NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Henneberry,* 2017 NSCA 71

Date: 20170803
Docket: CAC 441343
Registry: Halifax

Between:

Victoria Lea Henneberry

Appellant

v.

Her Majesty the Queen

Respondent

Judges:	MacDonald, C.J.N.S., Beveridge and Bourgeois, JJ.A.
Appeal Heard:	April 12 and 13, 2017, in Halifax, Nova Scotia
Held:	Appeal dismissed, per reasons by the Court by Beveridge, J.A.; MacDonald, C.J.N.S. and Bourgeois, J.A. concurring
Counsel:	Victoria Lea Henneberry, appellant in person Mark Scott, Q.C., for the respondent

Reasons for judgment:

INTRODUCTION

[1] The appellant is Victoria Henneberry. She appeals from conviction. But there was no trial, she pled guilty to the murder of Loretta Saunders.

[2] Ms. Saunders was a young Aboriginal woman in her last year of an Honours programme in Criminology. She sub-let a room in her apartment to Blake Leggette and the appellant.

[3] Ms. Saunders did not return when she went to collect rent from them on February 13, 2014. Leggette and the appellant were arrested in Ontario on February 18, 2014 in possession of Ms. Saunders' car, phone, I.D. and bank card.

[4] The appellant and Leggette were charged with the first degree murder of Ms. Saunders. The trial commenced before the Honourable Justice Joshua M. Arnold on April 21, 2015. After jury selection, Mr. Leggette agreed to plead guilty as charged.

[5] The appellant, with the assistance of counsel, then negotiated a plea to the included offence of second degree murder with a joint recommendation for the minimum ten-year period of parole ineligibility. The appellant and the Crown submitted an Agreed Statement of Facts to the trial judge.

[6] The trial judge conducted a thorough and complete plea inquiry with both Mr. Leggette and the appellant. Formal sentencing was adjourned for a week to permit Victim Impact Statements to be prepared and filed.

[7] The sentence for Mr. Leggette was automatic, life imprisonment without parole eligibility for 25 years.

[8] At the sentencing hearing, the appellant apologized to the victim's family for her role in Ms. Saunders' homicide. The judge accepted the joint recommendation and imposed the minimum sentence the law allows for second degree murder, life imprisonment without parole eligibility for ten years.

[9] The appellant appeals, and asks this Court to set aside her guilty plea. She argues her plea is invalid due to her mental health and because she is innocent.

[10] We heard the appeal proceedings over two days, April 12 and 13, 2017. At the conclusion of the hearing, we were satisfied that the appellant's request had no merit. We announced our unanimous decision that the appeal was dismissed with reasons to follow. These are our reasons.

[11] Before setting out a more detailed description of the proceedings in the Courts below and in this Court, we will set out some of the basic principles about a plea of guilt and the jurisdiction of an appellate court to set aside such a plea.

THE PRINCIPLES

[12] A guilty plea in open court is a formal admission of the essential elements of an offence. The consequences are significant: the accused gives up the right to have a trial conducted before an impartial and independent tribunal; he or she is no longer presumed to be innocent; the Crown need not call evidence to establish any aspect of the offence, save aggravating facts disputed by the accused at the time of sentence.

[13] A trial judge can, but need not, conduct an inquiry before accepting a guilty plea. The *Criminal Code* was amended to encourage trial judges to do so. Section 606 sets out the issues to be addressed, but adds that failure to "fully" conduct the inquiry does not affect the validity of the plea. It provides:

> 606. (1.1) A court may accept a plea of guilty only if it is satisfied that the accused
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> (a) is making the plea voluntarily; and
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> (b) understands
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> (i) that the plea is an admission of the essential elements of the offence,
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> (ii) the nature and consequences of the plea, and
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> (iii) that the court is not bound by any agreement made between the accused and the prosecutor.
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> (1.2) The failure of the court to fully inquire whether the conditions set out in subsection (1.1) are met does not affect the validity of the plea.

[14] Before sentence is passed, a trial judge has a discretion to permit an accused to withdraw a guilty plea (see, for example, *Thibodeau v. The Queen*, [1955] S.C.R. 646).

[15] An appellate court also has the power to permit an appellant to withdraw a guilty plea provided there are "valid grounds". There is no closed list of what might qualify, but it includes situations where the appellant did not fully appreciate the nature of the charge or the effect of the plea or never intended to admit facts essential to guilt, or on the accepted facts, a conviction is not legally available (see *Adgey v. The Queen*, [1975] 2 S.C.R. 426; *Brosseau v. The Queen*, [1969] S.C.R. 181; *R. v. Bamsey*, [1960] S.C.R. 294.)

[16] A frequently quoted description of this power is that of Dickson J., as he then was, in *Adgey v. The Queen*, *supra* where he wrote (p. 431):

> This Court in *R. v. Bamsey*, at p. 298, held that an accused may change his plea if he can satisfy the Appeal Court "that there are valid grounds for his being permitted to do so." It would be unwise to attempt to define all that which might be embraced within the phrase "valid grounds". I have indicated above some of the circumstances which might justify the Court in permitting a change of plea. The examples given are not intended to be exhaustive.

[17] History has borne out the wisdom of this broad approach. Relief has been granted because of: inappropriate inducements or threats (*R. v. Hirtle* (1991), 104 N.S.R. (2d) 56 (C.A.); improper pressure by counsel (*R. v. Lamoureux* (1984), 13 C.C.C. (3d) 101 (Que. C.A.); *R. v. Laperrière*, [1996] 2 S.C.R. 284); police threats, (*R. v. Nevin*, 2006 NSCA 72); violation of the accused's right to full disclosure (*R. v. Duguay*, 2003 SCC 70); a powerful inducement by the Crown with reliance on flawed or tainted opinion evidence which, when discredited, undercuts the existence of an informed plea (*R. v. Kumar*, 2011 ONCA 120; *R. v. Shepherd*, 2016 ONCA 188).

[18] Despite its breadth, the power is not unlimited. Absent a legal error in a withdrawal application before a trial judge, the power of an appeal court to permit withdrawal on appeal is tied to a prevention of a miscarriage of justice (s. 686(1)(a)(iii) of the *Criminal Code*).

[19] The onus is on an appellant to demonstrate on a balance of probabilities that his or her plea was invalid. What factors inform the validity of a guilty plea? *R. v. T.(R.)*, 10 O.R. (3d) 514, [1992] O.J. No. 1914 is one of the leading cases that discuss this issue. To be valid, a plea must be voluntary, informed, and unequivocal. Justice Doherty, for the Court wrote of these requirements:

> [14] To constitute a valid guilty plea, the plea must be voluntary and unequivocal. The plea must also be informed, that is the accused must be aware of

> the nature of the allegations made against him, the effect of his plea, and the consequence of his plea: *R. v. Lyons*, [1987] 2 S.C.R. 309 at p. 371, 37 C.C.C. (3d) 1 at p. 52; Law Reform Commission of Canada Working Paper No. 63, "Double Jeopardy Pleas and Verdicts" (1991) at p. 30.
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> …
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> [16] I will first address the voluntariness of the appellant's guilty pleas. A voluntary plea refers to the conscious volitional decision of the accused to plead guilty for reasons which he or she regards as appropriate: *R. v. Rosen* , [1980] 1 S.C.R. 961 at p. 974, 51 C.C.C. (2d) 65 at p. 75. A guilty plea entered in open court will be presumed to be voluntary unless the contrary is shown: Fitzgerald, The Guilty Plea and Summary Justice, supra, at p. 71.
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> [17] Several factors may affect the voluntariness of a guilty plea. None are present in this case. The appellant was not pressured in any way to enter guilty pleas. Quite the contrary, he was urged by duty counsel not to plead but to accept an adjournment. No person in authority coerced or oppressed the appellant. He was not offered a "plea bargain" or any other inducement. He was not under the effect of any drug. There is no evidence of any mental disorder which could have impaired his decision-making processes. He is not a person of limited intelligence.
>
> [18] In his affidavit the appellant asserts that he was anxious and felt himself under pressure when he entered his pleas. No doubt most accused faced with serious charges and the prospect of a substantial jail term have those same feelings. Absent credible and competent testimony that those emotions reached a level where they impaired the appellant's ability to make a conscious volitional choice, the mere presence of these emotions does not render the pleas involuntary.

[20] To this we would add, voluntary means the accused has not been coerced into pleading guilty. It is the free choice of an accused, untainted by improper threats, bullying or any improper inducement to plead guilty.

[21] Because the appellant suggests that her mental health robs her guilty plea of legitimacy, we turn to the issue how mental disorders can impact plea validity.

[22] In *R. v. W.(M.A.)*, 2008 ONCA 555, the appellant, without counsel, pled guilty to serious sexual offences committed against his son. He suffered from depression. A program coordinator informed the trial court that the appellant desperately needed psychiatric care.

[23] After sentence, the appellant became paranoid and started hallucinating. With medication, his hallucinations and depression subsided. He appealed on the basis that he had not been thinking clearly or rationally at the time he entered his

guilty plea, and had not appreciated the significance of accepting responsibility for actions he had not committed. Psychiatric reports were filed by the appellant and by the Crown.

[24] As to the test, Laskin J.A. adopted the "limited cognitive capacity" standard. This is the same yardstick used to determine the voluntariness of confessions and fitness to stand trial (see *R. v. Taylor* (1992), 77 C.C.C. (3d) 551 (Ont. C.A.); *R. v. Whittle*, [1994] 2 S.C.R. 914; *R. v. Eisnor*, 2015 NSCA 64 at paras. 105-111).

[25] This standard only requires that a court need be satisfied the accused understands the process, can communicate with counsel, and be able to make a conscious choice. It need not be a choice that is objectively wise, rational or necessarily in the accused's best interests. Justice Laskin wrote:

> [24] The issue on this appeal is whether the appellant's depression amounted to a mental disorder that affected the voluntariness of his guilty plea. In *T.(R.)* Doherty J.A. said that "[a] voluntary plea refers to the conscious volitional decision of the accused to plead guilty for reasons which he or she regards as appropriate": see p. 520. Doherty J.A. also recognized that mental disorder is one factor that may impair the voluntariness of a plea.
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> [25] Both sides, of course, accept these principles from *T.(R.)*. However, they disagree on what standard should be applied when an appellant relies on mental disorder to invalidate a plea because of involuntariness. The Crown contends that we should apply the same standard we use to determine an accused's fitness to stand trial: the "limited cognitive capacity" standard. That standard requires only that the court be satisfied an accused understands the process, can communicate with counsel and can make an active or conscious choice. Whether the accused's choice is wise, rational or in the accused's best interest forms no part of the limited cognitive capacity standard. See *R. v. Taylor* (1992), 77 C.C.C. (3d) 551 at 563-67 (Ont. C.A.).

[26] After referring to the *Taylor* and *Whittle* decisions and the benefit of a harmonized approach to capacity, Justice Laskin concluded:

> [32] Indeed, it is hard to justify a higher standard of mental competency for the decision to plead guilty than for other decisions an accused must make during the criminal process. An accused's decision to plead guilty is obviously an important decision. But so too is an accused's decision to retain a lawyer or to give evidence. Further, it would be incongruous to find an accused mentally competent to stand trial, yet unfit to enter a valid plea.
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> [33] The limited cognitive capacity standard is also compatible with the test in *T.(R.)* for determining the voluntariness of a guilty plea. The limited cognitive

> capacity standard requires an ability to understand the process and make an active or conscious choice. The standard in *T.(R.)* requires "the conscious volitional decision of the accused to plead guilty for reasons which he or she regards as appropriate": see p. 520. In substance, these standards are the same. Both standards require that an accused be capable of making a decision. Both standards are subjective: they reject the notion that the accused's decision must be rational or objectively in the accused's best interests.

(See also *R. v. Singh*, 2014 BCCA 373; *R. v. Baylis*, 2015 ONCA 477; *R. v. Yukich*, 2017 BCCA 77)

THE ISSUES

[27] There is just one issue to be resolved: the validity of the appellant's plea.

[28] The appellant has been self-represented throughout the appeal process. Her Notice of Appeal was out of time. She applied for an extension. The Crown consented.

[29] The process generated somewhat different versions of the grounds of appeal. One version was that she "wasn't in the right mind set when I made my plea. I was distraught, stressed and panicked" and "I am not guilty of second degree murder".

[30] A later version was:

> 1. Accused did not appreciate the nature of the charge, or did not intend to admit that he was guilty of it.
> 2. He may appeal on any ground that involves a question of law.
> 3. Appeal on agreed statement of facts or transcription of evidence.

[31] These grounds are expanded in an appendix to the Notice of Appeal. Under the first ground, she asserts that she did not intend to admit her guilt; there was not enough time to fully consider such a decision—with an adjournment, she would have been able to make the "proper decision" and not one based on "how I was feeling at the time"; lastly, she claims she suffers from panic/anxiety symptoms which caused her to act "differently".

[32] Under the second ground, she argues that there is no direct evidence of her guilt, only circumstantial.

[33] Under the third ground, she insists that some of the contents of the Agreed Statement of Facts are untrue.

[34] In any event, it appears the latter ground caused a concern that the appellant was alleging a miscarriage of justice due to ineffective assistance of counsel.

[35] There have been many appearances by the appellant before various justices of this Court to address appointment of counsel, dates for filing of materials, and scheduling of hearing dates. There is no need to recount them all.

[36] When she requested an adjournment of the original hearing dates, she said she renounced any suggestion of ineffective assistance of counsel—it would be all about her mental health at the time of her plea. Any complaint about counsel came formally off the table with the filing of a Notice of Abandonment of Ground of Appeal dated February 28, 2017:

> Take notice that the Appellant Victoria Lea Henneberry hereby abandons the ground(s) of appeal alleging ineffective counsel of J. Patrick Atherton, and a subsequent miscarriage of justice therefrom, which were asserted in the Notice of Appeal and subsequent submissions to this Court.

[37] The appellant filed a motion to adduce fresh evidence and factum on January 26, 2017. The motion consisted of her affidavit with one attachment from an emergency room visit in 2012 where she was prescribed Clonazepam for anxiety symptoms.

[38] The Crown's response of March 8, 2017 contained affidavits from Crown trial counsel, Christine Driscoll, Sherriff Tony Bremner and forensic psychologist Dr. Andrew Starzomski. We will return to these materials later.

[39] The Crown's factum interprets the grounds and fresh evidence motion as the appellant's request to have this Court permit her to withdraw her guilty plea as being invalid. We agree. As a result, the sole issue is: has the appellant established on a balance of probabilities that her plea to second degree murder was invalid?

[40] The answer is, she has not.

[41] We will first consider the record of the proceedings, and then the appellant's motion to adduce fresh evidence.

THE RECORD

[42] There is nothing in the record of the trial proceedings that gives any credence to the suggestion that her plea was anything but voluntary, unequivocal and informed.

[43] The appellant was represented throughout the proceedings by experienced defence counsel, J. Patrick Atherton. The appellant and Mr. Leggette were arrested on February 18, 2014 in Ontario. They were in possession of Ms. Saunders' car, cell phone, debit card and various pieces of her identification.

[44] The appellant gave a cautioned statement to the police on February 26, 2014. Email messages were found. A search of Mr. Leggette's phone uncovered a video of the appellant making comments on February 8, 2014 about murdering the victim.

[45] The appellant was present throughout a five-day preliminary inquiry. Judge Derrick, as she then was, presided. She reserved her decision on whether to commit Mr. Leggette and the appellant on the charge of first degree murder.

[46] On August 1, 2014, Judge Derrick delivered a lengthy oral decision. Her reasons have since been reported (2014 NSPC 117). She set out in detail the elements of the offence of first degree murder and the evidence admissible against each individual accused. We don't need to recite all of it, but some reference is necessary to appreciate the legal landscape that faced the appellant at trial whether Mr. Leggette was or was not a competent and compellable witness against her.

[47] The authorities discovered notes made by Mr. Leggette. They are not entirely consistent. They demonstrate his animosity toward the appellant, and suggest an active role by the appellant in the plan and murder of Ms. Saunders. The details of these notes can also be found in the trial judge's decision on their admissibility (2015 NSSC 112).

[48] Judge Derrick referred to some of the contents:

> [47] According to Mr. Leggette's notes, as of February 12, 2014, money was a problem for him and Ms. Henneberry. He was having trouble getting work and they were hard up. He talked about his nerves being "shot" from arguing with Ms. Henneberry; he would have done anything for her, but said: "Never thought I would kill for her..." (*Exhibit 37, page 2*)

> [48] Woven through the notes is the theme of Mr. Leggette pinning "the murder" on Ms. Henneberry. He said he told a lawyer who came to see him in jail that "Victoria is the one who commited (sic) the murder while I was in the shower" and concluded with "he believes me." (*Exhibit 37, page 8*) He also recorded how he "purposely stated that all the inmates should get off my back, since I'm not the one who killed Loretta Saunders. Victoria is the one, which is what we want people to believe, since I've said nothing and Victoria is speaking like a leaky faucet..." (*Exhibit 37, page 8*) Mr. Leggette also made reference to "accessory after the fact" being relevant to the defence it can be inferred he hoped to mount to the murder charge. (*Exhibit 37, page 12*)
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> [49] In an entry dated April 6, 2014, Mr. Leggette expressed the depth of his antipathy toward Ms. Henneberry, saying: "I hate her with everything in me, and with all the god's (sic) of this earth she will be going away for 25 to life, no matter what the truth is." (*Exhibit 37, page 16*) He had said in an earlier entry dated March 18: "I don't care if she isn't the one who actually killed Loretta, it's what I will hopefully make everyone believe. That is how I will make her pay for the last 3 years." (*Exhibit 37, page 12*)
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> [50] In his notes, Mr. Leggette not only wrote of wanting to ensure that Ms. Henneberry took the fall for Ms. Saunders' murder, he also spoke explicitly about his role. In an entry dated March 20, Mr. Leggette wrote: "Basically I am growing impatient, I'm angry at myself for killing Loretta, and the fact I'm going to be blaming Victoria for it, so I don't do life in prison, but Darcy [referring to his cell mate] says she deserves it." He also said in another passage: "In the end, I murdered a woman and even now as I did that day, it does not bother me. I think I wanted to do it as much a (sic) Victoria wanted me to." (*Exhibit 37, page 29*)

[49] Significantly, Mr. Leggette described what led up to and the day of the murder. He wrote how the appellant had told Ms. Saunders that on February 13, 2014 they would have her rent money. They knew this was not true. When Ms. Saunders showed up to collect the rent money, the appellant lied to her and said her bank card had been lost and she needed to call the bank to have it replaced. While doing so, Ms. Saunders sat on the couch and waited for her money. When Mr. Leggette then asked the appellant "should I do it", she responded "you don't have the balls".

[50] Mr. Leggett then proceeded to try to strangle the victim. He asked the appellant for assistance, first with a plastic bag. He needed three, but eventually knocked the victim out, and wrapped her head in plastic wrap to ensure death. Medical evidence confirmed death was caused by smothering and/or manual strangulation.

[51] In one version, Leggette wrote:

> I walked out to the living room where Loretta was sitting on the couch, come up behind her all in one motion grabbed her by the throat and proceeded to choke her. She kicked off the couch and we ended up in the dining room, while I constantly had her by the throat. For some reason it wasn't working, In my mind once I started I shouldn't stop. I asked Victoria for assistance, first with a plastic bag, Loretta put up a fight and tore 3 different bags I tried to use. Finaly [sic] I hit her head twice on the floor to knock her out which worked. I proceeded to wrap her head in plastic wrap to make sure she was actually dead.
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> (2014 NSPC 117 at para. 52)

[52] In another:

> On February 13, 2014, Victoria and I were arguing because she did not want to be in N.S. anymore (she never seemed to be satisfied). I was just finally sick of moving around so much, and wanted to just make it work. She was so hard to be with, always wanting what she wanted and not what was needed. I was getting sick of it, and my anger. I was trying my whole life previously to keep out of my life, was coming out, and she knew how to push my buttons. She had through[sic] out the idea, days before about killing Loretta Saunders! I never thought I would be capable of such an action, never say never!!!
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> …
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> Walked back to Victoria who is still in the room, on the phone with the bank, I asked her again, "should I do it!" She say's "You don't have the balls".
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> That angered me beyond what I had left, after everything we have been through, and like I said she knew how to push my button's. I walked out to where she was sitting on the couch, and all in one motion, I grabbed her by the neck from behind, and started to choke her, she struggled until we were off the couch, kicking over the coffee table, which made a horrible mess, and ended up in the dining room. Where I continued to choke her. In my mind I say, 'you've started, you cannot stop'. For some reason choking alone wasn't working. So I grabbed a bag, and loretta [sic] being a fighter, ripped at it, so I grabbed another, again she ripped at it. Suddenly Victoria got the nerve to come out, she's almost smiling. I exclaim 'it isn't working, why isn't it working. The bag isn't working, choking isn't working." Then It occurred to me. I took her head and softly hit her head on the floor twice, and only twice, as if I was feeling bad as I commited [sic] the act.
>
> March 4, 2014
>
> How can I feel bad during this act, I was confused. I asked Victoria for help, as if it would help me feel better. I told her to get the plastic wrap. Loretta was already knocked out which made the task of wraping[sic] her head in the plastic easy.

> Satisfied that she would cause no more trouble or fight it any more, I was able to stand and breath (sic), and look and allow to sink in what I did.

(2015 NSSC 112 at para 76)

[53] There was a video found on Mr. Leggette's phone, recorded by Leggette on February 8, 2014. It was found to be admissible against both Mr. Leggette and the appellant. It captured an angry, drunken exchange between them that referenced their discussions to kill Loretta Saunders. Judge Derrick described the contents:

> [59] On the toilet Ms. Henneberry appears to be crying. She tells Mr. Leggette she will not want to be with him when she is sober. He wants to know what he has done that is so wrong that she is reacting this way. Ms. Henneberry then introduces a completely new topic, one that was not under discussion or implied in the previous eight minutes: "You can't even say that you really want to kill Loretta." Ms. Henneberry tells Mr. Leggette: "You said that you want to kill her earlier."
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> [60] When Mr. Leggette reacts to this, quite calmly, by repeatedly asking Ms. Henneberry: "When did I say that?" she lashes out and calls him "a fucking liar", yelling at him, "Stop lying Blake!"
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> [61] In a tone that could be viewed as venomous, Ms. Henneberry tells Mr. Leggette: "I don't lie about who I want to kill and maybe you should stop lying too." He asks her: "Who do you want to kill then?" Ms. Henneberry does not answer but has more to say to Mr. Leggette about what her comments suggest was something he said on a prior occasion: "You're the one who says 'I want to kill Loretta, I can't wait until she comes back here.'" Ms. Henneberry goes on to say to Mr. Leggette: "You told me earlier today whenever she was here, 'Holy fuck Vicky I wish you would have said no.'

[54] Judge Derrick correctly set out the legal requirements for party culpability for first degree murder:

> [76] Ms. Henneberry could be culpable as a party to Ms. Saunders' murder if she aided or abetted Mr. Leggette in committing it. (*section 21(1)(b) and (c), Criminal Code*) Aiding involves assisting or helping the perpetrator. Abetting includes "encouraging, instigating, promoting or procuring the crime to be committed." (*R. v. Briscoe, [2010] S.C.J. No. 13, paragraph 14*) The assistance rendered must be "for the purpose of aiding the principal offender to commit the crime" (*Briscoe, paragraph 15, emphasis in original*) and the aider must have "intended to assist the principal in the commission of the offence." (*Briscoe, paragraph 16*)
>
> [77] A person who is alleged to have aided in a first degree murder must be shown to have known that the murder was planned and deliberate. (*Briscoe,*

> *paragraph 17*) The Crown is not required to prove that the aider or abettor had the same *mens rea* "as the actual killer." All that has to be proven is that "he or she, armed with knowledge of the perpetrator's intention to commit the crime, acts with the intention of assisting the perpetrator in its commission." (*Briscoe, paragraph 18, emphasis in original*)

[55] Judge Derrick then considered only the evidence admissible against the appellant. This excluded Mr. Leggette's writings. She considered: the animus by the appellant; her need for money; her stated intention not to pay the victim rent; her desire to return to Ontario, but their predicament that they had no means of transportation and no money; the cell phone video demonstrating the appellant's knowledge that Leggette was contemplating Ms. Saunders' murder; the appellant's police statement demonstrating exact knowledge about how the murder occurred.

[56] From this and other evidence, the learned provincial court judge reasoned:

> [96] A reasonable jury, properly instructed, could infer that Ms. Henneberry's anger had helped oxygenate a plan to kill Ms. Saunders and enabled her [to] participate in it, first by lying to Ms. Saunders about the availability of the rent money, and then by standing by, at the ready, while the plan she and Mr. Leggette had discussed -- the murder - was executed by Mr. Leggette. Once that was accomplished, Ms. Henneberry was an active participant in the rest of the plan, packing up, taking Ms. Saunders' car, cell phone, and bank card, getting money by returning the computer for a refund, and leaving town. This evidence considered in combination with the rest of the evidence is capable of supporting the inference that the murder of Ms. Saunders was planned and deliberate. (*R. v. Poitras, [2002] O.J. No. 25, paragraph 11 (C.A.); R. v. Pan, [1999] O.J. No. 1214, paragraph 246 (C.A.)*) After-the-fact evidence can be used "as positive evidence of a particular mental state (like planning and deliberation)..." (*R. v. Cudjoe, [2009] O.J. No. 2761, paragraph 91 (C.A.)*)
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> …
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> [100] This evidence, with the rest of the evidence, could support an inference that Ms. Saunders' murder was planned and deliberate: that the perpetrators did not want it known that Ms. Saunders had been murdered and not simply taken off capriciously for Newfoundland. (*Poitras, paragraphs 11-12*) This would assist in the getaway, the other component of a plan that required the elimination of Ms. Saunders, the elimination of the rent obligation, and access to the means to leave Nova Scotia -- Ms. Saunders' car.
>
> [101] In conclusion on Ms. Henneberry, I find that a reasonable jury, properly instructed, could return a verdict of guilt against her as a party to the first degree murder of Ms. Saunders. Accordingly I commit her to stand trial for first degree murder and the other offences I mentioned earlier.

[57] There was no challenge to the appellant's committal to stand trial for first degree murder.

[58] A motion for severance by the appellant was unsuccessful (2015 NSSC 152).

[59] The trial commenced on April 20, 2015 with jury selection. It was lengthy. Given the amount of pre-trial publicity, there were challenges for cause. During the selection process, the appellant brought a motion for a mistrial. It was dismissed.

[60] The jury was selected on April 21, 2015. Proceedings were to commence the next day with the trial judge's preliminary jury instructions followed by counsels' opening addresses. The jury was instructed to return at 2:00 p.m. on April 22, as counsel had some issues to discuss about presentation of exhibits.

[61] There were no preliminary instructions, nor opening addresses. There was no need. When Court convened shortly after 3:00 p.m., counsel for Mr. Leggette filed a notice of re-election to trial by judge alone. The Crown consented. Also presented as an exhibit was an Agreed Statement of Facts signed by counsel for the Crown and Mr. Leggette, and by Mr. Leggette personally.

[62] The trial judge carried out a detailed and careful plea inquiry with Mr. Leggette. It is useful to quote it, as it mirrors the process the trial judge subsequently followed for the appellant.

[63] After re-election, Mr. Leggette was arraigned and pled guilty to first degree murder. This then followed:

> THE COURT: Thank you. Mr. Leggette, do you understand that you are pleading guilty to the first degree murder of Loretta Saunders, thereby, committing an indictable offence contrary to and in violation of section 235 of the *Criminal Code of Canada* and the maximum punishment provided by that offence is imprisonment for life without eligibility for parole for 25 years?
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> MR. LEGGETTE: Yes.
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> THE COURT: Are you voluntarily of your own free will pleading guilty?
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> MR. LEGGETTE: Yes.
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> THE COURT: By pleading guilty, you are admitting all of the facts and essential elements of the offence for which the Crown prosecutor must prove at trial for you to be found guilty. In this case first degree murder. Do you understand this?

MR. LEGGETTE: Yes.

THE COURT: If I accept your guilty plea, there will be no trial, you will give up your right to a trial, to confront those who give evidence and the process of criminal justice insofar as your right to defend yourself will stop upon my acceptance of your plea and finding you guilty as charged. Do you understand this?

MR. LEGGETTE: Yes.

THE COURT: When I sentence you, although I will listen carefully to what you, your lawyer and the Crown prosecutors have to say as to what the sentence should be, I'm not bound by any opinion or agreement made between you and the Crown prosecutors, although this sentence is automatic, do you understand that?

MR. LEGGETTE: Yes, I do.

THE COURT: Do you still wish to plead guilty?

MR. LEGGETTE: Yes.

THE COURT: One of the consequences of pleading guilty to first degree murder is that first degree murder carries a fixed penalty of imprisonment for life without eligibility for 25 years. Even though you have filed an admission of facts in compliance with section 606 of the *Criminal Code of Canada*, I'm going to outline very generally for you what the essential elements are for the first degree murder of Loretta Saunders and I'll ask you whether you admit to these essential elements.

The essential elements are that you killed Loretta Saunders, that you killed Loretta Saunders unlawfully. That at the time you killed Loretta Saunders you intended to and meant to kill her and that you planned and deliberately killed Loretta Saunders. Do you understand these essential elements?

MR. LEGGETTE: Yes.

THE COURT: Did you cause Loretta Saunders' death?

MR. LEGGETTE: Yes.

THE COURT: Did you cause Loretta Saunders' death unlawfully?

MR. LEGGETTE: Yes.

THE COURT: Did you intend to and mean to kill Loretta Saunders?

MR. LEGGETTE: Yes.

THE COURT: Was your murder of Loretta Saunders both planned and deliberate?

MR. LEGGETTE: Yes.

> THE COURT: I formally accept your plea of guilty on count 1 of the indictment and, based upon the agreed facts as filed, I find you guilty of the first degree murder of Loretta Saunders.

[64] Sentencing was adjourned to April 29, 2015.

[65] The same process followed for the appellant. There was a notice of re-election to trial by judge alone and an Agreed Statement of Facts signed by counsel and by the appellant personally.

[66] The only difference was that when arraigned on the charge of first degree murder, the appellant entered a plea to the lesser and included offence of second degree murder. This led to an equally complete and thorough plea inquiry:

> THE COURT: Ms. Henneberry, do you confirm a guilty plea to the included offence of second degree murder?
>
> MS. HENNEBERRY: Yes.
>
> THE COURT: Do you understand that you are pleading guilty to the second degree murder of Loretta Saunders committing, thereby, an indictable offence contrary to and in violation of section 231 of the *Criminal Code* or 235 of the *Criminal Code* of Canada, and the punishment provided for that offence is life imprisonment without eligibility for parole for a period between 10 and 25 years?
>
> MS. HENNEBERRY: Yes.
>
> THE COURT: Are you voluntarily of your own free will pleading guilty?
>
> MS. HENNEBERRY: Yes.
>
> THE COURT: By pleading guilty, are you admitting all the facts and essential elements of the offence which the Crown prosecutor must prove at trial for you to be found guilty?
>
> MS. HENNEBERRY: Yes.
>
> THE COURT: If I accept your guilty plea, Ms. Henneberry, there will be no trial. You will give up your right to a trial, to confront those who give evidence and the process of criminal justice, insofar as your right to defend yourself, will stop upon my acceptance of your plea and finding you guilty as charged. Do you understand this?
>
> MS. HENNEBERRY: Yes.
>
> THE COURT: When I sentence you, although I will carefully listen to what you, your lawyer and the Crown prosecutors have to say as to what the proper sentence should be, and in this case parole eligibility, because there is a mandatory sentence, I am not bound by any opinion or agreement made between you and the Crown prosecutors, do you understand this?

MS. HENNEBERRY: Yes.

THE COURT: Do you still wish to plead guilty?

MS. HENNEBERRY: Yes.

THE COURT: One of the consequences of pleading guilty to second degree murder is that second degree murder carries a fixed penalty of imprisonment for life without eligibility for parole for a period between 10 and 25 years. Do you understand this?

MS. HENNEBERRY: Yes.

…

THE COURT: Yeah. Thank you. Even though, Ms. Henneberry, you have filed an admission of facts in compliance with section 606 of the *Criminal Code of Canada*, I'm going to outline for you the essential elements of second degree murder and I'll ask you whether you admit to these essential elements.

The essential elements are that you were, in this case, a party to the killing of Loretta Saunders, that the killing you were a party to was unlawful, that at the time Loretta Saunders was killed, you knew Blake Leggette intended to kill her and meant to kill her. Do you understand these essential elements?

MS. HENNEBERRY: Yes.

THE COURT: Were you a party to causing Loretta Saunders' death?

MS. HENNEBERRY: Yes.

THE COURT: Were you a party to causing Loretta Saunders' death unlawfully?

MS. HENNEBERRY: Yes.

THE COURT: Did you know that Blake Leggette intended to kill Loretta Saunders and meant to kill Loretta Saunders when he killed Loretta Saunders?

MS. HENNEBERRY: Yes.

THE COURT: Ms. Henneberry, I formally accept your plea of guilty to the second degree murder of Loretta Saunders as included within count 1 of the indictment and, based upon the agreed facts as filed, I find you guilty of the second degree murder of Loretta Saunders. Counsel, do you agree that this matter is also adjourned to Wednesday, April 29th at 9:30 a.m. for victim impacts to be filed and any other documents which Crown and defence want this court to consider?

[67] On April 23, 2015, the trial judge wrote to Crown and defence counsel requesting background information on Ms. Saunders and the two offenders. It is only the response by Mr. Atherton that is relevant. He sent a five-page letter dated April 27, 2015 to the trial judge, with copies to the other counsel and the appellant.

The relevance of this letter will become evident later when discussing the motion to adduce fresh evidence.

[68] On April 29, 2015, the sentencing hearing proceeded. The Crown read in the Agreed Statement of Facts for Mr. Leggette. There were no submissions to be made about sentence. As noted earlier, there is no range of sentence. No exercise of discretion to be considered. Life imprisonment without parole eligibility for 25 years is automatic.

[69] In relation to the appellant, the Crown read into the record the Agreed Statement of Facts signed by counsel and the appellant:

> MS. DRISCOLL: The agreed statement of facts with regards to Ms. Victoria Henneberry, as exhibited on last date, a lot of them are similar, but there are some differences.
>
> In January of 2014 Blake Leggette and Victoria Henneberry, who were a couple, moved to Halifax. They had arranged to sublet a room in an apartment that was leased by Loretta Saunders. Ms. Saunders was a student attending St. Mary's University. She had placed an ad on Kijiji to sublet a room.
>
> Shortly after Mr. Leggette and Ms. Henneberry moved into the apartment on Cowie Hill Road landlord/tenancy issues arose. Also Mr. Leggette and Ms. Henneberry were having financial difficulties and wanted to leave Halifax. Mr. Leggette planned to kill Ms. Saunders, take her car and leave the province.
>
> On February 13th, 2014, at approximately 11 a.m. Loretta Saunders went to her apartment on Cowie Hill Road to collect rent from Blake Leggette and Victoria Henneberry. Ms. Saunders sat on the couch in the living room area while waiting for her rent. Mr. Leggette and Ms. Henneberry did not have the money. Ms. Henneberry became aware Mr. Leggette wanted to kill Ms. Saunders. Ms. Henneberry lied to Ms. Saunders and said she had lost her bank card. Ms. Henneberry told Ms. Saunders she needed to call the bank, keeping Ms. Saunders there. Mr. Leggette came up behind Ms. Saunders, grabbed her by the throat and choked her. Ms. Saunders struggled and the two ended up on the floor in the adjacent dining room.
>
> Mr. Leggette tried to strangle or suffocate Ms. Saunders with a plastic bag, but Ms. Saunders was able to tear the bag. Mr. Leggette placed three different plastic bags over her head, but she managed to tear through each. Ms. Henneberry remained during the struggle. Mr. Leggette then hit Ms. Saunders' head on the floor twice and she stopped moving. He wrapped her head in Saran Wrap and placed her in a hockey bag belonging to Ms. Henneberry and tidied up.
>
> He and Ms. Henneberry left the apartment to return a computer to a store to get some cash, leaving Ms. Saunders' body in the apartment. They then

> returned to the apartment. Mr. Leggette carried Ms. Saunders in the hockey bag onto the elevator and out the front door, placing Ms. Saunders in the trunk of Ms. Saunders' car. Ms. Henneberry and Mr. Leggette packed some belongings into the car and left Halifax, stopping along the way to purchase food and other supplies. These purchases were made with Ms. Saunders' bank card. During the trip Ms. Henneberry lied to the police about her whereabouts. She also used Ms. Saunders' phone and texted Yelton Siccotte pretending to be Ms. Saunders.
>
> When Mr. Leggette and Ms. Henneberry reached Salisbury, New Brunswick, they stopped on the side of the highway and left Ms. Saunders' body, still in the hockey bag, in a treed area in the median. It was snowing at the time. Mr. Leggette and Ms. Henneberry continued on to Harrow, Ontario, where they stayed with a friend. They were arrested there on February 18th in Ms. Saunders' car with her ID, phone and bank card.

[70] The Crown noted the absence of any significant prior record, and based on the Agreed Statement of Facts, the limited role that made the appellant a party to the victim's murder. Crown counsel urged the trial judge to accept the jointly recommended life imprisonment with ten years' of parole ineligibility. Defence counsel agreed.

[71] After Victim Impact Statements were read, each offender addressed the Court. The appellant said this:

> MS. HENNEBERRY: I'm so sorry and feel incredibly terrible for the pain and loss that I caused you. For 14 months I've lived with the guilt of my actions and it's been eating me alive every day since. As much as I wish that I had left the apartment, ran as fast as I could and told someone, I didn't. It's sad to know that there was a point in my life where I was involved in the death of somebody.
>
> I know there's nothing I could say to ease your pain, but I'm truly sorry. Wrong choices were made and I've accepted and took blame for my part in this tragedy. I can only hope to one day receive your forgiveness.

[72] The trial judge recessed until the afternoon. On his return, he delivered oral reasons accepting the joint recommendation for the appellant. His reasons have subsequently been reported (2015 NSSC 134).

[73] There is not a scintilla of evidence that the appellant was rushed, panicked, or suffered from any mental or physical disorder that impaired the voluntariness or understanding of her guilty plea. It was certainly unequivocal.

[74] At one point during the appeal proceedings, the appellant had apparently waived solicitor/client privilege, only to withdraw that waiver. She has clearly

disavowed an allegation counsel was incompetent or failed her in any way. We agree with the Crown that an adverse inference can be drawn in this circumstance that the appellant's former counsel would have nothing to say that would be supportive of her claim her plea was invalid.

[75] We also agree that it can be safely concluded that counsel must have been able to receive instructions from the appellant to negotiate a plea to the reduced charge of second degree murder with a minimum period of parole ineligibility, re-elect to trial by judge alone, and accept the Crown's Agreed Statement of Facts.

[76] Are any of these conclusions shaken by the appellant's motion to adduce fresh evidence? They are not. In fact, the materials produced on the motion support the validity of the plea. It is to those materials we turn.

MOTION TO ADDUCE FRESH EVIDENCE

[77] The sole thrust of the appellant's motion is that she had a mental disorder that impacted her ability to plead guilty. Her claimed mental disorder varies somewhat in her submissions.

[78] It can best be distilled to an assertion that at the time of her plea, she was stricken with a panic attack. She says she had been previously prescribed Clonazepam for her panic and anxiety disorder, but since being jailed had no access to that or other medications to deal with her condition.

[79] The appellant's affidavit filed January 26, 2017[1] is internally inconsistent and is contradicted by the record and other evidence. For example, she deposed:

> On the day of April 22nd, 2015 I pled guilty to the lesser offence of second degree murder. During which I hadn't intended to as I was experiencing mental health issues which prevented me from fully comprehending what I was doing. I wasn't aware that I could have addressed the courts at any time before my sentencing to recant my former plea. **When asked in Court, I froze, unable to form the words that I wanted to relay which was " No, I don't want to plead guilty".** I have no recollection of accepting the plea bargain, and when I received a copy of the Agreed Statement of Facts I didn't recognize the signature above my name.

[1] Formally sworn before the Panel on April 12, 2017.

> As I have a very recognizable signature, it was done during a time where I wasn't fully aware of what I was doing. I made the decision to appeal my conviction of second degree murder on the day of April 22nd, 2015.
>
> [Emphasis added]

[80] Obviously the appellant did not freeze in Court. She personally re-elected to trial by judge alone, and answered each question asked by the trial judge throughout his careful plea inquiry. Nor did the appellant voice to anyone a lack of comprehension of what she had just done. By her own description, she was fully aware of what had just transpired, as she said she decided on April 22, 2015 to appeal her conviction. And, on April 29, 2015, she certainly did not "freeze" as she acknowledged her role in the homicide and apologized for it.

[81] In response to her claim of a mental disorder, the Crown engaged forensic psychologist Dr. Andrew Starzomski. Dr. Starzomski prepared a report to determine if the appellant was suffering from any mental disorder that could have invalidated her capacity to plead guilty to the second degree murder of the victim.

[82] His report is informative. Dr. Starzomski examined all the appellant's records while incarcerated and her medical records. He interviewed the appellant twice and administered standard psychological tests. The test results were so extreme as to indicate malingering. Dr. Starzomski concluded:

> Psychological testing was informative, as her responses to all four specialized and well-established **forensic psychological tests used in this evaluation showed robust and extreme attempts to present her mental health status as exceptionally disordered, dysfunctional and impaired**. The test protocols she generated in all four instances were sufficiently extreme so as to be invalid and not allow any conclusions about the actual nature of her psychological functioning vis a vis mental illness. While it is possible that Ms. Henneberry may have some psychological difficulties related to anxiety and trauma, the test results point with a high level of professional and clinical certainty to the conclusion she was in all likelihood making significant efforts to exaggerate and distort the nature of her symptoms at the time of this assessment.
>
> The psychological test results above converged on the significant likelihood that Ms. Henneberry's comments on interview would be coloured by similar biases, and this was the case. While Ms. Henneberry had asserted she was in a state of panic at the time of agreeing to the plea, during the present interviews she told me that she had no memory of agreeing to the plea or much of anything else that day (or the date of sentencing). She was unable to offer descriptions of any symptoms of anxiety or panic she experienced on those dates due to stating she was unable to remember events of the day (contrary to other comments she has made about

> her recall for those days). Testing showed her memory claims are highly unrealistic. **In my opinion her assertion that she had some form of a panic attack or mental health issue on those particular days in April 2015 is not supported by available clinical information and is inconsistent with the nature of those clinical conditions.**
>
> [Emphasis added]

[83] The Crown also filed affidavits from Crown trial counsel Christine Driscoll and Sherriff Tony Bremner. Ms. Driscoll recounted it was the Crown who had drafted the Agreed Statement of Facts. It was given to Mr. Atherton in time to allow him to go over it with the appellant to ensure total agreement.

[84] The appellant signed the Agreed Statement of Facts in Ms. Driscoll's presence. At no point then, or in court on April 22 or April 29, did the appellant complain or exhibit any signs of mental or physical distress. To the contrary, she appeared calm and presented in a similar manner as in her other appearances.

[85] Sheriff Bremner is trained to observe obvious signs of physical or emotional distress by inmates. At no point on April 22 or 29, 2015 were any observed and the appellant made no such complaint of any.

[86] In response to the Crown's materials, the appellant wanted an "independent" second opinion from a female medical professional because she claimed she had trust issues and hence did not relate well to males.

[87] There is nothing to suggest that Dr. Starzomski was anything other than independent. As to wanting a female medical professional, it turns out, she had one.

[88] Mr. Atherton retained Dr. Grainne Neilson, a forensic psychiatrist on staff at the East Coast Forensic Hospital. During the hearing in this Court on April 12 and 13, 2017, it was learned that Dr. Neilson delivered her report to Mr. Atherton on April 21, 2015—the day before she pled guilty. We do not have a complete copy of the report.

[89] At the hearing before us, the appellant acknowledged having seen Dr. Neilson in the days or weeks leading up to her trial. She claimed not to have a copy of Dr. Neilson's April 21, 2015 report. Crown counsel provided a copy to the appellant.

[90] The Crown had no objection to the appellant tendering a copy of the report at the hearing before us. The appellant declined.

[91] But Mr. Atherton's letter of April 27, 2015 to the trial judge sets out excerpts from Dr. Neilson's report about the appellant, including her mental health history. It is also informative, and contradicts the appellant's affidavit.

[92] For example, in her January 26, 2017 affidavit, the appellant describes how she had been taking Clonazepam for anxiety right up to her incarceration in February 2014, and without medication in jail, her condition had worsened. She deposed:

> I have requested through the courts to file a motion for fresh evidence which will be heard before a panel of three judges on the dates of April 12th and the 13th, 2017. In my grounds, I stated that "accused did not appreciate the nature of the offence and/or intend to admit guilt to it". I have been working towards obtaining medical records to support the grounds above in order to give the courts an idea as to what my mental health conditions are. Prior to the index offence, I was prescribed Clonazepam for the treatment of Panic and Anxiety disorder. I began taken [sic] Clonazepam in 2010, but discontinued use until January 2012 which I took consecutively until February 2014. During my incarceration at Central Nova Scotia Correctional Facility, I received no treatment or medication; even though I did request to be put back on my anti-anxiety medication. During my incarceration, my symptoms have only intensified and worsened as a result of not being properly medicated.

[93] Her claim of taking Clonazepam up to February 2014 is flatly contradicted by her own self-reporting to Dr. Neilson. This is what the letter of April 27, 2015 reveals:

> Ms. Henneberry reported that she experimented with numerous other substances including: cocaine at age 15 "a few times"; ecstasy age 17 or 18 "once"; hash from age 15-18 "a handful of times"; opiates (dialaudid and morphine) at age 16 and age 25 "a few times"; and benzodiazepines (clonazepam) from 2009-2010 and 2012-2013. She denied ever using IV drugs. She reported that she had been using as much as "mg of clonazepam/day" (i.e. high doses) in 2013, but weaned herself off this drug because she was experiencing a lot of anxiety and because she and her co-accused were trying to conceive a child.

[94] By her own self-report, the appellant told Dr. Neilson that she had anxiety and panic attacks which were been happening more frequently as the trial approached:

> Mental Health History
>
> Ms. Henneberry reported that she attended a mental health clinic in Calgary in 2012, when she was trying to wean herself off clonazepam, and was experiencing anxiety symptoms. She did not report any presentations to the emergency department for mental health concerns. Ms. Henneberry reported that she experiences anxiety and at times has panic attacks, and that she has been experiencing these more frequently as the trial approaches.

[95] The appellant's claim that she received no treatment for her anxiety is also contradicted. Dr. Starzomski had access to the appellant's medical records. He documents that the appellant was seen by medical professionals in March, May and August 2014 for problems with sleep and anxiety. She was offered anti-anxiety medications which she refused.

[96] Dr. Starzomski's report also references the mental health consultation that occurred in April 2015. The appellant refused permission for Dr. Starzomski to speak to Dr. Neilson about her clinical presentation in April 2015. His evidence was:

> A last minute health issue arising before her trial followed from a psychiatric assessment completed at that time. Information from that report is referenced in the Sentencing Decision. During the present interview Ms. Henneberry voiced dissatisfaction and confusion with the personality disorder diagnoses advanced in that assessment. Ms. Henneberry said that she did not understand how those diagnoses applied, stating that she had recently heard from the Warden's Council that none of those traits applied to her. She remarked that the diagnoses outlined in the doctor's report "was nothing I was going for" regarding trauma and anxiety issues. Ms. Henneberry declined my request to allow the psychiatrist to speak with me so I could hear more about her perspective on Ms. Henneberry's clinical presentation in 2015.

[97] To complete the picture that was before the trial judge, Mr. Atherton's letter of April 27, 2015 set out the following from Dr. Neilson's report:

> . . . She [Ms. Henneberry] reported a pattern of being able to obtain what she wants by presenting herself as helpless and deserving of sympathy and support, preying on the willingness of others to cater to her needs.
>
> …
>
> In summary, Ms. Henneberry's adult life has been characterized by an unsettled lifestyle with employment, residential and relationship instability. She described a parasitic existence with frequent conning and manipulation of others. She reported several self destructive activities, including involvement with several

> abusive relationships, poly substance abuse, and prostitution. While duplicity, dishonesty, and lack of responsibility seem to be integral to her interactions with others, she did not disclose a history of violence or aggression towards others as an adult (however, no collateral information is available on this latter point).

[98] As this review of the motion materials demonstrate, the appellant's claim she suffered from a mental disorder that invalidated her plea is baseless. We have no doubt that the appellant found her looming trial and the decision about pleading guilty stressful. That is no different for any accused. It would be abnormal otherwise.

[99] There is no credible evidence that the appellant lacked cognitive capacity to instruct counsel, enter into an Agreed Statement of Facts and plead to the lesser and included offence of second degree murder.

[100] The appellant refuses to permit ready access to witnesses that would be in the best position to shed light on her condition at the time of her plea, her lawyer and the forensic psychiatrist he engaged.

[101] The appellant had a choice on April 22, 2015. Plead guilty to second degree murder or proceed to trial. As explained before us by trial Crown attorney, Ms. Driscoll, the entry of pleas by Mr. Leggette and the appellant were not connected. It was not a package deal. Mr. Leggette made his decision. The appellant, with the assistance of counsel, made hers.

[102] The appellant was free to continue to trial on the charge of first degree murder where she could test the power of the circumstantial evidence arrayed against her and testify as to her now claimed innocence.

[103] But what was the legal landscape in front of her? The defence forensic psychiatrist's report dated April 21, 2015 was apparently unhelpful. Mr. Leggette, who had admitted to committing a planned and deliberate murder, would be a competent and compellable witness against the appellant. The choice to plead guilty was hers. It was conscious, voluntary and unequivocal.

[104] We admit the fresh evidence materials for the limited purpose of assessing the appellant's claim her plea was invalid. We dismiss the appellant's request to withdraw her plea and her appeal.

Beveridge, J.A.

Concurred in:

MacDonald, C.J.N.S.

Bourgeois, J.A.