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(Brandon Centre)
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COURT OF KING'S BENCH OF MANITOBA
(CRIMINAL DIVISION)

B E T W E E N:

HIS MAJESTY THE KING,

-and-

GABRIEL PAUL HEYMANS,

) Richard Lonstrup,
) Reid Girard,
) for the Crown
)
) Robert D. Harrison,
) Anthony Dawson,
accused.) for the accused
)
)
) Judgment delivered:
) September 14, 2026

LEVEN J.

SUMMARY

[1] The accused was found in a locked apartment with the body of his dead mother, who had been dead for multiple days. There were no signs of forced entry. There was a hatchet on the floor near the body. The defence called no evidence. The Crown called a psychiatrist who met with the accused twice. While talking to the psychiatrist, the accused flatly denied killing his mother and claimed he did not know who killed her. The psychiatrist gave his opinion that the accused had a disease of the mind caused by an old brain injury. The defence argued that the accused was not criminally responsible

(NCR). The behaviour of the accused was certainly odd in various ways. For reasons explained below I find that the accused was not NCR (i.e. he *was* criminally responsible). I find him guilty as charged under the ***Criminal Code***, R.S.C. 1985, c. C -46 (the "***Code***") of second-degree murder (section 231(7) of the ***Code***).

FACTS

[2] This is not a comprehensive recitation of all evidence and argument; it is a concise summary.

[3] The trial was held on April 13 - 16, 2026.

Agreed statement of facts

[4] The parties filed an agreed statement of facts.

[5] The parties agreed on the identity of the accused, without requiring witnesses to identify him.

[6] On October 24, 2023 at about 11 p.m., the victim was seen alive on security video footage. She was near the mailboxes in the apartment building where she lived (the Building) in Brandon, Manitoba. All cities are in Manitoba unless otherwise noted. All dates are in 2023 unless otherwise indicated. The victim lived in an apartment in the Building (the Apartment).

[7] The parties agreed that DNA testing confirmed that the victim was the deceased named in the Indictment, and that she was the biological mother of the accused.

[8] The parties agreed to the continuity of the deceased's body from the time it was discovered by the Building maintenance man (DM) to the time of the autopsy by Dr. R. Continuity of exhibits and of the crime scene were also agreed.

[9] The police took various crime scene photos. It was agreed that they were admissible without the need to call the photographer. The photos showed objects in the Apartment, including the body of the victim and the hatchet. They showed items throughout the Apartment, including a pile of money (which police witnesses said amounted to \$1,369).

[10] The accused's video statements were at the police station. The parties agreed that the Crown need only call four specific police officers in respect of the statements. (Later in the trial, the defence conceded that the accused's statements had been voluntary and, therefore, were admissible.)

[11] The parties agreed to the expertise of Crown witnesses: Dr. R (forensic pathology); Dr. Z. (forensic psychiatric assessment); and Dr. C. (forensic psychiatric assessment). Dr. C. did not end up testifying.

[12] The police seized some clothing from the apartment where the accused and the deceased lived (the Apartment). The parties agreed that biological material on some clothing matched the accused.

[13] The parties agreed that DNA matching to the accused was found on two fingernail clippings of the deceased. Some other clippings had male DNA, and some had only the deceased's DNA.

[14] The police found a receipt from Wal-Mart and a bank machine receipt in the Apartment. It was agreed that the receipts could be admitted as proof of the respective transactions.

[15] Dr. R's pathology report was tendered as an exhibit without objection. The report ends with this:

It is my opinion that the [deceased] died as a result of chop wounds to the head. Five separate impacts to the right side of the head by an implement sharp enough to cut through tissue and with sufficient tensile strength to break bone (at least two of the impacts) were identified at autopsy. This then would have resulted in bleeding an underlying brain injury that would have been fatal. Sharp force injuries (i.e. incised/chop wounds) to the distal right forearm, the right hand, and the right index finger were also noted, with an undisplaced fracture of the right ulna [lower arm bone] demonstrated on postmortem x-ray.

[16] The parties agreed on several facts in respect of the pathology report. They "accept in fact the conclusions in the said report as the cause of death of the deceased, and all other observations made during the autopsy process."

[17] The parties agreed that the autopsy photos were admissible.

[18] The parties agreed that the injuries observed on the extremities of the deceased are, in Dr. R's opinion, "consistent with, though not conclusive of, defensive injuries."

[19] The parties agreed that the body decomposed for "multiple days" before November 3.

DM

[20] DM recognized the victim and the accused as Building residents. He didn't know their names. Sometimes he spoke briefly with the victim (e.g. saying "good morning").

Sometimes DM would greet the accused, but the accused did not reply. DM never saw anyone else in the Apartment. DM had a key to the Apartment.

[21] On November 3, DM had received a complaint of an odour in the Building. He saw water leaking through the ceiling of the area below the Apartment. He went to the Apartment door, knocked, and called out "maintenance". There was no reply. He used his key to enter the Apartment.

[22] In the Apartment, DM saw the kitchen sink overflowing, and he saw a body on the living room floor. He left the Apartment. A building manager (A) arrived and looked inside the Apartment for a few seconds. A told DM that he saw a hatchet in the Apartment. DM called 911, and 911 called the police. The police arrived and spoke with DM.

[23] DM told the police what he knew. He saw the police lead the accused out of the building and into a police car. About a week afterwards, the police allowed DM to enter the Apartment. He saw that the kitchen sink was plugged with food and grease. DM had no further involvement.

Officer DJ

[24] DJ was one of the first three police officers who entered the Apartment on November 3 (along with BL and RB). They knocked, said "police", and used a key to enter. DJ saw the body of the deceased on the floor. There was a pool of blood around the head. There was a hatchet on the floor about two feet from the head.

[25] DJ saw the accused briefly. Other officers arrested the accused. DJ never interacted with the accused.

[26] DJ saw a pool of murky water in the kitchen sink.

[27] DJ spent about one hour in the Apartment. Later in the day, the Major Crimes Unit arrived and took over.

Officer BL

[28] BL was one the first three officers to enter the Apartment (along with DJ and RB). Once inside the Apartment, BL saw a male (later identified as the accused) moving down the hallway towards a bedroom. BL followed. BL and RB arrested the accused in the bedroom. They read him his *Charter* rights, and they handcuffed his hands behind his back. He did not resist. They searched the accused and found no weapons on his person.

[29] BL didn't see any blood on the accused.

[30] They took the accused out of the Building, placed him in a police car, and took him to the police station. BL may have made a few polite comments to the accused. At the police station, the accused was again read his *Charter* rights. The accused said that he understood and that he did not wish to contact a lawyer.

[31] BL never threatened the accused and never saw anyone threaten the accused. BL never offered the accused any promises of favor and never saw anyone offer him any promises.

[32] The accused did not appear injured and did not request food, water, medication or medical treatment.

Officer RB

[33] RB was one of the first officers to enter the Apartment. There were no signs of forced entry. Inside, he smelled a decomposing body. He knows the smell.

[34] Once inside the Apartment, he saw a male (the accused) run from the hallway into the bedroom. Officers followed the accused. In the bedroom, they placed him under arrest and read him his *Charter* rights. He said that he understood and that he didn't want to contact a lawyer.

[35] The behaviour of the accused was very "mundane". It was not typical behaviour for someone being arrested for murder.

[36] Officers took the accused to a police car. The accused had a wallet with a lot of money in it, and the police seized it.

[37] The accused gave his name and was cooperative.

[38] The accused was taken to the police station. RB did not threaten the accused and did not see anyone threaten the accused. He never made promises of favour to the accused and never saw anyone do so. The accused's answers seemed rational. The accused never asked for food, water, medication or medical treatment.

Officer TF

[39] Officer TF was with the forensic identification unit. He arrived at the Apartment later in the day on November 3. Other officers told him that a maintenance man had found a body in the Apartment.

[40] TF has attended about 30 death scenes. The odour at the Apartment was exceptionally foul. He has only smelled one other death scene that foul. He had to wear a canister mask.

[41] There was no sign of forced entry.

[42] There was very little furniture in the Apartment. The kitchen sink was apparently plugged and was overflowing into a black plastic tub on the floor. The tub was full and was spilling over on to the floor.

[43] There was a lot of blood near the body. There was blood on the hatchet, on the blinds, and on the carpet and walls.

Officer EJ

[44] Officer EJ was with the forensic investigation unit.

[45] He attended the Apartment and smelled an extremely intense smell of a decomposing body. It is a very distinctive smell. He put on a mask.

[46] The kitchen sink was overflowing. There was scum on top of the water. The general smell in the Apartment was so intense that he was not sure if the sink gave off a smell.

Officer RP

[47] Officer RP was in the Major Crimes Unit. He participated in the process of interviewing the accused at the station. Several times the accused was offered food and water. He ate a pizza-pop and granola bars. He accepted water, coffee and apple juice. He accepted the offer of bathroom breaks.

[48] The accused was cooperative. RP described the accused's emotional presentation as "flat". It did not appear that the accused had trouble understanding police questions. RP felt that his answers related to the questions asked.

Officer TN

[49] Officer TN was with the Major Crimes Unit. TN was the exhibit manager at the Apartment. He smelled the decomposition in the Building. He had to wear a canister mask.

[50] In the Apartment, the kitchen sink and the overflow container contained brown sludge. He dumped the sludge and water into the bathtub. It smelled of standing water. It was not like the smell of decomposing flesh.

[51] Although not explicitly questioned about this, all individuals who entered the Apartment described items that they saw in the Apartment (e.g. clothing, toiletries). Photos showed many of the items found in the Apartment. None of the descriptions and none of the photos showed any evidence of alcohol or narcotic consumption (e.g. empty alcohol bottles or any drug-use paraphernalia).

Dr. Z.

[52] Dr. Z's report, dated August 14, 2024, and addressed to the Presiding Judge of the "Brandon Provincial Court" was tendered without objection.

[53] After his arrest, the accused was detained at the PX3 unit at the Health Sciences Centre in Winnipeg. He participated in assessment interviews on July 19, 2024 (about 60 minutes), and on July 22, 2024 (about 45 minutes).

[54] Dr. Z. also reviewed documents such as records of the Manitoba Workers Compensation Board (WCB) in respect of the accused. (Although the point was not argued, these qualify as business records.)

[55] The accused was notified that this report would be forwarded to the court. He appeared to understand this caution, the nature of the evaluation process, and the limits of confidentiality.

[56] When asked about his family and social history, the accused often answered, "I don't know" or "I don't remember." He said he only recalled the past seven years but could not identify a reason for this. He said he did not recall where he was born or where he grew up.

[57] The accused described spending much of his time in the Apartment. He reported watching DVD movies and playing video games on a Sony gaming system. He said he would walk to a Wal-Mart , a McDonalds and a Mark's Work Warehouse in Brandon. He said he cooked his own meals and cleaned his own space. He said his mother did the vacuuming and sweeping. He said he had no friends. He expressed no desire to develop friendships.

[58] He said he received \$300 per month, but did not know his income source. He said he did not pay any bills. He said he had never worked.

[59] He said he did not use a cell phone or a computer, and was not sure what to do in case of an emergency.

[60] Dr. Z. also obtained information from the accused's brother LH. LH said that the accused was born in Killarney. They had a half-brother who had a different father.

(The information about what LH said is hearsay, but I note it insofar as it is in the Dr. Z's report. It is not particularly contentious.)

[61] At the age of 13, the accused stole a car and spent a period in custody at the Agassiz Youth Centre.

[62] The accused had a workplace accident in about 1998 (more about this later in the report). He received a brain injury.

[63] The accused and his mother lived together in Brandon since about 2008. LH has had minimal contact with them in the last decade. LH visited them a few times per year. In his (limited) observation, the accused and his mother got along fairly well.

[64] The accused has received WCB benefits of about \$2,000/month since his accident in 1998.

[65] The accused did not report any substance (drug) use. LH said that the accused used cannabis during his youth. The accused said he had never stayed in a hospital before. (Hospital records would show that this was incorrect.) He said he did not have a family doctor.

[66] Records show that, in 1998, the accused suffered multiple injuries from a 45-foot workplace fall in a grain elevator. He had fractures and head lacerations. This accident gave rise to his WCB benefits.

[67] On April 10, 2024, the accused took a Montreal Cognitive Assessment (MCA). He scored 19 of 30. A score of greater than 26 suggests cognition with a normal range. He also scored a 5 of 15 Memory Index Score. He scored zero of 5 in delayed recall.

[68] The accused said he had never experienced any psychiatric symptoms. He said he had sustained a head injury, but incorrectly said it was from a motor vehicle accident, rather than a workplace fall.

[69] He said he had never experienced any auditory or visual hallucinations. Dr. Z. asked him questions to see if he had experienced delusional beliefs commonly held by people with psychiatric disorders. He replied "no" to each question.

[70] The accused was admitted to the Centre for Adult Psychiatry (CAP) in Brandon for four days. He called 911 because he thought people were trying to harass him. A urine drug screen was positive for cannabis. He was irritable and guarded. He didn't report any hallucinations. He was diagnosed with Marijuana Induced Psychotic Disorder, and discharged.

[71] A May 16, 2003 memorandum by Dr. E summarized documents written by other medical doctors. In 1999, a doctor thought the accused might have an underlying psychosis and prescribed an antipsychotic. In 1999, he was tested for IQ. His non-verbal IQ was in the superior range; his verbal IQ was in the average range.

[72] In 2001, a doctor wrote that the accused experienced significant problems with short-term memory. He had mood changes and short bouts of depression. He reported hearing voices and had paranoid ideation.

[73] A 2001 report noted odd ideation, idiosyncratic word usage and memory difficulties.

[74] A 2001 report mentioned a diagnosis of Bipolar Disorder and a lithium prescription.

[75] Dr. Z. assessed the accused's fitness to stand trial. The accused correctly summarized the gist of the charges against him. He correctly explained the roles of the judge, the Crown and the defence lawyer. He understood that taking an oath requires one to speak the truth. He understood the gist of guilty, not guilty and NCR pleas. In Dr. Z's opinion, he was fit to stand trial.

[76] Dr. Z. asked the accused about the offence. The accused said that he did not kill his mother. He repeated this numerous times.

[77] The accused said that, on October 26, he went to sleep at about 6:00 a.m. and woke at about 9:00 a.m. When he woke, he saw his mother on the living room floor, with blood on the nearby floor and walls. He saw his axe on the floor beside her. He said he believed that someone attacked his mother, but he did not realize she was dead. He thought she was sleeping. He saw no signs of forced entry into the Apartment. He got a key from his mother's room and locked the Apartment door. Soon afterwards, he left to buy food at a grocery store. When he returned, he showered and went to sleep for several hours. When he awoke, he noticed clothes on the bag that his hatchet was usually stored in. He said that someone else must have put them there. He didn't notice any blood on the clothes, but he nevertheless washed them in the bathtub, and then went back to sleep.

[78] Dr. Z. asked the accused why he didn't tell anyone what happened. He said it was because he had no phone and there was no phone in the Apartment. He also said he didn't know anybody. He said he thought his mother would wake up later. He said he didn't realize she was dead until he was arrested on November 3. Between

October 26 and November 3, the accused said he ate, drank coffee, showered and watched movies. He said he didn't notice any foul smell in the Apartment.

[79] Dr. Z. asked the accused about the plugged kitchen sink. He said it had been plugged for months, and that he and his mother took turns emptying it into the toilet bowl.

[80] The accused said he didn't experience any hallucinations and didn't believe anyone was trying to harm him in any way. He said that he and his mother hadn't been in any recent arguments.

[81] The accused told Dr. Z. that he lived with his mother for seven years prior to her death. He said they didn't often speak to each other because their schedules didn't overlap (the accused tended to stay up all night and sleep during the day).

[82] Dr. Z. diagnosed the accused as having mild Major Neurocognitive Disorder due to Traumatic Brain Injury. Dr. Z. relied on the documentary evidence about the accused's workplace accident; Dr. E's 2003 report (which mentioned significant problems with short-term memory); the MCA "MOCA" score of 19 (mild cognitive impairment); the accused's difficulties with daily living tasks such as managing his finances; and the accused's amnesia for events before his injury. Although the accused can't do things like managing his finances, he can attend to his basic needs such as nutrition and hygiene.

[83] Dr. Z. also mentioned a "provisional" possibility of Cannabis Use Disorder and Stimulant (cocaine) Use Disorder. This was based on older collateral information and could not be verified.

[84] Dr. Z. considered schizophrenia, but the accused did not meet the criteria for this.

[85] Dr. Z. concluded:

It is my opinion, with a reasonable degree of medical certainty, that [the accused's] diagnosis of Major Neurocognitive Disorder constitutes a mental disorder for the purpose of determining Criminal Responsibility. I base this opinion on that fact that [the accused's] Major Neurocognitive Disorder is a chronic condition that significantly affects his cognitive abilities. However, it is also my opinion, with a reasonable degree of medical certainty, that due to the Affirmative Nature of the Not Criminally Responsible plea, [the accused's] consistent assertions that he did not commit the offence charged would render moot any plea of Not Criminally Responsible.

While Major Neurocognitive Disorder due to Traumatic Brain Injury can result in difficulty remembering one's actions at the time of an offence, there was no evidence that this was true in [the accused's] case given his ability to explain events surrounding the offence in great detail. Additionally, while there is the possibility that an individual with Major Neurocognitive Disorder due to a Traumatic Brain Injury may confabulate (unconsciously invent a story to fill gaps in their memory – note that this phenomenon differs greatly from willful deceit in that the story is not consciously fabricated), there was no evidence that this was true for [the accused]. Instead [the accused] gave a consistent account of his actions across separate interviews that grossly aligned with collateral information, a pattern that is inconsistent with confabulation.

In summary, it is my opinion, with a reasonable degree of medical certainty, that [the accused] is ineligible to raise a Subsection 16(1) defence due to his persistent assertion that he did not commit the offence charged.

[86] Dr. Z. testified. He was asked about the accused's claim that he did not remember certain things. There is no doubt that the accused has some degree of memory impairment. Dr. Z. also raised the possibility of "apathy". He explained this as a state where it's hard for a person to remember something and the person doesn't want to go to the work of remembering. Dr. Z said that this sort of apathy is common

with Major Neurocognitive Disorder. Dr. Z. said he detected a bit of this apathy during his fitness analysis of the accused.

[87] In Dr. Z's opinion, the accused most likely appreciated the nature and quality of the act of striking his mother's head multiple times with his hatchet. He would have known that this would cause death or injury. In Dr. Z's opinion, the accused most likely could distinguish between moral right and moral wrong.

[88] Dr. Z. was asked about the accused's claim that he thought his mother was sleeping on the floor for about eight days. Dr. Z said he was unable to determine whether the accused truly believed this. An average person would not have believed it.

[89] It was Dr. Z's opinion that a Major Neurocognitive Disorder could affect someone's understanding of what to do in the event of an emergency. The accused said that he didn't seek help when his mother was "sleeping" on the floor for a week, because he didn't know any neighbours. He did go out to Wal-Mart during that week, and he must have interacted with a salesperson at Wal-Mart. Dr. Z. said it was possible that the accused was avoiding the problem. It was possible that the accused was lying. It was also possible that, days later, the accused didn't remember the killing of his mother. Dr. Z. said that he is unable to determine whether the accused truly believed that his mother was sleeping for a week on the floor.

[90] Dr. Z. was asked if he could be in error. He said that there is always room for error in every opinion that he ever gives. He has never been 100% certain.

The accused's police statements

[91] The statements of the accused at the police station were videotaped. The video was played in court, and gaps where nothing happened on the video were skipped by consent.

[92] The two interviews were on November 3 and 4, 2023. The answers of the accused were always short. Often, he just answered "yes" or "no" or "I don't know". The accused correctly gave his address and said he had lived there for seven years.

[93] When asked about LH, the accused said he did not know who LH was.

[94] When asked when he last saw his mother, he said he saw her "this morning" (November 3). When asked what she was doing, he said "sleeping on the floor". When asked how long she was sleeping on the floor, he said "about a week". When asked why there was blood near his mother, he said "I don't know".

[95] In response to specific questions, the accused explained that he saw his mother on the floor. There was blood, he didn't try to talk to her. He got a key and locked the Apartment. Later, he walked to a store on Princess Avenue. There he bought two oranges and seven bananas. When he got home his mother was still on the floor. He said it looked like she had been "injured somehow". He didn't try to help her. He said, "I thought maybe she'd wake up".

[96] The accused slept and watched television. He walked to Wal-Mart and bought pies.

[97] Later, the accused was asked again about what happened to his mother. He said, "maybe someone, uh, walked into the apartment in the middle of the night and

attacked." When asked, "how would they have attacked your mom", he replied, "I don't know".

[98] The accused denied that he ever got angry with his mother.

[99] Later, the police said, "we think somebody killed your mom." The accused replied, "yeah, must be, uh, uh, or an attacker or something."

[100] Later he was asked about his regular walks to Wal-Mart to buy things. He was asked about what he bought on Monday. He said, "two pies, a heater and a container of garbage bags."

[101] The accused was asked at what point he thought something was wrong with his mother. He said, "I dunno. Sure I do. Like I said, she was, it looks like she was moving around and sleeping."

[102] Earlier, the accused said the hatchet was his. It was usually in his gym bag with coins in the bag. He said, "uh, someone must have took it outta my bag. So must and put it by the floor."

[103] Later, the accused was asked again about his mother on the floor. He said, "like she, she, uh, blood for some reason. Um, like she fell or something, maybe. I don't know."

[104] Later, the accused was asked if he hit his mother with a hatchet. He replied, "no". He was asked, "what do you know?" He replied "I don't know anything."

[105] Later, the accused was asked again if he knew his mother was dead. He said, "didn't actually know if she was dead. She was injured and sleeping."

[106] Elements of the Crown's evidence included after-the-fact conduct, although it was not described as such at the time (e.g. the behaviour of the accused when the police entered the Apartment). The defence did not object to the admissibility of any after-the-fact conduct evidence.

LAW

Criminal Code

[107] Relevant sections of the **Code** include:

Definitions

2 In this **Act**,

mental disorder means a disease of the mind; (*troubles mentaux*)

Defence of mental disorder

16 (1) No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.

[underlining added]

Presumption

(2) Every person is presumed not to suffer from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection (1), until the contrary is proved on the balance of probabilities.

[underlining added]

Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

troubles mentaux Toute maladie mentale. (mental disorder)

Troubles mentaux

16 (1) La responsabilité criminelle d'une personne n'est pas engagée à l'égard d'un acte ou d'une omission de sa part survenu alors qu'elle était atteinte de troubles mentaux qui la rendaient incapable de juger de la nature et de la qualité de l'acte ou de l'omission, ou de savoir que l'acte ou l'omission était mauvais.

Présomption

(2) Chacun est présumé ne pas avoir été atteint de troubles mentaux de nature à ne pas engager sa responsabilité criminelle sous le régime du paragraphe (1); cette présomption peut toutefois être renversée, la preuve des troubles mentaux se faisant par prépondérance des probabilités.

Burden of proof

(3) The burden of proof that an accused was suffering from a mental disorder so as to be exempt from criminal responsibility is on the party that raises the issue...

Homicide

222 (1) A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.

Kinds of homicide

(2) Homicide is culpable or not culpable...

Culpable homicide

(4) Culpable homicide is murder or manslaughter or infanticide...

Murder

229 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

Charge de la preuve

(3) La partie qui entend démontrer que l'accusé était affecté de troubles mentaux de nature à ne pas engager sa responsabilité criminelle a la charge de le prouver.

Homicide

222 (1) Commet un homicide quiconque, directement ou indirectement, par quelque moyen, cause la mort d'un être humain.

Sortes d'homicides

(2) L'homicide est coupable ou non coupable...

Homicide coupable

(4) L'homicide coupable est le meurtre, l'homicide involontaire coupable ou l'infanticide...

Meurtre

229 L'homicide coupable est un meurtre dans l'un ou l'autre des cas suivants :

a) la personne qui cause la mort d'un être humain :

(i) ou bien a l'intention de causer sa mort,

(ii) ou bien a l'intention de lui causer des lésions corporelles qu'elle sait être de nature à causer sa mort, et qu'il lui est indifférent que la mort s'ensuive ou non;

b) une personne, ayant l'intention de causer la mort d'un être humain ou ayant l'intention de lui causer des lésions

cause death or bodily harm to that human being ...

corporelles qu'elle sait de nature à causer sa mort, et ne se souciant pas que la mort en résulte ou non, par accident ou erreur cause la mort d'un autre être humain, même si elle n'a pas l'intention de causer la mort ou des lésions corporelles à cet être humain...

Classification of murder

Classification

231 (1) Murder is first degree murder or second degree murder.

231 (1) Il existe deux catégories de meurtres: ceux du premier degré et ceux du deuxième degré.

Planned and deliberate murder

Meurtre au premier degré

(2) Murder is first degree murder when it is planned and deliberate ...

(2) Le meurtre au premier degré est le meurtre commis avec préméditation et de propos délibéré...

Second degree murder

Meurtre au deuxième degré

(7) All murder that is not first degree murder is second degree murder...

(7) Les meurtres qui n'appartiennent pas à la catégorie des meurtres au premier degré sont des meurtres au deuxième degré...

Verdict of not criminally responsible on account of mental disorder

Verdict de non- responsabilité criminelle

672.34 Where the jury, or the judge or provincial court judge where there is no jury, finds that an accused committed the act or made the omission that formed the basis of the offence charged, but was at the time suffering from mental disorder so as to be exempt from criminal responsibility by virtue of subsection 16(1), the jury or the judge shall render a verdict that the accused committed the act or made the omission but is not criminally responsible on account of mental disorder...

672.34 Le jury ou, en l'absence de jury, le juge ou le juge de la cour provinciale, qui détermine que l'accusé a commis l'acte ou l'omission qui a donné lieu à l'accusation mais était atteint, à ce moment, de troubles mentaux dégageant sa responsabilité criminelle par application du paragraphe 16(1) est tenu de rendre un verdict de non-responsabilité criminelle pour cause de troubles mentaux...

Case law

[108] The leading case on circumstantial evidence is ***R. v. Villaroman***, 2016 SCC 33

(“***Villaroman***”), where the court stated:

[26] ... There is a special concern inherent in the inferential reasoning from circumstantial evidence. The concern is that the jury may unconsciously “fill in the blanks” or bridge gaps in the evidence to support the inference that the Crown invites it to draw...

...

[30] ...Telling the jury that an inference of guilt drawn from circumstantial evidence should be the only reasonable inference that such evidence permits will often be a succinct and accurate way of helping the jury to guard against the risk of “filling in the blanks” by too quickly overlooking reasonable alternative inferences...The inferences that may be drawn from this observation must be considered in light of all of the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.

...

[35] ...In assessing circumstantial evidence, inferences consistent with innocence do not have to arise from proven facts [citations omitted]. Requiring proven facts to support explanations other than guilt wrongly puts an obligation on an accused to prove facts and is contrary to the rule that whether there is a reasonable doubt is assessed by considering all of the evidence. The issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. If there are reasonable inferences other than guilt, the Crown’s evidence does not meet the standard of proof beyond a reasonable doubt.

[36] ...[A] reasonable doubt, or theory alternative to guilt, is not rendered “speculative” by the mere fact that it arises from a lack of evidence... A certain gap in the evidence may result in inferences other than guilt. But those inferences must be reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.

[37] When assessing circumstantial evidence, the trier of fact should consider “other plausible theor[ies]” and “other reasonable possibilities” which are inconsistent with guilt [citations omitted]... [The] Crown thus may need to negative these *reasonable* possibilities, but certainly does not need to “negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused” [citations omitted]. “Other plausible theories” or “other reasonable possibilities” must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.

[38] Of course, the line between a “plausible theory” and “speculation” is not always easy to draw. But the basic question is whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty.

...

[55] ... Where the Crown’s case depends on circumstantial evidence, the question becomes whether the trier of fact, acting judicially, could reasonably be satisfied that the accused’s guilt was the only reasonable conclusion available on the totality of the evidence [citations omitted].

[109] In ***R. v. W.(D)***, 1991 CanLII 93 (SCC) (“***W.(D)***”), the SCC provided a handy framework for analyzing reasonable doubt when an accused testifies. This now is extended to cases where there is some evidence from the accused before the court (e.g. a police statement). The instruction that originated from ***W.(D)*** has now been modified somewhat so as to include an instruction that directs as follows:

1. If you believe the accused’s evidence that he/she/they did not commit the offence charged you must find the accused not guilty.
2. If after careful consideration of all of the evidence you are unable to decide whom to believe, you must find the accused not guilty (because Crown counsel would have failed to prove the accused’s guilt beyond a reasonable doubt).
3. Even if you do not believe the accused’s evidence, if it leaves you with a reasonable doubt about his/her/their guilt or about an essential element about the offence charged, you must find him/her/them not guilty of that offence.

4. Even if the accused's evidence does not leave you with a reasonable doubt of their guilt or about an essential element of the offence charged, you may convict him/her/them only if the rest of the evidence you do accept proves his/her/their guilt beyond a reasonable doubt.

[110] In ***R. v. Benoit***, 2026 MBKB 59, the court found the accused guilty of first-degree murder on the basis of circumstantial evidence. At paragraph 66, the court agreed with the defence that some of the actions of the accused were illogical but concluded that this fact did not negate conviction.

[111] Assumptions grounded in everyday experience and common sense need not be established empirically: ***Gosselin v. Québec (Attorney General)***, 2002 SCC 84 at para. 56.

[112] The defence initially filed several cases. ***R. v. Landry***, 1991 CanLII 114 (SCC) ("***Landry***") dealt with old "insanity" defence. The accused suffered from severe psychosis. He believed at the time of the murder that he was acting on God's orders to kill Satan. He knew that murder was a crime, but he believed that the murder was necessary to fulfil his divine mission. Like today's ***Code*** provision, the old "insanity" provision used the word "wrong". The SCC ruled that this meant "morally wrong". The evidence was that the accused did not think the killing was morally wrong, so the insanity defence succeeded.

[113] In ***R v Jacquard***, 1997 CanLII 374 (SCC) the accused was charged with first-degree murder for killing one victim and attempted murder for shooting another. After the shooting, he wiped the gun clean and hid it. The issue in dispute was the

correctness of the judge's charge to the jury. (In the end, the SCC ruled that it was adequate.) The defence admitted to the *actus reus* (the physical act that makes up the external aspect of the crime), but advanced an NCR defence. The majority of the SCC commented that the fact that the accused wiped the gun and hid it was not relevant to the *actus reus* analysis (because the defence admitted the *actus reus*). However, the alleged wiping and hiding the gun was relevant circumstantial evidence for the jury to consider in evaluating the accused's NCR defence. Evidence of concealment or flight has some bearing on whether the accused was capable of appreciating that what he had done was wrong. The conviction was upheld.

[114] ***Cooper v. R.***, 1979 CanLII 63 (SCC) dealt with the old "insanity" defence. In the end, the SCC found that the charge to the jury was incorrect, so a new trial was ordered. Very much like today's provisions, the old provisions used the phrase "appreciating the nature and quality of an act". The SCC majority explained the meaning of this phrase. Appreciating is more than merely knowing. At page 1181, the majority commented that to "know" the nature and quality of an act may mean merely to be aware of the physical act, while to "appreciate" the act may involve estimation and understanding of the consequences of the act. In this case, the accused choked the victim to death. He may have *known* the nature and quality of the physical act of choking. However, to *appreciate* the nature and quality of choking would involve being aware that it could lead to or result in death.

[115] ***R. v. Chaulk***, 1990 CanLII 34 (SCC) ("***Chaulk***") involved a *Charter* challenge to the old "insanity" defence (which preceded today's NCR defence). The majority of the

SCC concluded that “wrong” in the predecessor to what is now section 16(1) meant “morally wrong”. Just as the current section 16(2) of the **Code** requires the defence to prove an NCR defence on a balance of probabilities, the previous wording of the **Code** required the defence to prove insanity on a balance of probabilities. In **Chaulk**, the SCC made it clear that the Crown is not required to prove the sanity of the accused as part of its case against such person (paragraph 130). Even if the defence has warned the Crown that it intends to raise an insanity defence, the Crown can wait until the defence formally raises it in court, and then the Crown can call rebuttal evidence. The Crown does not have to tender evidence of sanity as part of its evidence in chief. The accused bludgeoned the victim to death. There was expert evidence that the accused suffered from paranoid psychosis, which made them believe that they had the power to rule the world and killing was a necessary means to an end. The accused knew the laws of Canada existed but felt they were above the law. After upholding the law under section 1 of the **Canadian Charter of Rights and Freedoms**, Part 1 of the Constitution Act, 1982, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11, the majority ordered a new trial to deal with the question of whether the accused thought their actions were “morally” wrong.

[116] The Crown referred to **R. v. Skibicki**, 2024 MBKB 113 (“**Skibicki**”). The accused was charged with four counts of first-degree murder. The Crown psychiatrist felt that the accused did not have a mental disorder and was not NCR. The defence psychiatrist felt that he was NCR. The court preferred the evidence of the Crown psychiatrist because he was much more experienced and for other reasons. The

accused told the defence psychiatrist that God told him to act, that he heard the voices of angels/demons and that he would interact directly with God. The Crown psychiatrist felt that these comments were fabrications, and the court agreed. The court analyzed after-the-fact conduct at paragraphs 217-225. In this case, such evidence was admissible.

[117] The court noted, at paragraph 338, that “a person usually knows what the predictable consequences of his or her actions are and means to bring them about.” At paragraph 344, it was noted that the accused was on methamphetamine (meth) for three of the murders and was coming off psilocybin (magic mushrooms) for the fourth. The court considered whether the accused had the intent to commit the killings (and thus whether the offence was murder or manslaughter). Based on statements of the accused and other evidence, despite the accused’s use of meth and mushrooms, the court concluded that he had intent. The court also analyzed whether the murders were planned and deliberate (whether it was first- or second-degree murder). Based on all the evidence, the court concluded that all four murders were first-degree murders.

[118] The Crown filed *R. v. Malcolm*, 2026 ONSC 1508 (“*Malcolm*”). The accused stabbed his husband 30 times and two of his wounds were fatal. The accused quickly called 911, told the operator that he was hearing voices, and told the operator that his husband was a demon who was going to kill him. The voices told him to kill his husband. He was charged with second-degree murder. The accused did not testify. The Crown agreed that the accused had a history of mental health issues. The defence called two forensic psychiatrists and the Crown called one. One defence psychiatrist

(Dr. R) testified that she was uncertain whether the accused was NCR or not. The second defence psychiatrist testified that the accused was likely psychotic at the time of the killing. He didn't appreciate the moral wrongfulness of his actions. If he didn't have a serious mental disorder, it is unlikely that he would have killed the victim. The Crown psychiatrist (Dr. I) disagreed. He said there was little evidence that the accused was suffering from a primary psychotic disorder, and his symptoms were very unlikely to render him incapable of assessing the moral wrongfulness of his actions. The accused told Dr. R that he couldn't recall the stabbing. Dr. R did not believe this claim. She said it was possible that the experience was too overwhelming to discuss, and it was possible that the accused just didn't want to talk about it. Dr. I concluded that the accused was feigning his amnesia about the event. After weighing the evidence, the court concluded that the accused was suffering from a disease of the mind at the time of the killing. At paragraphs 146-147, the court concluded that there was a possibility that the accused didn't understand that the stabbing was morally wrong. However, the court concluded that the defence had failed to prove on a balance of probabilities that the accused did not appreciate that it was morally wrong. Therefore, the NCR defence failed. The court went on to consider whether the accused had the intent required for murder (as opposed to manslaughter). At paragraph 159, the court admitted that this was a "challenging" case. The accused had a mental disorder at the time of the killing. However, the court was satisfied that the accused knew he was stabbing the victim repeatedly (30 times). At the very least, the accused intended to cause bodily harm

that would cause death and was reckless as to whether death ensued. Therefore, he was guilty of second-degree murder.

[119] The Crown filed ***R. v. White***, 1998 CarswellOnt 2561 (SCC). The facts were unique and involved a murder, a later robbery, and a later flight from police and disposal of a gun. The trial judge instructed the jury about how it might consider post-offence conduct of the accused. The SCC ruled that the charge to the jury was adequate. At paragraph 19, the court observed:

Under certain circumstances, the conduct of an accused after a crime has been committed may provide circumstantial evidence of the accused's culpability for that crime. For example, an inference of guilt may be drawn from the fact that the accused fled the scene of the crime or the jurisdiction in which it was committed, attempted to resist arrest, or failed to appear at trial. Such an inference may also arise from acts of concealment, for instance where the accused has lied, assumed a false name, changed his or her appearance, or attempted to hide or dispose of incriminating evidence.

[120] The Crown filed ***R. v. Jaw***, 2009 SCC 42 ("***Jaw***"). At paragraph 40, the majority observed:

Post-offence conduct may also be used to discredit a defence that relates to the accused's person's state of mind at the time of the offence and that is therefore relevant to his or her ability to form the requisite intent for the offence, such as intoxication...or the "not criminally responsible" defence...In the case at bar, the Crown could have pursued the argument that the appellant's sense of awareness immediately after the shooting was relevant circumstantial evidence that he had requisite intent, since it belied his claim to have been completely disoriented by the pepper spray.

[121] The Crown filed ***R. v. White***, 2011 SCC 13. After a murder, the accused fled the scene. At paragraph 42, the majority pointed out:

Whether or not a given instance of post-offence conduct has probative value with respect to the accused's level of culpability depends entirely on the specific nature of the conduct, its relationship to the record as a whole, and the issues raised at trial. There will undoubtedly be cases where, as matter of logic and human experience, certain aspects of the accused' post-offence conduct support an inference regarding his level of culpability.

[122] At paragraphs 71 - 73, the majority cited ***Jaw*** with approval.

[123] In ***R. v. Rahman***, 2003 CarswellOnt 1682 (ONCA) ("***Rahman***"), at paragraph 8, the court summarized:

The post-offence conduct consisted of evidence of the appellant's delay in obtaining help after the complainant was shot, and evidence of concealment, which included the appellant asking the complainant to lie about the shooting, his failing to remain at the hospital and his attempting to destroy the mattress on which the complainant had bled after she was shot. The appellant concedes that the evidence of delay in obtaining help after the complainant was shot is relevant to his state of mind at the time of the shooting. The appellant submits, however, that the evidence as to concealment is not relevant because a defence of accident was raised and the attempts at concealment was equally consistent with panic or fear. He submits that the trial judge should have instructed the jury accordingly. We disagree. The conduct in issue was one course of conduct. Like any piece of circumstantial evidence, evidence of concealment may be subject to competing interpretations and must be weighed by the jury in light of all the evidence to determine whether it is consistent with guilt and inconsistent with any other rational explanation.

[124] In ***R. v. Miles***, 2018 MBQB 95 ("***Miles***"), the accused was charged with second-degree murder for drowning the victim in a river. The accused had been drinking. His police video statement showed him to be "a person who struggles with expressing himself precisely" (paragraph 54). The court had to consider the possibility that the victim drowned accidentally. At paragraph 54, the court concluded that:

...the accused's actions or inactions at that moment [of the drowning] solidify his meaning. Had [the victim] accidentally slipped under the water or been washed away in the river, the accused would have done something at that moment to save her. The accused would have tried to find [the victim]. He would have

alerted the RCMP, band constables, community members, or family members so that they could help look for her. He did none of those things.

[125] At paragraph 62, the court found that the accused's failure to make efforts to save the victim or to seek help were circumstantial evidence of his guilt. The court considered whether the accused's intoxication might reduce murder to manslaughter. The court concluded that the evidence didn't show advanced intoxication, so the accused was convicted of murder.

[126] In ***R. v. Stiers***, 2010 ONCA 382 ("***Stiers***"), the accused was charged with first-degree murder. The accused and the victim had a fistfight. The accused went away and came back with a knife. He ended up stabbing the victim to death. Various defences were advanced. The court of appeal felt that the instructions to the jury about whether the killing was planned and deliberate were inadequate, so the appeal court substituted a conviction for second-degree murder. The court commented on after-the-fact conduct. At paragraph 56, the court observed that:

...it has been held that where the accused's mental state is in issue, for example through evidence of intoxication, evidence of the accused's after-the-fact conduct could support an inference that, despite intoxication, the accused did have sufficient awareness to form the requisite intent for murder.

[127] In ***Tshilumba v. R.***, 2022 QCCA 1591, the accused killed the victim and then fled and hid. Among other things, he did computer searches about getting away with murder. He advanced an NCR defence to the first-degree murder charge. At paragraph 61, the appeal court observed that evidence of post-offence conduct could be relevant to the NCR defence.

[128] In *R. v. Obeing*, 2023 MBKB 48 ("*Obeing*"), the accused stabbed the victim 17 times and was charged with second-degree murder. The accused had an intellectual disability and bipolar disorder. After the stabbing, the accused fled, and disposed of the knife in a garbage bin. While being questioned by police, the accused became agitated, yelled, was tearful, sang, danced, moved around the interview room, and made unusual laughing and chanting noises. He was observed in a police cell spitting, covering his face with a blanket, ripping the blanket and throwing food and water on the floor. An agreed statement of facts said that, during incarceration, the accused experienced fleeting auditory hallucinations and paranoid ideation, which were controlled by medication. The accused lied to the police. He advanced an NCR defence. A psychiatrist (Dr. W) saw him. At paragraph 106, the court commented:

The after-the-fact conduct is relevant in that the accused fled from the scene, disposed of the weapon, washed blood from his hands, and ultimately lied to police. Those areas, as conceded by Dr. [W] required conscious thought, as something had been done that the accused needed to run from. Further, he told the police that they had "got the wrong guy", which would impute knowledge that there was something to be deceptive about. This would accentuate an appreciation of the wrongfulness of his actions and an awareness of the nature and quality of his act...

[129] At paragraph 109, the court said it accepted that the accused had a disease of the mind. However,

...he was able to demonstrate a conscious thought process as illustrated by his ability to call and pay for taxicab service, flee the scene, dispose of the knife, wash blood from his hands, lie to police with respect to his involvement and then undertake a detailed description in his statement as to what he had done and why.

[130] The NCR defence failed.

[131] In ***R. v. O'Connor*** 2002 CarswellOnt 3955 (CA) ("***O'Connor***"), the accused was charged with second-degree murder, the appeal court concluded that the instructions to the jury were inadequate, and it ordered a new trial. The issue was disbelieved alibi evidence offered by the accused. In very simple terms, just because a court does not believe the alibi evidence does not necessarily mean the alibi evidence was fabricated. At paragraph 32, the court observed that

...it is not the evidence establishing the falsity of the statements which constitutes the evidence of fabrication; rather it is the evidence of the circumstances in which the disbelieved statements were made and the detailed nature of those statements which...is capable of furnishing the independent evidence of fabrication.

[132] ***R. v. Wright***, 2017 ONCA 560, quoted ***O'Connor*** with approval at paragraphs 48-49. If an accused offers exculpatory evidence, and the court does not accept that evidence, that does not necessarily mean the accused concocted the evidence.

[133] In ***R. v. Stevenson***, 2014 ONCA 842 ("***Stevenson***"), at paragraphs 89-94, the court analyzed the proper use of evidence that the accused lied to the police. In this case, a major issue was identity. At paragraph 92, the court observed that an "accused's conduct after the homicide, including lies to the police, can have circumstantial value on the issue of identity". At paragraph 93, the court concluded that

...if the jury decided that the appellant was lying to the police and pretending to be unable to recall where he was at the time of his wife's murder, the jury could use that finding to support the inference that the appellant had killed his wife. The appellant first professed an inability to recall where he was when his wife

was killed only about four and a half hours after the murder...the timing and the subject matter of the lie made an inference of fabrication to avoid culpability a legitimate possibility.

[134] In ***R v B (AK)***, 2024 MBCA 76, the court quoted ***O'Connor*** with approval at paragraphs 57-60. Disbelieving the accused's exculpatory statement does not necessarily mean it was fabricated. The court must look at the circumstances in which a statement was made, including timing, the scope of the exculpation and the degree of detail in the statement.

[135] I invited both parties to file additional case law giving examples of Canadian courts reaching NCR verdicts. The Crown submitted six cases. The defence submitted five cases.

[136] In ***R. v. Gantchev***, 2021 ONSC 545 ("***Gantchev***"), the accused was charged with manslaughter for killing his father. At paragraph 84, the court commented that the accused told a psychiatrist that both of the accused's parents were aliens. The accused did not think killing was morally wrong. The court found the accused NCR.

[137] In ***R. v. Donnelly***, 2025 BCSC 2104 ("***Donnelly***"), the accused was charged with aggravated assault for stabbing three people with a chisel. The accused thought that God wanted him to stab the victims, so it was not morally wrong (paragraph 74). A doctor diagnosed the accused with schizoaffective disorder, bipolar type. The court found the accused NCR.

[138] In ***R. v. Mullings***, 2023 BCSC 1095 ("***Mullings***"), the accused was charged with second-degree murder for killing his partner. A doctor testified that the accused was acutely psychotic at the time of the killing. The accused was under the delusion that

the victim was trying to kill him. The accused was not able to know that the killing was morally wrong (paragraph 52), so the court found the accused NCR.

[139] In ***R. v. Mossaddad***, 2019 ONSC 6483 ("***Mossaddad***"), the accused was charged with first-degree murder for strangling his grandmother. A doctor diagnosed the accused with a primary psychotic disorder. The accused thought his grandmother was part of a grand conspiracy involving the Illuminati and aliens (paragraph 28-29). He thought this grandmother was going to kill him and he had no other way of surviving (paragraph 34). He didn't understand the moral wrongfulness of the killing. The court found the accused NCR.

[140] In ***R. v. Sesay***, 2018 MBPC 39, the accused was charged with attempt murder and other offences, for stabbing his victim multiple times. A doctor testified that the accused was suffering from delusions. The court found him NCR for attempted murder.

[141] In ***R. v. Mebrahtu***, 2017 MBQB 169 ("***Mebrahtu***"), the accused was charged with second-degree murder for stabbing his wife. The accused thought people, including his wife, were conspiring to kill him (paragraph 20). One doctor testified that the accused was suffering from paranoid delusions (paragraph 36). The court found the accused NCR.

[142] The defence submitted five cases. The first was ***R. v. Lee***, 2026 BCSC 715 ("***Lee***"). The accused was convicted of second-degree murder for killing his mother. The defence admitted to the *actus reus* of the offence and many agreed facts were tendered. The accused had a history of delusions. A psychiatrist prescribed an anti-psychotic medication, but the accused stopped taking the medication and stopped

seeing the psychiatrist. Over a year after the killing, the accused told two forensic psychiatrists (one retained by the Crown and one by the defence) that his mother was an alien shapeshifter; that he was a protector of the world; and that his mother's shapeshifting ability was temporarily stopped when the accused put tungsten in their home. The accused told police that his mother was an imposter, and not his real mother. He also told police that he didn't commit any crime and that anyone else in his situation would have done the same. The Crown and the defence agreed that the accused was suffering from a mental disorder at the time of the offence and that disorder made him incapable of knowing that the killing was morally wrong. The court found that at the time of the murder, the accused was suffering from delusions attributable to his untreated schizophrenia (paragraph 64). The court found the accused NCR.

[143] In *R. v. Bharwani*, 2025 SCC 26, the accused was charged with first-degree murder. Three forensic psychiatrists testified, two for the defence and one for the Crown. One doctor diagnosed the accused as having symptoms of schizophrenia and psychosis at the time of the murder. Another doctor diagnosed the accused with a major mental illness, most likely schizophrenia. At the time of murder, the accused was more likely than not unable to assess the moral wrongfulness of his actions. At the SCC level, the dispute was about the admissibility of fresh evidence. The SCC allowed certain fresh evidence and ordered a new trial.

[144] In *R. v. Ejigu*, 2016 BCSC 2278 ("*Ejigu*"), the accused was charged with second-degree murder for stabbing the victim 79 times. After arrest, the accused told a

government psychiatrist that she thought the police were trying to kill her. The doctor put her on anti-depressant and anti-psychotic medications. She showed some improvement and her anti-psychotic medication was phased out. Her condition deteriorated, and jail guards saw her sitting on the ground, hitting herself in the head, and screaming. She was put on medication again; her condition improved, and she was released on her own recognizance. There was evidence about her sometimes bizarre behaviour after she was released. The expert evidence was that disorders like those of the accused wax and wane, and can be held in check with medications, and can be exacerbated by stress. The court concluded that the accused suffered from a serious and enduring mental disorder. The court accepted the evidence of one psychiatrist that, at the time of the killing, the accused's perception of reality was likely significantly distorted so that she perceived everything that was going on around her through a paranoid lens of fear. The court found that, although the accused's actions were prompted by a psychotic delusion of a need for self-defence, they were intended to inflict serious bodily harm upon the victim. However, the evidence as a whole led the court to conclude that the mental disorder rendered the accused incapable of knowing that her actions in killing the victim were morally wrong. Therefore, the NCR defence succeeded.

[145] The defence filed ***Chaulk*** again.

[146] ***R. v. Richmond***, 2016 ONCA 134, involved an accused who stabbed his mother multiple times, decapitated her, and then set her house on fire. The accused called 911 and reported the fire. While walking, he flagged down the police and told them that

the house was on fire and that he was unsure if his mother was home. The accused had suffered from schizophrenia for years. His symptoms included auditory hallucinations, grandiose and paranoid delusions, thought disorder and conceptual disorganization. The accused didn't provide a statement to police and didn't testify at trial. A jury found him guilty of second-degree murder. He then requested an NCR hearing. A psychiatrist testified that the accused's behaviour was consistent with an "overkill phenomenon" linked to mental illness and with an "imposter theory". There were various flaws in the psychiatrist's opinions, and the jury declined to find the accused NCR. This was upheld on appeal.

ARGUMENT

Crown

[147] The Crown argued that it proved the *actus reus* beyond a reasonable doubt. The undisputed medical evidence was that the victim was killed by blows to the head by an instrument such as a hatchet. The accused's hatchet was found near the body, with the victim's blood on it. The accused admitted in his police statement that it was his hatchet. When the building manager entered the Apartment on November 3, the door was locked. There was no evidence of forcible entry. Only the accused and the victim's body were inside. Continuity of the hatchet was admitted.

[148] Although the accused suggested in his police statement that he thought some unknown intruder entered the apartment while the accused was sleeping, quietly took the accused's hatchet without waking the accused (who was a light sleeper), killed the victim, and silently left the apartment (not taking the large amount of cash in plain

view). The Crown submitted that this version of events was preposterous and that there was no evidence at all to support it.

[149] The accused chose not to testify at trial (which was his right), so he never elaborated on the unknown-intruder story.

[150] The Crown conceded that there was no evidence of motive. However, the Crown has no legal duty to prove motive.

[151] The Crown conceded that the accused suffered from a mental disorder at the time of the killing. However, the Crown argued that this mental disorder did not render the accused incapable of appreciating the nature and quality of the act (of hitting the victim's head multiple times with the hatchet) or of knowing that it was wrong.

[152] The Crown conceded that Dr. Z. indicated that the accused has significant memory problems. However, the Crown argued, memory problems in and of themselves do not prove an NCR defence.

[153] The Crown conceded that that the accused's behaviour was "strange" but pointed out that strange behaviour by an accused is not uncommon in criminal trials. To prove an NCR defence on a balance of probabilities, the defence has to do more than establish that the accused's behaviour was strange.

Defence

[154] The defence argued that the Crown did not prove the *actus reus* beyond a reasonable doubt. The defence argued that, if the accused had intended to fabricate evidence in his police statement, he would have done a much better job. For example, he would have claimed that he was a heavy sleeper, rather than a light sleeper.

[155] The defence did *not* try to argue in the alternative that, even if all of its other arguments failed, the accused was merely guilty of manslaughter, rather than murder.

[156] The defence did not attempt to argue that the accused was somehow unfit to stand trial.

[157] In arguing that the accused was NCR, the defence focused on some of the accused's unusual statements to the police (such as his statement that he designed military jets, and his statement that he designed Japanese video games), and argued that a "normal" person doesn't make such statements.

[158] The defence argued that the accused's behaviour after the victim was killed was not consistent with an effort to hide the crime or to reduce any suspicion that might fall upon him. On the contrary, his decision to let the overflow water from the kitchen sink to spill on to the floor (and eventually leak through the Apartment floor) actually did bring help (i.e. a maintenance man).

Reply

[159] In reply, the Crown pointed out that the accused told the police that he was *not* having delusions.

[160] The Crown questioned the credibility of the accused in relation to some of his claims that he did not remember various things. His claims that he did not remember should not all be taken at face value.

[161] Finally, the Crown pointed out that a lack of sophistication is not necessarily the same as a lack of capacity (i.e. the accused was obviously not sophisticated, but that does not mean that he was NCR).

FINDINGS

Actus reus

[162] I find that the Crown proved the *actus reus* beyond a reasonable doubt. The Crown's evidence is circumstantial, rather than direct. The accused never confessed to striking the victim with the hatchet (or any other object). There were no eyewitnesses and no video.

[163] There was no evidence that the accused had any motive to kill the victim (although the Crown correctly pointed out that it has no legal requirement to prove motive).

[164] It is obvious that the accused is neither eloquent nor sophisticated. Far from it. The Crown conceded that he had a mental disorder. The only expert witness to testify concluded that the accused had a mental disorder. I have no difficulty in accepting the Crown's concession that the accused had a mental disorder as of November 3.

[165] In his police statement, and his statement to Dr. Z., the accused offered an alternative theory of the crime. In this theory, an unknown intruder entered the Apartment while the accused was sleeping, and killed the deceased with the accused's hatchet without waking the accused. The accused did not suggest who this intruder might be or why the intruder might have wanted to kill the victim.

[166] The fact that the accused didn't suggest a motive for the alleged unknown intruder is neither here nor there. Just as the Crown didn't have to prove that the accused had a motive, the accused didn't have to offer up any plausible motive for any plausible alternative murderer. Using the **Villaroman** test, in which the defence would

have had to offer up a plausible scenario inconsistent with the guilt of the accused, there's no absolute requirement that motive be part of this plausible scenario. That being said, a theory might be more plausible if it includes a plausible motive.

[167] The circumstantial evidence against the accused is very strong. It was his hatchet. Because the victim knew him so well, he could have approached her at any time without alarming her. She would not likely have started screaming when she first saw him. He lived in the Apartment and rarely left. He would have had access to his victim almost all of the time. The Apartment was locked when DM arrived on November 3. There were no signs of forced entry. When the police arrived on November 3, the accused ran away from them.

[168] The evidence of the *actus reus* was circumstantial. As per **Villaroman**, the defence argued for an alternative theory inconsistent with the guilt of the accused. The theory was that an unknown intruder entered the Apartment while the accused was (lightly) sleeping, silently got the accused's hatchet, and struck the victim multiple times with the hatchet, hard enough to kill her, all without waking the accused.

[169] Post-offence conduct can be considered, as per the case law above. If the alternative theory were correct, we are left with the fact that the accused saw his mother motionless on the living room floor, surrounded by at least some blood, giving off a progressively more foul odour, and he did absolutely nothing for about a week (even though he left the Apartment more than once to go out to buy food and other items).

[170] Although this is stretching the bounds of plausibility, what if the accused's utter lack of sophistication, and mental disorder, and complete lack of friends or acquaintances (other than his mother), and lack of a phone, and lack of experience in solving problems for himself, left him genuinely perplexed about what to do to seek help for his mother? Even if he believed that she was sleeping on the floor for a week (which again stretches plausibility) he would at least have thought that she needed some sort of medical help. There was no evidence that his sense of smell was impaired in any way. Therefore, he must also have been aware of the growing overpowering odour from the decaying body. Even if he had never smelled a dead body before, the odour must have been cause for alarm.

[171] When police entered the Apartment on November 3, he didn't greet them with gratitude for their arrival. On the contrary, he ran away to a bedroom. This puts a lie to the theory that he wanted to get help but didn't know how to get it. It is, however, fully consistent with the Crown's theory that he killed his mother and knew that she was dead.

[172] When he gave a statement to police on November 3 and 4, he did not confess to killing his mother while offering an NCR explanation (e.g. she was an alien, or a shapeshifter, or God told him to kill her, or she was trying to kill him). He flatly denied killing her and offered up his unknown-intruder theory of the crime.

[173] In *Miles*, the court found that the accused's failure to seek help after the offence was one factor to consider.

[174] The fatal wounds to the deceased might well have been caused by the hatchet. There was no evidence of any other specific weapon that might have caused the fatal wounds.

[175] There was no evidence of a murder incidental to a robbery. A significant amount of cash was lying in plain view in the Apartment. If some unknown robber had somehow entered the Apartment and had killed the victim as an incident to the robbery, one would have expected the unknown robber to have taken the cash before leaving. The evidence is that this did not happen.

[176] There is no evidence of any other violent incidents happening in the Building at roughly the same time as the death of the victim. Defence counsel did not even cross-examine DM about this topic.

[177] In short, the defence's alternative theory was not even remotely plausible. Using a **Villaroman** analysis, the Crown's circumstantial evidence proved the *actus reus* of the offence beyond a reasonable doubt.

[178] We can overlay a **W(D)** analysis upon the **Villaroman** analysis. Although the accused did not testify, his police statement was in evidence. In his statement, he said that an unknown intruder must have killed his mother while he was sleeping. He said that he was a light sleeper. The wounds that killed the victim were severe. I did not believe the accused. His assertion about the unknown intruder was so farfetched as to be almost impossible. Nor did I find that his story about the unknown intruder raised any reasonable doubt about the guilt of the accused. Nor did the evidence as a whole raise a reasonable doubt about the guilt of the accused. It might almost be fair to say

that the only way the Crown's case might have been stronger (short of an eyewitness or a confession by the accused) would have been if the Crown has also discovered some evidence as to motive. As noted above, the Crown has no legal duty to prove motive. Therefore, a **W(D)** analysis also points towards guilt.

Murder versus manslaughter

[179] Although the defence did not raise, even as an alternative argument, an argument that the Crown failed to prove intent to kill (which would be needed for a verdict of murder instead of manslaughter), I have considered this issue.

[180] To prove intent for murder, the Crown must prove beyond a reasonable doubt either: a) that the accused meant to cause the victim's death; or b) that the accused meant to cause the victim bodily harm that he knew was likely to cause the victim's death and was reckless whether death ensued or not.

[181] The pathology report shows a very violent killing. There were five blows to the head, two of them strong enough to break bone. There were injuries to the victim's hand and right arm, severe enough to fracture an arm bone. Occasionally, the courts see "thin skull" killings, where the lethal injuries or injuries do not necessarily have to end up being lethal. One stab wound with a knife might end up hitting a major artery, causing the victim to bleed to death. If the stab wound had been a bit to the left or to the right, the victim would have lived. This was not such a case. The person who inflicted the very violent wounds must have (absent factors discussed below) intended at least to cause bodily harm that he knew was likely to cause death and was reckless whether death ensued or not.

[182] An accused might have an intent to kill despite having a mental disorder (e.g. as in *Malcolm*).

[183] Many cases in which courts have to grapple with the issue of murder-versus-manslaughter involve alcohol and/or drugs (e.g. *Skibicki, Miles, Stiers*). The defence did not try to argue that the accused was under the influence of alcohol and/or drugs at any material time.

[184] There was a bit of evidence, through Dr. Z and certain business records that Dr. Z reviewed, that the accused might have abused or misused marijuana at some previous time. However, there is no evidence that he used marijuana at all in October - November 2023. There was a very small bit of evidence that the accused had used cocaine in the past. Several police officers described the items that they saw in the Apartment, and police photos of the Apartment were very thorough. There was no evidence at all that alcohol or marijuana, or any drugs were present in the Apartment before November 3 (e.g. no empty alcohol bottles or beer bottle caps, no drug pipes or “rolling papers” or other paraphernalia).

[185] Could something other than alcohol or drugs have negated intent in this case? The defence never suggested anything. I will deal with the NCR defence below. The accused had a mental disorder. However, I am not aware of any case law in which alcohol and/or drugs were irrelevant, and in which the mere existence of a mental disorder (short of one supporting an NCR defence) in and of itself is sufficient to negate intent (to reduce murder to manslaughter).

[186] The court in ***Skibicki*** pointed out the “a person usually knows what the predictable consequences of his or her actions are and means to bring them about.”

[187] Therefore, I find that the Crown has proved second-degree murder beyond a reasonable doubt.

NCR

[188] The defence has to prove the NCR defence on a balance of probabilities.

[189] I should say up front that I found Dr. Z. to be a very credible witness. His C.V. established his expertise (and the defence agreed to it). He was thoughtful, objective, dispassionate, and his professional humility was commendable. He readily admitted that there is always room for error in every opinion that he ever gives.

[190] I invited both parties to file cases in which a court found an accused NCR, not to define the precise boundaries of the defence, but to provide a rough outline to the ballpark of the defence to date. Of course, there may be future cases that bear no resemblance to past cases, but in which a court properly arrives at an NCR verdict.

[191] The existing cases do not help the defence.

[192] In our case, the accused did not think the victim was an alien (as in ***Gantchev***).

[193] The accused did not think that God wanted him to stab the victims, so it was not morally wrong (as in ***Donnelly***).

[194] The accused did not think the victim was conspiring to kill him (as in ***Mullings***, ***Mossadad*** and ***Merahtu***).

[195] In our case, the accused did not think the victim was an alien shapeshifter (as in ***Lee***).

[196] He did not think the police were trying to kill him (as in ***Ejigu***).

[197] The accused did not believe he had the power to rule the world (as in ***Chaulk***).

[198] Again, I realize that future case law may be different from past case law. That being said, the existing case law strengthens the Crown's position on the NCR issue.

[199] The common element in the existing cases is that they are all scenarios in which a person could be aware that they were killing someone (rendering them dead) and maybe that what they were doing was against the law, but that they were not doing anything morally wrong. Arguably, it is not wrong to kill an alien; it is not wrong to kill someone on God's instructions; it is not wrong to kill someone who is trying to kill you. These fact situations fit the language of section 16 of the ***Code*** (as clarified by ***Landry*** and later cases): the defence must prove that the accused was incapable of appreciating the nature and quality of the act or omission or of knowing that it was [morally] wrong.

[200] The fact situation in our case simply does not fit this pattern at all. The accused simply denies that he killed his mother. He denied it on November 3, and his defence counsel took the same position at trial. The position never changed.

[201] In criminal trials, some alternative defences work very well together. An accused may deny that they had control of the illegal drugs but, in the alternative, if they did have control the quantity was not sufficient to support a trafficking charge (it was simple possession). An accused might argue that they killed the victim in self-defence but, in the alternative, when they killed him they were so drunk and/or impaired that it was manslaughter rather than murder.

[202] None of the cases in which an NCR defence succeeded involved a defence that the accused never committed the *actus reus* (killing someone) but, in the alternative, that they were NCR when they killed the victim. Frankly, these defences do not sit comfortably together as alternative defences.

[203] Another pattern in the existing cases is that, when an NCR defence succeeds, there is at least one expert witness who supports the NCR defence. Often these cases involve multiple psychiatrists with opposite opinions (as in ***Skibicki*** and ***Malcolm***). None of the cases involve a situation in which an NCR defence succeeded wholly on the basis of the defence's cross-examination of the Crown's expert. In theory, it could happen, but it didn't happen in any of the cases cited. This is not surprising because the onus is on the *defence* to prove an NCR defence (on a balance of probabilities).

[204] In ***Skibicki*** the court noted that there "is a need to differentiate between 'unusual' and 'delusional' beliefs." In ***Obeing***, the behaviour of the accused was bizarre, but the accused was not NCR. Our accused certainly was an unusual individual. He told police that he couldn't remember a lengthy list of important things but he could remember that he bought two oranges and seven bananas at a store on Princess Avenue. Perhaps his acknowledged memory problems might account for this unusual disparity.

[205] The defence argued that some of the things that the accused did were not "normal". This is not a legal term, but I understand what the defence was saying. Some aspects of the accused's behaviour (like his assertion that he designed Japanese video games) could accurately be called baffling or bizarre or perplexing. There might

be some sort of psychiatric explanation for this sort of baffling assertion. If so, neither party explored it while questioning Dr. Z. (and the defence chose not to call its own expert witness to shed some light on this and other questions). It will have to remain a minor mystery. In the end, though, the onus is not on the Crown to solve all mysteries; it is on the defence to prove the NCR defence.

[206] Dr. Z offered his expert opinion that the accused was not NCR. His opinion was consistent with all of the other evidence. He was unshaken on cross-examination. I agree with his opinion.

[207] To be fair, there were some very minor points in Dr. Z's evidence that might point very slightly in the direction of an NCR finding. Dr. Z learned from reviewing business records that, in 2016, another doctor found the accused unfit to stand trial on other charges. The defence did not call that other doctor to testify. The only evidence at all was Dr. Z's persuasive evidence that the accused was fit to stand trial on these charges at this time. It is trite law that fitness to stand trial can change over time.

[208] The other very minor point that very slightly supported an NCR defence was Dr. Z's reference to a 2001 report by a Dr. E that mentioned a report by another doctor that the accused had reported hearing voices. Again, the defence did not call any evidence that the accused heard any voices on or about November 3 (or at any time after 2001).

[209] Standing alone, these two minor points are far from sufficient to prove that the accused is NCR for the events of late October and early November 2023.

[210] For these reasons, the NCR defence must fail.

[211] Accordingly, I find the accused guilty of second-degree murder as charged.

[212] I thank counsel for their courtesy and for agreeing to many facts.

_____J.