

Manitoba Court of Appeal addresses reasonable inferences in murder decision

By **John L. Hill**

Law360 Canada (May 15, 2024, 10:30 AM EDT) -- The courts have grappled with how to treat circumstantial evidence for years, and the problem of what constitutes reasonable inferences still arises. This is evident in the Manitoba Court of Appeal decision of *R. v. O'Hanley*, 2024 MBCA 29.

Chelsea O'Hanley lived with a group of friends. One of the roommates, Bobbi-Lyne Hall, disclosed that Gerhard Reiner-Wiebe had raped her. Instead of going to the police, vigilante justice was administered. Two men, Jonathan Narvey and Kyle Sinkovits, captured Reiner-Wiebe and confined him in the basement by securing him in a chair, taping his arms and gagging his mouth. He was beaten brutally over a few days. Several of his fingers were amputated. As he was approaching death, he was carried upstairs. A tarp was placed on the floor, and Reiner-Wiebe was laid upon it. Narvey sat on the beaten man's torso, and "trophy photographs" were taken with O'Hanley's cellphone. Shortly after that, Reiner-Wiebe died.



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His body was wrapped in the tarp and transported in O'Hanley's car to an isolated location where the group doused it with gasoline and set it on fire. What didn't burn was buried.

On Dec. 23, 2021, the Crown preferred a direct indictment charging O'Hanley, Hall, Narvey and Sinkovits with first-degree murder for killing Reimer-Wiebe. The four accused were jointly charged with committing indignity to a human body for setting the body on fire to incinerate the remains and eliminate evidence of the murder. O'Hanley and Hall were also charged as accessories after the fact to the murder.



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Three co-accused resolved their charges and were sentenced under a plea bargain with a joint recommendation. Narvey and Sinkovits pleaded guilty to second-degree murder and were sentenced to life imprisonment with parole eligibility set at 20 years.

Hall pleaded guilty to the offence of being an accessory after the fact to the murder and was sentenced to four years. O'Hanley pleaded not guilty to all three offences and proceeded to trial and was convicted of second-degree murder and additionally convicted as a party to the second-degree murder (*R. v. Sinkovits, Narvey, O'Hanley and Hall*, 2022 MBQB 154). She was also convicted of committing an indignity to the body and as an accessory after the fact to the murder. She was sentenced to life imprisonment for life with 12 years of parole ineligibility. Concurrent sentences were assessed for the additional charges (*R. v. Sinkovits, Narvey, O'Hanley and Hall*, 2023 MBKB 40).

O'Hanley appealed, with the main grounds of appeal being that the trial judge failed to apply the test set out in *R. v. Villaroman*, 2016 SCC 33. It was argued that there was no direct evidence linking O'Hanley to the murder, the taking of trophy photos or indignities surrounding the disposal of the corpse.

How a trier of fact deals with circumstantial evidence in making a conviction has a lengthy history in our jurisprudence going back to the Rule in *Hodge's Case*. This rule was adapted from a British judgment, *Hodge's Case*, (1838) 168 E.R. 1136. It stated that "conclusions alternative to the guilt of the accused must be rational conclusions based on inferences drawn from proven facts." The rule has fallen by the wayside in the United States and the United Kingdom. There is an academic dispute if it survives in Canada. The modern approach is the test in *Villaroman*, where only "reasonable" inferences are permitted. Those are inferences that are logically based on the evidence or lack of evidence and are assessed in light of "human experience and "common sense."

Defence counsel argued that the inferences taken by the trial judge that O'Hanley was a party to the murder were misguided. Those inferences included the speculation that the victim was still alive when brought to the kitchen, that O'Hanley participated in laying the tarp on the floor, that she took the photographs and that she participated in the disposal of the body.

The Manitoba Court of Appeal gave this argument short shrift. The Appeal Court acknowledged that a trial judge's inferential reasoning is entitled to deference (*R. v. Turner*, 2023 MBCA40). The appeal court's sole duty in such cases is to assess the reasonableness of the trial judge's decision that "guilt was the only reasonable conclusion available on the totality of the evidence, as per *Villaroman*."

The evidence that O'Hanley participated in laying down the tarp was somewhat weak, but the use of her cellphone in taking pictures and the use of her SUV in delivering the body for interment established she was a party to the offence. Her evidence on the stand justified the trial judge's remark that she was a "skillful and clever liar." Everything pointed to O'Hanley being present and participating in the indignity meted out to the victim. The conclusion was inescapable.

The trial judge's conviction and sentence were upheld where common sense replaced the minute examination of legal principles.

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