

1995

C.R. 113548

IN THE SUPREME COURT OF NOVA SCOTIA

HER MAJESTY THE QUEEN

VERSUS

DONNA ANNE COOK

DECISION

HEARD BEFORE: The Honourable Justice David W. Gruchy in the
Supreme Court of Nova Scotia on May 25, 1995

DECISION: May 25, 1995 (Orally)

WRITTEN RELEASE June 12, 1995
OF ORAL:

COUNSEL: Christopher Morris, for the Crown
Anne Derrick, for the Defence

GRUCHY, J. (Orally)

Donna Anne Cook has pleaded not guilty to the charge that she, between November 28, 1994, and December 2, 1994, at or near Fall River, in the County of Halifax, Nova Scotia, did commit first degree murder on the person of Tyler Alexander Cook, contrary to Section 235(1) of the **Criminal Code of Canada**.

As the matter was originally scheduled for a jury trial, a pre-trial conference was held and it was disclosed that the accused wished to re-elect to trial by judge alone, to which the Crown was prepared to consent. It was also disclosed during subsequent pre-trial conferences that the main issue of the case would be whether the accused was criminally responsible pursuant to the provisions of Section 16 of the **Criminal Code of Canada**.

An agreed statement of facts has been submitted to me pursuant to Section 655 of the **Code**. That agreed statement of facts and the various appendices were read and submitted to me during the trial. A video tape of the accused's re-enactment of the events leading to the death of Tyler Cook was played.

The bare facts concerning the alleged offence are clear. On a day between November 28, 1994, and December 2, 1994 - probably on November 30, the accused was at home with her baby, Tyler Cook, then 18 months old. The child was in his crib in his bedroom and Ms. Cook had been lying on her sofa in the living room. She arose

from the sofa and ran some water into the bath tub. When the bath tub was almost full she took the child from his crib and submerged him, on his back, in the bath tub. She held the child there until she was satisfied that he was dead.

The Crown and the defence have submitted to me that those acts would ordinarily constitute the crime of murder. The Crown has submitted that they would constitute the crime of first degree murder and the defence has submitted that they would constitute the crime of second degree murder. The Crown and defence are agreed in their submissions to me that Donna Anne Cook, at the time of the alleged offence, was not criminally responsible pursuant to Section 16 of the **Code**.

It is nonetheless necessary for me to review briefly the facts as submitted to me for, as a trier of fact, I am not bound by counsels' submissions.

Donna Anne Cook is a 31 year old single female. She lived but briefly with Tyler's father who has had no relations with the child or with Ms. Cook since they lived together briefly in Vancouver. Ms. Cook came originally from Fall River, Nova Scotia, but has had minimal relations with her immediate family in the recent past.

Ms. Cook's first psychiatric treatment was apparently sought and obtained in April, 1993. She was then pregnant with Tyler.

She sought help from a Dr. Gabor Mate in Vancouver who recommended that she receive urgent psychotherapy. That therapy revealed that she was then experiencing many psychiatric difficulties. Although the opinion submitted to me dated May 25, 1993, arising from that psychiatric assistance, did not name her condition, it is clear that the symptoms described were the same symptoms which were later exhibited and as I will discuss below. Ms. Cook received a certain prescription intended to relieve her psychiatric symptoms.

When Ms. Cook left Vancouver she went to Calgary. While there she had further difficulty psychiatrically and was again treated on July 14, 1993. At that time she was admitted to the Calgary General Hospital and remained there from that date until July 27. The discharge summary from the Calgary General Hospital reveals that she was then diagnosed as suffering from paranoid schizophrenia. She complained then that she was the victim of a ritual abuse. She was clearly suffering from delusions of a paranoid nature. She feared then that Tyler was "under the control of a supernatural power or an evil force". She then stated that she could hear Tyler talking, (a statement which she repeated subsequent to the death of Tyler) that is, that Tyler could speak virtually from birth.

Her treating physicians at Calgary judged Ms. Cook "to be a potential danger to her six-week old baby". Tyler was placed with child welfare during Ms. Cook's hospitalization. Ms. Cook was then again prescribed the same drugs as had been prescribed for her at

Vancouver and she responded to that treatment. She was discharged from Calgary and arrangements were made for her to return to Halifax with her baby "to live with her father in the short term". She was no longer then considered to be a threat to herself or to her baby. Arrangements were made for her to have follow-up services at Halifax.

When she returned to Halifax she did not live with her father, but did live for some time in the same apartment building as he. She continued to receive medical treatment, including continued prescriptions of those drugs which had been prescribed for her in Vancouver and Calgary, and which had been apparently successful. She was, however, under the impression that she could reduce the dosage of the required drugs and eventually discontinue them. There is no indication in the evidence before me that there was any medical suggestion that she would be able to reduce and discontinue the anti-psychotic drugs. Eventually, she discontinued taking them.

In the months before the death of Tyler, Ms. Cook lived through hell. She heard voices within her head telling her to do things. She heard voices from outside her head - strange and varied voices. She felt that she had been possessed by evil forces. Tyler had been possessed by those forces and was under the control of other beings. She saw apparitions in the shape of geometric patterns which she considered to be horrible. She felt

- indeed she knew - that Tyler was in danger and would be subjected to severe sexual abuse by other persons. She experienced pain when there was in fact no physical cause for it. She thought she was haunted by spirits and ghosts and lived in a terrifying world of unreality.

Dr. Akhtar and Dr. Rosenberg are completely agreed. Ms. Cook was suffering under such severe delusions "and in such a 'florid psychotic episode' that she was incapable of making rational decisions on her own". On the surface her actions might have appeared to have a rational progression, but when considered in the light of her delusions, these psychiatrists say it is clear she was suffering from a severe mental disorder. That mental disorder, according to the psychiatrists, was such that she was incapable of appreciating the nature and quality of her acts or of knowing that they were wrong. Indeed, while Ms. Cook showed ambivalence about her actions, it is clear that she ultimately considered her actions in the killing of Tyler to be "good" in that she was protecting her child from evil forces and from a fate, presumably worse than death.

It is my conclusion, in which I agree with counsel, that on the facts and symptoms described to me in detail by Drs. Akhtar and Rosenberg, Ms. Cook was not criminally responsible for her acts committed at the time as alleged. I am also completely satisfied that the accused could not possibly have concocted her psychiatric

problems. She displayed the same symptoms even before her child was born. Her behaviour and her withdrawal were objective signs of her illness. She had let herself go physically, even though she now presents as a well-groomed person. The utter and complete disarray of her apartment was an indication of the disarray that her mind must have been in at the time of the alleged offence.

I am completely satisfied that the accused, at the time of the alleged offence, was suffering under a "disease of the mind". That disease is schizophrenia - paranoid type. It is a disease which has been repeatedly and oft recognized as one which may be included in the phrase "mental disorder" as found in Section 16 of the **Criminal Code**. She was completely incapable of appreciating the nature and quality of her acts. She was satisfied in her own mind that her acts were not wrong, but good. She knew the physical qualities of her act but did not have the capacity to appreciate their morality.

Crown counsel has urged that I should find that the acts of the accused leading to the death of Tyler Cook would, but for the lack of criminal responsibility, constitute the offence of first degree murder. I am unable to agree that such a conclusion is necessary. As I have found, the evidence clearly shows that the accused was unable to appreciate the nature and quality of her acts. Pursuant to Section 231(2) "murder is first degree murder when it is planned and deliberate". I am satisfied by the evidence

of the psychiatrists - and indeed by the accused's own statement to the police - that her actions were not planned in any legally acceptable sense. Her voices, her delusions, and her apparitions were planning for her. The actions themselves, as I have stated above, may have appeared to have a logical sequence, but the underlying purpose and plan were totally irrational. Similarly, while the accused's actions appear to have been deliberate, I find that the accused was incapable of any rational deliberation.

I conclude that the distinction between first degree murder and second degree murder in this case is irrelevant. But for the lack of criminal responsibility, the acts of the accused constituted culpable homicide. The acts of the accused formed the basis of the offence charged. While I conclude that a jury, properly instructed, might have been able to convict the accused of first degree murder, I, sitting as a trier of fact, would have concluded that in view of her psychiatric condition, she was incapable of the *mens rea* required for that offence or for second degree murder. I am, however, unable to reduce on my own motion, or on the motion of defence counsel, the charge from first degree murder to second degree murder.

The difference between first degree murder and second degree murder in this case is moot. The accused committed the acts which would ordinarily have constituted one offence or the other, but did so at a time when she was not criminally responsible on account of

a mental disorder. Pursuant to Section 672.35, the accused shall not be found guilty and is not convicted of the offence.

This finding, of course, does not mean that Ms. Cook is free. I have the authority pursuant to the provisions of Section 672 of the **Code** to order her continued detention. I now order that Ms. Cook be detained at the Provincial Forensic Psychiatry Service at the Nova Scotia Hospital in Dartmouth until the time of the disposition hearing before the Review Board as provided in Section 672.47 of the **Code**.

There remains but one piece of unfinished business. The Canadian Broadcasting Corporation has withdrawn its application for access to a copy of the video taped accused's re-enactment which was submitted during evidence. It is a function of the court to protect the rights of citizens, and especially those who have committed no crime. Ms. Cook is such a person. She is also a person who needs all the help society can give her. As much as I am able to do, I would like to protect her from what may be the devastating effects the public telecasting of that tape might have upon her.

I therefore order the video tape to be sealed by the Prothonotary only to be released upon further Order of the Court.

J.