies how a trier of fact is to use circumstantial evidence. He says at para. 30:

It follows that in a case in which proof of one or more elements of the offence depends exclusively or largely on circumstantial evidence, it will generally be helpful to the jury to be cautioned about too readily drawing inferences of guilt. No particular language is required. Telling the jury that an inference of guilt drawn from circumstantial evidence should be the only reasonable inference that such evidence permits will often be a succinct and accurate way of helping the jury to guard against the risk of “filling in the blanks” by too quickly overlooking reasonable alternative inferences.

- [93] The Court goes on, at para. 35 to remind that inferences consistent with innocence do not have to arise from proven facts, because to do so would put a burden on the accused to prove facts. When dealing with circumstantial evidence, the trier of fact must determine what reasonable inference can be drawn from it. If there are reasonable inferences other than guilt, then the Crown has not proven the case beyond a reasonable doubt. However, the Crown is required to negate “reasonable inferences”, not every possibility, no matter how remote, that is inconsistent with guilt (*Villoroman* at para. 37).
- [94] The court must remember that alternative inferences whether arising from the evidence or an absence of evidence, must be reasonable and not simply possible, *Villoroman* at para. 42.

*iii) Manslaughter*

- [95] Manslaughter is defined in s. 234 of the *Criminal Code* as culpable homicide that is not murder or infanticide. It is considered a residual category of culpable homicide where the accused did not possess the intent for murder.
- [96] Recently in *Regina v. H.C.* 2022 ONCA 409, Coroza J.A. speaking for the Court set out the test to prove the offence of manslaughter as follows at para. 34:

[34] To prove manslaughter beyond a reasonable doubt, the Crown must prove: (i) an unlawful act or omission (actus reus); (ii) that the unlawful act or omission was inherently dangerous in that it presented an objectively foreseeable risk of causing injury and was a marked departure from the standards of a reasonable person (mens rea); and (iii) that the act or omission caused the death (causation); see *R. v. Plein*, 2018 ONCA 748, 365 C.C.C. (3d) 437, at para. 30.

[97] In *Regina v. Javanmardi* 2019 SCC 54 at paras. 30 and 31 the Court says:

[30] As a result, the actus reus of unlawful act manslaughter is satisfied by proof beyond a reasonable doubt that the accused committed an unlawful act that caused death. There is no independent requirement of objective dangerousness.

[31] The fault element of unlawful act manslaughter is, as noted, objective foreseeability of the risk of bodily harm that is neither trivial nor transitory, coupled with the fault element for the predicate offence (*Creighton*, at pp. 42-43; *DeSousa*, at pp. 961-62).

#### IV. APPLICATION OF THE PRINCIPLES

[98] In order to determine whether the Crown has established the guilt of the accused beyond a reasonable doubt, the court must consider the totality of the evidence. I agree that this is a somewhat unusual case. There is no direct evidence as to how Ms. Court died. There is no forensic or other evidence connecting the accused to the death of Ms. Court.

[99] I accept the uncontested evidence of Dr. Tweedie that she died from blunt force trauma to her head and neck. This was more than likely the result of multiple impacts to both sides of her head. He could not, however, determine whether the injuries were the result of inflicted trauma by punching or kicking, or impacts sustained in a fall down the stairs, or a combination of both.

[100] To be found guilty of manslaughter, the Crown must prove beyond a reasonable doubt that Mr. Nahmabin:

- i) committed an unlawful act against Ms. Court;
- ii) that the unlawful act was inherently dangerous and presented an objectively foreseeable risk of causing injury and was a marked departure from the standards of a reasonable person; and
- iii) that the act caused the death of Ms. Court.

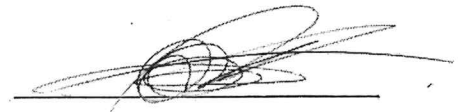
[101] The unlawful act which the Crown alleges was committed by Mr. Nahmabin is an assault by hitting or pushing Ms. Court to cause her to fall down the stairs.

[102] The Crown relies on the evidence of Jesse Duguay, the *ante mortem* statements of Ms. Court as well as the statements of the accused, in addition to the expert evidence to support their position.

[103] I will consider each of these items of evidence, but I am mindful that the cumulative effect of the evidence must be considered in determining if the Crown has met its burden.

- [104] As it relates to the evidence of Jesse Duguay, I have already expressed my concerns with his evidence. There are a number of inconsistencies in his evidence that cause me concern. His initial statement was given to the police on October 25, 2020. PC Oosterhof who took the statement described Mr. Duguay as being quite confrontational. I note that the initial statement is brief and did not include any reference to hearing running in the hall and the sound of several doors, including Mr. Nahmabin's apartment door opening and closing, or the accused whispering to his son. He only added those details to his evidence after he became aware that Mr. Nahmabin "went and confessed".
- [105] I do not accept his evidence in that regard. I find that evidence unreliable for the reasons already outlined. I cannot accept that the details he added to his evidence were the way that the events actually unfolded and not added after he became aware of the arrest of the accused. I do accept though, that he heard a bang and a painful scream as he initially indicated, at about 9:20am.
- [106] As for the *ante mortem* statements, I accept that Ms. Court had concerns about Mr. Nahmabin that she shared with a number of people. She told her counsellor, Ms. Hodgins in September 2020 that she was dealing better with the neighbour, Ms. Shaw, who can be described as a close friend of Ms. Court's described that she was acting strangely before her death. She also confirmed that Ms. Court did not feel comfortable around Mr. Nahmabin, but she also testified that about a week before her death, Mr. Nahmabin carried a heavy bag of kitty litter from the car to Ms. Court's apartment for her.
- [107] Ms. Court's fear and unease around Mr. Nahmabin appears to be based on her subjective belief that he was doing things to try to intimidate her or cause her to fall down the stairs. The evidence reflects that no one ever heard Mr. Nahmabin say anything negative about Ms. Court or complain about her. No one heard Mr. Nahmabin threaten her. No one observed him leaving debris on the stairs as Ms. Court believed. The only incident that she described that was confirmed in any way, was the incident when Mr. Nahmabin spilled water on the stairs and that appeared to be accidental. He cleaned it up right away and apologized.
- [108] While the *ante mortem* statements provide evidence of the state of mind of the declarant, that is Ms. Court, they do not in my view establish that Mr. Nahmabin had any animus towards Ms. Court or motive to cause her harm. I cannot infer from that evidence that Mr. Nahmabin must have caused Ms. Court's fall, or that the falling out they had was a motive for him to cause her harm.
- [109] I turn now turn to the balance of the evidence, including the police investigation and the statements made by the accused both in writing and to the police. The police investigation did not clearly lead to the identification of anyone involved in the death of Ms. Court. Even with the statements obtained from Ms. Court's friends and neighbours, that evidence only raises a suspicion about Mr. Nahmabin's potential involvement in the death of Ms. Court.
- [110] As I indicated, there is no direct evidence that Mr. Nahmabin assaulted Ms. Court and caused her to fall down the stairs which resulted in her death.

- [111] The notes written by the accused do not contain an admission by him. They do reflect that he referred to Ms. Court by derogatory names and obviously had a dislike for her. He writes in May 2020 that he fears he will cause her harm for asking "redundant questions" if she were to ask him why he didn't like her. Certainly, that evidence raises some concerns, but I note it was written about five months prior to Ms. Court's death.
- [112] As for the statements made by Mr. Nahmabin when he attended at the police station, although he says he went there to confess, he doesn't actually confess; he cannot provide the police with any details of what happened to Ms. Court. He appears to be guessing or assuming that he did something to her. He said things such as "I *may* have done harm to my neighbour", "I *may* have killed my neighbour". During his statements, he does not say that he actually pushed or kicked Ms. Court down the stairs, he said that "I must've done something" .... "If I blacked out, it must've been me that pushed her".
- [113] In those statements it appears that Mr. Nahmabin is entirely unsure about whether he *actually* did anything to cause Ms. Court to fall down the stairs. He appears to assume that he must have done something because he cannot remember if he did. He does not answer any of the questions put to him about how he caused Ms. Court's death. He says that he cannot remember. He remembers being outside having a coffee and then he was in his apartment. He says because he has hurt feelings, he must have done something.
- [114] It would not, of course, be unusual for someone to indicate to the police that they wish to confess to a crime and then change their mind. It does not strike me that this is what Mr. Nahmabin did in this situation.
- [115] I cannot draw the conclusion, based on the evidence that because the accused said "it must've been me that pushed her" that he actually did push Ms. Court down the stairs. The absence of evidence as to the manner of Ms. Court's death also causes the court concern. That is not to say that I am being critical of the Crown or Dr. Tweedie. On the evidence before me, I simply cannot be satisfied that Ms. Court died as a result of being pushed down the stairs, as opposed to an accidental fall.
- [116] The onus is on the Crown to establish beyond a reasonable doubt that Mr. Nahmabin committed an unlawful act that caused the death of Ms. Court. In this case, the Crown has not met its onus, and I am not satisfied on the totality of the evidence that Mr. Nahmabin assaulted Ms. Court and caused her death. Accordingly, the accused will be found not guilty of the charge.



Maria V. Carroccia  
Justice



**DELIVERED:** Orally on May 22, 2024

**CITATION:** R. v. Nahmabin, 2024 ONSC 2946

**COURT FILE NO.:** CR-2169-22

**DATE:** 20240523

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

HER MAJESTY THE QUEEN

– and –

Timothy Shawn Nahmabin

Accused

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**REASONS FOR DECISION**

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CARROCCIA J.

**RELEASED:** 20240523