

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Hennigar*, 2017 NSSC 32

Date: 20170131

Docket: Hfx No. 446539

Registry: Halifax

Between:

Her Majesty the Queen

v.

Codey Hennigar

Defendant

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Judge: The Honourable Justice Patrick J. Murray

Heard: December 12, 13, 14, 16 2016, in Halifax, Nova Scotia

Oral Decision: January 31, 2017

Summary: Accused was charged with 3 counts of 2nd degree murder of his mother and grandparents.

Issues: Whether Accused should be found not criminally responsible pursuant to section 16 and 672.34 of the *Criminal Code*?

Result: The Court heard expert testimony from three (3) forensic psychiatrists as to the Accused's mental health leading up to and at the time of the offences. All the experts opined that the Accused was seriously ill at the time of the offences, due to his mental disorder.

Court determined Accused suffered a mental disorder at the time of the offences that rendered him incapable of knowing that his actions were wrong in the circumstances.

Accused returned to the East Coast Forensic Hospital pending disposition hearing, before the Criminal Code Review Board, pursuant to s. 672.47.

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Counsel: Roland Levesque and Mark Heerema, for Her Majesty the Queen
Malcolm Jeffcock, Q.C., for the Defendant, Codey Hennigar

Introduction

[1] On January 7, 2015 at or near Goffs, Halifax County, the lives of Ann Ward, Ida Ward and Bill Ward were taken from them in a violent fashion by Codey Hennigar, Ann Ward's son and the grandson of Ida and Bill Ward. Mr. Hennigar is before this Court charged with three counts of second degree murder in their deaths.

[2] At the start of the trial the Accused was arraigned. He entered no plea to the three counts of second degree murder in the Indictment. Pursuant to the provisions of the *Criminal Code of Canada*, R.S.C. 1970, c. C-34, where an accused does not enter a plea, he is deemed to plead not guilty. A plea of not guilty was therefore entered on the record at the time of arraignment.

[3] In Canada, when a plea of not guilty is made, the normal course of the criminal trial is for the Crown to prove beyond a reasonable doubt both the *actus reus* (the act) and the *mens rea* (the intention to commit the act).

[4] In this case the mental state of the Accused at the time of the act was committed is in question because of an alleged mental disorder. In that case, certain provisions of the *Criminal Code of Canada* apply.

[5] Mr. Hennigar's counsel advised that an Agreed Statement of Facts had been prepared and signed by his client and himself, as well as the Crown.

[6] Counsel and Mr. Hennigar were questioned at some length by the Court to ensure their understanding and agreement on the facts and supporting materials in the Exhibits and Schedules. They were also questioned as to the voluntariness of the agreed statements of fact, the consequences of being found not criminally responsible due to mental disorder and of not being found not criminally responsible and the penalties associated with the charges.

[7] The Agreed Statement of Facts - Part A was entered and read into the record. Mr. Hennigar admitted to committing the acts which caused the deaths of the three victims as set out in the indictment. In my view, the admission of having committed the act is fully supported by the agreed statement of facts.

[8] The Agreed Statement of Facts – Part B, contains a number of exhibits including statements and medical history. The Agreed Statement of Facts - Parts A and B and the attached materials are admitted as though all the information was placed before the trier of fact through *viva voce* evidence and accepted by the trier of fact.

[9] The facts of this case are agreed upon and entered into the record as Exhibits 1 and 5 with attachments, being Exhibits 2, 3, 4, 6, and 7. Briefly on the date of January 7, 2015 in late afternoon Codey Hennigar was seen standing on the front lawn looking up at the Ward residence. A short time later the house was on fire and was eventually destroyed by fire. The three deceased bodies were discovered in the debris.

[10] Later that night Mr. Hennigar was apprehended driving his grandmother's vehicle, a blue Toyota Echo, near the East Hant's High School by two RCMP Officers. An altercation had occurred between the vehicles. He was placed under arrest at approximately 1 am. A back pack was retrieved from the vehicle and was found to contain personal items including a cell phone, keys and a wallet belonging to Mr. Hennigar. The back pack also contained tools, including a framing hammer. Forensic testing of items seized and autopsies were performed on the deceased persons in relation to the deaths and in relation to the Accused.

[11] The agreed facts form part of the evidentiary foundation along with their qualifications for the opinion of each of the forensic psychiatrists who completed assessments and expressed an opinion in relation to the applicability of section 16 of the *Criminal Code* to Mr. Hennigar.

[12] At issue in this case is whether sufficient evidence has been produced to establish on a balance of probabilities that section 16(1) of the *Criminal Code* applies and that a verdict under section 674.34 should be rendered finding Codey Hennigar not criminally responsible for the three counts of second degree murder.

[13] Section 16(1) of the *Criminal Code* provides, in part, that no person is criminally responsible for an act committed while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or of knowing that it was wrong. Section 16 further provides that everyone is presumed *not* to suffer from a mental disorder so as to be exempt from criminal responsibility until the contrary is proven on a balance of probabilities. (*R v. Onachie*, 2015 ONSC 7928)

[14] To displace the presumption of criminal responsibility two things must be established:

- i) That at the time of the attack on the victims the Defendant had a mental disorder; and
- ii) That the mental disorder (a) rendered the Defendant incapable of appreciating the nature and quality of the acts that caused the three deaths; or (b) rendered the Defendant incapable of knowing that those acts were wrong.

[15] There were no witnesses to the killings. Codey Hennigar did not testify at trial. While it is impossible to say what exactly was in the mind of Mr. Hennigar at the time, three experienced forensic psychiatrists have all said, that he was not capable of knowing his acts were wrong because he suffered from a major and severe psychiatric illness.

[16] Crown and Defence submit that a high degree of certainty should be derived from the conclusions of the three independent assessments. As such, it is their joint position that section 16 of the *Criminal Code* applies to the Accused and a verdict of not criminally responsible on account of mental disorder as outlined in section 672.34 should be the outcome of this trial.

[17] In this trial the Crown has accepted the burden of proving on a balance of probabilities that Mr. Hennigar is exempt from criminal responsibility. This means the Crown must show that it is more likely than not that s. 16 applies.

[18] Because the Defence has raised the issue, the Crown by law is entitled to put forward evidence of a mental disorder in the course of the trial.

[19] A proper weighing of expert opinion often plays a central role in determining whether or not an accused should be found not criminally responsible. (*R v. Molodowic*, [2000] 1 S.C.R. 420)

[20] In the present case, each of the psychiatrists were permitted to give expert opinion, after the holding a *voir dire*. The scope of their qualification, as approved by this Court is as follows:

As an expert witness in the area of forensic psychiatry and qualified to give expert evidence on the assessment and diagnosis of mental disorders and their impact on criminal responsibility and functioning, as well as the impact of medications on prognosis and management of mental disorders.

Mental Disorder

[21] The act having been admitted, the first question is whether at the time of the acts Mr. Hennigar suffered from a mental disorder. The terms mental disorder is defined in section 2 of the *Criminal Code*, as a disease of the mind. Whether an offender suffers from a “disease of the mind” is a question of law, and not a question of medicine. (*R v. Race*, 2014 NSSC 6, at paragraph 23)

[22] 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.

[23] Further, it has been recognized that although it is a legal concept, the term mental disorder has a medical dimension. Medical experts can play an essential part in the trial judge’s determination as a question of law. This was confirmed by the Supreme Court of Canada in *R v. Bouchard-LeBrun*, [2011] 3 S.C.R. 575, at paragraph 61:

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...” (p. 350).

[24] Crown counsel have submitted whether Mr. Hennigar had a mental disorder is an issue the Court need not struggle with in this case.

[25] Part A of the agreed facts contains repeated references by family members to Mr. Hennigar having schizophrenia. Also the agreed facts in Part B contains the documented medical history and observations from both mental health professionals and lay persons, confirming the onset and diagnosis of the illness.

[26] The Defence submits, based on this documented history and the opinions of the three psychiatrists, the Court should have no doubt that Mr. Hennigar has, for a number of years, been suffering from a mental disorder.

[27] The Defence has properly noted that each physician was qualified as a forensic psychiatrist having expertise not only in medicine and psychiatry, but in particular in the application of that science to the law.

[28] Dr. Theriault met with Mr. Hennigar shortly after the offences and witnessed first hand his mental state. Dr. Brunet met with him as well. Although it was later, she was aware of his treatment and had a high degree of confidence in her opinion. Dr. Lohrasbe did not meet with Mr. Hennigar but completed a thorough review of the medical records, witness statements and opinions. His view as contained in his report was:

Collectively the available information provides ample confirmation of a major mental disorder with disabling psychiatric features, well before the predicate offences.

[29] Dr. Lohrasbe in his report discussed the presence of symptoms of a major mental disorder at and around January 7, 2015 in stating “the conclusion that Mr. Hennigar suffers from a major mental disorder is inexorable.” Inexorable in this context means inarguable.

[30] Dr. Theriault in his March 2015 report states that subsequent to March 9, 2015 Mr. Hennigar exhibited a range of symptoms of a psychotic state, providing clear evidence of an underlying and severe mental disorder.

[31] All three physicians were aware of the diagnosis standard known as DSM5. Dr. Brunet was asked about the requirements for a diagnosis of schizophrenia. She stated there were two: 1) psychotic symptoms; and 2) dysfunction or significant distress caused by them with no other explainable cause.

[32] Dr. Brunet gave evidence that Mr. Hennigar met these requirements. He had a lengthy history of psychotic symptoms.

[33] In paragraph 12 of the Facts – Part B, Dr. Teehan opined on June 15, 2012 that Mr. Hennigar had schizophrenia, paranoid type and was not on medications. Prior to that Dr. Teehan on March 17, 2012 stated “it is unavoidable that he made a diagnosis of psychosis, not otherwise specified”.

[34] In my respectful view, the evidence fully supports the diagnosis of schizophrenia, an illness that has been accepted in law as a mental disorder for the purpose of s. 16. (See **Race**).

[35] Referring to the definition in **Cooper**, “illness, disorder and abnormal condition”, are all things that apply to the Defendant based on the evidence given at trial. For example, Dr. Theriault’s referred to the “symptoms of his illness”.

[36] I find as a matter of law that Mr. Hennigar was suffering from a mental disorder as defined in the *Criminal Code of Canada* for the purposes of s. 16 of the *Code*.

[37] It is important to state that suffering from a mental disorder or disease of the mind alone is insufficient to qualify for a defence under s. 16. (**R v. Ratti**, [1991] 1 S.C.R. 68) There are legal and policy reasons why the law defines and limits certain defences. (**R v. Farr**, [2012] N.J. No. 201 (Nfld. Prov. Ct.) One of the main policy reasons is protection of the public. (**R v. Dobson**, 2015 ONSC 2865)

[38] The question is not merely whether Mr. Hennigar was mentally ill or acting out of delusions, but whether he was not criminally responsible by reason of a mental disorder within the meaning of s. 16. (**R v. Woodward**, [2009] O.J. No. 5484 (C.A.))

[39] The Defendant must therefore fall within either branch of s. 16, on the balance of probabilities.

[40] The position of the Crown and joined by the Defence, is not only did Mr. Hennigar have schizophrenia, but at the time of the offence he was psychotic and severely impacted by his mental disorder.

[41] Further, Crown and Defence have stated it is the second branch of s. 16 that is most applicable to Mr. Hennigar. They submit that at the time Mr. Hennigar committed these acts, he was suffering from a mental disorder that rendered him incapable of knowing that the acts were wrong.

[42] In **R v. Chaulk**, [1990] 3 S.C.R. 1303, the Supreme Court of Canada effected a major change in the notion of what is meant by the term wrong. The court found that wrong must mean more than legally wrong. A person may know the act is against the law but because of a disease of the mind, they are still incapable of knowing that it is morally wrong according to the moral standards of society.

[43] Further in **R v. Oommen**, [1994] 2 S.C.R. 507, the Supreme Court of Canada held that the inquiry must be specific to the act or acts in question. At paragraph 21 the court stated:

21. ...the inquiry focuses not on the general capacity to know right from wrong, but rather on the ability to know that a particular act was wrong in the circumstances.

[44] The court in **Oommen** stated further that the crux of the inquiry is whether the accused lacks the capacity to rationally decide whether the act is wrong and hence make a rational choice about whether to do it or not. (Paragraph 26)

[45] The court noted that delusions can make an accused perceive an act is right or justifiable, when it is otherwise wrong. A disordered condition of the mind may deprive an individual of the ability to rationally decide or evaluate what he is doing.

[46] In this case there are a number of factors that are relevant to the Accused's ability to make a rational decision and that affected his ability to know when set against the moral standards of society, that his actions were wrong. (***R v. Ratti***)

[47] I refer to the recent decision in ***Race*** where Justice Coady referred to a number of such factors:

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. (Emphasis added)**

[48] All three forensic psychiatrists expressed the opinion that on the day in question Mr. Hennigar would have been diagnosed as having schizophrenia. This will now be addressed in more detail.

[49] I turn now to discuss the evidence at trial.

Dr. Theriault

[50] Dr. Theriault is currently the Deputy Head of Psychiatry at Dalhousie University, School of Medicine. He is a founder in Forensic Psychiatry of the RCPSC. He has immense experience in the field of psychology in a career spanning over 30 years. Central to his profession is his practice of assessing individuals to determine criminal responsibility, such as the case here.

[51] In giving his evidence Dr. Theriault was calm, forthright and attentive. His conclusions were thoughtful and clear.

[52] Dr. Theriault had the benefit of meeting Mr. Hennigar, on twelve occasions. Mr. Hennigar has been a patient at the East Coast Forensic Hospital since January 19, 2015, where Dr. Theriault completed the court ordered assessment with respect to him.

[53] Dr. Theriault explained in his testimony that with continued treatment Mr. Hennigar began to divulge information at the end of the first assessment period. His first report found that

Mr. Hennigar did not meet the criteria set out in s. 16 for exemption from criminal responsibility, despite the presence of a mental illness.

[54] Dr. Theriault concluded that at that time there was insufficient evidence to make a causal link between the offences in question and Mr. Hennigar's mental illness. He did at that time give the opinion that Mr. Hennigar was fit to stand trial.

[55] It is significant that in the initial report Dr. Theriault found that Mr. Hennigar was suffering from a psychotic illness, schizophrenia, and had begun to show some response to the introduction of psychotic medications.

[56] It was the continued response of Mr. Hennigar to the medications and treatment that led to the second report of Dr. Theriault, dated April 21, 2015.

[57] In that report Dr. Theriault was able to offer a definite opinion as to whether Mr. Hennigar was criminally responsible for the crimes for which he was charged. In his second report, Dr. Theriault states at page 17:

The central issue here is that the individual, in this case, Mr. Hennigar, although aware of their actions, perceives those actions as being outside of their volitional control. I believe that Mr. Hennigar's behaviour towards his grandparents and mother can be viewed as a case of automatism.

[58] Dr. Theriault's opinion is rooted in Mr. Hennigar having so called "passivity experiences" at the material time. This is described as observing his own actions which had a greater purpose. In a real sense, Dr. Theriault stated that Mr. Hennigar was the passive recipient of "made actions", for example, being "puppeted on strings". In that sense Dr. Theriault believed that his actions were utterly unconscious and without volition, stating at page 17:

In the case of Mr. Hennigar it is my opinion, his actions arose from internal factors; that is, they arose as a result of symptoms produced by his psychotic illness, schizophrenia.

[59] Dr. Theriault testified that the Accused's account given on March 19, 2015 formed the crux of his opinion in April. He concluded that Mr. Hennigar's actions on January 7, 2015 were directly the result of his mental disorder.

[60] Dr. Theriault was asked about differences in the Accused's account to him and to Dr. Brunet, for example, in the way Mr. Hennigar perceived the police who were chasing him, in one case being the boyfriend of his former girlfriend and in the other dark forces attempting to prevent the two worlds from coming together, the change over to the new world as he told Dr. Brunet.

[61] Dr. Theriault explained that one event can have multiple meanings. He stated that Dr. Brunet's report reflects treatment of Mr. Hennigar over time. Over time an individual can reveal

less and less or more and more. The basic problem is still there, that is multiple delusional beliefs, he said.

[62] Further Dr. Theriault stated the bedrock of any opinion is the best explanation available at the moment and this may shift over time.

[63] In Dr. Theriault's case he stated he is unshaken in his opinion. For her part Dr. Brunet stated the core elements remain the same, and are, she said, "quite consistent considering that Mr. Hennigar would have been "more psychotic" then than now and had not talked about the offences or his symptoms to the same extent".

[64] Dr. Theriault testified at trial, that he held a high degree of confidence in his opinion, stating that it is considerably higher than the required test or standard of balance of probabilities.

[65] Dr. Theriault was asked about Dr. Lohrasbe's opinion in which Dr. Lohrasbe characterizes Mr. Hennigar state as "disassociation". Dr. Theriault's explained that the concepts of passively phenomena and disassociation are very similar.

[66] Dr. Theriault held to his opinion which is that both branches apply because his actions were not of his own volition; and he was not the active agent. His actions had a greater moral purpose, so his actions would not be construed as morally wrong.

Dr. Lohrasbe

[67] Dr. Lohrasbe gave evidence at trial. He outlined the materials he reviewed in preparation of his report. These included the medical history and documents pertaining to Mr. Hennigar, his interaction with his family and health care officers. In addition there were the interview statements given by Ms. Demont Scott and Mr. Redden.

[68] Dr. Lohrasbe was careful to draw the Court's attention to certain limitations. He did not have access to the Accused and could not give his clinical impressions. Ideally he would have but he had all of the Crown disclosure and stated he was comfortable and perfectly confident in giving his opinion.

[69] At trial Crown counsel, Mr. Levesque, took Dr. Lohrasbe through the four steps he followed in completing his report, which are: 1) whether there is present a mental disorder; 2) was it present or active at the relevant time; 3) what are the dominant elements as pertaining to the offences; and 4) matching the clinical criteria to the legal criteria.

[70] Dr. Lohrasbe was asked if he took note of the previous collateral information from Mr. Hennigar's mother Ann Ward, Dr. Muir, Dr. Pottle, his father Mitch Hennigar, his brother Kent, sister Chandra and half-sister Nikita. He had he said.

[71] Gathering this information assisted and provided objective information to him as to the existence of an illness and its progression. He noted in Mr. Hennigar's case there was strong genetic loading for schizophrenia. He stated the information provided clearly showed there was

a progression to Mr. Hennigar's illness, which he described as a mental disorder. He noted that people with a medical disorder often turn to substance abuse as it feeds their "inner world", especially marijuana. There was evidence of this with Mr. Hennigar.

[72] In Dr. Lohrasbe's opinion Mr. Hennigar's background showed an emerging pattern. He noted some of the early and unusual behaviour pertaining to a fear of land mines in the lawn and booby traps in the shed. He noted that resistance and dismissal of the diagnosis by the individual is very common. This applied to Mr. Hennigar.

[73] This is also consistent with what Dr. Theriault had reported.

[74] Dr. Lohrasbe gave a definition of "psychosis". It is when an individual loses contact with objective reality. This is a rough and ready definition he said.

[75] Dr. Lohrasbe said a mental disorder rarely suddenly erupts in a 30 year old. It is typically gradual and increases over time. It is easy to attribute it's existence to substance abuse, he said. He stated with respect to Codey Hennigar as follows:

Collectively the available information provides ample confirmation of a major mental disorder with disabling psychotic symptoms well before the predicate offences.

[76] I am not going to summarize the entire report, which is in evidence as Exhibit 14. I will note in summary form some points that Dr. Lohrasbe considered important.

- He noted a three year gap in the information.
- He noted the information provided by Probation Officer Demont Scott and Mr. Redden had a significant impact in filling that gap between 2012 – 2015.
- Their information he said was compelling in that it was information outside the profession, meaning the medical profession.
- This was information about nanotechnology, the C4 explosive on his shoe, suspicions and complaints in relation to police.

[77] In particular, Doctor Larasbe noted not only was Mr. Hennigar displaying signs of psychosis but it was worsening as observed by Ms. Demont Scott in October, 2014. She was so concerned she wrote to officials out of fear of potential violence in the future.

[78] Dr. Lohrasbe highlighted the fact that immediately before, (in the year 2014) and immediately after, with the observations of Dr. Theriault, about Mr. Hennigar's speech and behavior, Mr. Hennigar was actively psychotic. This is compelling he said.

[79] An important feature as noted by Dr. Lohrasbe, was the lack of insight into these problems by Mr. Hennigar. For example, he would become upset when Mr. Redden did not believe him, when he told him about conversations with his cat. He was not embarrassed or apologetic for this at any later point in time.

[80] Dr. Lohrasbe indicated that paranoia and passivity experiences are often associated with a heightened risk of violence. Dr. Lohrasbe stated it is of diagnostic significance that non-mental health professionals made these objective observations in the “build up” to the date of the offences on January 7, 2015.

[81] In his report at page 10, Dr. Lorasbe stated it is a short step from being tracked to being controlled. This gave him confidence to conclude that Mr. Hennigar was at the time actively psychotic.

[82] When Dr. Lohrasbe spoke about the dominant element at play in relation to the predicate offences (Step 3), he explained that this is often the most difficult. He spoke of family members often being targeted and the presence of pre-existing threats, such as is the case here. He said it is not unreasonable to explore what other factors could be contributing to these when dealing with mental illness.

[83] He explained, it is very likely the previous expressions of anger and threats were largely rooted in the schizophrenia. As soon as the individual begins to respond, you no longer see the features of a disordered mind. You then realize a line can be drawn so to speak, between the previous incidents and the individual being treated, he said. It was not the individual just being a nasty person, he said. The anger and belligerence began to decline with treatment.

[84] At page 12 of his report, Dr. Lohrasbe stated that Mr. Hennigar was “acutely psychotic at the time of the offences”. The reasonable inference is it did not drop back to normal at the time of the subject offences.

[85] Dr. Lohrasbe ultimately concluded that Mr. Hennigar met the test under the second branch of s. 16, that being that he by reason of his mental disorder would be rendered incapable of knowing his actions were wrong, in the moral sense.

[86] In his report he stated his opinion at page 19 as follows:

I would point out that psychosis distorts reality, including moral reality, the degree of distortion often matching the severity of symptoms. ..When psychosis is severe and sustained, and the patient is isolated from real-world feedback, it becomes increasingly likely that the unpredictable directions of psychotic symptoms will override the patients moral compass. Psychotic experiences, with their urgency and demand for attention, became the dominant reality for the sufferer, and morality based on ‘normal’ life experiences fade away. Within the mindset, it is likely that he was incapable of knowing that his actions were morally wrong in the real world.

[87] Dr. Lohrasbe did not state definitively that Mr. Hennigar would meet the first branch of the test in section 16. He said referring to the most recent account given to Dr. Brunet, there was a level of appreciation by Codey Hennigar, “he knew it wasn’t a pencil he was wielding”. Dr. Lorasbe stated, he likely met the “spirit” of the first arm but that was a step that need not be taken because the clear path according to Dr. Lorasbe, was with respect to the second arm. He

explained that under the second arm you don't have to struggle with anything such as the latest interpretation of the section by the Courts.

[88] Dr. Lohrasbe commented on Dr. Brunet's report and the Accused's account given to her. It is not uncommon he said for more information to become available over time, after reflection and when the person is away from the immediacy of the situation, and being treated.

[89] Dr. Larasabe testified that if we accept that this is what Mr. Hennigar believed was happening, as given to Dr. Brunet, it would destroy anyone's moral compass. The major mental disorder of schizophrenia would grossly undermine his view of reality.

[90] Finally, in cross-examination Dr. Lorasbe told Mr. Jeffcock while he didn't disagree with Dr. Theriault, it is not necessary to go as far as determining insane automatism, especially with the benefit of Dr. Brunet's report. That said he agreed the three reports had essentially reached the same outcome.

Dr. Brunet

[91] Dr. Aileen Brunet gave evidence at trial. Like Dr. Theriault and Dr. Lohrasbe she is a forensic psychiatrist. She is the Clinical Director at the East Coast Forensic Hospital, where Mr. Hennigar has been housed since January of 2015. For four years she was president of the Nova Scotia Psychiatric Association.

[92] She has worked abroad in New Zealand where she was the Clinical Director of Forensic Psychiatry. She has been a forensic psychiatrist since 1998. Prior to that she did post graduate training in Forensic Psychiatry and was Chief Resident at St. Joseph's Health Care in Toronto, Ontario.

[93] Dr. Brunet had the benefit of meeting with Mr. Hennigar and obtaining from him his most recent account of what transpired on January 7, 2015. The evidence establishes that as his treatment progressed Mr. Hennigar was more forthcoming with what his recollections of events was.

[94] I do not intend to repeat in detail the account he gave to Dr. Brunet, as it is in her report dated June 16, 2016.. As she stated at trial Mr. Hennigar reported to her such beliefs as being a "child of light" and that he had "nanotechnology" implanted in his body. In addition, he also reported that he thought he was "changing the world" when he killed them, and that it would "turn over into a better world".

[95] The Accused also described an experience with "levitation" from approximately 2 years earlier when he saw gasses rising from the trees at the annual Musquoduboit Exhibition and he then levitated above them.

[96] Dr. Brunet noted this was told to Dr. Teehan during the time Mr. Hennigar was involved in the Mental Health Court Program in 2012.

[97] Mr. Hennigar talked about having an internal compass, which told him what to do, how to think and how to act. He spoke about “psychotic flaring” which he described as “freaking out” and this was the case of the morning of January 7, 2015. He spoke about being “puppeted” and receiving communication from God.

[98] As this was happening he thought he heard the mill on the property running and he packed some tools to go there. He went, he said, to his grandparents home to get some water, and said he remembered speaking to his grandfather about paying the power, which had been shut off and his mind “just popped”. He said he felt bad about the power but did not recollect being enraged.

[99] Without repeating all of the details of his account, he told Dr. Brunet as he reached into his bag to get the water bottle is when his brain “popped” and he felt out of control with something telling him that killing his family would achieve a better world, as “a sacrifice to bring heaven over”.

[100] Dr. Brunet reported he felt justified in killing his family as he was doing it, and that things happened very quickly. Dr. Brunet’s opinion is contained at page 16 as follows:

I concur with the opinions of Dr. Theriault and Lohrasbe regarding Mr. Hennigar qualifying for a s. 16 CC mental disorder defense for all of his charges. It is unarguable that Mr. Hennigar has the mental disorder of schizophrenia and that the symptoms arising from this illness were directly responsible for Mr. Hennigar’s actions. His account of the symptoms, the passivity phenomena of being “puppeted” in his physical actions and receiving mental guidance from the compass, associated with dissociative symptoms of disconnection from this emotions and actions rendered him incapable of appreciating the wrongfulness of his conduct. Indeed, it is a reflection of how unwell he was that he could tell me that he felt right and justified in his actions even though they had not been preplanned, he was not in control of his own body and his understanding of why he was doing it was really only unfolding concurrently with when he was doing it. His analogy of being a puppet is quite apt because not only was he being controlled physically but he also had the experience of the intent being *outside his awareness*; it was in the hands of the puppet master, so to speak, and not his own.

[101] Dr. Brunet stated at trial that she stood by her opinion. She was asked with what level of certainty she expressed her opinion. She stated she does not normally give one, but it would be a high level of certainty in this case.

[102] She further stated that differences in Mr. Hennigar’s accounts given to her and to Dr. Theriault are not surprising given that he had been more psychotic in March and April, 2015. She stated where there may be differences it would be very difficult to determine which the correct or truer version, is if there is one. This shows a healthy degree of caution by Dr. Brunet.

[103] Dr. Brunet was asked since the Accused account is subjective, what objective factors she relied upon in giving her opinion. She answered that Mr. Hennigar had a history of untreated psychosis as recent as the end of October, 2014. She said there was very specific information provided by Ms. Demont Scott, observations that Dr. Brunet made during the interview with him, and information in terms of how he presented when he was first admitted to hospital and first seen by Dr. Theriault. He was showing psychosis during that time.

[104] When transferred to the East Coast Forensic Psychiatric Hospital early on he appeared stressed and disorganized in his behaviour. He was mumbling to himself on a regular basis and often suggestive of attending auditory hallucinations.

[105] He continued to express delusional beliefs in the early interviews. He was preoccupied with his belief that since 2011 that he had stepped into something that he believed to be a plastic explosive.

[106] Finally, she commented on the post offence conduct, being panicky and not knowing what to do. It was all psychotically based she said because he wasn't certain whether he had performed correctly and wasn't sure what to do when the world did not turn over.

[107] In evidence as Exhibit 11 is a map showing that after more than several hours Mr. Hennigar was apprehended approximately 25 kilometres away or less than one half hour drive from the Ward residence.

Alternative Explanation – Anger Theory

[108] I have given considerable thought to the so-called anger theory, described by Dr. Theriault as an alternative explanation for these killings. Although this could not be ruled out none of the three psychiatrists adopted it. Instead, they all firmly believed that Mr. Hennigar's actions were solely attributed to the psychosis that he was experiencing due to his mental illness. It must be remembered this illness was not being treated or managed at that time.

[109] It would be erroneous to simply accept that there was an argument and things went very badly. According to Dr. Theriault, who had the most contact with him, you would have to set aside the strong evidence of a psychotic illness immediately before and what was obvious to him immediately after the offence. He was monitored at the East Coast Forensic Hospital while not being interviewed.

[110] Dr. Theriault considered this alternative because of the seriousness of the entire matter for the family involved, but said that over time the picture that evolved (both with his interview and Dr. Brunet's) is consistent with psychosis and how it impacts a persons actions. Dr. Brunet stated the impact of the psychosis on him was intense and profound.

[111] Dr. Brunet stated she had no doubt there was a mental disorder because he was still psychotic after the offence and because he was still struggling with what in fact he was supposed to have done. She saw no red flags in terms of him feigning what happened or feigning the illness, which of course also makes the anger theory much less likely.

[112] I have already discussed Dr. Lohrasbe's response to the previous threats. His opinion is that it is highly unlikely, that he simply acted out of anger. To do so would be to ignore his entire history and his subsequent accounts.

[113] The best proof he said lies in Mr. Hennigar's recovery since being treated. He saw not an iota of a chance that Mr. Hennigar was malingering. In fact, none of the three physicians, with combined experience of 70 years saw evidence of malingering.

[114] Dr. Theriault, who was the most familiar with him stated it is very difficult to do so consistently and over time, that is feigning. What he witnessed was an expression of remorse as Mr. Hennigar was recovering and the gravity of events was setting in.

[115] In my view, the evidence as presented does not support the many inferences that would be required to accept such an alternative explanation for these killings.

Decision

[116] Where there is psychiatric evidence available courts have commonly admitted it to assist the trier of fact in making its determination as to whether an accused is not criminally responsible. (See paragraph 61 of *Bouchard-LeBrun*).

[117] For example in the seminal case of *Chaulk*, expert evidence was permitted to show that the accused suffered from paranoid psychosis which made them believe that they had the power to rule the world and killing was a necessary means to that end.

[118] In this case I have considered such cases as *R v. Godin*, 2009 SCC 26, and *R v. Falconer*, as they pertain to admissible evidence and the reliance to be placed upon secondary sources as well as the degree of caution to be accorded to an accused's own account of events.

[119] Given the agreement on facts that was reached after much effort and cooperation between senior counsel, I don't believe a more in depth analysis is required of the caselaw. I will refer to *R v. Kirkby*, (1985), 47 C.R. (3d) 97, as it was cited to me by Defence counsel in his summation. At page 54 the court stated in reference to statements made by an accused:

Statements by an accused that he is Julius Caesar, that his neighbour is killing him with "thought waves", or that he hears voices issuing commands to him, constitute original evidence to prove that the accused suffers from a delusion or is hallucinating. The utterances are not used to prove any fact asserted in them, but as circumstantial evidence to support an inference that the accused suffers from delusions or hallucinations.

[120] In *Molodowic* the Court provided guidance in cases where there is unanimity among experts, stating there has to be a rational basis to reject the opinion of the experts. (Page 427.)

[121] Each of the psychiatrists who gave evidence in this trial was very experienced. Each completed an impartial and independent report with respect to Mr. Hennigar's mental state at the

time of these offences. While there were some differences in how they arrived at their opinions, each one concluded that Mr. Hennigar was suffering from a severe mental disorder, schizophrenia, and that at the very time these offences occurred, he was under the firm grip of this disorder, which resulted in and rendered him incapable of knowing that the acts he committed were wrong.

[122] Each of the doctors, Dr. Theriault, Dr. Lohrasbe and Dr. Brunet were examined thoroughly in Court and subjected to cross-examination. Each gave their evidence in a professional and confident manner and did not waiver in their opinion. They considered all of the possibilities as it pertained to Mr. Hennigar, and were well informed as to the serious nature of the inquiry, and the potential consequences flowing from this tragic event.

[123] In all three expert opinions the common element was psychosis which was active at the time.

[124] I was satisfied that these experienced psychiatrists fully understood and took very seriously their obligation to the Court to be impartial and independent in giving their evidence. I am satisfied without any hesitation that they performed this primary duty to the Court as is evident by their testimony.

[125] Dr. Brunet had the benefit of seeing Mr. Hennigar as he was coming out of his psychosis and after his treatment had begun to take hold. As Dr. Theriault said, it is when you no longer see the symptoms that you can confirm what they were and what they represented.

[126] There is, Dr. Theriault said, “compelling information to suggest from both the observations of others and the observations of the experts before and after the account of Mr. Hennigar, that he was actively ill at the time of the offences.” He witnessed what he considered to be “first rank” signs of his mental illness.

[127] I don’t find it is necessary to conclude that it was in fact “insane automatism” that drove Mr. Hennigar to commit these acts. I accept the evidence of Dr. Theriault that fundamentally, there is no disagreement.

[128] Referring to *Molodowic* there is nothing that would raise any serious question as to the validity of the psychiatrists conclusions. I have considered the facts related to the commissions of the acts. On the totality of the evidence there is nothing to contradict and seriously challenge the unanimous opinion of the experts, in my respectful view.

[129] After considering all of the evidence, I am satisfied that Mr. Hennigar qualifies for a not criminally responsible defence in relation to the deaths of his mother and grandparents. This is because, on the date in question, January 7, 2015, he was suffering from a mental disorder, schizophrenia.

[130] I am further satisfied that as a result of his mental disorder, Mr. Hennigar did not realize these actions were morally wrong. I am satisfied as were all of the experts that he was psychotic at the time these terrible events. I find he was in an extremely psychotic state, so much so that it

was driving his behavior, leaving him incapable of knowing his acts were wrong in the circumstances.

[131] I am therefore satisfied that the presumption contained in s. 16(2) has been displaced. The burden of proof has been met. This is consistent with the evidence before the Court of psychosis and how it impacts on a persons volitions and actions.

[132] It is unnecessary for me to make a determination as to whether, because of his mental disorder, the Defendant was incapable of appreciating the nature and quality of his acts because the evidence is clear that his psychotic disorder rendered him incapable of knowing his conduct was wrong.

Conclusion:

[133] Pursuant to section 672.34 of the *Criminal Code of Canada* I find the Defendant, Codey Hennigar, committed the acts that formed the basis of the 3 counts of second degree murder in the indictment, but at the time was suffering from a mental disorder so as to make him exempt from criminal responsibility by virtue of section 16(1). I therefore find Mr. Hennigar not criminally responsible.

[134] Further and pursuant to s. 672.45 of the *Criminal Code*, this Court shall make no disposition but pursuant to s.672.47, remit the matter to the Review Board established under the *Criminal Code* for disposition as soon as practical and in accordance with the provisions in that section and related sections of the *Code*.

[135] Those provisions, s.672.5(14) allow for victim impact statements to be provided but that is a matter for the Review Board.

[136] The ancillary orders requested by the Crown pertaining to DNA (s. 487.051) and Forfeiture of Weapons (s. 491) are hereby granted.

[137] Finally, I want to acknowledge the family, friends and those in attendance who may have known the victims, and who sat in on this trial. I expect you may have at times found it very difficult. I want to thank you for attending and for your interest in these proceedings.

Murray, J.