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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

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	)	Renée D. Lagimodiere
- and -	)	for the Crown
	)	
JEREMY ANTHONY MICHAEL SKIBICKI,	)	Leonard J. W. Tailleur
	)	Alyssa B. Munce
accused.	)	Brittney J. Hoyt
	)	for the accused
	)	
	)	Date of judgment with written
	)	reasons to follow: July 11, 2024
	)	
	)	Date of written reasons:
	)	July 22, 2024

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JOYAL C. J.

I. INTRODUCTION

[1] Jeremy Anthony Michael Skibicki (hereinafter the "accused") is charged with four counts of first degree murder. All four victims were Indigenous women.

[2] After an approximately six-week-long trial, I reserved my decision. What now follows is that decision along with my accompanying reasons.

[3] The prosecution on the four-count indictment proceeded before me as a trial by judge alone as a result of the Crown's late consent to a re-election from what had been the mandatory trial by judge and jury.

[4] The precipitating police investigation and the eventual four charges of first degree murder are the result of an initial and gruesome discovery.

[5] It was on May 16, 2022, that the severed head of Rebecca Contois was found in a garbage bin at the rear of 253 Edison Avenue in Winnipeg. It was wrapped in a Dollarama shopping bag. The person who found the bag removed it from the bin and called the police. The arms and legs of Ms Contois were later found in garbage bins in more or less the same area. Her torso was later located at the Brady Road Landfill.

[6] On May 17, 2022, the accused was arrested for the murder of Ms Contois. At the time of his arrest, the accused resided at 5-259 McKay Avenue, an address

in the North Kildonan area of Winnipeg. That address is not far from the various garbage bins in which the police found the head, arms, and legs of Ms Contois.

[7] Upon his arrest, the accused was taken to the Winnipeg Police Service (WPS) Homicide Unit, where he spoke to a lawyer, in person. He then later admitted in his video statement to the police that he had killed Ms Contois and three other women.

[8] In the course of his interview with WPS detectives, the accused specified that he killed Rebecca Contois, Morgan Harris, and two additional women. Police were able to identify his third victim as Marcedes Myran. The identity of his first victim however (the chronologically first killing), remains unknown. As it relates to the unknown victim, she has been given the name Mashkode Bizhiki'ikwe, or Buffalo Woman.

[9] While the remains of Rebecca Contois were found in garbage bins and at the Brady Road Landfill, the still unrecovered remains of Ms Harris and Ms Myran are thought to be in a different landfill. The whereabouts of the remains of Buffalo Woman are still unknown.

[10] While the specific details of each victim's death differ slightly, based on the accused's video statement to the police, they follow a general pattern.

[11] All four victims were Indigenous women. All four victims were vulnerable. All four victims frequented shelters. All four victims were strangled. Specifically,

Marcedes Myran and Rebecca Contois were strangled to death, whereas Buffalo Woman and Morgan Harris were drowned in the bathtub.

[12] Also part of that pattern as reported by the accused himself, was the fact that he would fill the bathtub in his apartment prior to the death of all four victims. In each case, following the death of the victims, the accused would then at some point submerge them in the bathtub and would have intercourse with the corpses. In the case of Rebecca Contois, the accused explained in his video statement to the police that she was not initially brought to the bathtub because of her weight. The accused told the police that in connection to Ms Contois, he "brought like a washcloth to kind of clean her down. Specifically so I could just do whatever with her" (Exhibit 5 PDF, p. 256).

[13] In each case, once finished with the victims, the accused would then dispose of their corpses. The accused described how he disposed of two of the victims' corpses by dumping their bodies which he had placed in plastic bags. The other two victims, Ms Myran and Ms Contois, were disposed of only after the accused had dismembered their corpses.

[14] Part of the pattern appears to be that the accused would keep some of the victims' possessions or tokens in his apartment following their deaths.

[15] As should be obvious, the facts of this case are mercilessly graphic. Those facts are largely uncontested as they are established by the accused's own

admissions and by so much of the Crown evidence. Those facts are at once jarring and numbing.

[16] It is admitted as fact that the killings of all four women and the unspeakable horrors that surround each of those four killings were committed by the accused. To the extent that any of the details surrounding the deaths (as generally and specifically described in the accused's confession to the police) were not otherwise clearly admitted in the agreed statement of facts (Exhibit 1), I note that there was no connected defence cross-examination or argument contesting any of those details (concerning what the accused admitted happened before or after the deaths). Many of those details were details on which the Crown adduced supporting evidence or made submissions respecting its legal burden in relation to the charges of first degree murder.

[17] It is apparent from his confession to the police that the accused is a man with clearly expressed racist views. Indeed, it is the Crown's position that the accused's actions were in part, racially motivated.

[18] Some months after his arrest and his confession to the police, the accused had his first interview with a psychiatrist (Dr. Das), who later testified on the accused's behalf at trial. It was during that interview that the accused explained (in what the Crown called the "new version") that the killings took place after he heard voices and was driven by those voices. His defence team argues that those voices are symptoms of a psychosis and more specifically, a schizophrenic

condition. That schizophrenic condition, says the defence, constitutes a mental disorder that rendered the accused incapable of knowing that his killings were morally wrong.

[19] In response, the Crown alleges that any such explanation and "new version" by the accused is a fabrication and that no voices were in fact heard and that no such mental disorder or schizophrenic condition existed. Instead, the Crown alleges that the accused targeted vulnerable Indigenous women and that he is a man driven by a paraphilia, specifically, a necrophilia homicidal subtype. Accordingly, the Crown contends that he should be convicted of four counts of first degree murder. I note that broadly speaking, a paraphilia refers to recurrent and intense sexual arousal, urges or fantasies distinct from common sexual interest. Homicidal necrophilia is on the severe end of the spectrum of paraphilia, and it describes arousal attached to having sex with people that the individual has killed.

[20] As I will later discuss, the positions of the Crown and the defence as expressed in the above paragraphs, constitute their respective theories in this case. It is those theories that give rise to the issues and questions (as set out in paragraphs 66 to 68) that will require my determination.

[21] While it cannot be in any way determinative of any of the particular and specific issues in this case, it need be mentioned that there is an undeniable backdrop to this exceptionally high-profile prosecution. It is a backdrop that was acknowledged by the defence team itself as can be seen in its two unsuccessful

pre-trial applications challenging the Crown's initial and continuing refusal to consent to a re-election from judge and jury to a judge alone trial. It was the position of the defence team that because of the massive publicity surrounding the trial and the broader social context surrounding the deaths of these four Indigenous women, it would be difficult for the accused to find an impartial jury anywhere in Manitoba that could deal with the legal and factual issues that require adjudication.

[22] In connection to this backdrop, it would be artificial and disingenuous for this Court to not acknowledge and be conscious of the fact that for many, this case is, in numerous respects, emblematic of much of what is associated with the tragedies that underlie the grim reality of missing and murdered Indigenous women and girls in Canada. That fact, combined with what in this case is the cruelty and barbarism of the particular deaths of the four victims, require this Court to be especially conscious of and focussed on its institutional responsibilities. Those responsibilities include the recognition that despite what might be the broader social significance or impact of this prosecution, this matter remains a criminal trial. As such, this Court must ensure that the accused receives the required due process from what is and must be perceived as an impartial tribunal.

[23] However unspeakable are the acts that gave rise to the four counts in the indictment concerning these particular four murdered Indigenous women and however acute and noteworthy is the obvious pain that is uniquely tied to the

realities that involve missing and murdered Indigenous women and girls in Canada more generally, this case can and must be decided only on the basis of the legal and factual issues that pertain to this specific case. So too must it be decided only on the basis of the admissible evidence adduced at this trial. Simply stated, despite the backdrop to this obviously high-profile prosecution, the issues in this case require the care and rigour that must always accompany an impartial and dispassionate application of the law to the facts as this Court may find them.

[24] Mindful of the above, and as part of the vigilance that this Court must bring to its assessment of all of the evidence in order to ensure that no conviction on any count is entered unless and until the Crown has proved the relevant and essential elements beyond a reasonable doubt, this Court must also give full consideration to the accused's contention that he is not criminally responsible (NCR) pursuant to s. 16(1) of the ***Criminal Code***.

[25] As it relates to the accused's defence that he is not criminally responsible, it is important to underscore the fundamental principles that explain why the availability of an NCR defence is a necessarily defining part of a civilized and humane system of criminal justice. In ***R. v. Bouchard-Lebrun***, 2011 SCC 58, the Court noted as follows (at paragraph 45):

> [45] According to a traditional fundamental principle of the common law, criminal responsibility can result only from the commission of a voluntary act. This important principle is based on a recognition that it would be unfair in a democratic society to impose the consequences and stigma of criminal responsibility on an accused who did not voluntarily commit an act that constitutes a criminal offence.

[26] As was explained somewhat differently but as persuasively in the testimony of the psychiatrist, Dr. Gary Chaimowitz (whose evidence I will later review):

> One of the civilized things in this country is that we do not hold people criminally responsible if their acts are caused by a mental disorder.

[27] Put simply, an invocation of NCR pursuant to s. 16 of the ***Criminal Code***, is a legitimate defence. Although every person is presumed not to suffer from a mental disorder, if, in the face of that presumption, the defence of NCR can nonetheless be established by an accused person on a balance of probabilities, then that designation of NCR should not be seen as a product of an opportunistic ploy nor should it be seen or described as a systemic failure to hold an offender accountable for otherwise illegal acts.

[28] Accordingly, in the context of the present case, given the accused's submissions and the evidence adduced on the issue of mental incapacity, this Court must and will give full consideration to that issue and the possible application of a defence the law recognizes as legitimate when established by the accused on a balance of probabilities.

II. LEGAL FRAMEWORK AND THE POSITIONS OF THE PARTIES

A. The Indictment

[29] The four counts in the indictment read as follows:

1. THAT, HE, the said JEREMY ANTHONY MICHAEL SKIBICKI, on or about the 15th day of March, 2022, at or near the City of Winnipeg in the Province of

Manitoba, did cause the death of (or kill) Jane Doe and thereby commit murder in the first degree, contrary to the *Criminal Code of Canada*.

2. THAT, HE, the said JEREMY ANTHONY MICHAEL SKIBICKI, on or about the 1st day of May, 2022, at or near the City of Winnipeg in the Province of Manitoba, did cause the death of (or kill) Morgan Beatrice Harris and thereby commit murder in the first degree, contrary to the *Criminal Code of Canada*.

3. THAT, HE, the said JEREMY ANTHONY MICHAEL SKIBICKI, on or about the 4th day of May, 2022, at or near the City of Winnipeg in the Province of Manitoba, did cause the death of (or kill) Marcedes Love Myran and thereby commit murder in the first degree, contrary to the *Criminal Code of Canada*.

4. THAT, HE, the said JEREMY ANTHONY MICHAEL SKIBICKI, on or about the 15th day of May, 2022, at or near the City of Winnipeg in the Province of Manitoba, did cause the death of (or kill) Rebecca Stacey Contois and thereby commit murder in the first degree, contrary to the *Criminal Code of Canada*.

B. The NCR Defence: Not Criminally Responsible by Reason of Mental Disorder Pursuant to Section 16 of the Criminal Code

[30] An NCR verdict can only be rendered after finding beyond a reasonable doubt that the accused committed the act that formed the basis of the offence charged. In the present case, the accused takes no issue with respect to having committed the alleged acts. He admits that he killed each of the victims.

[31] Despite the accused's stipulated admission that he did unlawfully cause the death of each of the victims, Rebecca Contois, Morgan Harris, Marcedes Myran, and Buffalo Woman, it is nonetheless his position (about which he led expert evidence) that the *actus reus* of these offences were not "voluntarily" committed. In other words, although he admits to causing the deaths of each of the victims and that he did so unlawfully, he insists that none of those deaths were caused by a voluntary act. The accused contends that to the extent he committed the acts

that caused the unlawful deaths of any of the four victims, he did so after hearing voices and while suffering from a psychosis, specifically, a schizophrenic condition. The accused says that he was compelled by a plan from God. In this regard, his defence team suggests that based on the expert evidence they adduced, it is more likely than not that the accused was suffering from a mental disorder at the time that he unlawfully caused the deaths of the victims. It is also the position of the defence team that based on the evidence they adduced at trial, it is more likely than not that the accused's mental disorder made him incapable at the time of the killings of knowing that his killings were morally wrong. Based on the accused's own psychiatric expert evidence, he is not contending that he was unable to appreciate the nature and quality of the acts. According to Dr. Das, "he was aware that he was ending the lives of the victims".

[32] Canada's criminal justice system recognizes that only those who commit voluntary unlawful acts should be held criminally responsible. As cited earlier, LeBel J. stated as follows in ***Bouchard-Lebrun*** (at paragraphs 45–48):

> [45] According to a traditional fundamental principle of the common law, criminal responsibility can result only from the commission of a voluntary act. This important principle is based on a recognition that it would be unfair in a democratic society to impose the consequences and stigma of criminal responsibility on an accused who did not voluntarily commit an act that constitutes a criminal offence.
>
> [46] For an act to be considered voluntary in the criminal law, it must be the product of the accused person's free will. As Taschereau J. stated in *R. v. King*, 1962 CanLII 16 (SCC), [1962] S.C.R. 746, "there can be no *actus reus* unless it is the result of a willing mind at liberty to make a definite choice or decision, or in other words, there must be a willpower to do an act whether the accused knew or not that it was prohibited by law" (p. 749). This means that no one can be found criminally responsible for an involuntary act (see Dickson J.'s dissenting reasons in

Rabey v. The Queen, 1980 CanLII 44 (SCC), [1980] 2 S.C.R. 513, which were endorsed on this point in *R. v. Parks*, 1992 CanLII 78 (SCC), [1992] 2 S.C.R. 871).

[47] An individual's will is expressed through conscious control exerted by the individual over his or her body (*Perka v. The Queen*, 1984 CanLII 23 (SCC), [1984] 2 S.C.R. 232, at p. 249). The control may be physical, in which case voluntariness relates to the muscle movements of a person exerting physical control over his or her body. The exercise of a person's will may also involve moral control over actions the person wants to take, in which case a voluntary act is a carefully thought out act that is performed freely by an individual with at least a minimum level of intelligence (see H. Parent, *Responsabilité pénale et troubles mentaux: Histoire de la folie en droit pénal français, anglais et canadien* (1999), at pp. 266-71). Will is also a product of reason.

[48] The moral dimension of the voluntary act, which this Court recognized in *Perka*, thus reflects the idea that the criminal law views individuals as autonomous and rational beings. Indeed, this idea can be seen as the cornerstone of the principles governing the attribution of criminal responsibility (L. Alexander and K. K. Ferzan with contributions by S. J. Morse, *Crime and Culpability: A Theory of Criminal Law* (2009), at p. 155). When considered from this perspective, human behaviour will trigger criminal responsibility only if it results from a "true choice" or from the person's "free will". This principle signals the importance of autonomy and reason in the system of criminal responsibility. As the Court noted in *R. v. Ruzic*, 2001 SCC 24, [2001] 1 S.C.R. 687:

> The treatment of criminal offenders as rational, autonomous and choosing agents is a fundamental organizing principle of our criminal law. Its importance is reflected not only in the requirement that an act must be voluntary, but also in the condition that a wrongful act must be intentional to ground a conviction. . . . Like voluntariness, the requirement of a guilty mind is rooted in respect for individual autonomy and free will and acknowledges the importance of those values to a free and democratic society . . . . Criminal liability also depends on the capacity to choose — the ability to reason right from wrong. [Emphasis in original; citation omitted; para. 45]
>
> [Emphasis added]

[33] In submitting as he has that he suffered from a mental disorder and that the mental disorder made him incapable at the time of knowing that his acts were morally wrong, the accused is seeking an exemption from criminal responsibility based on his invocation of s. 16(1) of the ***Criminal Code***.

[34] Section 16(1) of the ***Criminal Code*** reads as follows:

> **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.

1) Mental Disorder

[35] Mental disorder is defined in s. 2 of ***Criminal Code*** as a "disease of the mind". In ***R. v. Cooper***, [1980] 1 S.C.R. 1149, the Supreme Court explained that disease of the mind is a legal term that (at 1159):

> … embraces any illness, disorder or abnormal condition which impairs the human mind and its functioning, excluding however, self-induced states caused by alcohol or drugs, as well as transitory mental states such as hysteria or concussion.

[36] Whether the condition in question is a mental disorder is a legal determination. Whether the accused was suffering from such a mental disorder at the time of the offence is a factual question (***Bouchard-Lebrun***, at paragraph 61; see also paragraphs 58-60, 62-63).

[37] Every person is presumed not to suffer from a mental disorder. Accordingly, exemption from criminal responsibility on the basis of s. 16(1) must be established and the burden of proof is on the accused to establish on a balance of probabilities, the following:

1. that it is more likely than not that the accused was suffering from a mental disorder at the time of the unlawful acts in question; and

2. that it is more likely than not that the accused's mental disorder made him incapable at the time either of, a) appreciating the nature and quality of the act in question or, b) knowing that the act was wrong.

2) Nature and Quality of the Act/Omission

[38] If an accused is found to be suffering from a mental disorder at the time of the offence, the next consideration is whether it was of sufficient seriousness that it rendered them incapable of appreciating the nature and quality of the act. The Supreme Court of Canada has explained that "appreciate" refers to "estimation and understanding of the consequences of [the] act" (***Cooper***, at 1161; and ***R. v. Abbey***, [1982] 2 S.C.R. 24, at 33).

[39] As already noted, in the present case, the accused concedes that there is no issue with respect to his being incapable of appreciating the nature and quality of the acts. Instead, the accused is invoking the alternative route to a finding of NCR. The accused contends that he suffered from a mental disorder (schizophrenia) at the time he committed the unlawful acts in question and that while he may have been aware of and appreciated the nature and quality of his acts (and that these acts were legally wrong), he was nonetheless incapable of knowing they were morally wrong insofar as he was hearing voices and driven by delusions that caused him to believe that he was compelled to commit the killings as part of a plan from God.

3) Knowing It Was Wrong

[40] The above position of the accused requires a finding that the alleged mental disorder rendered the accused incapable of knowing that the act was wrong: that is, morally wrong, not legally wrong. As McLachlin J. (as she then was) observed in ***R. v. Oommen***, [1994] 2 S.C.R. 507 (at 520):

> … The issue is whether the accused possessed the capacity present in the ordinary person to know that the act in question was wrong having regard to the everyday standards of the ordinary person. … [T]he real question is whether the accused should be exempted from criminal responsibility because a mental disorder at the time of the act deprived him of the capacity for rational perception and hence rational choice about the rightness or wrongness of the act.

See also ***R. v. Molodowic***, 2000 SCC 16, at paragraph 7.

[41] The accused's expert, Dr. Das, was clear that the accused knew that his killings were legally wrong. However, based on the accused's self-reporting of hearing voices, Dr. Das further opined that:

> [206] … Mr. Skibicki believed that he had a moral obligation to end the lives of each of his four victims, to save them; i.e. to prevent them from going to hell and instead allowing/helping them to go to heaven. He also appeared to be fully invested in the belief that he had to fulfil this as part of his mission to God.
>
> Exhibit 48: Dr. Das – Final Report at paragraph 206. See also paragraph 205.

[42] If I determine, based on all the evidence that the accused has established on a balance of probabilities, that he suffered from a mental disorder and that the mental disorder made him incapable of knowing his killings were morally wrong, I must find the accused not criminally responsible.

[43] Irrespective of the route the accused seeks to have this Court take to a finding of NCR, it is the Crown's contention that the defence's only psychiatric expert (Dr. Das) and his opinion, should be afforded little weight, if any. The Crown insists that no mental disorder existed, and that the NCR defence has not been established.

[44] It is the Crown's submission that in respect of the accused's invocation of s. 16(1) of the ***Criminal Code*** and his attempt to seek exemption from criminal responsibility, this Court should find that based on the evidence the Crown adduced, psychiatric and/or otherwise, the accused was fabricating the presence of any symptoms that he, the accused, suggests are reflective of a psychosis or schizophrenia. Indeed, based on the psychiatric expert evidence the Crown adduced, the Crown maintains that the accused did not suffer from a mental disorder and further, that he did not suffer from a mental disorder that would have prevented him from knowing that the killings were wrong, either legally or morally.

[45] It is the Crown's position, that rather than suffering from a mental disorder that would exempt him from criminal responsibility, the accused, in a planned and deliberate way, targeted and killed the four vulnerable Indigenous victims and then, in order to satisfy his paraphilia and necrophilia, had sex with their corpses. It is also the position of the Crown, that as part of the same series of events of each of these killings, the accused committed the offences of sexual assault and/or forcible confinement. Put simply, it is the Crown's position that

however this Court chooses to analyze the events leading up to, running concurrent with, or following the killings, the accused committed first degree murder. The relevant law and the Crown's theory as to how it has established first degree murder, is set out below.

C. First Degree Murder

[46] The relevant sections of the ***Criminal Code*** read as follows:

> **Classification of murder**
>
> 231(1) Murder is first degree murder or second degree murder.
>
> **Planned and deliberate murder**
>
> (2) Murder is first degree murder when it is planned and deliberate.
>
> . . .
>
> **Hijacking, sexual assault or kidnapping**
>
> (5) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder in respect of a person when the death is caused by that person while committing or attempting to commit an offence under one of the following sections:
>
> (a) section 76 (hijacking an aircraft);
>
> (b) section 271 (sexual assault);
>
> (c) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm);
>
> (d) section 273 (aggravated sexual assault);
>
> (e) section 279 (kidnapping and forcible confinement); or
>
> (f) section 279.1 (hostage taking).
>
> . . .
>
> **Second degree murder**
>
> (7) All murder that is not first degree murder is second degree murder.

[47] In the present case, having argued that this Court should reject the accused's NCR defence, the Crown takes the position that the evidence establishes that the accused is guilty of first degree murder.

[48] The Crown submits that in this case, there are two relevant routes to convictions for first degree murder. With the accused having admitted that he committed the unlawful acts that caused the deaths of each of the four victims, it remains for the Crown to establish the other essential elements of first degree murder on the basis of its two-prong theory. In other words, with respect to each of the four counts, the Crown must still prove beyond a reasonable doubt that the accused had the intent for murder (the requisite state of mind) and additionally, that the murder was planned and deliberate or that the death was caused while committing forcible confinement or sexual assault.

[49] The Crown contends that it has in fact proved the accused's guilt of first degree murder beyond a reasonable doubt by establishing that the accused had the requisite state of mind and that the killings were "planned and deliberate" and/or that the accused caused the death of all of the four victims while committing sexual assault and/or committing the offence of forcible confinement.

[50] In considering the Crown's theory, I will remain mindful of the governing jurisprudence as it relates to the Crown's position that the killings constitute both a planned and deliberate murder and constructive first degree murder.

1) Planned and Deliberate

[51] Planned and deliberate are distinct concepts. Both must be proved beyond a reasonable doubt. As Mainella J. A. succinctly explained in ***R. v. Whiteway (B.D.T.) et al.***, 2015 MBCA 24 (at paragraphs 11-12):

> [11] A "planned" murder is one resulting from a calculated scheme or design previously devised. While the plan to murder may be a simple one, it must have existed before the murder was committed. A "deliberate" murder is one that is carefully considered and thought out. A murder where a person thinks about the consequences beforehand is deliberate; a murder that is hasty, rash or impulsive is not (see *R. v. Jacquard*, 1997 CanLII 374 (SCC), [1997] 1 S.C.R. 314 at para. 26; and *R. v. Nygaard*, 1989 CanLII 6 (SCC), [1989] 2 S.C.R. 1074 at 1084).
>
> [12] There are no special rules as to proof of planning or deliberation. Either requirement may be established by way of an inference drawn on circumstantial evidence, if the jury is satisfied beyond a reasonable doubt that the guilt of the accused is the only reasonable inference that can be drawn on the proven facts (*R. v. Cooper*, 1977 CanLII 11 (SCC), [1978] 1 S.C.R. 860 at 880-81; and *R. v. Griffin*, 2009 SCC 28 at para. 33, [2009] 2 S.C.R. 42).

2) Constructive First Degree Murder

[52] Constructive first degree murder involves an underlying crime of domination. As noted in ***R. v. Muchikekwanape***, 2002 MBCA 78 (at paragraph 77):

> [77] The underlying offences listed in s. 231(5) of the *Code* all involve the unlawful domination of victims. The Legislature intended that where an accused exploits this position of power and commits murder in the process of such exploitation, the crime warrants the increased stigma and sentence attached for first degree murder.
>
> [Emphasis added]

[53] When considering whether first degree murder pursuant to s. 231(5) has been proved, the trier of fact must find "(1) an underlying crime of domination;

(2) murder; (3) substantial cause; (4) no intervening act; and (5) the same transaction" (***R. v. Sundman***, 2022 SCC 31, at paragraph 30).

[54] As to the more specific crime of forcible confinement, Jamal J. in ***Sundman*** recently reviewed the elements that must be proved (at paragraph 21):

> [21] To establish unlawful or forcible confinement under s. 279(2) of the *Criminal Code*, the Crown must prove that (1) the accused confined another person; and (2) the confinement was unlawful (*R. v. Magoon*, 2018 SCC 14, [2018] 1 S.C.R. 309, at para. 64). At its core, unlawful confinement involves a deprivation of a person's liberty (*R. v. Bottineau*, [2006] O.J. No. 1864 (QL), 2006 CarswellOnt 8510 (WL) (S.C.J.), at para. 117, per Watt J. (as he then was), aff'd 2011 ONCA 194, 269 C.C.C. (3d) 227). Unlawful confinement occurs if, for any significant time period, a person is coercively restrained or directed contrary to their wishes, so that they cannot move about according to their own inclination and desire (*R. v. Luxton*, 1990 CanLII 83 (SCC), [1990] 2 S.C.R. 711, at p. 723; *R. v. Pritchard*, 2008 SCC 59, [2008] 3 S.C.R. 195, at para. 24; *Magoon*, at para. 64). The person need not be restricted to a particular place or physically restrained (*Magoon*, at para. 64; *R. v. Gratton* (1985), 18 C.C.C. (3d) 462 (Ont. C.A.), at pp. 473 and 475, per Cory J.A. (as he then was); *R. v. Lemaigre* (1987), 1987 CanLII 4896 (SK CA), 56 Sask. R. 300 (C.A.), at para. 3; M. Manning and P. Sankoff, *Manning, Mewett & Sankoff: Criminal Law* (5th ed. 2015), at p. 1037). The restraint can be through violence, fear, intimidation or psychological or other means (*Magoon*, at para. 64). The purpose of the confinement is not relevant (*Pritchard*, at para. 31; *R. v. Kimberley* (2001), 2001 CanLII 24120 (ON CA), 56 O.R. (3d) 18 (C.A.), at para. 107; *R. v. Johnstone*, 2014 ONCA 504, 313 C.C.C. (3d) 34, at para. 45; *R. v. Parris*, 2013 ONCA 515, 300 C.C.C. (3d) 41, at para. 47).

[55] When the underlying crime is alleged to have been a sexual assault, the Crown must establish touching, which is objectively sexual in nature, and to which the victim did not consent. In ***R. v. Niemi***, 2017 ONCA 720, leave to appeal to the S.C.C. dismissed, Paciocco J. A. reviewed both sexual assault and attempted sexual assault and the timing in relation to the killing. He concluded his review with the following (at paragraph 77):

> [77] … a sexual assault has been committed (although not necessarily completed) when an accused uses force against a victim with the intention of

> committing sexualized misconduct even if the overtly sexualized conduct has yet to commence. It follows that even if the victim dies from that force before the sexualized misconduct begins, death will have been caused by the accused while the accused was committing a sexual assault. Such a finding will be appropriate where the murder and sexually assault are so inextricably intertwined that they form a single continuous transaction.
>
> [Emphasis added]

See also ***Niemi***, at paragraphs 41-76; and ***Muchikekwanape***, at paragraphs 53-92.

[56] To convict the accused of first degree murder as charged, the Crown must establish beyond a reasonable doubt the essential elements for first degree murder. Set out below are the elements that the Crown must establish either in connection to its theory that the killings were planned and deliberate and/or its theory that the accused committed constructive first degree murder because he caused the death while committing the offence of sexual assault and/or unlawful confinement.

[57] Respecting the Crown's theory that the accused committed murder in the first degree because it was planned and deliberate, the Crown must establish the following:

1. that the accused caused the deceased's death;
2. that the accused caused the deceased's death unlawfully;
3. that the accused had the state of mind required for murder;
4. that the accused's murder of the deceased was both planned and deliberate.

[58] Unless I am satisfied beyond a reasonable doubt that the Crown has proved all these essential elements, I must find the accused not guilty of first degree murder based on the Crown's theory that the killings were planned and deliberate.

[59] Insofar as the Crown contends that the accused's guilt for first degree murder can also be established on the basis of a theory of constructive first degree murder, the Crown must establish beyond a reasonable doubt the following essential elements:

1. that the accused caused the deceased's death;
2. that the accused caused the deceased's death unlawfully;
3. that the accused had the state of mind required for murder;
4. that the accused committed either sexual assault and/or unlawful confinement;
5. that the sexual assault and/or unlawful confinement and the murder of the deceased were part of the same series of events; and
6. that the accused actively participated in the killing.

[60] Unless I am satisfied beyond a reasonable doubt that the Crown has proved all of these essential elements, I must find the accused not guilty of first degree murder.

[61] Needless to say, proof of all the essential elements beyond a reasonable doubt respecting either the Crown's theory of constructive first degree murder or

that the killings were planned and deliberate, must be present in respect of any count before an individual conviction can be entered on that particular and individual count.

[62] If the accused's NCR defence has not been established on a balance of probabilities, my later analysis in this judgment will assess (as it relates to each of the separate four counts) whether the Crown has indeed established all of the requisite elements of the offence for either a planned and deliberate first degree murder and/or a constructive first degree murder.

[63] I have not yet identified the position of the defence as it relates to the first degree murder charges and the related Crown theory. In that regard, I will pause to note what it was that I identified "on the record" (at the time of the final submissions) as the curious position taken by the defence in relation to the four counts of first degree murder. Both in their final oral submissions and in their written brief outlining their argument, the defence suggests that this Court is facing nothing less than a zero-sum determination as between a finding of NCR or convictions for first degree murder. In other words, this Court must make an either/or determination.

[64] At paragraph 7 of the defence's written brief, the following position is put forward:

> The defence's position is that the options in this case are either that Mr. Skibicki is found Not Criminally Responsible (NCR) on four counts of 1st degree murder, or he is convicted on four counts of 1st degree murder. There is no middle ground.

[65] While I acknowledge the clarity of the defence position in respect of the NCR defence, I do not and cannot accept the apparent defence position that if NCR is rejected, it follows inexorably and automatically that there are convictions on four counts of first degree murder. Accordingly, as will be seen, in the event that I am not satisfied that the accused has established on a balance of probabilities that he is not criminally responsible by reason of a mental disorder pursuant to s. 16(1) of the ***Criminal Code***, I will still conduct (as I am obliged to do) a thorough and rigorous analysis as to whether the Crown has proved beyond a reasonable doubt each of the necessary constituent essential elements that must be proved in respect of either planned and deliberate or constructive first degree murder.

III. ISSUES

[66] Broadly and simply stated, the overarching issues that attach to each count in the indictment are as follows:

1. Is the accused not criminally responsible by reason of a mental disorder (NCR) pursuant to s. 16 of the ***Criminal Code?***
2. Has the Crown proved beyond a reasonable doubt that the accused is guilty of first degree murder?

[67] The answers to those principal questions require this Court to conduct an even more specific analysis and address additionally relevant questions relating to

what must be established (with reliable and credible evidence) respecting an NCR defence and a prosecution for first degree murder.

[68] Mindful of the main two issues as identified above, I have considered carefully the positions of the parties just as I have taken note of certain of the admissions that have been stipulated by the accused. Given the positions of the parties, the stipulated admissions of the accused and the applicable legal framework (including the relevant burdens and standards of proof), the issues requiring my determination will be the same for each of the four counts in the indictment. Those determinations that I must make (and in the specific order in which they are enumerated) will reduce to the following questions:

1. Is it more likely than not that the accused was suffering from a mental disorder at the time of the killings?
2. If the accused was suffering from a mental disorder at the time of the killings, is it more likely than not that the accused's mental disorder made him incapable at the time of knowing that the killings were morally wrong?
3. Even if the accused has not established on a balance of probabilities that he is exempt from criminal responsibility pursuant to s. 16(1) of the ***Criminal Code***, has the Crown nonetheless established beyond a reasonable doubt that the accused possessed the requisite state of mind for murder?

4. Has the Crown established beyond a reasonable doubt that the murder of the victim in each count was both planned and deliberate?
5. Irrespective of whether the murder was planned and deliberate, did the accused commit the offence of sexual assault and/or forcible confinement in relation to each victim named in respect of each count in the indictment?
6. Was the sexual assault and/or the forcible confinement and the murder of the victim in each count, part of the same series of events?

[69] It should be clear that some of the above questions reflect those issues that arise from the Crown's burden to establish beyond a reasonable doubt the essential elements respecting either of the two theories it is advancing as it relates to first degree murder.

[70] Two of the above questions (necessarily posed as the first two questions) also reflect the issues that arises from the accused's contention that he ought to be found not criminally responsible by virtue of a mental disorder and the operation of s. 16(1) of the ***Criminal Code***.

[71] As I mentioned at the beginning of this section, each of these questions and the connected determinations will be considered and answered in the analysis section of this judgment in relation to each count found in the indictment.

IV. EVIDENCE ADDUCED AT TRIAL

[72] I will identify below the evidence that was presented at trial.

[73] The nature of that evidence includes amongst other evidence, an agreed statement of facts, witnesses (police, civilian and expert) who gave *viva voce* testimony, the accused's video statement to the police, Facebook messages sent by the accused, as well as letters authored by the accused and sent to a female inmate at another institution in a different Canadian province. Those letters were sent by the accused while he was in custody awaiting his trial some months after his arrest on these charges.

[74] I will not be identifying or listing all or any specific exhibits unless an exhibit has particular relevance to my later analysis.

[75] As it relates to the evidence that comes directly from the accused (his video statement to the police, his Facebook messages, his letters to the female inmate, and in separate interviews, his assertions to the two psychiatrists respecting the voices he says he heard and the delusions he says he experienced), I have instructed myself that any eventual use of this evidence is governed by the necessary preliminary determination that I must first make. That is, I must first satisfy myself that any of that video statement, those messages, letters or assertions, were in fact made by the accused himself. While the accused raised no issue in this regard, I can confirm that I have satisfied myself that any such

statements, messages, letters or assertions purportedly made by the accused, were indeed made by the accused.

[76] It should be noted that in a pre-trial *voir dire*, the accused's video statement to the police had been determined by me to be voluntary and non-violative of the relevant ***Charter*** provisions.

[77] Insofar as any use is made of the accused's video statement to the police, his Facebook messages and his letters to the female inmate in my consideration of legal and factual issues in this case, I do so having determined (in the absence of any argument to the contrary advanced by the accused), that based upon the totality of the evidence that I find supportive and confirmatory, the video statement to the police, the Facebook messages and the letters are indeed reliable and true for the potential use identified by the Crown. In my later analysis with respect to the four first degree murder counts, I specifically explain why the accused's confession (in relation to the killings) as given in the police statement, can be relied upon as true and accurate.

[78] As it relates specifically to what was asserted by the accused in separate interviews with the psychiatrists, Dr. Das and Dr. Chaimowitz, (months after his initial arrest and months after his videotaped confession to the police) in relation to the voices he says he heard and the delusions he says he experienced, I find (as I will discuss later at paragraphs 266, 270, 277 and 278 of this judgment), those assertions to be fabrications.

[79] It should be noted as well, that apart from the accused's contested video statement to the police (which was the subject of the previously mentioned *voir dire*), all of the accused's identified Facebook messages, and his letters to the female inmate were presented and admitted into evidence without contest and with the consent of the accused.

[80] I note that some of the evidence that will be identified and discussed in this section of the judgment is evidence that the Crown has asked this Court to also use as evidence of similar act and/or after-the-fact conduct. I identify that evidence and its relevance and purpose in the next section that follows this discussion of the evidence presented at trial. As I will explain, the similar act evidence (and its proposed use) was consented to by the defence. I note as well, the Crown's argument and use of the after-the-fact conduct was similarly unopposed and not contested in argument (or in evidence) by the defence. As I will repeat later when I discuss the use of that evidence, despite the consent or non-opposition by the defence, I did at the time, insist on conducting a brief inquiry as to whether that evidence did in fact meet the threshold for admission.

[81] I will start my review of the evidence presented at trial with a very brief summary of the agreed statement of facts and then proceed to summarize the accused's video statement to the police, his Facebook messages and the letters he sent to a female inmate in an institution in Nova Scotia. That will be followed by a review of the *viva voce* witnesses presented at trial, including the two

psychiatrists, Dr. Das and Dr. Chaimowitz, each of whom conducted various and separate interviews with the accused. Dr. Das was called as the only witness for the defence. For his part, following the Court ordered assessment pursuant to s. 672.12(3) of the ***Criminal Code***, Dr. Chaimowitz was called by the Crown as part of their rebuttal evidence to Dr. Das's testimony respecting the NCR issue.

A. The Agreed Statement of Facts (Exhibit 1)

[82] The "agreed statement of facts" stipulates in 34 paragraphs a number of agreements that made it possible for the Crown to avoid calling various witnesses and/or having to present perhaps numerous other exhibits, which in the end were not presented. Some of the stipulated admissions in the agreed statement of facts support or assist in supporting (along with the other evidence the Crown adduced at trial) the truth, accuracy and reliability of that to which the accused confessed in his videotaped statement to the police. So too do those stipulated admissions assist in confirming (forensically and otherwise) some of the details surrounding the deaths of each victim.

[83] I do not intend to review the agreed statement of facts or the specific stipulated admissions in further detail. I will note however, that the document formalizes the accused's significant acknowledgment that he caused the deaths (by unlawful acts) of each of the four victims identified in the four counts in the indictment.

B. <u>The Videotaped Police Statement/Interview of Jeremy Skibicki (Exhibit 5, References to PDF Version of Transcript)</u>

[84] After being taken into custody for the murder of Rebecca Contois, the accused was interviewed on May 17, 2022, starting at 5:53 p.m., lasting until May 18, 2022, at 3:53 p.m. Over approximately 22 hours, Detective Danylyshyn and Detective Allan interviewed the accused intermittently. For approximately the first two-thirds of the interview, the accused discussed numerous topics, from his exercise routine to his upbringing.

[85] As it concerns the accused's mental health, it was during the interview with the police that the accused indicated that he had been diagnosed with post-traumatic stress disorder and borderline personality disorder, but they were not an "urgent matter" (p. 45 of the transcribed video interview). At the time of the interview, the accused said that he felt mentally "stable" (p. 166). During the interview, he stated that he had "Sleeping Beauty Syndrome", what he described as his attraction to having sex with women who were unconscious or intoxicated, unable to help themselves. He explained that the source of this attraction, in his view, was the result of childhood trauma and trying to seek power in response to that experience (p. 224).

[86] As it concerns the accused's drug use, the accused stated that he was in recovery from a meth addiction at the time of the police interview and noted he had "had a couple minor slips" (p. 46). During the police interview, the accused

indicated that he was on meth for three out of the four murders and was coming off mushrooms during the first murder.

[87] After the interviewers presented the accused with a series of evidence tying him to the crime scene (of the killing of Rebecca Contois), the accused stated that he killed four people (p. 218). He stated that the killings were racially motivated, citing the "great replacement theory," and concerns surrounding the "extinction of the white race" (pp. 218-219). He told the interviewers that he was put on Earth by God for the sole purpose of destruction, as he noted, "extreme desperate measures need to be taken for the survival of my people" (p. 265). The accused said that he believed that one day people would see that he "had the right idea" (p. 267).

[88] While the accused said that he initially believed that God called him to do this, he clarified that God "wouldn't ask me to kill anyone" and he acknowledged that he acted of his own volition because he thought it was "right" (p. 267). The accused described himself as a member of "Holy Europe", which he described as "patriotic movements of European peoples", rooted in pre-1054 [CE] Christianity (p. 267). At numerous points in the interview, the accused asked to "confess [his] sins" before an Orthodox priest (p. 216). When asked which church he visits in Winnipeg, the accused stated that he had never been to one (p. 347).

[89] The accused said that throughout his life he had paid attention to how individuals had gotten away with murder (p. 290). Specifically, he referred to how

Shawn Lamb disposed of his victims in the garbage, and how an unknown individual got caught because his victim had logged into their social media on his device (p. 290).

[90] The accused stated that he had a general criteria for selecting his victims, including: no video of the victim entering or exiting his apartment; that they not have a phone or log into social media; and that no one know they were with him (p. 291). When asked what would happen when an individual had a cell phone, the accused answered that they simply "wouldn't be a target" (p. 292). The accused said that the timing of the garbage pickup became part of his thought process by the third victim, while the first two were more "spur of the moment" (pp. 260-261). Prior to the death of Ms Contois, the accused did not believe he was going to get caught; however, he noted that he got "sloppy" (p. 237).

[91] In addition to discussing the victims, the accused briefly discussed his relationship with his ex-wife, Erin Leszkovics. The accused said that he "basically held her hostage" and had intercourse with her while she slept (pp. 223, 225).

[92] In his video statement to the police, the accused described in a sometimes disorganized way, the killings of his four victims. I briefly set out below a very brief summary of each killing.

Count 1, Buffalo Woman

[93] The accused said that he met Buffalo Woman outside of The Salvation Army around the time that the COVID-19 restrictions were lifted (p. 220). At the

time he met Buffalo Woman, he was coming off mushrooms, which he described as having pushed his "psychological thought process … into reality" (p. 221). The accused said he was "extremely triggered" by the victim saying, "I love you, daddy" and by her stealing from him (p. 222). In response, he strangled the victim, but he stated that he had been planning to drown her in the tub. After attempting to strangle Buffalo Woman to death, the accused stated that he began "undressing [Buffalo Woman]" at which point, she regained consciousness (p. 227). The accused stated that once he realized that Buffalo Woman had become "consciously aware", the accused proceeded to drown Buffalo Woman in his bathtub (p. 227). After killing Buffalo Woman, the accused had intercourse with her corpse (p. 227). To dispose of Buffalo Woman's body, using "all [his] strength" he placed her in a garbage bin and rolled the bin down the street to the Tony's Academy Auto Service ("Tony's") bin (pp. 228, 234). While he threw out most of her belongings, he sold her Baby Phat jacket on Facebook Marketplace (pp. 230, 340).

Count 2, Morgan Harris

[94] The accused identified the second victim as Morgan Harris, whom he originally met at Siloam Mission in 2012 (pp. 230-231). After having previously seen Ms Harris at a shelter located at 190 Disraeli Freeway ("190 Disraeli"), the accused stated that he noticed Ms Harris outside Siloam Mission, as if "she was barred" from entering the building (p. 232). She went with the accused on the bus back to his home (p. 232). When they returned to the accused's apartment,

the accused stated that he filled the bathtub. However, he did permit Ms Harris to go outside to have "her last smoke" (p. 233). When she returned, the lights were off, and the accused attempted to push her into the bathtub. The accused placed Ms Harris in a headlock, and eventually drowned her to death in the tub (p. 233). After Ms Harris had died, the accused said he had intercourse with her corpse until the smell was "too much" (p. 234). Similar to the disposal of Buffalo Woman's body, the accused placed the body of Ms Harris in a commercial garbage bin located at Midas Muffler ("Midas"), steps away from the Tony's bin (p. 234).

[95] While the accused stated that his actions were drug-fuelled due to meth, he stated that he was "not blaming the drugs," as he "knew what [he] was doing" (p. 232).

Count 3, Marcedes Myran

[96] At the time of the interview, the identity of the third victim, Ms Myran, was unknown to the accused. The accused noted that she had been wearing a red cap and was Indigenous (pp. 238-239). The accused met Ms Myran in a back lane, he asked her if she had a place to stay and whether she wanted to come stay with him (p. 241). The accused stated that during the initial stage of their encounter, he felt that Ms Myran was taking advantage of him, which intensified his feelings of "helplessness" and "powerlessness" (p. 242). In response to feeling taken advantage of, the accused said that he felt triggered (p. 242). The accused said that the two began by having consensual intercourse, but it eventually turned

to non-consensual intercourse, and he became rough with her (pp. 242-243). The accused told the detectives that when Ms Myran began fighting back, he was "triggered", making him feel like his "passive thoughts" became "something else" (p. 243). During the altercation, she began to try and get away, but given he had already killed two people, the accused thought that letting her go would be a "liability" (p. 244). He proceeded to strangle her twice until she had died. After having intercourse with her corpse, the accused proceeded to dismember the body with a combat knife over a period of twelve hours as he did not think he would be able to move Ms Myran's body (p. 249). The accused did not recall where he had disposed of the body; however, he noted that he used Pine Sol to get rid of the smell.

[97] The accused indicated that he was most high (meth) during this killing (p. 252). When asked whether he had any regrets from this killing, he said he regretted his "meth use that day" as he did not believe he would "have made that decision otherwise" (p. 303). When he started to "use" that night, he began to fill up the tub, as he had done with the other killings (p. 303). The accused differentiated Ms Myran from his other victims, describing her as mentally and psychologically stable, and expressing that he felt more guilt for her death (pp. 303, 246).

Count 4, Rebecca Contois

[98] The accused was initially placed under arrest for this murder — the murder of Ms Contois. He stated he met Ms Contois on the bus four months before his arrest (pp. 254, 185). Over four months, she would routinely stay with him for a couple of days and then leave. The accused said that Ms Contois was using him and lying to him, for example, by saying that she loved him (pp. 254-255). The accused told the interviewers that Ms Contois's deceit was "probably one of the reasons I did what I did" (p. 255).

[99] While Ms Contois was sleeping, the accused tried to have intercourse with her, and she tried to fight off his advances. The accused stated that after Ms Contois rejected the accused's numerous non-consensual sexual acts, the accused decided to "fill up the tub again" and get high (p. 313). The accused stated that after filling the tub, the accused returned to murder Ms Contois, eventually strangling Ms Contois to death (pp. 313, 315). Because of her weight, rather than bring her corpse to the tub after killing her, the accused used a washcloth to clean off her body so that he could "do whatever with her" (p. 256). Like the other victims, the accused had intercourse with Ms Contois's corpse "seven or more" times over approximately twelve hours (pp. 316, 257). He later dismembered her corpse in the bathtub because she would not fit in a garbage bin; he said this took him over twelve hours (pp. 263-264). Before disposing of her corpse, he covered it in plastic bags, as was done with the other victims

(p. 262). The accused noted that he disposed of Ms Contois's corpse in numerous bins (pp. 259-260).

[100] The accused explained that he was high on meth during this killing. Specifically, he said that after he got high and "she didn't do what I said like sexually," he got "triggered" and killed her (pp. 256, 313-314). Given he had already killed three people, the accused had "no hesitation" in killing her, even though she fought back aggressively (p. 314). During their final altercation, the accused placed a pillow over her face and then proceeded to place his hand over her mouth and nose in order to silence her while he strangled her to death (p. 315).

[101] The accused noted that all the victims, including Ms Contois, were killed around the same time of day, between approximately five and six in the morning to ensure that no one would notice (p. 312).

C. Facebook Messages

Exhibit 30: Skibicki Facebook Analysis (PDF Version)

[102] It was Mr. Riley Johansson (a civilian crime and intelligence analyst) who reviewed and analyzed the Facebook content from the accused's account in relation to the time frame of each victim's death. Mr. Johansson was called as an expert witness at trial, and I review his evidence later in this section.

[103] With respect to count 1, Buffalo Woman, between March 10, 2022 and March 16, 2022, the accused sent messages to two individuals using Facebook

Messenger ("Messenger") regarding his recent mushroom use (p. 2). On April 12, 2022, the accused finalized the sale of the Baby Phat jacket, after sending messages to multiple individuals over Messenger (p. 2). With respect to the time frame related to count 2, Morgan Harris, Mr. Johansson testified that the accused had messaged a friend, again through Messenger, saying he had just gotten up from a nap at 11:15 p.m. (p. 2). In the "Key Findings/Timeline of Communications Exhibit" section of Exhibit 30, Mr. Johansson did not list any relevant Facebook messages from the time frame related to count 3, Marcedes Myran.

[104] The Facebook-related evidence of the accused's relationship with Ms Contois, count 4, differed significantly from the previous victims. On February 22, 2022, the accused messaged Mr. Gabriel Delorme stating that he had met "Rebecca" on the bus (p. 1). Mr. Johansson stated that later that day, Ms Contois and the accused became Facebook friends. Towards the end of February and the beginning of March, the accused messaged Mr. Delorme regarding the possibility of adding Ms Contois to his lease (p. 2). Mr. Johansson testified that on May 15, 2022, the accused unfriended the victim on Facebook. On May 16, 2022, the accused exchanged messages with Mr. Ryan Cerezo-Brennan regarding a disagreement he had with his neighbour, Mr. MacKay. Mr. Johansson stated that on May 17, 2022, the accused sent a woman a shirtless picture over Messenger, with what appeared to be bloodstains on his hands (p. 3).

Exhibit 31: Appendix I, Erin Leighlee Messages (Leszkovics, PDF Version)

[105] In Facebook messages over Messenger to Ms Leszkovics between May 9, 2022, and May 10, 2022, the accused stated that he could be doing three life sentences, but may not be caught (May 9, 2022, 11:15:17 p.m.). After Ms Leszkovics asks the accused not to hurt her, he says "I know I can't hurt you ever … I would never kill a Christian … I just did what I thought was right" (May 10, 2022, 1:12:52 a.m.). Later that evening, in commenting how he had sex with Ms Leszkovics while she was asleep, he stated "because it's a sex/power thing but it's OK since you are my wife" (May 10, 2022, 2:00:25 a.m.). Two days later, the accused stated to Ms Leszkovics that he would confess on his deathbed (May 12, 2022, 10:46:03 p.m.).

[106] The accused stated that Satan had tricked him into thinking that he was following God by cheating on Ms Leszkovics (May 10, 2022, 1:45:18 p.m.). The accused reiterated to Ms Leszkovics that he had borderline personality disorder and post-traumatic stress disorder; however, he got very upset when Ms Leszkovics suggested that he should visit the Selkirk Mental Health Centre (May 09, 2022, 10:55:07 p.m., May 10, 2022, 2:00:55 p.m.).

Exhibit 38: Gabriel Belmont (Delorme) Facebook Messages

[107] In a conversation with Gabriel Delorme over Messenger on March 12, 2022, the accused stated that "[Jesus] was white bro. It's okay to love your race too" (p. 426). Over Messenger, the accused stated that he was "recovering a little

from mushrooms" (p. 420) and that he "can't do [mushrooms] ever again… [he'd] die if [he did]" (p. 415). The accused said that he would only do mushrooms again "if instructed by an Angel" (p. 414), as God "uses Angels" because "he's too powerful" (p. 413).

D. <u>The Accused's Letters: Exhibits 39-47</u>

[108] Between approximately January 4, 2023 and April 27, 2023, the accused exchanged a series of letters with a female inmate institutionalized in Nova Scotia. The letters suggest that the accused was looking to develop a romantic relationship with her. In the first letter, the accused acknowledged that their letters were likely recorded and that he was an extremely unpopular figure, potentially "one of the most hated men in Winnipeg (if not all of Canada)" (p. 3).

[109] In the third letter, he discussed the unfairness of a potential jury trial. Specifically, he noted that he was on the verge of giving up, even though he had an NCR defence (p. 1). Regarding the trial, the accused wrote that "people need to know the truth even if they can't accept or believe it" (p. 3). He wrote that "[he] may get all/any of these charges overturned (to NCR) if [he is] convicted" (p. 4). The accused asked her to conduct research for him, including determining which federal penitentiaries are best for someone charged with first degree murder (p. 2), whether "convicted murderers" can publish books (p. 3), and the status of what he described as the Manitoba segregation class action lawsuit (p. 4).

[110] In his fifth letter, the accused outlined his views on religion and white supremacy noting they are "kind of extreme" (p. 4). With respect to his temperament, he wrote in his sixth letter that "when I do lose my cool, I've been known to terrify people" (p. 3). By his ninth and final letter, he wrote that he was experiencing an "emotional low", which reinforced his desire to continue a relationship with her.

E. Witnesses

[111] The following witnesses testified *viva voce* at trial.

1) Detective Greg Allan

[112] The witness, Detective Allan, was assigned to this investigation following the initial discovery of the human remains found in the identified garbage bins. At the time of the accused's arrest, Detective Allan was a member of the Homicide Unit. Detective Allan has approximately 15 years of experience with the WPS. Detective Allan, along with his partner, Detective Danylyshyn interviewed the accused after his arrest (Exhibit 4).

[113] Detective Allan testified that during the police interview, the accused appeared calm and composed, making appropriate and responsive comments. Detective Allan stated that during the interview, the accused did not appear to be in a state of hallucination, nor did the accused indicate or mention that he was being instructed by voices or a higher power. Detective Allan stated that neither

he, nor his colleagues had serious concerns about the accused's mental health based on the accused's actions and statements during their encounters with him.

[114] During cross-examination, Detective Allan acknowledged that the accused had mentioned in the police interview that he had been previously diagnosed with borderline personality disorder and PTSD. Detective Allan testified that the accused was never explicitly asked whether the accused heard voices; however, the accused did not make any requests pertaining to his mental condition, nor did he make any mention of medications related to a mental condition. Detective Allan stated that during the interview with police, the accused reported using what the accused described as "medical marijuana".

2) Constable Jan de Vries

[115] Constable Jan de Vries served as the exhibit officer throughout the investigation. As the exhibit officer, Constable de Vries was responsible for processing all evidence and acted as the central repository for the evidence. The Crown tendered four exhibits related to Constable de Vries's work (Exhibits 7-10).

[116] Constable de Vries testified that the Identification Unit was advised of human remains found in a garbage bin at 253 Edison Avenue at approximately 5:20 a.m. on May 16, 2022. Constable de Vries described the evidence collected from garbage bins at multiple locations, including 253 Edison Avenue, 215 Edison Avenue, Midas and Tony's, as well as the accused's residence, 259 McKay Avenue.

Count 1, Buffalo Woman

[117] Constable de Vries identified photos of Buffalo Woman's jacket, which had been sold by the accused over Facebook Marketplace as detailed in the accused's statement. Constable de Vries stated that the jacket had not been washed or worn after it was sold, and that the Identification Unit found both a male and female DNA profile on the jacket. Despite significant efforts to identify the female DNA profile on the jacket, the identity of that profile remains unknown.

Count 2, Morgan Harris

[118] During his testimony, Constable de Vries identified numerous items tied to Ms Harris, ranging from a jacket (Exhibit 8, photo 12) to bloodstains on a pillow, (Exhibit 8, photo 20), both of which were found in the accused's apartment. Using surveillance footage, Constable de Vries's team placed Ms Harris at Higgins Pharmacy on April 28 and 29 wearing a three-quarter length jacket and a light blue hoody, carrying a green Dollarama bag. Constable de Vries testified that the articles of clothing Ms Harris was wearing in the surveillance video matched articles of clothing previously collected through the investigation. The Identification Unit matched Ms Harris to DNA profiles identified during the investigation after receiving DNA samples from Ms Harris's family.

Count 3, Marcedes Myran

[119] Relying on a red and black cap found on the floor of the accused's bedroom (Exhibit 8, photo 25), Constable de Vries was able to identify Ms Myran in video surveillance at 1277 Henderson Highway. Ms Myran's DNA was identified after receiving a DNA sample from her mother. Constable de Vries testified that the decisions as to which items would be submitted for DNA testing were informed in large part by the accused's statement.

Count 4, Rebecca Contois

[120] Constable de Vries identified numerous items belonging to Ms Contois that were found in the accused's apartment and in garbage bins, including a bra (Exhibit 8, photo 53), and a pair of women's underwear (Exhibit 8, photo 59). Constable de Vries testified that Ms Contois's remains were found in garbage bins at 253 Edison Avenue and at 215 Edison Avenue on May 16, 2022, and that Ms Contois's torso was found on June 14, 2022, at the Brady Road Landfill. Ms Contois was identified by her fingerprints. Constable de Vries testified that video surveillance captured the accused placing something in the garbage bins behind Midas and showed an individual carrying a duffel bag down Edison Avenue.

[121] When asked about his brief interaction with the accused during the police interview, Constable de Vries stated that the accused appeared to be in a normal mental state during their interactions, responding to requests appropriately given the context. Constable de Vries stated that in his experience as a police officer,

he has had contact with individuals experiencing psychotic episodes. Constable de Vries noted that he did not notice anything comparable (to those contacts) in the accused's own behaviour.

[122] Under cross-examination, Constable de Vries clarified that he had only spent 10 minutes with the accused.

3) Constable Brian Neumann

[123] Constable Neumann was the supervisor for the Identification Unit working on the accused's case. He has 22 years of experience with the WPS. Constable Neumann testified primarily as to the unit's search of the Brady Road Landfill, as well as to the initial identification of the human remains.

[124] According to Constable Neumann, by the time the WPS were able to reach the garbage bins behind Midas and Tony's, the bins had been emptied. The Identification Unit was able to locate the specific truck that collected the contents of the garbage bins. That truck had disposed of its contents at the Brady Road Landfill on May 16, 2022, at 9:25 a.m. As the trucks were equipped with GPS, Constable Neumann and his team were able to set a search parameter of approximately three acres within the landfill. On June 14, 2022, day two of the third week of the planned search, the Identification Unit found Ms Contois's torso. When they located the torso, it was wrapped in a black plastic bag, a multicoloured bed sheet, and an afghan.

[125] Based on video surveillance, Constable Neumann and his team predicted that the remains of Ms Harris would have been placed in the bin at Midas on May 3, 2022, at 12:18 a.m., and the remains of Ms Myran would have been placed in the same bin on May 6, 2022, at 2:35 a.m. The remains of both victims were picked up by GFL and taken to the Prairie Green Landfill on May 16, 2022. Constable Neumann stated that the Identification Unit did not become aware of this fact until June 20, 2022. In an email received on June 21, 2022, Constable Neumann learned that between May 16, 2022 and June 21, 2022, 10,077 loads had been disposed of in the general area of the landfill, and the elevation of the land had increased by 40 feet in the area of three acres or more. Unlike the trucks utilized at the Brady Road Landfill, Constable Neumann learned that the trucks used by the Prairie Green Landfill did not have GPS or video technology. On June 22, 2022, a drone operator took a series of photos of the area.

[126] There was no cross-examination of Constable Neumann.

4) Dr. Raymond Rivera

[127] Dr. Rivera is a medical examiner for the Office of the Chief Medical Examiner. He has conducted over 3,000 autopsies. Dr. Rivera was qualified as an expert to speak to the cause and effect of injuries to the human body. The defence did not contest his qualifications. Dr. Rivera examined Ms Contois's head and extremities. Given that the body had been dismembered, Dr. Rivera could not provide a definitive opinion as to the cause of death. However, the petechiae

(small dots on the face), and the possible brain damage from lack of oxygen led Dr. Rivera to believe that there had been some pressure on Ms Contois's neck. The bruising around her mouth and lips suggested that there was some sort of pressure around her mouth. Based on the examination, Dr. Rivera stated that the victim's body showed signs of death by strangulation. Dr. Rivera noted that the victim had meth in her system; however, it was unclear how much.

[128] There was no cross-examination of Dr. Rivera.

5) Detective Sergeant Paul Barber

[129] In May 2022, Detective Sergeant Barber was a detective sergeant in the Homicide Unit of the WPS. He has 19 years of experience with the WPS. At the initial stage of the investigation, Detective Sergeant Barber served as an investigator assisting with the interviews and surveillance. As the investigation progressed, he was in a coordinator role. As coordinator, he played a significant role in the WPS's surveillance efforts and the preparation of the charge summary. Specifically, Detective Sergeant Barber and his team went back to "try and seize as much video surveillance as possible" once the three additional murders were discovered.

Count 1, Buffalo Woman

[130] Based on the accused's statement to the police, Detective Sergeant Barber stated that the WPS was able to obtain the victim's jacket, which the accused had sold on Facebook Marketplace. His team

determined that the alleged killing likely took place around March 15, 2022, based on the timeline identified by the accused along with the change in COVID-19 restrictions. Detective Sergeant Barber stated that they were unable to retrieve any relevant video surveillance because video from around March 15, 2022 had been "overridden" by the time of their search on or around May 18, 2022.

Count 2, Morgan Harris

[131] During the investigation, Detective Sergeant Barber learned about Ms Harris's daily visits to Higgins Pharmacy and interviewed the business's pharmacist. The WPS were able to retrieve video surveillance of Ms Harris picking up her medications on April 28, 2022 and April 29, 2022. In the videos, Ms Harris was seen in a three-quarter length jacket, fleece, and baby-blue hoodie matching the items found in the accused's apartment and in autobin "A".

[132] Detective Sergeant Barber reviewed videos of Ms Harris interacting with the accused at 190 Disraeli on April 30, 2022 (Exhibit 12). With reference to Exhibit 13, Detective Sergeant Barber stated that Ms Harris was seen leaving 190 Disraeli in the early morning of May 1, 2022. According to Detective Sergeant Barber, it appeared she was told to leave by shelter staff; this was also referenced by the accused in his statement. Detective Sergeant Barber stated that in both instances (as captured on both videos), the victim was seen wearing the items of clothing identified during the investigation.

[133] Detective Sergeant Barber testified that based on information from the accused's statement, the WPS retrieved video surveillance from May 3, 2022, showing the accused lifting something with a black covering into a garbage bin behind Midas (Exhibit 14).

Count 3, Marcedes Myran

[134] Detective Sergeant Barber testified that based on information from the accused's statement, he looked for video surveillance of the accused with a female in a "red baseball cap" on approximately May 4, 2022. Detective Sergeant Barber reviewed video surveillance showing the accused leaving 190 Disraeli with a woman, following which they appear to catch a bus. Detective Sergeant Barber then reviewed subsequent video surveillance showing the accused and Ms Myran walking through the parking lot of 1277 Henderson Highway toward McKay Avenue. In the video, Ms Myran can be seen wearing the items retrieved during the investigation.

[135] In his statement, the accused indicated that he could not recall where he disposed of the body. Detective Sergeant Barber testified that the WPS examined video surveillance from the relevant time period. Video surveillance from May 6, 2022 shows the accused moving a garbage bin on its side, opening the lid towards the Midas bin, and then, seeming to move something into the larger commercial bin.

Count 4, Rebecca Contois

[136] Detective Sergeant Barber testified that Ms Contois and the accused had more contact with each other than the accused had had with the other victims. This seemed evident to the extent that the accused had requested to add Ms Contois to his lease. Based on the accused's statement, the WPS believed that Ms Contois arrived at the accused's residence on May 14, 2022.

[137] With reference to Exhibits 17 through 26, Detective Sergeant Barber detailed the accused's activities in the late hours of May 15, 2022, and early hours of May 16, 2022, during which the accused is seen walking through the back lane in the area near the accused's residence and Henderson Highway. Detective Sergeant Barber testified that the series of videos shows the accused walking in his white shoes with a large black duffle bag; flipping the garbage bin in a similar fashion to his actions in Exhibit 16; and putting two bags in the garbage receptacle.

[138] Detective Sergeant Barber concluded his testimony by stating that the investigation is ongoing, particularly as it relates to the identity of Buffalo Woman. There was no cross-examination of Detective Sergeant Barber.

6) Ms Florence Célestin

[139] Ms Célestin, a DNA specialist, served as the reporting scientist for the RCMP for the case. Ms Célestin testified that it can be more difficult to obtain DNA profiles where samples are degraded.

[140] Between June 1, 2022 and February 9, 2024, Ms Célestin produced 12 reports based on the DNA profiles collected during the investigation. Ms Célestin provided additional context to the findings outlined in Constable de Vries's testimony, testifying that she found numerous DNA profiles linked to Ms Harris, Ms Myran, and Ms Contois within the accused's apartment and the items collected in the garbage bins. Ms Célestin was also able to identify a female DNA profile on the Baby Phat jacket (which was discussed in the accused's statement), believed to have belonged to Buffalo Woman. Ms Célestin testified that despite significant efforts to identify the DNA profile of Buffalo Woman, her identity remains unknown.

[141] In cross-examination, Ms Célestin stated that it is unlikely that even new DNA technology would have been able to identify degraded DNA. Ms Célestin explained that the effectiveness of new technology would be dependent upon the specific DNA profile.

7) Allen Cohan

[142] For almost 20 years, Mr. Cohan has been a resident of 259 McKay Avenue, the building in which the accused resided. During the time period linked to the alleged crimes, Mr. Cohan served as the building's caretaker. Mr. Cohan testified that on the night of May 16, 2022, he witnessed the accused dump an "arm full of clothes" into one of the empty garbage bins and wheel it over to the location of

the full bins. Mr. Cohan said that he went to look in the bins and saw a pink backpack in the bin.

8) Allan MacKay

[143] Mr. MacKay is a resident of 259 McKay Avenue and has lived in the building for 14 years. Mr. MacKay gave two statements to the police (May 17, 2022 and May 25, 2022). Mr. MacKay addressed an encounter he had with the accused around 2:00 a.m. on May 16, 2022. Mr. MacKay stated that the accused was running up and down the stairs, slamming doors. Mr. MacKay said that he opened the door to his apartment and had a brief encounter with the accused. According to Mr. MacKay, the accused was carrying waste baskets and told Mr. MacKay that he was taking out the garbage. After the encounter, Mr. MacKay sent an email complaint to the landlord at approximately 2:00 a.m. Mr. MacKay said the noise from the accused continued nonetheless after he sent the email.

9) Richard Patkau

[144] Mr. Patkau has lived at 259 McKay Avenue since 1988. Mr. Patkau stated that the accused moved into the unit beside him in November 2021. In his statement to the police, as well as his testimony at trial, Mr. Patkau stated that between the late hours of May 14, 2022, and the early hours of May 15, 2022, Mr. Patkau could hear what he thought was the accused's shower running. The next morning, Mr. Patkau could hear the accused running the shower at

approximately 5:50 a.m. The same thing occurred every two hours until around 11:45 a.m.

10) Ronald Normand

[145] Mr. Normand has been working at 190 Disraeli since December 2021. Mr. Normand stated that the accused was known to frequent 190 Disraeli. Mr. Normand stated that the accused stood out because he did not fit in: his clothes were clean, his face shaven, and he appeared well taken care of. Mr. Normand stated that the accused never appeared to be intoxicated.

[146] On May 19, 2022, after seeing the news regarding the accused's arrest, Mr. Normand went to the police to provide information to the police about a conversation he had with the accused. Mr. Normand told the police that the accused had mentioned that he did not need to stay at 190 Disraeli overnight because he had his own place and that he came to 190 Disraeli to "stalk his victims", rather than seeking shelter. Given the nature of what he hears daily in his work, Mr. Normand did not report the comment. However, when he saw the news, he went to the police, at which time he gave the police names of individuals who had not been recently seen at the shelter, including Ms Harris.

[147] In cross-examination, after briefly questioning Mr. Normand on the consistency of his testimony relative to his police statement (which cross-examination in my view, did not in any way significantly affect his credibility or

reliability), counsel asked Mr. Normand whether his conversation with the accused could be described as "weird", to which Mr. Normand responded, yes.

11) Erin Leszkovics

[148] Ms Leszkovics is the accused's ex-wife, and her testimony was introduced by the Crown as extrinsic evidence of similar acts. It is evidence that is logically relevant to and probative of a number of issues before this Court. This extrinsic similar act evidence in my view, was of permissible assistance to potentially establish animus, motive, *actus reus*, intent, *modus operandi*, planning and deliberation and context. It was also of permissible potential assistance in this Court's consideration of the accused's NCR defence.

[149] Both Crown and defence argued that the similar act evidence ought to be admitted as it met the test outlined in ***R. v. Handy***, 2002 SCC 56, ***R. v. Arp***, [1998] 3 S.C.R. 339, and ***R. v. B. (C.R.)***, [1990] 1 S.C.R. 717. While defence counsel did not take issue with and indeed consented to the inclusion of the similar act evidence, this Court was nonetheless mindful of its gatekeeping function in ensuring that the identified evidence met the requisite threshold for admission. To that end, recognizing that the evidence was highly probative, that the prejudicial impacts of the evidence would be largely diminished in view of the judge alone trial, and that the defence itself might rely upon Ms Leszkovics's testimony in their NCR defence, this Court agreed to admit Ms Leszkovics's evidence for its potential use as "extrinsic" evidence of similar acts. As earlier noted, a more detailed

discussion and justification of the similar act evidence is offered in the next section of this judgment at paragraphs 188 to 216.

[150] Ms Leszkovics is of Métis background. Ms Leszkovics told this Court that she met the accused at Siloam Mission in February 2018, the day after she was released from prison. At the time, Ms Leszkovics was struggling with a meth addiction. Ms Leszkovics testified that after months of dating sporadically, she and the accused married in September 2018.

[151] During her testimony, Ms Leszkovics stated that the accused believed that a wife must listen to her husband "no matter what". Ms Leszkovics testified that the accused had intercourse with her while she slept because he said he had "a fetish for Sleeping Beauty Syndrome", which involved her acting like a "rag doll, kind of like limp and lifeless sexually". Ms Leszkovics testified that the accused liked when she would take her sleeping medication because he would then have intercourse with her while she slept. When asked how she knew the accused was having intercourse with her while she was sleeping, Ms Leszkovics stated that she would be sore or bleeding vaginally and/or anally (often the next day) and that the accused would sometimes tell her what he had done. Ms Leszkovics also told this Court that on occasion, she would not take her medication in order to see what the accused did while she was supposed to be sleeping. Ms Leszkovics testified that when she did not take her sleeping medication, the accused would get angry and have anal intercourse with her.

[152] Ms Leszkovics stated that the accused enjoyed watching pornography on the "dark web", featuring realistic scenes in which a man breaks into a home to kill a woman and have sex with her corpse. She testified that the accused wanted the two of them to produce similar types of content as it would "make lots of money".

[153] Ms Leszkovics described the accused's history of violent behaviour towards her. She said that the accused would sometimes keep her in their Sherbrook apartment against her will. During periods when the accused prevented Ms Leszkovics from leaving the apartment, the accused would take her phone (and associated Internet access), require her to remain naked, and spit on her. Ms Leszkovics further described a time when the accused tried to suffocate her with a pillow. Ms Leszkovics testified that she had reported this to the police. She testified that the accused told her that if "anything happened to [her], he would keep [her] in the closet, … [and] skull fuck [her] even when she was dead, until [she] would stink too bad".

[154] By September 2019, Ms Leszkovics was in treatment for her addiction and applied for a protection order against the accused. Despite the protection order, Ms Leszkovics stated that she went back to the accused after completing treatment because he had threatened staff at her second-stage recovery home, which resulted in her being asked to move out. Ms Leszkovics testified that the accused came at her with a knife after she had moved back in with him. Following that

incident, Ms Leszkovics moved in with her mother and never returned to the accused.

[155] The two continued to speak over Facebook Messenger. On the evening of May 9, 2022, Ms Leszkovics received a message from the accused in which he said that he could go to prison for three life sentences, although he was not sure if he would be caught. On May 11, 2022, Ms Leszkovics decided to call the accused over Facebook Messenger; in view of his messages and her own experiences with the accused, she "had a feeling something terribly wrong had happened". During the call, the accused told Ms Leszkovics that he could not admit what he had done because he would have to go on the run. Ms Leszkovics testified that she had sent a message to the accused during this time frame because he had posted a photo on Facebook holding a knife, and she thought that it "didn't look very good".

[156] During cross-examination, Ms Leszkovics testified that she had told the police that the accused's behaviour was "demented" and that the accused thought he had a direct line to God. The defence highlighted that in the 2019 protection order application, Ms Leszkovics had indicated that she believed that the accused had narcissistic traits, that he was like three different people, and that she thought he was schizophrenic based on something she had read online.

[157] Ms Leszkovics acknowledged that she had included attachments on the protection order application that appeared to show statements (social media posts) from the accused. However, she disagreed with the suggestion that at the time

of the application, these attachments were included out of concern for the accused's mental health. The attachments included in the protection order application were comprised of a series of his social media posts wherein the accused suggested: how he could kick someone's teeth out in the name of Jesus Christ; that he was not schizophrenic; and that he "can't leave everything up to God". Ms Leszkovics also testified that as part of these posts, the accused made additional comments, including that all murders in the Bible were justified, and that he had earlier been sexually assaulted.

12) Riley Johansson

[158] Mr. Johansson, a civilian crime and intelligence analyst with the WPS, has 10 years of experience with the WPS, and seven years of prior experience with the RCMP. As a civilian crime and intelligence analyst working in tactical and strategic analysis, Mr. Johansson analysed and "provided context" to the data collected during investigations. Mr. Johansson testified that he had extensive experience in "extraction analysis" and "tracker data analysis". This Court qualified Mr. Johansson as an expert in computer and Facebook data analysis. With reference to Exhibits 29-36, Mr. Johansson discussed the accused's online behaviour in relation to the time frame of the alleged crimes.

Count 1, Buffalo Woman

[159] With reference to Exhibit 29, Mr. Johansson described the accused's Internet searches made between March 10, 2022 and March 15, 2022, which

included searches related to micro-dosing/psilocybin, "garbage day Winnipeg", and DNA/forensics. Between March 15, 2022 and March 20, 2022, Mr. Johansson testified that the accused made general queries related to fingerprints, security footage, and "explosive anger disorder". Between March 17, 2022 and April 8, 2022, Mr. Johansson stated that the accused made multiple queries regarding "missing persons in Manitoba" and Bear Clan Patrol. In addition, Mr. Johansson highlighted numerous searches related to Baby Phat girl's jacket.

[160] Mr. Johansson also testified that the accused made an additional search on April 4, 2022, regarding garbage day.

Count 2, Morgan Harris

[161] Between May 1, 2022 and May 2, 2022, the accused made general searches related to garbage day, and Bear Clan Patrol. Further, Mr. Johansson stated that the accused made a specific search regarding, "how long does it take for hot water to come back". Mr. Johansson testified that on May 17, 2022, the accused accessed Ms Harris's Bear Clan Patrol missing person poster.

Count 3, Marcedes Myran

[162] Between May 4, 2022 and May 5, 2022, the accused made general queries related to waste management. In addition, Mr. Johansson stated that the accused made specific searches related to "eternal rest", "definition of a serial killer", and "do Muslims behead people with knives". Mr. Johansson said that

between May 5, 2022 and May 8, 2022, the accused conducted searches related to Bear Clan Patrol.

Count 4, Rebecca Contois

[163] Mr. Johansson stated that the accused sent an email to Employment and Income Assistance Manitoba (EIA) on March 8, 2022, indicating that Ms Contois would be added to the accused's lease. On May 6, 2022, a photo of Ms Contois was added to the accused's computer. Mr. Johansson testified that on May 16, 2022, the accused made searches related to "garbage day Winnipeg" and fingerprints ("do fingerprints only get on smooth surfaces"/"how long can police keep fingerprints").

13) Detective Sergeant Michael MacDonald

[164] Detective Sergeant Michael MacDonald is a detective sergeant with the WPS. He has 18 years of experience with the WPS and has been involved throughout this investigation. In May 2023, the WPS became aware that the accused was sending letters to a female inmate living within an institution in Nova Scotia. While some of the letters had been destroyed, Detective Sergeant MacDonald travelled to Nova Scotia to seize nine letters. The letters were submitted as evidence (Exhibits 39-47).

Expert Witness Testifying in Respect of the NCR Defence

14) Dr. Sohom Das

[165] Dr. Das is a UK-based consultant forensic psychiatrist practicing since 2014. He was called as a defence witness. Since 2014, Dr. Das has had several full- and part-time positions providing and overseeing care for patients relating to forensic psychiatry. In addition, Dr. Das has a medico-legal practice. The Crown strongly contested his qualifications as an expert.

[166] Dr. Das runs a YouTube account that features content addressing mental health public education, and "true crime" entertainment. It is the true crime component of these YouTube videos and the connected conduct of Dr. Das that raised concerns. In the *voir dire* during which his qualifications and professionalism were intensely challenged, the Crown played a number of the YouTube videos in question. One video concluded with Dr. Das telling his audience, "Do not kill anybody, but if you do, don't tell anybody". Dr. Das's YouTube account also features a series of videos describing how individuals fake mental illnesses. While Dr. Das testified that he is not currently making a profit from his YouTube account, he acknowledged that he might very well in the future. He also acknowledged that the more provocative and interest inspiring are the videos or subject matter, the greater the likelihood for an expanded audience and in turn, a greater profit. This perhaps explains his often-repeated mantra in the videos, "always be plugging". It is not unreasonable to suggest as I do later in

my analysis, that Dr. Das's unique approach reflects an apparent professional self-aggrandizement and professional exhibitionism. In this regard, I note that in 2022, while still early in his career in psychiatry, Dr. Das authored a "memoir" entitled, *In Two Minds: Stories of Murder, Justice and Recovery from a Forensic Psychiatrist*. I can note as well, that on July 10, 2024, Dr. Das made himself available for and participated in a rather opinionated interview with *The Globe and Mail*, wherein he offered comments about the present case, which he would have known was on reserve — the verdict of which was to be delivered later that same week.

[167] Despite my concerns regarding Dr. Das's professionalism and the potential impact on his independence, objectivity, reliability and credibility, this Court qualified Dr. Das as an expert in forensic psychiatry based on the test outlined in ***R. v. Mohan***, [1994] 2 S.C.R. 9, and reiterated in ***White Burgess Langille Inman v. Abbott and Haliburton Co.***, 2015 SCC 23. While this Court had concerns regarding Dr. Das's actions outside his traditional responsibilities as a forensic psychiatrist, I determined that that alone does not and should not pre-empt his testimony or qualifications. In qualifying Dr. Das to give the identified expert evidence, I nonetheless noted that this Court's concerns regarding his professionalism and credibility could be addressed in relation to the ultimate weight to be attributed to his testimony.

[168] It was noted as well that in comparison to the other psychiatrist who testified at trial (Dr. Chaimowitz), Dr. Das has significantly less experience, having

started practicing in 2014. This was the first time he has testified in Canada and the first time he has carried out such an NCR assessment in the context of Canadian criminal law.

[169] Dr. Das's almost 100-page report (in which much of his testimony was rooted) outlined his opinion and the basis of his assessment in respect of the NCR issue. That report was marked as Exhibit 48 at the trial.

[170] Dr. Das met with the accused by video on two occasions (September 12, 2022 and April 22, 2024), for an hour and a half each session. He did so to assess the accused's mental status at the time of the offences. At the time of the first assessment, the accused had been charged with only the murder of Ms Contois, although he had confessed to killing Ms Myran, Ms Harris, and Buffalo Woman. At the time of the second assessment, the accused had been charged with all four murders. In conducting his assessment, Dr. Das relied upon numerous documents provided by the defence, including the accused's interview with the police, past medical records, CFS records, and Facebook messages.

[171] Dr. Das testified that based on his forensic assessment, he was of the opinion that the accused was schizophrenic. Dr. Das opined that in all four killings, the accused's "actions were directly driven/influenced by numerous psychotic symptoms" (Dr. Das Report, paragraph 204). In support of his finding, Dr. Das cited the accused's assertions to him that God told him to act, that he heard the voices of angels/demons, and that he would interact directly with God. Dr. Das

was of the opinion that statements made by the accused, such as those involving "a mission from God" and the "voices of angels and demons", were illustrative of delusions and hallucinations, a key symptom of schizophrenia. As it relates to the accused's beliefs, Dr. Das also testified that he believed on a balance of probabilities, that the accused's racist views, articulated during the police interview, were an example of paranoid delusions. Dr. Das acknowledged however, that not all racist beliefs are based on delusions.

[172] Based on his review of the documents provided to him and the two interviews conducted with the accused, Dr. Das was of the opinion that the defence of not criminally responsible "should be open" to the accused on all four counts. Dr. Das stated that although the accused's mental disorder did not affect his ability to appreciate the nature and quality of his acts, the accused was incapable of knowing that his actions were morally wrong.

[173] Under cross-examination, Dr. Das testified that he was unsure as to whether the accused had ever been diagnosed with schizophrenia by a psychiatrist. Dr. Das acknowledged that although there had been references to schizophrenia on triage notes, no formal diagnosis had been made. Dr. Das also acknowledged that despite the fact that the accused had been assessed by three different psychiatrists, none of them had diagnosed him with schizophrenia. Dr. Das also confirmed that the accused had never been hospitalized under ***The Mental Health Act***, C.C.S.M. c. M110, nor had he been treated while incarcerated

as a consequence of his mental state. When asked why he had not confronted the accused with evidence of possible malingering, Dr. Das testified that in view of the accused's previous medical history, the evidence provided to Dr. Das by the defence, as well as his own interview with the accused, he was confident that the accused was not malingering. When questioned regarding his decision to not address paraphilias in any detail within his report, Dr. Das testified that he did not explore paraphilias in his report because "he had ruled it out". Dr. Das testified that he believed that the accused's sexual acts post-killings were the result of the accused's delusions. Specifically, Dr. Das testified that he did not address paraphilia because he did not believe that the accused could "have a paraphilia, while having a hallucination".

15) Dr. Gary Chaimowitz

[174] Dr. Chaimowitz is a certified psychiatrist (Royal College of Physicians of Canada, 1988), and is designated as Founder – Forensic Psychiatry (Royal College of Physicians of Canada). He is a professor of psychiatry at McMaster University and serves as the head of forensic service at St. Joseph's Healthcare Hamilton. He has published extensively in peer-reviewed journals, taught at a university level, taken on leadership roles in the profession, and currently sits on the Ontario Review Board. In addition, Dr. Chaimowitz has maintained a small psychiatric practice, conducted in-patient work, and done assessments for a low-volume sexual behaviours clinic in Hamilton. According to Dr. Chaimowitz, he has

diagnosed and treated individuals with schizophrenia "probably hundreds of times".

[175] Dr. Chaimowitz has conducted approximately 100 NCR assessments and many fitness to stand trial assessments. He has also given connected and resulting testimony in respect of the many fitness to stand trial assessments and the multitude of NCR assessments he has done. He has been qualified as an expert at three different levels of court in Ontario. Dr. Chaimowitz was tasked in this case with assessing whether the accused may have a defence of NCR, pursuant to s. 16(1) of the ***Criminal Code***, in relation to all four counts. Dr. Chaimowitz analyzed 75 sources of information (including the same information available to Dr. Das) and conducted approximately eight hours of interviews with the accused over three interview blocks (Dr. Chaimowitz Report, p. 8).

[176] I unhesitatingly qualified Dr. Chaimowitz to testify as an expert in forensic psychiatry.

[177] Dr. Chaimowitz testified as a rebuttal witness after this Court ordered an assessment pursuant to s. 672.12(3)(a) of the ***Criminal Code***.

[178] Dr. Chaimowitz's 86-page report was marked at trial as Exhibit 49. As with Dr. Das, much of Dr. Chaimowitz's testimony at trial was rooted in the assessment, opinion and conclusion (and the related justifications) as explained in his report.

[179] Dr. Chaimowitz testified that the accused "did not have a major mental disorder that was active at the time of the offences [so as] to allow for a section 16(1) defence" (Dr. Chaimowitz Report, p. 86). Specifically, Dr. Chaimowitz disagreed with Dr. Das's opinion that the accused had schizophrenia. Dr. Chaimowitz stated that he does not believe that the accused has a major psychiatric disorder associated with psychosis. Dr. Chaimowitz testified that he does not believe that the accused had a substance use disorder, or an antisocial personality disorder. Most relevant to this case, Dr. Chaimowitz stated that the accused has a paraphilia, specifically, a necrophilia, homicidal subtype. In his view, the accused's claims about voices and delusions are fabrications.

[180] Based on his assessment, Dr. Chaimowitz testified that in his opinion, "Mr. Skibicki did appreciate the nature and quality of his actions", and the accused "would have known that they were wrong from a legal and a moral perspective" (Dr. Chaimowitz Report, p. 86).

[181] Dr. Chaimowitz testified that the possibility that the accused acted due to psychosis was "extremely low". During cross-examination, Dr. Chaimowitz made clear that it is rare for him to opine with such certainty, noting that he would typically provide the court with alternative explanations for the conduct being considered. While Dr. Chaimowitz acknowledged that it is not completely

impossible that the accused has schizophrenia, in his opinion, it was improbable that the accused committed the acts due to a delusional drive.

[182] Dr. Chaimowitz stated that in view of the evidence as a whole — including the "uniquely dark necrophiliac acts" following the murders, the accused's own admissions suggesting that he was a necrophiliac, and the accused's previous sexual history — it would be highly unusual for a psychiatrist not to explore paraphilias. Dr. Chaimowitz concluded that the accused had a very serious form of homicidal necrophilia.

[183] Dr. Chaimowitz testified and wrote in his report that he believed the accused's "soft-spoken, outwardly gentle, and thoughtful" traits "can disarm potential victims" (Dr. Chaimowitz Report, p. 85). Dr. Chaimowitz stated that during the police statement, the accused appeared to remain "clear and cogent, consistent with the motive inherent in his communications pre-offence and at times, post-offence" (Dr. Chaimowitz Report, p. 85). Dr. Chaimowitz testified that the accused began to describe experiences of grandiose delusions only following his arrest, at which time the accused suggested that he was morally compelled to act by God. Dr. Chaimowitz testified that despite the accused having stated that he experienced these symptoms for decades, no health care or social services professional "ever reported symptoms consistent with or made a primary psychotic disorder diagnosis of a condition such as Schizophrenia or Schizoaffective Disorder" (Dr. Chaimowitz Report, p. 85). Dr. Chaimowitz also testified that the

accused has not sought treatment for schizophrenia since his arrest or while incarcerated.

[184] According to Dr. Chaimowitz, in the circumstances, taking into consideration the accused's medical history and experiences with both social services and the criminal justice system, it is "unlikely" that the accused's illness (if it was schizophrenia) would have gone undetected for decades.

[185] Dr. Chaimowitz stated that the accused's actions reflect a "semi-planned organized set of murders" rooted in racial enmity and necrophilia. Dr. Chaimowitz observed that despite the fact that much of society would describe the accused's beliefs as delusional, millions of individuals share his racist views. Dr. Chaimowitz was emphatic that, in his opinion, the accused is not schizophrenic, stating that instead, he is a "conspiracy laden, racist man with significant personality problems and addictions, along with homicidal necrophilia" (Dr. Chaimowitz Report, p. 85). Dr. Chaimowitz concluded that the accused did not have an active mental disorder at the time of the alleged crimes and in his opinion, would not qualify for a defence of not criminally responsible pursuant to s. 16(1) of the ***Criminal Code***.

[186] Under cross-examination, Dr. Chaimowitz testified that the same "self-reported" and/or "carried-over" diagnoses (following an initial mention of schizophrenia) were commonly, but not always, listed on the accused's medical documents. In other words, once the term schizophrenia had been mentioned however casually or hypothetically (even by the accused's self-reported

comments) the charts are obliged to include those references as part of the accused's medical history. Dr. Chaimowitz stated that while schizophrenia may have been listed in triage forms, at no point was the accused diagnosed with schizophrenia. Dr. Chaimowitz testified that the medication that the accused was prescribed, which can be used to treat schizophrenia, was more likely used to treat sleep concerns given its low dose.

[187] On the question of malingering, Dr. Chaimowitz testified that, in his opinion and from his considerable experience, the risk of malingering is higher in cases, such as this one, where a guilty verdict results in a lengthy prison sentence. Dr. Chaimowitz stated that there is a potential for malingering whenever someone faces the prospect of their liberty being taken away. That fact alone requires a rigorous exploration as to whether malingering or fabrication has taken place in a given case. Dr. Chaimowitz reiterated that in this case, there were a number of factors that suggested malingering. For example, the accused described having delusions many months following his arrest and many months after his initial video statement to the police where Dr. Chaimowitz believes no credible or no clear mention was made of voices or delusions. The accused had also never been diagnosed with schizophrenia despite being routinely seen by health care professionals. Dr. Chaimowitz noted that the accused had never sought, nor received treatment for schizophrenia while incarcerated. Moreover, during his interview with the police, the accused appeared to Dr. Chaimowitz to be "clear …

thoughtful, and measured," at no point showing any overt signs of a mental disorder (Dr. Chaimowitz Report, p. 65). Dr. Chaimowitz stated that from his perspective, the police conducted a well-structured interview where logically, at the point the accused was confronted with evidence tying him to the crime, the accused confessed, and continued to do so throughout the remaining interview. Dr. Chaimowitz acknowledged that it is understandable why the accused might seek an NCR finding. Nonetheless, in Dr. Chaimowitz's opinion, given the totality of the evidence and the accused's pattern of behaviour (and his letters to the female inmate), there is little that convincingly points to schizophrenia regardless of how delusional or irrational the accused's words and conduct appear to the average person.

F. Evidence of Similar Acts and After-the-Fact Conduct

[188] The Crown has adduced evidence which in addition to providing parts of the general narrative, is evidence which the Crown asked this Court to consider and use as evidence of similar and/or after-the-fact conduct.

[189] In the case of the evidence of similar act, that evidence and its use was consented to by the accused. Respecting the use of after-the-fact conduct, it was similarly unopposed or uncontested by the accused in argument and/or with evidence of his own.

[190] Notwithstanding the consent as it relates to the similar act evidence, I did as already noted, in relation to the evidence of Erin Leszkovics, specifically address

with both parties ("on the record"), prior to the Crown presenting the evidence in question, the threshold test for admissibility. In doing so, I satisfied myself pursuant to the gatekeeper function that I must exercise as the trial judge, that that evidence could be admitted for the purposes identified.

[191] Notwithstanding the above-mentioned threshold determination that I had already made orally, for reasons of transparency and thoroughness, I set out below a brief analysis as to why the proposed evidence of similar act and after-the-fact conduct was admitted and why and how it might be used in my analysis.

1) Evidence of Similar Acts

[192] The Crown asks this Court to use evidence relating to each separate murder allegation in support of each other on each count in the indictment. Additionally, the Crown would like this Court to use the evidence from Erin Leszkovics in relation to conduct of the accused and prior similar incidents with the accused. The cross-count evidence includes similar acts potentially confirmatory of the planning, deliberation, killing, and post-mortem intercourse with all four victims. The extrinsic evidence from Ms Leszkovics, describes the accused's sexual and violent predilections that can be seen as strikingly similar to the violent acts and predilections inflicted on the victims.

[193] That extrinsic similar act evidence is in my view, potentially demonstrative of circumstances that are logically relevant to establish animus, motive, *actus* (support for the reliability and truth of the accused's confession) intent and

context. Additionally, the Crown says that given her uniquely positioned experience with the accused and her consequent capacity to testify about the accused's sexual and violent predilections, the evidence of extrinsic conduct from Ms Leszkovics is necessary to respond to the accused's arguments surrounding both the NCR defence and any argument with respect to a lack of intent (the requisite state of mind for murder).

[194] The Crown also takes the position that the circumstances surrounding Ms Leszkovics and the victims are also so similar that they establish a *modus operandi* in the accused's behaviour. That in turn is probative of intent as well as in respect of the issues of planning and deliberation.

[195] Needless to say, with the accused's admissions with respect to having unlawfully caused the deaths of the four victims, identity is not in issue. Accordingly, the similar act evidence adduced is clearly not adduced for that purpose.

[196] In considering the potential use of the evidence of similar act as suggested by the Crown, I remain mindful that all relevant evidence is admissible unless it is barred by a specific exclusionary rule. One such rule is the prohibition against the admission of bad character or propensity evidence if it shows only that the accused is the type of person likely to have committed the offence in question.

[197] I also recognize as a starting point that evidence of similar acts, whether of counts charged in an indictment or of extrinsic misconduct, is presumptively

inadmissible. Such evidence may be admissible however, where the Crown can demonstrate on a balance of probabilities that in the context of a particular case, the probative value of the evidence in relation to a particular issue outweighs its prejudicial effects, thereby justifying its reception (***R. v. E. (T. I.)***, 2014 MBCA 40; ***R. v. Laporte (PLR)***, 2016 MBCA 36; and ***R. v. D. K. M.***, 2017 MBCA 5; see also ***Handy***, at paragraphs 55 and 101; and ***Arp***, at paragraphs 38-40).

[198] The rules governing the admissibility of evidence of similar act or extrinsic evidence have changed from the traditional pigeonhole exceptions to what is now a more principled approach. Thus, the admissibility of similar act evidence, whether of other counts charged in the indictment or of extrinsic misconduct, will be determined by: i) the relevance of the evidence to a live issue in a case; ii) the probative value of the evidence; iii) the prejudicial effect of the evidence; and iv) balancing the probative value of the evidence against the prejudicial effect.

[199] Similar act or extrinsic evidence must be relevant to some issue beyond general disposition or character. Typically, similar act evidence will be tendered to prove, amongst other issues, *actus reus*, *modus operandi*, or identity. Depending upon the issue that the similar act evidence is being tendered to prove, a differing degree of similarity will be required in order for the evidence to be sufficiently probative.

[200] The "similarity" inquiry is a case specific, highly individualized examination involving a consideration of all relevant factors, including, but not limited to:

1) proximity in time;

2) the similarity, details and circumstances;

3) number of occurrences;

4) any distinctive features unifying the incident;

5) intervening events, if any; and

6) any other factor that tends to support or rebut the underlying unity of the similar acts.

Handy, at paragraph 82.

[201] The similarity factors listed above are intended to be helpful but are not meant to be an exhaustive list. Not every factor need be present. Each inquiry will be case specific and must in a principled fashion, take into account all relevant aspects of the evidence (***Handy***, at paragraphs 81-84).

[202] Before evidence may be admitted as evidence of similar act, there must also be a link between the allegedly similar act and the accused. In other words, there must be some evidence upon which the trier of fact can make a proper finding that the similar act to be relied upon was in fact the acts of the accused. The second phase of the inquiry into admissibility focusses on whether there is some evidence to link the accused to the similar acts. That is not an issue in this case with the accused's admissions and with the consent provided by defence counsel.

[203] Overall, the similarity issue is to be decided first and without reference to evidence linking the accused to each alleged similar act.

[204] An assessment of potential prejudice requires consideration of both reasoning prejudice and moral prejudice. Reasoning prejudice is concerned with the danger that the trier of fact will be confused by the multiplicity of incidents and put more weight than logically justified on the similar act testimony. Moral prejudice is concerned with the danger that the trier of fact may convict the accused based on nothing more than a showing that the accused is a bad person. In my consideration of the now admitted similar act evidence and in respect of any assessment of potential prejudice, I am mindful of these dangers, just as I was at the initial threshold stage of my determination (***Handy***, at paragraphs 139, 144-146).

[205] The cogency and strength of the similar act evidence will more readily justify its reception where the similar act evidence can be seen as more focussed and specific to circumstances similar to the charge. In such a context, the probative value of the propensity evidence becomes more cogent. Probative value exceeds prejudice where the force of the similar circumstances defies coincidence and other innocent explanations (***Handy***, at paragraphs 47-48).

[206] As I indicated earlier, when an application is initially made to admit similar act or extrinsic evidence, the judge's role is that of a gatekeeper. The issue at that stage is whether the evidence should be admitted. The evaluation and

weighing of any such evidence (once it is admitted) is something to be done in the context of all of the evidence.

[207] The similar act evidence admitted in the present case establishes that the circumstances surrounding the death of all four victims and the similar abuse and violence experienced by Ms Leszkovics are so strikingly similar that they point to an obvious *modus operandi* in the perpetrator (the accused). That is relevant and probative to issues of motive, intent, planning and deliberation and the negation of certain arguments that the accused is making in respect of mental incapacity and his NCR defence. Some of that strikingly similar evidence is also supportive or confirming of important details in relation to the accused's confession to the police respecting the four killings. That similar act evidence suggests that the accused specifically selected vulnerable women at shelters, brought them to his residence, sexually assaulted them and forcibly confined them. The evidence (along with the accused's own confession) could also suggest as the Crown has argued, that the killings were racially targeted and were motivated by the accused's paraphilia and his alleged homicidal necrophilia.

[208] The similar act evidence of the individual incidents can be used in support of each other in that there is evidence that each of the similar acts is attributable to the accused. The inferences to be drawn in the present case and the probative force of those similar acts can be assessed in light of the following:

1) the temporal proximity of the similar acts;

2) the similarity of the acts and the *modus operandi* employed by the accused to complete the acts;

3) the lack of meaningful dissimilarities between the acts; and

4) the context and manner in which the various acts were alleged to have occurred.

[209] Given the above, it is my view that the probative value outweighs any reasoning and/or moral prejudicial effect. I have come to that determination given the strength of the evidence.

[210] It would seem that the accused abused all of the women in the same way in that he was sexually violent, he strangled them and he was physically aggressive with all of them. Although he did not kill Ms Leszkovics, it is fair to suggest as the Crown does, that the pattern of conduct is similar as it relates to Ms Leszkovics and in respect of all four deceased victims. Like the four victims, Ms Leszkovics was also a vulnerable woman. Ms Leszkovics lived with and actually married the accused. In that regard, she explained how she met him at a shelter (confirming his regular or pattern of attendance at shelters). She also described incidents of sexual assault while she was unconscious and using drugs, just as she described how the accused fantasized about having sex with corpses.

[211] I agree with the Crown's submission that the testimony of Ms Leszkovics reveals similarities, which by their cumulative effect, justified not only its admission into evidence, but also, the use of that evidence to assist in proving that each act

as contained in the four counts in the indictment, was committed by the accused in very similar ways. From that fact, potential inferences can be drawn in respect of motive, intent, planning and deliberation. That fact is also potentially relevant and probative in confirming parts of the accused's confession and in negating parts of the NCR defence. As it relates to the NCR defence for example, the following question need be asked: Is it likely or more likely than not (or even reasonable) that given the experience of Ms Leszkovics with the accused and given the strikingly similar circumstances surrounding each of the four other killings, the alleged mental disorder would have coincidentally manifested on four discreet occasions separated in some cases by many days?

[212] Respecting the cross-count similar act evidence, that evidence establishes that:

1) all of the women were Indigenous;
2) all of the women were vulnerable;
3) all of the women frequented shelters;
4) all of the women were strangled and Marcedes Myran and Rebecca Contois were strangled to death;
5) the accused filled the bathtub at all four killings;
6) two of the women were drowned;
7) all of the women's bodies were defiled when the accused had repeated sexual intercourse with their corpses;

8) all of the women were disposed of in garbage bins. Marcedes Myran and Rebecca Contois were dismembered before their disposal; and

9) the accused kept tokens from each of the women after their deaths.

[213] Given how the above similarities point to an obvious *modus operandi*, it seems more than reasonable to suggest that this evidence provides not only context for each murder, but also, obvious potential probative assistance on issues like planning and deliberation, intent, and mental capacity (the defence of NCR).

[214] In summary, the list of similarities in the cross-count or count-to-count similar act evidence, taken cumulatively, are very compelling. They are so compelling in my view that their probative force outweighs any prejudicial effect. The force of the similar circumstances goes to establish many of those things that the Crown identified they could establish. Conversely, given the strong probative value, there is only a slight danger arising from the possibility of moral and reasoning prejudice.

[215] I have no difficulty in concluding as I did when I made my threshold determination, that the Crown has established on a balance of probabilities that the probative value of the similar act evidence outweighs any possible prejudicial effect of that evidence.

[216] By the accused's own confession and by virtue of the corroborative evidence of Ms Leszkovics, it is not unreasonable to argue that the accused

intentionally preyed on vulnerable Indigenous women, that he sexually assaulted them and that his pattern of escalating violence culminated in the sexualized killings of Buffalo Woman, Morgan Harris, Marcedes Myran, and Rebecca Contois. Both the extrinsic similar act evidence and the similarities in the cross-count or count-to-count similar act evidence, support not only the Crown's arguments with respect to the essential elements that it must prove in respect of the constituent elements for first degree murder, but also, they too work to negate some of what the accused argues in respect of his NCR defence.

2) <u>Evidence of After-the-Fact Conduct</u>

[217] Just as the similar act evidence provides admissible and usable evidence on the essential elements for first degree murder and for the purpose of potentially negating the accused's NCR defence, so too does some of the evidence of after-the-fact conduct. I will now turn to briefly address how the evidence of after-the-fact conduct can be permissibly used in the present case.

[218] In ***R. v. Calnen***, 2019 SCC 6, Martin J. reviewed the law relating to after-the-fact conduct (at paragraphs 107-08):

> [107] As with other types of evidence, evidence of after-the-fact conduct is admissible if it is relevant to a live, material issue in the case, its admission does not offend any other exclusionary rule of evidence, and its probative value exceeds its prejudicial effects.
>
> [108] Relevance involves an inquiry into the logical relationship between the proposed evidence and the fact that it is tendered to establish. The threshold is not high and evidence is relevant if it has "some tendency as a matter of logic and human experience to make the proposition for which it is advanced more likely than that proposition would be in the absence of that evidence": *R. v. White*, 2011

> SCC 13, [2011] 1 S.C.R. 433, at para. 36, quoting D. M. Paciocco and L. Stuesser, *The Law of Evidence* (5th ed. 2008), at p. 31. In other words, the question is whether a piece of evidence makes a fact more or less likely to be true. Relevance does not require a "minimum probative value": *R. v. Arp*, 1998 CanLII 769 (SCC), [1998] 3 S.C.R. 339, at para. 38. As the admissibility of after-the-fact conduct evidence is, "[a]t its heart", one of relevance, determining the relevance of any piece of after-the-fact conduct evidence is necessarily a case-by-case, "fact-driven exercise": *White (2011)*, at paras. 22 and 42; see also *R. v. White*, 1998 CanLII 789 (SCC), [1998] 2 S.C.R. 72, at para. 26.

[219] After-the-fact conduct is a type of circumstantial evidence. As with all circumstantial evidence, I must consider what inferences, if any, may be drawn from it. In that connection, I must keep in mind that people sometimes do things for entirely innocent reasons and that their conduct might be equally and rationally consistent with any such innocent reasons. As will be clear from my determinations later in my analysis, that is not my conclusion in the present case.

[220] Some of the evidence of after-the-fact conduct has potential relevance to the issue of NCR. In the present case, in the context of the NCR issue, there are two opposing psychiatrists giving expert opinions and testimony. Consideration of evidence of after-the-fact conduct should have informed such opinions and testimony.

[221] The proposed relevant after-the-fact conduct in the present case ranges from, amongst other things, what it is that the accused did to the victims' corpses following the killings, to his actions disposing of the bodies and the various computer searches on topics relating to garbage day pickups, DNA fingerprints and missing Indigenous women.

[222] In this case, there is relevance to the after-the-fact conduct in relation to the NCR issue and the differing opinions of the psychiatric expert witnesses. In a case such as this one, in assessing the reliability and persuasiveness of an expert's opinion and testimony, this Court must consider the totality of the evidence and whether the expert, him, her, or themselves, properly considered all of that evidence. As part of the totality of the evidence in this case — including the evidence of the after-the-fact conduct and similar act — there was evidence that goes to motive, intent, possible planning and deliberation and a specific *modus operandi*, which both psychiatric experts should have thoroughly considered. As I will explain later, the defence expert, Dr. Das, did not adequately consider all of that evidence.

[223] It is the Crown's position that the totality of the evidence (some of which is evidence of after-the-fact conduct and similar act) was either ignored, deemphasized or inadequately taken into account by Dr. Das when he believed the accused's assertions that he (the accused) committed the killings as a result of his hearing voices and experiencing delusions in each of the four discrete killings. Conversely, Dr. Chaimowitz did properly and adequately consider all of the evidence (including the similar act and after-the-fact evidence), which he says suggests that the four killings were not as a result of a mental disorder, but instead, were part of a pattern of racially motivated killings driven by a similarly manifesting paraphilia and homicidal necrophilia. In this regard, the Crown

underscores the supporting evidence that it says comes from evidence of conduct, which identifies and highlights amongst other things, the accused's capacity (despite the alleged voices and delusions that supposedly caused him to kill) to be sexually aroused such that he was able to have intercourse with the corpses and repeatedly defile their bodies. No less relevant in this regard, is the after-the-fact conduct demonstrating a self-interested and self-protective awareness on the part of the accused to dispose of and conceal the victims' bodies and conduct computer searches relating to garbage days, DNA fingerprints, and missing Indigenous women.

[224] I will conclude my discussion of how the evidence of after-the-fact conduct can be permissibly used in the present case by repeating that there is nothing in the circumstances of this case or on the evidence received at trial that would suggest that an alternative explanation is available or has been offered by the accused (or anyone else) for the after-the-fact conduct that would suggest any reasonable or rational inference different from those suggested by the Crown.

[225] To summarize, the evidence of after-the-fact conduct can be used as circumstantial evidence, which in this case is relevant and material to "live issues". Its admission does not offend any other exclusionary rule and its probative value exceeds its prejudicial effects.

V. ANALYSIS

[226] As I noted when I set out the issues at paragraph 66, the two main issues that need be addressed in the present case are:

1) Is the accused not criminally responsible by reason of a mental disorder (NCR) pursuant to s. 16 of the ***Criminal Code***?

2) Has the Crown proved beyond a reasonable doubt that the accused is guilty of first degree murder?

[227] To answer those questions, there are additional determinations that I must make that correspond to the other questions enumerated at paragraph 68 of the Issue section of this judgment. For convenience, those questions, first relating to the accused's defence of NCR, and second, the prosecution of the four counts of first degree murder, are as follows:

i) Is it more likely than not that the accused was suffering from a mental disorder at the time he committed the killings?

ii) Is it more likely than not the accused's mental disorder made him incapable of knowing that the killing was wrong?

iii) Did the accused possess the requisite mental state of mind (intent) for murder?

iv) Has the Crown established beyond a reasonable doubt that the murder of the victim in each count was planned and deliberate?

v) Did the accused commit the offence of sexual assault and/or forcible confinement in relation to any of the victims named in respect of each count?

vi) If so, was the sexual assault and/or forcible confinement and the murder part of the same series of events?

[228] The above questions must be addressed in respect of each separate killing set out in the four counts of first degree murder.

[229] If, in addressing the first main issue (the defence of NCR), I determine that the accused is not criminally responsible pursuant to s. 16 of the ***Criminal Code***, it will be unnecessary for me to address the second main issue or related questions respecting the offence of first degree murder.

[230] Accordingly, I will first address the accused's defence of NCR.

A. Is the accused not criminally responsible by reason of a mental disorder (NCR) pursuant to s. 16 of the Criminal Code?

[231] The defence submits that the accused has demonstrated on a balance of probabilities that he should be found not criminally responsible pursuant to s. 16(1) of the ***Criminal Code*** given that the accused has been diagnosed with schizophrenia, a mental disorder, which the defence submits manifested at the time of each of the four killings, thereby rendering him incapable of knowing that his actions were morally wrong.

[232] As I explained in the legal framework set out earlier in the judgment, a person is not criminally responsible if he or she suffered from a mental disorder at the time of the act and, as a result, was not capable of appreciating the nature and quality of his or her act or of knowing the act was wrong. The issue of mental disorder has been raised by the accused. This Court is accordingly required to consider whether the accused is exempt from criminal responsibility on that basis.

[233] Every person is presumed not to suffer from a mental disorder. Exemption from criminal responsibility on this basis must be proved.

[234] In the particular circumstances of this case, to decide whether the accused is exempt from criminal responsibility by reason of mental disorder, I must ask myself the following questions: 1) Is it more likely than not that the accused was suffering from a mental disorder at the time of each of the killings; and 2) Is it more likely than not that the accused's mental disorder made him incapable at the time of each of the killings of knowing that the killings were morally wrong?

[235] As I noted when I first set out the position of the accused, he is not arguing that the mental disorder made him incapable (at the time of the killings) of appreciating the nature and quality of the killing, but rather, that the mental disorder made him incapable of knowing the killings were morally wrong.

[236] I will now review each of the above questions that I must address as it relates to the defence of NCR.

Is it more likely than not that the accused was suffering from a mental disorder at the time he committed the killings?

[237] A mental disorder is a disease of the mind. A disease of the mind is any illness, disorder or abnormal condition that impairs the human mind and its functioning. A disease of the mind does not include a self-induced state caused by alcohol or drugs, or transitory mental states, such as hysteria or concussion (***Bouchard-Lebrun***, at paragraphs 69-70; ***Cooper***, at 1159).

[238] To decide whether it is more likely than not that the accused was suffering from schizophrenia (as advanced by the defence) at the time of the killings (I acknowledge that schizophrenia is a mental disorder), I must consider all of the evidence, particularly the evidence of the two experts who testified in respect of this issue. Those two experts were previously identified as Dr. Das and Dr. Chaimowitz. Both witnesses were qualified as experts and permitted to give opinion evidence relevant to their expertise as psychiatrists and in relation to the issue of NCR.

[239] As with any other witness, when I consider the evidence of Dr. Das and Dr. Chaimowitz, I remain mindful of the fact that I may give the evidence of an expert as much or as little weight as I think it deserves. Just because an expert has given an opinion does not require the court to accept it. When I consider the opinion given by an expert witness, I must consider the expert's education, training, and experience just as I must consider the factual foundation and reasons

for the opinion given. I must assess as well, the suitability of the analysis and methods used by the expert, along with any and all of the other evidence that was presented, including the accused's assertions made to the psychiatrists and the accused's videotaped statement to the police. The consideration of all of that will better enable me to determine how much or little to rely on as it relates to either of the expert's opinions.

[240] In considering the opinions of the experts in the present case, I must also remain mindful that when an expert provides their opinion, they may be relying upon facts which I, as the trier of fact, may not find reliable or believable. To the extent that an expert relies on facts that I do not accept, believe, or find supported by the evidence, that expert's opinion may be less helpful.

[241] There is a disagreement between the two experts in this case, Dr. Das and Dr. Chaimowitz, insofar as Dr. Das has offered his opinion that the accused did indeed suffer from schizophrenia at the time of the killings and did thereby suffer from a mental disorder. Dr. Chaimowitz disagrees, saying there is no reliable or credible evidence upon which to base a diagnosis that the accused was, at the time of the killings, suffering from a mental disorder, specifically schizophrenia.

[242] The issue on which these experts differ is a matter of critical importance insofar as it relates to whether or not it can be determined that the accused voluntarily committed the unlawful act(s) (to which he has confessed) that caused

each victim's death. The issue on which these experts differ can be considered a critical aspect to an essential element that the Crown must prove beyond a reasonable doubt. In this case, proof of that critical aspect of the essential element may depend entirely on expert evidence. So, while the accused in the present case does have the onus of establishing on a balance of probabilities that a mental disorder existed at the time of the killings, before I accept the opinion of Dr. Chaimowitz on this issue (Dr. Chaimowitz was presented by the Crown), I will ensure that I am satisfied beyond a reasonable doubt that he is correct. If I am not sure that he is correct, the Crown has failed to prove beyond a reasonable doubt a foundational aspect of an essential element connected to the *actus reus* of the offence charged.

[243] I have already reviewed the testimony given at trial by Dr. Das. See paragraphs 165 to 173 of this judgment. I will at this point, note paragraphs 198 to 207 of Dr. Das's report (Exhibit 48) wherein he, in written form, provides the essence of his opinion and conclusion about which he also gave testimony at trial:

> [197] As regards the issue of criminal responsibility in Canadian law, my understanding is that this test is in essence encapsulated in Section 16(1) of the *Criminal Code of Canada* which reads as follows: **"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."** My understanding is that in Canadian law, this is in the context of moral wrongfulness (as opposed to legal wrongness, as is the case for UK law).
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> [Emphasis in original]

[244] In commenting on the accused's mental state, Dr. Das opined as follows:

> [198] To examine Mr Skibicki's mental state at the time of 4 killings, as I have previously outlined, in my view, on balance, he displayed numerous positive symptoms of schizophrenia. To reiterate / summarise, this included the following:
>
> [199] Experiencing a strong feeling / belief for several years; i.e. that he has a responsibility to look after a certain woman and for them to become his wife. During my second interview, Mr Skibicki expanded upon this by reporting that he had a strong belief from around the age of 16 that he was destined to meet a particular partner who had very specific characteristics. He initially felt this with Erin and he later felt it with the victims. Upon questioning, he explained that he had this belief because God had told him this. Mr Skibicki told me that for many years he has had the experience that he has been "interacting with God or a higher power," including directly hearing voices. He also said that it was "a strong understanding that was revealed to me"; in my view, on the balance of probabilities, this was a delusional experience.

[245] As it relates to the nature and significance of the accused's delusions, Dr. Das continued with the following observations:

> [200] **Of great significance in regard to the issue of criminal responsibility, in my view**, when Mr Skibicki was narrating his beliefs at the time, in all 4 cases, during the material times, he appeared to be overwhelmed with strong beliefs that were 'revealed' to him through God. These included that his victims were in some way impure and would be exploited. He believed that if the victims were 'subservient to God', they would be saved from going to hell (i.e. it would be more likely that they would instead go to heaven). Mr Skibicki informed me that he believed that if they were not subservient to God he felt compelled to physically destroy them. He told me on more than one occasion that he believed that in doing so, he was undertaking a mission from God. Further, Mr Skibicki also relayed that he then had repeated sex with the corpses; he believed he had to do this to "sanctify the body... it was a necessary part of the process." In my view, these beliefs are indicative of **delusions of control**; i.e. a false belief that another person, group of people, or external force controls one's general thoughts, feelings, impulses, or behaviours.
>
> [201] In addition to the above, Mr Skibicki also expressed to me that he could determine whether or not his victims were not subservient to God by having sex with them, which he considered to be his "special power". In my view, this is indicative of **a grandiose delusion (aka delusion of grandeur)**; a belief that the sufferer has special abilities, possessions, or powers.
>
> [202] Further, Mr Skibicki told me that he believed the third victim, Marcedes, was "a degenerate and living in sin". I asked Mr Skibicki how he knew this, and he replied that "It was because she was wearing all red" (as well as other reasons,

> such as the music she was listening to). In my opinion, on the balance of probabilities, this experience was a **delusional perception**; when someone misinterprets a perfectly normal sensory experience (seeing red clothes) and assigns it an entirely false meaning.
>
> [203] As previously stated, Mr Skibicki has seemingly experienced auditory hallucinations (hearing voices) for many years before the four homicides, including **hearing voices (from God)**. These appear to be directly related to his delusions of control, as I have previously commented upon. For all four homicides, Mr Skibicki informed me that he had heard a voice (in the first three cases, he was unsure if the voice was "from an angel or the holy spirit", though in the final case he believed it was from God). In all cases, these voices appeared to directly encourage him to commit the killings.
>
> [204] **Having carefully considered Mr Skibicki's mental state and thought processes at the material times, in my opinion, for all 4 homicides, his actions were directly driven / influenced by numerous psychotic symptoms. In my view, on balance, these did not render him incapable of appreciating the nature and quality of the act; i.e. he was aware that he was ending the lives of each of the victims. However, of significance, in my opinion, on balance, these symptoms did render him incapable of knowing that his actions were wrong.**
>
> [Emphasis in original]

[246] In reaching the conclusion that the accused's illness rendered him incapable of knowing his actions were wrong, Dr. Das placed particular emphasis on the accused's statements that God had been compelling him to act:

> [205] To expand, in my view, on balance, Mr Skibicki believed that the victims were going to hell, for a variety of connected reasons, such as destroying their bodies, living in sin, and of particular significance, not being subservient to God. Additionally, it appears, on balance, that Mr Skibicki believed that if he allowed this to happen, then God would not forgive him. Further, Mr Skibicki appears to have been suffering from delusional belief that by killing these women (i.e. destroying their physical form), he would be helping them to go to heaven instead. To illustrate this, I would highlight that on a couple of occasions, I asked Mr Skibicki whether he thought he was doing the right thing (both at the time and now) and he replied that he did. One specific example would be him stating: "Yes. I am certain. What I had to do was absolutely necessary. God was compelling me to do it". I asked him if there was any other possible explanations for his behaviour. Mr Skibicki contemplated this for a while and he replied that he acknowledged that his solicitors have mentioned the possibility of a mental illness; however, he did not agree with this and did not / still does not believe that he had / has a mental illness. As another example regarding another victim, I once again asked Mr Skibicki whether he thought he was doing the right thing, both at that time and

> now. He replied: "I was absolutely doing the right thing. It was a mission from God. I am very clear on this".

[247] The essence of Dr. Das's opinion on the question of criminal responsibility is set out in paragraphs 206-207:

> [206] To summarise, in my opinion, on the balance of probabilities, in his delusional state (i.e. suffering from overt psychotic symptoms in relation to schizophrenia), Mr Skibicki believed that he had a moral obligation to end the lives of each of his four victims, to save them; i.e. to prevent them from going to hell and instead allowing / helping them to go to heaven. He also appeared to be fully invested in the belief that he had to fulfil this as part of his mission to God.
>
> [207] **Having taken all of the above into consideration, in my view, on the balance of probabilities, Mr Skibicki is open to the defence of a lack of criminal responsibility in Canadian law, as regards to all 4 homicides**.
>
> [Emphasis in original]

[248] For his part, Dr. Chaimowitz similarly outlined the essence of his assessment and opinion in his report marked as Exhibit 49. Dr. Chaimowitz took considerable care to not only assess the accused as he was required to do, but also, to challenge and verify much of what the accused himself asserted in respect of his alleged mental disorder. To do that, Dr. Chaimowitz addressed much of what it appeared that Dr. Das ignored or deemphasized in terms of his assessment. In so doing and in coming to his own independent conclusions following his assessment, Dr. Chaimowitz addressed and negated not only the ultimate conclusions of Dr. Das, but much of the foundational evidence upon which those conclusions were based.

[249] At page 81 of his report, Dr. Chaimowitz addresses many of the accused's past visits to medical facilities and the origins of the term schizophrenia as it appeared on his medical charts:

> Mr. Skibicki's multiple and extensive drug use brought him into contact with paramedics and emergency services multiple times over the years. Despite his anxious or odd presentations, the multiple occurrences did not lead to a psychiatric admission or psychotic disorder diagnosis. He reported various diagnoses himself, diagnoses that were often replicated on the face sheets when seen. He was usually let go within a few hours or perhaps a day after being seen. No formal diagnosis of a psychotic disorder was made. No clear psychiatric referrals were made, and no treatment of a psychotic disorder was provided. There was nothing at all to suggest he may have Schizophrenia besides his self-report. Mr. Skibicki has had a few psychiatric assessments over the years, but no primary psychotic disorder was ever diagnosed.

[250] At page 82 of his report, Dr. Chaimowitz addressed what he identifies as the sexual and racial motives for the accused's actions on the dates in question:

> Mr. Skibicki began developing an arousal for dead bodies, likely at a fairly early age. This manifested in his preference for having sex with women who were unconscious or asleep and the need for dominance. There were several encounters or statements he is reported to having made that foreshadowed his ultimate offences. His fascination and arousal to dominance and the process of suffocation along with sex with unconscious or asleep females continued to evolve and grow.
>
> . . .
>
> In addition, there were multiple reports from witnesses and Mr. Skibicki's online activity that point to a political perspective that could be considered as alt-right or white supremacist. Conspiracy theories abound in some of what he believed and acted out online. This paradoxically meant that despite the fact that he had sex with a number of Indigenous women (his victims), he had a disdain for populations or ethnic groups that he would consider as "not white".

[251] At pages 82 and 83 of his report, Dr. Chaimowitz provides an important summary of the accused's alleged history of mental disorder. In that summary, Dr. Chaimowitz clearly explains why he has concluded there is nothing at all in any

of the information that he has reviewed that suggests that the accused has a major mental disorder such as schizophrenia:

> ***History of Mental Disorder***
>
> Mr. Skibicki has had many contacts with various emergency services. Diagnoses listed appear to be either self-report or self-report replicated on the face sheet of the agencies contact forms. The few psychiatric assessments he has had make for minor diagnoses, note his substance abuse and his personality difficulties.
>
> Though Mr. Skibicki's file mentions **Schizophrenia**, there is nothing at all in any of the information that I have reviewed to suggest that he has a major mental disorder such as Schizophrenia.
>
> Schizophrenia is a major mental disorder that requires the presence of two or more of the following, each present for a significant portion of time during a one month. At least one of these must be delusions, hallucinations or disorganized speech in addition to grossly disorganized or catatonic behavior or so-called negative symptoms need to be present. For a significant portion of time since the onset of the symptoms, the persons level of functioning in one or more areas, such as work, interpersonal relations come out or self-care, is markedly below the level achieved prior to the onset. Continuous signs of disturbance need to be present for at least six months. That six-month period must include at least one month of symptoms that meet active phase symptoms. The disturbance must not be attributable to the physiological effects of a substance such as drugs of abuse or medication or another medical condition.
>
> The brief, unusual, odd behaviour that he had experienced that led him to be brought to hospital either dissipated quickly, sufficient that he was discharged home within an hour or a day and no specific treatment was provided. They were transient and in keeping with substance abuse.
>
> Mr. Skibicki has never been diagnosed with a primary psychotic disorder. In fact, up until sometime after Mr. Skibicki's arrest, there is no suggestion of hallucinations beyond brief drug use, no significant delusions, or any of the other hallmark symptoms of Schizophrenia.
>
> All of the symptoms or descriptions of significant hallucinations and/or delusions had appeared post-arrest. In my view, there was nothing to suggest that Mr. Skibicki has a major mental disorder such as Schizophrenia. He does have some characterological difficulties, and at best one can describe him as someone with a significant maladaptive personality structure with a number of antisocial and possibly borderline disorder type features. He has never really received psychiatric treatment to any extent throughout the years. He was briefly prescribed a low dose antipsychotic for non-psychotic related symptoms.

> Notwithstanding the multiple contacts with the health care system over the decades prior to Mr. Skibicki's arrest, and even now in jail, this man has not received the basic treatment for psychotic disorders such as Schizophrenia. That, in my view, talks loudly to the absence of this diagnosis.
>
> What Mr. Skibicki has said to Dr. Das and then to me, is that he experienced some unusual beliefs throughout his life and around the time of the offences to suggest that he was compelled to do what he did as this was God's work.
>
> I give this almost no weight towards a Schizophrenia diagnosis. Notwithstanding multiple contacts over the years and opportunities for Mr. Skibicki to be diagnosed with primary psychotic disorder, there was no indication of this historically. In addition, nothing emerged in the detention centre or in the lengthy interview with police after his arrest to suggest that he was driven to do what he did through auditory hallucinations or delusions. His description of psychotic symptoms stretches credulity but is understandable in the convenience of the timing of its expression i.e., after his detention.
>
> [Emphasis added]

[252] Dr. Chaimowitz goes further at page 84 addressing what the accused suggested was his supposed borderline personality disorder and post-traumatic stress disorder.

> There is nothing in his medical records to support a diagnosis of **Borderline Personality Disorder** or **Post Traumatic Stress Disorder**. By this, no medical or psychiatric assessment has identified the symptoms of these disorders in Mr. Skibicki.
>
> [Emphasis in original]

[253] Dr. Chaimowitz also addresses at page 84, paraphilia, necrophilia and homicidal necrophilia and how his assessment of the accused has led Dr. Chaimowitz to identify these relevant and applicable diagnoses to the accused.

> **Paraphilic Disorder — Other — Necrophilia**. Paraphilic disorders are disorders that are present for a period of over six months. They denote recurrent and contain intense sexual arousal other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physiologically mature, consenting human partners. They may come from fantasies or enactment of sex with the dead. On the more severe end of the spectrum is homicidal necrophilia, which is arousal attached to having sex with people that the individual has killed. The individual has acted on these sexual urges, or the sexual urges or fantasies cause clinically significant distress or impairment in social[,] occupational and other

> important areas of functioning. The individual [in] this case would be 18 years or more.
>
> Mr. Skibicki also has a longstanding interest in arousal attached to women he has dominated, who are either unconscious or dead that has preceded the murders by a number of years. This can in part be understood in terms of his early life experiences. His developing sexual interest in dead bodies and his arousal by suffocating women and hav[ing] sex with sleeping or unconscious women continued to evolve over the years. His behavior, which includes arousal by thoughts of or the dead, and the ability to have sex with the dead multiple times as he did on these four occasions, would qualify him for a Paraphilic Disorder-Other, specifically Necrophilia. In my view … his Homicidal Necrophilia subtype is the predominant diagnosis and is the most responsible and compelling diagnosis to explain his criminal behaviour.
>
> [Emphasis added]

[254] At pages 85 and 86 of Dr. Chaimowitz's report, he specifically addresses his assessment of criminal responsibility as it relates to the accused. He provides in that segment of his report, his clear and unconditional opinion:

> **Assessment of Criminal Responsibility**
>
> Mr. Skibicki's statements to police were clear and cogent, consistent with the motive inherent in his communications pre-offence and at times, post-offence. This appeared to be a semi-planned organized set of murders that had both racial enmity and a necrophiliac drive to it. That Mr. Skibicki is soft-spoken, outwardly gentle, and thoughtful are features that can disarm potential victims.
>
> It is only sometime after his arrest that Mr. Skibicki began speaking of messages from God, along with what could have been construed as auditory and visual hallucinations as well as grandiose delusions.
>
> Mr. Skibicki suggests that he was compelled to do what he did. In other words, he felt that even though he knew this was legally wrong, he felt morally compelled because this was "God's compulsion" and that somehow, he was assisting these women in going to heaven.
>
> In my view, the likelihood that this was in fact a function of a psychosis is extremely low, even if these thoughts were present (which I think is highly unlikely).
>
> Clearly, Mr. Skibicki has a motivation for a Not Criminally Responsible verdict, given the gravity and horror of his acts. According to Mr. Skibicki, the so-called psychotic symptoms he describes in exquisite detail go back decades and include delusional type activity, delusion like beliefs, hallucinations, as well as some odd symptoms.

> Notwithstanding a plethora of symptoms Mr. Skibicki describes going back decades, none of the multiple social service or health care providers he saw, ever reported symptoms consistent with or made a primary psychotic disorder diagnosis such as Schizophrenia or Schizoaffective Disorder. In fact, no one assessing him, even in custody where he was seen multiple times, has diagnosed or even treated him for Schizophrenia.
>
> That these symptoms, some of which do not correlate with genuine psychotic symptoms, would go undetected for years stretches the imagination. In my view, the things he describes are not indicative or even suggestive of schizophrenia.
>
> In my opinion, the weight of all the mental health and other contacts, his own statements, in digital print or his other pre-offence actions and behaviours all point to a conspiracy laden, racist man with significant personality problems and addictions, along with homicidal necrophilia, who committed a series of racially motivated murders and necrophiliac acts.
>
> In my opinion and in sum, in my view, there is no suggestion that this man would qualify for a defence of section 16(1) of the Criminal Code of Canada. He did not have an active mental disorder that was active at the time of the offences. He does have a relatively rare but powerful Paraphilic Disorder - Necrophilia, homicidal subtype, that was most likely the driving force behind his offending.
>
> **Opinions and Recommendations**
>
> Mr. Skibicki has been charged with four counts of First-Degree Murder. He, in my view, does not have a major psychiatric disorder associated with psychosis. He does meet psychiatric diagnoses with Substance Use Disorder - alcohol and illicit substances, and gambling. He also has an Antisocial Personality Disorder. Most importantly, he has a Paraphilia, specifically Necrophilia, homicidal subtype.
>
> With respect to all four charges, in my view, Mr. Skibicki did not have a major mental disorder that was active at the time of the offences to allow for a section 16(1) defence, specifically a defence of mental disorder. In any event Mr. Skibicki did appreciate the nature and quality of his actions and, in my view, would have known that they were wrong from a legal and a moral perspective. He did not have a mental disorder impacting his ability to appreciate that what he was doing was wrong or knowing that they were wrong.
>
> [Emphasis added]

[255] I have considered as I must, the totality of the evidence as presented at this trial as it relates to the issue of NCR and specifically, the initial determination that I must make as to whether the accused suffered from a mental disorder at the time of the killings. Part of that evidence is obviously the evidence of the two

experts, Dr. Das and Dr. Chaimowitz, and the evidence they considered or inadequately considered.

[256] For the reasons that follow, I have concluded that the accused has not demonstrated that it is more likely than not that he was suffering from a mental disorder at the time he committed the killings.

[257] As I will explain, I will be affording comparatively little weight to the evidence of Dr. Das. Although I have concerns about his professionalism as earlier expressed, those concerns were not by themselves determinative in my assessment of his evidence. While the absence of professionalism as I described it, raises some questions about his reliability, credibility, and objectivity, I am more concerned about his relatively limited experience and reduced familiarity with the issue of NCR in the context of Canadian criminal law. I also have, as I will explain, significant concerns about certain foundational deficiencies in respect of Dr. Das's analysis and conclusions. No less problematic for the opinion and conclusions of Dr. Das is the fact that I have rejected (as fabrications) a significant portion of the foundational evidence upon which his opinion rests: the assertions of the accused that he heard voices and believed at that time of the killings that he was compelled by God to act.

[258] As I will explain below, I found the evidence of Dr. Chaimowitz, when considered with the totality of all of the other evidence presented at trial, reliable, credible and extremely persuasive. The depth and scope of his professional

experience, the rigour and completeness of his analysis and his unfailing objectivity and candour while testifying, caused me to see his opinion evidence as not only extremely helpful, but as I indicated, convincing and persuasive. Indeed, when I consider the conflicting evidence of Dr. Chaimowitz and Dr. Das on this critical and essential element that the Crown must establish (that the accused committed the *actus reus* by committing a "voluntary" act), I have no difficulty concluding that the evidence, opinion, and conclusions of Dr. Chaimowitz persuade me beyond a reasonable doubt of the correctness of his opinion and conclusions. In other words, the accused did not have a mental disorder such as schizophrenia that was active at the time of the four killings. Moreover, not only did the accused appreciate the nature and quality of his actions, in my view, based upon the opinion of Dr. Chaimowitz and the totality of the evidence — including much of the after-the-fact evidence and his videotaped statement to the police — he would have known that those killings were wrong not only from a legal perspective, but also from a moral perspective. Simply put, he did not have a mental disorder impacting his ability to appreciate that what he was doing was morally wrong.

[259] When I assess the opinions of the two experts, I have attempted to remain mindful of certain guiding and relevant principles.

[260] An expert's function is "to provide the judge and jury with a ready-made inference which the judge and jury, due to the technical nature of the facts, [were perhaps] unable to formulate" (***Abbey***, at 42). The opinion of psychiatrists "more

often than not will be based on second-hand evidence" (***Abbey***, at 42). That second-hand evidence (hearsay) is admissible to show the information on which the expert opinion is based, not as evidence of the existence of the facts on which the opinion is based (***R. v. Lavallee***, [1990] 1 S.C.R. 852, at 893). Where the psychiatric evidence is composed of hearsay evidence, the challenge will be the weight to be attributed to the opinion (***Lavallee***, at 893). Obviously, "before any weight can be given to an expert's opinion, the facts upon which the opinion is based must be found to exist" (***Lavallee***, at 893; ***Abbey***, at 46).

[261] In assessing the evidence of an expert, the trier of fact should also consider the totality of the evidence. Some of that evidence may include reference to similar act evidence. In that regard, the Ontario Court of Appeal noted as follows in ***R. v. Brissard***, 2017 ONCA 891, at paragraphs 17-18. (See also paragraphs 19-25, and 28).

> [17] … a specific inclination to do the very act charged in relation to a particular victim. Evidence of a mental state, or motive, may be relevant to prove the accused did the act constituting the offence or it may be relevant to prove his or her intention or other mental state.
>
> [18] As this court explained in *R. v. Jackson* (1980), 1980 CanLII 2945 (ON CA), 57 C.C.C. (2d) 154 at 167 (Ont. C.A.), [1980] O.J. No. 1468, at para. 37, evidence of motive may include evidence of relevant emotions or desires:
>
> > Motive, in the sense of an emotion or feeling such as anger, fear, jealousy and desire, which are likely to lead to the doing of an act, is a relevant circumstance to prove the doing of an act as well as the intent with which an act is done. The relevant emotion may be evidenced by
> >
> > (a) conduct or utterances expressing the emotion,
> >
> > (b) external circumstances which have probative value to show the probable excitement of the relevant emotion, and

> (c) by its prior or subsequent existence (if sufficiently proximate): see Wigmore On Evidence, 3rd ed., Vol. I, pp. 557-61; Vol. II, pp. 328-29.
>
> [Emphasis in original]

[262] In considering the totality of the evidence, the assessment of an expert's opinion may also include after-the-fact conduct where it may have "some bearing on whether the accused was capable of appreciating that what he had done was wrong" (***R. v. Jacquard***, [1997] 1 S.C.R. 314, at paragraphs 50-51; ***R. v. Obeing***, 2023 MBKB 48, at paragraph 92).

[263] When I examine the evidence of Dr. Das, I note that he is a forensic psychiatrist from the United Kingdom. He has been practicing since 2014 and carries out psychiatric assessments and report writing in civil and criminal cases. This was his first time testifying in Canada and by necessity, there was as it relates to his status, a consequent and comparative inexperience in relation to the NCR issue as it manifests in the Canadian criminal justice system.

[264] In addition to his relative inexperience, I will repeat my concerns about his reliability and professionalism given what the Crown was right to call "his highly alarming and unprofessional presence on the Internet".

[265] More fatal to his evidence however, was the fact that his opinion was based upon a flawed or weak foundation. I am in agreement with the Crown when it argues that much of Dr. Das's opinion as to the existence of a mental disorder, relies almost exclusively on self-reporting by the accused. Much of that

self-reporting involved the accused's own assertions to Dr. Das (and Dr. Chaimowitz) where he described voices and explained how he was driven by delusions and the belief that he was compelled by God to act. That "new version" as it was characterized by the Crown has never been tested for its veracity and it is in my view, contradicted by the other evidence that was presented at trial. Dr. Chaimowitz himself explained why he disbelieved the assertions from the accused about voices and delusions. Dr. Chaimowitz found those assertions made by the accused to be fabrications.

[266] Dr. Chaimowitz testified that the accused began to describe experiences of grandiose delusions only following his arrest, and specifically, months after his initial video statement to the police where nothing credible and clear was stated about his hearing voices or suffering from delusions. Additionally, Dr. Chaimowitz pointed out that despite the accused having stated that he experienced these symptoms for decades, no health care or social service professional ever reported symptoms consistent with schizophrenia (or made any such primary psychotic disorder diagnosis). No less significant, is the fact that the accused appears to have never, since his arrest, sought treatment for schizophrenia while in custody awaiting trial. I accept, agree with and completely endorse Dr. Chaimowitz's reasons for rejecting the accused's assertions about his having heard voices and having experienced delusions. To the extent that Dr. Das's opinion is based upon those assertions (which they clearly are), Dr. Das's opinion is flawed. As

Dr. Chaimowitz more convincingly asserted, in the circumstances, taking into consideration the accused's medical history and experiences with both social services and the criminal justice system, it is "unlikely" that the accused's illness (if it was schizophrenia) would have gone undetected for decades.

[267] Dr. Das's opinion also seems to be based on what is a flawed premise respecting an already existent condition of schizophrenia. As the Crown persuasively argued, Dr. Das's involvement in this case began with an erroneous indication to him, by the accused's counsel, in an initial contact letter or background document. It seemed to suggest or imply that the accused had an untreated diagnosis of chronic schizophrenia (which I have determined is not accurate). Again, I agree with the Crown that this resulted in a skewed review of the medical records leading to Dr. Das's belief that the accused has schizophrenia. During his testimony at trial, Dr. Das was finally required to concede that there was no clear diagnosis of schizophrenia anywhere in the medical records.

[268] Adding to what I find was the flawed reasoning and method of Dr. Das was his failure to objectively consider the totality of the evidence and other possibilities respecting diagnosis. Such a consideration of the totality of the evidence and other possibilities is indeed part of what a psychiatrist must do in conducting the type of assessment that was required in the present case. As an example, Dr. Das's report never considered paraphilias notwithstanding his agreement in his testimony that where there is evidence of such a paraphilia or of

deviant sexual preferences, a forensic psychiatrist has a duty to explore that issue as an alternative possibility and/or motive for a person's action. In that connection, I note that Dr. Das was reluctant in his testimony to agree that he did not consider paraphilias in his report. Instead, he said that although never explicitly writing about paraphilia in his report, he had in fact ruled it out because he believed the accused was psychotic at the time of the killings. He acknowledged that there was relevant evidence of paraphilic behaviour by the accused, but he then noted that the accused's actions cannot be both psychosis and necrophilia. The Crown properly challenged Dr. Das's apparent view that psychotic beliefs can be based on other beliefs including past paraphilia which can translate into psychosis. However confusing is Dr. Das's opinion on this point, the Crown is right to note that his apparent failure to more critically consider paraphilias, explains his apparent fixation on a diagnosis of schizophrenia.

[269] Also part of the psychiatrist's task in conducting the type of assessment that was done in this case, particularly where the expert opinion and conclusions may be based upon what it is that the accused is now telling the psychiatrists about any alleged mental disorders, is to explore the possibility of, and guard against, any malingering or fabricating by an accused person. Despite Dr. Das's view that the accused was not malingering or fabricating in respect of what it was that he told Dr. Das many months after his initial confession to the police (where voices and delusions were not initially mentioned), I am of the view that Dr. Das

did not consider, or adequately consider (or deemphasized) other evidence about which he would have been aware and which should have impacted his assessment as to whether or not the accused was malingering.

[270] There was evidence that should have given rise to concerns about the veracity of the accused's subsequent assertions about voices and/or delusions. Some of the evidence that was not considered, inadequately considered, or perhaps deemphasized by Dr. Das, was the following:

- the accused's lengthy, clear and cogent police statement;
- the accused's after-the-fact conduct including the fact that he was sexually aroused such that he was capable of repeatedly having intercourse with the bodies of each victim;
- the accused's disposal of the bodies;
- the accused's computer searches relating to such topics as garbage day, DNA, fingerprints and missing Indigenous women;
- the accused's admission to Erin Leszkovics on May 9, 2022 (after killing Buffalo Woman, Morgan Harris, and Marcedes Myran) that "I could be doing like 3 life sentences" (Exhibit 31 – Facebook messages with Erin Leszkovics, p. 166);
- the accused's sexually deviant history and predilections apparent in the medical history and about which Erin Leszkovics testified and about which the accused also spoke in his videotaped statement to

the police;

- the apparent lack of psychiatric interventions such as a referral to a psychiatrist, or an assessment (in the absence of medications) throughout his time in custody since May 17, 2022; and
- the nine letters sent to the female inmate between January and April 2023, which demonstrate a thought process that was well organized, clear, and articulate. As the Crown has properly noted, those letters sent by the accused also include manipulative comments such as "if I get past these legal issues without any of this showing up in the Crown's hands — I will seriously consider getting married to you". Those same letters reference the accused's intention to raise an NCR defence. The letters also talk about exploring "how they take convicted murderers [sic] money they earn from writing books and if it's only autobiography or any kind of book" (Exhibit 41). All of this suggests an awareness, a calculated opportunism and a potential for manipulation that at the very least, ought to have been juxtaposed with and explained vis-à-vis questions about the credibility of the accused's assertions concerning a mental disorder, the voices and delusions.

[271] I agree with the position of the Crown that all of the above evidence raises serious questions about the credibility of the accused's "new version" respecting

the so-called voices and delusions that the accused suggests were present at the time of the four discrete killings. Despite the presence of this evidence and Dr. Das's awareness of it, he never confronted the accused with it. His justification for not having done so with more rigour and clarity was simply that he had concluded that the accused "wasn't faking it".

[272] I contrast the evidence of Dr. Das and all of the foundational and deficiencies it represents in terms of flawed premises and flawed reasoning, with the evidence of Dr. Chaimowitz.

[273] As earlier noted, Dr. Chaimowitz testified as a rebuttal witness after this Court ordered an assessment pursuant to s. 672.12(3)(a) of the ***Criminal Code***. As I have already suggested, I accept the evidence given by Dr. Chaimowitz as persuasive and convincing and on the question of mental disorder and whether the accused knew that his killings were morally wrong, I find his opinion and conclusions correct beyond a reasonable doubt.

[274] I pause for a moment to address what defence counsel raised in cross-examination as two reported decisions where Ontario courts had not accepted the evidence of Dr. Chaimowitz. In this regard, defence counsel seemed to be suggesting that the decisions themselves signal some concern respecting a pattern of opinion or demonstrated bias on the part of Dr. Chaimowitz. I wish to be clear, that having read those decisions, I reject completely the interpretation that suggests that those judicial decisions allege some type of demonstrated bias on

the part of Dr. Chaimowitz. When Dr. Chaimowitz was questioned about those decisions and the fact that his opinion was not accepted in those cases, he explained calmly, candidly, objectively, and professionally, that his role as an expert is to simply provide an opinion based on his experience and the evidence in question, but that ultimately, the decision is for the trier of fact. His answer in this connection, represented and symbolized so much of what was professional, objective, and dispassionate about the fairness and rigour of Dr. Chaimowitz's approach to this case and the evidence (the totality of the evidence) that he was required to examine.

[275] I note that Dr. Chaimowitz's review of the medical history of the accused contained a comparatively more thorough and critical analysis. It was this more thorough critical analysis, which in turn, explained the details of the accused's visits to various medical facilities. Instead of just highlighting or relying on the words written in the reports, he noted in his report, after a full examination of the accused's medical history, that "there is no previous psychiatric diagnosis of schizophrenia or psychotic disorder and no treatment of that disorder" (Dr. Chaimowitz's report, p. 80).

[276] Importantly, the foundation for so much of Dr. Chaimowitz's opinion involved a careful consideration and assessment of all of the evidence that was before this Court. Although the accused reported similar voices to Dr. Chaimowitz as he did to Dr. Das, those assertions by the accused were assessed by

Dr. Chaimowitz more rigorously in light of all of the evidence, including the accused's police statement, his sexually deviant predilections and the other evidence that was before this Court, including evidence of similar act and after-the-fact conduct.

[277] No less importantly, Dr. Chaimowitz directly addressed (as every psychiatrist must in a case like the present) the possibility of malingering. On this critical and foundational point, Dr. Chaimowitz concluded that the symptoms described by the accused were "fabrications". It was his view that those symptoms would not suddenly occur without clear and prior indicia. Given the nature of the crimes, Dr. Chaimowitz believed that the examinations of the accused's sexual interest and preferences were an important and required part of the psychiatric task in terms of the NCR assessment in this case and in terms of assessing the veracity of the accused's assertions. I agree.

[278] In the end, I do accept Dr. Chaimowitz's opinion (and I find it to be correct beyond a reasonable doubt) that the accused's crimes were driven by a "relatively rare but powerful Paraphilic Disorder — Necrophilia, homicidal subtype". Persuasively, he emphasized in his testimony that the accused's actions (having repeated sexual intercourse with the victims' corpses) would have required repeated sexual arousal and that "it would take an extreme stretch of the imagination to think that anyone could find a degree of arousal to do that based on delusions".

[279] For the foregoing reasons, I have concluded that there is insufficient credible and reliable evidence to establish on a balance of probabilities that the accused was suffering from a disease of the mind at the time the offences in question were committed. Instead, I am in agreement with the opinion of Dr. Chaimowitz for the reasons and justifications he has provided, that the evidence supports a finding that the murders were "racially motivated", and the accused killed the victims to fulfill his necrophiliac urge.

[280] I will note that even if I had found that a mental disorder existed at the time of the killings (which I do not) I would have still determined that based on the evidence contained in the accused's confession to the police, the evidence of Dr. Chaimowitz and indeed all of the evidence adduced at the trial (including the evidence of similar act and after-the-fact conduct), the accused has not established that the mental disorder (had I found one) made it more likely than not that he was incapable of knowing that the killings were morally wrong.

[281] As it relates to evidence of the accused's awareness that his killings were morally wrong (as discussed above), I note the accused's obvious attempts to avoid detection as revealed in the manner in which he disposed of the bodies and in the various computer searches he conducted. Some of the other relevant evidence would include the following:

- the accused's indication to the police that he did some "horrible, horrible, horrible, horrible things" (made specifically with reference to Buffalo Woman);
- the accused's indication to the police that "what happens to me [now that he has confessed] it's like it's never going to be enough. Even capital punishment";
- the accused's expressed desire to the police to confess his "sins" to an Orthodox priest; and
- the accused's admission to Erin Leszkovics on May 9, 2022, after he had killed the first three victims, that "I could be doing like 3 life sentences".

[282] The above is just some of the available and relevant evidence reflecting the accused's awareness that his killings were morally wrong. I identify some of that evidence knowing that having found no mental disorder, it is not necessary for me to address this second question on the NCR issue.

[283] To summarize, I have concluded on the first main issue that the accused has not established on a balance of probabilities that he is not criminally responsible by reason of mental disorder (NCR) pursuant to s. 16 of the ***Criminal Code.***

[284] In coming to the determinations I have as it relates to the proposed NCR defence, I have hopefully made very clear my findings as to why the opinion of

Dr. Das deserves comparatively little weight and why the foundational evidence coming from the accused respecting the alleged voices and delusions should be disbelieved.

[285] Having rejected as fabrications the accused's assertions made to the psychiatrists that at the time of the killings he was hearing voices and that he believed that he was acting on a plan from God (such that he did not know that what he was doing was morally wrong), the necessary foundation for his NCR defence is compromised. My determination and the rejection of the proposed NCR defence has followed accordingly.

[286] It is the accused, who bears the burden on an NCR defence of establishing on a balance of probabilities that which must be established pursuant to s. 16(1) of the ***Criminal Code***. In that regard, I repeat, that for the purposes of assessing the assertions made by the accused respecting his mental incapacity at the time of the acts, I share and endorse the assessment and conclusion of Dr. Chaimowitz and the reasons for that assessment and conclusion. That conclusion suggests clearly that when the accused asserts that he heard voices and experienced delusions, he was "malingering" or fabricating.

[287] Having disbelieved and rejected those particular assertions made by the accused to the psychiatrists in the context of my analysis of his NCR defence (where the onus rests on the accused on a balance of probabilities), I will nonetheless briefly return to those assertions in the next section of my analysis

where I discuss the particular constituent essential elements of the first degree murder counts (for example, when discussing the requisite mental element for murder). Respecting those counts and those constituent essential elements, the onus rests with the Crown and the standard is one of proof beyond a reasonable doubt. In that context, pursuant to the safeguards set out in ***R. v. W.(D.)***, [1991] 1 S.C.R. 742 for assessing any evidence coming from the accused that might constitute relevant defence evidence on a vital issue, I will — despite my disbelief of the accused's assertions respecting the voices and delusions — examine whether that, or any of the other evidence, might still raise a reasonable doubt respecting any essential element that the Crown must prove beyond a reasonable doubt. Irrespective of whether a reasonable doubt arises on that basis or any other basis, I will still be required to determine on all of the evidence, whether the Crown has proved beyond a reasonable doubt all essential elements for first degree murder.

[288] Before beginning my analysis of the constituent elements of the first degree murder counts, I address below the unique challenges of applying ***W.(D.)*** in a case such as this one.

B. <u>The Application of W.(D.)</u>

[289] The accused did not testify in this case, although he did as noted, provide a lengthy video statement to the police. There is also as I earlier explained, evidence of his Facebook messages and conversations with his ex-wife,

Erin Leszkovics, just as there are as well, the letters he wrote and sent to the female inmate in Nova Scotia. There is in addition, as I just identified in the previous section in my discussion of the NCR issue, the accused's assertions to the psychiatrists respecting the voices he says he heard and the delusions he says he experienced.

[290] The question of if and how the safeguards set out in the now well-known ***W.(D.)*** instruction are applied, arises not just when an accused testifies at trial, but also where an accused's statement, comments and/or writings are part of the evidentiary record. Typically, the ***W.(D.)*** instruction had been most applicable and useful in two witness cases where conflicting versions were pitted against each other and where the trier of fact was required to avoid choosing between versions and/or falling into error by unconsciously shifting the burden of proof from the Crown to the accused.

[291] 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.

[292] As mentioned, the above instruction is no longer limited to cases in which the accused testifies and where if believed, the evidence would warrant an acquittal. Subsequent jurisprudence has extended the ***W.(D.)*** instruction well beyond cases in which an accused's testimony is pitted against the contradictory testimony of another witness or witnesses called by the Crown. The Honourable David Watt has noted in *Watt's Manual of Criminal Jury Instructions, 2023* (Toronto: Thompson Reuters, 2023), that the instruction now applies equally where an exculpatory version arises because a statement of an accused is entered as part of the Crown's case or from comments, utterances, or writings of the accused arising from evidence elicited from witnesses called by the Crown. It is said that the ***W.(D.)*** instruction should now be given in any case where, on a vital

issue, credibility findings are required between conflicting evidence adduced by the accused or evidence favourable to the accused arising out of the Crown's case.

[293] Notwithstanding the above, lower courts have been repeatedly told that the language of ***W.(D.)*** is not a formula to be slavishly applied. Instead, what is important is that the trier of fact remain mindful that the principle of reasonable doubt applies to credibility, and that the Crown bears the burden of proof. That burden is nothing less than proof "beyond a reasonable doubt". What must also be remembered is that the trier of fact is not required to make a mere choice between competing versions where competing versions exist. Neither is it necessary for a trier of fact to believe the defence on a vital issue such as an essential element. It is enough that in the context of all of the evidence (where the burden rests with the Crown), that any evidence, conflicting or otherwise, leaves the trier of fact with a reasonable doubt about the accused's guilt.

[294] In the present case, given its unique features, a simple application of the instruction of ***W.(D.)*** is not without complication. The accused has admitted to unlawfully causing the death of all four victims. Having raised the NCR defence, it was the accused who bore the burden on a balance of probabilities as it relates to that issue. Further, there is nothing in his statement, his assertions, his messages, and/or writings on the record before me, that otherwise provides evidence, which if believed, would warrant an acquittal. That said, there are critical issues that remain. They include matters that could touch the issue of the

accused's state of mind (intent), and other issues relating to the essential elements the Crown must prove beyond a reasonable doubt in order to convict the accused of first degree murder.

[295] With that in mind, I must and will (whether or not it is always expressly stated in my analysis) when addressing each and every essential element that the Crown must prove beyond a reasonable doubt (whether it be for planned and deliberate or constructive first degree murder), carefully consider any and all of the out of court statements, messages, writings or assertions of the accused that are part of the evidentiary record. I must consider that evidence along with all of the other evidence, even if I do not believe some of what the accused has said, messaged, written or otherwise asserted. In other words, I must consider all of the accused's video statement to the police, his Facebook messages, his letters and assertions to the psychiatrists that might help or be favourable to the accused's position. Irrespective of whether I disbelieve some of what the accused has said, I must and will still consider whether anything he has said, messaged or written, raises a reasonable doubt about any remaining essential element the Crown must prove with respect to the four counts of first degree murder. Even if the statement, messages, letters and/or assertions to the psychiatrists do not raise a reasonable doubt about an essential element of the four first degree murder charges, I will also consider the statements, messages, and/or letters when I consider whether, on all the evidence, the Crown has established beyond a

reasonable doubt all of the essential elements on the four counts of first degree murder.

[296] Before proceeding to the next section of my analysis where I address the constituent essential elements of first degree murder, I wish to be clear about, and will repeat, my earlier assessments and findings respecting those statements, messages, writings and assertions made by the accused that are part of the evidentiary record. Those assessments and findings are made consistent with my role as a finder of fact by which I can accept some, none or all of what a witness or an accused has said. With those findings set out, I will remain mindful of and address the safeguarding principles that underly the ***W.(D.)*** instruction when I discuss each of the essential elements of first degree murder that the Crown must prove beyond a reasonable doubt.

[297] As it relates to the accused's videotaped statement to the police made on May 17, 2022, I have already noted that I find his confession to the police (and his account of the surrounding details before and after each killing) to be more or less accurate and true. I have come to that conclusion based on my careful review and observations of all of the evidence, including the evidence of the interviewing police officers and the other significant Crown evidence (forensic and otherwise) that supports and corroborates many of the details that the accused mentions during his confession. I will review some of that supporting, confirming and

corroborative evidence when I address in the next section, what it is that the accused said about each killing.

[298] Concerning the identified Facebook messages that were tendered into evidence, I accept that those messages came from the accused, and I accept them as being, on their face, representative of what the accused was saying at the time of those messaging conversations.

[299] Concerning the letters he wrote to the female inmate between January 4, 2023 and April 27, 2023 (Exhibits 39–47), I accept that those letters were written by the accused and that they too, however manipulative some of those became, were representative of what the accused was saying at the time of that correspondence.

[300] Finally, as it relates to what I note were the accused's assertions made to the psychiatrists wherein he asserts what the Crown characterizes as his "new version" of the killings (invoking the presence of accompanying voices and delusions), I find those assertions to be false. For the reasons I have already explained, I do not believe the accused as it relates to those assertions, and I find them to be fabrications.

[301] With the above findings and assessments having been made, I now turn to my analysis of the four counts of first degree murder.

C. Has the Crown proved beyond a reasonable doubt that the accused is guilty of first degree murder?

[302] In this section, I intend to specifically address the remaining questions set out at paragraph 68 of this judgment, which focus on the essential constituent elements that the Crown must establish beyond a reasonable doubt for the offence of first degree murder. I will do so mindful that the accused has already admitted that he unlawfully caused the death of each victim and that I have now concluded (given my determination on the NCR issue) that the unlawful acts were in fact and in law, "voluntary". The specific questions that I will address correspond to the identified essential elements in respect of both paths that the Crown submits can be taken in the present case for establishing first degree murder: first degree murder by planning and deliberation and/or constructive first degree murder. The specific questions concern the essential elements that relate to state of mind, planning and deliberation, and alternatively, the underlying offences (for the constructive first degree murder theory) of sexual assault and forcible confinement and the question of whether those offences were in fact committed as part of the same series of events as the killings.

[303] Just prior to my analysis of the relevant questions concerning the four counts of first degree murder, I will address below as earlier promised, why I am satisfied that the accused's statement to the police can to a large extent be relied upon as truthful and accurate.

1) The reliability and truth of the accused's videotaped statement to the police

[304] The Crown's case against the accused depends significantly on the evidence that the accused himself provided in his police videotaped statement/confession. I have obviously already considered that police video statement (along with all of the other evidence) as it relates to the NCR issue just as I will have considered it (along with all the other evidence) as it relates to the charge of first degree murder. While much of that confession can be seen as supported, confirmed, or substantiated in both specific evidence and on the totality of the evidence that was adduced at trial, it is important that I briefly but transparently address why it is that I accept as true and accurate what it is that the accused has confessed as having done in respect of each of the four victims and killings. Accordingly, for convenience and easy reference, prior to specifically addressing the essential elements that the Crown must prove in respect of each of the four counts (on either of its two theories for first degree murder), I will briefly summarize what it is that the accused has stated or confessed respecting the killing of each of the four victims. I will then address why it is I find that those admissions to be reliable and why they may be seen as supported, confirmed, or corroborated in terms of other specific evidence or on the totality of the evidence.

The Killing of Buffalo Woman

[305] In his video police statement, the accused described how he killed Buffalo Woman. He also detailed his actions after the murder, including that he "fucked her corpse after" and did "horrible, horrible, horrible, horrible things" (Exhibit 5 PDF, p. 222).

[306] The accused went on to explain to the police that he disposed of Buffalo Woman's body by putting her in a garbage bin and rolling her to the end of McKay Avenue. He had wrapped her in a thick contractor bag. While he threw out most of her belongings, he sold her Baby Phat jacket on Facebook Marketplace.

[307] Important portions of the accused's confession respecting his involvement with Buffalo Woman can be seen to be supported, confirmed, or corroborated.

[308] On the evening of March 14, 2022, the accused planned a bus trip to 190 Disraeli from 259 McKay Avenue at 18:39:48 (Exhibit 22, the Buffalo Woman timeline). Between that time and morning of March 15, 2022, there was almost no computer activity until the accused searched "garbage day Winnipeg" at 8:59:57. It was during the morning of March 15 that the accused conducted research regarding DNA such as "when can they take your DNA", and whether washing clothes removes DNA. He also conducted searches about fingerprints (Exhibit 32).

[309] The above computer searches and bus trips correspond with the varied admissions that the accused made and support his account to the police. I note

that in his statement he observed that he kept and then sold the jacket of Buffalo Woman on Facebook. This is confirmed and/or established from his own computer searches and from the individual who bought the jacket.

[310] Although there is no video of the accused disposing of Buffalo Woman's remains, his explanation of how he did so is consistent with the video of him doing the same things with the next three victims.

The Killing of Morgan Harris

[311] Similar to the description of how and why he killed Buffalo Woman, there is accompanying supporting evidence elsewhere in the evidence that suggests that his confession respecting Morgan Harris can be relied upon as true. In that regard, I note that the accused stated the following during his confession to the police:

- the accused explained to the police that he met Morgan Harris a long time ago (Exhibit 5 PDF, pp. 230-231);
- the accused described seeing Morgan Harris at two shelters — 190 Disraeli and Siloam Mission and made reference to her having been "barred" from a shelter. He talked to her and asked her if she wanted to come and "chill" (Exhibit 5 PDF, p. 232). She did go with him, and the accused stated in his videotaped statement that "I knew what I was doing, man" (Exhibit 5 PDF, p. 233);
- he filled his bathtub before killing her (Exhibit 5 PDF, p. 233);

- he permitted Ms Morgan to go out for a smoke because he was "thinking, like fuck, this is going to be her last smoke so I let her enjoy that". He put her in a headlock, she collapsed with her head in the tub. As the accused commented to the police, "she fought, but [it] didn't work out for her" (Exhibit 5 PDF, p. 233); and
- he explained to the police that following the killing, he defiled the body of Morgan Harris multiple times until the smell was too much after which he disposed of her body behind the Midas. He did so by wrapping Morgan Harris's body in various garbage bags from Dollarama. He kept her ring (Exhibit 5 PDF, pp. 234, 239, 262, and 319).

[312] All of the above facts as admitted in his video police statement, were subsequently supported with what the Crown justifiably calls objective and observable evidence. In other words, what the accused told the police was true. He was in fact seen on the video with Ms Harris at 190 Disraeli. Her clothing was found in his suite and in the bin behind his suite. Her ring was also found in his suite, along with her DNA. No less significant is the timeline of computer evidence and surveillance footage. When consideration is given to the accused's admissions, one notes that after Ms Harris went missing, she was never seen again. During the night of her murder, the accused searched on his computer how

long it takes for water to come back on. He then searched for information on garbage collection (Exhibit 33).

[313] I also note the video evidence of the accused disposing of Ms Harris's remains exactly where he told the police that disposal took place (Exhibit 33).

The Killing of Marcedes Myran

[314] In his video statement to the police, the accused talked about the third victim, but did not know her name. She turned out to be Marcedes Myran. In respect of this killing, once again, much of what the accused explained in his statement to the police was also confirmed in the evidence adduced at trial.

[315] The accused explained that he met Marcedes Myran in a back lane between The Salvation Army and Siloam Mission (Exhibit 5 PDF, p. 236). She was wearing a red cap, baggy clothes, bracelets, and necklaces. Her jewellery was left in his apartment (Exhibit 5 PDF, pp. 239, 305 and 319).

[316] The accused asked Ms Myran, "do you have a place? Do you want to come, you know, come with me?" (Exhibit 5 PDF, p. 241). At his place, the accused says he was having consensual sex with Ms Myran when she did not let him finish. The accused says that he started "to get like, a little bit rough with her". She apparently fought back which he did not like (Exhibit 5 PDF, pp. 242-243). He then described how the killing took place.

[317] Before killing her, the accused tried to calm her down, but she kept fighting. The accused was also fearful that she was going to leave. In describing

his thought process, he noted, "this is a liability because I already killed some people before … I'm not going to go down for this" (Exhibit 5 PDF, p. 244). He put her in a headlock, brought her to the ground and was on top of her strangling her from the front. He strangled her "until she was like skull and crossbones dead" (Exhibit 5 PDF, pp. 245, 247). The accused explained to the police that "he feel[s] a little more guilt" for killing Marcedes (Exhibit 5 PDF, p. 247).

[318] Significantly, the accused had, as he had in all of the other four killings, filled the bathtub before the killing of Marcedes Myran took place (Exhibit 5 PDF, p. 247). The accused then explained to the police that he used a combat knife to dismember Ms Myran's deceased body. He then placed her in multiple garbage and Dollarama bags.

[319] As with the other killings that the accused described, there is again, objective and observable evidence that suggests that what the accused confessed to the police was true.

[320] The computer searches are consistent with the actual sequence of events. The video surveillance confirms the disposal of Marcedes Myran's body. The timeline that was adduced into evidence respecting Ms Myran reveals a confirmatory summarized analysis. I note that the accused was seen walking with Ms Myran while she was wearing the very same clothing seized from his suite. I note as well that Ms Myran's DNA was also found in his suite, along with her

jewellery. Further, I note that the morning after the accused killed Ms Myran (the third killing), the accused searched for the "definition of serial killer" (Exhibit 34).

[321] In addition to the above, the details provided by the accused in his confession are markedly similar with respect to each of the two previous murders that the accused had committed and with respect to much of the corroborative evidence found to establish those other murders. I note as the Crown has argued, that the similar act evidence on a count-to-count basis is compelling corroborative evidence of the general *modus operandi* and the sort of similar murder, sexual violation, and disposal of each victim. Moreover, his conduct after each murder demonstrates an awareness and consciousness of culpability that corresponds to and coheres with, what it is that he confessed to the police.

The Killing of Rebecca Contois

[322] As the Crown has argued, by the time the accused killed Rebecca Contois, he had already killed three women and knew he could be doing three life sentences. His computer searches in and around the time of Ms Contois's murder indicate that he knew her personally. He explained that he had met her on a bus, took her to his apartment and that she stayed with the accused for a period of time. It would appear that she even logged into her Facebook account on his computer. She apparently left some time later before eventually returning on the date she was killed.

[323] The accused described to the police how he had added her to his apartment lease. He further explained how on the night in question, while he was trying to have sex with her, Ms Contois told the accused to get off and started fighting him. He explained that his response was to "chok[e] her to death" (Exhibit 5 PDF, p. 256). He told the police that he crushed her throat. She was making noises, so he covered her with a pillow (Exhibit 5 PDF, pp. 314-315).

[324] The accused described dismembering Ms Contois in the bathtub and that he disposed of her torso in a big brown bin near Tony's and Midas. The accused explained how he had fewer bags at this point, so he only used one bag each for the various body parts (Exhibit 5 PDF, p. 262).

[325] As the accused explained, he had paid attention to the garbage day pickup and that "became part of my thought process like by the third time" (Exhibit 5 PDF, p. 260). He explained to the police how he put Ms Contois's watch on. At the time of his arrest, he was wearing that watch.

[326] The accused in his confession to the police admitted that these were racially targeted murders (Exhibit 5 PDF, pp. 264-267).

[327] Once again, the accused's confession regarding the killing of Rebecca Contois can be verified by objective and observable evidence. Unlike the other victims, Ms Contois's remains were in fact discovered. As the Crown emphasized, Ms Contois's DNA evidence was in his suite, and her clothing was also found.

[328] I note as well that the video surveillance and actual witness evidence (from the accused's neighbours) assists in supporting the truth of the accused's account. He was seen on the night in question going in and out of his suite. That was confirmed by a conversation he had with the landlord. He was then seen the next morning getting rid of clothing in autobin "A". The video surveillance also establishes that he did indeed dispose of the remains in different bins. Given the accused's description to the police about how he wrapped Ms Contois, it is significant to note that when Ms Contois's legs and head were found, they were wrapped as described (single wrapped) whereas her torso (later found in the Brady Road Landfill) was wrapped multiple times in blankets and then in a bag.

[329] Importantly, I note that the pathologist, Dr. Rivera, testified that the evidence of injury that he observed was consistent with the explanation provided by the accused that she had been strangled to death.

[330] As it relates to the Contois timeline (Exhibit 36) that summarizes the computer searches of the accused with particular reference to the actions before and after Ms Contois's killing, I note that much of what the police was told by the accused was verified by external evidence.

[331] As it relates to the potential confirming count-to-count similar act evidence, there was again by the accused's own account of what happened with Ms Contois, many significant similarities. The only obvious dissimilarity between the killing of Ms Contois and the other victims was the fact that the accused had

a more regular relationship with Ms. Contois. Still, the similarities themselves with respect to each of the killings, provides substantial support with respect to the reliability and truth concerning much of what it is to which the accused confessed respecting Ms Contois.

[332] To summarize, based on the specific identified evidence and/or the totality of the evidence more generally (including some of the similar act and after-the-fact evidence), I have no difficulty finding that the accused's confession as it relates to the four killings (and the surrounding details) is true and that it can be relied upon (as it already has been to some extent on the NCR issue) for the purposes of my analysis in the next section respecting the essential elements for first degree murder.

[333] Having explained why it is that I have determined that the accused's confession to the police respecting the four killings can be relied upon as more or less accurate and true, I now turn to the remaining questions that I must answer as it relates to the four counts of first degree murder.

2) Did the accused have the requisite state of mind (the intent required) for murder?

[334] To prove that the accused had the intent required for murder, the Crown must prove beyond a reasonable doubt one of two things, either:

1) that the accused meant to cause the victim's death; or

2) 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 the death ensued or not.

[335] In other words, I must decide whether the Crown has proved beyond a reasonable doubt that the accused meant to kill the identified victim in each count, or that the accused meant to cause the identified victim in each count, bodily harm that he knew was so dangerous and serious, that he knew it was likely to kill the victim and proceeded despite his knowledge of that risk.

[336] If the Crown has not established beyond a reasonable doubt on any given count that the accused did have either intent for murder, then the accused has committed manslaughter in respect of that count.

[337] The Crown does not have to prove both of the above. Nor do I have to agree on the same intent with respect to all counts in the indictment so long as one or the other intents has been proved beyond a reasonable doubt when I consider each count.

[338] To determine whether the Crown has proved that the accused had one of the intents required for murder, I must consider all of the evidence, including the nature of the harm inflicted and anything said or done in the circumstances. I may take into account, as a matter of common sense, that a person usually knows what the predictable consequences of his or her actions are and means to bring them about. That said however, I am not required to draw that inference about

the accused. Indeed, I must not do so if, on the whole of the evidence, including evidence of drug consumption (or any evidence of mental incapacity or disorder that in this case has fallen short of the s. 16 ***Criminal Code*** threshold), I have a reasonable doubt about whether the accused had one of the intents required for murder.

[339] In the present case, this Court heard expert testimony from two psychiatrists. I have already provided reasons as to why I have afforded little weight to Dr. Das and instead, I find myself persuaded and convinced by the opinion of Dr. Chaimowitz. I have considered carefully all of the evidence that was adduced in the context of the accused's NCR defence, including obviously, the evidence of both Dr. Das and Dr. Chaimowitz. Also part of that evidence were the assertions by the accused to the psychiatrists about the voices heard and the delusions he experienced. I disbelieved the accused's assertions in that regard and found them to be fabrications. Nonetheless, I will return to those assertions later, in the manner and for the reasons I explained when I discussed the application of ***W.(D.)*** in the unique circumstances of the present case. I wish to be clear, that separate and apart from my earlier and discrete NCR determinations, none of the evidence adduced on the NCR issue causes me to have a reasonable doubt in respect of whether the accused meant to cause any of the four victims' deaths or that the accused meant to cause any of the four victims bodily harm that he knew was likely to cause their deaths and was reckless whether death

ensued or not. Nonetheless, there is still other evidence, including possible evidence of mental incapacity, drug consumption, and anger that may impact my assessment as to whether the accused had the requisite state of mind for murder. After I have considered all of that other relevant evidence that I will discuss below, I will determine whether the Crown has proved beyond a reasonable doubt with respect to each count, that the accused had the requisite mental state (intent) for murder.

Evidence of Mental Incapacity or Disorder

[340] In addition to the evidence regarding the NCR defence (which did include the accused's video police statement), I have also specifically considered those portions of the accused's video police statement where he speaks more generally and in a bizarre manner about God. Again, I do so for the purposes of determining whether any of those portions of the accused's statement impact my analysis as to whether the accused's actions at the time of the killings were connected to a state of mind incompatible with the requisite state of mind or intent for murder. In that regard, I note that at one point the accused stated (Exhibit 5 PDF, p. 265):

> But I believe that God raises some people up for the sole purpose of destruction. And I believe now, like more conclusively, that that is why I was put here and this is the reason it was -- for them that was their time. Yes, it was my decision. It's not something that God willed or decided something. That I decided because I believe that doing this -- I mean it's -- you know, like obviously it causes death, but I think that extreme desperate measures need to be taken for the survival of my people.

[341] The accused went on to say that (Exhibit 5 PDF, p. 267):

> I believe that this was something that God called me to do, but I started to kind of rationalize more and realized that it wasn't God calling me directly to do that because God, you know, wouldn't ask me to kill anyone. That goes against God's very nature. So it was something that I decided to do because I thought it was -- was right.

[342] I have considered the accused's comments in the above paragraphs and while they are bizarre, when I consider them with the totality of all of the other evidence presented at trial, they do not suggest a state of mind on the part of the accused that leaves me with a reasonable doubt about whether the accused meant to cause any of the four victims' deaths or that he meant to cause any of the four victims bodily harm that he knew was likely to cause their deaths and was reckless whether death ensued or not.

[343] Further to the above finding, as I have already noted in my discussion of Dr. Chaimowitz's analysis respecting the NCR issue, Dr. Chaimowitz did not accept that the accused was hearing voices from God and acting upon them. Dr. Chaimowitz noted that the likelihood that the accused committed the acts because of hallucinations was low. As I have already indicated in the context of the NCR issue, I have accepted that conclusion of Dr. Chaimowitz for the reasons that he gave. I also believe that conclusion has implications for my analysis on the issue of the accused's state of mind and intent for murder.

[344] When I consider whether the accused meant to cause the victims' deaths or whether the accused meant to cause bodily harm to the victims that he knew

was likely to cause their deaths and was reckless whether death ensued or not, I make the same distinction that is made by Dr. Chaimowitz. There is a need to differentiate between "unusual" and "delusional" beliefs. While the accused made what can be considered to be "bizarre statements" in parts of his confession to the police, they were not indicative of a state of mind that negated the requisite state of mind for murder. As Dr. Chaimowitz testified, "[the accused] was a controlling man with odd belief systems". He believed "outright racist ideas", and he was a man that "used language, power and dominance to control the women he was with".

[345] To the extent that the accused makes some of the "bizarre statements" that he does (in his statement to the police) in reference to God, I am in agreement with Dr. Chaimowitz, that on the totality of the evidence, it is improbable that those statements represent anything like a delusional drive. As I will conclude later, it is my view, based on the totality of the evidence, that rather than being driven by delusions, voices, or hallucinations, the accused did have the requisite state of mind and the required intent for murder. In that regard, he meant to do what he did when he killed each of the victims because the murders were not only in part racially motivated, but they were also, definitionally, sexually motivated in that they were an integral and inextricable part of what Dr. Chaimowitz identified was the accused's homicidal necrophilia. The accused meant and intended to kill his victims for the connected and resulting sexual gratification.

[346] It was Dr. Chaimowitz's view that it is improbable that the delusional drive, for whatever reason, would allow a person to get aroused to commit those acts of necrophilia.

Evidence of Drug Consumption and Thought Process

[347] There is also evidence before this Court, specifically as found in the accused's own videotaped statement to the police, wherein he describes his drug consumption and thought process around the time of the killing of each victim identified in the four counts in the indictment: Buffalo Woman; Morgan Harris; Marcedes Myran; and Rebecca Contois.

[348] As it relates to the accused's required state of mind for murder (the required intent) I will now briefly set out what it was that the accused stated to the police in relation to his drug consumption and thought process at the time he killed each of the four particular victims. Following that, I will provide my determinations as to what if any impact that evidence has on my analysis as to whether the accused had the requisite state of mind and intent at the time of the killings of each victim.

Count 1 – Buffalo Woman

[349] At the time of the murder of Buffalo Woman, the accused stated that he was "coming off of mushrooms" (Exhibit 5 PDF, p. 221). When asked by Detective Allan whether the murder was racially motivated or drug and hate induced, the accused acknowledged that while "a lot of" those elements were "in

[his] mind", he stated that he was "extremely triggered" during his interaction with Buffalo Woman because "she'd say, I love you daddy", and he believed she would steal from him (Exhibit 5 PDF, p. 222).

[350] The above comments must be considered together with what the accused also said to the police during that same interview when he expressed that he was "kind of … planning on drowning [Buffalo Woman] in the bathtub" (Exhibit 5 PDF, p. 227). The accused initially believed that he had strangled her to death yet, as he began "undressing her she became consciously aware" (Exhibit 5 PDF, p. 227). After Buffalo Woman gained consciousness, the accused proceeded to drown her in the bathtub and have intercourse with her corpse (Exhibit 5 PDF, p. 227).

[351] In considering the accused's state of mind with respect to count 1 and indeed all counts, it is instructive to consider that when Detective Allan asked the accused about his thought processes and motivations regarding the entirety of the four murders, the accused stated that his actions were "racially motivated" and cited concerns regarding the "extinction of the white race" and "racial purity" (Exhibit 5 PDF, p. 219). Specifically, the accused stated that he knew his actions would cause death, but he believed that "extreme desperate measures needed to be taken for the survival of my people" (Exhibit 5 PDF, p. 265).

[352] The accused stated to the police that he had "certain criteria" for his victims (Exhibit 5 PDF, p. 291). He expressed that there could be "no video [of the victim] going in or out" of his apartment, the victim could not have a phone,

nor could anyone know that the victim was with the accused (Exhibit 5 PDF, p. 291). If an individual did not meet each element of the criteria, the accused explained to Detective Allan that "they wouldn't be a target" (Exhibit 5 PDF, pp. 292-293).

[353] As part of considering his level of awareness, his mental state and intent at the time of killing Buffalo Woman and the others, I note that the accused stated to the police that throughout his life, he had paid attention "to how people had gotten away with murder" (Exhibit 5 PDF, p. 290).

[354] I note that much of what I identify above as having been explained by the accused to the police, generally and more specifically in relation to Buffalo Woman, represents a thought process as well as a description of what he did and thought at the time of the killing. All of that is evidence from which inferences can be drawn (despite his identified earlier consumption of mushrooms) respecting the accused's knowledge and awareness of what he was doing and what it is he meant to do to Buffalo Woman.

Count 2 – Morgan Harris

[355] While the accused noted that he was on meth at the time of Ms Harris's murder (Exhibit 5 PDF, p. 274), he stated that "[he] knew what he was doing" and was "not blaming the drugs" for his actions (Exhibit 5 PDF, p. 232).

[356] When I examine what the accused told the police concerning his thought process in respect of Ms Harris, I note that the accused decided to "let" Ms Harris

have "her last smoke", at which point he "filled up the bathtub again" stating that "[he] was planning on doing that" (Exhibit 5 PDF, p. 233). Once Ms Harris re-entered the apartment, the lights were off, and the accused put Ms Harris in a "headlock" and drowned her in the tub (Exhibit 5 PDF, p. 233).

[357] As in the case of Buffalo Woman, the accused proceeded to have intercourse with the corpse until "the decay or smell was too much" (Exhibit 5 PDF, p. 234). In addition, the accused stated that he disposed of Ms Harris's corpse in the "same way" as Buffalo Woman, however, he chose to utilize the Midas commercial garbage bin because the previous one he had used had "a lock on it" (Exhibit 5 PDF, p. 234).

[358] I note that much of what I identify above as having been explained by the accused to the police, represents a thought process wherein the accused had at the time of the killing, despite his meth consumption, a level of intention, knowledge and awareness of what he was doing and what it is he meant to do with Ms Harris.

Count 3 – Marcedes Myran

[359] The accused stated that he was the "most high" for the murder of Ms Myran (Exhibit 5 PDF, p. 252). The accused expressed that he regretted his meth use during the murder of Ms Myran, as he believed that "[he] wouldn't have had made that decision otherwise" as he stated he had "no intention" to kill Ms Myran prior to using (Exhibit 5 PDF, pp. 303, 241).

[360] The accused stated to the police that his interaction with Ms Myran was a "disaster waiting to happen because she was a meth user and she had some on her" (Exhibit 5 PDF, p. 303). The accused stated that after he began to use (meth), he filled the bathtub, as he had done with the previous murders (Exhibit 5 PDF, p. 303). I find that the filling of the bathtub became a precursor (not only for this, the third murder, but also as in the previous killings) for what inevitably followed. What followed was a racially and sexually motivated killing.

[361] When I examine the accused's thought process as revealed in his statement to the police, the accused appears to contradict his earlier assertions that he had not intended to kill Ms Myran prior to using drugs. He stated to the police in the context of this third murder (Ms Myran), that he was by that time, seeking out victims based on the garbage pickup schedule (Exhibit 5 PDF, p. 260).

[362] As it relates to the accused's state of mind and the required intent for murder, despite the meth consumption at the time of the killing of Ms Myran, the accused's comments suggest and reinforce that the timing of the murders was deliberate and intentional.

[363] I do note that the accused stated that on the date of the murder of Ms Myran, he felt that Ms Myran was taking advantage of him (Exhibit 5 PDF, p. 242). In addition, the accused explained that when Ms Myran began to fight back against the accused's acts of non-consensual sex, he got "triggered" (Exhibit 5 PDF, pp. 242-243). In his commentary to the police, it would appear

that the accused attributed "the chain reaction" of violence to his feelings of being "triggered" — triggered by what he perceived as Ms Myran "using [him] for a place to stay" and her decision to fight back against his non-consensual sexual actions (Exhibit 5 PDF, pp. 242-243).

[364] Unlike the two previous victims, the accused murdered Ms Myran by strangulation. The accused proceeded to dismember Ms Myran's corpse over the course of the next 12 hours (Exhibit 5 PDF, p. 250).

[365] Based on some of what I identified above as having been explained by the accused to the police (including the filling of the bathtub before the murder and the discussion of the garbage pickup schedule), it would appear that at the time of the killing, despite his meth consumption, the accused had a level of intention, knowledge and awareness of what it was he was doing and what it is he meant to do to Ms Myran.

Count 4 – Rebecca Contois

[366] Based on what the accused said in his statement to the police, the accused was on meth at the time of Ms Contois's murder (Exhibit 5 PDF, p. 274). He took the meth after his initial sexual advances were rejected by Ms Contois and significantly, after he filled the bathtub in the way that had defined and accompanied his previous killings.

[367] Despite describing to the police that he had taken meth, when describing the murder of Ms Contois, the accused appears to point to multiple contributing

factors in his thought process. Specifically, he reinforced that after he got high, Ms Contois continued to not do what he wanted sexually, and when Ms Contois attempted to fight back, the accused "put her in a choke hold" and strangled her to death (Exhibit 5 PDF, p. 255). As part of his explanation about his thought process to the police, the accused stated that Ms Contois's decision to tell the accused that she loved him, was probably one of the reasons why he did what he did. As the accused explained to the police, he did not believe her (Exhibit 5 PDF, p. 255).

[368] In considering the accused's state of mind and his intent, I note that the accused explained to the police that by the fourth murder, he was "very overconfident" as he thought that he could get away with it (Exhibit 5 PDF, p. 261). At one point, he stated that he felt no hesitation in "his attack and his grip" at the time he strangled Ms Contois to death (Exhibit 5 PDF, p. 314). Similar to the previous murders, the accused explained that he felt "triggered" when Ms Contois tried to fight back against the accused (Exhibit 5 PDF, p. 314).

[369] Again, when examining the accused's state of mind at the time of the killing of Ms Contois, I note the accused's ability (as revealed in his video statement to the police) to remember specific times and how he remembered and described how he chose to act at specific moments. The accused stated to the police that like the other murders, he had intercourse with Ms Contois's corpse from approximately seven or eight in the morning to approximately seven or eight in

the evening (Exhibit 5 PDF, p. 257). When outlining the series of events related to Ms Contois's murder, the accused clarified that a common thread between each murder was the timing of the killings. Specifically, the accused stated that each murder took place between five and six in the morning to ensure that he could "kill [his victims] without anyone noticing" (Exhibit 5 PDF, pp. 312-313).

[370] Again, I note that much of what I identify above as having been explained by the accused to the police, represents a thought process wherein the accused had, at the time of the killing, despite his meth consumption, an apparent level of intention, knowledge and awareness of what it was he was doing and what it is he meant to do to Ms Contois.

[371] In examining the evidence I have reviewed concerning drug consumption as it relates to each of the killings associated with the four counts in the indictment (along with the other evidence and comments made by the accused that I identified), I remain mindful that as a result of consuming drugs, a person may not have the required intent for murder. However, the mere fact that a person's mind may be affected by drugs, so that they lose inhibitions or act in a way in which they would not have done had they been sober or unaffected by the drugs, is no excuse if the required intent is otherwise proved.

[372] In this case I must decide whether the evidence of drug consumption along with all of the other evidence, leaves me with a reasonable doubt whether the accused had the intent required for murder at the time of the act. I remain

mindful that the accused is not required to prove that he lacked the required intent. The Crown must prove beyond a reasonable doubt that the accused had the intent required for murder despite evidence of his drug consumption.

[373] I have considered all of the evidence, including the stated evidence of the accused's drug consumption. I have also considered any evidence coming from the accused or elsewhere that might inform my analysis as to the effect of that drug consumption on the accused's intent and/or his knowledge of the consequences of his actions.

[374] In addition to the accused's police statement, I have considered his messages, writings, and/or assertions to the psychiatrists wherein he discusses what he described as the voices he heard and the delusions he had. Even if I did not believe the accused as it relates to those assertions that he made to the psychiatrists, I must still examine those assertions and indeed, any and all of the other out of court messages, writings, or letters that the accused made, to determine whether they leave me with a reasonable doubt about whether the accused had the requisite state of mind for murder at the time of the four killings stipulated in each of the four counts in the indictment. Even if none of the accused's statements, messages, writings and/or assertions do not raise a reasonable doubt, I must still on a consideration of all of the evidence, satisfy myself that the Crown has proved beyond a reasonable doubt that the accused had the requisite state of mind (intent) for murder.

The Rolled-Up Instruction

[375] As it relates to the accused's state of mind and the requisite intent for murder, given the numerous times the accused mentioned in his police statement that he was "triggered" and given the implied suggestion that that triggering involved anger, I must keep in mind one additional instruction when I consider all of the evidence. In that regard, I would be remiss if, based on all of the evidence that I have reviewed, I did not instruct myself pursuant to what has become known as the "rolled-up instruction", which flows from a series of cases including ***R. v. Nealy*** (1986), 30 C.C.C. (3d) 460 (Ont. C.A.); ***R. v. Settee*** (1990), 55 C.C.C. (3d) 431 (Sask. C.A.); ***R. v. Robinson*** (1996), 105 C.C.C. (3d) 97 (S.C.C.). In connection to that instruction, even if I am satisfied beyond a reasonable doubt that when the accused caused the victims' deaths he was not in a mental state (caused by the consumption of drugs or otherwise) so as to negate the requisite state of mind, I must nonetheless consider any evidence of what might be the accused's combined anger, fear, drug high, and possible instinctive reaction. I must consider any such evidence, not just by itself, but altogether, along with any other evidence that might suggest that the accused acted instinctively, in the sudden excitement of the moment, without thinking about the consequences of what he did so as to negate the requisite state of mind and intent for murder.

[376] Any such evidence does not necessarily mean that the accused did not have either mental state necessary to make the unlawful killing of the deceased's

murder. The fact that the accused may have consumed drugs, been angry, afraid, and excited is not necessarily inconsistent with the state of mind required to make an unlawful killing murder. As a matter of fact, evidence of some of these states or conditions may actually give rise to one or other states of mind required to make an unlawful killing murder.

[377] Take for example anger, even intense anger. Feeling angry at someone or about something, may cause a person to have one of the states of mind necessary for murder. As a result, the accused's anger on its own is not enough to negate what may still be the presence of the requisite state of mind for murder. On the other hand, when considered along with the other evidence that might be present, evidence of anger may raise a reasonable doubt as to whether, when an accused unlawfully killed a victim, that accused had either intent required for murder.

[378] I have thus considered the effect of all of the evidence, the sum total of it, along with any other evidence that seems or tends to show the accused's state of mind as it relates to the issue of whether the Crown has proved beyond a reasonable doubt the state of mind or intent required for murder. Having considered all of that evidence and having considered the cumulative effect of that evidence in the context of the "rolled-up instruction", I am not left with a reasonable doubt. Indeed, after having considered the totality of the evidence adduced at trial and the effect of that evidence, the sum total of it, I am satisfied

that the Crown has proved beyond a reasonable doubt that the accused had the requisite state of mind and intent for murder when the accused killed Buffalo Woman, Morgan Harris, Marcedes Myran, and Rebecca Contois.

3) Has the Crown established beyond a reasonable doubt that the murder of the victim in each count, was both planned and deliberate?

[379] To prove planned and deliberate first degree murder, the Crown must prove beyond a reasonable doubt not only that the accused had the intent required for murder, but also that the murder was both planned and deliberate. "Planning and deliberation" are not the same as "intention". For example, a murder committed intentionally, but on a sudden impulse or without prior consideration, is not planned and deliberate.

[380] It is the murder itself that must be both planned and deliberate, not something else that the accused did or committed, like for example, an underlying offence such as sexual assault or unlawful confinement.

[381] The words "planned" and "deliberate" do not mean the same thing.

[382] "Planned" means a calculated scheme or design that has been carefully thought out, the nature and consequences of which have been considered and weighed.

[383] The plan does not have to be complicated. It may be very simple. In addressing this question, I must consider the time it took to develop the plan, not how much or little time it took between developing it and carrying it out. I must

remember that one person may prepare and plan and carry it out immediately, while another person may prepare a plan and wait a while, even quite a while, to carry it out.

[384] "Deliberate" means "considered, not impulsive", "slow in deciding".

[385] I must decide whether the murders of Buffalo Woman, Morgan Harris, Marcedes Myran, and Rebecca Contois (all considered separately in relation to each of the four counts in the indictment) were both planned and deliberate. To decide this issue, I must consider all of the evidence. Among the things that I must and have considered are the following:

- what the accused did or did not do;
- how the accused did or did not do it;
- what the accused said or did not say in his statement to the police, in his Facebook messages, in his letters, or in his assertions to the two psychiatrists;
- the accused's condition;
- the accused's state of mind, including any evidence of how that may have been affected by his consumption of drugs, or by his mental state as described either by the accused himself and/or the expert testimony;
- the effect of any real or imagined provoking words or conduct from any of the victims on the accused's state of mind; and

- any evidence of similar act or after-the-fact conduct from which I can draw permissible inferences.

[386] If I am not satisfied beyond a reasonable doubt that the murder of the victim identified in each count was planned and deliberate, I must find the accused in relation to that count, not guilty of first degree murder, but guilty of second degree murder, subject to my analysis of the Crown's theory respecting constructive first degree murder.

[387] If I am satisfied beyond a reasonable doubt that in respect of a particular count, the identified victim's murder in that count was both planned and deliberate, I must find the accused guilty of first degree murder with respect to that count.

[388] When reviewing some of the relevant evidence, I begin by noting that the accused's own comments and descriptions (in his video statement to the police) provide clear and telling context for how the murders came to happen. Those general comments themselves, describing his thought processes and motivations, provide insight (and a potential basis for inferences) in respect to how some of the specific murders may have been conceived and planned. The accused's police video statement along with the similar act evidence suggests a *modus operandi*, which remained remarkably similar in conception and execution.

[389] As discussed earlier regarding cross-count similar act evidence, the *modus operandi* encompasses the following commonalities:

1) all of the women were Indigenous;

2) all of the women were vulnerable;

3) all of the women frequented shelters;

4) all of the women were strangled and Marcedes Myran and Rebecca Contois were strangled to death;

5) the accused filled the bathtub at all four killings;

6) two of the women were drowned;

7) all of the women's bodies were defiled when the accused had repeated sexual intercourse with their corpses;

8) all of the women were disposed of in garbage bins. Marcedes Myran and Rebecca Contois were dismembered before their disposal; and

9) the accused kept tokens from each of the women after their deaths.

[390] The accused's statement to the police also reveals the extent to which the murders were in part, motivated by race and white supremacist ideology. This fact is rendered all the more chilling when considered with the evidence of Ronald Normand, who testified about a conversation he had with the accused at 190 Disraeli at which time the accused clarified to Mr. Normand that he came to 190 Disraeli to "stalk his victims", rather than seeking shelter.

[391] The accused's more general comments to the police in his police statement also disclose how some of the murders were intentionally timed and

planned. In that connection, I note the following exchange between Detective Allan and the accused (Exhibit 5 PDF, p. 260):

> **DET. ALLAN:** Okay. So is it -- did you intentionally like time the disposal of the pick-up?
>
> **JEREMY SKIBICKI:** Yes.
>
> **DET. ALLAN:** Okay. So then when you're seeking out a victim, was it something where you had prior knowledge of … this is my window to identify a victim to … kill …
>
> **JEREMY SKIBICKI:** That became part of my thought process like by the third time.

[392] The accused's statement to the police also describes the criteria that the accused used for selecting his victims. The accused noted as follows (Exhibit 5 PDF, p. 291):

> **JEREMY SKIBICKI:** … So like there's certain criteria such as like no video going in and out … [of] my apartment if I was going to put someone there. … [T]here is no phone or anything that they have. No one knows that they're with me. I think that's pretty much it.

[393] When Detective Allan asks the accused about what happens when a person had a cellphone on them, the accused responded by saying "they just wouldn't be a target" (Exhibit 5 PDF, p. 292).

[394] The accused also explains in his video statement his preferred time (the early morning) for the killing (in order to avoid noise and detection) and the period during which he would normally have the post-mortem intercourse with his victims (Exhibit 5 PDF, pp. 257, 312-313).

[395] The general details of the accused's statement to the police — along with the convincing assessment and analysis of Dr. Chaimowitz — also describe a motivation connected to an obvious paraphiliac disorder, specifically, the more extreme necrophiliac homicidal subtype.

[396] In the end, while much of the general information that the accused provided to the police in his videotaped statement (along with the explanatory expert analysis of Dr. Chaimowitz) does indeed offer relevant context, it also creates a prism through which the circumstances of the specific killings can be understood as a product of both some forethought and the accused's dark motivations. That context and that prism is reinforced on an examination of all of the evidence, including the evidence of similar act.

[397] With the above in mind, I proceed in the paragraphs below, to examine the particular circumstances of each killing with a view to determining whether or not the murders of Buffalo Woman, Morgan Harris, Marcedes Myran, and Rebecca Contois were both planned and deliberate.

The Murder of Buffalo Woman

[398] In his statement to the police, the accused explained that he met Buffalo Woman outside of The Salvation Army around the time the COVID-19 restrictions were ending. They took a bus back to his apartment. In examining what happened at the apartment, I need to underscore that the following account

must be read within the context of the accused's police statement regarding his motivation and thought process.

[399] After Buffalo Woman briefly left and returned to the apartment that same date, she at one point, grabbed some of his stuff and tried to leave. It was at that moment that the accused grabbed her. He started to choke her, and she passed out.

[400] What the accused said to the police about this killing and what exactly he did, must be considered in the context of what he also revealed in his video police statement about his racist and necrophiliac motivations. In his statement to the police, the accused made reference to the planned nature of his actions, stating the following (Exhibit 5 PDF, p. 227, see also pp. 221-222):

> … I started to like choke her out and I thought she was dead, but she wasn't. Like I was kind of like planning on drowning her in the bathtub. And when I was undressing her she became consciously aware. And then I drowned her in the bathtub. The last thing she said to me was "Fuck you" and I understand why.
>
> [Emphasis added]

[401] To understand and appreciate the above quotation, it is necessary to understand some of the strikingly common details of the similar act evidence and the inferences that can be drawn respecting planning and deliberation.

[402] Following the murder, the accused admitted that he "fucked her corpse after" and did "horrible, horrible, horrible, horrible things" (Exhibit 5 PDF, p. 222).

[403] As previously stated, the accused's victims fit into a specific pattern, all individuals were vulnerable Indigenous women who frequented shelters. Based

on the accused's statement and all of the evidence, I find that Buffalo Woman, as one of the Indigenous victims in this case, was the subject of the same type of planning and targeting about which the accused spoke, both directly and indirectly. That resulted in her attendance at the accused's apartment. By the accused's own words, as evidenced in his more general and specific comments, I find that it is clear what he planned to do to Buffalo Woman. I also find that the murder of Buffalo Woman he described was not hasty, rash, or impulsive. In killing Buffalo Woman in the manner he did and with the thought process the accused himself describes, an inference can be drawn about the general planning and deliberation that flows from the accused's *modus operandi* in respect of all of the killings. Having brought Buffalo Woman to his apartment, he was able to kill a vulnerable Indigenous woman following which he was able indulge his homicidal necrophilia.

[404] The accused planned to kill Buffalo Woman, he deliberated on it and then he strangled and drowned her. He kept her body to defile it until he had to dispose of her remains because of the odour.

[405] In examining the circumstances of the killing of Buffalo Woman for planning and deliberation, I carefully considered all of the accused's statements, messages, letters, and as well, his assertions to the psychiatrists (including anything that might impact his mental state). Even if and where the accused's assertions have caused me to disbelieve him, I have nonetheless taken care to examine whether those assertions (even if disbelieved) nonetheless raise a

reasonable doubt on the issue of planning and deliberation. Even if none of the accused's statements, messages, letters and/or assertions to the psychiatrists raise a reasonable doubt about the accused's planning and deliberation in respect of his killing of Buffalo Woman, I have also considered, whether on all of the evidence, the Crown has established beyond a reasonable doubt the requisite planning and deliberation for murder.

[406] In the circumstances of the killing of Buffalo Woman, I have determined that the Crown has proved beyond a reasonable doubt that the killing was planned and deliberate.

The Murder of Morgan Harris

[407] In his statement to the police, the accused describes seeing Morgan Harris at two shelters — 190 Disraeli and Siloam Mission. The accused stated that he believed that Ms Harris had just been "barred" from a shelter and decided to approach her. In speaking to her on or around the date in question, he asked her if she wanted to come and "chill" at his apartment. She did go with him, in respect to which the accused says that "I knew what I was doing, man" (Exhibit 5 PDF, p. 232).

[408] At his apartment, it is significant that the accused filled his bathtub before the killing of Ms Harris. He had a plan, he acted on that plan.

[409] The accused's understanding of what he intended to do was revealed clearly in his video statement to the police. The accused stated that he let Ms Harris go out for a smoke because he was thinking (Exhibit 5 PDF, p. 233):

> [L]ike I wasn't even going to let her have [a smoke], but I was thinking, like fuck, this is going to be her last smoke so I let her enjoy that. My lights were off and I tried to like you know, pushing her into the bathtub. And then she started to like freak out a little bit and I was like, yeah, like don't worry, don't worry. And as soon as she kind of turned around I got her in a headlock. Then she kind of like collapsed with her head into the tub. She fought, but [it] didn't work out for her. I'm not sure if you need too many more details cause it's like --.
>
> [Emphasis added]

[410] After acting on his plan and killing Morgan Harris, the accused then proceeded to have intercourse with her body multiple times until the smell was too much. The accused disposed of Ms Harris's body behind the Midas. He wrapped it in multiple garbage bags from Dollarama, and as the accused stated, he did so in the "same way" as he had done with Buffalo Woman (Exhibit 5 PDF, p. 234).

[411] In permitting Morgan Harris to go out for what the accused described was going to be her "last smoke", the accused's own statement clearly suggests the plan was in place, that it was deliberate, considered, and thought out.

[412] I pause to note that as with this killing (the murder of Morgan Harris), each victim may have tried — to a greater or lesser extent — to resist the violence (sexual or physical) of the accused. The accused reacting to the resistance may have been spontaneously responsive.

[413] Even if the level of resistance to the accused (either in the case of Morgan Harris or in the circumstances of the killings of the other victims), may have sometimes varied and required spontaneous reactions by the accused, the already planned and deliberate killing by the accused inevitably took place in each instance. In other words, the situational reaction of the accused to any resistance or "fighting back", did not make the resulting killings any less planned or deliberate. In the case of Morgan Harris, by the time the accused had permitted her to go out for one last smoke, he had already filled the bathtub and obviously had a plan as to what he was going to do.

[414] It is open to me to infer as I do, that on the available evidence (as with the killing of Buffalo Woman), the killing of Morgan Harris, as one of the vulnerable Indigenous victims in this case, was the subject of the same type of planning and targeting (as was the case with the other victims) that resulted in the fatal attendance at the accused's apartment. With that attendance and from the accused's own words as noted at paragraph 409 (and the evidence of similar act), it is clear what he planned to do, just as it was clear that the murder he described was deliberate and not hasty, rash, or impulsive.

[415] In killing Morgan Harris in the manner he did and with the thought process the accused himself describes, an inference can be drawn about the general planning and deliberation that flows from the accused's *modus operandi*. Having

brought Morgan Harris to his apartment, he was able to kill an Indigenous woman following which he was able to indulge his homicidal necrophilia.

[416] In examining the circumstances of the killing of Morgan Harris for planning and deliberation, I carefully considered all of the accused's statements, messages, letters, and as well, his assertions to the psychiatrists (including anything that might impact his mental state). Even if and where I have disbelieved the accused's assertions, I have nonetheless taken care to examine whether those assertions (even if disbelieved) raise a reasonable doubt on the issue of planning and deliberation. Even if none of the accused's statements, messages, letters, and/or assertions to the psychiatrists raise a reasonable doubt about the accused's planning and deliberation in respect of his killing of Morgan Harris, I have also considered, whether on all of the evidence, the Crown has established beyond a reasonable doubt the requisite planning and deliberation for murder.

[417] In the circumstances of the killing of Morgan Harris, I have determined that the Crown has proved beyond a reasonable doubt that the killing was planned and deliberate.

The Murder of Marcedes Myran

[418] In his statement to the police about this murder, the accused described how he met Ms Myran when she was alone (the accused did not know Ms Myran's name at the time of his police statement) in a back lane between The Salvation

Army and Siloam Mission. He asked her, "Do you have a place? Do you want to, you know, come with me?" (Exhibit 5 PDF, p. 241).

[419] Importantly, the accused told the police that he had filled the bathtub before killing Ms Myran (Exhibit 5 PDF, p. 247).

[420] The accused explained to the police that he was having consensual sex with Ms Myran when she "didn't let [him] finish". It is at that point, that the accused explained to the police that he started "to get like a little bit rough with her". Ms Myran fought back, which the accused did not like (Exhibit 5 PDF, pp. 242-43).

[421] Despite the accused's efforts to calm Ms Myran down, she kept fighting. At one point, Ms Myran was going to leave. The accused described to the police what it was that he was thinking at that point, "this is a liability because I already killed some people before. … I'm not going to go down for this" (Exhibit 5 PDF, p. 244). The accused explained to the police that he was going to put Ms Myran in a headlock, but instead strangled her from the front because he "couldn't get [his] arm around her" (Exhibit 5 PDF, p. 245). He brought her to the ground and was on top of her strangling her from the front. As described by the accused, he strangled her "until she was like skull and crossbones dead" (Exhibit 5 PDF, pp. 245, 247).

[422] As with the killings of the other victims (where there was perhaps varying degrees of resistance, responsive anger and fear from the accused), the situational

reaction, anger and fear on the part of the accused in relation to Ms Myran's resistance and "fighting back" (and attempt to leave), do not determinatively affect my assessment and analysis respecting planning and deliberation. In my view, there is nothing in the accused's description of what happened with Ms Myran that would transform his killing of Ms Myran into anything but the already "planned and deliberate" murder that it was.

[423] It is important to note that the accused explained to the police that by the third killing (Ms Myran's), he was seeking out victims and calibrating the timing of their killings partly based on the garbage pickup schedules.

[424] After the killing of Ms Myran, in what can be seen as part of his modus operandi, the accused dismembered Ms Myran's body after which he placed her in multiple garbage bags from Dollarama.

[425] Again, in examining the accused's own words and in examining the situation surrounding the killing of Ms Myran, I find that this killing was representative of the accused's modus operandi in respect of which I have already commented. He knew what he was doing, and what he did was planned and deliberate. After the accused strangled Ms Myran to death, he then had repeated intercourse with her corpse.

[426] Despite his later expressed regret and guilt respecting the killing of Marcedes Myran, the inescapable conclusion is that the accused was targeting another vulnerable Indigenous woman, whom he met at a shelter, to bring to his

suite in order to kill her and then defile her so that he could indulge his homicidal necrophilia.

[427] In examining the circumstances of the killing of Marcedes Myran for planning and deliberation, I carefully considered all of the accused's statements, messages, letters, and as well, his assertions to the psychiatrists (including anything that might impact his mental state and his ability to plan and deliberate). Even if and when I disbelieve the accused's assertions, I have nonetheless taken care to examine whether those assertions (even if disbelieved) raise a reasonable doubt on the issue of planning and deliberation. Even if none of the accused's statements, messages, letters, and/or assertions to the psychiatrists raise a reasonable doubt about the accused's planning and deliberation in respect of his killing of Marcedes Myran, I have also considered, whether on all of the evidence, the Crown has established beyond a reasonable doubt the requisite planning and deliberation for murder.

[428] In the circumstances of the killing of Marcedes Myran, I have determined that the Crown has proved beyond a reasonable doubt that the killing of Marcedes Myran was planned and deliberate.

The Murder of Rebecca Contois

[429] In his video statement to the police, the accused described his more regular relationship with Ms Contois and how she returned to his apartment on the night of her death.

[430] The accused explained how Ms Contois threw stones at his window (from outside the apartment) in order to get the accused's attention so as to be able to enter the apartment. Ms Contois was soaking wet from the rain. The accused let her into his apartment.

[431] Ms Contois showered and slept for a while. The accused tried to lie beside her (while she slept) in order to have sex with her, but she continued to refuse his advances. Significantly, the accused then went to his bathroom and began filling the bathtub. He also proceeded to get high on meth.

[432] The accused then returned to Ms Contois. When asked by Detective Allan how he ended up murdering Ms Contois, the accused stated as follows (Exhibit 5 PDF, p. 255):

> Yeah. Yeah, so same kind of thing, but like all I had to do -- all I had to do is just fucking let her sleep and then like you know, tell her I don't want you to come back here anymore. <u>But after I got high and she didn't do what I said like sexually, same kind of thing.</u> She'd being saying like get off or whatever. Start to fight me. I put her in a choke hold like that (indicating). So same thing. Just choked her to death.
>
> [Emphasis added]

[433] Again, when I examine the circumstances and details of the killing of Ms Contois, even if the accused had a more regular relationship with her, the details of the killing on the date in question and the characteristics of Ms Contois as a victim, share a clear commonality with the other killings and victims so as to point to and reaffirm a modus operandi established by the count-to-count similar act evidence.

[434] In terms of a formulation of a plan by the accused, it is significant that following Ms Contois's rejection of the accused's non-consensual sexual acts while she was sleeping, the accused proceeded to fill the bathtub and get high on meth. When he returned to Ms Contois, and she again refused his advances, it was, as he said, "the same thing". In other words, he carried out the plan (about which he would have deliberated). The implementation of that plan to kill Ms Contois on the date in question would have begun with his filling of the bathtub, a fact similarly associated with his other killings.

[435] I also note that in relation to the previously identified *modus operandi* and my consideration of the accused's planning and deliberation, the death of Ms Contois was the accused's fourth killing and that he had indicated in his video police statement, that by the third murder, he paid attention to the garbage day pickup and that it had indeed become "part of my thought process …". That detail is supported in the evidence respecting Ms Contois and suggests that it was part of the accused's considered and deliberate thought process when deciding he could kill her.

[436] I also note that by the accused's own admission, he tried to ensure a rather precise and considered timing for the killings (early in the morning so as to avoid noise and detection). The killing of Ms Contois was no exception and followed the same pattern. In that regard, the accused spoke to the precise timing of the killing in his video statement (Exhibit 5 PDF, p. 312):

> **JEREMY SKIBICKI:** Let her in and I let her shower and sleep for awhile and then like -- oh yeah, that's the thing. The thing in all of these things and have in common is like around the time that they took place because I felt like if it was any later than what it was -- like it was like between 5:00 and 6:00. Something like that. There was daylight out, but it was before anyone was really awake. 'Cause I felt like if I hadn't taken the opportunity there it would have been too late basically.
>
> **DET. ALLAN:** And what is it? The opportunity to do what?
>
> **JEREMY SKIBICKI:** To kill her without anyone noticing.
>
> [Emphasis added]

[437] When the accused filled the bathtub following Rebecca Contois's resistance to his sexual advances, the plan about which the accused would have deliberated and ultimately acted upon (on the day of Rebecca Contois's murder), was by the accused's own admission, a product of his overconfidence (Exhibit 5 PDF, p. 261):

> **JEREMY SKIBICKI:** Oh, right, okay. So this brings a thought to mind. That I was very overconfident by the last time because I was like sure I would get away with it.

[438] In addition to the relevance and the probative value of the similar act evidence as it relates to my assessment respecting the planned and deliberate nature of Rebecca Contois's death, I also note and draw inferences from the accused's actions (and the chronology of those actions) on the date in question. Specifically, I note the accused's actions following Rebecca Contois's resistance to the accused's his sexual advances. When the accused decided to fill the bathtub, as he had done with the previous murders, it is my finding that it is at that point that he decided that he would soon kill Rebecca Contois. While the plan was

simple and uncomplicated, it was also considered and thought out and consistent with his *modus operandi*. As previously identified, aspects of the *modus operandi* include: the killing of a vulnerable Indigenous woman, sexual assault, the filling of the bathtub, strangulation, post-mortem intercourse, and the eventual disposal of the victim's body (sometimes dismembered). The accused's plan to kill Ms Contois was not hasty, rash, or impulsive. Rather, it was the result of a planned and deliberate act rooted in racism and a homicidal necrophilia carried out in a similar fashion on three previous occasions with similar motivations. (See ***Whiteway***, at paragraphs 11-12). Rebecca Contois's fatal moment came shortly after having resisted the accused's sexual advances.

[439] In examining the circumstances of the killing of Rebecca Contois for planning and deliberation, I carefully considered all of the accused's statements, messages, letters, and as well, his assertions to the psychiatrists (including anything that might impact his mental state). Even if and where the accused's assertions have caused me to disbelieve him, I have nonetheless taken care to examine whether those assertions (even if disbelieved) nonetheless raise a reasonable doubt on the issue of planning and deliberation. Even if none of the accused's statements, messages, letters and/or assertions to the psychiatrists raise a reasonable doubt about the accused's planning and deliberation in respect of his killing of Rebecca Contois, I have also considered, whether on all of the evidence,

the Crown has established beyond a reasonable doubt the requisite planning and deliberation for murder.

[440] In the circumstances of the killing of Rebecca Contois, I have determined that the Crown has proved beyond a reasonable doubt that the killing was planned and deliberate.

[441] Having concluded that the Crown has established beyond a reasonable doubt that the murders of Buffalo Woman, Morgan Harris, Marcedes Myran, and Rebecca Contois were all planned and deliberate (thereby establishing the Crown's theory of planned and deliberate first degree murder), I will now consider the questions that focus my attention on the Crown's alternate theory of constructive first degree murder.

4) Has the Crown established beyond a reasonable doubt that the accused committed constructive first degree murder by committing the offence of sexual assault and/or forcible confinement in relation to any of the victims named in respect of each count?

[442] The alternative path that the Crown has posited for establishing the accused's guilt beyond a reasonable doubt for first degree murder is based on the contention that the accused murdered the four victims while committing the offences of sexual assault and/or forcible confinement.

[443] In the present case, it is already established that the accused caused the deaths of the victims, that he did so unlawfully, and that he actively participated

in each of the killings. The remaining essential elements for constructive first degree murder that require proof beyond a reasonable doubt are as follows:

- that the accused had the requisite state of mind for murder;
- that the accused committed or, attempted to commit an offence enumerated under s. 231(5) of the ***Criminal Code***, in this case sexual assault and/or forcible confinement; and
- that the commission or attempt to commit the sexual assault or forcible confinement and murder, were part of the same series of events.

[444] In considering as I did earlier, the Crown's first route to establishing the offence of first degree murder (that each murder was "planned and deliberate"), I have already addressed the question of whether the accused had the requisite state of mind for murder. My analysis and conclusions in that regard are no different as it relates to the question of constructive first degree murder. I have determined for the reasons already given, that the accused did at the time of the killings of all of the victims, have the requisite state of mind and the required intent for murder.

[445] In considering the two underlying offences that the Crown identifies as part of its theory for constructive first degree murder (sexual assault and unlawful confinement), I will commence my analysis by addressing the alleged constructive first degree murder based on the commission of the alleged sexual assaults.

i) Did the accused commit or attempt to commit a sexual assault in relation to any of the victims named in the four counts, and if so, was the commission or attempt to commit the sexual assault and the murder part of the same series of events?

[446] As it relates to the alleged underlying offence of sexual assault, and the Crown's theory of constructive first degree murder, there are two relevant questions that I must address: (i) Did the accused commit or attempt to commit sexual assault, and (ii) was the sexual assault and the murder part of the same series of events? In the unique circumstances of the present case, those questions are, for substantive and practical reasons that will become apparent, best considered together. Accordingly, the paragraphs that follow will address together, both the issue of whether a sexual assault was committed in respect of each victim and whether in the context of the killings, the murder and sexual assault were part of the same series of events.

[447] The essential elements for sexual assault that the Crown must prove beyond a reasonable doubt are well known:

1) the accused directly touched the victim;
2) the touching was intentional;
3) the touching took place in circumstances of a sexual nature;
4) the victims did not consent to the sexual activity in question; and
5) the accused knew that the victim did not consent to the sexual activity in question.

[448] In determining whether the murders of each victim constitute constructive first degree murder, I have considered in relation to each count, the totality of the evidence including the accused's pre- and post-mortem acts towards each of his four victims. On an intuitive analysis, one might think that the intercourse with each victim following their respective deaths was in and of itself a sexual assault and that the only remaining question would be in relation to whether that sexual assault was sufficiently contemporaneous with the murder ("part of the same series of events"). Part of the rationale in the Ontario Court of Appeal's judgment in ***Niemi*** suggests otherwise, with the court commenting as follows (at paragraphs 43-44):

> [43] A sexual assault is, first and foremost, an assault. There must be an intentional application of force to the person of the victim without the victim's consent: ***Criminal Code***, s. 265(a). Inferentially, the crime of assault requires that the victim be alive at the time of the relevant touching, and capable of withholding consent.
>
> [44] Moreover, an assault becomes sexual if it is "committed in circumstances of a sexual nature, such that the sexual integrity of the victim is violated": *R. v. Chase*, [1987] 2 S.C.R. 293 (S.C.C.), at p. 302. <u>It is difficult to speak meaningfully in such possessive terms about the victim's sexual integrity if the victim is dead.</u>
>
> [Emphasis added]

[449] For reasons that I will briefly outline below (see paragraphs 455 to 462), I have serious reservations with this part of the court's analysis in ***Niemi***. Notwithstanding my disagreement in that regard, using the broader analysis set out in ***Niemi*** (and adopted in subsequent cases), constructive first degree murder based on sexual assault can still be made out in the present case in respect of

each count in the indictment. See for example ***R. v. Martell***, 2023 SKKB 103; ***R. v. Tallcree***, 2023 ABKB 211; ***R. v. Singh***, 2022 ONCA 584; ***R. v. Durant***, 2020 ONSC 6842. See also ***Sundman***; ***R. v. Imona-Russell***, 2018 ONCA 590.

[450] I have already found that the accused's acts were motivated by a homicidal necrophilia, which involves as Dr. Chaimowitz explained, "arousal attached to having sex with people that the individual has killed" and where the individual has also "acted on these sexual urges" (Dr. Chaimowitz Report, p. 84). Having found that the murders in the present case were in large part sexually motivated (they were also racially motivated), it follows that the accused's action of indulging his necrophilia by having sex with the corpse of the person he has just killed, is *definitionally*, a non-consented to sexual act inextricably tied to the murder itself.

[451] Constructive first degree murder involves an underlying crime of domination. In the present case, the very essence of the accused's actions towards all four victims involved domination, with the accused having had "a longstanding interest in arousal attached to women he has dominated, who are either unconscious or dead" (Dr. Chaimowitz Report, p. 84). Irrespective of the post-mortem timing of the accused's sexual acts towards his victims, I find that each of the murders were sexually motivated and carried out at least in part for the purpose of facilitating sexual acts (in each case, multiple times) against the deceased victim.

[452] Despite my earlier identified disagreement with one of the fundamental premises of ***Niemi*** (that sexual assault requires a live victim capable of withholding consent), I find Paciocco J.A.'s broader analysis in ***Niemi***, to be both persuasive and particularly apt in the context of this case (at paragraphs 57-61):

> [57] It follows, as Steel J.A. said in *R. v. Muchikekwanape*, 2002 MBCA 78, 166 Man. R. (2d) 81 (Man. C.A.), at para. 89, that "pre-death violence perpetrated to subdue a victim for the purpose of perpetrating a sexual assault is in itself a sexual assault." Even though the sexualized activity does not commence until after death, the sexual assault commences before death, providing the basis for a first degree murder conviction under s. 231(5)(b).
>
> [58] In practical terms, the fact that an assault perpetrated for the purpose of facilitating sexual activity can ground a first degree murder conviction under s. 231(5)(b), even where the objectively sexualized assaultive acts have yet to begin, does nothing to extend the reach of s. 231(5)(b). This is because a first degree murder conviction under s. 231(5)(b) can be based on an attempted sexual assault, and anyone who uses violence for the purpose of perpetrating a sexual assault has gone beyond preparation and is committing an attempted sexual assault. Still, it is important in understanding the technical scope of s. 231(5)(b), and those authorities that rest first degree murder convictions on sexual assault findings where sexualized conduct occurs after death, to appreciate when the completed offence can provide a path to conviction.
>
> [59] The instant point, of course, is that where the victim dies at the hands of the accused before the accused commences the sexualized conduct that he intended all along, the fact that it is impossible to sexually assault a corpse will not prevent a s. 231(5)(b) first degree murder conviction. The victim may be dead when the sexualized conduct occurs, but they were alive when the sexual assault commenced.
>
> [60] Sensibly, the law does not require discrete proof that, before the violence ensued, the accused person had an intention to sexually violate their victim. Where the two crimes — murder and sexual assault — are so "inextricably intertwined that they form a single continuous transaction", to use the phrase offered by Steel J.A. in *Muchikekwanape*, at para. 77, the entire attack takes on the character of a sexualized murder and will ground a first degree murder finding under s. 231(5)(b). In effect, the close link between the events exposes, circumstantially, that the murder is a sexual killing. Since the entire single transaction is a sexual killing, a sexual assault is necessarily occurring when the murder happens, even if the victim has expired by the time the objectively sexualized conduct begins.

> [61] This outcome is made possible by the interpretation that has been given to the "while committing" requirement found in s. 231(5). That component of s. 231(5) has been authoritatively interpreted in *R. v. Paré*, [1987] 2 S.C.R. 618 (S.C.C.), in the context of s. 231(5)(b). Even though the most natural reading of s. 231(5) suggests that both offences must occur simultaneously, this is not what the law requires. The two offences can occur sequentially, so long as they are properly characterized as parts of the same transaction or event.
>
> [Emphasis added]

[453] I have no difficulty in determining beyond a reasonable doubt that in the present case, the violence that caused the death of each victim was inextricably linked to the violation that followed in respect of each victim's sexual integrity. Indeed, the very nature of the accused's arousal *depended* on the death of each victim, and as such, the sexual assault had to have commenced prior to each of their deaths. Put simply, the murders were "sexual killings". Again, given the very nature of homicidal necrophilia and the sexual motivation that underlies it, the acts of murder and sexual assault in the case of each of the four victims are so "inextricably intertwined that they form a single, continuous transaction" (***Muchikekwanape***, at paragraph 77).

[454] Alternatively, but not incompatibly with the conclusions in the preceding paragraphs, even if I had not determined that the underlying sexual assaults gave rise to a finding of constructive first degree murder in respect of each count, I note that in the case of three of the victims, Buffalo Woman, Ms Myran and Ms Contois, the sexual acts by the accused immediately prior to, and separate from the three murders, constituted sexual assault or attempted sexual assault irrespective of

what came afterwards. In the case of Buffalo Woman, this involved the removal of Buffalo Woman's clothing after the accused's initial attempt to strangle her to death and prior to her regaining consciousness. In the case of both Ms Myran and Ms Contois, this involved non-consensual sexual activity in which both victims tried to fight off the accused's sexual advances. In other words, when I examine the elements of the offence of sexual assault, I find that in all three cases, the evidence suggests that just prior to the actual killing of each of these three victims: (i) the accused directly touched each of Buffalo Woman, Ms Myran, and Ms Contois; (ii) that the touching was intentional; (iii) that the touching took place in circumstances of a sexual nature; (iv) that each of Buffalo Woman, Ms Myran and Ms Contois did not consent to the sexual activity in question; and (v) that the accused knew that each of these three victims did not consent to the sexual activity in question.

[455] I will now briefly return to my earlier comment wherein I expressed some disagreement with the somewhat restrictive rationale in ***Niemi***.

[456] It should be clear that I have already determined that the accused is guilty of constructive first degree murder given the very nature of homicidal necrophilia and the sexualized murder that necessarily underlies it. The acts of murder and sexual assault in the instance of each of the four victims identified in the four counts are indeed inextricably intertwined such that they form a single transaction. While that finding has been made as described, I do nonetheless question part of

the rationale in ***Niemi***, a rationale upon which I have partly relied but one which also starkly suggests that absent a connected sexualized murder, sexual assault requires a live victim. It is a rationale that confidently asserts by way of a premise, that it is "difficult to speak meaningfully in such possessive terms about the victim's sexual integrity if the victim is dead" (***Niemi***, at paragraph 44).

[457] The rationale in ***Niemi*** clearly precludes the possibility of a sexual assault on a dead person (absent a preceding and connected sexualized murder). I question whether that rationale (and the premise upon which it rests) is sustainable as it does not seem entirely coherent with the manner in which we have come to analyze and understand sexual assault (and the underlying principles) in Canadian jurisprudence.

[458] I certainly acknowledge the existence of s. 182 of the ***Criminal Code*** (and the separate offence it creates) and Parliament's attempt to regulate and protect generally against any indecent and improper interference and/or indignity inflicted upon a body or human remains. That said, it is far from clear that s. 182 adequately addresses the profound violation that is distinctly and uniquely associated with sexual acts performed on a dead person.

[459] While strictly speaking, it is not necessary to decide this issue given my earlier finding, I will repeat in passing, that the pre-emptive rationale in ***Niemi*** seems somewhat incongruous, and difficult to reconcile with the way we, in

Canada, have come to think about dignity in the context of the law of sexual assault.

[460] The Supreme Court of Canada has already made it clear that a sexual assault conviction can follow from the non-consensual sexual act with a person who is not conscious (***R. v. J.A.***, 2011 SCC 28; ***R. v. Al-Rawi***, 2018 NSCA 10, ***R. v. Esau***, [1997] 2 S.C.R. 777; and ***R. v. Humphrey*** (2001), 143 OAC 151, at paragraph 56). I note as well, that the identification and criminalization of assault (and sexual assault) is rooted in society's commitment to the integrity of the person. In this regard, control over who touches one's body and how, are questions — which at their core — are deeply grounded in human dignity and autonomy (***R. v. Ewanchuk***, [1999] 1 S.C.R. 330). Accordingly, it is unclear why in death, as in life, similar care would not be taken (given the indignities and debasement involved in any such case) to ensure that the social stigma of a sexual assault conviction also attaches to the to non-consensual contact with a dead person, separate and apart from whatever might have been the cause of death.

[461] It is now well established that without voluntary agreement or consent to a sexual act, there is the *actus reus* for sexual assault. If the only distinction or difference justifying the rationale that precludes the possibility of sexual assault on a dead person (absent a sexualized murder) rests with the fact that a person who is dead is incapable of communicating or withholding consent, the reasoning behind that distinction risks moving towards the absurd and away from what the

Supreme Court of Canada has attempted to do in affirming a robust understanding of dignity in the context of non-consented to sexual activity (***Ewanchuk***; and ***R. v. Kirkpatrick***, 2022 SCC 33). It is perhaps well to ask: Does human dignity, properly understood in the context of Canadian sexual assault law, die with a person's last breath? In that same context, does society's commitment to the protection of the inviolability and sexual integrity of the person terminate with a person's last breath? If not, does the language in s. 182 and its more sterile focus on "interference", adequately and sufficiently address the indignities that occur when a dead person is touched sexually in a way that would require a living person's consent?

[462] The answers to those questions will have to await another case where the issues and facts may make those questions and answers much more determinative.

ii) *Did the accused commit a forcible confinement in relation to any of the victims named in the four counts, and if so, was the commission of the forcible confinement and the murder part of the same series of events?*

[463] As it relates to the alleged underlying offence of unlawful confinement and the Crown's theory of constructive first degree murder, there are two relevant questions that I must address — 1) Did the accused commit unlawful confinement, and 2) was the unlawful confinement and the murder part of the same series of events?

[464] I will consider these two questions separately.

Did the accused commit forcible confinement?

[465] For the Crown to establish unlawful confinement, it must prove each of the following essential elements beyond a reasonable doubt:

1) that the accused intentionally confined the victim; and
2) that the confinement was without lawful authority.

[466] If the Crown has not satisfied me beyond a reasonable doubt of each of these elements, the accused has not committed unlawful confinement.

[467] To intentionally confine another person is to physically (coercively) restrain that person, contrary to their wishes, thereby depriving that person of their liberty to move from one place to another. Confinement is an unlawful restriction on liberty for some (a significant) period of time. It does not have to be in one particular place. The accused must intend to restrict the victim's freedom to move about. As noted earlier in ***Sundman***, unlawful confinement occurs where, for any significant time period, a person is coercively restrained or directed contrary to their wishes, so that they cannot move about according to their own inclination and desire. The person need not be restricted to a particular place or physically restrained. The restraint can be through violence, fear, intimidation, or psychological, or other means. The purpose of the confinement is not relevant.

[468] I will review below, what if any evidence exists in respect of each of the four victims as it relates to what the Crown alleges was the intentional unlawful confinement of each victim.

Buffalo Woman

[469] In considering whether the accused intentionally confined Buffalo Woman as alleged, I remind myself of the circumstances surrounding her attendance at the accused's suite and the circumstances surrounding her murder.

[470] Following their meeting outside of 190 Disraeli, Buffalo Woman and the accused took a transit bus back to his place at 5-259 McKay Avenue. They "hung out" briefly at his suite after which Buffalo Woman left for a brief period of time, possibly to get some cigarettes. She did return. The accused indicated that he was starting to come off mushrooms when Buffalo Woman returned.

[471] At one point at the suite, Buffalo Woman said, "I love you daddy", which he indicated, he "did not take lightly".

[472] At another point, Buffalo Woman grabbed some of the accused's "stuff" and tried to leave. The accused then grabbed her. The accused choked her, and Buffalo Woman passed out. He then filled his bathtub with water. He then started to undress the still unconscious Buffalo Woman because he intended to have sex with her (consistent with his attraction to unconscious, passed out, or dead females).

[473] As the accused was undressing the still unconscious Buffalo Woman, she became "consciously aware". The accused then drowned her in the bathtub.

[474] In examining all of the evidence, I find that Buffalo Woman was confined from the moment the accused grabbed her, kept her from leaving and began to choke her into unconsciousness. Following the accused having filled the bathtub, he returned to the unconsciousness Buffalo Woman and began to undress her at which time she became conscious. During that entire period, I find that given the accused's earlier action (restraining Buffalo Woman from leaving) and his intention to have sex with her, Buffalo Woman was physically restrained and confined to the accused's suite. I also find that the span of time between the grabbing of Buffalo Woman (keeping her from leaving) and the drowning of her after she had regained consciousness, was a period of time of significant enough duration that it falls within the earlier described definition of confinement.

[475] As it relates to whether the confinement was committed without lawful authority, given the circumstances that I have described and given the violence that was so much part of the victim's death, there is obviously nothing in the evidence that would suggest anything but that the confinement was done without lawful authority.

Morgan Harris

[476] In considering whether the accused intentionally confined Morgan Harris as alleged, I remind myself of the circumstances surrounding her attendance at the accused's suite and the circumstances surrounding her murder.

[477] The accused described meeting Morgan Harris a long time ago. He had most recently (leading up to the killing of Morgan Harris) described seeing her at two shelters — 190 Disraeli and Siloam Mission — where he talked to her and asked her if she wanted to come back to his suite and "chill". She did go with the accused and as he says, "I knew what I was doing, man".

[478] With the above as context, I note that while they were both at his suite on the day in question, the accused filled his bathtub before the killing. He indicated in his statement to the police that he permitted Ms Harris to go out ("let her go") for a smoke because in his mind, he was "thinking, like, fuck, this is going to be her last smoke, so I let her enjoy that". When she returned to the darkened suite, he put her in a headlock and she collapsed, striking her head on the bathtub. In his words, she continued to fight, but "[it] didn't work out for her". He then drowned her in the bathtub before proceeding to have sex with her corpse multiple times over the next several hours.

[479] While the accused's intention may have been clear in terms of his eventual murder and sexual defilement of Ms Harris, it is not clear on the evidence that when the accused refers to having "let" Ms Harris go out for one last smoke

(suggesting a temporary release from confinement), that Ms Harris herself knew or believed at that moment, that she was restrained (physically or otherwise) and that this was to be her "last smoke". From the time that Ms Harris returned to the darkened suite and resisted the accused's immediate attempts to push her into the bathtub (following which she was put into a headlock, collapsed, and struck her head on the tub) it is not clear to me, on the evidence, that Ms Harris was restrained for a sufficiently significant period of time so as to justify characterizing that quickly transpiring physical interaction with the accused as a confinement. Put simply, despite the obvious violence surrounding Ms Harris's death, I cannot on the evidence, satisfy myself that the duration of time during which Ms Harris's liberty would have been restricted (prior to the murder), was of a sufficient duration so as to constitute a confinement as defined in law.

Marcedes Myran

[480] In considering whether the accused intentionally confined Marcedes Myran as alleged, I remind myself of the circumstances surrounding her attendance at the accused's suite and the circumstances surrounding her murder.

[481] The accused met Ms Myran in a back lane between The Salvation Army and Siloam Mission. He asked her "do you have place? Do you want to, you know, come with me?" Ms Myran did indeed agree to go back to the accused's suite.

[482] At the accused's suite, the accused and Ms Myran were having consensual sex, but Ms Myran would not let the accused finish. It was at that point that the

accused started getting rough with her and he advises that she fought back. This caused him to become "triggered".

[483] While the accused tried to calm Ms Myran, she continued to fight with him. She wanted to leave. The accused described his thought process at that juncture as follows: "this is a liability because I already killed some people before … I'm not going to go down for this".

[484] The accused put Ms Myran in a headlock, brought her to the ground and was on top of her choking her from the front. As he indicated, he choked her until "she was like skull and crossbones dead".

[485] The accused advised the police that he had filled the bathtub before murdering Ms Myran.

[486] Although once again, the events leading to Ms Myran's death evolved quickly (following her refusal to let the accused finish when they were having sex), I nevertheless find, on the evidence, that the accused did physically restrain Ms Myran's liberty and movement and for a sufficiently significant period of time so as to constitute a confinement.

[487] It seems clear that when the accused describes himself as having become "a little rough with her" and that as a consequence, she fought back, she was trying to move or get away from the accused. She was unable to do so.

[488] The accused confirms that he tried to calm her down, but she kept fighting and was going to leave. He indicated that he was not going to let her

leave (because he saw this as a "liability"). It was at that point, that the accused continued restricting Ms Myran's liberty by putting her in a headlock and bringing her to the ground and remaining on top of her. It was then that he choked her from the front.

[489] Based on all of the evidence that I have reviewed, I have concluded that the accused did intentionally confine Marcedes Myran.

[490] I will say in relation to Ms Myran's confinement, as I said in the discussion relating to Buffalo Woman's confinement, given the circumstances that I have described and given the violence that was so much a part of the victim's death, there is obviously nothing in the evidence that would suggest anything but that the confinement that I have identified, was done without lawful authority.

Rebecca Contois

[491] In considering whether the accused unlawfully confined Rebecca Contois as alleged, I remind myself of the circumstances surrounding her attendance at the accused's suite and the circumstances surrounding her murder.

[492] Ms Contois and the accused had known each other for a period of time prior to her death. He had met her on a bus, took her to his apartment where, for a period, she stayed with the accused. She then left for some time, eventually returning on the day she was killed. By that time, the accused had already killed three women.

[493] On the night of her murder, Ms Contois attended to the accused's apartment and threw stones at his window in order to get his attention. She came in from the rain and was soaking wet. She had a shower and slept for a while.

[494] At one point, in response to the accused's sexual advances, Ms Contois told the accused to get off her and she started fighting with him. This triggered the accused and caused him to start choking her. She fought back, and he crushed her throat. During this time she was making noise, so he covered her face with a pillow.

[495] As horrifically violent and aggressive was the accused's response and was his eventual murder of Ms Contois, on the evidence before me, I cannot find beyond a reasonable doubt, that in the interaction that I just described, that Ms Contois had her liberty restricted (physical or otherwise) for a sufficiently significant period of time so as to allow me to find a confinement. Although it seems clear that Ms Contois was physically restricted at the point she began fighting the accused and when the accused began choking her (and trying to cover her face with a pillow), those events seem to have been evolving in real time at a rapid pace such that they did not represent a significant enough duration of time compatible with what in law, a confinement requires.

[496] For the foregoing reasons, I have not found beyond a reasonable doubt that Morgan Harris or Rebecca Contois were forcibly confined. Conversely, I have

found beyond a reasonable doubt, that Buffalo Woman and Marcedes Myran were forcibly confined.

[497] Having found beyond a reasonable doubt that Buffalo Woman and Marcedes Myran were forcibly confined, I now must consider, as it relates to the Crown's theory of constructive first degree murder respecting forcible confinement, whether in relation to Buffalo Woman and Marcedes Myran, the unlawful confinement and their murders were part of the same series of events.

Was the forcible confinement and the murder part of the same series of event?

[498] In order for the accused to be guilty of first degree murder, the Crown must prove beyond a reasonable doubt that the accused murdered Buffalo Woman and Marcedes Myran while he was committing the offence of forcible confinement.

[499] The forcible confinement and the murder (the killing) must involve two distinct criminal acts. In other words, the forcible confinement and the murder must not be one and the same.

[500] Although the forcible confinement and the murder must involve two distinct criminal acts, the murder and the forcible confinement must be closely connected with one another, in the sense that they must be part of the same series of events. They must both be part of a single ongoing transaction.

[501] To address this question, I must consider the entire course of the accused's conduct in respect of each killing. I must look at the whole series of

events in order to decide whether I am satisfied beyond a reasonable doubt that the murder and the forcible confinement were part of the continuous series of events that was a single ongoing transaction.

[502] I have carefully conducted the above examination in respect of each murder. Having just reviewed each murder and the identified forcible confinement, I will not repeat yet again those underlying facts. The chronology and the proximity of the events should be obvious from those facts.

[503] In the case of Buffalo Woman, I have no difficulty in finding beyond a reasonable doubt that the period of time during which she was confined and the connected events and actions by the accused that led to her murder, were indeed all part of a continuous series of events.

[504] Respecting Marcedes Myran, I similarly have no difficulty finding beyond a reasonable doubt, that the period of time during which she was confined and the connected events and actions by the accused that led to her murder, were also, all part of a continuous series of events that was a single ongoing transaction.

5) Summary of my analysis respecting first degree murder

[505] To summarize, for the reasons I have now provided, I have found that the Crown has established the accused's guilt beyond a reasonable doubt on all four counts on the basis of its theory of planned and deliberate first degree murder.

[506] Alternatively, I have found that the Crown has established the accused's guilt beyond a reasonable doubt on all four counts on the basis of its theory of

constructive first degree murder in respect of the underlying offence of sexual assault.

[507] As it relates to the Crown's theory of constructive first degree murder in respect of the underlying offence of forcible confinement, I have found that the Crown has only established the accused's guilt beyond a reasonable doubt in respect of count 1 (Buffalo Woman) and count 3 (Marcedes Myran).

VI. CONCLUSION

[508] The necessary prosecution and criminal trial of the accused, Jeremy Skibicki, has had an undeniable and profound impact on the entire Manitoba community, Indigenous and non-Indigenous. That impact has also been very apparent in the courtroom itself, where the pain and suffering of the victims' families and friends, who so vigilantly attended the trial each day, has been palpable. Subjected daily to the most excruciating and horrific details of their loved ones' final moments, those family and friends were present not only out of a deep respect, love and honour for their mothers, daughters, granddaughters, sisters, aunties, cousins, and friends, but also, I suspect, because they were, like all Manitobans, in search of answers. In the absence of her own identifiable family, the fact that so many also bore witness on behalf of Buffalo Woman, ensuring she was not forgotten, was a remembrance that was both powerful and moving.

[509] Within this context, it is an understandable hope that the dispassionate, exacting, and painstaking processes of a criminal trial might provide some

clarifying answers, and by extension, assist in the process of grief, acceptance, and healing. Although that hope is more than understandable, the more modest and realistic goals for a proceeding such as this one, are a fair process and a legally just result.

[510] For all its rigours and clear truth-seeking objectives, it should be obvious that in a case as shocking and unsettling as this one, where the question "why" is ever present, the scope and focus of the criminal trial is by necessity, limited. The perhaps unsatisfying reality is that despite its other strengths, a criminal trial is usually an inadequate and ill-equipped forum for answering the more difficult and deeper questions that will always surround the pathologies, inhumanity and barbarism of an accused like Jeremy Skibicki.

[511] That said, what a criminal trial can and must always do, is provide — based on admissible evidence — impartial and judicious answers to the meaningful factual and legal questions that arise, including whether the state has established an accused's guilt beyond a reasonable doubt. If that task is properly performed, a still valuable form of attainable justice may be achieved.

[512] In the present case, in answering the relevant factual and legal questions, I have come to the following conclusions:

1. The accused has not established on a balance of probabilities in respect of any of the four counts in the indictment that at the time of the killing of Buffalo Woman, Morgan Harris, Marcedes Myran, and/or

Rebecca Contois, he was not criminally responsible by reason of mental disorder pursuant to s. 16 of the ***Criminal Code***.

2. That in respect of each and every count in the indictment as it relates to the victims, Buffalo Woman, Morgan Harris, Marcedes Myran, and/or Rebecca Contois, the Crown has proved beyond a reasonable doubt that the accused is guilty of first degree murder.

[513] In the result, the accused, Jeremy Skibicki, stands convicted of four counts of first degree murder.

_____C.J.K.B.