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R. v. Rzadkowski, 2025 ONSC 2269

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CITATION: R. v. Rzadkowski, 2025 ONSC 2269
COURT FILE NO.: CR-24-30000544-0000 and CR-25-30000062-0000
DATE: 20250416

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
HIS MAJESTY THE KING	)	Jon McGrath, for the Crown
	)	
– and –	)	
	)	
RYSARD RZADKOWSKI	)	Ian McCuaig, for Mr. Rzadkowski
	)	
	)	
	)	
	)	**HEARD:** February 3-7, 10, 2025
	)	

JUDGMENT ON TRIAL

R. MAXWELL J.

Overview

[1] Mr. Rzadkowski is charged with attempted murder and weapons dangerous, arising out of an incident which occurred on August 3, 2022. He entered a plea of not guilty on both counts and had a trial before me.

[2] There is no dispute that Mr. Rzadkowski made contact with the complainant on August 3, 2022 and that he was armed with an instrument. As will be discussed in greater detail, Mr. Rzadkowski testified on the trial and disputed that he caused the injuries sustained by the complainant, claiming that any contact he made with the complainant was inadvertent and further, that he contacted her with a toy sword which could not have caused the injuries she sustained.

[3] I conclude, based on all of the evidence, that there is no basis for Mr. Rzadkowski's suggestion that his contact with the complainant was accidental, inadvertent, or incidental to her falling onto the instrument he carried.

[4] Mr. McCuaig, on behalf of Mr. Rzadkowksi, conceded that the evidence establishes Mr. Rzadkowski's guilt of lesser offences of assault and assault with a weapon. For reasons I will explain, there can also be no doubt, based on the evidence of the serious, life-threatening nature of the complainant's injuries that the Crown has established his guilt on the lesser offence of aggravated assault beyond a reasonable doubt.

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[5] The real issue to be determined in this case is whether Mr. Rzadkowski had the requisite *mens rea* for the offence of attempted murder.

[6] For the reasons set out below, I have concluded that the Crown has not proved beyond a reasonable doubt that Mr. Rzadkowski is guilty of attempted murder in his attack on the complainant. I have concluded that a specific intent to kill the complainant, while an available inference, is not the only reasonable or rational inference to be drawn on the whole of the evidence. On the totality of the evidence, which includes all of the circumstances in which the attack took place and Mr. Rzadkowski's after-the-fact statements, it could also be that Mr. Rzadkowski formed an intention to cause Ms. Dabroska bodily harm without having formed an intention to kill her.

[7] As I will explain, while Mr. Rzadkowski's post-arrest statements, on their face, support an inference that he intended to kill the complainant, his statements must be considered in the context in which they were made, and in the totality of the evidence. When his after-the-fact statements acknowledging he stabbed the complainant and declaring that he "tried to kill her" are put in the context in which they were made, another available inference that arises is that he recognized, after the fact, that his actions could have killed the complainant, but not necessarily that he set out with the intent to kill her when he attacked her.

[8] The balance of the evidence which informs the assessment of Mr. Rzadkowski's intent, which is circumstantial, is consistent with an intent to cause bodily harm, but does not, in my view, when taken together and in combination with his statements, lead to only one inference that he had the intent to kill.

[9] As such, I conclude that Mr. Rzadkowski is guilty of aggravated assault. I am also satisfied that Mr. Rzadkowski is guilty of the offence of weapons dangerous. Mr. McCuaig, in closing submissions, conceded Mr. Rzadkowski's guilt on this count.

The Evidence

[10] The Crown called the complainant, several police witnesses and the emergency physician who treated the complainant on August 3, 2022 when she was brought by ambulance to Sunnybrook Hospital with injuries.

[11] The Crown also sought to have the accused's utterances to the police upon his arrest admitted for the truth of their contents as an exception to the hearsay rule as spontaneous utterances. Mr. Rzadkowski initially challenged the voluntariness of the utterances. However, part way through the completion of the evidence on the *voir dire*, the voluntariness of Mr. Rzadkowski's statements was conceded.

[12] The parties agreed that the evidence that was called on the *voir dire* would apply to the trial proper.

[13] As noted earlier, Mr. Rzadkowski testified on the trial and denied causing the serious wound to the complainant's abdomen, as described by Dr. Chu.

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(i) Background

[14] I accept the following facts which form the background to the incident of August 3, 2022.

[15] The complainant is a denturist who operated her business out of the main floor of a two-story house at 2955 Kingston Road. She rented the 2nd floor and basement of the house as residential. Two tenants occupied units on the 2nd floor of the building. Mr. Rzadkowski rented the basement unit.

[16] Mr. Rzadkowski grew up in Poland and worked as a jeweler for many years both in Poland and later when he immigrated, in Canada. When he immigrated to Canada in 1987, he settled in Saskatchewan and shortly thereafter, moved to Toronto. He relocated to Edmonton and Saskatchewan for a time, then returned to Toronto. He found a tenancy with the complainant. At the time of the incident, Mr. Rzadkowski had been living in the basement unit of the complainant's building for approximately eight years.

[17] Mr. Rzadkowski had a cordial relationship with the complainant for much of his tenancy. Both he and the complainant are Polish. The complainant sometimes helped Mr. Rzadkowski fill out paperwork for things like unemployment benefits and social assistance. During the Covid-19 pandemic, she assisted him in applying for CERB payments. Mr. Rzadkowski also tried to help the complainant by doing odd jobs around the property, such as tending to the landscaping in the summer, shoveling snow in the wintertime, and other maintenance.

[18] The complainant accepted in cross-examination that, in the year prior to the incident, there had been a change in Mr. Rzadkowski's behaviour. She received an increased number of complaints from the other tenants about Mr. Rzadkowski making excessive noise, particularly at night, interfering with the other tenants' ability to sleep.

[19] In or around the summer of 2021, the complainant received complaints from the other tenants about Mr. Rzadkowksi's water usage. They complained that Mr. Rzadkowski's regular watering of the grass and shrubs on the property was causing low water pressure to their units, and further, that his nighttime watering caused excessive noise.

[20] The complainant tried to speak to Mr. Rzadkowski about the issues, he continued to water the lawn and shrubs and she therefore turned off the exterior water until the summer season was over. Mr. Rzadkowski was upset and he ignored her presence for a period of time until the summer was over.

[21] Complaints from the other tenants continued in 2022 and became more constant. Sometime around the beginning of the summer of 2022, the complainant spoke to Mr. Rzadkowski and said he had to be more respectful of the other tenants and decrease the noise. She also told him to stop watering the lawn and shrubs, which he resumed doing in the summer of 2022. He did not comply with her directions.

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[22] About two months before the incident, the tenants were making near daily complaints about Mr. Rzadkowski's noise, the smell of his cooking, and other issues. She decided to enlist a property management company to deal with all tenant disputes. She testified that she advised all her tenants of her intention to have all complaints go through the property management team.

[23] She had not yet finalized retaining the property management team when the events of August 3, 2022 took place.

(ii) The Evidence Concerning the Incident of August 3, 3022

[24] The complainant testified in the two months before the incident, when the complaints were constant, that she spoke to Mr. Rzadkowski about the complainant and he told her to "shut up". The complainant testified that she reached a conclusion that she could not handle the complaints anymore and felt Mr. Rzadkowski would not listen to her or comply. This is what prompted her to enlist a property management company to deal with the complaints.

[25] On August 3, 2022, she finished work at approximately 7pm and sat in a lawn chair near the side entrance of the house to smoke a cigarette. The side entrance leads to the residential units on the 2nd and basement floors.

[26] She testified that she had been outside for only a few minutes when Mr. Rzadkowski exited from the side entrance of the house and said something to her. She could not recall what he said or asked, but believed it must have been about the other tenants, because she recalled telling him that he had to be respectful of the other tenants. He then left the area and returned inside the home through the side door.

[27] Less than five minutes later, Mr. Rzadkowski exited again from the side door. The complainant testified that Mr. Rzadkowski looked very angry. She recalled him saying a phrase in Polish, which she translated as "why are you so fucked up?" In cross-examination, she stated she had never seen Mr. Rzadkowski look this way. She also testified in cross-examination that Mr. Rzadkowski had never previously been aggressive toward her.

[28] The complainant testified that Mr. Rzadkowski approached very quickly. As he approached, she noticed his body and right arm were stiff. His right hand was behind his back. The complainant testified that it appeared to her that he was making "jerky" movements with his right hand behind his back. She could not see his right hand as he approached.

[29] She testified that Mr. Rzadkowski suddenly brought his right hand from around his back. She saw that he was holding a knife in his right hand. She described the knife as having a pale wooden coloured handle and a long blade. She testified that the blade seemed very long. She thought it might have been a butcher's knife.

[30] In cross-examination, she testified that she thought she saw the knife as he raised his arm to strike her the first time. She disagreed with the suggestion that the handle of the knife was brown and maintained that it was wooden and a pale colour. She stated in cross-examination that it is

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possible she saw his hand rather than the handle of the knife when she saw the pale colour. She acknowledged that she did not see the knife clearly.

[31] She testified that before she could get up from her seat, Mr. Rzadkowski came at her with the knife. She raised her left arm to position it in front of her to protect herself from the knife. The knife cut her left forearm just above the wrist. She looked down and saw she was bleeding from her arm. After that, either before or after she had fallen out of the chair and onto the ground, she realized she had been stabbed on the right side of her abdomen.

[32] The complainant could not recall when she fell or when she was stabbed following the initial cut to her forearm. She testified that while she was on the ground, she noticed a lot of blood coming from her abdomen.

[33] The complainant testified that as she tried to get up, she observed that Mr. Rzadkowski was still pointing the knife at her. She testified that she tried to calm him down and told him to go back inside the house. Once she was able to stand up, she held a lawn chair in front of her with the legs of the chair pointed toward Mr. Rzadkowski to create distance between them.

[34] The complainant testified that she was able to push Mr. Rzadkowski backward, throwing him off balance, which allowed her to retreat inside the home. She entered the unit of one of the tenants on the 2nd floor. Someone called 911.

[35] She did not see what Mr. Rzadkowski did with the knife after he stabbed her.

[36] In cross-examination, she accepted that, on occasion, she talked to a friend over the phone about Mr. Rzadkowski's behaviour, but denied she had conversations about him with the tenants. She was asked whether she had a computer in her office that runs any artificial intelligence ("AI") programming. She denied that her computer had any such programming, testifying that her computer was 10 years old.

[37] PC O'Neill and PC Kay arrived on scene in response to the 911 call. They found the side door to the home locked. Very shortly thereafter, Mr. Rzadkowski was observed through the window in the basement apartment. A firefighter on scene directed him to unlock the door, which he did. He was immediately taken into custody by PC O'Neill and PC Kay.

[38] PC O'Neill testified that when Mr. Rzadkowski came out, he had items in his hands, which he was ordered to drop. He did not immediately drop the items (which were later determined to be his eyeglasses and cell phone.) Mr. Rzadkowski was taken to the ground and placed in handcuffs. As a result of being taken to the ground, he suffered a cut to his forehead.

[39] After he was placed under arrest, while he was on the ground being searched by PC O'Neill, Mr. Rzadkowski made certain utterances. The utterances were captured on PC O'Neill's body worn camera as well as by the in-car camera.

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[40] At 9:05pm, the body-worn camera captured Mr. Rzadkowski's statement, "I told you [inaudible] I stabbed the woman, with knife."

[41] Shortly thereafter, Mr. Rzadkowski was moved to the side of the scout car where the search incident to arrest continued. At 9:06pm, he stated, "I stabbed her with my knife".

[42] Mr. Rzadkowski was directed multiple times by officers to stop speaking. At 9:11pm, PC O'Neill read the accused his rights to counsel and provided a caution. In response to the caution that he did not have to say anything in answer to the charge and that whatever he said may be given in evidence, Mr. Rzadkowski stated, "Good, I tried to kill her, sir."

[43] In cross-examination, PC O'Neill accepted that Mr. Rzadkowski's breathing was laboured when he was in police custody at the scene. Mr. Rzadkowski had an injury to his head, however he did not complain of pain. PC O'Neill accepted in cross-examination that Mr. Rzadkowski complained that the handcuffs were too tight and that he did not initially loosen them because he could get a finger inside the handcuffs. Later, before leaving the scene, he checked again and felt they had become tighter. He then loosened the handcuffs.

[44] Mr. Rzadkowski was seen by emergency medical personnel on scene. The interaction was captured on the body-worn camera of PC O'Neill. They cleaned his wound and bandaged it. Mr. Rzadkowski was conscious and alert throughout. He was transported to the hospital where he received three stitches to close the wound.

[45] Detective Constable Debreau attended the scene and took photographs of the exterior and interior of the property. Numerous photos were introduced as exhibits on the trial. In the backyard of the home, under an apple tree, police located a cellphone, headphones for the cell phone, cigarettes, a lighter, and other items. PC Debreau testified that police located a lawn chair outside which had red staining on the left armrest. The chair was moved into the side entranceway of the house to protect it from the rain.

[46] In cross-examination, DC Debreau accepted that no testing was done on the chair to confirm that the staining was blood. He made an assumption that the staining was blood, based on his past experience of attending scenes and because he had information that there had been a stabbing at the crime scene.

[47] Inside a black garbage bin in the backyard on the southern wall of the home, police located a knife with a black handle. The blade was approximately 30 cm in length and appeared to have red staining on the blade, in the area just above the handle. DC Debreau accepted that he made an assumption that it was the weapon used in the incident because of the information he received that the call was about a stabbing at the address. There is no evidence that any tests for fingerprints or DNA were conducted on the knife to connect the knife to Mr. Rzadkowski.

[48] The staining on the knife blade was swabbed and analyzed by the Centre for Forensic Sciences. The report was filed as an exhibit on the trial. The complainant could not be excluded as the source of the blood on the knife blade.

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[49] DC Debreau photographed the interior of the home. Just inside the side entrance, there is a short set of stairs leading to the main level of the home, another set of stairs to the left of the side door leading to the 2nd floor apartment and another set of stairs to the right of the side door leading to the basement apartment. DC Debreau photographed what appeared to be red staining on the stairway railing leading up to the 2nd floor. He also observed and photographed a carpet runner on the landing of the 2nd floor which had a dark spot on it and which PC Debreau believed was blood. He accepted on cross-examination that no investigation was done to confirm whether the staining on the railing or the carpet runner was, in fact blood, nor did he have any information as to when the staining occurred.

[50] The complainant was transported to Sunnybrook Hospital, where she underwent emergency surgery. Dr. Peter Chu is an emergency surgeon, performed the emergency surgery on the complainant. He noted that the complainant had a superficial cut to her forearm and a wound to her abdomen. He testified that the abdominal injury, on the surface, measured approximately six centimetres, but the injury under the muscle was much deeper, spanning 15 centimetres. He testified that the larger internal injury was likely caused by the knife going into the body at an angle, as the internal wound had an arch shape. The knife penetrated the skin, the fat layer under the skin, and two layers of tissue before tearing a hole in the right colon and severing two blood vessels which transport blood to the colon. Dr. Chu determined that the injury had caused 1.5 litres of blood to pool in the complainant's abdomen. In his assessment, she required urgent surgery to repair the severed blood vessels. The nature and extent of the injuries also required that Dr. Chu remove half of the complainant's colon.

[51] In cross-examination, Dr. Chu testified that the size of the wound visible on the outside does not necessarily correlate with the internal damage and that what might appear to be a small wound on the surface may cause significant internal damage. A person may be able to talk and move but nevertheless be very sick. Dr. Chu testified that the complainant's injuries were life-threatening and, if left untreated, would have been fatal.

[52] A day or two after the emergency surgery, the complainant underwent a further surgical procedure to put her colon back together. She was hospitalized for two weeks before she was discharged.

[53] PC Goodwin took photos of the complainant's healing injuries on September 1, 2022, some three weeks after the incident. The photographs were introduced as exhibits on the trial. The photographs capture a healing cut on the complainant's left forearm and a large, healing wound on the right side of her abdomen. The complainant also had a very large healing incision from her chest down to her lower abdomen from the emergency surgery.

[54] Mr. Rzadkowski testified that leading up to August 3, 2022, the complainant never mentioned to him that the other tenants complained about him. He testified that when the complainant heard him say "shut up", he was not speaking to her but rather, was speaking about artificial intelligence programs. He testified that he had concerns that the AI programming on the complainant's computer may not be functioning properly, causing the complainant to make hasty

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or incorrect decisions. He also testified that on the day that he said, “shut up”, he was responding to an AI programming, asking him, “what about Africa, how we going to go.” He denied that he was speaking to the complainant at this time.

[55] In terms of the events on August 3, 2022, Mr. Rzadkowski testified that he was working at his desk when an artificial intelligence voice told him to go for a walk and have a cigarette. He said he went outside then came back inside. The voice then told him he should go to a dollar store, buy a toy sword, and approach the complainant to ask the question “two months or five years?” He stated that “two months” referred to the complainant saying to him that he had two months to leave the unit and “five years” referred to an earlier conversation during which she told him he could stay for five years.

[56] He testified that he went outside with a toy sword he purchased at the dollar store and conducted a “ritual”, pointing the toy sword at the complainant while asking the question, “two months or five years”. He stated that she tried to get up from her seat but she was injured on her wrist. He felt he was “frozen” or stuck and did not move. In cross-examination, he testified that she had to move forward in the chair to get out of it and that the toy sword hit her stomach. He testified that his contact with her was “just a touch”, that it was no more than a scratch, he saw a 5cm wide circle, and that it did not injure her.

[57] Mr. Rzadkowski testified that the complainant stood up and told him to calm down. He proceeded to put the toy sword in a garbage bin on the property then return to his apartment.

[58] He denied that the knife inside the garbage bin was the sword he used in approaching the complainant. In cross-examination, he testified that he had never seen the knife in the garbage can before. He pointed out that the knife which was located in the garbage can does not have a pale coloured wooden handle, as described by the complainant. He suggested that the blood on the knife in the garbage bin was put there by someone and that the laboratory which conducted the testing knew it had been placed on the blade. He denied that he caused any injury to the complainant, other than possibly scratching her.

[59] He testified that at the time he was taken to the ground, there were two police officers to his left and right. He also testified that he sustained a scratch to his forehead. He recalled being asked about the injury to his head and receiving treatment for the injury. He maintained that the entire arrest was made up and that those who were there created “a movie”. He testified that one of the officers said to him “did you try to murder her”, to which he simply repeated back the officer’s word, stating, “did I try to murder her”.

[60] He denied that the police body camera footage which captures his post-arrest statements are authentic, in that he disputes that he is the person in the recordings. He disputed making any of the statements captured on the recording. He claimed that the person in the body worn camera recording is an actor.

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[61] He denied he had any intention to hurt the complainant, testifying that they had a great relationship and were like “brother and sister”.

[62] In cross-examination, he was asked why he would listen to the AI voice which told him to buy the toy sword and confront the complainant with the question if he believed AI was dangerous and inaccurate. He stated that this voice had proven to be knowledgeable and that the item he bought was only a toy.

[63] In cross-examination, he denied the suggestion that he was angry after speaking with the complainant about his tenancy. He denied returning to his unit and retrieving a knife then stabbing the complainant out of anger. He denied trying to kill the complainant. He testified that he did not want to hurt her.

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General Legal Principles

[64] Mr. Rzadkowski is presumed innocent of these charges. He started the trial with the presumption of innocence and the Crown carries the burden of displacing the presumption with evidence that establishes proof beyond a reasonable doubt that he committed the offences: *R. v. Lifchus*, [1997] 3. S.C.R. 320 (S.C.C.), at para. 27.

[65] Central to determining whether the Crown has proven the charges beyond a reasonable doubt is my assessment of the credibility and reliability of the witnesses. In assessing the credibility and reliability of the witnesses, I must look at each witness’s evidence individually, and in the context of the rest of the evidence to determine what, if any, of their evidence I accept. I can accept some, none, or all of a witness’s testimony. In making this assessment, I must be vigilant not to allow demeanor or notions about how a witness should testify or behave inform my assessment of that witness’s evidence to any significant extent.

[66] Credibility is a witness’s willingness to tell the truth. Reliability is the accuracy of the witness’ testimony. Accuracy is affected by the witness’ ability to observe, remember, and recount the events. A witness whose evidence is not credible cannot give reliable evidence. However, a credible witness may still be unreliable. Therefore, the reliability of a witness’s evidence is critically important.

[67] Because Mr. Rzadkowski testified and called other defence evidence, in determining whether the Crown has proved the allegations beyond a reasonable doubt, I must apply the principles set out in *R. v. W.(D.)*, [1991] 1 S.C.R. 742 (S.C.C.). First, if I believe Mr. Rzadkowski’s evidence, I must acquit. Second, if I do not believe his testimony, but I am left in reasonable doubt by it, I must acquit. Third, even if I am not left in doubt by the evidence of the accused, I must ask myself whether, on the basis of the evidence which I do accept, I am convinced of Mr. Rzadkowski’s guilt beyond a reasonable doubt.

[68] The second step of the *W.(D.)* framework does not require complete rejection of the accused’s exculpatory evidence. The trier of fact may be unable to positively believe the accused but is nevertheless left in doubt about who to believe, or unable to determine what really happened.

Some evidence of the accused may raise a reasonable doubt even though the bulk of it is rejected. In any of these circumstances, the accused is entitled to an acquittal.

[69] In assessing whether or not to believe Mr. Rzadkowski's evidence, I do not consider the evidence in isolation, as though the Crown had led no evidence. Rather, I must assess the evidence in light of all of the evidence. As the Court of Appeal for Ontario stated in *R. v. Hoohing*, 2007 ONCA 577, 74 W.C.B. (2d) 676, at para. 15:

> The evidence of any witness, including an accused, may be believable standing on its own, but when other evidence is given that is contradictory, or casts doubt on the accuracy or reliability of the witnesses' evidence, that evidence may no longer be believable, or in the case of an accused, may no longer raise a reasonable doubt.

Assessing the Credibility and Reliability of the Evidence and Findings of Fact

[70] I will first address Mr. Rzadkowski's evidence. I do not accept most of Mr. Rzadkowski's testimony about his interaction with the complainant on August 3, 2022. I do accept his evidence that he armed himself. I accept his evidence that he disposed of the item he armed himself with in the garbage bin in the yard. I accept his evidence that he went outside to confront the complainant about his tenancy.

[71] However, I find most of Mr. Rzadkowski's evidence about the encounter to be unreliable. I make a preliminary observation. The tenor and content of much of Mr. Rzadkowski's evidence suggested he believes much of the evidence in the case is manufactured as part of a conspiracy to set him up and that some of his conduct was motivated by the forces of artificial intelligence.

[72] Further, there were times during the trial that Mr. Rzadkowski's presentation suggested he might be experiencing symptoms of mental illness such as auditory hallucinations. For example, he suggested there was a knocking sound inside the courtroom and questioned whether others could hear it.[1]

[73] It may be that Mr. Rzadkowski's present recollection of the events is clouded by delusional beliefs. He may be mistaken about certain details. It may be that he is being untruthful in some

[1] There were no concerns raised about his fitness to stand trial. Mr. Rzadkowski, at all times during the trial, was oriented to where he was, the nature of the proceedings, and was able to answer questions and participate in the proceedings. He regularly consulted with counsel and was able to instruct counsel. Notwithstanding his occasional references to hearing sounds in the courtroom which were not there, I had no concerns about his fitness during the trial, nor did counsel raise any concerns related to Mr. Rzadkowski's fitness to stand trial.

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aspects of his evidence. It is difficult to know with certainty. However, I find that the bulk of his evidence is generally unreliable, on the basis that it is contradicted by evidence that I find to be credible and reliable.

[74] Before leaving the topic of Mr. Rzadkowski's mental health, I wish to note that there was no evidence before me that, at the time of the incident, Mr. Rzadkowski was suffering from any mental illness or impairment. There was also no evidence from any witness at trial that suggested Mr. Rzadkowski was suffering from a mental illness or mental impairment during the encounter. Mr. Rzadkowski made no suggestions of a conspiracy to frame him, planted evidence, or that artificial intelligence played a role in the event of August 3, 2022 in his utterances to the police. Neither the Defence nor the Crown made submissions that Mr. Rzadkowski acted involuntarily or that he is not criminally responsible for his actions. I am fully satisfied that Mr. Rzadkowski acted in a voluntary manner.

[75] As to whether he was experiencing symptoms of mental illness on August 3, 2022 which diminished his capacity to form specific intent to commit attempted murder, given my conclusion that the evidence does not establish beyond a reasonable doubt that Mr. Rzadkowski formed the requisite *mens rea* for attempted murder, I do not need to resolve the issue of whether Mr. Rzadkowski had diminished capacity to form the intent for attempted murder.

[76] Returning to Mr. Rzadkowski's evidence, as noted, I found much of his evidence to be unreliable and incredible. Much of his evidence was contradicted by evidence on the trial which I accept was entirely reliable and credible.

[77] For example, his testimony that he made accidental contact with the complainant with a toy sword is contradicted by: (1) the evidence of the complainant (which I accept) that he approached aggressively and raised his arm above his head and then struck her with the knife; (2) the evidence that a knife was found in the garbage bin very shortly after the incident with the complainant's blood on it; (3) the evidence of the wounds suffered included a defensive wound which drew blood and a very serious abdominal wound. There is no basis for the suggestion that the complainant suffered injuries accidentally.

[78] Mr. Rzadkowski's evidence denying the authenticity of the police worn body camera recording and the in-car camera recording is also not reliable. I have no doubt whatsoever that the person who was under arrest and who made the utterances which were recorded was Mr. Rzadkowski. PC O'Neill testified credibly about the circumstances surrounding Mr. Rzadkowski's arrest. The accuracy and authenticity of his body-worn camera was not challenged in cross-examination.

[79] Similarly, Mr. Rzadkowski's suggestion that Dr. Chu exaggerated the complainant's injuries is contradicted by the uncontested evidence of Dr. Chu about his internal examination of the complainant and the surgical procedures he undertook in order to save her life. His evidence that the blood on the knife located in the garbage bin had been planted is without any foundation and is contradicted by his own evidence that the complainant sustained some injury during the

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encounter and that he threw the item he was holding during the interaction with the complainant into the garbage can.

[80] Mr. Rzadkowski's evidence, on the whole, did not make sense in the context of the other evidence as a whole. His version of events is implausible, inconsistent, and contradicted by evidence that is highly credible, including the evidence of the complainant about his demeanor and actions before and during the attack, the evidence of Dr. Chu about the nature and extent of the injuries, the evidence of the weapon located at the scene, and the evidence from his utterance to the police in which he acknowledged stabbing the complainant with a knife. I do not accept Mr. Rzadkowski's evidence, nor does it raise a reasonable doubt.

[81] Turning to the complainant's evidence, I fully accept the complainant's account of what happened on August 3, 2022. I found the complainant to be a credible and reliable witness. She testified in a straightforward manner and did not embellish details. She was candid that she and Mr. Rzadkowski had an amicable relationship for years before the incident and that his behaviour on August 3, 2022 was out of character for him. She accepted that the conversation which preceded Mr. Rzadkowski going inside and returning with a knife was likely about the noise complaints. Her account of her relationship with Mr. Rzadkowski and the events leading up to the stabbing were fair and measured. There was no suggestion of animosity between then until the events of April 3, 2022.

[82] In terms of her reliability, her account was clear and corroborated by other evidence.

[83] I accept her evidence that when Mr. Rzadkowski returned to the backyard after their brief discussion, he was angry and agitated.

[84] I accept that she remembered this because it was unusual to see him this way. I also accept that as he approached, he kept his right arm and hand hidden behind his back. I accept that he approached quickly and when he was close to her, raised his arm while holding the knife in an attacking stance. She was not shaken in her evidence in cross-examination that he was aggressive and attacked her.

[85] Further, while she was unable to remember the exact point within the sequence of event of when she was stabbed in the abdomen, I find that there was no significant separation in time between Mr. Rzadkowski raising his arm in which he held a knife, her sustaining a defensive wound to her left forearm, and her sustaining a stab wound to her abdomen. I find that it was Mr. Rzadkowski who caused the defensive wound to the complainant' left forearm and that he stabbed her in her abdomen with the instrument he was holding, which I find to be the knife which was later located in the garbage bin in the backyard and which I find had her blood on the base of the blade.

[86] The fact that there was no forensic investigation into DNA or fingerprints on the knife does not shake my conclusion that this was the knife that was used in the attack, given the nature of the wounds she suffered (she was stabbed), her description of seeing the long blade of the knife, the

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presence of her blood on the base of the blade, the fact that it was located in the garbage bin in the yard where she had been attacked, and the lack of any evidence to suggest that anyone other than Mr. Rzadkowski was present in the backyard at the time of the incident. Moreover, while I generally do not consider Mr. Rzadkowski to be a reliable witness, even on his account, he placed the instrument he was holding in the garbage bin in the yard.

[87] She accepted on cross-examination that in describing the knife Mr. Rzadkowski held as having a pale wooden handle, that she may have been looking at his hand and not the handle of the knife. Given the very brief opportunity she had to view what was in Mr. Rzadkowski's hand, I accept that she may have been mistaken about the colour of the knife handle. This frailty in her evidence does not however undermine any of the core aspects of her evidence that Mr. Rzadkowski attacked her with a knife.

[88] The only reasonable inference to draw from the evidence is that the knife located in the garbage bin which had her blood on it is the knife which Mr. Rzadkowski used to stab her.

[89] I have considered Mr. Rzadkowski's evidence that the knife in the garbage bin was not the item he held in the confrontation and threw in the garbage bin afterward and his suggestion that the blood had been placed on the knife. For reasons I have already set out, I do not accept this evidence, nor does it raise a reasonable doubt about the complainant's recollection of being stabbed by Mr. Rzadkowski.

[90] Further, the complainant's evidence that she raised her arm to defend herself is consistent with the evidence of Dr. Chu and the photographs capturing a wound to her left forearm.

[91] Finally, I accept the evidence of Dr. Chu, which was not challenged in cross-examination, that the complainant suffered a severe internal injury as a result of being stabbed in the abdomen. I accept his evidence that she required emergency surgery to stop the bleeding from the severed blood vessels and that, if left untreated, she would have died from her injuries.

[92] I find that the incident occurred as the complainant described it. It was an unprovoked attack, precipitated by a conversation about Mr. Rzadkowski's tenancy or issues with the other tenants. Mr. Rzadkowski, in an angry state, left the conversation, armed himself with a kitchen knife with a 30 cm blade, concealed the knife behind his back as he approached, and then, moving quickly toward the complainant, raised the knife to her, first grazing her left forearm and then stabbing her in the abdomen. I find that he was still standing over the complainant, holding the knife, when she told him to calm down and go back inside the house. I accept that the complainant was able to put distance between she and Mr. Rzadkowski using a lawn chair and retreated to the house. I find Mr. Rzadkowski disposed of the knife in the garbage bin in the yard then returned to his basement apartment. I find that the wound, while relatively small on the surface, caused extensive, life-threatening internal injuries to the complainant. The internal injury spanned 15 cm, as a result of the knife going in and being pulled out at an angle. I accept that the complainant's injuries, as described by Dr. Chu, were very serious and that without treatment, she would have died from her injuries.

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[93] Having made my determinations on credibility and reliability and my findings of fact, I turn now to consider the issue of whether the Crown has proved that Mr. Rzadkowski had the necessary intent to be found guilty of Attempted Murder.

Has the Crown Proven the Elements of Attempted Murder Beyond a Reasonable Doubt?

[94] The offence of attempted murder requires proof beyond a reasonable doubt that Mr. Rzadkowski intended to kill the complainant, coupled with conduct done for the purpose of carrying out that intention: *R. v. Boone*, 2019 ONCA 652, at para. 49; *R. v. Ancio*, [1984] 1 SCR 225.

[95] In order to prove an attempted murder charge, the Crown must establish beyond a reasonable doubt that Mr. Rzadkowski had a specific intent to kill the complainant. It is not sufficient for an attempted murder charge for the Crown to prove only that Mr. Rzadkowski caused bodily harm that he knew was likely to cause death and was reckless as to whether death ensued or not: *Ancio,* at pages 402-404.

[96] The Court of Appeal for Ontario in *Boone* explained the concept of "intent" in the context of a charge of attempted murder to include not only having a purpose to kill another either as an end in itself or as a means to achieving some other end, but also includes carrying out some purpose with knowledge that killing is virtually certain to result. The Court stated, at para. 52:

> When can it be said that a person intends to kill? Certainly, a person whose purpose is to kill another, either as an end in itself or as a means to achieving some further end, has the intention to kill. However, and subject to the language of the provision creating the offence, courts have extended this everyday conception of intention to include the decision to carry out some purpose in the knowledge that killing is virtually certain to result, although the killing is neither the ultimate purpose in acting, nor the means chosen to achieve the desired purpose, and may even be deeply regretted. That is, the law treats as intended those side-effects that are foreseen to occur with virtual certainty.

[97] The Court clarified in *Boone*, at para. 57, that a belief that a result is a virtually certain consequence of one's actions is to be distinguished from recklessness as to the consequences, which would not be sufficient to establish the *mens rea* for attempted murder. To establish the intention for attempted murder on the basis of a belief in the certainty of an outcome (death), the Crown must establish that the accused believed the outcome *would* flow from the action, not that he appreciated death may or probably would flow as a consequence of his actions.

[98] The *mens rea* of attempted murder may be proved on the basis of direct or circumstantial evidence, or a combination of both. All the circumstances of the conduct must be considered, including: (1) the nature of the weapon used; (2) the extent of the weapon's use; (3) the manner in which the weapon was used; (4) the areas of the victim's body that were attacked, and (5) any other surrounding circumstances which may assist in inferring intention.

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[99] Justice Then in *R. v. Payne*, 2013 ONSC 4609, at para. 20, offered a non-exhaustive list of factors which inform the analysis of whether there is sufficient evidence of the specific intent to kill on a charge of attempted murder involving a stabbing:

> (1) the nature of the weapon used;
> (2) the location of the stab wounds (ie. were the wounds to vital parts of the anatomy);
> (3) the force with which the wound was inflicted;
> (4) the number of wounds;
> (5) the evidence or lack of evidence of premeditation or spontaneity;
> (6) the presence or absence of defensive motivation; see also.

[100] On the evidentiary significance of stab wounds, Justice A. Campbell (as he then was) in *R. v. Odulate et al*, [2001] O.J. No. 4029, at page 16, observed

> The mere fact that A stabs and wounds V with life threatening results is not, alone, any evidence of intent to kill.
>
> For attempted murder there must be some additional evidence from which the trier of fact may infer that the stabber intended something more than the actual consequence of the wound.
>
> Some stab wounds, by themselves alone, provide such evidence. Other stab wounds do not. It is impossible to draw a bright line between the two. It is entirely a question of degree having regard to all the circumstances including the nature of the wound, the vital nature of the area wounded, the nature of the combat, the evidence or lack of evidence of premeditation or spontaneity or threat or plan, the presence or absence of evidence of defensive motivation, the persistence with which the stabbing is repeated or not, whether or not intent to kill has been established.
>
> See also *R. v. Martin*, 2010 ONCA 256, at para. 4

[101] In this case, there is no direct evidence of a specific intent to kill the complainant or that Mr. Rzadkowski carried out his conduct with knowledge or belief that the complainant's death was a virtual certainty.

[102] For the Crown to establish the intent required for attempted murder, it relies on circumstantial evidence. The Court of Appeal for Ontario summarized the proper approach to circumstantial evidence in *R. v. Lights*, 2020 ONCA 128, 149 O.R. (3d) 273, at paras. 36-37:

> When the Crown's case consists wholly or substantially of circumstantial evidence, the standard of proof requires the trier of fact be satisfied beyond a reasonable doubt that the accused's guilt is the only reasonable inference to be drawn from the evidence as a whole: *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1000, at para. 20.

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[103] As noted in *Villaroman*, at para. 30, where proof of one or more elements of the offence depends exclusively or largely on circumstantial evidence, a trier of fact must be careful about too readily drawing inferences of guilt. An inference of guilt drawn from circumstantial evidence should be the only reasonable inference that the evidence permits. The mischief of inference-drawing from circumstantial evidence arises where the trier of fact may conclude prematurely that an accused is guilty without considering whether there are "reasonable alternative inferences".

[104] To determine if the circumstantial evidence meets the required standard of proof, the trier of fact must keep in mind that it is the evidence, assessed as a whole, that must meet this standard of proof, not each individual piece of evidence that is but a link in the chain of proof: *R. v. Smith*, 2016 ONCA 25, 333 C.C.C. (3d) 534, at paras. 81-82; *R. v. Morin*, [1988] 2 S.C.R. 345, at pp. 360-61; *Côté v. The King (*1941), 77 C.C.C. 75 (S.C.C.), at p. 76. See also *R. v. Uhrig*, 2012 ONCA 470, at para. 13; *R. v. Hudson*, 2021 ONCA 772, 158 O.R. (3d) 589, at para. 70.

[105] Applying the law as set out above, I turn first to the findings in this case. I have found that Mr. Rzadkowski stabbed the complainant with a kitchen knife with a 30 cm blade. While not necessarily designed as an instrument for killing, it certainly gave Mr. Rzadkowski the ability to cause serious bodily harm or death to the complainant: *R. v. Smith*, 2007 CarswellOnt 4160, at para. 34. He wounded her on her left forearm, but that wound was superficial. In my view, it was more of a slash than a stab wound. The wound he inflicted to her abdomen was a penetrating stab wound. I am prepared to infer that he used significant force in inflicting the wound because he penetrated the skin, two layers of facia, and a muscle layer, ultimately lacerating two blood vessels. While I cannot say, more precisely, how much force was used, I find that the accused stabbed the complainant with significant force.

[106] As to the area where the complainant was wounded, Mr. Rzadkowski stabbed the complainant in the side abdomen. While a penetrating wound to virtually any part of the body has the potential to cause serious or fatal injury, some areas such as the neck or chest are more vulnerable to fatal injuries because of the vital organs or vessels they contain. An inference that someone who stabs another person in the neck or chest intends to cause their death may, depending on the circumstances, be more readily accepted as the only reasonable inference about intent. The stab wound to the abdomen, on its own, may not so readily raise the inference of an intent to cause death. Depending on the surrounding circumstances, including what precipitated the stabbing, how many wounds were inflicted, and any words which were exchanged, a stabbing in the abdomen could certainly added to a constellation of factors supporting an inference that the accused intended to cause death.

[107] I therefore consider the circumstances surrounding the stabbing. As I have noted, Mr. Rzadkowski approached the complainant quickly, slashed her once on the arm and then stabbed her once in the abdomen. While there was a degree of premeditation in the attack, there is also no question that the entire attack happened very quickly, without any breaks between the accused emerging from the house, to the first slash, to the stabbing. Further, there was only one stab wound. There is no evidence that Mr. Rzadkowski attempted to stab the complainant further after the single stab wound, nor did he pursue her when she retreated into the home.

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[108] The constellation of factors, including the nature of the weapon used, the nature of the injury caused, the number of wounds, the circumstances surrounding the stabbing, and Mr. Rzadkowski's utterances do not, in my view, establish that he had a specific intent to kill the complainant or that he believed his actions would, with virtual certainty, kill the complainant. In particular, many of the factors are equally consistent with an intention to cause bodily harm without an intent to kill, including the fact that there was only one stab wound, it was inflicted in a vulnerable but not necessarily an area containing vital organs, there was nothing said before or after the stabbing occurred, and there is no evidence that Mr. Rzadkowski attempted to continue the attack or pursue the complainant when she fled the area.

[109] There is a further item of evidence upon which the Crown relies for the inference that Mr. Rzadkowski intended to kill the complainant. These are Mr. Rzadkowski's statements which were captured on PC O'Neill's body-worn camera and the in-car camera. Mr. Rzadkowski, when he was told why he was under arrest stated, "I told you, I stabbed the woman, with knife" and a minute later stated, "I stabbed her with my knife." Thereafter, in response to being read the primary caution, Mr. Rzadkowski stated, "Good, I tried to kill her, sir."

[110] The Crown argues that these statements are compelling evidence of Mr. Rzadkowski's intent to kill the complainant when he came out of the house with the knife. Mr. McCuaig submits that the statements must be put in context. Mr. Rzadkowski may have been simply recounting the events that had transpired after-the-fact and may not have been expressing his intention at the time of his conduct.

[111] Mr. Rzadkowski's first two utterances, confirming that he had stabbed the complainant with a knife, provide evidence that he committed the act, however, the statements do not shed light on Mr. Rzadkowski's state of mind at the time he acted.

[112] It is primarily the third utterance, "Good, I tried to kill her, sir", which may offer some evidence of Mr. Rzadkowski's state of mind at the time of the stabbing. The statement, on its face, could support an inference that Mr. Rzadkowski, in stabbing the complainant, intended to kill her.

[113] However, attributing a definitive meaning to his utterance as a statement of his intention that he meant to kill the complainant when he stabbed her, when put in the context of the rest of the evidence, is difficult. The statement must be assessed in the context in which it was made. Mr. Rzadkowski made the statement in the context of having just been told he was under arrest for attempted murder and being given a caution that anything he said could be used against him. It is not clear, in watching the body camera footage and hearing Mr. Rzadkowski make the utterance, whether he was confirming his understanding of the charge, whether he was recounting the physical events which had just transpired, or whether he was conveying what he was thinking when he committed the physical acts. I would also note that, in the recording, Mr. Rzadkowski appears distressed and agitated, breathing heavily, bleeding from his forehead, and making other comments, including that he did not wish to live any longer.

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[114] I am unable to accept that his utterance can be taken as an admission that he intended to kill the complainant. In my view, there are different reasonable inferences which arise from Mr. Rzadkowski's utterance, which diminish the weight I can put on the utterance as a piece of circumstantial evidence of *mens rea*.

[115] Having regard to all of the contextual factors I have just outlined, I turn to the question of whether the evidence establishes that the only reasonable inference available on the evidence is that Mr. Rzadkowski formed the intent to kill the complainant or believed his acts would, with virtual certainty, result in her death.

[116] There is no question that Mr. Rzadkowski's attack on the complainant was unprovoked and premeditated, in that he went into the home to retrieve the knife before the attack. There is no question that the complainant suffered extremely serious injuries from the stab wound to her abdomen. I accept that there is a basis to conclude that Mr. Rzadkowski had a degree of *animus* toward the complainant, or at least that he was very upset by the thought that the tenancy might be coming to an end or that the complainant had given him inconsistent information about the future of his tenancy.

[117] It follows that one rational and available inference to draw from the totality of the evidence is that Mr. Rzadkowski intended to kill the complainant when he retrieved a knife from inside the home, approached her, and stabbed her. That may even be the most probable inference.

[118] However, I must also consider whether there are other possible, reasonable inferences arising from the evidence about Mr. Rzadkowski's state of mind at the time. At least one possibility, in my view, is that Mr. Rzadkowski acted without necessarily considering what he intended as a consequence of his actions or formulating a specific intent to kill the complainant. Another rational inference is that he intended to cause the complainant bodily harm and did not care or turn his mind to whether she would die or not.

[119] As such, the Crown has not established the *mens rea* of attempted murder beyond a reasonable doubt and I find Mr. Rzadkowski not guilty of attempted murder.

[120] Count 1 on the Indictment is particularized to "stabbing" and, as such, provides a route for conviction on a lesser included offence of aggravated assault. Based on my findings of fact set out above, I am satisfied beyond a reasonable doubt that Mr. Rzadkowski committed an aggravated assault contrary to s. 268(1) of the *Code*. I find him guilty of the lesser, included offence of aggravated assault.

Has the Crown Proven the Elements of Weapons Dangerous Beyond a Reasonable Doubt?

[121] Mr. Rzadkowski is charged with weapons dangerous contrary to s. 88(1) of the *Code*. Proof of weapons dangerous requires proof beyond a reasonable doubt that Mr. Rzadkowski possessed a weapon and that he did so for a purpose that was dangerous to the public peace. The purpose for which the person possessed the weapon must be determined at the instant of time that precedes its use.

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[122] Mr. McCuaig did not make submissions on this charge.

[123] I have already found that Mr. Rzadkowski armed himself with a knife from the home, walked into the backyard and confronted the complainant, then attacked her with the knife. On the facts as I have found them, Mr. Rzadkowski is guilty of weapons dangerous as it concerns his possession of a knife immediately prior to the aggravated assault on the complainant.

Conclusion

[124] For the reasons set out, I find Mr. Rzadkowski not guilty of attempted murder but guilty of the lesser included offence of aggravated assault. I find Mr. Rzadkowski guilty of weapons dangerous.

[125] I thank both counsel for their professionalism throughout the course of the trial.

R. Maxwell J.

Released: April 16, 2025

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ONTARIO

SUPERIOR COURT OF JUSTICE

HIS MAJESTY THE KING

– and –

RYSARD RZADKOWSKI

REASONS FOR JUDGMENT

Maxwell J.

Released: April 16, 2025