

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Sorenson*, 2018 NSPC 36

Date: 20181005

Docket: 8212908 / 8213242

Registry: Sydney

Between:

Her Majesty The Queen

v.

Karin Tara Sorenson

Judge:	The Honourable Judge Diane L. McGrath
Heard:	July 27, 2018 and September 13, 2018, in Sydney, Nova Scotia
Decision	October 5, 2018
Charges:	CC 811 / CC 145(3) / CC 175(1)(A)(ii) / 88(2)(B)
Counsel:	Rochelle Palmer, Counsel for the Crown Christa Thompson, Counsel for the Defendant

By the Court:

Introduction

[1] Karen Sorensen was arrested by members of the Cape Breton Regional Police Service on April 5, 2018 after she was found walking on Highway 105 near Groves Point, Cape Breton Regional Municipality, Nova Scotia. Police had received information that a female was crossing in front of vehicles causing them to slow down in the area which is a 90 km/h zone. It was later learned there had been several other reports of Ms. Sorensen walking in traffic on that date and that police had contact with her and instructed her to cease this activity. At the time Ms. Sorensen was on a Peace Bond or s.810 Recognizance which required her to keep the peace and be of good behaviour, and as well prohibited her from being on any roadway in a manner that would block traffic or constitute a hazard. As a result of her actions and the belief of police that she would continue walking in traffic she was arrested and charged. While in police custody concerns arose concerning Ms. Sorensen's well-being which resulted in her being transported to the Cape Breton Regional Hospital by police. Ms. Sorensen was seen by an emergency room doctor as well as a crisis worker. She was cleared and returned to lockup.

[2] Ms. Sorensen was brought to court in custody the following day, April 6, 2018 and was released by the Court on an Undertaking.

[3] Later that same day, police were called to Home Depot in Cape Breton Regional Municipality in response to a report of a female walking around the store with a knife telling people to stay away from her. Police attended and located Ms. Sorensen in the plumbing section of the store lying on the bottom shelf of a shelving unit. Ms. Sorensen was hostile to police, yelling at them to leave her alone and was threatening self harm. She was also demanding the return of knives which she alleged police had stolen from her. Ms. Sorensen was eventually convinced to surrender herself to police and was once again transported to Cape Breton Regional Hospital for a mental health assessment. At the hospital Ms. Sorensen was seen by Dr. Milligan, a trained psychiatrist, and later released back to the custody of the police. Ms. Sorensen was remanded into custody the following day, April 7, 2018.

[4] By this point in time Ms. Sorensen was facing charges as follows:

April 5, 2018 – s. 811 x 2

April 6, 2018 – s. 145(3)x2 s. 175(1)(a)(ii) and s.88(2)(b)

[5] Ms. Sorensen was initially represented by duty counsel. On April 16, 2018 she dismissed duty counsel and began demanding to be provided with a human rights lawyer. On occasion she exhibited selective mutism in Court and launched a hunger strike. There were numerous appearances in court by Ms. Sorensen throughout this time where the disruptive and odd behaviour continued. During one such appearance, on April 13, 2018 she damaged a sprinkler in the court house cell area causing an evacuation of the building and a shut down of the entire Justice Centre. As a result of these actions Ms. Sorensen was charged with an offence under s. 430, which is not part of the matters under consideration in this application.

[6] As a result of this behaviour and the inability of any counsel to engage Ms. Sorensen in any meaningful discussion about her situation, the Court ordered an assessment under the authority of s.672.12 of the Criminal Code on April 19, 2018 to assess both fitness and criminal responsibility.

[7] On May 17, 2018 Ms. Sorensen returned to court. A report prepared by Dr. R. Kronfli dated May 15, 2018 found Ms. Sorensen to be fit, but advised she may become unfit if released into the community. That report further offered the opinion that Ms. Sorensen met the definition for a finding of Not Criminally Responsible or NCR as set out in s. 16 of the Criminal Code.

[8] By the time Ms. Sorensen next returned to court on June 20, 2018 she was represented by Nova Scotia Legal Aid. Counsel advised they were retaining an expert to offer a second opinion on the issue of criminal responsibility.

[9] On July 27, 2018 an Agreed Statement of Facts was filed with the Court setting out the facts that formed the actus reas of the offences charged from April 5 and 6, 2018. There was no agreement with respect to the issue of criminal responsibility and a hearing on that issue was scheduled.

[10] The Criminal Responsibility Hearing began on July 27, 2018. There was insufficient time available to complete the matter that day and proceedings were adjourned to Sept 14, 2018. Again, there was insufficient time available to conclude the matter and it was once again adjourned to September 20, 2018 for final argument. On September 20, 2018 the matter was adjourned one final time, to October 5, 2018 for decision on the issue of criminal responsibility as it relates to the Informations setting out offences from April 5, 2018 and April 6, 2018.

[11] Ms. Sorensen's position is that she not only committed the actus reas of the offences, but at the time in question she also possessed the requisite mens rea. She submits that she should, therefore, be found guilty of the offences and sentenced by this court.

[12] The Crown maintains that the opinion offered by Dr. Kronfli on May 15, 2017 should be accepted by the Court and the accused found Not Criminally Responsible on account of mental disorder.

Presumption, Burden and Standard of Proof

[13] S. 16 of the Criminal Code establishes the Defence of Mental Disorder. Even though in this case the issue of the offender's criminal responsibility is being advanced by the Crown, the section applies.

S. 16 states as follows:

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

16(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.

16(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. R.S. c. C-34, s.16; 1991, c.43, s.2.

[14] In the matter before this Court Ms. Sorensen is presumed to be criminally responsible. Ms. Sorensen does not have to prove she is criminally responsible. It is the Crown who is asserting that Ms. Sorensen is Not Criminally Responsible and thus the Crown bears the burden of proof on a balance of probabilities.

[15] The question is not whether Ms. Sorensen is mentally ill but whether she is Not Criminally Responsible by reason of mental disorder within the meaning of s. 16 (R. v. Woodward, [2009] O.J. No. 5484 (C.A.)).

Evidence of Dr. R. Kronfli

[16] Dr. R Kronfli, the Psychiatrist in Chief of Offender Mental Health Services for the Province of Nova Scotia was called by the Crown. Dr. Kronfli had authored a report on May 15, 2018 offering the opinion that Ms. Sorensen met the criteria for a finding of Not Criminally Responsible as set out in s. 16 of the Criminal Code. That opinion was provided in response to an Order made by this Court pursuant to s. 672.12 of the Criminal Code.

[17] Dr. Kronfli was qualified by the Court, with the consent of Defence, as an expert in forensic psychiatry including the diagnosis and management of psychiatric disorder entitled to give expert opinion evidence on the diagnosis and management of mental disorders including assessments related to issues of fitness and criminal responsibility.

[18] It is Dr. Kronfli's opinion that Ms. Sorensen suffers from a serious psychiatric disorder, specifically a psychotic disorder with multiple delusions. Dr. Kronfli testified that Ms. Sorensen exhibited grandiose delusions, persecutory

delusions, delusions of reference and somatic delusions. According to Dr. Kronfli, Ms. Sorensen's delusions were contributing to a deterioration in her mental health that resulted in a situation where although Ms. Sorensen was aware of what she was doing in the physical sense she could not have known her actions were wrong from an ethical point of view. In his opinion, Ms. Sorensen's delusions affected her knowledge of the nature and quality of her actions.

[19] Dr. Kronfli went on to testify that while Ms. Sorensen knew what she was doing in the physical sense, she excused herself. He offered the opinion that she could not have known the ethical and moral wrongness of her actions because of her psychiatric illness.

[20] Dr. Kronfli met with and interviewed Ms. Sorensen on multiple occasions at the East Coast Forensic Hospital. He spent approximately 5-6 hours with her in total. At one point there was a discussion with Ms. Sorensen about potential medications for her condition. She ultimately refused treatment after reviewing the pharmacological information sheets with respect to the recommended medications.

[21] Dr. Kronfli's assessment did not include a review of any previous contacts Ms. Sorensen may have had with psychiatry as she refused to provide any

information on where those contacts occurred, despite indicating there had been numerous contacts in other Provinces.

[22] In addition to his interviews with Ms. Sorensen, Dr. Kronfli reviewed the police reports as well as the hospital reports from April when police took Ms. Sorensen to the Cape Breton Regional Hospital on two occasions as referenced previously.

[23] Dr. Kronfli testified that he found Ms. Sorensen to be very difficult to have a conversation with. She was over inclusive and tangential. She talked about conspiracies and jumped from topic to topic. Her conversation was very fragmented.

[24] Dr. Kronfli told the Court his first contact with Ms. Sorensen was the most disorganized. He described her as being consumed by persecutory delusions and as trying to rationalize her actions. He described her as sarcastic and angry; she was laughing, crying and raising her voice.

[25] In his testimony Dr. Kronfli described many of the delusions he said Ms. Sorensen suffered from. While he described some of her delusions as non-bizarre delusions, he testified that it is her interpretation of events that is odd and to the extreme thus rendering her delusions, in his opinion, psychotic delusions.

[26] While Ms. Sorensen described the actions that led to the s. 811 charges as being undertaken to attract the attention of police so as to bring attention to her state of homelessness, Dr. Kronfli is of the opinion that her actions were the result of a psychotic delusion because of the interpretation she gave to the events that led to her being homeless.

[27] With respect to the events the following day, Dr. Kronfli reported that Ms. Sorensen's explanation was that she was distressed and viewed life as futile. Dr. Kronfli attributes this feeling to what he describes as persecutory delusions. Ms. Sorensen, he testified, believed she was not accomplishing anything in her life because she was being targeted by certain people. It was, therefore, this foundational belief of being targeted that led to her actions.

[28] Dr. Kronfli described Ms. Sorensen's stay at the East Coast Forensic Hospital's Mentally Ill Offender Unit as being challenging. He reported that her mental health was deteriorating and that she required a structured environment to maintain fitness. It was his testimony that predictable structure settles people. He agreed that Ms. Sorensen was never treated with any medication with the exception of a single dose of an anti-psychotic drug on one occasion. He went on to describe Ms. Sorensen as improving over time despite not being medicated or treated in any way.

[29] Dr. Kronfli indicated that prior to diagnosing Ms. Sorensen he did consider several other possibilities. In the end, however, he was able to state with a reasonable degree of certainty that she suffers from a delusional disorder exhibited by mixed delusions. It is his opinion that Ms. Sorensen presents a continued possibility of unpredictable behaviour unless treated. He also testified that it is his opinion that Ms. Sorensen has been trying to fake wellness by attempting to explain her behaviour with superficial explanations.

[30] With respect to the charges from April 5, 2018 Dr. Kronfli offered the opinion that Ms. Sorensen knew what she did was wrong but could not understand the ethical and moral consequences. With respect to the charges from April 6, 2018, he offered the opinion that Ms. Sorensen lacked the ability to problem solve which was secondary to her psychiatric illness.

[31] It is important to note that the opinion Dr. Kronfli provided was applicable only to the offences from April 5, 2018 and April 6, 2018. It is his opinion that the charge from April 13, 2018 does not qualify for a finding of NCR. No explanation was offered by Dr. Kronfli for why the April 13, 2018 offence did not qualify. Nor was there any explanation how this could be the case if Ms. Sorensen had been in a psychotic state on April 5th and 6th, a condition she was never treated for and a

state which Dr. Kronfli testified continued throughout her stay at the forensic hospital well after April 13, 2018.

[32] Dr. Kronfli was somewhat dismissive of the observations made of Ms. Sorensen at the Cape Breton Regional Hospital shortly after the offences in question stating that none of the people who saw her in that setting had a background in forensic psychiatry; yet, at the same time he latched on to Dr. Milligan's suggestion that there may be more than meets the eye to Ms. Sorensen when he reported there was no evidence of an active psychotic process.

[33] Dr. Kronfli disagreed with Dr. Theriault's opinion which had been sought by Ms. Sorensen in response to this Application. It is Dr. Kronfli's opinion that Ms. Sorensen is quite good at faking wellness. While he agreed that a psychotic illness does not turn on and off like a light switch he did, however, state that symptoms can abate and that some people are particularly good at hiding their symptoms.

Evidence of Dr. P. Scott Theriault

[34] Dr. Theriault was retained by Defence to provide a second opinion with respect to the issue of Ms. Sorensen's criminal responsibility for the offences of April 5, 2018 and April 6, 2018. Dr. Theriault is a forensic psychiatrist who also works at the East Coast Forensic Hospital with mentally ill offenders. Dr.

Theriault is the Deputy Director of Dalhousie University's Department of Psychiatry. In addition to his other roles, Dr. Theriault operates a private consulting practice. It was in his capacity as a private consultant that he saw Ms. Sorensen at her counsel's request.

[35] Dr. Theriault was qualified by the Court, with consent of the Crown, as an expert in forensic psychiatry including the diagnosis and management of psychiatric disorder entitled to give expert opinion evidence on the diagnosis and management of mental disorders, including assessments related to issues of fitness and criminal responsibility.

[36] In formulating his report and opinion, Dr. Theriault reviewed the same information that was available to Dr. Kronfli in addition to Dr. Kronfli's report. He also conducted his own interview with Ms. Sorensen which lasted for about 1.5 hours. Dr. Theriault testified that in his opinion, information either contemporaneous with or closest in time to the occurrence of the offences offers the best insight into the accused's mental state at the time in question.

[37] In addition to the information just noted, Ms. Sorensen had prepared and presented to Dr. Theriault a 20 page document. This document was prepared by Ms. Sorensen in her own handwriting and was her attempt to disqualify or refute

the findings of Dr. Kronfli as set out in the Report he authored for the Court. This 20 page document was entered as Exhibit #7, not for the truth of it's contents but rather to add context to Dr. Theriault's testimony concerning the document, and to provide the Court with an example of what was submitted to be the ordered and logicity of Ms. Sorensen's writing.

[38] Dr. Theriault disagreed with Dr. Kronfli's assessment and diagnosis of Ms. Sorensen in its entirety. Dr. Theriault testified that during his interview with Ms. Sorensen, as well as in his review of her written document, he did not observe any signs of acute psychosis or delusional thinking as described by Dr. Kronfli.

[39] During his interview of Ms. Sorensen, Dr. Theriault discussed the delusions identified by Dr. Kronfli. While he found that some of Ms. Sorensen's ideas could be characterized as overvalued none rose to the level of delusions. Likewise, he found that while some of her behaviour and beliefs may be considered to be very odd, they too did not rise to the level of delusions.

[40] It is Dr. Theriault's opinion that Ms. Sorensen suffers from a personality disorder, specifically borderline personality disorder with paranoid and schizoid personality traits. He testified that she has a very low threshold for noise, very poor social skills and very poor coping mechanisms.

[41] Dr. Theriault found Ms. Sorensen to be able to articulate very clearly how Dr. Kronfli, in her opinion, misinterpreted what she said. She was able to logically and coherently offer to Dr. Theriault an explanation of what Dr. Kronfli described as her delusional beliefs.

[42] It is Dr. Theriault's opinion that if Ms. Sorensen had been acutely psychotic as described by Dr. Kronfli she would not have gotten better or settled with time but would have remained in that state until treated with medication.

[43] It is Dr. Theriault's opinion that Ms. Sorensen's behaviour as described in the material available to him from the time of the commission of the offences until the time he saw her was consistent with borderline personality disorder.

[44] Dr. Theriault testified that a personality disorder does not affect one's ability to appreciate the wrongfulness of their actions. His meeting with Ms. Sorensen was only 1.5 hrs long as that was all the time he required. When he met with Ms. Sorensen she was calm, coherent and on point throughout their discussions. His observations, he pointed out, were in accordance with those of Dr. Milligan, a trained psychiatrist who met with Ms. Sorensen on April 7, 2018, shortly after the commission of the offences in question. Dr. Milligan, he pointed out, described Ms. Sorensen as clear, coherent and organized in her thought process.

[45] Dr. Theriault is of the opinion that if Ms. Sorensen was tangential with Dr. Kronfli it was because she was upset. He observed that when Ms. Sorensen is upset she vents and talks about the things that are most important to her. When she is calm and feels respected she is on point.

[46] With respect to the 20 page Disqualification Report prepared by Ms. Sorensen, it is Dr. Theriault's opinion that someone as acutely psychotic as described by Dr. Kronfli would not be capable of producing such a document.

[47] Dr. Theriault went on to explain that a person with a personality disorder such as Ms. Sorensen's responds to stressors in a mal-adaptive manner and may refuse to accept they have a personality disorder. While a personality disorder does not impair a person's perception of reality, it may impair their judgement and decision making. Thus, while a person's actions are founded on bad judgement and bad decision making the person is still aware of both the nature and consequences of what they are doing.

[48] Of great significance to Dr. Theriault in formulating his opinion is the fact that Ms. Sorensen has not been receiving ongoing treatment. Dr. Theriault indicated one would expect a person suffering from psychosis who remained untreated to continue to decline. As Dr. Theriault pointed out, that has not been the

case with Ms. Sorensen whose has exhibited unremarkable behaviour for lengthy periods of time.

[49] With respect to the issue of faking wellness, Dr. Theriault acknowledged that some people with psychotic disorders can constrain themselves for periods of time from voicing their beliefs but believes that if this is what Ms. Sorensen was doing it would have been detectable by him. As he explained, once a delusion is present it becomes a central part of a person's life. The delusion does not go away without treatment and does not wax and wane in an emotional way. A person may be guarded about expanding on their delusional beliefs, but they remain present and central to that person's life.

[50] In her interview with Dr. Theriault Ms. Sorensen was able to articulate what she did and why. In the first instance she was aware the police would be called and, in fact, it was her desire that police be called when she decided to commit the offence. She understood what she was doing was wrong and that she would be arrested but committed the act as a form of protest. She was frustrated and was committing, in her words, an act of civil disobedience to voice her frustration. She was protesting. She was protesting the fact she was homeless, and she felt society was not doing enough to help homeless people. She told Dr. Theriault that she knew her actions placed her at risk as well as others and that she would be arrested.

[51] With respect to the second set of charges under consideration, Ms. Sorensen related to Dr. Theriault that she armed herself with a knife with the intention of taking her own life. She felt she had nothing to live for. She was ultimately unable to follow through and told those around her she was not going to hurt them. She indicated to Dr. Theriault that she understands that her actions and the way she was behaving would cause others to fear for their safety.

[52] Dr. Theriault offered the opinion that Dr. Kronfli had fallen into the trap of diagnostic momentum which ultimately led to a misdiagnosis. He went on to state that even if Ms. Sorensen suffers from a delusional disorder there is no evidence that any of the delusions as discussed by Dr. Kronfli in his report are connected in any way to the offences in question.

[53] Dr. Theriault's opinion is that Ms. Sorensen is mentally ill, she has a personality disorder. She is a problematic personality and is very disruptive. However, she knows what she is doing and appreciates both the nature and quality of her actions. She knows what she is doing is wrong, but she chooses to do it anyway. She disregards the consequences. She may think what she is doing is for the greater good, but she knows she is breaking the law.

Issue

[54] The issue this Court must decide is whether or not Karin Sorensen meets the criteria of s.16 of the Criminal Code so as to exempt her from criminal liability for the offences set out in Informations dated April 5, 2018 and April 6, 2018.

The Law

[55] In examining the legal principles that apply to issues of criminal responsibility, the Ontario Court of Appeal provided a thorough review of those principles in the case of *R. v. Richmond*, 2016 CarswellOnt 2320, 2016 ONCA 134, [2016]O.J. No. 856, 128 W.C.B. (2d) 544, 334 C.C.C. (3d) 315, 345 O.A.C. 131. In a unanimous decision, Justice Cronk, writing for the Court stated at paragraphs 52-55:

52 In *R. v. Oommen*, [1994] 2 S.C.R. 507 (S.C.C.), at p. 518, the Supreme Court explained the nature of the inquiry under s. 16(1):

The crux of the inquiry [under s. 16(1)] is whether the accused lacks the capacity to rationally decide whether the act is right or wrong and hence to make a rational choice about whether to do it or not. The inability to make a rational choice may result from a variety of mental disfunctions; [T]hese include...delusions which make the accused perceive an act which is wrong as right or justifiable, and a disordered condition of the mind which deprives the accused of the ability to rationally evaluate what he is doing.

53 And further, at p. 520:

[T]he real question is whether the accused should be exempted from criminal responsibility because a mental disorder at the time of the act deprived him of the capacity for rational perception and hence rational choice about the rightness or wrongness of the act.

54 Not every mental disorder, even those that are delusion-driven, will trigger a s. 16 defence. The concept of “wrong” embodied in s. 16(1) contemplates knowledge that an act was morally – not legally – wrong in the circumstances, according to the ordinary moral standard of reasonable members of the community. In *R. v. Ratti*, [1991] 1 S.C.R. 68 (S.C.C.), at p. 113, the Supreme Court, citing its earlier decision in *R. v. Chaulk*, [1990] 3 S.C.R. 1303 (S.C.C.), explained:

It is not sufficient to decide that the appellant’s act was a result of his delusion. Even if the act was motivated by the delusion, the appellant will be convicted if he was capable of knowing, in spite of such delusion, that the act in the particular circumstances would have been morally condemned by reasonable members of society.

55 In this case, there is no doubt that the appellant suffers, and has suffered for many years, from a severe psychotic illness – schizophrenia – with symptoms that include auditory hallucinations, grandiose and paranoid delusions, and thought disorder and conceptual disorganization, among others. The question, however, is not whether he was mentally ill or acted out of delusions when he killed his mother, but rather, whether he was **NCR** within the meaning of s. 16 of the Criminal Code. See Woodward, at para 3.

[56] In the earlier case of *R. v. Cooper* (1980), [1980] 1 S.C.R. 1149 the Supreme Court of Canada set out the test . The test is: was the accused, at the time of the offence, by reason of disease of the mind, (now mental disorder), unable to appreciate not only the nature of the act but the natural consequences that would flow from it? In other words, was the accused person, by reason of disease of the mind, deprived of the mental capacity to foresee and measure the consequences of the act?

[57] A finding of Not Criminally Responsible on account of mental disorder is a legal finding. It is a determination for the Court to make after consideration of expert opinion evidence. (*R. v. Bouchard-LeBrun*, [2011] 3 S.C.R. 575 Para 61).

[58] As Justice Coady of the NSSC set out in *R. v. Race*, 2014 NSSC 6

29. It is not possible for a person, psychiatrist or other, to positively determine what was going on in an offender's mind at the time the crime was committed. Nevertheless caselaw reveals various factors which courts have utilized in assessing the mental state of an accused. These include pre-offence conduct, conduct during the offence and post-offence conduct. The accused's account of his actions are important to assessors. The opinions of expert witnesses are very influential and highly relevant.

Analysis

[59] Dr. Kronfli testified that Ms. Sorensen suffers from a psychotic disorder. He offered the opinion that she suffers from multiple mixed delusions, delusions of grandeur, paranoid delusions, delusions of reference and somatic delusions. He testified that because of these delusions Ms. Sorensen was unable to understand or appreciate the moral wrongness of what she was doing. He testified that she knew the police would be called and she would be arrested. Dr. Kronfli however did not explain how these delusions prevented Ms. Sorensen from knowing her actions were morally wrong even though she knew the police would be called.

[60] It is not disputed that Ms. Sorensen was homeless at the time of these events. It is not disputed that Ms. Sorensen blames others for the fact she is homeless and feels she has been treated unfairly throughout her life. Whether she has been treated unfairly or not is not the issue here. It is further undisputed that on the night in question Ms. Sorensen deliberately walked into traffic on the 105 Highway

knowing she would be arrested. Her comments were that she knew she was putting herself in danger and creating a hazard for others. She knew the police would be called. She wanted the police to be called. It was her hope that by getting arrested she would draw attention to her homeless situation and the plight of others in that same situation. She did not think society was doing enough to assist the homeless. It was, in her words, an act of civil disobedience. She was protesting. She wanted to get arrested and she did. Her actions were goal oriented. While her belief as to why she was homeless may have been delusional if you accept Dr. Kronfli's opinion, the fact remains she was in fact homeless and was trying to make a public statement about the plight of the homeless by committing the offences on April 5, 2018. Her behaviour seems to be better characterized by Dr. Theriault. It was poor judgement, it was a bad decision, but it was a conscious decision aimed at accomplishing a particular outcome, one which Ms. Sorensen achieved.

[61] With respect to the incident on April 6, 2018 at Home Depot, Ms. Sorensen was in the store with a knife. She related to Dr. Kronfli and Dr. Theriault that she was overcome with feelings of hopelessness and desperation and decided to kill herself but was unable to follow through. She was in a public place at the time and her actions, understandably, caused distress for others. As a result of her actions

the store was evacuated. Dr. Kronfli has said that in his opinion these actions as well qualify for a finding of NCR as defined in s. 16 of the Criminal Code. Dr. Theriault however points out that there is no connection between any of the identified delusions Dr. Kronfli says Ms. Sorensen is suffering from and her actions. At the time in question Ms. Sorensen was homeless, she was jobless, she had no family and no friends. This was her reality. By deciding to take her own life, although ultimately unable to do so, she was not driven by delusions but by helplessness and despair. This was a demonstration of her over dramatic reaction to situations and her poor coping skills as highlighted by Dr. Theriault. While Ms. Sorensen may have been so consumed with her own plight that she did not consider the impact of her actions on others, there is nothing to suggest that she was not able to understand that walking through a store, in public with a knife, was wrong and would result in contact with the police once again. It would of course be a different situation if there was some evidence that Ms. Sorensen embarked on this course of action because she was compelled to do so by some force over which she had no control or believed she had no control, but that is not the evidence before this Court. The evidence before this Court is that Ms. Sorensen reported to both doctors as well as Dr. Milligan the day after the offence, that she was going to end her life because she had nothing to live for. These actions I find can be

characterized as Dr. Theriault suggested as dramatic and an extreme over reaction, they do not appear to be driven by psychotic delusions.

[62] As stated previously, the Court considers it important to note that the opinion Dr. Kronfli provided was applicable only to the offences from April 5, 2018 and April 6, 2018. It is his opinion that the charge from April 13, 2018 does not qualify for a finding of NCR. No explanation was offered by Dr. Kronfli for why the April 13, 2018 offence does not qualify. Nor is there any explanation how this could be the case if Ms. Sorensen had been in a psychotic state on April 5th and 6th, a condition she was never treated for and a state which he testified continued throughout her stay at the forensic hospital well after April 13th. I note that Dr. Kronfli first saw Ms. Sorensen on April 24, 2018. At that time she was, in his opinion deteriorating, a situation which he said was ongoing. It does not seem to follow that if Ms. Sorensen was acutely psychotic on April 5th and 6th so as to be Not Criminally Responsible, and that she was still in that state on April 24th and continuing to decline that she would also not have been in such a state on April 13th. No explanation as to how this could be the case was ever offered by Dr. Kronfli despite his statement that an illness such as the one he believed Ms. Sorensen suffered from does not turn on and off like a light switch, and his continued opinion that she is need of medication and treatment.

Conclusion

[63] S. 16(2) of the Criminal Code creates a presumption that all persons are criminally responsible. This is a rebuttable presumption. The standard of proof is proof on a balance of probabilities. The burden of such proof lies with the party that raises the issue, in this case the Crown.

[64] A finding of Not Criminally Responsible is a legal finding, not a medical finding, although the Court is assisted in such matters by the evidence and opinions of expert medical professionals, in this case forensic psychiatrists.

[65] This Court has been presented with two conflicting opinions by two very eminent psychiatrists. Both agree Ms. Sorensen is mentally ill. They disagree as to what that illness is and on the issue of whether her illness rendered her incapable of appreciating the nature and quality of her acts. As I stated at the outset, Ms. Sorensen does not have to prove anything in this matter, it is up to the Crown to prove on a balance of probabilities that she is Not Criminally Responsible for the offences of April 5th and 6th, 2018.

[66] For the reasons given above I find that the Crown has not met the burden required to displace the presumption that Ms. Sorensen is criminally responsible. Based on the Agreed Statement of Facts as entered on July 27, 2018 I find Ms.

Sorensen guilty of the offences as charged on Informations alleging offences on April 5, 2018 and April 6, 2018.

Diane L. McGrath, JPC