SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Race, 2014 NSSC 6

Date: 20140124
Docket: C.R. No. 388485
Registry: Halifax

Between:

Her Majesty the Queen

v.

Glen Douglas Race

Judge:	The Honourable Justice Kevin Coady
Heard:	November 4 , 5, 6, 7, and 8, 2013 in Halifax Nova Scotia
Final Written	January 24, 2014
Counsel:	Mark Heerema and Paul Carver, for the Crown Joel E. Pink Q.C., for the Defendant

By the Court:

[1] On March 5, 1981 Glen Douglas Race was born into a conventional family. He was loved and supported by industrious parents and a devoted younger brother. He enjoyed a relatively unremarkable upbringing. Throughout his school years he generally excelled at school and sports. Mr. Race had friends in high school and enjoyed a social life much the same as his peers. When Mr. Race graduated from high school in 1998 his future looked promising. Any parent of a son living the life of Glen Race would naturally feel proud of the young man they raised. While there were some bumps along the way none appeared a threat to his future accomplishments and successes.

[2] In 1999 Mr. Race entered the mechanical engineering program at Dalhousie University. In the first year he received reasonable grades and enjoyed a normal social life. Mr. Race did not display signs of substance abuse or mental health problems. In 2000 he travelled to Taipei for eleven weeks to teach English. The record suggests that Mr. Race's substance use increased during this time. Later in 2000 Mr. Race started his second year at Dalhousie. In that year his academics slipped and he was using drugs on a regular basis. Otherwise Mr. Race felt physically and mentally healthy.

[3] The year 2001 was a defining year for Mr. Race as his mental health began to deteriorate. While he lived with his parents he attempted to isolate himself. He would lock himself in the basement for days without telephone, lights, television, or radio. He refused an adequate diet as a cleansing exercise and lost forty pounds in a matter of weeks. It would be trite to describe his behaviour as peculiar.

[4] In October, 2001 Mr. Race was referred for a psychiatric assessment. He was diagnosed with major depression with psychotic features. He was prescribed antidepressants and antipsychotic medication but refused to take them. In November, 2001 Mr. Race's parents arranged with the police to force him into a psychiatric hospital. The treating physician raised the possibility that Mr. Race was suffering from a "schizophreniform illness."

[5] Mr. Race escaped from the hospital but was returned by police after one week. He presented with deteriorated hygiene and had spent time living in a dumpster. He was angry, belligerent, and refused any examination or treatment. He had no insight into his illness or concern for his safety. He was found incapable of consenting to treatment and given antipsychotic medication against his will.

[6] Within weeks Mr. Race left the hospital and terminated his medications. His diagnosis at the time was "psychosis not otherwise specified with a differential diagnosis of paranoid schizophrenia." It is very clear from the evidence that by 2002 Mr. Race was extremely ill and resistant to any kind of treatment.

[7] Mr. Race's illness, and its manifestations between 2002 - 2005, are best described at paragraphs 143-146 of the agreed statement of facts:

> 143. Between March 2002 and September 2003 Glen Race continued to isolate himself and deteriorate. He became a recluse. He did not leave the family home. He did not attend to his daily hygiene including not showering or brushing his teeth for over a year. He ate excessively and gained sixty pounds. He claimed to have telepathic experiences and that he was influenced by other peoples thoughts. He was angry and blamed the hospital for ruining his life and spirituality.
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> 144. In October 2003 Glen Race started leaving the family home again. He went for increasingly long walks. He developed a belief in vampires and demons. He believed he was being attacked through the astral plane. He believed eating garlic and holding his breath would protect him from these attacks. He claimed to have reached a "high consciousness". He claimed he walked the streets as if he was a "God". At one point he emerged from his bedroom having painted all its contents and himself white for the purpose of "purification".
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> 145. Glen Race was angry with his parents and blamed them for his admission to the hospital. He punched holes in the walls. He threw objects at his father. He spit at his parents. He smashed stereo equipment. He tried to intimidate his mother. He slept with a knife. In January 2004 he struck his father and smashed his computer when his parents refused to allow him to drive their car. In 2005 he struck his father with a rake because he was angry his father had hurt the grass by mowing the lawn.
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> 146. In January 2004 Glen Race wanted to go to Mexico or Belize. He boarded the ferry but was refused entry into the United States because he had no money.

[8] In April, 2005 Mr. Race was admitted to the East Coast Forensic Hospital as a result of a minor legal conflict. The treating physician found evidence of a psychotic illness and made a diagnosis of “schizophrenia disorganized type.” He was found to be “non-compliant with his medications and had absolutely no insight into the need for medication or the nature of his illness.” The legal conflict was resolved and Mr. Race returned to live with his family. In the weeks that followed Mr. Race became increasingly more agitated and paranoid.

[9] Mr. Race was admitted to the Abbie Lane Hospital in December, 2005 and was diagnosed with a psychotic disorder – schizophrenia, untreated since 2002. When urged to get treatment he reacted with anger and destructive behaviour. Within a week he left the hospital and went to Montreal.

[10] In early 2006 Mr. Race was brought to The Nova Scotia Hospital by police as a result of increasingly bizarre behaviour. Notwithstanding antipsychotic medication treatments his behaviour did not change. Over the next few months the following observations were noted:

> a. He used garlic to absorb negative energy (he consumed it, placed it around his room and was suspected of leaving it in the room of another patient);
>
> b. He drew pentagrams and hung them in his room;

c. He spoke about being spiritually raped by the hospital daily;

d. He believed hospital staff were spiritual vampires who sucked the life from him;

e. He believed all nature was sacred and that the trees talked to him;

f. He was disdainful and dismissive of staff;

g. He had persecutory and possibly religious delusions;

h. He believed there could be "dual realities";

i. He believed he had the power to curse people and make them suffer; and,

j. He almost equated himself to Christ.

The treating psychiatrists determined that Mr. Race was treatment resistant.

[11] In June, 2006 Mr. Race was discharged as he showed signs of improvement. He returned to live with his parents. Those signs of improvement began to recede and between January and May, 2007 his parents observed their son engage in the following behaviour:

a. Spreading salt on the driveway and around the house (apparently to ward off demons and vampires);

b. He bathed in salt;

c. He would not allow anyone to be in the kitchen while he prepared his food;

d. He cooked rice and left it outside to "feed the spirits";

e. He frequently meditated while holding a knife;

f. He frequently held his breath which he stated was his way of fighting demons;

g. He took apples back to the trees because they were "hungry";

h. He claimed he could talk to the trees;

i. He was in and out of the house at all hours of the day and night, carrying a knife; and,

j. He told his mother he had the power to forgive sin but he would never forgive sin.

[12] Between May 1 and May 8, 2007, at or near Halifax, Nova Scotia Glen Race killed Paul Knott and Trevor Brewster. He fled Nova Scotia eventually crossing the border into New York State where he killed Darcy Manor. He was arrested in Texas at the border with Mexico on May 15, 2007.

[13] The evidence establishes that Mr. Race and Mr. Knott had a chance encounter on Citadel Hill, a well-known homosexual stroll in Halifax. It is generally accepted that Mr. Race targeted a gay man only for reason of easy access and not because he had any hang-ups about gay men. The evidence suggests that Mr. Race savagely attacked Mr. Knott with a knife in Mr. Knott's vehicle. He then drove 60 kilometers to dispose of the body in a remote and densely forested location. Mr. Knott's body was not found for several days. His vehicle was

located at another remote location stuck in the mud. It was obvious that Mr. Race took various steps to conceal the identity of the vehicle.

[14] The evidence establishes that on the evening of May 7, 2007 Mr. Race and Mr. Brewster had a chance encounter at Frenchman Lake, also a well-known homosexual stroll in Dartmouth. Sometime after this encounter Mr. Race savagely attacked Mr. Brewster with a knife. He then disposed of the body under a wharf where it was not found for days. It was obvious that Mr. Race took various steps to conceal the killing of Mr. Brewster.

[15] After disposing of Trevor Brewster's body Glen Race drove away in Mr. Brewster's Honda Civic. After a close encounter with the police, he drove to New Brunswick and ultimately to a location near the American border. He drove the vehicle deep into an abandoned logging road where it became stuck in the mud. It was not discovered until months later. Upon discovery it was determined that Mr. Race took steps to conceal the identity of the vehicle.

[16] Sometime between the morning of May 9, 2007 and the afternoon of May 10, 2007 Mr. Race entered the United States illegally by walking across the border at a secluded area. He discovered a remote hunting camp where he entered a cabin and located a hunting rifle and ammunition. At approximately 5:00 p.m. Darcy

Manor attended the camp to ready the exterior water pump for the coming season. While Darcy Manor was working on the pump Mr. Race fired a single shot through the cabin window killing Mr. Manor. Upon discovery of Mr. Manor's body it was determined that Mr. Race took steps to conceal the body and his presence at the hunting camp. He left the area in Darcy Manor's truck and headed south.

[17] Between May 10th and May 14th Mr. Race drove Darcy Manor's truck some 5000 kilometers to a location near the Mexican border. The evidence discloses many efforts along the way to camouflage the vehicle and his flight from New York police. On the morning of May 15th Mr. Race approached the Rio Grande River where he triggered a sensor. This activation attracted a border guard. After a short struggle Mr. Race was arrested and ultimately returned to New York State. In time, he was convicted of the first degree murder of Darcy Manor and sentenced to a life sentence to be served in American prisons. In October, 2010 Mr. Race was extradited to Canada to face charges related to the deaths of Mr. Knott and Mr. Brewster. He has been a resident of the East Coast Forensic Hospital since that time.

[18] This prosecution was scheduled for a lengthy jury trial. On September 30, 2013 Mr. Race entered guilty pleas to the second degree murder of Paul Knott and

the first degree murder of Trevor Brewster. He then made an application pursuant to section 16 of the *Criminal Code* to be found not criminally responsible (NCR) in respect to both homicides.

[19] Mr. Race's application was heard over five days in November, 2013. An agreed statement of facts was tendered pursuant to section 655 of the *Criminal Code*. The Defence called forensic psychiatrists Dr. Lisa Ramshaw and Dr. Stephen Hucker. The Crown called forensic psychiatrist Dr. Hy Bloom. All three experts accepted that Mr. Race qualified for an NCR defence in relation to the deaths of Paul Knott and Trevor Brewster. The Crown does not oppose Mr. Race's application but did cross examine the Defence's experts.

[20] There is no dispute respecting the legal principles that apply in NCR applications. A brief review of the fundamental principles is necessary for a full understanding of this judgment. It all starts with section 16 of the *Criminal Code*, which states:

> 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.
>
> (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.

> (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.

The origins of section 16 can be traced to the 1843 House of Lords judgment in "M'Naughten's case." In that case Chief Justice Tindal offered the following rules respecting the severely mentally ill offender:

> …we have to submit our opinion to be, that the jurors ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.

[21] The Supreme Court of Canada in *R. v. Bouchard-Lebrun*, [2011] 3 S.C.R. 575 commented as follows on the theoretical foundation of being found NCR:

> According to a traditional fundamental principle of the common law, criminal responsibility can result only from the commission of a voluntary act. This important principle is based on recognition that it would be unfair in a democratic society to impose the consequences and stigma of criminal responsibility on an accused who did not voluntarily commit an act that constitutes a criminal offence.

An act will only be considered voluntary when it is the product of an accused person's free will. An offender's will is expressed through conscious control of one's body.

[22] To satisfy section 16(1) of the *Criminal Code* the following must be established:

> (1) The accused was suffering from a mental disorder when the act or omission was committed; and,
>
> (2) The mental disorder rendered the accused incapable of:
>
> a. appreciating the nature and quality of the act or omission, or
>
> b. of knowing that the act or omission was wrong.

All accused are presumed to not suffer from a mental disorder. Where a party attempts to rebut that presumption they must do so on the balance of probabilities.

[23] To qualify for section 16(1) an accused must have suffered from a mental disorder at the time of the offence. Section 2 of the *Criminal Code* defines a mental disorder as a "disease of the mind." In *R. v. Cooper,* [1980] 1 S.C.R. 1149, the Supreme Court of Canada interpreted the term "disease of the mind" as follows:

> In summary, one might say that in a legal sense "disease of the mind" embraces any illness, disorder of abnormal condition which impairs the human mind and its functioning, excluding however, self-induced states caused by alcohol or drugs, as well as transitory mental states such as hysteria or concussion. In order to support a defence of insanity the disease must, of course, be of such intensity as to render the accused incapable of appreciating the nature of and quality of the violent act or of knowing that it is wrong.

Whether an offender suffers from a "disease of the mind" is a question of law and not a question of medicine.

[24] In *R v. Bouchard-Lebrun*, *supra*, the Supreme Court of Canada discussed the interplay between medicine and the law in NCR proceedings at paragraphs 61 and 62:

> 61 For the purposes of the Criminal Code, "disease of the mind" is a legal concept with a medical dimension. Although medical expertise plays an essential part in the legal characterization exercise, it has long been established in positive law that whether a particular mental condition can be characterized as a "mental disorder" is a question of law to be decided by the trial judge. In a jury trial, the judge decides this question, not the jury. As Martin J.A. stated in an oft-quoted passage from *Simpson,* "[i]t is the function of the psychiatrist to describe the accused's mental condition and how it is considered from the medical point of view. It is for the Judge to decide whether the condition described is comprehended by the term 'disease of the mind'" (p. 350). If the judge finds as a matter of law that the mental condition of the accused is a "mental disorder", it will ultimately be up to the jury to decide whether, on the facts, the accused was suffering from such a mental disorder at the time of the offence.
>
> 62 Thus, the trial judge is not bound by the medical evidence, since medical experts generally take no account of the policy component of the analysis required by s. 16 Cr. C. (*Parks,* at pp. 889-900). Moreover, an expert's opinion on the legal issue of whether the mental condition of the accused constitutes a "mental disorder" within the meaning of the Criminal Code has "little or no evidentiary value" (*R. v. Luedecke*, 2008 ONCA 716, 269 O.A.C. 1 (Ont. C.A.), at para. 113).

[25] The presence of a mental disorder standing alone is insufficient to qualify for a section 16 defence. The Supreme Court of Canada emphasized this point in *R. v. Ratti*, [1991] 1 S.C.R. 68 at paragraph 20:

> 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 members of society.

A more general statement of this principle is found in *R. v. Farr,* [2012] N.J. No. 201 at paragraph 26:

> C. FLYNN PROV. CT. J.: I must therefore conclude that the defence has failed to satisfy either branch of the section 16 defence on the balance of probabilities. I have no doubt that Mr. Farr's illness spurred him to do things that he might normally not do. However, in that sense, Mr. Farr is no different from the hypothetical individual suffering from some other mental disorder who continually calls his ex-girlfriend because he obsesses about her. He, too, cannot stop himself, but he appreciates what he is doing and the consequences of it. The result is that he, too, would not fit the criteria for a section 16 defence, despite the fact that his obsessions are propelling him to do certain things. If Canada recognized the defence of diminished responsibility, it is possible that such could apply in this case. However, the Supreme Court of Canada has made it clear that no such defence exists in Canadian law. (*R. v. Chartrand,* [1977] 1 S.C.R. 314).

[26] The first track by which an accused may be found NCR is if the mental disorder made them incapable of appreciating the nature and quality of the crime. Appreciating the nature and quality of a crime refers to an appreciation of the physical character and physical consequences of the action. The following explanation appears at paragraph 65 of *R. v. Palma,* [2001] O.J. No. 3283:

> In the *Simpson* decision, Martin, J.A., offered the view that s. 16(2) exempts from liability an accused who, due to a disease of the mind, has no real understanding of the nature, character and consequences of the act at the time of its commission. I agree. With respect, I accept the view that the first branch of the test, in employing the word 'appreciates', imports an additional requirement to mere knowledge of the physical quality of the act. The requirement, unique to Canada,

> is that of perception, an ability to perceive the consequences, impact, and results of a physical act. An accused may be aware of the physical character of his action (i.e., in choking) without necessarily having the capacity to appreciate that, in nature and quality, that act will result in the death of a human being. This is simply a restatement, specific to the defence of insanity, of the principle that mens rea, or intention as to the consequences of an act, is a requisite element in the commission of a crime.

The evidence before me clearly indicates that this track does not apply to Mr. Race. He appreciated the nature and quality of his actions when killing Paul Knott and Trevor Brewster.

[27] The second track by which an accused may be found NCR is if the mental disorder made them incapable of knowing their actions were wrong. Prior to 1990 an accused's awareness that their actions were contrary to law deprived them of the NCR defence. The 1990 decision of the Supreme Court of Canada in *R. v. Chaulk,* [1990] 3 S.C.R. 1303 effected a major change in this area of the law. Lamer C.J. commented as follows at paragraph 97:

> Viewed from this perspective, it is plain to me that the term "wrong" as used in s. 16(2) must mean more than simply "legally wrong". In considering the capacity of a person to know whether an act is one that he ought or ought not to do, the inquiry cannot terminate with the discovery that the accused knew that the act was contrary to the formal law. A person may well be aware that an act is contrary to law but, by reason of "natural imbecility" or disease of the mind, is at the same time incapable of knowing the act is morally wrong in the circumstances according to moral standards of society. This would be the case, for [page 1355] example, if the person suffered from a disease of the mind to such a degree as to know that it is legally wrong to kill but, as described by Dickson J. in *Schwartz*, kills "in the belief that it is in response to a divine order and therefore not morally wrong" (p. 678).

And further at paragraph 101:

> An interpretation of s. 16(2) that makes the defence available to an accused who knew that he or she was committing a crime but was unable to comprehend that the act was a moral wrong will not open floodgates to amoral offenders or to offenders who relieve themselves of all moral considerations. First, the incapacity to make moral judgments must be causally linked to a disease of the mind; if the presence of a serious mental disorder is not established, criminal responsibility cannot be avoided. Secondly, as was pointed out by Dickson J. in *Schwartz,* supra "[m]oral wrong" is not to be judged by the personal standards of the offender but by his awareness that society regards the act as wrong" (p. 678). The accused will not benefit from substituting his own moral code for that of society. Instead, he will be protected by s. 16(2) if he is incapable of understanding that the act is wrong according to the ordinary moral standards of reasonable members of society.

[28] In 1994 the Supreme Court of Canada in *R. v. Oommen,* [1994] 2 S.C.R. 507, introduced the concept of "rationality" into the wrongful analysis. McLachlin J. commented at paragraphs 21 and 26:

> 21 A review of the history of our insanity provision and the cases indicates that the inquiry focuses not on general capacity to know right from wrong, but rather on the ability to know that a particular act was wrong in the circumstances. The accused must possess the intellectual ability to know right from wrong in an abstract sense. But he or she must also possess the ability to apply that knowledge in a rational way to the alleged criminal act.
>
> …
>
> 26 The crux of the inquiry 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; as the following passages indicate these include at a minimum the states to which the psychiatrists testified in this case – 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.

[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.

[30] Both Crown and Defence psychiatrists concluded that Mr. Race qualified for an NCR defence. Unanimity of experts was addressed by the Supreme Court of Canada in *R. v. Molodowic,* [2000] 1 S.C.R. 420. Arbour J. commented on the significance of unanimity at paragraph 10:

> A proper understanding and weighing of expert opinion often plays a central role in the determination of whether or not an accused should be found not guilty by reason of mental disorder. The absence of a Crown rebuttal expert to contradict an accused's psychiatric evidence is not in itself sufficient to conclude that a verdict of guilty was unreasonable if that conclusion remained reasonably open to the jury on the totality of the evidence. However, it may be unreasonable for a jury to disregard the expert evidence put before it, particularly where all the experts called were in agreement with each other, when their evidence was "uncontradicted and not seriously challenged" (R. v. Kelly (1971). 6 C.C.C. (2d) 186 (Ont. C.A.), at p. 186), and when there was nothing in the "conduct of the commission of the crime which would raise any serious question as to the validity of the psychiatrists' conclusion" (Kelly, at p. 186). Furthermore, appellate review of the reasonableness of the jury's findings must be undertaken in light of the standard articulated in Biniaris, supra.

The unanimity of the three psychiatrists, coupled with the Crown's position, fairly well determines the outcome of this proceeding. I have found nothing in the evidence that counters these two factors.

[31] There is ample evidence that Mr. Race was suffering from a mental disorder when he killed Paul Knott and Trevor Brewster. Dr. Lisa Ramshaw filed a report dated January 24, 2013 in which she advanced the following:

> Diagnosis:
>
> Axis I: Schizophrenia of the Undifferentiated Type
> Cannabis Abuse Disorder – in remission
>
> Axis II: No evident Personality Disorder

The following opinion appears at page 63 of Dr. Ramshaw's report:

> It is my opinion that Mr. Race's primary diagnosis is Schizophrenia of the Undifferentiated Type with a history of paranoid and grandiose delusions, religious preoccupation, perceptual abnormalities, disorganization of thought and behaviour, and significant psychosocial decline. His presentation and behaviour over the past ten years has clearly been influenced by his delusions and his profound lack of insight into his mental illness. The onset and course of his mental illness is typical of schizophrenia.
>
> Mr. Race clearly has a chronic and dense history of unremitting psychosis, albeit his beliefs have fluctuated from paranoid to grandiose. He also has an associated long history of religious preoccupation, being secretive, reclusive, and engaging in bizarre behaviour. Further, he has had a long history of ambivalence, and a need to escape from his guarded stance with a façade of wellness, in that he has tended to be secretive about his inner world, and can present well on the surface and as "normal". He has convinced others of this many times including his family, in hospital, during arrests, and while in jail. However, his presentation, aided by his intelligence, was clearly in the service of self-protection to prevent hospitalization and treatment due to his lack of insight into his illness.

Dr. Ramshaw was of the opinion that Mr. Race was suffering from this mental disorder during the first two weeks of May, 2007.

[32] Dr. Ramshaw offered a definition of schizophrenia at page 62 of her report. I will reproduce that definition as I believe it will contribute to a fuller understanding of this decision:

> Schizophrenia is a major mental illness that tends to have its onset, in males, in the second or third decade of life. Once extant, schizophrenia is a lifelong illness. An individual with schizophrenia suffers from symptoms of psychosis. Psychosis is generally defined as the presence of delusions, hallucinations, grossly disorganized thought and behaviour, or some combination of these. Social and occupational decline are often prominent, as are a diminution of their motivation and self-care. The mainstay of treatment for schizophrenia is antipsychotic medication. This tends to ameliorate or ablate the more florid symptoms of psychosis in a majority of individuals. Once this medication has had the opportunity to achieve this effect, multidisciplinary psychosocial rehabilitation is used to treat the residual symptoms of schizophrenia and improve function and quality of life. The course of a schizophrenic illness is frequently adversely affected by psychosocial stress, an unstructured living situation, alcohol or street drug use, and non-compliance with psychiatric treatment.
>
> The three most common types of schizophrenia are paranoid, disorganized and undifferentiated. The latter involves a combination of paranoia and disorganization. Cognition is much more affected in those with the disorganized type. However, most individuals with schizophrenia experience rigid thinking. It is not unusual for those who suffer from paranoid schizophrenia to appear well on the surface, despite elaborate underlying delusional beliefs and a guarded stance. However, they tend to have difficulties with interpersonal relationships and maintaining employment. In all forms of schizophrenia, function can fluctuate and mental state tends to fluctuate over time and is dependent on numerous factors, such as stress, medication treatment, substance use etc.

[33] The defence also called Dr. Stephen Hucker, a forensic psychiatrist. He concluded that Mr. Race was suffering from schizophrenia at the material times. He offered the following opinion at page 34 of his September 28, 2013 report:

> In my opinion Mr. Race has a mental disorder: Schizophrenia is a well-recognized and often seriously incapacitating disorder that may render a person unable to perceive reality in the way that others do. They thus construct an alternative reality. While most schizophrenics, even when very deteriorated, can often manage to complete simple tasks, retain a basic fund of knowledge and appear to make at least uncomplicated decisions, the actions of a psychotic are often guided by hallucinations and delusions. Mr. Race's apparently willful actions and means to evade apprehension appear to have been the direct result of his false beliefs and abnormal perceptions. In addition, while floridly mentally ill, his thinking processes were disturbed and his conversation, especially when left undirected, resulted in a jumble of incoherent ideas.
>
> It is my opinion that, as a result of his severe mental disorder, Mr. Glen Race was at the requisite time, driven by abnormal ideas, thinking and perceptions that substantially distorted his appreciation of reality.

[34] The Crown called Dr. Hy Bloom. He concurred with the aforementioned psychiatrists in concluding that at the material times Mr. Race was suffering from schizophrenia. It was his opinion that Mr. Race struggled with this illness since he was 19 years old. Dr. Bloom testified that he found no evidence to refute this diagnosis. I will have more to say about Dr. Bloom's evidence when I discuss section 16(2) of the *Criminal Code*.

[35] The two tracks in section 16(2) are disjunctive. Section 16(2)(a) addresses whether Mr. Race appreciated the nature and quality of his actions when he killed

Paul Knott and Trevor Brewster. Dr. Hucker addressed this factor at page 34 of his September 28, 2013 report:

> He would have been able to appreciate the nature and quality of his acts in the sense that he would have known that stabbing, bludgeoning or shooting another human being would be likely to cause serious injury and possibly death. In my opinion, therefore, he would have been able to perceive the consequences, impact and results of his physical actions.

Dr. Ramshaw is not as concise in her section 16(2) analysis. She suggests in her report that Mr. Race's schizophrenia "could render him incapable of appreciating the nature and quality of the act or omission or unable to understand the moral or legal wrongfulness." Dr. Bloom testified on direct that Mr. Race did appreciate the nature and quality of his actions. Consequently his opinion is firmly rooted in section 16(2)(b).

[36] *R. v. Chalk, supra,* established that knowing an act is wrong may have a legal foundation or it may have a moral foundation. In Mr. Race's case the experts base their opinions on the latter. Dr. Ramshaw stated at page 66 of her report:

> In summary, it is more likely than not that Mr. Race's psychosis, with extensive delusional beliefs, was the prime motivating factor in his offending behaviour. The driving force for the extreme behaviour was likely his perceived "mission" to cleanse the world of sins, righteousness, and need for escape in the context of escalating religiosity, grandiosity and paranoia.
>
> On the balance of probabilities, from a psychiatric perspective, Mr. Race was unable to access the moral wrongfulness at the material time due to the extent of his psychosis, which was driving his behaviour. A defence of not criminally responsible on account of a mental disorder is therefore supported.

She seems to accept that Mr. Race knew his actions would be fatal but firmly believed and accepted that they were warranted in his delusional fight against all things evil.

[37] Dr. Ramshaw concluded that Mr. Race was experiencing psychosis before, during, and after the killing of Paul Knott and Trevor Brewster. She described psychosis as a break from reality wherein the subject truly believes that delusions are real. When later asked about these killings Mr. Race stated that "he believed he had to eradicate all demons and vampires and that he was God." Mr. Race truly believed he was on a mission.

[38] Dr. Hucker's opinion is that Mr. Race did not appreciate the moral wrongfulness of his homicidal actions. He states at page 35 of his September 28, 2013 report:

> Though intellectually able to understand the wrongness of killing another person, this knowledge was overridden by the overwhelming effects of his illness-based symptoms. He believed himself to be instructed by supernatural entities and that he had to rid the demons in order to save the world. Mr. Glen Race would have had the general capacity to distinguish right from wrong though he himself did not, at the requisite time, believe he was doing wrong. However, in my opinion, because of his mental disorder he was not able to apply that knowledge in a rational way.

Mr. Race provided the following to Dr. Hucker in an early post arrest interview:

> "In April I get the call from heaven to attack the demons themselves…I'm led by many angels and other spiritual entities…I'm living with this strange day to

> day world… called by angels…I got sent to Halifax to wage war on these demons…I go out as a tool in the hand of God…I've died myself and living in half self of spirit …psychosis is a better part."

He stated he "was also trying to end the plague of the devil that was hurting so many."

[39] Dr. Bloom's opinion also comes down on the side of moral wrongfulness. He states in his report:

> I believe Mr. Race's mental state was consistent from the Knott to the Brewster killings. Both were motivated by similar ideation – to obtain what Mr. Race deemed were the necessities for carrying out a larger delusionally-based plan to kill his perceived persecutors, and people more generally. Mr. Race was experiencing delusions and hallucinations of various kinds at the time that preoccupied him. It is my view that all of the steps that he had taken in the days prior to and at the time of the killings were delusionally-based. As intelligent and purposeful as Mr. Race's activities were, there was certainly a disconnect between what he thought and did, and his ability to achieve his ultimate goals.

[40] Dr. Bloom further comments at page 115 of his report:

> Frankly, I suspect that even if Mr. Race knew something about the moral wrongfulness of his actions at the time, he was so psychotic as to not have been able to apply this information to his circumstances. His clear sense that his actions were morally justified were likely not, at the time, capable of being displaced by reference to the usual moral dictums of society at large. Put another way, although Mr. Race had some sense of the legal and moral wrongfulness of his actions – more likely in retrospect than at the time – my opinion is, that he wasn't able to make a rational choice at the time due to the intensity and all-encompassing nature of his psychotic symptoms.

He then expresses the following opinion at page 116:

> It is my opinion that Mr. Race, on closer analysis, would not have known the moral wrongfulness of his actions at the time that he killed both Mr. Knott and Mr. Brewster. Due to the complexities of Mr. Race's case, I offer this opinion on a balance of probabilities basis.

[41] After considering all of the evidence I am satisfied that Mr. Race qualifies for an NCR defence in relation to both the Knott and Brewster homicides. He suffered from a mental disorder on both occasions, that being schizophrenia. I am also satisfied that Mr. Race, as a result his mental disorder, did not realize that these actions were morally wrong. I am satisfied that he really believed they were necessary to achieve his psychotic mission. In light of this NCR finding I am sending any further proceedings to a Review Board pursuant to section 672.45 of the *Criminal Code*.

[42] I want to add to the bottom line in an effort to assist the victims' supporters, and the general public, to understand why NCR is the proper outcome for Mr. Race. It is important to realize that Mr. Race, his family and friends, are victims as well. They are victims of the cruel and unforgiving illness of schizophrenia. Given that there is no cure, and Mr. Race's case is so severe, their victimization will continue for the rest of their lives. This in no way minimizes the pain and loss the Knott and Brewster families have, and will continue to, experience. These homicides are different than most killings in that the perpetrator and the victims are victims.

[43] It is important to note that an NCR finding is not an acquittal. Mr. Race will be held responsible for killing Paul Knott and Trevor Brewster. There will be consequences for those actions and those consequences will continue for the rest of his life. Instead of a jail cell Mr. Race will be detained in a secure hospital under the control of the state until such time as he is no longer a threat to public safety. He will remain in custody until the professionals are certain that he is no longer dangerous. The evidence of the experts in this hearing suggest that any kind of release is unlikely to happen soon. If Mr. Race is released from a secure hospital he will continue to be closely supervised to ensure that he is not regressing.

[44] In *R. v. Bouchard-Lebrun, supra,* the Supreme Court of Canada commented extensively upon the theoretical foundation of being found NCR:

> According to a traditional fundamental principle of the common law, criminal responsibility can result only from the commission of a voluntary act. This important principle is based on a recognition that it would be unfair in a democratic society to impose the consequences and stigma of criminal responsibility on an accused who did not voluntarily commit an act that constitutes a criminal offence.
>
> For an act to be considered voluntary in the criminal law, it must be the product of the accused person's free will. As Taschereau J. stated in *R. v. King*, [1962] S.C.R. 746, "there can be no *actus reus* unless it is the result of a willing mind at liberty to make a definite choice or decision, or in other words, there must be a willpower to do an act whether the accused knew or not that it was prohibited by law" (p. 749). This means that no one can be found criminally responsible for an involuntary act (see Dickson J.'s dissenting reasons in *Rabey v. The Queen*, [1980] 2 S.C.R. 513, which were endorsed on this point in *R. v. Parks*, [1992] 2 S.C.R. 871).

An individual's will is expressed through conscious control exerted by the individual over his or her body (*Perka v. The Queen*, [1984] 2 S.C.R. 232, at p. 249). The control may be physical, in which case voluntariness relates to the muscle movements of a person exerting physical control over his or her body. The exercise of a person's will may also involve moral control over actions the person wants to take, in which case a voluntary act is a carefully thought out act that is performed freely by an individual with at least a minimum level of intelligence (see H. Parent, *Responsabilité pénale et troubles mentaux: Histoire de la folie en droit pénal français, anglais et canadien* (1999), at pp. 266-71). Will is also a product of reason.

The moral dimension of the voluntary act, which this Court recognized in *Perka*, thus reflects the idea that the criminal law views individuals as autonomous and rational beings. Indeed, this idea can be seen as the cornerstone of the principles governing the attribution of criminal responsibility (L. Alexander and K. K. Ferzan with contributions by S. J. Morse, *Crime and Culpability: A Theory of Criminal Law* (2009), at p. 155). When considered from this perspective, human behaviour will trigger criminal responsibility only if it results from a "true choice" or from the person's "free will". This principle signals the importance of autonomy and reason in the system of criminal responsibility. As the Court noted in *R. v. Ruzic*, 2001 SCC 24, [2001] 1 S.C.R. 687:

> The treatment of criminal offenders as rational, autonomous and choosing agents is a fundamental organizing principle of our criminal law. Its importance is reflected not only in the requirement that an act must be voluntary, but also in the condition that a wrongful act must be intentional to ground a conviction. . . . Like voluntariness, the requirement of a guilty mind is rooted in respect for individual autonomy and free will and acknowledges the importance of those values to a free and democratic society . . . . Criminal liability also depends on the capacity to choose — the ability to reason right from wrong.

This essential basis for attributing criminal responsibility thus gives rise to a presumption that each individual can distinguish right from wrong. The criminal law relies on a presumption that every person is an autonomous and rational being whose acts and omissions can attract liability. This presumption is not absolute, however: it can be rebutted by proving that the accused did not at the material time have the level of autonomy or rationality required to attract criminal liability. Thus, criminal responsibility will not be imposed if the accused gives an excuse for his or her act that is accepted in our society, in which there is "a fundamental conviction that criminal responsibility is appropriate only where the actor is a discerning moral agent, capable of making choices between right and wrong" (*R. v. Chaulk*, [1990] 3 S.C.R. 1303, at p. 1397). In *Ruzic*, the Court

> recognized the existence of a principle of fundamental justice that "only voluntary conduct — behaviour that is the product of a free will and controlled body, unhindered by external constraints — should attract the penalty and stigma of criminal liability" (para. 47).
>
> Insanity is an exception to the general criminal law principle that an accused is deemed to be autonomous and rational. A person suffering from a mental disorder within the meaning of s. 16 *Cr. C.* is not considered to be capable of appreciating the nature of his or her acts or understanding that they are inherently wrong. This is why Lamer C.J. stated in *Chaulk* that the insanity provisions of the *Criminal Code* "operate, at the most fundamental level, as an exemption from criminal liability which is predicated on an incapacity for criminal intent".
>
> The logic of *Ruzic* is that it can also be said that an insane person is incapable of morally voluntary conduct. The person's actions are not actually the product of his or her free will. It is therefore consistent with the principles of fundamental justice for a person whose mental condition at the relevant time is covered by s. 16 *Cr. C.* not to be criminally responsible under Canadian law. Convicting a person who acted involuntarily would undermine the foundations of the criminal law and the integrity of the judicial system.

[45] Dr. Bloom testified that this was a complex and difficult case. He identified several "red flags" which could challenge a finding of NCR. He was referring to the amount of wherewithal Mr. Race displayed in trying to get away with the crimes he committed. The casual observer could easily question the apparent incongruity between not knowing an act was wrong and attempting to cover it up. Dr. Bloom addressed this point at page 115 of his report:

> Mr. Race had the wherewithal to be mindful of alternate agendas, meaning that as psychotic as he was, he was aware of the steps that he needed to take to avoid detection and apprehension, although he offers (and I accept) his psychotically-based reason for avoiding detection – so that he could ultimately (attempt to or) carry out his original plan. Looked at superficially, someone might think that Mr. Race's plan of going to Belize was just a simple escape plan to evade the authorities after committing horrendous crimes. That would, in my view, be an

> incorrect interpretation. Travelling to some warm climate, like Belize or Mexico, had been on his mind for some time, and ties into his grandiose delusions about starting a new order (the way he tied this to his rebirth as a Mayan ruler is likely the best example of this). The trip to a southern destination ties into his psychotic ideation.

In other words, he knew he had to avoid detection in order to fulfill his mission. He knew his actions would attract the attention of authorities and their intervention would limit his effectiveness.

[46] Dr. Bloom comments further at pages 115-116 of his report:

> One argument for believing that Mr. Race's actions were the actions of a rational person is his fairly constant awareness of certain aspects of the reality of his situation, and by this, I mean he seemed to consistently know what to do in order to avoid being caught. Having this sense of reality by being driven predominantly by a psychotically-based agenda are not at odds with each other. Even the most psychotic individuals (and Mr. Race fits into this class) are able to some degree, particularly if they are endowed with high intelligence, to juggle the two competing realities psychotic individuals contend with – their internal reality, which is the prevalent one, as it dictates their actions, and the external reality, which they may to varying extents need to recognize and grapple with in order to survive. The 'Windows' computer analogy comes to mind. Although the individual is operating predominantly within one (psychotic) window, there are one or more other windows operating in the background which the individual may be anywhere between minimally and markedly aware of.

I am completely satisfied that the so-called "red flags" are just more examples of Mr. Race's mental disorder.

Coady, J.