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N.B. case fuels debate over domestic violence



Crystal-Dawn MacKenzie outside of the Sydney Street courthouse in Saint John, N.B.

Mary-Ellen Saunders / Telegraph-Journal

Tamsin McMahon, National Post · Jan. 3, 2011 | Last Updated: Jan. 3, 2011 6:56 AM ET

After a night of drunken revelry that escalated into a violent street fight, Crystal-Dawn MacKenzie grabbed a knife from her neighbour's kitchen, yelled "I'm going to kill him" and stabbed her common-law husband in the collarbone.

If the knife had moved just a centimetre in either direction, Patrick Andrew Thomas likely would have lived, a pathologist later testified. But the 29-year-old bled to death on a downtown Saint John street.

Eight months later, Ms. MacKenzie walked out of a New Brunswick court a free woman after a nine-woman, three-man jury in Saint John acquitted the 28-year-old mother of three of second-degree murder, accepting that she had finally snapped after years of abuse at the hands of Mr. Thomas.

The Crown filed an appeal last week, a rare move for a jury trial. Prosecutors are arguing that the judge erred in his definitions of murder and self-defence and that Ms. MacKenzie had alternatives to killing her husband to escape his **violence**.

"Of course she had other options," said her lawyer, David Kelly. "But she had been drinking and that impaired her judgement."

The case has riveted the community and polarized opinions about just how far a battered woman can go to defend herself, an argument that has raged since a landmark 1990 Supreme Court of Canada ruling found women could use a history of abuse to defend themselves from murder charges.

People were surprised that Ms. MacKenzie didn't face any consequences for killing her partner, such as family **violence** counselling or community service, said Nancy Porter, executive director of Coverdale Centre for Women, a women's shelter that neighbours Ms. MacKenzie's apartment.

"Has the jury sent the message that if you're in a situation of family **violence** it's OK to bump off the other half?" she asked. "I can't imagine the Crown would be on some kind of witch hunt."

Ms. MacKenzie's acquittal has renewed public criticism of the battered women's defence despite overwhelming evidence that women are far more often the targets of **domestic** homicides than men, said Deborah Doherty, executive director of Public Legal Education and Information Service of New Brunswick. Ms. Doherty has studied 20 years' worth of **domestic** homicides in the province, which until recently had all been committed by men and many of which were murder-suicides.

"Certainly there seems to be people who wrote comments when she was acquitted that it's just another sign of bias against men in relationships," Ms. Doherty said.

"But in terms of **domestic** homicides, three out of every four victims are women. Yes, women are killing their partners, but it's much more uncommon. It's much more likely that women are the victims of serious **domestic violence**."

Ms. MacKenzie's rocky and often violent four-year relationship with Mr. Thomas was played out in detail at trial as the judge asked potential jurors to excuse themselves if they had strong feelings on **domestic violence**.

A friend testified he once saw Mr. Thomas sitting on Ms. Mackenzie when she was pregnant and punching her in the face. Others told the jury they saw Mr. Thomas bite Ms. MacKenzie, call her names and smash her head into tiles. The jury saw two years of police photos of Ms. MacKenzie bruised and battered and in 2009 Mr. Thomas pleaded guilty to assaulting Ms. MacKenzie. Although he was ordered not to go near her, he breached his probation three times.

Still, a social worker told the court that although she was concerned about the **domestic violence** complaints, she had never removed the couple's children from the home.

In the early hours of March 15, the couple was coming home from partying at a Saint John bar when Mr. Thomas passed out on the steps of their building. Witnesses said they saw Ms. MacKenzie trying to wake him up by smacking him in the head.

It escalated into an argument and then a physical fight. Ms. MacKenzie grabbed a broom and ran at Mr. Thomas in the street. He put her in a headlock and began to choke her.

When she broke free, neighbours heard her say "I've had enough, I'm going to kill him," before she ran for a kitchen knife.

"I just didn't want him to go in the house because my kids were in there," Ms. MacKenzie testified. "I knew if he went in, that would be the end of me," she said.

It was Ms. MacKenzie's pledge to kill her husband that has left some applauding the Crown's decision to appeal her acquittal.

"They need to say enough is enough — it doesn't matter what gender you are if you commit murder, it should be treated a murder," said Ed Hoyt, founder of the New Brunswick Children's Equal Parenting Association, which held a Christmas Eve protest outside the Saint John family court.

That argument ignores a huge body of research that shows women and men often kill for very different reasons and under very different circumstances in relationships, Ms. Doherty said.

Men often kill their partners in the midst of a breakup, often out of jealousy and control. Women mostly kill within intact relationships, often to protect themselves and their children or because they see no other way out of the abuse.

"If you read all the literature on battered women, they tend not to see the other options," Ms. Doherty said.

"Even if they go to a neighbour, they think he's going to follow them. There's no hope unless they kill him."

Although courts have been doing their best to understand the plight of abused women, the acquittal risks setting a troubling precedent, said Coverdale shelter's Ms. Porter.

"In the world of **domestic violence**, nothing is right."

National Post with files from the New Brunswick

Telegraph-Journal

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