

CANADA / JUDGMENT

R. v. Hutchison

2024 BCSC 704

COURT

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2024 BCSC 704 R. v. Hutchison

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hutchison,

2024 BCSC 704

Date: 20240426

Docket: X084304

Registry: New Westminster

Rex

v.

Jack Cruthers Hutchison

Before: The Honourable Madam Justice Murray

Oral Reasons for Judgment

Counsel for the Crown:

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A.J. Bonfield

Counsel for the Accused:

P.S. McMurray

Place and Dates of Trial:

New Westminster, B.C.

January 15,16,18,19, 22-26,
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Place and Date of Judgment:

New Westminster, B.C.

April 26, 2024

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INTRODUCTION

- [1] In September 2020, the world was still in the midst of the COVID-19 pandemic. Trinity Western University (TWU), a private Christian University in Langley, like most, if not all schools and universities in the province, was operating on a restricted basis. All classes were online. With few exceptions, the campus was restricted to staff and students who lived in residence. Resident students were permitted to have one guest that was preregistered. Social distancing protocols were in place.
- [2] Most buildings were locked. Student residences were accessible to only those with key cards. There were signs on all exterior residence doors that said, "Residents Only".

- [3] Against that backdrop, on September 30, 2020, a tall man wearing all black was wandering through various student residences. We now know this man to be Howard Hill. Mr. Hill rifled through some students' rooms. He seemed out of it. He clearly was not a resident. Students called security. Some students were concerned for their safety. Others were concerned for their belongings.
- [4] The accused Jack Hutchison was the sole security guard working on campus that day. It was not a scheduled work day for him. He was covering for a co-worker that was sick. Mr. Hutchison responded to the first group of calls but was unable to find the man. After responding to a scheduled fire drill, he then responded to the second group of calls. Mr. Hutchison spotted Mr. Hill walking away from Robson Hall, the residence he had been last reported to have been in. Mr. Hutchison called out to Mr. Hill identifying himself as security and asking him to stop. Mr. Hill turned around and looked at Mr. Hutchison then took off running. Mr. Hutchison followed, also running.
- [5] Mr. Hutchison tackled Mr. Hill and took him to the ground. Mr. Hutchison placed Mr. Hill in a neck restraint and held him there until police arrived. When police finally got there, Mr. Hill was unconscious. He died in hospital a couple of days later after he was taken off life support.
- [6] Mr. Hutchison is charged with manslaughter. The Crown theory is that Mr. Hutchison killed Mr. Hill in the course of an unlawful act, an assault. The specific act in question is the hold used by Mr. Hutchison to restrain Mr. Hill. I will detail this hold shortly.
- [7] Mr. Hutchison contends that he was acting in self defence and defence of others and that the force he used was reasonable in all the circumstances. Alternatively, Mr. Hutchison claims that harming Mr. Hill was an accident as he did not know that with his hold he was exerting pressure on a critical artery.
- [8] The Court heard from many students who witnessed the incident on the lawn. Not surprisingly, all saw different things. For the most part, all of the witnesses were credible. Reliability varied according to where the student was positioned, their vantage point, what they were doing during the incident, whether they were distracted by texting or sharing images with friends, the point at which they started watching and the strength of their memory.
- [9] Despite the differences, there are many facts that are consistent. They are as follows:
- 1) At the time of the incident, Mr. Hutchison was 51 years of age. He was 5 feet 4 ½ inches tall and weighed 150 pounds. He was physically fit;
 - 2) Mr. Hill was 30 years old. He was 6 foot, 3 ½ inches tall and weighed 194 pounds. He was a person who experienced schizophrenia. He had not taken his medication for approximately 5 months. He was not a student at TWU, nor was he authorized to be in any of the student residences;

- 3) Mr. Hill was walking through student residences, mumbling and talking to himself. It looked like he was scanning the residences. He rummaged through some rooms;
- 4) Many of the residents asked Mr. Hill to leave. It appeared to students that he was experiencing a mental illness or was perhaps under the influence of alcohol and/or drugs;
- 5) Students were troubled by Mr. Hill's presence in their residence. Some students were fearful for their safety or the safety of their belongings;
- 6) Students reported the above to Mr. Hutchison;
- 7) Mr. Hutchison went looking for Mr. Hill a number of times with no success. He continued to receive reports from students. Mr. Hutchison finally saw Mr. Hill walking away from Robson Hall residence;
- 8) Mr. Hutchison identified himself as security and asked Mr. Hill to stop to talk to him;
- 9) Mr. Hill turned and looked at Mr. Hutchison then he ran away from him;
- 10) Mr. Hutchison chased after him;
- 11) Mr. Hill ran up the stairs at McMillan Hall toward a field. Mr. Hutchison continued to pursue him;
- 12) The two men ran in a zig zag pattern between bushes, then Mr. Hill turned suddenly and made a bee-line across the field toward student, Abigail Thompson, who was standing alone in the parking lot near the field. Ms. Thompson froze;
- 13) Mr. Hutchison tackled Mr. Hill and took him to the ground;
- 14) Mr. Hutchison ended up on top of Mr. Hill. Mr. Hill was on his back. Mr. Hutchison was on his back/right side, laying across Mr. Hill's chest in an "x" pattern;
- 15) Mr. Hutchison was leaning on his right elbow. He had Mr. Hill in a headlock with his right arm around the back of Mr. Hill's neck. Mr. Hill's head was cradled in the crook of Mr. Hutchison's right elbow. Mr. Hill's face was turned upward. Mr. Hutchison was holding his right hand with his left hand;
- 16) Abigail Thompson took a video, a few seconds in duration, in order to get a "time stamp" of the incident. The time of the video is 2:49 p.m.;
- 17) A struggle ensued between the two men. Mr. Hill was flailing his arms and legs, yelling and swinging at Mr. Hutchison's head. He hit Mr. Hutchison's head a couple of times with an open hand and closed fist. He pulled Mr. Hutchison's hair and tried to headbutt him. He was swearing at Mr. Hutchison. Mr. Hill was moving his legs in an effort to kick or knee Mr. Hutchison. He spat on Mr. Hutchison. Mr. Hutchison punched Mr. Hill in the nose three to four times in groups of three punches. Mr. Hill's nose was bleeding;

- 18) Early in the struggle, student Joel Dyck approached the two men and asked Mr. Hutchison if he needed help. Mr. Hutchison asked him to call 911 and to tell police to come quickly as he could not hold Mr. Hill for long. Mr. Dyck called 911 at 2:50 p.m. and told them to hurry. Mr. Hutchison asked Mr. Dyck several times to tell the police to hurry. There was a sense of urgency in Mr. Hutchison's voice;
- 19) Taylor Dickau who was employed as a resident director at Robson House arrived a short time later. He also asked Mr. Hutchison if there was anything he could do to help. Mr. Hutchison asked him to hold Mr. Hill's legs. Mr. Dickau sat on Mr. Hill's legs and held his ankles. Mr. Dickau was facing Mr. Hill's feet. His back was to Mr. Hutchison. Mr. Hill was thrusting his hips up, throwing up his knees and punching at Mr. Hutchison. Mr. Dickau cannot remember the number of punches;
- 20) At 2:58 pm, Mr. Dyck received a call from the police asking him to meet them at the Welcome Gate of TWU to guide them to where Mr. Hutchison and Mr. Hill were. He did so;
- 21) At some point after Mr. Dyck left and before police arrived, Mr. Dickau felt that Mr. Hill was no longer resisting so he got off of him and sat on the grass beside him. He continued to hold Mr. Hill's legs;
- 22) Shortly after he got off of Mr. Hill's legs, Mr. Dickau asked Mr. Hutchison if he was making sure that the man was still breathing. Mr. Dickau explained that he asked this as the George Floyd incident had happened a couple of months prior and he was thinking about it. Mr. Hutchison responded that he was. Mr. Dickau could see Mr. Hill's stomach going up and down like with regular breathing;
- 23) Mr. Hutchison asked Mr. Dickau to find his cell phone that he had dropped on the grass while he was chasing Mr. Hill. When he found it, Mr. Hutchison asked Mr. Dickau to call Derek Adams, the head of security at TWU. Mr. Dickau tried calling Mr. Adams three times. There was no answer;
- 24) Cst. Marcus Vettoretti, then a 2-year member of the RCMP, was the first officer on scene. He found Mr. Hutchison laying on top of Mr. Hill. He still had Mr. Hill restrained with a headlock;
- 25) Student Jungming Choi took photos of the police officer approaching Mr. Hutchison and Mr. Hill. The time stamp on the photo is 3:02 p.m.;
- 26) When Cst. Vettoretti went to take control of Mr. Hill, he found that Mr. Hill's arm was limp. He looked at Mr. Hill's face. According to Cst. Vettoretti, Mr. Hill's face had "an unconscious look to it". His left eye was partly open, "staring vacantly";
- 27) Cst. Vettoretti immediately started CPR. As was routine practice, he also administered Narcan in case Mr. Hill was having an overdose;

- 28) When the ambulance service arrived, police officers were performing CPR on Mr. Hill. Ambulance attendants took over and were able to get a pulse back. They transported Mr. Hill to Royal Columbian Hospital where he was put on life support;
- 29) As a result of the incident, Mr. Hutchison had a fractured rib; and,
- 30) On October 2, 2020, Mr. Hill died within 15 minutes of being taken off life support.
- [10] Having set out the facts that are not in dispute, I will now outline the specifics of the offence of unlawful act manslaughter.

UNLAWFUL ACT MANSLAUGHTER

- [11] It is not always a crime to cause another person's death. It is a crime, however, to cause the death of another person by an unlawful act. As stated at the outset, the Crown alleges that Mr. Hutchison caused Mr. Hill's death through the unlawful act of assault.
- [12] The burden is on the Crown to prove each of the following essential elements beyond a reasonable doubt:
1. that Mr. Hutchison committed an unlawful act (assault);
 2. that Mr. Hutchison's unlawful act was objectively dangerous in the circumstances; and
 3. that Mr. Hutchison's unlawful act (assault) caused Mr. Hill's death.
- [13] The mens rea of unlawful act manslaughter is objective foreseeability of the risk of bodily harm which is neither trivial nor transitory, in the context of a dangerous act. Foreseeability of the risk of death is not required: *R. v. Creighton*, [1993] 3 SCR 3 at para. 78. The question is would a reasonable person in the circumstances of the accused have appreciated the risk of bodily harm flowing from his conduct? If yes, the necessary moral fault is established. If not, the accused must be acquitted.
- [14] A defence of accident can only negate the fault element, (that is that the prohibited consequence was objectively foreseeable), if the prohibited consequence was such a chance occurrence that the trier of fact is left with reasonable doubt: *R. v. Barton*, 2019 SCC 33 at paras. 186-191. I will return to this.

ISSUES

- [15] The issues can be framed as follows:
- 1) Did Mr. Hutchison commit an unlawful act (assault)?
 - 2) Was Mr. Hutchison's unlawful act objectively dangerous in the circumstances?
 - 3) Did Mr. Hutchison's unlawful act cause Mr. Hill's death?
- [16] I will consider the issues in turn.

[17] Before I do, I must touch on s. 25 of the Criminal Code which shields a protected class of persons, including police officers, from criminal liability in the course of duty when they use only as much force as is necessary in the circumstances, provided the officer acted on reasonable and probable grounds. In the case before me, both Crown and Defence Counsel conceded that s. 25 does not apply to security guards such as Mr. Hutchison.

MANSLAUGHTER ISSUE 1: DID MR. HUTCHISON COMMIT AN UNLAWFUL ACT (ASSAULT)?

Assault

[18] Under s. 265 of the Criminal Code, a person commits assault when he intentionally applies force directly or indirectly to another person. In this case, Mr. Hutchison tackled Mr. Hill, punched him a number of times and held him down on the ground in a headlock. There is no question that Mr. Hutchison committed assault on Mr. Hill.

[19] However, assault is only unlawful if it is not justified. In this case there is evidence that raises the defence of self-defence or defence of others. If I am satisfied that Mr. Hutchison was acting in self-defence or defence of others, that is a complete defence to the charge of manslaughter.

Was Mr. Hutchison acting in self-defence or in defence of others?

[20] The claim of self-defence must come strictly within s. 34 of the Criminal Code which reads in relevant part as follows:

34 (1) A person is not guilty of an offence if

- (a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
- (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
- (c) the act committed is reasonable in the circumstances.

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
- (c) the person's role in the incident;
- .
- (e) the size, age, gender and physical capabilities of the parties to the incident;

.

(g) the nature and proportionality of the person's response to the use or threat of force;

[Emphasis added.]

[21] Mr. Hutchison does not have to prove that this defence applies. Rather, the Crown has to prove that it does not. All three of the s. 34(1) criteria must be present beyond a reasonable doubt for the defence to be available: *R. v. Tremblay*, 2019 BCSC 410 at para. 172.

[22] In summary, to decide whether Mr. Hutchison was acting in lawful defence of himself or others, I must consider three questions:

- 1) The Catalyst: Did Mr. Hutchison believe on reasonable grounds that force was being used or threatened against him or another person?
- 2) The Motive: Did Mr. Hutchison commit the assault for the purpose of defending or protecting himself or another person from the use or threat of force?
- 3) The Response: Was Mr. Hutchison's conduct reasonable in all of the circumstances?

[23] I will consider these questions in turn.

Self Defence Issue 1: Did Mr. Hutchison believe on reasonable grounds that force was being used or threatened against him or another person?

[24] For s. 34 to apply, Mr. Hutchison must have had the subjective and reasonable belief that Mr. Hill was a threat to himself or another. This is assessed on both a subjective and modified objective standard which takes into account the personal characteristics or experiences of the accused.

[25] The question is not what Mr. Hutchison thought was reasonable based on his characteristics and experiences, but rather what a reasonable person with Mr. Hutchison's relevant characteristics and experiences would perceive: *R. v. Khill*, 2021 SCC 37 at para. 57.

[26] At the time Mr. Hutchison found Mr. Hill outside Robson Hall, he knew at the very least, that Mr. Hill had been going in and out of student residences, had rifled through some rooms, was acting as if he might be experiencing a mental illness or was under the influence or alcohol and/or drugs. Mr. Hutchison also knew that many students were upset by Mr. Hill's actions, and some were afraid.

[27] There was some testimony to the effect that Mr. Hill walked by a male resident and invited him to fight. I find that whether or not Mr. Hutchison knew this at the relevant time does not impact my analysis.

- [28] Mr. Hutchison's testimony about his subjective belief during the incident was as follows: He maintains that he was acting to protect himself and others. When Mr. Hill abruptly turned to run directly at Ms. Thompson, he thought Mr. Hill was going to harm her so he had to stop him. I accept that Mr. Hutchison had reasonable grounds to believe that Mr. Hill was a threat to Ms. Thompson's safety and the safety of others. He was also entrusted to keep people on the campus safe.
- [29] He tackled Mr. Hill and took him to the ground. Once on the ground, Mr. Hutchison says that he thought his life was in danger. Mr. Hill had struck him in the head, headbutted him, spat at him and threatened to kill him. He put Mr. Hill in the headlock to restrain him until police got there. Mr. Hutchison believed that Mr. Hill continued to be a threat to him and others. At no time did he think it was safe to release his hold on Mr. Hill completely; however, he says he loosened the hold when Mr. Hill was not resisting.
- [30] As noted above, many students watched the incident on the lawn after Mr. Hutchison had Mr. Hill on the ground. Students saw it at different times, from different places, at different distances. There were varied accounts of what happened. In my view, two students stood out in terms of reliability: Joel Dyck and Taylor Dickau. They were close in proximity to Mr. Hutchison and Mr. Hill and were paying careful attention to what was happening. They were not texting friends or taking photos. They were focussed on what was happening. Where their evidence differs from other witnesses, I prefer their evidence.
- [31] Once on the ground, I accept the evidence of Mr. Hutchison and Joel Dyck (as well as others) that Mr. Hill was thrashing around. He hit Mr. Hutchison several times in the head, spat in his face, and tried to knee and headbutt him. I further accept that Mr. Hill threatened to kill Mr. Hutchison.
- [32] Having considered all of the evidence, I find that at the time that Mr. Hutchison tackled Mr. Hill, took him to the ground, put him in the headlock and punched him a number of times in the face to stop him from resisting, he was acting in his own self defence and in defence of Abigail Thompson and the other TWU students. I further find that Mr. Hutchison's subjective belief was reasonably held in all of the circumstances.
- [33] However, as time went on, the nature of the incident changed. A number of witnesses, including Joel Dyck and Abigail Thompson, heard Mr. Hill tell Mr. Hutchison three to four times that he could not breathe. Mr. Hutchison testified that he did not hear him say that. I find that he did. I further accept that at some point, Mr. Hill stopped moving. Taylor Dickau recognized that Mr. Hill had stopped moving. At that point, Mr. Dickau got off of Mr. Hill's legs and sat on the grass beside Mr. Hill to hold his legs. He then stopped assisting with holding Mr. Hill down as Mr. Hutchison had instructed him to do. Several witnesses that were watching from a distance, including Skyler Huber and Abigail Thompson, also saw that Mr. Hill was no longer moving.

- [34] At some point, it was clear that Mr. Hill was no longer a threat to anyone. Therefore, I cannot accept that there continued to be reasonable grounds to believe that Mr. Hill was using force or threatening force against Mr. Hutchison or others once he stopped moving.

Self Defence Issue 2: Did Mr. Hutchison commit the assault for the purpose of defending or protecting himself or another person from the use or threat of force?

- [35] This question is focussed on Mr. Hutchison's state of mind only. Was there a defensive or protective purpose for restraining Mr. Hill with a headlock?
- [36] In my view, given the information Mr. Hutchison had at the time and his responsibilities as a security guard, it was his duty to investigate whether Mr. Hill was a danger and to protect students on campus.
- [37] I accept that Mr. Hutchison's purpose was to restrain Mr. Hill until police came in order to keep the students and himself safe.

Self Defence Issue 3: Was Mr. Hutchison's conduct reasonable in all of the circumstances?

- [38] The Supreme Court of Canada's decision in *Khill* is instructive with respect to the assessment of whether Mr. Hutchison's conduct was reasonable in all of the circumstances. The facts are as follows: In the early morning, Mr. Khill was awoken by loud noises coming from outside his home. He saw from his window that it appeared that someone was breaking into his truck - that person would later be known as Mr. Styres. Mr. Khill retrieved and loaded his rifle. He approached from the rear of the truck, yelled "Hey, hands up!". When Mr. Styres turned, Mr. Khill fired two shots, killing Mr. Styres. Mr. Khill later explained that he was formerly a part-time reservist with the army and reacted under the belief that Mr. Styres was reaching for a gun. Mr. Styres had no weapons, save for a pocket knife.
- [39] Martin, J. writing for the majority, instructed courts to assess reasonableness as follows:
- [64] ... the starting point is that reasonableness will be measured according to "the relevant circumstances of the person, the other parties and the act". This standard ... [covers] how the act happened and what role each person played ... [and takes] into account certain characteristics of the accused -- including size, age, gender, and physical capabilities ... Also added into the equation are certain experiences of the accused, including the relationship and history of violence between the parties ...
- [40] Unlike the prior inquiries, this is not an assessment of Mr. Hutchison's state of mind or subjective belief during the incident. Rather, I must consider the relevant circumstances of Mr. Hutchison, Mr. Hill, and the act, including, but not limited to, the factors that are set out in s. 34(2). The factors are non-exhaustive; no single factor is necessarily more or less determinative to the outcome.

- [41] The analysis is not what is reasonable from Mr. Hutchinson's perspective, but rather what would be reasonable to a person with some of the same qualities and experiences as Mr. Hutchison (Khill at para. 67). In the present case, I take into consideration the fact that Mr. Hutchison was smaller and older than Mr. Hill, per s. 34(c)(e). Mr. Hutchison had also been trained in martial arts and as a security guard.
- [42] Reasonableness is assessed from the beginning to the end of the incident. In Khill, Martin J. instructed courts on the meaning of the phrase "the person's role in the incident in s. 34(2)(c) which reads in part as follows:
- [142] The phrase enacted is broad and neutral and refers to the conduct of the person, such as actions, omissions and exercises of judgment, in the course of the incident, from beginning to end, that is relevant to whether the act underlying the charge was reasonable in the circumstances.
- [Emphasis added.]
- [43] In Khill, the accused's role in the incident was properly assessed from the moment he decided to investigate the noise himself and not merely the instant between perceiving an uplifted gun and taking the first fatal shot.
- [44] Reasonableness can change during the course of an altercation: See R. v. A.A., 2019 BCCA 389.
- [45] It took police about 11 to 13 minutes to get to where Mr. Hutchison and Mr. Hill were once called. As per Khill, I must consider the reasonableness of Mr. Hutchison's actions over that whole time period. In this instance, what was reasonable at the beginning may not have been reasonable as time went on. Of particular significance is whether two of the factors enumerated in s. 34(c) changed over the course of the incident: the extent to which use of force was imminent and whether there were others available to respond to the potential use of force (s. 34(c)(b)) and the nature and proportionality of the person's response to the use or threat of force (s. 34(c)(g)).
- [46] As stated above, I find that Mr. Hutchison's actions in taking Mr. Hill to the ground and restraining him with the headlock were reasonable at the beginning. He knew that Mr. Hill was acting erratically on campus, was upsetting and scaring students, ran away from him after he identified himself as security and while being pursued made a sudden bee-line for a female student who was standing alone in the parking lot. In my view, Mr. Hutchison's fear for the female student's safety was not unfounded or unreasonable. In addition, I find that Mr. Hutchison's decision to take Mr. Hill to the ground and restrain him was not just reasonable, it was the only way he could ensure the safety of the students.
- [47] The issue really boils down to the headlock and whether its use remained objectively reasonable in the circumstances as time went on, or whether it became disproportional to the threat.

- [48] Mr. Hutchison started working as a security guard at TWU in January 2016. Before that he worked as a security guard with a security company through which he worked at various locations. He successfully completed two levels of security guard training at the Justice Institute. The advanced security course involved training in the use of force including, according to Mr. Hutchison, how to use handcuffs if there is a physical altercation and how to employ an arm lock. I pause to note that Mr. Hutchison had handcuffs but he left them in his golf cart when he was looking for Mr. Hill. According to Mr. Hutchison, he was taught that as a security guard, force was only to be used in circumstances "when he felt someone was in danger or he was".
- [49] Mr. Hutchison boxed for many years as a young man. He practiced martial arts, primarily Aikido and Wing Chun as a teenager into his early twenties. In 2014, he went back to martial arts training in Muay Thai, Krav Maga and Brazilian Jiu Jitsu (BJJ). Mr. Hutchison reached the intermediate level of purple belt in BJJ which qualified him to teach and supervise lower ranked students. He testified that he stopped practicing martial arts a couple of months after he started working at TWU because of back problems. According to Mr. Hutchison, neck restraints are a common tactic in BJJ. They are taught at an early stage of training and are commonly practiced in training.
- [50] He acknowledged that he was aware that restraining someone by the neck was dangerous and testified that he maintained an airway for Mr. Hill while restraining him.
- [51] Although Mr. Hutchison testified that he eased off on the pressure he was applying when Mr. Hill was not resisting, the fact remains that Mr. Hutchison kept Mr. Hill in a headlock the entire time without carefully monitoring his condition. I do not accept Mr. Hutchison's contention that Mr. Hill suddenly went unconscious the moment the police arrived.
- [52] When considering the reasonableness of Mr. Hutchison's actions over the entire period of time, I find the evidence of Taylor Dickau compelling. He could feel that Mr. Hill had stopped resisting so he got off Mr. Hill's legs and held his legs from the side. That is when he asked Mr. Hutchison if Mr. Hill was still breathing.
- [53] Several students noticed the change in Mr. Hill as well. Abigail Thompson testified that Mr. Hill stopped moving about five or six minutes after he was taken to the ground. Skyler Huber said Mr. Hill stopped moving about five minutes before police arrived. Jill Altamirano, a nursing student, noticed the incident from her dorm window after Taylor Dickau had moved off Mr. Hill's legs and was holding them from the side. She was struck by how "still" Mr. Hill was. She considered going out to see if she could help perform CPR but then decided that there were enough people involved.
- [54] If students watching at a distance saw that Mr. Hill was no longer moving and Taylor Dickau could feel that Mr. Hill was no longer resisting, Mr. Hutchison ought to have. He was in the best place to monitor Mr. Hill's state. His face was within inches of Mr. Hill's face. His body was on top of Mr. Hill's chest. While Mr. Hutchison's actions are not to be judged by a standard of perfection, a reasonable person in these circumstances, with some of the same

qualities and experiences as Mr. Hutchison would make sure that Mr. Hill was not being grievously injured while restraining him in potentially dangerous hold. Eleven to thirteen minutes is a long time to have someone in a neck impingement.

- [55] Finally, while I accept Mr. Hutchison's contention that he did not want to involve students as it was his responsibility to protect them, Mr. Hutchison was not alone. He had help--Taylor Dickau.
- [56] I accept that Mr. Hutchison did not intend to hurt Mr. Hill and that he certainly did not intend to cause his death. However, that is not the legal test. The question is whether restraining Mr. Hill in a headlock for a prolonged period of time was reasonable in all of the circumstances.
- [57] I find that it was not. Mr. Hutchison was utilizing the headlock to restrain Mr. Hill until police arrived to ensure his safety and the safety of others. When Mr. Hill stopped resisting, he was no longer a threat to Mr. Hutchison or anyone else, and the nature of Mr. Hutchison's response became disproportionate.
- [58] Having concluded that after Mr. Hill stopped moving, there were no longer reasonable grounds to believe that Mr. Hill was a danger to the safety of Mr. Hutchison or anyone else and that the force used was excessive, I find that the defence of self defence and defence of others does not apply.
- [59] Accordingly, I am satisfied that Mr. Hutchison committed the unlawful act of assault.
- [60] I will now continue to consider the second element of manslaughter.

MANSLAUGHTER ISSUE 2: WAS MR. HUTCHISON'S UNLAWFUL ACT OBJECTIVELY DANGEROUS IN THE CIRCUMSTANCES?

- [61] In Creighton, the Supreme Court of Canada described what is meant by the phrase "objectively dangerous in the circumstances" as follows:
- "conduct which is inherently risky to life or limb, such offences are therefore presumed to involve objective foresight of the risk. In other words, proof of the accused having engaged in prohibited conduct which is such that any reasonable person would inevitably have foreseen the risk involved will serve as a substitute for objective foresight, relieving the prosecution from having to introduce additional evidence to prove the existence of such foresight." (at p. 22)
- [62] As mentioned above, Mr. Hutchison raises the defence of accident. The defence submits that Mr. Hutchison restrained Mr. Hill with a headlock rather than a choke hold because it is less dangerous. He did not intend to impede the blood flow to Mr. Hill's brain nor did he intend for him to lose consciousness. Mr. Hutchison testified that if he applied pressure to one of Mr. Hill's vital blood vessels during the struggle it was not deliberate; he had no knowledge that he was doing so.

- [63] The question is whether the risk of bodily harm was objectively foreseeable when restraining a person in a headlock for an extended period. As established above the extended period in this case is between 11 to 13 minutes.
- [64] Mr. Hutchison's hold is captured in the photographs taken by the students. He is laying with his right side and right side of his back across Mr. Hill's chest. Mr. Hutchison is leaning on his right elbow. The crook of his right arm is behind Mr. Hill's neck. His right forearm is curled around the right side of Mr. Hill's neck. He is gripping his right hand with his left hand. Mr. Hutchison's right leg is bent at the knee. His right thigh is pressed up against the right side of Mr. Hill's face. Similarly, Mr. Hutchison's right chest is pressed against the left side of Mr. Hill's face. There is a substantial quantity of blood on Mr. Hill's face that came from his nose. Photos taken of Mr. Hutchison after the incident show blood-soaked patches on his pants and shirt that correspond with where his leg and chest were in contact with Mr. Hill's face. The photographs are taken over the time period in question including when the police arrive. Mr. Hutchison's position does not change. It is impossible to tell from the photos whether the force used by Mr. Hutchison changed over time but the position of his arm/hand on Mr. Hill's neck does not change. That is significant because Mr. Hutchison's right arm/hand is against Mr. Hill's neck in the area of his carotid artery and jugular vein.
- [65] Would a reasonable person have realized that holding a person's neck in that fashion gives rise to a risk of harm? Yes. There is no question that a neck restraint, like a headlock, is inherently dangerous in any circumstance. It may not have been as objectively dangerous as a choke hold but the risk of harm from any pressure being applied to the neck is well known. As stated above, Mr. Hutchison admitted that he was aware that restraining someone by the neck was dangerous. Although the outcome was an accident, Mr. Hutchison's hold was not.
- [66] While I accept that Mr. Hutchison did not intend to cause harm to Mr. Hill, the restraint he intentionally applied to Mr. Hill's neck had an objectively foreseeable risk of bodily harm that was neither trivial nor transitory.
- [67] I reject the defence of accident and find that the continued and prolonged use of the headlock was objectively dangerous in the circumstances.

MANSLAUGHTER ISSUE 3: DID MR. HUTCHISON CAUSE MR. HILL'S DEATH?

- [68] To prove that Mr. Hutchison legally caused Mr. Hill's death the Crown has to prove beyond a reasonable doubt that Mr. Hutchison's conduct contributed significantly to Mr. Hill's death. It does not have to be the only cause.
- [69] Forensic pathologist Dr. Farshaad Bilimoria testified at trial. His Amended Postmortem examination report was filed as Exhibit 4.

- [70] Dr. Bilimoria performed the autopsy of Mr. Hill on October 8, 2020. He concluded that Mr. Hill's cause of death was due to "asphyxia due to fatal pressure on the neck due to physical restraint by other". The evidence that led him to this conclusion is as follows:
- 1) The presence of petechiae on the inside of the left lower eyelid and the soft tissues around the left eye which indicated that there was an increase in blood pressure in Mr. Hill's head. According to Dr. Bilimoria, the increased blood pressure was caused by a blockage of the jugular vein that did not allow de-oxygenated blood to flow back from his head to his heart and lungs.
 - 2) Brain damage which was caused by a lack of oxygen.
 - 3) Bruising on the right side of the neck near the omohyoid muscle on the right side of Mr. Hill's neck which was caused by pressure being exerted to that location. It is noteworthy that the bruising is located in the vicinity of Mr. Hill's jugular vein and carotid artery, precisely where Mr. Hutchison applied the headlock on Mr. Hill.
- [71] Put simply, the pathologist's opinion is that prolonged pressure on vital blood vessels on the right side of Mr. Hill's neck cut off blood flow to Mr. Hill's brain causing brain damage, unconsciousness and ultimately his death.
- [72] Defence argues that there are other possible causes of death including that Mr. Hill had a heart attack caused by drug use. Toxicology tests on samples taken from Mr. Hill on his arrival to the hospital on September 30, 2020, indicated that hydromorphone was found in Mr. Hill's urine. According to the toxicology report, hydromorphone is a semi-synthetic narcotic opioid which is used for the relief of pain. Hydromorphone shares the same toxic effects as other opioids including respiratory depression, coma and death.
- [73] It is significant that the hydromorphone was found in Mr. Hill's urine and not his blood. According to Dr. Bilimoria, substances in the urine do not have an effect on a person. Dr. Bilimoria testified that based on his autopsy, the toxicology reports and the information he received about the incident, he found no other reasonable causes of death. I agree. The suggestion that hydromorphone caused Mr. Hill's death is speculative at best.
- [74] The evidence shows that Mr. Hill was not experiencing any physical difficulties prior to coming into contact with Mr. Hutchison. Once on the ground he was struggling and fighting to get free. The injuries discovered in the autopsy are consistent with pressure being applied to the jugular vein--in the area where Mr. Hutchison was holding Mr. Hill. Witnesses heard Mr. Hill saying that he could not breathe. They saw him stop moving. Mr. Hill was unconscious when police arrived.
- [75] Taking all of the evidence into consideration I have no doubt that Mr. Hutchison legally caused Mr. Hill's death by holding him in a headlock for an extended period of time thus exerting fatal pressure on vital blood vessels in Mr. Hill's neck.

CONCLUSION

[76] Stand up Mr. Hutchison. I accept that you did not intend to cause Mr. Hill harm. However, as you have heard from all that I have just said, that is not a defence to manslaughter.

[77] After a careful consideration of the law and the evidence, I find you guilty of manslaughter.

"The Honourable Madam Justice Murray"

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