IN THE PROVINCIAL COURT OF NOVA SCOTIA
Cite as: R. v. Denny, 2009 NSPC 63

Date: November 17, 2009
Docket: 2087308, 2087309,
2087310, 2087312
2087314
Registry: Sydney

Her Majesty the Queen

v.

Andre Noel Denny

DECISION - NCR HEARING

Revised Decision:	The date of the decision was incorrectly noted as February 5, 2009 in the top right hand corner. This decision replaces the previously distributed decision.
Judge:	Peter Ross
Heard:	November 17, 2009
Decision:	November 17, 2009
Charges:	445.1(a), 354(1)(a), 733.1(1) x 2, 264.1(1) Criminal Code
Counsel:	Darcy MacPherson, for the Crown Ann Marie MacInnes, for the Defence

[1] On September 3rd, 2009 Andre Noel Denny was arrested and charged with a variety of offences from September 1st and 2nd including uttering threats (s.264.1) causing unnecessary injury to a dog (s.445.1) possession of stolen property (the dog) (s.354) and accompanying breach of probation charges on each (s.733.1). There were also pending charges from February 14, 2009 of resisting arrest (s.129) and breach of undertaking (s.145) on which he had previously been released.

[2] He was held police custody on the September matters and then sent for a s.672.11 fitness assessment on September 4th, 2009.

[3] Since then the court has been able to deal with a number of issues with reasonable dispatch, owing largely to coordination with officials at the East Coast Forensic Psychiatric Hospital, the cooperation of various witnesses, testimony by telecommunication, and to the efforts of counsel.

[4] A contested fitness hearing was held on October 15th. Mr. Denny was adjudicated fit to stand trial.

[5] A contested s.515 bail hearing was held on October 29th. Mr. Denny was not denied his liberty on public safety grounds, but it was deemed necessary to remand him back to the ECFPH to maintain fitness.

[6] With a defence of “not criminally responsible” raised, a trial on only the *actus reus* portion of the charges was held on November 10th. He was found to have performed the actions which constituted the essential elements of the above-noted offences. Some other charges were dismissed. The trial then turned to the aspect of *mens rea* - the mental element which must be present for a person to be judged guilty of committing a crime.

[7] A hearing into the defence of criminal responsibility was held on November 17th. He was found not to be criminally responsible (NCR) for the September offences. The court declined to hold a disposition hearing. Mr. Denny thus has a disposition pending before the Review Board.

[8] Between his arrest in September and the conclusion of the trial he was, except for a few days, remanded to the ECFPH on either an assessment

order or a “keep fit” order. He has now been sent back there to await the outcome of the Board’s disposition hearing.

[9] I found that the NCR defence was not substantiated for the February charges. He was accordingly convicted and sentenced to one day in jail on these charges.

[10] At the NCR hearing Crown and defense counsel took positions opposite to what one would expect in a typical case. Defense argued that Mr. Denny should not be given the “benefit” of the s.16 defense because the result of an NCR finding is to give the Review Board ultimate authority over when and on what terms an accused might eventually be released back into the community. Mr. Denny would prefer a determinate sentence in a Correctional facility. The Crown argued for a s.16 finding of NCR as a proper outcome based on available evidence. Both sides, however, were acting in furtherance of their respective duties - one to the accused, the other to the public.

[11] This is a brief statement of reasons for the finding of NCR on the September charges. I will not restate here my brief oral reasons on the *actus*

reus, but I take cognizance of and will refer to certain parts of the November 10th hearing.

[12] Dr. Kronfli of the ECFPH gave expert opinion evidence on the issue of criminal responsibility on November 17th. While Dr. Kronfli did not have the opportunity to review the trial evidence from November 10th he had sufficient acquaintance with the matter, from the Crown file and clinical records, to express an opinion. His evidence was germane to the facts as I found them at the *actus reus* stage of the proceeding.

[13] Mr. Denny did not testify at the *actus reus* portion of the trial. However he did testify on the aspect of criminal responsibility. With regard to the s.264.1 charges, he says he acted out of anger. He referred to the family history and the spite he felt about how things worked out concerning the house in which he was raised.

[14] In regard to the s.445.1 charge, he again referred events from his past, to an overgrown pitbull terrier which used to live nearby, to steps his father (a dog control officer) had taken to deal with it. Again he claimed to have known

what he was doing. He said he told Dr. Kronfli that the dog he wounded was the “devil’s dog” only in order to trick him into prescribing medication. He told Dr. Kronfli “what he wanted to hear.” He said there was no such thing as the devil, that he thought he was killing “some drug dealer’s dog.” In almost the same breath, however, he said that his remarks about the “devil’s dog” were “part of my delusion.”

[15] Mr. Denny, I found, did utter a death threat directed at people living at number 19, 74th Street, Eskasoni. He had been living in a trailer next to the house for about a month. He said he was going to “slice everyone’s throat” when they were sleeping. I found that the descriptive similarity between this remark and what was done to the dog two days later constituted some evidence of identity - i.e. that the person who sliced the dog’s throat was Mr. Denny.

[16] Mr. Denny was seen in possession of the dog shortly after it disappeared, having caged it in a shed next to his trailer. After he cut his throat, he boasted to one witness that he had killed it and eaten it and cleaned

his hands in the water of a nearby stream. He neither killed nor ate the dog, but it was so badly injured that it had to be euthanized.

[17] Corporal Thomas investigated the complaint lodged about the missing dog. She spoke to Mr. Denny about it. He told her he'd thrown the dog under the deck of the house. He went on to say that they "had a Sheppard at that house - they'd probably eaten it."

[18] Mr. Denny testified that he knew what he was doing, knew it was wrong at the time, and was remorseful. Having been adjudged of "doing the crime" he expressed the wish to "do the time" at the Correctional Centre.

[19] There is no doubt that Mr. Denny had some sense of what he was doing on or about September 1st and 2nd. He made associations. He made excuses. He knew who people were and how they might react to what he had done. On arrest he seemed to understand the role of police and his right to counsel, even asking for the assistance of a prominent criminal defence lawyer.

[20] This being said, certain features of the trial evidence raise obvious concerns about Mr. Denny's state of mind. There is the rather bizarre nature of the crime itself. This was a pitbull by breed, but a harmless three month old pup at the time. In addition, he was observed to be acting strangely in the days before, "talking to himself and swinging sticks" in the words of his stepmother. He spoke of the "devil's dog" and the demon inside him.

[21] When Corporal Thomas saw him on September 2nd he was wearing gloves, a heavy jacket and hood, with a scarf across his face, even though it was warm enough outside for others to be wearing shorts. She did not have grounds to arrest at that point. His presentation to Corporal Thomas caused her such concern that she put a warning out to other members who might come in contact with him.

[22] Dr. Kronfli had the benefit of observations and a preliminary assessment done by Dr. Foley at the Cape Breton Regional Hospital shortly after arrest. Dr. Foley believed Mr. Denny to be "grossly psychotic" at that time. Dr. Kronfli saw Mr. Denny just days afterwards and, with the benefit of this clinical history

and his own observations and assessment, concluded that Mr. Denny was not criminally responsible for what he had done.

[23] In his oral testimony on November 17th, Dr. Kronfli confirmed that Mr. Denny has a long history of schizophrenia, paranoid subtype, coupled with a substance abuse problem. He said that he was suffering from delusions, and also extremely disorganized, at the time the offences were committed. He expressed a high degree of confidence in his opinion that the accused was incapable of appreciating the wrongfulness of his actions. He was thoroughly tested on all relevant aspects of his opinion. His is the only psychiatric evidence on point and I find it to be credible and well-founded.

[24] The Crown has argued that, with respect to the uttering threats, Mr. Denny was incapable of appreciating the nature and quality of his acts, and that with regard to wounding the dog, he was incapable of knowing that his actions were wrong. It has thus put forward both aspects of the s.16 defence. Upon hearing the evidence, I find there is merit in this position and am satisfied that a defense under s.16 has been proven. Following the analysis

on the 264.1 and 445.1 charges, the possession of stolen goods and breach of probation charges admit to the same conclusion.

Dated at Sydney, N.S. this 17th day of November, 2009.

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Judge A. Peter Ross