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CANADA / JUDGMENT

## R. v. Elton

2012 BCSC 315

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COURT

Supreme Court of British Columbia

DECIDED

20 January 2012

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2012 BCSC 315 R. v. Elton

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Elton,

2012 BCSC 315

Date: 20120120

Docket: X074270

Registry: New Westminster

Regina

v.

Thomas Robert Elton

Before: The Honourable Mr. Justice Truscott

Oral Reasons for Judgment

Counsel for the Crown:

D.G. Wilson, B. Kielmann

Counsel for the Accused:

J.W. Conroy, Q.C., B.D. Vaze

Place and Date of Trial:

New Westminster, B.C.

November 21-24, 28-30,

December 5, 7 and 8, 2011

Place and Date of Judgment:

New Westminster, B.C.

## January 20, 2012

- [1] THE COURT: The accused, Thomas Robert Elton, is charged with the second degree murder of Brenda Turcan on June 22, 2009 at or near Surrey, in the Province of British Columbia, contrary to s. 235 of the Criminal Code.
- [2] Mr. Elton says that his actions do not constitute murder but rather constitute the aiding of Brenda Turcan to commit suicide.
- [3] Aiding and abetting a person to commit suicide is a separate offence under s. 241 of the Criminal Code, and is not an included offence under the charge of murder. Mr. Elton is not charged in these proceedings with that offence. A finding of aiding or abetting suicide will bring about the result of an acquittal of Mr. Elton for murder.
- [4] Mr. Elton and Ms. Turcan were married at the time of Ms. Turcan's death and lived together in an apartment in Surrey, British Columbia.
- [5] They had married on March 25, 2005 and for the most part had lived together since that time.
- [6] When they first met in late 1995 or early 1996, Ms. Turcan was relatively healthy, but her health started to deteriorate quite significantly after she suffered her first heart attack in 2004.
- [7] By the time of her death on June 22, 2009, Ms. Turcan was suffering from a constellation of progressive medical illnesses. It is the evidence of her family doctor, Dr. Rebeyka, that she was chronically ill, although not terminally so, and was on a number of medications prescribed by him. His evidence is that her medical problems were all treatable and manageable, however.
- [8] He says that the mixture of her medications had the potential to interact adversely if taken inappropriately but he had discussed with her the consequences of that and he only prescribed enough of the medications at any one time sufficient to carry her through to her next appointment with him.
- [9] Ms. Turcan was also on a methadone treatment program for her drug addiction and Dr. Rebeyka was aware of this and factored that into his discussions with her on the precautions to be taken in mixing the medications.

- [10] While Ms. Turcan was not terminally ill at the time of her death she had lost a lot of weight and was down to less than 100 pounds, and was having great difficulty digesting any food. Generally speaking her quality of life was quite low.
- [11] The clear evidence from Mr. Elton as well as from other witnesses is that at all times Mr. Elton and Ms. Turcan were very loving and caring of each other right through to Ms. Turcan's death, and he was very devoted to her and never complained about his obligations to take care of her.
- [12] It is the evidence of Mr. Elton that he and Ms. Turcan had an understanding, an agreement, prior to June 22, 2009 that if either of them wanted to commit suicide the other would also commit suicide.
- [13] This agreement is explained by Mr. Elton in different ways. At one point in his evidence he says that if one was "screwed up" and could not take care of themselves and their quality of life was not going to get better, then that person could commit suicide and the other person would ensure there was no interference from other persons and would also commit suicide together.
- [14] At another point in his evidence he says that if Ms. Turcan was in a position where she could not take care of herself and tomorrow could offer no better release from pain and if she wanted to commit suicide, he would help. His part of the bargain was that he would be going with her.
- [15] Further he says words to the effect that the agreement was that if Ms. Turcan was incapacitated and could not finish, he would help her die, and if one of them was incapable of making that choice happen, then as a partner or a mate to the other person, the other was required to help, and that if she started the process he was going to make sure.
- [16] The night before June 22, 2009 Mr. Elton says he fell asleep at about 4:00 a.m. and woke up about 8:00 a.m. Ms. Turcan was already up when he went into the living room to roll a cigarette. She was sitting on a couch across from him and they talked a little bit.
- [17] It is his evidence that Ms. Turcan then said, "Well, it's time, it's over. I've already gone. I've had enough." He said "What?" and she replied "It's time, right?"
- [18] He says that these were the code words they agreed to use to indicate it was time for the suicide of both. He says that once that point was reached there was no more discussion. He grabbed their dog and took him outside so the dog could relieve himself, and says that he came back inside in about 15 minutes.
- [19] When he returned he says Ms. Turcan was down and not responding, either sleeping or unconscious. He took a bottle of valium from her hand and she did not move at all. When asked if she was breathing at the time he says "not like normal". He thought she had taken something to try to end her life and had left him out of the scene.

- [20] He says that the bottle of valium was about one-third full and he fed eight pills to the dog and took 23 pills himself and then sat on his couch.
- [21] He says Ms. Turcan was not lying down but was sitting on the other couch. She was not awake and was not breathing really heavily. She did not seem to be unconscious. He figured they were into it. He says this was about 8:30 a.m.
- [22] He did not see her take any valium from the bottle but he concluded that she had started the process and he was going to finish it.
- [23] There was an object that he refers to as a bayonet on the floor by her couch that he says they kept for protection purposes.
- [24] He says that he wanted to make sure she was gone as he did not want her to come to and find that he and the dog were dead.
- [25] He wanted to be sure that she could not be resuscitated by paramedics or anybody.
- [26] He took the bayonet and tried to stab her on the right side with it. She reacted by pushing the bayonet away. He says he then put the bayonet down.
- [27] Following this he says he put his hands around her neck in a stranglehold and tightened his grip but says he did not think that he had done any damage.
- [28] In the statement that he gave to Constable Yanicki he was asked how he ended his responsibility and his response was to demonstrate a strangling motion with his hands and tell Constable Yanicki "like that, and when that didn't work, then the same thing that was on the kitchen table" (referring to the bayonet).
- [29] Later in his statement he said the strangling worked.
- [30] When he went back to the bayonet he stabbed her again with it. He thought this was in her throat area but he acknowledges the medical evidence that the wound was in the centre of her chest, although that is not his memory.
- [31] In his statement he pointed to his chest when describing the stabbing motion and said that at the time she was lying there breathing and she tried to fight him a little bit.
- [32] At trial he denies this is a correct answer and says she was not breathing at that time.
- [33] When asked if the bayonet stabbing would have killed her if it hadn't been for the strangulation, he says "eventually yes".
- [34] When asked why he did not just let her die if he had assumed she had taken drugs already, he says for some reason he did not think they had much time.
- [35] He explains that the pharmacist was expected with her methadone although he agrees the pharmacist had to be buzzed in to gain entrance.

- [36] When asked why the pharmacist could not just be ignored his answer is that would be totally uncharacteristic.
- [37] He says he was just making sure her wishes were carried out and he was going with her. He intended to help her. He says that she had had too much suffering and that was the reason he killed her.
- [38] He says she had given him permission to kill her and he strangled her and drove a bayonet into her chest to kill her. She started the process and he finished it.
- [39] He then went back to his couch and telephoned his father to tell him that Ms. Turcan was gone and he was going too. His parole officer then telephoned saying he had missed a 9:00 a.m. appointment and Ms. Turcan's parole officer also telephoned. He put both of them off.
- [40] He then decided to give his dog a second chance and he telephoned a friend, Colleen Sinclair, to come and get the dog. He says this was about 9:30 a.m. He told Ms. Sinclair that Ms. Turcan had died and he was going too and asked her to come to get the dog.
- [41] Ms. Sinclair said she would be there in one-half hour.
- [42] He says he sat on the couch and Ms. Sinclair and the police came at about the same time and he was arrested for murder. He was taken out in the hallway and sat down but refused to tell a paramedic anything about the drugs he had taken and refused all medical attention.
- [43] When asked why he did not tell the police or paramedic what drugs he had taken, he says it was because he wanted the drugs to work. It was only half of what he had intended to take, but was still a good amount and it might do the trick.
- [44] Later in his evidence he says that he was intending to take methadone as well which he says was in a cupboard in the kitchen but didn't have a chance to do that before the police arrived. He says he had only taken half the drugs he wanted to and he was going to take the methadone after Ms. Sinclair had taken the dog.
- [45] He denies he changed his mind about dying himself. He says he was pretty serious about what he wanted to do.
- [46] He confirms that he remained conscious when the police arrived and arrested him and never lost consciousness thereafter while he was transported to the police detachment, was booked in at the detachment and put in a cell, and then taken out of the cell at approximately 11:55 p.m. and interviewed until 1:11 a.m. on June 23, 2009.
- [47] Nevertheless he says the drugs in his system were taking effect and if he had not been interrupted by the police in his cell he may have lost consciousness and died. He says that the drugs were also having some effect during the interview.

- [48] In the toxicology report of Dr. Smith, he reports that a therapeutic level of diazepam, prescribed as a muscle relaxant, a sedative, or an alcohol withdrawal and anti-anxiety agent, was found in Ms. Turcan's blood. Methadone was also found in her blood in a concentration typical of what might be expected in an opioid-tolerant person receiving methadone maintenance therapy. Citalopram, used to treat depression, was also detected in an unidentified amount, as was ethyl alcohol in an undetermined concentration.
- [49] Ms. Turcan's cause of death was determined by Dr. Charlesworth, a forensic pathologist, to be mechanical asphyxia or strangulation. The stab wound to her chest was estimated to be 22 to 23 centimetres in depth. His conclusion is that the stabbing could have occurred earlier than the strangulation or shortly thereafter, and by itself would have caused her death.
- [50] Significant injuries to her neck typical of external force being applied to the neck structures were found, resulting in the collapse of the airway.
- [51] None of her chronic medical conditions in his opinion contributed in any direct fashion to her death.
- [52] He did not see any sign of pills in Ms. Turcan's stomach and only 60 cc of semi-solid material. He concludes that she did not appear to have taken much of anything just prior to death, and specifically, any valium for a while. If she had ingested a lot of drugs just before death he would expect to find more than 60 cc of paste material in her stomach.
- [53] Dr. Charlesworth explains that in order to determine what effect any drugs were having at the time of her death, it is what was going on in her blood and not in her stomach that was going to indicate what was having effect. From the blood samples he determined that there was no effect on her body at death from the drugs found in her blood.
- [54] Mr. Jeffery, a toxicologist consultant, reviewed the report of Dr. Smith and formed the following conclusions:
1. The concentration of diazepam, nordiazepam, temazepam and oxazepam found in the blood are consistent with a therapeutic dose of diazepam. The other 3 drugs found are all metabolites of diazepam.
  2. The interaction of methadone and diazepam produces a subjective opioid effect greater than either drug alone.
  3. The interaction of citalopram and methadone may yield a higher blood concentration of methadone. The calculated dose of methadone from the blood concentration is 107.8-134.8 mg. This is higher than the dose of methadone Ms. Tucan [sic] was taking. Therefore this blood concentration of methadone may be higher due to the drug interactions. I must state these calculations are highly variably and may be effect by post-mortem distribution of the drug,

4. The concentration of methadone found in the blood is consistent with a subject on the methadone maintenance program.
  5. The combined effect of methadone, the 4 benzodiazepines and citalopram will yield a greater Central Nervous System Depression than either of the drugs alone. This combination may well lead to greater depressant activity all way up to sedation and possibly unconsciousness.
  6. It is highly unlikely that a Medical Doctor would prescribe to a methadone maintenance patient, diazepam and citalopram, due to the possible adverse drug interactions.
- [55] In his evidence at trial he explains that it is difficult to say if the amount of methadone found in Ms. Turcan's blood was a high dose for her since she was already on the methadone program, and his calculations are only to be considered as a guide or possible calculations.
- [56] He was not aware that Ms. Turcan had been treated by Dr. Rebeyka for the previous nine years and that her drug intakes were constantly monitored, save for methadone, of which Dr. Rebeyka was aware of her intake of methadone.
- [57] Mr. Jeffery acknowledges that the longer one uses a combination of drugs and becomes more tolerant one conclusion could be that there is less likelihood of the risk of depressive activity leading to sedation and possibly unconsciousness.
- [58] He also agrees that a doctor has the right to prescribe what he considers to be appropriate as long as he takes into account the overall toxic effects on the patient and in this regard he acknowledges the difficulty in estimating the effect of drugs pre-death on a deceased from calculations of drugs in the system post-death. In his view it must be approached with great caution and the calculations are highly variable and only an indication.
- [59] Mr. Elton concedes Ms. Turcan's death was caused by asphyxiation due to manual strangling and would otherwise have been caused by the bayonet wound.
- [60] However he submits that the contribution of drugs in her system including methadone was not determined by the evidence at trial and he was only assisting her in her efforts to commit suicide in accordance with their previous agreement.
- [61] It is submitted that he honestly believed she had started the process of suicide based on her telling him that morning that "it was time" and his observation of her non-responsiveness and the bottle of pills he saw in her hands.
- [62] It is submitted that he honestly believed he had not applied enough pressure to her neck to kill her when he put his hands around her neck, as he was only trying to help her, and he only used the bayonet to ensure she could not be revived, further supporting his honest belief that she was trying to commit suicide by drug overdose and he was only assisting her.

- [63] Further it is submitted that his subsequent acts of administering a dose of drugs to himself and to his dog are confirmed by the fact that a police officer and Ms. Sinclair both found the dog to be somewhat lethargic and this is further corroboration of the prior agreement between he and Ms. Turcan that all three were to go together in the nature of a suicide pact.
- [64] It is submitted that all the evidence should at least raise a reasonable doubt that he intended to kill Ms. Turcan as opposed to assisting her, and he should be acquitted of murder.
- [65] Reliance is placed upon the charge to the jury given by Mr. Justice Davies in *R. v. Martens*, Duncan Registry, 25133-6, where he described "aiding" as "to facilitate, that being to advance, to promote, to expedite, to move the process of committing suicide along". It is submitted that Mr. Elton satisfied this definition by his actions.
- [66] Examples of other situations where the courts have found aided suicide to have been proven are said to include: *R. v. Reed* in 1936 in Saskatchewan where the accused was found not guilty of murder in giving poison to her husband who wanted to commit suicide, and *R. v. Kirk*, 2006 ONCJ 509, where a husband pleaded guilty to assisting suicide in filling a bathtub with water and assisting his wife to drown, when she had indicated a wish to commit suicide.
- [67] Finally it is submitted that if the Court does not accept this as assisted suicide, Mr. Elton should only be found guilty of manslaughter because he never intended to cause her death by his own hands.
- [68] The Crown commences its submissions by focusing on certain sections of the Criminal Code.
- [69] Section 21 sets out the distinction between parties to an offence who actually commit the offence and those who aid or abet that party to commit the offence.
- [70] It is no criminal offence for a person to commit suicide, defined as the act of killing oneself intentionally.
- [71] However, a person that aids or abets a suicide remains guilty of a criminal offence under s. 241 of the Code. It is submitted that the same distinction exists in s. 241 as in s. 21, that the person who commits the suicide is to be considered the principal while the aider or abettor only helps the principal commit suicide.
- [72] Section 14 of the Criminal Code denies any person who wants to commit suicide the right to give consent to have death inflicted on them by another. The section also states that such consent does not affect the criminal responsibility of any person who inflicts that death on the person who gave consent.

- [73] Accordingly, it is submitted that if Ms. Turcan consented to have Mr. Elton inflict death on her, or even if he honestly but mistakenly believed that he had her consent, neither the actual consent nor perceived consent relieves Mr. Elton of criminal responsibility if he acted on that consent or perceived consent because there can be no such consent in law.
- [74] It is submitted that a person who ends the life of another in order to relieve that person's suffering, referred to as active euthanasia, is still guilty of culpable homicide.
- [75] Culpable homicide is defined in s. 222 of the Criminal Code as causing the death of a human being by means of an unlawful act, and culpable homicide is defined as murder, manslaughter, or infanticide.
- [76] Accordingly it is submitted that if Mr. Elton inflicted death on Ms. Turcan in order to relieve her of her suffering it is still an unlawful act and he remains guilty of culpable homicide.
- [77] The Crown submits that the crux of the issue comes down to whether Mr. Elton by his actions simply assisted Ms. Turcan to kill herself or he acted as the principal in inflicting death on her and is therefore liable for the culpable homicide of murder.
- [78] It is submitted that Mr. Elton's level of participation in the act causing the death of Ms. Turcan is at the heart of the matter.
- [79] The case of *In re Joseph G.*, 667 P.2d 1176, a decision of the Supreme Court of California, dealt with circumstances where two young boys intentionally drove off a cliff to commit suicide and the driver survived while the passenger died.
- [80] In considering the charge of murder against the surviving driver the Court referred with approval to an Oregon decision in *People v. Bouse* (1953) 164 P.2d 800, where the accused's wife drowned in a bathtub and there was evidence that she had told her husband she wanted to die.
- [81] In the decision of *In re Joseph G.*, *supra*, the Court said this about *People v. Bouse*, *supra*:

In *Bouse*, the defendant's wife drowned in a bathtub; there was evidence that she had told the defendant she wanted to die and that he attempted suicide shortly after her death. On the evidence, the jury could have found that the defendant held his wife's head underwater, despite her struggles, until she died, thereby committing murder. On the other hand, the jury might have found that the defendant merely ran the water and assisted his wife into the tub, and was therefore guilty of only manslaughter under the Oregon assisting statute. In upholding the manslaughter instruction, the court reasoned that the latter statute "does not contemplate active participation by one in the overt act directly causing death. It contemplates some participation in the events leading up to the commission of the final overt act, such as furnishing the means for bringing about death--the gun, the knife, the poison, or providing the water, for the use of the person who himself commits the act of self-murder. But where a person actually performs, or actively assists in performing, the overt act resulting in death, such as shooting or stabbing the victim, administering the poison, or holding one under water until death takes place by

drowning, his act constitutes murder, and it is wholly immaterial whether this act is committed pursuant to an agreement with the victim, such as a mutual suicide pact."

[82] The Court went on to say as well:

Under *Matlock* [which is another case] and *Bouse*, the key to distinguishing between the crimes of murder and of assisting suicide is the active or passive role of the defendant in the suicide. If the defendant merely furnishes the means, he is guilty of aiding a suicide; if he actively participates in the death of the suicide victim, he is guilty of murder.

[83] The Court distinguished a murder-suicide pact from a true mutual suicide pact and said this:

The reference to a suicide pact seems to relate to the evidence that the defendant made a suicide attempt after his wife's death. The type of suicide pact contemplated was apparently of the murder-suicide variety, in which, by mutual agreement, one person kills the other and then kills himself. The court noted that even given the existence of such a pact, if the defendant actively drowned his wife it would be murder. This is to be distinguished from either (1) the mutual suicide pact in which one party provides the means (e.g., poison or lethal weapons) but each individual kills himself independently pursuant to the agreement; or (2) the circumstances of the present case, in which the pact envisions both parties killing themselves simultaneously with a single instrumentality. As will be seen, in both of the latter situations the proper criminal liability to be attached is for aiding and abetting suicide rather than for murder.

[84] In *re Joseph G.*, *supra*, was considered by the Quebec Court of Appeal in *R. v. Gagnon* (1993), 84 C.C.C. (3d) 143, where the Court endorsed the definition of a genuine suicide pact stated by the California Court and said this:

In my view, that will occur when two persons form a true and genuine suicide pact, that is when the partners are in such a mental state that they have formed a common and irrevocable intent to commit suicide, together, simultaneously, by the same event and by the same instrumentality where the risk of death is identical and equal for both.

and further said this:

I want to add an aside at this point in order to clearly distinguish the circumstances of a genuine suicide pact from certain other crimes that could be characterized, wrongly, as a suicide pact. This is the case, for example, of a person who, out of compassion or for any other reason, acquiesces to the wishes of a close or dear one and gives him death. The only purpose of this act is the death of the other person and not his own and it is clearly prohibited by s. 14 of the Criminal Code and a person who commits it may be charged. I would also distinguish the case of what the American jurisprudence calls the "murder-suicide pact" where a person kills another with his consent, and the agreement with the victim (or his understanding of it) is that he will then in turn commit suicide. In that situation, the active partner does two successive acts, complete in themselves, autonomous acts, which involve the formation of a double intent, the first to kill and the second, to kill himself.

- [85] The Crown submits that in the case of aiding or abetting suicide the accused does not carry out the final overt act leading to the victim's death and offers the example of an accused providing poison to a person who wants to commit suicide and that person then ingests the poison and dies. There the accused plays a passive role only in the victim's death, an example being *R. v. Genereux* (1999), 44 O.R. (3d) 339; 136 C.C.C. (3d) 338).
- [86] The Crown submits that in the case of a culpable homicide the accused causes either directly or indirectly the death of the victim, and offers as examples where the accused stabs, shoots or strangles the victim and causes the victim's death. There the accused plays an active role in the death (as explained in *In re Joseph G.*, *supra*.)
- [87] It is submitted that to conflate the two different roles into the same *actus reus* analysis is to ignore the distinction in the Criminal Code between culpable homicide under s. 222 and aiding or abetting suicide under s. 241.
- [88] The way the Crown puts it is that in a case of assisted suicide the deceased has the last word on whether they will carry through with it, while in the case of culpable homicide the accused gets the last word by crossing the line from aiding or abetting to causing the death of the deceased.
- [89] On the evidence the Crown submits that Mr. Elton strangled and stabbed Ms. Turcan and caused her death. He caused her death by his overt acts; she did not cause her own death.
- [90] He was the principal of murder and not an aider or abettor of suicide.
- [91] Ms. Turcan could not legally consent by s. 14 of the Code to him inflicting death on her as any consent she gave does not affect his criminal responsibilities for murder.
- [92] It is submitted there was no genuine mutual suicide pact between them because there was no attempt by Mr. Elton to simultaneously die by the same instrumentality.
- [93] It is also submitted that there is no evidence of Ms. Turcan having ingested any great amount of drugs beyond the amount she was prescribed by her doctor. This is the evidence of Dr. Smith, Dr. Charlesworth, and Dr. Rebeyka.
- [94] There is no evidence that Ms. Turcan told Mr. Elton she had consumed a lot of drugs and he never observed her taking any.
- [95] It is also submitted that there is no evidence Mr. Elton took any great amount of drugs himself if he took any at all. He remained conscious through the time from Ms. Turcan's death to 1:11 in the following morning when he completed his statement to Constable Yanicki.
- [96] The Crown submits that the judgment in *R. v. Kirk*, *supra*, cited by the defence is inconclusive whether the wife drowned herself, or whether her husband pushed her head underwater.

- [97] It is also pointed out that in *R. v. Martens*, supra, Mr. Justice Davies in his charge to the jury instructed the jury that the essential elements of the offence of aiding or abetting suicide requires that the deceased named in the indictment commit suicide, and here the Crown submits that Ms. Turcan did not commit suicide but rather Mr. Elton caused her death by murdering her.
- [98] Finally it is pointed out that in the cases cited by the defence to support its submission of honest but mistaken belief by Mr. Elton that Ms. Turcan was committing suicide and wished his assistance, in each of those cases, being *R. v. Sault Ste. Marie (City)*, [1978] 2 S.C.R. 1299; *R. v. Sansregret*, [1985] 1 S.C.R. 570; and *R. v. D.R.* (1985), 20 C.C.C. (3d) 524, it is stated that the honest but mistaken belief must be in circumstances which if they were true would render the accused's conduct innocent.
- [99] In the circumstances here where Mr. Elton submits that he believed he was only aiding or abetting Ms. Turcan in committing suicide, any honest but mistaken belief in that would not render his conduct innocent but would in fact render him guilty of aiding or abetting a suicide under s. 241 of the Criminal Code.
- [100] As a consequence, it is submitted that this defence of honest but mistaken belief is not available to Mr. Elton in the circumstances.

## Analysis and Decision

- [101] It is my conclusion that Ms. Turcan had not taken any excess of drugs to end her life at the time Mr. Elton strangled and stabbed her to end her life. She was not attempting to commit suicide.
- [102] The toxicology results on her satisfy me that she had mostly therapeutic amounts of drugs in her body at the time of her death and no valium in her stomach or in her bloodstream.
- [103] It is also my conclusion that Mr. Elton is not entitled to any defence of honest but mistaken belief that she was committing suicide and wanted or needed his help, because even if he was correct in that belief and even if his actions amounted to only aiding her it would not have rendered him innocent but rather would have rendered him guilty of aiding or abetting a suicide.
- [104] Accordingly I agree with the Crown that the defence of honest but mistaken belief is not available to Mr. Elton in the circumstances.
- [105] I reject Mr. Elton's evidence that when he strangled Ms. Turcan he was not intending to end her life by that act. He applied enough pressure to close off her supply of air and I conclude that he intended this as the natural consequences of his action in strangling her.
- [106] The evidence he gave in his statement to Constable Yanicki that he ended his responsibility by strangling her satisfies me that he intended to cause her death by this act.

- [107] Although at that point in his statement he also said the strangling had not worked, and he had to turn to the bayonet, in his evidence at trial when asked by his own counsel about his answer in the interview "and yes it worked" in response to saying the strangling was what he tried the first time, he told his counsel that the answer looked like he was talking about the strangling. He did not deny that connection.
- [108] The fact he told Constable Yanicki the strangling worked satisfies me that he intended Ms. Turcan's death by that act and thought it had worked. He said at trial that she was not breathing when he stabbed her thereafter.
- [109] I accept that Mr. Elton used the bayonet to stab her in the chest to ensure that she was dead.
- [110] If Ms. Turcan was not dead already before he stabbed her then certainly by his own evidence he intended to make sure that she was dead by stabbing her in the chest. That was his expressed intention to ensure she could not be revived by someone else.
- [111] Even if Ms. Turcan had been attempting to commit suicide or Mr. Elton honestly believed that, by strangling and stabbing her Mr. Elton was not aiding or abetting her suicide but was in fact acting to cause her death by his own overt actions.
- [112] As to Mr. Elton's own intention to commit suicide I have great doubts about that when he remained conscious through the time the police arrived right until the end of the interview with Constable Yanicki, and on his own evidence only took half the drugs he had intended to take to ensure his own death.
- [113] In any event, however, he certainly did not attempt to commit simultaneous suicide with Ms. Turcan by the same means even if he believed she was attempting to commit suicide.
- [114] It is my conclusion that Mr. Elton committed murder of Ms. Turcan by strangling and stabbing her. He intended to cause her death by these acts beyond a reasonable doubt and he succeeded.
- [115] This was not an offence committed out of anger or hate towards Ms. Turcan. They loved and cared for each other. In my view this was a mercy killing by Mr. Elton to put Ms. Turcan out of her ongoing suffering.
- [116] Nevertheless his actions constituted murder of Ms. Turcan and I find Mr. Elton guilty of second degree murder of Ms. Turcan as charged.
- [117] That concludes my judgment.

"The Honourable Mr. Justice Truscott"

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