**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

R. v. Jones, 2011 NSPC 77

**Date:** November 2, 2011
**Docket:** 2292404, 2294273 - 2294282
**Registry:** Halifax

Her Majesty the Queen

v.

Dalton Cornelius Jones

# DECISION

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| **Judge:** | The Honourable Judge Anne S. Derrick |
| **Heard:** | September 23, October 19, 27 and 31, 2011 |
| **Decision:** | November 2, 2011 |
| **Charges:** | sections 145(2)(b); 279(2), 264.1(1)(a), 266 x 6, 129(a), 267(a) of the *Criminal Code* |
| **Counsel:** | Catherine Cogswell - Crown Attorney<br>Dalton Jones for himself<br>Roger Burrill, *amicus curiae* |

**By the Court**:

[1] On August 8, 2011, after a four-day trial during which Mr. Jones represented himself, I found Mr. Jones guilty of the following charges: unlawfully threatening to cause bodily harm or death to his wife, Shealynn Jones on March 4, 2011; unlawfully assaulting Shealynn Jones on March 4, 2011; unlawfully assaulting his daughter, Niala Jones on March 9, 2011, unlawfully and willfully resisting arrest on March 10, 2011; unlawfully assaulting Niala Jones between November 30, 2009 and March 12, 2011 (the Bank of Montreal incident); unlawfully assaulting Niala Jones between November 30, 2009 and March 12, 2011 (the Dawn Street incident); unlawfully assaulting Niala Jones between November 30, 2009 and March 12, 2011 (the Walmart incident); and assaulting Niala Jones with a weapon between November 30, 2009 and March 12, 2011 (the plastic broom handle incident).

[2] In my decision of August 8, 2011, (*R. v. Jones, 2011 NSPC 47*) I noted that although there had been trial evidence of Mr. Jones telling both his wife, Shaelynn Rogers, and her sister, Amberlee Rogers, that he was Jesus Christ, no evidence had been led and no submission made "that Mr. Jones was not criminally responsible for his actions due to a mental disorder as contemplated by section 16(1) of the *Criminal Code*." I went on to observe:

> … Under section 16(2) of the *Criminal Code*, Mr. Jones is presumed not to have a mental disorder so as to be exempt from criminal responsibility until the contrary is proved by a balance of probabilities. No such issue has been raised and notwithstanding any grandiose claims that may have been made by Mr. Jones about his divine provenance, he is as liable to the application of the criminal law and its sanctions as anyone else to whom section 16(1) of the *Criminal Code* does not apply. *(paragraph 91)*

[3] Section 16 of the *Criminal Code* provides as follows:

> (1) No person is criminally responsible for an act committed…while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act…or of knowing it was wrong.
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> (2) Every person is presumed not to suffer from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection (1), until the contrary is proved on the balance of probabilities.
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> (3) The burden of proof that an accused was suffering from a mental disorder so as to be exempt from criminal responsibility is on the party that raises the issue.

[4] On August 8, the Crown indicated its position on sentence was that a sentence of two years in a federal penitentiary was appropriate, given the nature of the offences – that they were committed against an intimate partner and a child and constituted a breach of trust and authority, aggravating factors under the *Criminal Code*. I ordered a pre-sentence report. Mr. Jones once again declined to explore having representation and continued to insist on representing himself.

[5] Mr. Jones has a short prior record and had previously served only a short sentence in a provincial correctional facility. His first offence, which had been an assault on a partner, had resulted in a conditional discharge.

[6] In the circumstances, I determined that I should appoint *amicus curiae* to assist me. The following is an extract from my reasons (*R. v. Jones, 2011 NSPC 50*) for deciding to do this:

> **15** I am satisfied that in relation to Mr. Jones' sentencing I would benefit substantially from the assistance of counsel other than the Crown. The Crown has a brief to represent the public interest and is an officer of the Court. However a criminal proceeding is an adversarial proceeding. On the one hand I have the Crown and on the other hand I have a defendant who refuses to engage a lawyer. The Crown is seeking a prison sentence for Mr. Jones. In addition to not being legally trained, Mr. Jones' mental health is being raised as a substantial concern by his family. I have already noted in my decision convicting Mr. Jones that he may be laboring under a delusion about who he is, an impression that was reinforced for me this morning in comments he made to me while we were addressing the matter of proceeding with his sentencing. This is the context in which I will be dealing with a recommendation from the Crown that Mr. Jones be sentenced to a penitentiary term. Ms. Cogswell for the Crown has indicated that she is in agreement that the appointment of *amicus* counsel in this case is appropriate.
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> **20** I have determined on all the circumstances of this case that I require counsel to assist me in relation to the issues in Mr. Jones' sentencing. That counsel can also consider whether Mr. Jones' mental health should be addressed under the *Criminal Code* provisions or otherwise in the context of the sentencing process. I intend to hold a pre-trial, once I have selected counsel, to instruct on the assistance I am seeking.

[7] I have been very fortunate to have had Roger Burrill, a senior member of the defence bar and a seasoned staff lawyer with Nova Scotia Legal Aid assist me as *amicus*. His contribution to this case has been invaluable.

[8] Mr. Jones’ sentencing was scheduled for September 23. At a pre-trial on September 1, with Mr. Burrill in attendance, I addressed the role of the *amicus* and indicated that I saw Mr. Burrill’s role,

> …to be fully informed about what Mr. Jones is being sentenced for…To be fully informed about the position the Crown is taking and why…To put before the Court, what from the *amicus*' knowledge and research is the range of sentence that would be appropriate here…we all know [sentencing] is a very individualized process – then I should also be receiving submissions on what, in the *amicus*' view, would be a fit and proper sentence in relation to Mr. Jones. (*Transcript of Proceedings, September 1, 2011*)

[9] By this time, it had become apparent that the issue of Mr. Jones' mental health was going to be a factor in sentencing him. Noting that concerns were being raised by his family – his brother had addressed me in open court on August 8 and again on September 1 - and community members, and in light of evidence I had heard during the trial, I asked Mr. Jones if he was seeking to have me order a psychiatric assessment under section 672.12 of the *Criminal Code*. Mr. Jones advised me he did not want me to order an assessment. Mr. Jones also told me he did not want to discuss the issue or implications of a psychiatric assessment with a lawyer.

[10] Section 672.12 of the *Criminal Code* provides that the court "may make an assessment order at any stage of proceedings against the accused of its own motion…" The assessment may be ordered however only if there are,

> …reasonable grounds to believe that such evidence [concerning the accused's mental condition] is necessary to determine…whether the accused, was, at the time of the commission of the alleged offence, suffering from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection 16(1)…

[11] I concluded that in all the circumstances the interests of justice would not be served if I simply ignored the issue of Mr. Jones' mental condition at the time he

committed the offences before the court. “What is of greatest importance is that a person who is not criminally responsible [on account of mental disorder] should not be found guilty.” (*R. v. Laidley, [2001] A.J. No. 1221, paragraph 31 (Alta. Q.B.)*) Despite my uncertainty at the time I ordered the appointment of an *amicus curiae* (*R. v. Jones, [2011] N.S.J. No. 437, paragraph 14*) it subsequently became abundantly clear to me that I had the authority under section 672.12 of the *Code* to order a section 672.11 assessment following the conclusion of the trial. However, as I did not have admissible evidence before me that provided the reasonable grounds to order an assessment, I decided there should be a hearing into whether there were reasonable grounds for me to believe I needed a forensic psychiatric assessment at this stage of the proceedings. I gave the following reasons:

> …I want to determine a sentence that is fully appropriate for Mr. Jones…the issue of mental health has been raised. This is not something that I’m imagining; it’s not something that is frivolous…there has been a sincere effort on the part of concerned community members who know Mr. Jones and who are raising a concern that justice won’t be done if this issue isn’t explored. So, my view is that my obligation in terms of ensuring that justice is done in this case, both in the public interest and in respect of Mr. Jones and his victims, that we should have this issue explored. I am going to look to Mr. Burrill as the *amicus*…to assist in providing at this hearing what I will need to consider…one option would be that the *amicus* will come back and say, “…there is no admissible evidence to put before you.” Or the *amicus* may be able to present some evidence for me to consider. But I think that’s a proper role for the *amicus* to discharge in this unusual and challenging case…*(Transcript of Proceedings, September 1, 2011)*

[12] It had been Mr. Burrill’s suggestion that a preliminary psychiatric assessment be obtained from the East Coast Forensic Hospital (ECFH). I accepted that as a helpful and constructive proposal to determine if I would have reasonable grounds to order an assessment under section 672.11 of the *Code*.

[13] Mr. Burrill obtained from Dr. Scott Theriault, a forensic psychiatrist with Capital Health and the former Clinical Director of the East Coast Forensic Hospital (July 1998 – June 2011), a report dated September 18, 2011. In that report, Dr. Theriault expressed the opinion that "there is evidence to suggest that Mr. Jones is suffering from a psychiatric illness of psychotic proportions." Dr. Theriault went on to state:

> The characteristics of his illness, and its overlap with at least some of the offences in question, gives rise to the possibility that his illness may have influenced his behaviour at the time of the offences such that there exists reasonable grounds to conduct an assessment to ascertain whether or not Mr. Jones fall[s] under the purview of Section 16(1) of the Criminal Code of Canada.
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> …
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> …from a clinical perspective, there appear to be reasonable grounds to suggest that Mr. Jones has a significant psychiatric illness and that that psychiatric illness may have played a role in his behaviour over the period of time during which at least some of the charges arose.

[14] On September 23, Ms. Cogswell advised that the Crown accepted Dr. Theriault's opinion and was of the view that reasonable grounds for ordering a section 672.11 assessment existed. I qualified Dr. Theriault as an expert able to provide opinion evidence in forensic psychiatry, particularly in matters of criminal responsibility. Mr. Jones wished to ask Dr. Theriault some questions and proceeded to do so. At the conclusion of Dr. Theriault's testimony, I was satisfied that reasonable grounds had been made out by his opinion and I ordered the assessment. Mr. Jones was remanded to the ECFH for this purpose.

[15] Dr. Theriault produced a written report dated October 16, 2011 on the issue of Mr. Jones' criminal responsibility. In his report, Dr. Theriault addressed the issue of "…whether Mr. Jones meets the criteria for exemption from criminal responsibility pursuant to s. 16(1) of the *Criminal Code*…" with respect to the charges before the court. Such an exemption would mean a verdict of not criminally responsible on account of mental disorder (NCR/MD) which is provided for in section 672.34 of the *Criminal Code*:

> Where the…provincial court judge…finds that an accused committed the act…that formed the basis of the offence charged, but was at the time suffering from mental disorder so as to be exempt from criminal responsibility by virtue of subsection 16(1), the…judge shall render a verdict that the accused committed the act…but is not criminally responsible on account of mental disorder.

[16] Dr. Theriault's opinion is that the NCR/MD verdict applies to most of the charges before me. The following are excerpts from Dr. Theriault's report:

> Opinion
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> 1. Mr. Dalton Jones is currently experiencing a psychotic illness; namely, delusional disorder. The primary symptomatology of this disorder is Mr. Jones' belief that he is of a Divine nature; specifically, that he is Jesus Christ. Mr. Jones' belief that he is Jesus Christ fundamentally colors his judgment and decision-making processes. Mr. Jones believes that he can make no mistake and that although he knows the difference between right and wrong because of his divine nature he will always make the correct and righteous choice. Although Mr. Jones uses Scripture to buttress his arguments his belief in the literal interpretation of those scriptures is, in my opinion, a phenomenon of his illness.
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> 2. Mr. Jones, in my opinion, meets the criteria for exemption from criminal responsibility by virtue of s. 16(1) of the Criminal Code of Canada for some, but not all, of the charges on the Assessment Order.

> Specifically, Mr. Jones, in my opinion, meets the criteria for a finding of Not Criminally Responsible by reason of mental disorder with respect to the charges of assault on March 4 and March 9, 2011, and 2 of the 3 charges of assault under s. 266, occurring between November 30, 2009 and March 12, 2011 [the so-called Wal Mart incident and the so-called Dawn Street apartment incident].

…

Background Information

…

There is clear evidence, in my view, that beginning some time, probably in early 2010, but perhaps earlier, that Mr. Jones' developed a delusional disorder with a primary religious focus. Mr. Jones' accounting of the development of his belief that he is Jesus Christ, is consistent with the known development of psychotic disorders. Mr. Jones describes a period of time where he felt that he had some greater purpose or was meant for something important although he was unable to really identify what that was. This growing awareness is what is, in psychiatric parlance, known as the prodromal phase of the illness.... Mr. Dalton Jones then goes on to explain how he had a revelation from "Jehovah God" that he was, in fact, Jesus Christ. This sudden realization of one's purpose in life in a delusional framework is often referred to as the epophany phase. During this phase of the illness, the person comes to experience themselves in the context of their delusional belief and begins to interpret all the information around them in light of that belief. Beginning then, sometime around March of 2010 or perhaps earlier, Mr. Jones began to interpret all of his interactions with other people in light of his belief that he was, in fact, Jesus Christ.

…

Rationale for Findings

As a prerequisite for any analysis under s. 16(1) of the Criminal Code of Canada it first has to be ascertained that the accused is suffering from a mental disorder. In my opinion, Mr. Jones is suffering from a mental disorder. Specifically, Mr. Jones is suffering from delusional disorder. An essential feature of delusional disorder is the presence of delusions

without some of the more disorganized features or features of thought disorder seen in schizophrenia. For example, the Criterion C for delusional disorder, in the DSM-IV, notes "Apart from the impact of the delusions or its ramifications, functioning is not markedly impaired and behavior is not obviously odd or bizarre".

In my opinion there is evidence that supports that Mr. Dalton Jones' current beliefs are a function of illness and not merely a representation of religious belief. According to family members there is little evidence to suggest that the family lean toward a fundamentalist view of religious scriptures and there is little evidence to suggest that Mr. Jones was, himself, a deeply spiritual man prior to the change in his behavior occurring about March of 2010. Although he did reconnect with the Jehovah Witness faith this appears to have been several months after the development of his delusional ideation. As I have noted in my previous report, Mr. Jones does not indicate that he is attempting to be Christ-like in his behavior but rather he indicates that he is Jesus Christ. Somewhat paradoxically, Mr. Jones' believing that he is Jesus Christ has not really fundamentally changed his behavior for the better. Rather, it would appear that Mr. Jones' delusional belief about his nature simply has given him a sense of righteousness over his behavior without manifestly changing his behavior towards what would be thought of as a better person. One of the most pervasive features of Mr. Jones' illness is his belief that because he is Jesus Christ, his actions are unassailable. He believes that because he is Jesus Christ any decision that he makes or action that he takes is immediately vindicated because, as Jesus Christ, he can do no wrong. Although he uses Scripture to justify his actions, in my opinion, this is epiphenomena of his illness. That is, Mr. Jones believes, as a matter of his illness, that his actions are correct and his use of the Scriptures to support this is secondary. This is different than an individual who, due to religious beliefs, interprets the Scriptures as a way to determine right from wrong action.

…

Summary and Recommendations

In summary, Mr. Dalton Jones is a 31-year-old male from Sierra Leone, recently immigrated to Canada. There is evidence that suggests that he has developed a delusional disorder with primary religious delusions

> starting about March, 2010, but in all likelihood predating that to some extent, at least in its prodromal stages. Mr. Jones' delusional beliefs centre squarely on his belief that he is Jesus Christ. More importantly, because he believes he is Jesus Christ, he believes that his actions are unassailable and infallible. He quite clearly reports that he knows the difference between right and wrong but because he is Jesus Christ, he can do no wrong. This, in my opinion, puts him squarely within the purview of a s. 16 defence where the individual, as a result of a mental disorder, must be unable to appreciate the nature and quality of their actions or the wrongfulness of those actions. Clearly, Mr. Jones is aware of the actions for which he is charged, and in fact, in most of the offences he does not deny or dispute them. However, he adamantly defends that his actions are not wrongful. He does this largely through quoting Scriptures although in my opinion this is really an epiphenomenon of his illness; that is, the fundamental expression of his illness is a delusional belief in his Godhood and his infallibility and his expression of the Scriptures is simply secondary to this. Mr. Jones' actions with respect to the charges noted above for which, in my clinical opinion, he meets criteria under sec. 16(1), arises because he has a delusional belief that he, as Jesus Christ, must bring the literal interpretation of Scriptures to the masses and that to act in any way that is counter to that would impair his ability to do so.
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> Mr. Jones at this time remains untreated. He continues to profess his belief that he is Jesus Christ. Until such time as he is treated he is at risk of conducting himself in a fashion similar to that which brought him initially before the courts.

[17] I will shortly discuss the examination of Dr. Theriault on his report but before I do that I want to explain the procedural underpinning to this aspect of the proceedings in this case. The submission of Dr. Theriault's opinion raised the issue of how to deal with criminal responsibility in light of the fact that Mr. Jones indicated he was not asking to be found not criminally responsible. For assistance in determining this issue, Mr. Burrill advised that the reasoning in *R. v. Swain, [1991] S.C.J. No. 32* was relevant. I requested the Crown provide Mr. Jones with a copy of *Swain* following a case-management hearing that was held on October 27. *Swain* addresses the issue of how the matter of criminal responsibility can be dealt

with by the court in circumstances where the accused is opposed to advancing the issue. In the context of the Supreme Court of Canada identifying as “a basic tenet of our legal system that the criminal law ought not to convict a person who was insane at the time of the offence”, Lamar, C.J. was clear that this principle and the corresponding objective did not require “that the Crown have the ability to raise evidence of insanity over and above the accused's wishes and thereby to interfere with the conduct of his or her defence.” (*Swain*, *paragraph 66*) At paragraphs 70 - 72, the Court considered and resolved the issue:

> **70** The dual objectives discussed above could be met without unnecessarily limiting *Charter* rights if the existing common law rule were replaced with a rule which would allow the Crown to raise independently the issue of insanity only after the trier of fact had concluded that the accused was otherwise guilty of the offence charged. Under this scheme, the issue of insanity would be tried after a verdict of guilty had been reached, but prior to a conviction being entered. If the trier of fact then subsequently found that the accused was insane at the time of the offence, the verdict of not guilty by reason of insanity would be entered. Conversely, if the trier of fact found that the accused was not insane, within the meaning of s. 16, at the time of the offence, a conviction would then be entered.
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> **71** Such a rule would safeguard an accused's right to control his or her defence and would achieve both the objective of avoiding the conviction of a person who was insane at the time of the offence and the objective of protecting the public from a person who may be presently dangerous. Of course, an accused would also be entitled, under this scheme, to raise his s. 7 right not to be found guilty if he was insane at the time of the offence. An accused would, if he chooses not to do so earlier, raise the issue of insanity after the trier of fact has concluded that he or she was guilty of the offence charged, but before a verdict of guilty was entered. This is consistent with the accused's right, under our criminal justice system, to force the Crown to discharge its full burden of proof on the elements of actus reus and mens rea before raising other matters. However, this does not mean that the accused can raise insanity only after both actus reus and

> mens rea have been proven. While the Crown would be limited to raising evidence of insanity only after the trier of fact was satisfied that the full burden of proof on actus reus and mens rea had been discharged or after the accused's own defence has somehow put his or her mental capacity for criminal intent in issue, the accused would have the option of raising evidence of insanity at any time during the trial…
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> **72** In my view, the new common law rule achieves the dual objectives enunciated above without limiting an accused's rights under s. 7 of the Charter. Under the new common law rule, there will only be two instances in which the Crown will be entitled to lead evidence of insanity. First, the Crown may raise evidence of insanity after the trier of fact has concluded that the accused is otherwise guilty of the offence charged. In these circumstances the Crown's ability to raise evidence of insanity cannot interfere with the conduct of the accused's defence because the Crown's ability to do so will not be triggered until after the accused has concluded his or her defence. Second, the Crown may raise evidence of insanity if the accused's own defence has (in the view of the trial judge) put the accused's capacity for criminal intent in issue. In these circumstances the Crown's ability to raise evidence of insanity is not inconsistent with the accused's right to control the conduct of his or her defence because the very issue has been raised by the accused's conduct of his or her defence. Furthermore, as was stated above, the Crown's ability to raise evidence of insanity only after an accused has put his or her mental capacity for criminal intent in issue does not raise the problem of the Crown being able to place an accused in a position where inconsistent defences must be advanced.

[18] I just want to note that the language used in *Swain* of insanity is not present in section 16 anymore; it is now the language of mental disorder, so that [‘insanity’] is archaic language and is no longer in use in this context.

[19] In light of the principles in *Swain*, and the Crown’s acceptance of Dr. Theriault’s opinion, Ms. Cogswell for the Crown indicated she would call Dr. Theriault as a witness. This would enable Mr. Jones to cross-examine him and also give Mr. Burrill as the *amicus* the opportunity to ask Dr. Theriault questions about

his opinion, if he determined it necessary. Ms. Cogswell explained the procedure to be followed in a letter to Mr. Jones that she copied to Mr. Burrill and myself and that enclosed a copy of the *Swain* decision for Mr. Jones with the most relevant paragraphs highlighted for his benefit. October 31 was set as the date for Dr. Theriault's examination and the submissions of the parties.

[20] On October 27, the parties, Mr. Burrill, and I received a brief further opinion from Dr. Theriault dated October 26, 2011. This opinion was an amplification by Dr. Theriault of his original opinion and was described by him as "a brief addendum." Dr. Theriault had the following to say in this addendum:

> Readers of my original report will note that in my analysis of Mr. Jones' criminal responsibility one of the parameters by which this was gauged was the temporal sequence of events with respect to the correlation of Mr. Jones' mental illness and the charges in question. I had given an opinion that he appears to have developed a mental illness sometime around March of 2010 although I noted in my report that the prodromal phase may have preceded this by some time as is normally the case in psychotic illnesses. Consequently I had indicated that those charges that predated March, 2010, likely did not qualify for a finding of NCR/MD [not criminally responsible on account of mental disorder] although those charges that postdated that time, did. In reviewing the transcript from the original trial, I note that there is evidence that suggests that Mr. Jones may have been ill as early as November, 2009…Mr. Jones may have been demonstrating features of a psychotic illness as early as…November, 2009…
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> …
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> …It would seem to me that the possibility exists therefore of a finding of NCR/MD with respect to [those charges relating to incidents before March 2010]. I raise this possibility with less confidence than I did those in my previous report because there is no evidence available to me to suggest definitively that Mr. Dalton Jones was of the view that he was Jesus Christ

> as early as that time although there is evidence on the transcript to suggest that he was, in fact, ill…

[21] Dr. Theriault noted that "conducting an assessment of criminal responsibility following completion of a trial adds certain complexities which would otherwise not be there." In his testimony on October 31, Dr. Theriault explained that some of the information available to him through the trial transcript is "not as useful as it might be because the focus of the court was not on [Mr. Jones'] mental state." He noted that Mr. Jones' mental state came up only incidentally in the course of the trial.

[22] Dr. Theriault testified to his diagnosis that Mr. Jones,

> …has a delusional disorder, which is a psychotic disorder in which the person has a relatively focused expression of their delusional beliefs in one particular area. The person's behaviour outside of the expression of those beliefs is often not all that notable…the person often… has a very circumscribed focus… [Mr. Jones] has a belief he is Jesus Christ so his world is shaped around that belief but in other ways he can act and comport himself appropriately without any particular reference to that…

[23] Dr. Theriault indicated it is difficult to know when Mr. Jones started to develop that belief but, according to his review of the evidence, by early 2010 he was professing himself to be Jesus Christ. There may have been a gap between when Mr. Jones started to develop the belief and started to profess it. He told Dr. Theriault that he had known some time prior to professing his belief that he was Jesus Christ and had been having an internal struggle with why this would be. Dr. Theriault noted in the transcript of Amberlee Rogers' testimony some indication that Mr. Jones was developing strange ideations in late 2009 as evidenced by his extreme reaction to a trivial incident involving playing cards that Mr. Jones

perceived to be “lucky”. (Dr. Theriault referred to this as the “magic cards” incident in his testimony.)

[24] It is Dr. Theriault’s opinion that by March 2010, Mr. Jones was fully in the grip of his delusional disorder and was unable to see that his actions were wrongful because, as Jesus Christ, he could make no mistakes. It is in relation to the incidents from March 2010 on that, in Dr. Theriault’s opinion, Mr. Jones should be found to be “not criminally responsible on account of mental disorder”. These are the charges of assault and threats against Shealynn Rogers (counts 2 and 3 in the Information); the March 9, 2011 assault of Niala Jones (count 4); the Dawn Street assault of Niala Jones (count 8); and the Walmart assault (count 9).

[25] In arriving at his opinion, Dr. Theriault relied on the trial transcripts and his conversations with Mr. Jones. He noted that Shealynn Rogers provided the most information about what Mr. Jones believed and how he responded when he was challenged about those beliefs. I will note that I expressly found in my trial decision that Shealynn Rogers was “a credible witness who took pains not to embellish or exaggerate her description of events.” (*R. v. Jones, [2011] N.S.J. No. 430, paragraph 77*)

[26] In response to questions from Ms. Cogswell, Dr. Theriault addressed an issue that I had wondered about since reading his opinion. That issue is the severity of the beating of Niala Jones on March 9, 2011 and the circumstances under which it occurred, and the significance of that for Dr. Theriault’s assessment of Mr. Jones’ mental condition. Dr. Theriault noted that Mr. Jones had felt that Niala, whom it will be recalled was beaten by Mr. Jones when she called him Dada rather than D. Jones as he preferred, was being disrespectful of him simultaneously as D.

Jones and Jesus Christ. The degree of force suggested to Dr. Theriault the degree of intensity with which Mr. Jones held the belief and the intensity with which he felt he needed to respond.

[27] A statement made by Mr. Jones in posing questions of Dr. Theriault reinforced for me the assessment made by him of the March 9 assault on Niala Jones. In his examination of Dr. Theriault, Mr. Jones emphasized that he has never denied that he is 'Dalton Jones' and that the 'Son of God' (whom he professes to be) goes by different names throughout the scriptures. This, then, is how Mr. Jones can comprehend himself as Dalton Jones and the Son of God at the same time, which is what Dr. Theriault identified as the context in which Niala was beaten on March 9.

[28] The examination of Dr. Theriault by the Crown also explored the addendum opinion he had submitted. Dr. Theriault indicated that he does have some concerns about the plastic broom and Bank of Montreal assaults on Niala (counts 7 and 10) which occurred during what the evidence suggests to Dr. Theriault was the prodromal stage of Mr. Jones' delusional disorder, that is, before March 2010. Despite some uncertainty about whether verdicts of not criminally responsible on account of mental disorder are applicable for these charges, Dr. Theriault testified that he cannot say these incidents meet the tests in section 16 of the *Criminal Code.* He is unable to say on a balance of probabilities that at the time of these assaults on Niala, Mr. Jones was fully under the influence of his delusional disorder such that he should be found not criminally responsible. These incidents pre-date the time when, in Dr. Theriault's opinion, Mr. Jones was acting in accordance with his belief that he is Jesus Christ. Other than the "magic cards" incident in late 2009 testified to at trial by Amberlee Rogers, the evidence is

simply not available for him to conclude that, in this time period before March 2010, Mr. Jones was unaware because of his delusions of the wrongfulness of his actions.

[29] Mr. Burrill, as *amicus*, explored this territory as well. He elicited from Dr. Theriault that Mr. Jones could have believed at the time of the plastic broom and Bank of Montreal incidents that he was Jesus Christ. In Dr. Theriault's opinion, if Mr. Jones' delusional beliefs were present at that time, he would qualify for a not criminally responsible verdict on these charges. However Dr. Theriault maintained that he could not point to the evidence in the record that establishes the basis for finding Mr. Jones was acting out a delusion when committing these offences. While Dr. Theriault testified that had Mr. Jones not been ill, these incidents "probably would not have happened", after listening again to portions of his evidence and reflecting carefully on them, I conclude that his responses to Mr. Burrill do not reflect a change in his view that, assessed on a balance of probabilities standard, Mr. Jones' actions in late December 2009/early January 2010 do not fall within section 16 of the *Code*. As I have noted, Dr. Theriault testified explicitly that he cannot say Mr. Jones was unaware of the wrongfulness of his actions during this time frame, based on a delusion.

[30] The hearing on October 31 concluded with submissions on the NCR/MD issue by Ms. Cogswell and Mr. Jones. Although it likely seems surprising, Mr. Jones not only took no objection to Dr. Theriault's opinion, he submitted that verdicts of not criminally responsible on account of mental disorder should be entered for the plastic broom and Bank of Montreal assaults. Reflecting on this turn of events, I consider Mr. Jones' stance to emerge from his stated belief that these proceedings are pre-ordained and part of a divine scheme. Mr. Jones has also

submitted that an NCR/MD verdict should apply to the resisting arrest charge. The Crown seeks to have me accept Dr. Theriault's opinion and to find that the plastic broom and Bank of Montreal assaults and the resisting arrest do not qualify for NCR/MD verdicts.

[31] Given the unusual and challenging nature of this case I have tried to painstakingly detail its complexities and the evidence I have before me. However, with much water under the bridge, my decision requires a minimal amount of explanation. I accept Dr. Theriault's opinion in its entirety and while I understand the basis for his disquiet about the plastic broom and Bank of Montreal assaults, I feel I cannot speculate about Mr. Jones' mental condition at the time of these incidents. Dr. Theriault's opinion provides me with information that is outside my knowledge and experience. (*R. v. Mohan, [1994] S.C.J. No. 36*) His special knowledge and recognized expertise in the areas of forensic psychiatry and criminal responsibility has been put forward to assist me in arriving at the correct determination in this case. I am satisfied, based on his opinion, and in accordance with section 672.34 of the *Criminal Code*, that Mr. Jones should be found not criminally responsible on account of mental disorder in relation to the charges of assault and threats against Shealynn Rogers (counts 2 and 3 in the Information); the March 9, 2011 assault of Niala Jones (count 4); the Dawn Street assault of Niala Jones (count 8); and the Walmart assault (count 9). I do not need to elaborate further as I have provided considerable detail about Dr. Theriault's opinions which have significantly informed my reasoning.

[32] I find Mr. Jones criminally responsible for the plastic broom and Bank of Montreal assaults of Niala and for resisting the police when they arrested him. Again relying on Dr. Theriault's expert opinion I am satisfied that Mr. Jones was,

at the time of the plastic broom and Bank of Montreal incidents, in the prodromal stage of his mental disorder. While that finding falls short of satisfying the requirements of section 16 of the *Code,* I regard it as relevant to a determination of the fit and proper sentence for Mr. Jones on these charges, a matter I have, of course, yet to receive submissions on. As for the resisting arrest, Mr. Jones did not state either at trial or to Dr. Theriault that he resisted arrest because he was Jesus Christ. Although by this time, Mr. Jones' belief in his divine identity was a fully developed delusion and presumably could underpin a refusal to acknowledge the authority of the police, I do not have the evidence before me to establish that. The evidence I do have is that Mr. Jones resisted due to a belief that the police were acting outside of their lawful authority because they had obtained only one side of the story. According to Mr. Jones, the police had failed to conduct any investigation of the case against him. Had they done so, Mr. Jones told me in his submissions at trial, they would have learned that in the circumstances of the alleged assault of Shealynn Rogers, he was entitled to defend himself by hitting her when she pointed a knife at him. (*Trial Transcript, page 720*) The evidence does not support an NCR/MD verdict on the resisting arrest charge and I find no reasonable basis for rejecting Dr. Theriault's opinion on criminal responsibility for this offence.

[33] I will conclude these reasons by acknowledging the unique challenges presented by this case and the evolving demands placed on everyone involved throughout. I want to recognize the fairness and flexibility Ms. Cogswell demonstrated in her handling of this case for the Crown, Mr. Jones' patience and decorum during what must continue to be at times a confusing and stressful process, Mr. Burrill's [indispensable] contribution, and Dr. Theriault's willingness to assist us at short notice and under onerous time constraints. I want to say as

well that I hope this lengthy decision, written also as an archive of how this case unfolded, provides everyone involved, including Shealynn Rogers, and the public, with a comprehensible narrative of these post-trial proceedings, the evidence I have considered and relied on, and my reasoning.

[34] Now I will ask counsel and Mr. Jones to address whether in accordance with section 672.45 of the *Criminal Code*, I am being asked to hold a disposition hearing, which I may do on my own motion or am mandated to do on application by the accused or the prosecution, or whether the disposition should be placed in the hands of the statutorily constituted *Criminal Code Review Board*. I want to note at this juncture two of the relevant sections of the *Criminal Code* dealing with disposition:

Section 672.45(2) provides that:

> At a disposition hearing, the court shall make a disposition in respect of the accused, if it is satisfied that it can readily do so and that a disposition should be made without delay.

Section 672.47 (1) provides that:

> Where a verdict of not criminally responsible on account of mental disorder…is rendered and the court makes no disposition in respect of an accused, the Review Board shall, as soon as is practicable but not later than forty-five days after the verdict was rendered hold a hearing and make a disposition.

[*Editorial Note*- At the conclusion of Judge Derrick's decision, the Crown and Mr. Jones joined in a recommendation that the matter should be referred to the Criminal Code Review Board for a disposition hearing on the NCR/MD charges. The amicus curiae, Mr.Burrill viewed this as the appropriate option, submitting that section 672.45(2) applies, that is, that the Court "shall make a disposition" only if it is "satisfied that it can readily do so and that a disposition should be made without delay." Judge Derrick agreed and referred the NCR/MD charges to the CCRB for disposition.

A sentencing hearing of November 25, 2011 was set for the offences for which findings of criminal responsibility had been made.]