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R. v. Serieaux, 2024 ONSC 5054

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CITATION: R. v. Serieaux, 2024 ONSC 5054
COURT FILE NO.: CR-22-650
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ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	
HIS MAJESTY THE KING	J. McKenzie, Counsel, for the Crown
Plaintiff	
- and -	
JHEIDON SERIEAUX	C. Hicks and T. Davidson as Amicus
	J. Serieaux, Self-represented
Defendant	
	HEARD: August 7,8 9,12,14, 15, 16, 20, 21, 22, 2024

The Honourable Mr. Justice H.S. Arrell

JUDGMENT

INTRODUCTION:

[1] Mr. Serieaux is charged with first degree murder in the stabbing death of Christopher Sim on August 8, 2021, in the City of Hamilton.

[2] Mr. Serieaux is self-represented. Although given many opportunities to retain counsel, Mr. Serieaux elected not to do so.

[3] Amicus was appointed some time ago to assist Mr. Serieaux and the Court. With the consent of the Crown I granted *Amicus* increased flexibility to act more like Mr. Serieaux's advocate, which has been done throughout this trial most professionally and competently by Mr. Hicks and Ms. Davidson.

[4] Mr. Serieaux, at certain earlier stages of these proceedings, was deemed unfit to stand trial due to a mental illness. A jury ruled on March 18, 2024, after Mr. Serieaux had received treatment at Waypoint Centre for Mental Health Care ("Waypoint") pursuant to my keep fit order, that he was fit for trial.

[5] The trial commenced on August 7, 2024, without a jury at the request of Mr. Serieaux and with the consent of the Crown.

[6] Initially, I ruled that Mr. Serieaux would attend this trial in person. After several days of hearing the trial in person, Mr. Serieaux refused to leave his cell at the Hamilton Detention Centre. According to *Amicus*, Mr. Serieaux's health had deteriorated, and it was suspected that he may have stopped taking his medication. He asked to be transferred back to Waypoint and continue his participation in the trial virtually. The Crown was not opposed to this request, and *Amicus* recommended such a change in location so that the trial could continue. I made an appropriate order and Mr. Serieaux continued the trial virtually from Waypoint, with the full assistance of *Amicus*.

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FACTS:

[7] The August 8, 2021 incident occurred in the parking lot of the Mission Services of Hamilton, a men's shelter on 325 James St. N ("Mission Services"). Mr. Serieaux was 23 years of age at the time of this incident. It appears that he had been living in shelters for some time. Mr. Sim, the deceased, was 37 years of age and had also been living in shelters for an extended period of time.

[8] During the investigation, a number of surveillance cameras were located and accessed. Exhibit 1, filed on consent, was the Crown photobook, which encompassed various screen shots, still photos, and surveillance video footage. Exhibit 1 also included edited video compilations/reports, created using the prior-mentioned photo/video data. Mr. Serieaux and *Amicus* agreed early in the trial that the accuracy and authenticity of this documentation was not at issue. However, as I will explain later in this judgment, when confronted with the surveillance video of the stabbing on his cross-examination, Mr. Serieaux commented that the video was fake. I have concluded that all the videos and the rest of Exhibit 1 are accurate depictions of the events they capture on August 8, 2021.

[9] Mr. Serieaux is first seen, in the video surveillance footage, at 7:57 a.m. on August 8, 2021, in a hallway on the second floor of the Good Shepherd Cathedral ("the Cathedral"). The Cathedral is a hostel for men, located at 378 Main St. E. in Hamilton, and approximately 2.5 km away from Mission Services. On August 8, 2021, Mr. Serieaux was registered as staying at the Cathedral.

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[10] Caitlyn Reid is a shelter support worker. She was working at the Cathedral on August 8, 2021. She knew Mr. Serieaux and confirmed that he was booked into the Cathedral on August 7, 2021. She recalls interacting with him the morning of August 8, 2021, when he requested use of the shelter's tablet. Ms. Reid found Mr. Serieaux's behaviour normal, although in her testimony she noted his insistence on wanting to use the shelter's tablet. Mr. Serieaux never did access the tablet that morning.

[11] Mr. Serieaux is next seen shortly after 11:00 a.m., sitting on a bench with another male at the north-east corner of James St. N. and Barton St. in the City of Hamilton. This location is across the street from Mission Services.

[12] The deceased is first seen, on video surveillance, at 11:06 a.m. walking south along James St. N. to the north-west corner of James St. N. and Barton St., where he sat down on a doorway stoop. Mr. Serieaux, shortly after, crosses James St. and approaches the deceased. They appear to be interacting verbally. Mr. Vechioni, Mr. Usher, and another unidentified male join them, and they all appear to be conversing. An older gentleman stops briefly on the aforementioned north-west corner and then walks on.

[13] At 11:16 a.m., very shortly after the older gentleman walks on, a physical altercation occurs between the deceased and Mr. Serieaux. It is short lived with a few punches landed by the deceased. It is apparent that the deceased was the aggressor and the winner of this approximately 22 second confrontation ("the initial altercation"). During the initial altercation, Mr. Serieaux is knocked to the sidewalk, his hair appears to be pulled by the deceased, he then gets up, and leaves the scene by crossing Barton St. onto a church property and out of camera view.

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[14] The video surveillance then shows the deceased and Mr. Vechioni casually walking north on James St. N. towards Mission Services.

[15] Mr. Vechioni gave evidence during trial. At the time of the incident, he had been a resident of Mission Services for approximately six months, during which he had met and become friendly with Mr. Sim. Mr. Vechioni had seen Mr. Serieaux around the Mission Services area a few times but did not know him.

[16] Mr. Vechioni indicated that, on the morning of August 8, 2021, following breakfast, he and a few men had gone out for a smoke. Mr. Sim was on the corner of James St. N. and Barton St. sitting on a stoop, and they all congregated near him and were chatting. Mr. Vechioni was about 10 feet away from Mr. Sim when he heard a thump. He looked over and saw Mr. Sim and Mr. Serieaux in a physical altercation. He saw Mr. Sim punch Mr. Serieaux twice and kick him. He saw Mr. Serieaux fall to the sidewalk and then get up and cross Barton St. and leave the area. He did not recall Mr. Sim dragging Mr. Serieaux by the hair, but upon viewing the surveillance video he agreed that may have happened. The altercation was very quick, and no one appeared hurt to Mr. Vechioni. He made no mention of Mr. Serieaux losing a shoe when leaving. He agreed that Mr. Sim appeared to get the better of this altercation and agreed that Mr. Sim could "take care of himself".

[17] After the initial altercation, Mr. Sim, Mr. Vechioni, Mr. Usher, and the other un-identified male, are seen on video surveillance casually walking back to Mission Services for lunch. Mr. Vechioni testified that, on this walk, he asked Mr. Sim what the fight with Mr. Serieaux was about. Mr. Sim told Mr. Vechioni that Mr. Serieaux had said something disrespectful about the older gentleman who had walked by, and that Mr. Sim felt he needed to teach him a lesson to be

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more respectful of older people. Mr. Vechioni also recalled that when they got to the Mission Services dining hall, and sat down for lunch, Mr. Sim stated that he wanted to advise Mr. Serieaux everything was OK and there were no hard feelings. According to Mr. Vechioni, Mr. Sim borrowed his phone, got Mr. Serieaux's number from another resident and attempted to call him – but the call did not go through.

[18] Mr. Vechioni testified that during the initial altercation he saw a phone fall to the ground from Mr. Serieaux's pocket. He believed Mr. Sim picked it up and gave it back to him, although he testified that it could have been someone else who gave it back to him.

[19] Following their entry for lunch, Mr. Sim left the Mission Services cafeteria prior to Mr. Vechioni. Mr. Vechioni testified that as soon as Mr. Sim left the dining hall he heard screams from outside. He looked out the window and saw Mr. Sim holding his neck. Mr. Vechioni ran outside to assist. Mr. Vechioni did not see the stabbing nor who stabbed the deceased. He does recall Mr. Serieaux looking in the window of the cafeteria while they were having lunch.

[20] Ms. Smith and Ms. Khan were working at Mission Services on the morning of August 8, 2021, and confirmed hearing a scream and immediately looking into the parking lot and seeing Mr. Sim, who they recognized, holding his neck and staggering. They also testified to seeing Mr. Serieaux in close proximity to Mr. Sim, and then leaving the scene.

[21] Daniel Mundell was a resident of Mission Services and was having lunch at the same time as Mr. Sim, who he knew. Mr. Mundell testified to seeing a male looking in the cafeteria window as Mr. Sim was leaving. He immediately heard screams from outside and saw Mr. Sim holding his bleeding neck.

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[22] The surveillance video shows Mr. Sim, at 11:22 a.m., entering the Mission Services dining hall. At 11:39 a.m. Mr. Serieaux is seen outside of Mission Services. He appears to be looking in the windows of the dining hall and walks back and forth outside the Mission Services lot. The lot consists of a dining hall on the north-east corner of James St. N. and Barton St., a parking lot just north of the dining hall, and the men's residences just north of the parking lot. The on-site Mission Services office space, where Ms. Smith was sitting at the time of the stabbing, is located on the main floor of the men's residences facing the parking lot.

[23] The surveillance video shows that at 11:44 a.m., Mr. Sim exits the Mission Services dining hall and walks down the exit ramp, leading into the parking lot. Having seen Mr. Sim, Mr. Serieaux immediately runs at him, leaving the James St. N. sidewalk and entering into the Mission Services parking lot. Mr. Serieaux's right hand is extended and holding an object. Mr. Serieaux attacks Mr. Sim from behind for approximately four seconds, during which his right arm is moving up and down in a striking motion. Only Mr. Sim and Mr. Serieaux are in the area when the incident occurs. The accused flees the parking lot, goes out of camera view, and Mr. Sim staggers across the parking lot ultimately collapsing to the pavement. Mr. Sim is pronounced dead shortly thereafter at the hospital.

[24] Randy Still was qualified on consent as an expert in bodily fluid and DNA analysis.

[25] Mr. Still received a blue surgical mask found at the bottom of the dining hall exit ramp where the stabbing took place. He also received Mr. Sim's left and

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right fingernail clippings, a blood sample from Mr. Sim, and later a blood sample from Mr. Serieaux for comparison.

[26] Mr. Serieaux's DNA was found on the blue mask. He is seen wearing such a mask on surveillance prior to the stabbing. No blood was found on the mask. Only Mr. Sim's DNA was found on the right fingernail clippings, while both his and Mr. Serieaux's DNA was found on the left fingernail clippings. Mr. Still was not able to advise how the DNA was deposited nor when the DNA was deposited.

[27] Dr. Liza Boucher was qualified as a forensic pathologist. She performed the autopsy on Mr. Sim on August 10, 2021. She found a penetrating wound to the right eye area, an incision type wound to the right neck, a penetrating wound to the upper left chest, a much deeper penetrating wound to the left mid chest, and defensive wounds to the right and left fingers. Mr. Sim also had various blunt force injuries along with abrasions and contusions. Dr. Boucher concluded that most of Mr. Sim's injuries had occurred recently as there were no signs of healing.

[28] Dr. Boucher found the cause of death to be the deep mid left chest sharp force wound. This wound penetrated to the heart area, which indicated that Mr. Sim would have lost a great deal of blood quickly and that death would have followed rapidly. Mr. Sim had no underlying health issues that contributed to his death. He did have fentanyl and methamphetamines in his system, but these substances did not contribute to his cause of death. Dr. Boucher was not qualified to advise as to whether those drugs may have affected Mr. Sim, as she was not aware of his tolerance level for such drugs.

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[29] Dr. Boucher could not give an opinion as to the amount of force used in the penetrating wound to the left mid chest, as it depended on the type of sharp-edged instrument used and the sharpness of the instrument. However, Dr. Boucher did characterize the wound as relatively deep, in the heart area, and cutting three ribs on entry. Such a wound, according to Dr. Boucher, would have required some force.

[30] Mr. Serieaux was arrested approximately two months after the stabbing, in Brantford.

[31] No murder weapon was found. No evidence or blood was found at the corner of James St. N. and Barton St., where the initial altercation between Mr. Sim and Mr. Serieaux took place.

[32] A cell phone was found at the bottom of the dining hall exit ramp; however, the police were unable to activate it and did not determine who it belonged to. Nor did the police test the cellphone for DNA or fingerprints, given the number of people who had likely handled it.

[33] The police had no record of any prior incidents or relationship between Mr. Sim and Mr. Serieaux. Both Mr. Sim and Mr. Serieaux had criminal records.

[34] Mr. Serieaux, who elected to give evidence, stated that he was born in Toronto in 1998. He was raised by his mother.

[35] Mr. Serieaux recalls getting some mental health treatment growing up. He told the Court that when he was 15 years of age he was in and out of hospital for his mental health. He also believes that he was on a Community Treatment Order ("CTO") at age 17 until age 18, and again from 2018-2021, during which times

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he received medication and some counselling. Mr. Serieaux testified that his doctor took him off the CTO and his medication in June of 2021, citing that he had become better.

[36] According to Mr. Serieaux, he was on no prescription medication in August of 2021. He does recall using marijuana, and despite being unsure of the quantity specified that it was likely a fair amount. Mr. Serieaux denies any other drug or alcohol use on the day that Mr. Sim was stabbed.

[37] Mr. Serieaux was familiar with Mission Services. He agreed that he showed up in that area around 11:00 a.m. on August 8, 2021, for no apparent reason. He also confirmed that he had spent the previous night at the Cathedral. He confirmed that the video surveillance (prior to the stabbing) was accurate, and that he was sitting with a friend on the north-east corner of James St. N. and Barton St. and that they both crossed the street to join Mr. Sim. Mr. Serieaux agrees that he was just chatting with Mr. Sim for about 10 minutes, as per the video, when suddenly he was "sucker punched" by Mr. Sim and "stomped on". Mr. Serieaux got up and fled. He does not recall losing his shoe. During his testimony, Mr. Serieaux first testified in chief that he dropped his phone during the initial altercation, and he was not sure if someone gave it back to him. In cross examination he changed this narrative to indicate that Mr. Sim took the phone out of his pocket as outlined in paragraph 42.

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[38] Mr. Serieaux recalls “waking up” from the initial altercation, several blocks away at a group home where he saw a friend Yozn. It is clear that Mr. Serieaux never lost consciousness within surveillance camera view. Mr. Serieaux testified to asking Yozn to help him fight Mr. Sim. Yozn refused and the accused decided to return to Mission Services, alone, to find Mr. Sim. Mr. Serieaux testified that he wanted to fight Mr. Sim to get revenge for the beating he took from Mr. Sim a short time before.

[39] Mr. Serieaux testified that he knew the only way he could win a fight against Mr. Sim was if he used his 4-inch knife, which he always carried with him. Mr. Serieaux agrees, that upon returning to the Mission Services lot, he was looking for Mr. Sim in order to stab him and to hurt him. Mr. Serieaux was adamant he did not intend to kill Mr. Sim. Mr. Serieaux testified that he stabbed Mr. Sim only once in the lower stomach and cut Mr. Sim’s eye by hitting him with the handle of his knife. Mr. Serieaux agreed that he stabbed him quickly and that Mr. Sim screamed and was bleeding profusely. Mr. Serieaux confirmed that he immediately ran away, as he knew the police would come and he did not want to get arrested. He also testified to knowing that the knife in his hand, which was covered in Mr. Sim’s blood, was evidence. Mr. Serieaux disposed of the knife in a dumpster. Mr. Serieaux ended up at a friend Rico’s house, who saw on his computer that Mr. Sim had died and that the police were looking for Mr. Serieaux. Mr. Serieaux then took a GO bus to Toronto and stayed with his father until early October, when he went to Brantford where he was arrested. Mr. Serieaux admits that he gave the arresting officer a fake name.

[40] Mr. Serieaux testified that he always carried the knife in a pocket that allowed him to get at it quickly. It was a folding knife with a button that pushed the

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blade out quickly when activated. Mr. Serieaux confirmed that the knife was in his pocket during the initial altercation with Mr. Sim.

[41] Mr. Serieaux testified that he knew Mr. Sim from earlier encounters. He testified that he had been shot in the leg, robbed, raped, and mentally transported by Mr. Sim through witchcraft in July of 2021. He testified to thereafter being constantly threatened by Mr. Sim's demands for money. Mr. Serieaux testified that he had gone to the hospital because of the gun shot to his leg, however, there were no such records before the Court nor did the police have any incident report involving gunshots between Mr. Sim and Mr. Serieaux. Mr. Serieaux stated that he was not looking for Mr. Sim when he ended up on the bench at the corner of Barton St. and James St. N. on the morning of August 8, 2021. Mr. Serieaux gave no explanation as to why he would voluntarily cross the street to have a seemingly amicable 10-minute conversation with Mr. Sim, after being shot, robbed, and raped by him only a few weeks earlier, and constantly threatened thereafter. Mr. Serieaux admits that the initial altercation lasted about 21 seconds as shown on the video. According to Mr. Serieaux, Mr. Sim said he beat him because he was disrespectful to an older man. Mr. Serieaux denied any disrespect. Mr. Serieaux said his head was cracked during the initial altercation and that he was covered in blood when he ran away. The police found no trace of blood in the area of

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the initial altercation.

[42] Mr. Serieaux initially told the Crown that his phone did not fall out during the initial altercation, but that Mr. Sim went into his pocket and stole it. Upon viewing the video, he admitted that the phone did fall out and someone handed it back to him.

[43] Mr. Serieaux admitted on cross-examination that from the end of the initial altercation until the stabbing, a period of approximately 26 minutes, he thought constantly about going back to hurt Mr. Sim. He agreed that during that time he had planned not to use his fists but to stab Mr. Sim, as he did not think he could win in a simple fist fight. He agreed that prior to the stabbing he was actively looking for Mr. Sim, with his hand in his pocket holding his knife. He agreed that the only way he could get the better of Mr. Sim was if he stabbed him. He agreed he looked in the window of the dining hall and saw Mr. Sim having lunch. He testified to standing just around the corner of the dining hall, out of Mr. Sim's line of vision, and waiting for Mr. Sim to exit and go down the ramp. Mr. Serieaux testified to knowing that Mr. Sim's back would be to him when he was using the ramp. Mr. Serieaux planned to surprise Mr. Sim in order to get the upper hand and be successful in hurting him. Mr. Serieaux testified that he planned to stab Mr. Sim deeply because he knew he was a tough guy.

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[44] Mr. Serieaux agreed that as soon as he saw Mr. Sim walking down the ramp, he took the knife out of his pocket and pushed the button to extend the blade. He stated that he ran at Mr. Sim, surprising him, and stabbed him deeply once in the lower stomach just as he had planned and intended to do. The accused admitted that he then ran away, as he did not want to get caught by the police. He again stated that he did not think Mr. Sim would die or that there was any possibility he would die. He admitted he saw a lot of blood from Mr. Sim and that made him feel good because he wanted to hurt him badly and get revenge for the beating he had received earlier that morning. He admitted that he knew of people dying from a single stab wound but was adamant that he did not think there was any possibility Mr. Sim would die. Mr. Serieaux gave no explanation as to why he thought Mr. Sim would not die. He stated that he was shocked and surprised when he later learned, at his friend Rico's residence, that Mr. Sim had died.

[45] Mr. Serieaux admitted that at the time of the stabbing he knew what he was doing was wrong and that other people would think what he did was wrong.

[46] Mr. Serieaux advised the Crown that he had spoken to Dr. Komer, a forensic psychiatrist, and told him that Mr. Sim would not die because God had promised him he would not die if he stabbed him. He was not asked if he thought that was still an accurate explanation.

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THE LAW:

[47] Pursuant to s. 229 and s. 231 of the *Criminal Code of Canada*, R.S.C. 1985, c. C-46, ("the *Criminal Code*"),

229. Murder

Culpable homicide is murder

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

(b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or

(c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

…

231.

231 (1) Classification of murder

Murder is first degree murder or second-degree murder.

231 (2) Planned and deliberate murder

Murder is first degree murder when it is planned and deliberate.

[48] Mr. Serieaux is charged with first degree murder pursuant to s. 231(2) of the

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Criminal Code. The Crown must therefore prove the following beyond a reasonable doubt:

1. That Mr. Serieaux caused the death of Mr. Sim.
2. That Mr. Serieaux caused the death of Mr. Sim unlawfully.
3. That Mr. Serieaux had the state of mind required for murder.
4. That Mr. Serieaux's murder of Mr. Sim was both planned and deliberate.

[49] The Crown theorizes that Mr. Serieaux's motive for the stabbing was the revenge he sought against Mr. Sim for the earlier beating he took at his hands. The Crown is under no duty to prove motive, however, motive, if proven, is a reason why someone does something – it is simply part of the evidence for me to consider. I adopt the Crown's theory of Mr. Serieaux's motive as Mr. Serieaux has so admitted the same reasoning a number of times in his evidence.

POSITION OF THE PARTIES:

THE CROWN:

[50] The Crown's position is very simple. The accused has admitted to stabbing the deceased to get revenge for the earlier beating that Mr. Sim administered. Mr. Serieaux planned what he was going to do so that he would be successful. He stalked Mr. Sim in order to ambush him, knowing he would be unarmed, and attacked him from behind with complete surprise. He planned to stab the

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deceased deeply because he knew he was a tough guy. All of which went according to his plan.

[51] The Crown submits that Mr. Serieaux's testimony regarding the absence of any intention to kill is not worthy of belief. The physical evidence is clear, there were four stab wounds, one laceration, and no notable injuries to the stomach. The video evidence of the stabbing is also clear, Mr. Serieaux's right arm goes back and forth rapidly over four seconds as he stabs Mr. Sim repeatedly. Mr. Serieaux's explanation, when confronted with the video evidence, was that the part of the video depicting the stabbing was fake. Mr. Serieaux also testified that he knew of people who had died from a single stab wound. It is simply not credible, according to the Crown, that Mr. Serieaux did not intend to kill Mr. Sim or cause him such harm that he would have known it was likely Mr. Sim would die and was reckless if he did or not.

[52] The Crown argues that Mr. Serieaux's plan to stab Mr. Sim was deliberate, as he considered how to enact revenge on Mr. Sim for over 26 minutes and was certainly not impulsive as he hunted for him, outside the Mission Services, for the five minutes prior to the stabbing. According to the Crown, Mr. Sim's death was more than just intentional, as Mr. Serieaux weighed how he could get the best of Mr. Sim and hurt him badly. Mr. Serieaux had also considered what he would do after the stabbing and immediately left the scene as he knew what he

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had done was wrong and that the police would attend quickly. He knew he had to get rid of the weapon used, as it was evidence, and he did so with no noted hesitation. He then left town to avoid detection and hid at his father's residence before leaving for Brantford. Mr. Serieaux successfully evaded the police for almost two months.

[53] The Crown concludes that the evidence proves beyond a reasonable doubt that this was a planned and deliberate murder of a specific target, being Mr. Sim, by Mr. Serieaux for the purpose of enacting revenge.

AMICUS:

[54] *Amicus* submits, on behalf of Mr. Serieaux, that his evidence should be accepted as raising a reasonable doubt that he never had any intention to kill Mr. Sim but only wanted to hurt him. It is argued that the Crown offers no evidence to contradict what Mr. Serieaux says was his intention. Therefore, the Crown has not proven, beyond a reasonable doubt, the intent necessary for murder.

[55] *Amicus* further argues that the evidence of planning and deliberation for first degree murder is lacking. Mr. Serieaux never made a plan, as he never intended to kill Mr. Sim. Further, as argued by *Amicus* on behalf of Mr. Serieaux, there is no evidence that Mr. Serieaux weighed the pros and cons of his actions or the consequences of what he was going to do. As such the Crown has not proven, beyond a reasonable doubt, the planning and deliberation necessary for

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first degree murder.

MR. SERIEAUX:

[56] The accused was asked if he had anything further to submit to the Court, not covered by *Amicus* on his behalf. He again reiterated that he never intended or planned to kill Mr. Sim and that he was surprised and shocked when he learned that Mr. Sim had died.

ANALYSIS:

[57] There is no issue that Mr. Serieaux caused the death of Mr. Sim based on the evidence of eyewitnesses, the surveillance videos, and the accused's own admission of stabbing Mr. Sim. I therefore conclude that the first element of murder has been proven beyond a reasonable doubt.

[58] The evidence that Mr. Sim's death was unlawful, occurring as a result of the aforementioned stab wounds, is overwhelming and corroborated by witnesses at the scene and the autopsy. There is no evidence that Mr. Serieaux acted in self defence, and such has not been raised as an issue by Mr. Serieaux or *Amicus*. As such, I conclude that the Crown has proven beyond a reasonable doubt that the death of Mr. Sim, as caused by Mr. Serieaux, was unlawful.

[59] To render a verdict of murder the Crown must prove that Mr. Serieaux meant to kill Mr. Sim or meant to cause Mr. Sim bodily harm that he knew was likely to kill Mr. Sim and was reckless whether Mr. Sim died or not. As has been

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stated many times by our courts, it is a matter of common sense that a person usually knows what the predictable consequences of his or her conduct will be, and usually means to bring them about: see *R. v. Seymour*, [1996] 2 S.C.R. 252; *R. v. Spence*, 2017 ONCA 619, 353 CCC (3d) 446, at para. 45.

[60] I accept that Mr. Serieaux has some mental health issues, however I do not accept that at the time of the stabbing any such mental health issues affected his ability to form the intention for murder. His own testimony indicates that he was told by his doctor that he no longer needed a CTO. Further, he stated that he was on no drugs, prescription or nonprescription, on the day of Mr. Sim's death. Ms. Reid found nothing abnormal about his actions earlier that morning. There has been no psychiatric evidence filed in this trial. In fact, the evidence of other witnesses who interacted with Mr. Serieaux on the morning of August 8, 2021, did not note any obvious mental irregularities in his mental state.

[61] Nearly two months after the incident, the arresting officer, P.C. Rae, stated that as far as he could tell Mr. Serieaux understood what was said to him, was responsive to instructions, and followed any directions he was given when he arrested him. Mr. Serieaux certainly had the mental capacity to survive and avoid detection from the authorities, while on a Canada wide warrant for his arrest for first degree murder, for two months. Such efforts included not

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accessing his bank accounts or cashing his government cheques. Mr. Serieaux admitted that at the time of the stabbing he knew what he was doing was wrong and that other people would think what he did was wrong. Therefore, I conclude that any mental health issues did not prevent Mr. Serieaux from forming an intent for murder.

[62] I have concluded that Mr. Serieaux's testimony, of never intending the death of Mr. Sim, is not credible and I reject it. His evidence has been contradicted a number of times by physical evidence and witnesses whose testimony I find more reliable. He also changed his evidence between what he said in chief and in cross examination, when convenient. Mr. Serieaux admits that he wanted to hurt Mr. Sim badly. He admits he planned to stab Mr. Sim because he would not succeed in his goal, of badly hurting Mr. Sim, if he did not surprise him and use a knife. His own testimony, that he planned to stab Mr. Sim deeply, with his 4-inch knife, in his torso, is evidence of the significant injury that Mr. Serieaux intended to cause. He was happy, he said, when he saw Mr. Sim bleeding profusely. He was also well aware of people dying from a single knife wound. As depicted in the video and confirmed by the autopsy, the accused clearly stabbed Mr. Sim more than once, and in fact inflicted five serious wounds inclusive of one which rapidly caused Mr. Sim's death. Mr. Serieaux's explanation that the video was fake is not credible, especially when

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corroborated by the autopsy.

[63] I conclude that Mr. Serieaux's testimony of having no intention to kill Mr. Sim is not believable. I further conclude that his evidence does not raise a reasonable doubt about his intention to kill Mr. Sim, or to cause him bodily harm that was likely to cause his death and was reckless whether he died or not. I also conclude that the evidence I have accepted leaves no doubt in my mind that the Crown has proven the third element for murder.

[64] The last element the Crown must prove beyond a reasonable doubt for the charge of first-degree murder is that the murder was both planned and deliberate: see *More v. The Queen*, [1963] S.C.R. 522. Planned means a calculated scheme or design that has been carefully thought out, the nature and consequences of which have been considered and weighed: see *R. v. Jacquard*, [1997] 1 S.C.R. 314. The plan does not have to be complicated, elaborate, nor sensible. It may be very simple and occur relatively quickly: see *R. v. Reynolds* (1978), 22 OR (2d) 353 (Ont. C.A.). It is the implementation of the plan that is necessary. A murder committed on a sudden impulse and without prior consideration, even with an intention to kill, is not a planned murder.

[65] Deliberate means that the plan was considered and not impulsive. To be deliberate, a murder must be more than just intentional and must be carefully thought out, as well as neither hasty nor rash. The pros and cons of the intended

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action must be considered: see *Reynolds*. Circumstantial evidence may well prove planning and deliberation, but it must generate more than a mere suspicion or speculation: see *R. v. Smith* (1979), 51 C.C.C. (2d) 381 (Sask. C.A.).

[66] I am also well aware that Mr. Serieaux's mental condition has been an ongoing factor in this case. However, for the reasons stated in paragraph 60 of this decision, I conclude that any possible mental health issues, based on the evidence received in this trial, do not lead me to conclude that Mr. Serieaux was incapable of forming a planned and deliberate murder of Mr. Sim.

[67] The evidence of Mr. Serieaux indicates that he wanted revenge on Mr. Sim for the earlier beating he took. He concluded that he had to stab Mr. Sim to successfully win the further altercation, badly hurt Mr. Sim, and get the revenge he sought. Mr. Serieaux had 26 minutes between the initial altercation and the stabbing to plan what he was going to do and consider what the consequences might be for him and Mr. Sim.

[68] Mr. Serieaux's own testimony indicates that he began planning his revenge almost immediately after the initial altercation, as he asked Yozn to help him fight Mr. Sim. When Yozn declined to assist Mr. Serieaux, Mr. Serieaux knew he would have to act alone and planned to use a knife to guarantee success. According to his evidence, Mr. Serieaux always carried a 4-inch knife in a

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pocket where he could get at it quickly. He planned to surprise Mr. Sim, to again guarantee his success at revenge. He knew the deceased would be at lunch and planned to wait at Mission Services until he exited. The surveillance shows Mr. Serieaux walking around Mission Services and looking in the window of the dining hall to confirm that Mr. Sim was there. He then waited around the corner of the building for Mr. Sim to exit with his back to him. When Mr. Sim started walking down the ramp the accused immediately ran at him, with his knife extended in his right hand, with no one else around, and attacked him from behind by stabbing him four times and slicing him in four seconds. Mr. Serieaux then fled, and shortly thereafter disposed of the murder weapon and evaded the police for approximately two months. I have no doubt that Mr. Serieaux formulated a calculated scheme that had been carefully thought out, knowing that the consequences of his actions would either be to cause the death of Mr. Sim or to hurt him so badly that his likely death was known. Further, I have no doubt that Mr. Serieaux was not concerned whether his actions, in stabbing Mr. Sim, would result in Mr. Sim's death. Mr. Serieaux's sole objective was to get revenge and the aforementioned plan was how he thought he would be most successful. He carried out his plan and caused Mr. Sim's death. His plan was not complicated, elaborate, or indeed sensible, but it was successful.

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[69] I also conclude that Mr. Serieaux's plan, as formulated and carried out, was deliberate. Mr. Serieaux had plenty of time to consider the plan and its consequences. It is obvious that the stabbing was not impulsive as Mr. Serieaux can be seen for five minutes, on video surveillance, pacing in front of Mission Services and looking in the windows waiting for Mr. Sim to exit so he could ultimately ambush him. He was not acting in a hasty or rash manner. He had thought out what he wanted to accomplish and how to succeed. He considered the pros and cons, knowing that stabbing Mr. Sim by surprise from behind would afford him the revenge he sought. He considered that with no one else around he could quickly leave the scene and dispose of the murder weapon before the police arrived. This circumstantial evidence is based on the video surveillance, and Mr. Serieaux's own testimony. It is much more than mere speculation or suspicion. There is no other reasonable explanation but that this was a planned and deliberate murder.

CONCLUSION:

[70] I have reviewed the case of *R. v. W.(D.)*, [1991] 1 S.C.R. 742. I am persuaded beyond any doubt, that the accused is guilty based upon the evidence that the Crown has led and which I accept. There is no evidence from the accused's testimony, or the cross-examinations of various witnesses, that raises any doubt in my mind as to his guilt. There is also no evidence, which I have not

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accepted, which raises any doubt as to the guilt of the accused. I reject the accused's testimony of having no intention to kill Mr. Sim as not credible.

[71] I conclude that the Crown has proven beyond any reasonable doubt that Mr. Serieaux's murder of Mr. Sim was planned and deliberate and I find him guilty of first-degree murder.

_____

Arrell J.

Released: September 13th, 2024

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CITATION: R. v. Serieaux, 2024 ONSC 5054
COURT FILE NO.: CR-22-650
DATE: 2024-09-13

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

HIS MAJESTY THE KING

Plaintiff

- and –

JHEIDON SERIEAUX

Defendant

JUDGMENT

Justice Arrell

Released: September 13, 2024

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