

CANADA / JUDGMENT

R. v. Donnelly

2025 BCSC 2104

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2025 BCSC 2104 R. v. Donnelly

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Donnelly,

2025 BCSC 2104

Date: 20251024

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Registry: Vancouver

Rex

v.

Blair Evan Donnelly

Before: The Honourable Justice Gottardi

Reasons for Judgment

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R. Allain

Place and Dates of Hearing:

Vancouver, B.C.

September 8-11,15-18, 2025

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Introduction

- [1] On a warm September evening in 2023, three random acts of violence shattered an otherwise tranquil celebration in the heart of Vancouver's Chinatown district. Three people who had just been enjoying some live music at the festival were each stabbed by an individual wielding a chisel. This incident took place during a period of time in which the citizens of Vancouver had been faced with several random acts of violence in the city. The tragic facts surrounding this case drew the attention of the public and politicians to the increasingly frequent and uneasy intersection between mental health services and the criminal justice system.
- [2] The accused, Blair Evan Donnelly, is charged on a three-count indictment with the aggravated assault of Pretty Luong, Karen Mach and Dan Mach contrary to s. 268(2) of the Criminal Code, R.S.C. 1985, c. C-46. The incident occurred on September 10, 2023, in a public plaza on the festival grounds.
- [3] There is no dispute that Mr. Donnelly committed the offences. Mr. Donnelly admits that he was, in fact, the individual who struck the three victims with the chisel. The primary issue is whether Mr. Donnelly was, at the time that he committed the offences, suffering from a mental disorder such that he should be exempted from criminal responsibility by virtue of s. 16(1) of the Code.
- [4] At trial comprehensive admissions of fact were filed, together with CCTV footage of Mr. Donnelly's movements and photographs of the crime scene and victim's injuries. Viewed collectively, this evidence records Mr. Donnelly's apparent health and behaviour both before and after the incident. The Crown called no witnesses and led no expert evidence.
- [5] Mr. Donnelly testified as part of the defence case. In addition, Dr. Robert Lacroix, a forensic psychiatrist, testified at trial and provided his expert opinion regarding Mr. Donnelly's mental state at the time of the offence. His very thorough report was marked as Exhibit 7.
- [6] Counsel for Mr. Donnelly submits that there is a substantial body of evidence contained in the admissions of fact, the testimony of the accused and Dr. Lacroix's expert opinion to establish, on a balance of probabilities, that Mr. Donnelly was suffering from a mental disorder at the time he committed the offences which rendered him incapable of knowing that his actions were morally wrong, as contemplated in s. 16(1) of the Code.
- [7] The Crown, on the other hand, argues that even if the attack was motivated by a delusion, Mr. Donnelly was nevertheless capable of knowing that these acts would have been morally condemned by reasonable members of society. The Crown submits that if a delusion was operative at the time of the incident, it was not sufficiently compelling so as to deprive Mr. Donnelly of his ability to bring his mind to bear on what he was doing.
- [8] As recently explained by Devlin J. in *R. v. Mullings*, 2023 BCSC 1095, where an accused raises the defence of being not criminally responsible by reason of mental disorder ("NCRMD"), the court is first to consider whether the Crown has proven the actus reus of the offence

beyond a reasonable doubt. If the Crown has proven the actus reus, the court must next examine whether the party claiming NCRMD has established the defence on a balance of probabilities. If the court determines NCRMD does not apply, it asks whether the Crown has proven the mens rea beyond a reasonable doubt: see Mullings at para. 5; see also R. v. Vandenberg, 2019 BCSC 1838 at para. 52.

- [9] In the case at bar, the actus reus is admitted. Having considered the admissions of fact in conjunction with the testimony of the accused, I am satisfied the Crown has proven the actus reus beyond a reasonable doubt. Therefore, I will proceed directly to consider the NCRMD defence.

The Statutory Regime

Overview of NCRMD

- [10] Section 16 of the Code sets out the circumstances in which a mental disorder will exempt an accused person from criminal liability:

Defence of mental disorder

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.

Presumption

- (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.

Burden of proof

- (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.

[Emphasis added.]

- [11] Thus, to meet the requirements for an NCRMD defence under s. 16 of the Code, the accused must establish, on a balance of probabilities, either:

- a) that they were suffering from a mental disorder that rendered them incapable of appreciating the nature and quality of their act (or omission); or
- b) that they were suffering from a mental disorder that rendered them incapable of knowing that the act (or omission) was wrong.

These two avenues to establishing the defence are often referred to, respectively, as the first and second "branches" of NCRMD.

- [12] The parties agree, consistent with Dr. Lacroix's opinion, that Mr. Donnelly understood the nature and quality of his actions. Therefore, the issues to be determined at this stage of the analysis are whether Mr. Donnelly was suffering from a mental disorder at the time of the offence and, if so, whether that mental disorder rendered him incapable of knowing that the act was morally wrong - in short, whether Mr. Donnelly's actions on September 10, 2023 satisfy the second branch of NCRMD.

The Purpose of the NCRMD regime

- [13] In Canada, as a matter of penal policy, we only convict individuals of a crime when they have committed a "guilty act" and have a "guilty mind". We will not hold an individual criminally responsible if, at the time of the offence, they were suffering from a mental disorder which interfered with their ability to know right from wrong, or their ability to rationally choose between the two. In the simplest terms, we do not convict people of crimes for being sick.
- [14] This principle was articulated much more eloquently in *R. v. Bharwani*, 2025 SCC 26, by Karakatsanis and Martin JJ.[1]:
- [211] The criminal law will not punish a person who lacks the capacity to reason through options and consciously choose whether to act. As this Court stated in *R. v. Ruzic*, 2001 SCC 24, [2001] 1 S.C.R. 687, at para. 45:

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: [*R. v. Martineau*, [1990] 2 S.C.R. 633], at pp. 645-46. Criminal liability also depends on the capacity to choose -- the ability to reason right from wrong. [Emphasis added in original.]

- [212] G. Ferguson distilled the underlying rationale of the NCR defence in "A Critique of Proposals to Reform the Insanity Defence" (1989), 14 *Queen's L.J.* 135, at p. 140:

Put simply, our principles of criminal law and criminal sanctions are based on an assumption about human nature -- the assumption that human beings are rational and autonomous. We have the capacity to reason right from wrong, and the capacity to choose right or wrong. These assumptions may be incorrect, but they are, and are likely to remain, the theoretical basis of our criminal law. It is these dual capacities -- reason and choice -- which give moral justification to imposing criminal responsibility and punishment on offenders. If a person can reason right from wrong and has the ability to choose right or wrong, then attribution of responsibility and punishment is morally justified or deserved when that person consciously chooses wrong. [Emphasis added in original.]

We agree with this understanding of the NCR defence. Punishing a person who cannot rationally apply their knowledge to consciously choose whether to commit criminal acts is fundamentally unjust and would violate an "essential basis for attributing criminal responsibility" (*R. v. Bouchard-Lebrun*, 2011 SCC 58, [2011] 3 S.C.R. 575, at para. 49).

- [15] To apply those principles to the case at bar, it would be "fundamentally unjust" to punish Mr. Donnelly for his actions, no matter how reprehensible, if, at the time of the offence, he could not rationally apply his knowledge of right and wrong to make a conscious choice to commit those criminal acts. These bedrock principles of the criminal law are equally part of the social compact that we as citizens make with those among us who suffer from significant mental illness.

The Applicable Legal Principles

- [16] The leading case on the second branch of the s. 16 test is the Supreme Court of Canada's decision in *R. v. Oommen*, [1994] 2 S.C.R. 507, 1994 CanLII 101. In *Oommen*, the Supreme Court of Canada reconsidered "[w]hat is meant by the phrase 'knowing that [the act] was wrong' in 16(1)": at 516. Justice McLachlin (as she then was) explained that "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": at 518. She found that "the inability to make a rational choice may result from a variety of mental dysfunctions", including "delusions which make the accused perceive an act which is wrong as right or justifiable" or a "disordered condition of the mind which deprives the accused of the ability to rationally evaluate what he is doing": at 518. She explained that the standard of what is right or wrong turns on society's views, rather than an accused's own moral code (at 521-522):

Finally, it should be noted that we are not here concerned with the psychopath or the person who follows a personal and deviant code of right and wrong. The accused in the case at bar accepted society's views on right and wrong. The suggestion is that, accepting those views, he was unable because of his delusion to perceive that his act of killing was wrong in the particular circumstances of the case. On the contrary, as the psychiatrists testified, he viewed it as right. This is different from the psychopath or person following a deviant moral code. Such a person is capable of knowing that his or her acts are wrong in the eyes of society, and despite such knowledge, chooses to commit them.

[Emphasis added.]

- [17] On this reading of *Oommen*, it follows that, if a delusional state precludes the accused from making a rational choice, that accused does not have the capacity to know their act is "wrong". It is here that I wish to acknowledge a "hiccup" in the jurisprudence. In recent years, the role of compulsion has proven a vexing question in cases where an accused understands the gravity of their conduct but proceeds anyway. A line of cases in Ontario, beginning with *R. v. Dobson*, 2018 ONCA 589, offers a different interpretation of *Oommen*: that an accused who has the capacity to know that society regards their actions as morally wrong, and proceeds despite this general understanding, cannot meet the "morally wrong" test in s. 16.

[18] The Crown seeks to rely on Dobson in the case at bar. To be clear, the Crown takes the position that Dobson can be read consistently with the ratio in Oommen. I disagree. First, as to whether the ratio in Dobson is at odds with the Supreme Court's decision in Oommen, I defer to members of the Supreme Court's interpretation of the conflict in Bharwani:

[222] In sum, this Court's jurisprudence allows for an NCR verdict for an accused with a background understanding of moral wrongfulness, whose mental disorder compels them to act in a way that prevents them from applying that understanding at the moment of their criminal acts. It follows that Dobson impermissibly narrowed Oommen to the extent that it effectively reads out the capacity to choose to act, where an accused is incapable of consciously applying their knowledge that society would view their criminal act as morally wrong.

[Emphasis added.]

[19] Second, and more importantly to the resolution of this case, the minority in Bharwani reaffirmed that there are two components of the concept of "knowledge of moral wrongfulness":

[213] This principle finds application in Oommen. The specific legal question at issue in Oommen related to the scope of the phrase "knowing that [the act] was wrong" in s. 16(1) of the Criminal Code. The Court held, at p. 516:

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. [Emphasis added in original.]

[214] This passage is clear. An accused is NCR if they committed a crime due to feelings of compulsion caused by a mental disorder, provided that compulsion prevented them from rationally applying any knowledge that their criminal acts were morally wrong.

[215] Oommen identified two parts of the concept of knowledge of moral wrongfulness. The first part is a general capacity to understand that a criminal act is wrong. The second is a specific capacity to "apply" that knowledge rationally to choose to commit the specific criminal act in question. Feelings of intense compulsion might not affect an accused's general knowledge of whether an act is morally wrongful. But intense feelings of being compelled or forced to act can prevent an accused from "applying" their understanding of moral wrongfulness to specific actions.

[Emphasis added.]

[20] The question is thus the effect a particular delusion or compulsion has on an accused's "capacity to apply" their general knowledge of wrongfulness "rationally to choose" the impugned acts. Oommen and R. v. Landry, [1991] 1 S.C.R. 99, 1991 CanLII 114, are

illustrative. In both cases, the Court accepted that s. 16 captures a person suffering from a mental disorder who knows that it is wrong to kill, but believes they had no choice because of a divine order: see *R. v. Chaulk*, [1990] 3 S.C.R. 1303 at para. 97, 1990 CanLII 34. Such individuals may know that society views killing is wrong, but "they could not know that what they were doing was wrong" having regard to the standards of reasonable people: Oommen at 519. As stated by G. Arthur Martin, K.C., as cited in Oommen at 519-20:

A person may have adequate intelligence to know that the commission of a certain act, e.g., murder, is wrong, but at the time of the commission of the act in question he may be so upset with delusions or subject to impulses which are the product of insanity that he is incapable of bringing his mind to bear on what he is doing and the considerations which to normal people would make the act right or wrong. In such a situation the accused should be exempt from criminal liability.

- [21] While Oommen does not require an accused to raise a specific legal defence, in "divine order" cases, the person's "will [is] overborne" such that their conduct is "not, in a realistic way, freely chosen": see *R. v. Ruzic*, 2001 SCC 24 at para. 44.
- [22] In sum, I conclude my recitation of the governing law where I began. In the wake of the minority's comments in *Bharwani*, it is clear that Oommen remains the leading authority on the "morally wrong" branch of the s. 16 test.
- [23] Turning now to the application of that test, Mullings confirms that the analysis required under s. 16 of the Code proceeds in two stages: see *R. v. Bouchard-Lebrun*, 2011 SCC 58 at para. 56. First, I must determine whether Mr. Donnelly was suffering from a mental disorder at the time of the offence. If I find he was suffering from a mental disorder at the relevant time, I must then turn to the second stage of the statutory test, which concerns the effects of the mental disorder. At this stage, I must determine whether, owing to his mental condition, Mr. Donnelly was incapable of knowing that his actions were wrong: *Bouchard-Lebrun* at para. 56.
- [24] With these legal principles in mind, I turn to a consideration of the evidence.

Summary of the Evidence

- [25] The testimony of Mr. Donnelly, the admissions of fact and supporting documents filed at trial set out the details of Mr. Donnelly's behaviour before, during and after the impugned incident. Dr. Lacroix's report, adopted in his evidence at trial, contains useful descriptions of much of Mr. Donnelly's background and the prior incidents set out below. My summary of these events is informed by that evidence; evidence which I accept.
- [26] I have attempted to compendiously summarize the facts with reference to the evidence. The material facts are not in dispute.

Mr. Donnelly's background

- [27] Mr. Donnelly is currently 66 years old, and was born in Edmonton, Alberta. At the time of the incident, he was 64 years of age.
- [28] In direct examination, Mr. Donnelly described growing up Edmonton and playing hockey throughout his school-age years. He testified that he had a great family life. He has a brother and a half-brother with whom he is still in contact. Both of his parents are now deceased.
- [29] Mr. Donnelly stated that he was not religious in his youth. He testified that he went to church a few times with his mother but that he did not enjoy it very much.
- [30] Mr. Donnelly testified that when he was twenty-two years old he "met Christ" and became "totally enamoured with God". He testified that before this spiritual awakening, he had been involved in a "bad lifestyle" involving drugs and excessive partying.
- [31] Mr. Donnelly described several personal interactions which he interpreted as "signposts that God was trying to get a hold of [him]". He described making a deal with God that he would serve him if God could arrange for him to have a wife and family.
- [32] Mr. Donnelly described becoming involved with the church in Edmonton. At the time he had been working as an electrician's apprentice. Mr. Donnelly started going to church and discovered a vibrant Christian community which was filled with other single young persons like him.
- [33] He met a woman who would later become his wife and the two of them became leaders within their church community. He described their leadership role in the church as overseeing twenty-two "houses" of Christian adults living in gender-separate residences. Mr. Donnelly testified that he and his wife were responsible for maintaining the upkeep and rental accounts associated with the houses but also provided spiritual support and counsel to those that lived there.
- [34] After his marriage, Mr. Donnelly continued to work with the church in Edmonton for a period of time. He sought further religious training and attended Bible College. In time, the family expanded to include two daughters.
- [35] Mr. Donnelly then testified that the family moved to Ontario. He described being "led by the Holy Spirit to plant a church" and so he bought a house in Ontario and renovated the basement to accommodate gatherings of approximately twenty-five people.
- [36] Mr. Donnelly testified that he acted as a pastor for a congregation of approximately twenty-five people in the town for approximately one year.
- [37] At that point in his life Mr. Donnelly testified that he experienced a significant event related to his mental health. He and his family had been driving to Red Deer, Alberta, when he began feeling unwell. His wife arranged for him to be hospitalized for three days. He stated that he was released with no medications or a formal diagnosis as to what he had experienced. He was not feeling mentally ill at the time that he was released.

- [38] As a result of this medical incident, Mr. Donnelly testified that he no longer felt comfortable continuing on as a pastor for his fledgling church group. After a discussion with his supervising pastor, he decided to resign from his role in the church.
- [39] The family moved back to Alberta so that Mr. Donnelly could continue his training as an electrician. In order to achieve certain certification, he attended the Northern Alberta Institute of Technology.
- [40] The family moved to Kitimat, British Columbia after Mr. Donnelly completed his training. He worked in Kitimat as a project supervisor until 2006.

The death of his daughter

- [41] Mr. Donnelly testified that in 2006 he "got really sick and took [his] daughter's life". When asked whether he realized at the time that he was mentally ill he stated that he did not.
- [42] Initially, in his direct examination, Mr. Donnelly could not recall whether his daughter's death was connected to God. When prompted for more details related to his daughter's death Mr. Donnelly stated that he could not remember.
- [43] Counsel for Mr. Donnelly sought to refresh his memory by having him review portions of Dr. Lacroix's report. After reviewing the report, Mr. Donnelly was able to provide some additional details.
- [44] Mr. Donnelly testified that at the time around his daughter's death he was experiencing increased stress from his role as a project manager at his place of employment. He also described attending a church service in which the pastor's sermon had had a profound impact on him. He had asked for, and received, a copy of that sermon.
- [45] As a result of reviewing this sermon, Mr. Donnelly formed the belief that he either had to kill his wife or, otherwise, kill his entire family by Christmas. He stated that he felt the Holy Spirit was directing him.
- [46] Mr. Donnelly testified that he was "in turmoil" about having to kill his wife. He described experiencing several events which he interpreted as signs or potential signs from God. He described a visit at a friend's home. During that visit his friend spit tea out of his mouth and his friend's puppy dog repeatedly brought him a toy rat which was deposited at his feet. Mr. Donnelly interpreted these events as signs that God was upset with him about not taking his wife's life.
- [47] The next morning Mr. Donnelly described buying a lottery ticket at a nearby store. He testified that if he scratched the ticket and did not win then he would not be obligated to kill his wife. Mr. Donnelly testified that he did not scratch the lottery ticket because he was worried that it might be a winner.

- [48] On the day of his daughter's death, Mr. Donnelly described walking around with a knife. He took his daughter to a hair appointment. Upon her return from the appointment Mr. Donnelly interpreted certain things he observed to be a sign that he should kill his daughter instead. He stabbed her one time and then left the house. His daughter died as a result of the stabbing wound.
- [49] When asked why he had stabbed his daughter Mr. Donnelly paused for a long time. He then testified that he had no idea why he would have done that and that he had loved his daughter. He acknowledged that he regrets his actions now and talks to God about that incident "over and over".
- [50] Mr. Donnelly was ultimately found not criminally responsible by reason of mental disorder in relation to his daughter's death. He has been residing at the Forensic Psychiatric Hospital ("FPH") at Colony Farm since that time.

Subsequent Manifestations of Mental Illness

- [51] Mr. Donnelly was detained at FPH following his initial Review Board hearing on March 4, 2008 and was treated with a combination of mood stabilizing medications and antipsychotic medications. Over the course of the next year his illness appeared to be stabilized. At his second Review Board hearing on February 9, 2009, Mr. Donnelly's disposition included a provision allowing for unescorted community access at the discretion of the Director.

Assault with a weapon: 2009

- [52] On October 21, 2009, Mr. Donnelly left FPH on an unaccompanied day leave and uncharacteristically used crack cocaine. After this, he attended the apartment of a friend he met through FPH. In the residence, Mr. Donnelly asked that his friend pray with him. When his friend got up from praying, Mr. Donnelly attacked him with a paring knife. His friend managed to escape with minor cuts to his hands. Mr. Donnelly was found by police the following morning, in an apparently disorganized state.
- [53] Mr. Donnelly was returned to FPH, where he was noted by psychiatrists to be acutely psychotic. He refused medications and food. He was placed in seclusion, where he was observed to disrobe and make nonsensical statements. His mental state began to normalize after he was given injectable medications. As a result of this incident Mr. Donnelly pled guilty to one count of assault with a weapon and was sentenced to forty-five days in custody.
- [54] Over the following years at FPH Mr. Donnelly's mental state was relatively stable. In December 2016, Mr. Donnelly commenced overnight "visit leaves" to the Community Transitional Care ("CTC") program. However, after several months into his time in the CTC program concerns were raised about Mr. Donnelly's increasing spiritual and religious activities and he was subsequently returned to hospital on March 17, 2017.

Assault with a weapon: 2017

- [55] Several days later on March 21, 2017, Mr. Donnelly was watching a hockey game with a co-patient in their Hawthorn cottage. During commercial breaks, the men listened to music. During one commercial break, Mr. Donnelly asked the co-patient to turn up the volume. Mr. Donnelly then lunged at him with a butter knife. The co-patient managed to thwart the attack by kicking Mr. Donnelly, fleeing the residence and alerting staff.
- [56] In the days that followed the March 21, 2017 incident, Mr. Donnelly was again placed in seclusion on a maximum-security unit. He was described by several psychiatrists over the subsequent days as psychotic and disorganized. Mr. Donnelly was refusing to follow staff directions, refusing to take medication, and smearing substances on the walls of the seclusion area for several days.
- [57] Mr. Donnelly struggled to explain the incident in its aftermath. He described seeing the name of the victim on a whiteboard in a common area of the cottage and interpreted that cue as a sign that he should proceed to stab the victim. Mr. Donnelly was found NCRMD of assault with a weapon in August 2018.

The intervening years at FPH

- [58] Mr. Donnelly's mental state appeared to remain stable over the subsequent years. In late 2020, Mr. Donnelly once again commenced visit leaves to the CTC program. This continued until early 2022.
- [59] In April 2022, Mr. Donnelly was asked to return to FPH. Although Mr. Donnelly's mental state had not deteriorated, doctors became concerned about the suitability of staff supervision at the CTC program. After expressing initial displeasure at being returned to FPH, Mr. Donnelly became focused over the course of the next year on potentially being discharged to Manchester House in Victoria.
- [60] Ultimately in March 2023, it was decided that Manchester House was an unsuitable discharge arrangement. Accordingly, Mr. Donnelly shifted his focus to a reconsideration of CTC.
- [61] In the weeks and months leading up to the incident in September 2023 there was no evidence in staff documentation of any mood instability, psychotic symptoms, behavioural issues or changes in Mr. Donnelly's religious activities. In addition, there were no concerns raised about alcohol or illicit substance use in the time leading up to the September 10, 2023 incident. Blood serum and urine screening in the weeks leading up to the incident also indicate that Mr. Donnelly was taking his medication and had not consumed any illicit substances.

The Events of September 10, 2023

- [62] On September 10, 2023 Mr. Donnelly was given approval to go on an unescorted leave from FPH for the purposes of a bike ride. He was given approval to leave FPH at 1:30 p.m. and return no later than 8:30 p.m.
- [63] At approximately 1:32 p.m. that day, Mr. Donnelly left FPH pursuant to his approved request. Initially, Mr. Donnelly testified that his intention was to go for a bike ride and have a coffee at the Waves coffee shop in Coquitlam.
- [64] Mr. Donnelly explained that he used his electric bike to leave FPH and he biked down Colony Farm Road.
- [65] Mr. Donnelly testified that he did not turn right at the end of Colony Farm Road to go to Coquitlam; instead, he turned left. He stated that he turned left because he "believed [he] was being prompted by God to go to Chinatown". He stated that it was a "knowing in [his] heart" that he must go to Chinatown and hurt someone. Mr. Donnelly testified that the knowing in his heart came from God (or the Holy Spirit - Mr. Donnelly testified that the two terms are interchangeable for him).
- [66] In direct examination, Mr. Donnelly explained that based on the knowing in his heart that God wanted him to go to Chinatown and hurt somebody, he went to Home Depot by bike. While there, he purchased a chisel and then boarded the SkyTrain towards Chinatown. Video footage establishes that at approximately 1:48 p.m., Mr. Donnelly arrived at the Home Depot in Coquitlam, wearing an orange and yellow reflective vest, grey satchel, and a black helmet on his head, and purchasing an item from the self checkout.
- [67] Mr. Donnelly testified that he knew how to get to Chinatown, having been there before for Chinese food, and knew he could take the SkyTrain from Braid station to get there. Video surveillance shows Mr. Donnelly arriving at the Braid SkyTrain station at 2:09 p.m. that afternoon.
- [68] At approximately 2:48 p.m., Mr. Donnelly disembarked the SkyTrain at the Stadium/Chinatown station and spent about an hour near the Skytrain station in a park on Dunsmuir and Beatty. There, Mr. Donnelly described meeting an individual who referred to himself as "Superman", and who showed him a scar on his stomach. That person was smoking a "joint". Mr. Donnelly did not consume any marijuana that day.
- [69] In the park, Mr. Donnelly took off his "hi-vis" vest and his helmet and put them in his backpack, which he hid in a bush. He then left the park towards Chinatown on his bike. He had with him his satchel, his wallet and the purchased chisel in the satchel.
- [70] At some point, someone gave him a flyer for the Light Up Chinatown Festival and he made his way there. He explained in his direct examination that he was looking for clues as to why he was there, why God was leading him there.

- [71] Mr. Donnelly testified that he eventually saw a sign that was related to a "Chinese-Canadian friendship centre", or an official Chinese sign which made him think of the two Michaels who were imprisoned in China for several years. This thought was described as a breakthrough and made him believe that he was at the right place and was on the path to which God had directed him. It was at this point that Mr. Donnelly felt that he was "where God wanted [him] to be".
- [72] He expanded on that feeling, and testified that the whole day, he really felt like God was leading him throughout the events.
- [73] Mr. Donnelly also testified to having a thought, while at the festival, that if he hurt someone the Chinese authorities might come out and arrest him.
- [74] Mr. Donnelly further stated that when he was in the festival, he asked the Holy Spirit for a sign not to do this - "tell me not do this and I won't do it" - but in his mind he did not receive such a sign. He testified that he carried out the act because, in his mind, he "wanted to obey God".
- [75] Shortly before 6 p.m., the final musical act of the festival was just finishing. At the time, Dan and Karen Mach were seated towards the rear left of the stage, in the last row of plastic chairs. Pretty Luong was seated about 10 feet behind the Machs, under a canopy. At that point, video shows Mr. Donnelly standing approximately 10 feet behind Ms. Luong.
- [76] At approximately 5:54 p.m., Mr. Donnelly stabbed Ms. Luong once in the upper back, having moved directly behind her in the intervening minutes. Mr. Donnelly then moved towards Karen Mach who was facing away from him and was just getting up from her chair. He stabbed her once in the upper back with the chisel.
- [77] Mr. Donnelly then turned to face Dan Mach, who was seated at Karen's left and had turned to face his assailant. Mr. Donnelly stabbed at him, striking him in the forearm with the chisel. A brief struggle ensued during which Mr. Mach tried to kick Mr. Donnelly, but in doing so he fell backward and ultimately cut his knee.
- [78] Mr. Donnelly testified that he only stabbed each victim once because all he understood from the Holy Spirit was that he was to hurt them. Mr. Donnelly agreed that he knew he had broken the law but did so because he was "just trying to obey the Holy Spirit".
- [79] Immediately after the final assault, Mr. Donnelly jogged away from the scene heading north towards the intersection of Columbia and Pender Street. He was arrested a few blocks later at approximately 6 p.m.
- [80] One of the arresting officers, Constable Bailon, described Mr. Donnelly as "discombobulated and walking slowly while sweating profusely".

- [81] Constable Balance, the other arresting officer, told Mr. Donnelly that he was under arrest and asked if he understood. Mr. Donnelly nodded and mumbled "mhmmm". He was further Chartered and warned. He stated that he understood the warning and declined access to a lawyer.
- [82] Mr. Donnelly was then taken to the Vancouver Police jail and given an opportunity to contact counsel. He remained there until 11:44 p.m. when he was interviewed by Detectives Lim and Antonel. That police interview ended at 12:30 a.m. on September 11, 2023.

Post-Incident Events

- [83] Later that day Mr. Donnelly was transferred to the North Fraser Pre-Trial Centre (NFPT). During his intake that evening at the institution no active symptoms of mental illness were described. A few hours later, however, Mr. Donnelly attacked his cellmate at approximately 12:00 a.m. on September 12, 2025.
- [84] After being separated by correctional staff, Mr. Donnelly was described as "not responding" to questions asked of him. He was then placed in segregation.
- [85] Later that morning, a mental health clinician attempted to examine Mr. Donnelly but he refused. He was described as having "looked at the staff in a confused way".
- [86] At approximately 10:27 a.m. on September 12, 2023, Mr. Donnelly was seen by a psychiatric nurse. When asked about the recent altercation Mr. Donnelly replied "I don't recall". Later in the afternoon that day Mr. Donnelly refused to provide a urine drug screen. Records also indicated that he was refusing medications.
- [87] Mr. Donnelly was examined by a psychiatrist, Dr. Murphy, on September 13, 2023. During this exchange Mr. Donnelly indicated that he would have an advocate at his next Review Board hearing and stated "it is Jesus Christ the Lord". After approximately fifteen minutes of questioning by Dr. Murphy, Mr. Donnelly said "that's enough of these bullshit questions". Dr. Murphy spoke with Mr. Donnelly's psychiatrist at FPH who indicated that his "irritable presentation today is atypical for this patient's baseline" and that his religious comments were "typical of relapse for Mr. Donnelly". Mr. Donnelly was then certified under the Mental Health Act.
- [88] A second Mental Health Act certificate was completed by Dr. Skinner on September 14, 2023. Mr. Donnelly was transferred to FPH later that afternoon.
- [89] Upon his return to FPH, Mr. Donnelly's care was assumed by psychiatrist Dr. Liam Dodge. Dr. Dodge noted Mr. Donnelly was declining medication upon arrival and exhibiting signs inconsistent with his baseline. These signs included talkativeness, irritability and "delusions of a religious nature". Mr. Donnelly was preoccupied with "religious and conspiratorial themes" and was observed to be singing in seclusion. A disinhibited and childlike demeanour was also observed as diverging from his baseline.

- [90] Over the next several days, treating doctors noted religious and grandiose delusional beliefs, loosening of associations, tangentiality and elevated mood. He continued to sing religious songs while in seclusion. After several days Mr. Donnelly eventually agreed to restart oral medication and was eventually released from seclusion on September 26, 2023.
- [91] When reassessed by Dr. Dodge on October 3, 2023, despite being treated with his usual antipsychotic regimen for two weeks, Mr. Donnelly was still not at his baseline. Over a month later, when Mr. Donnelly was examined by Dr. Dodge on November 17, 2023, Mr. Donnelly stated that the end of days was imminent. He also spoke about the "second coming of Christ" and "the sign of the beast". He referenced people having microchips in their hands. He also mentioned Christians needing to "martyr" themselves. Given the persistence of his symptoms, doctors proposed treatment with clozapine, a powerful antipsychotic with significant and serious side effects.

Cross-Examination of Mr. Donnelly

- [92] Over the course of two days, Crown counsel conducted a measured and very skilful cross-examination of Mr. Donnelly. The Crown spent a significant amount of time in cross-examination exploring Mr. Donnelly's religious beliefs and having him set out core tenets of his Christian faith. He was then asked about his state of mind on September 10, 2023, and his current thinking about those same events.
- [93] In cross-examination, the Crown explored Mr. Donnelly's understanding of how God communicates with him. For example, Crown counsel explored the concept of "promptings" from the Holy Spirit within the context of evangelical segments of Christianity. After agreeing that many evangelical Christians described experiencing such promptings, Mr. Donnelly was asked about the index offence:

Q. You've told the court that on September 10th, 2023, you felt a prompting from the Spirit to go to Chinatown and hurt someone.

A. Yes.

Q. And I'm suggesting to you that that type of prompting was no different than prompting you've received throughout your entire life from the Holy Spirit.

A. I agree with that.

Q. And like every other prompting you've ever had from the Holy Spirit, there's a degree of interpretation that is required by yourself; right?

A. Yes.

Q. And the reason, I'm going to suggest to you, that you think you are mentally fit at the time is that when you look back you realize you misinterpreted what God laid on your heart that day.

A. As I look back, I agree with you.

Q. So it wasn't that you were unwell, sir, it was just that you misinterpreted the prompting you received that day. Is that a fair summary of your perception as you look back?

A. I think that's a fair prompt - a fair analysis.

[94] In cross-examination, Crown counsel also elicited evidence from Mr. Donnelly that promptings from the spirit are not typically viewed as orders or commands. The following exchange took place during the second day of Mr. Donnelly's cross-examination:

Q. Well, just step back for a second and think. Do you agree with that? Like when you're talking about the Holy Spirit putting something on your heart, or you're talking about the Holy Spirit prompting you, are those the same thing?

A. Yes.

Q. Okay. And yesterday I put to you the suggestion that a prompt is -- is essentially a suggestion and you agreed with that. Do you still agree with that?

A. Say that again?

Q. That a prompt is the same thing as a suggestion.

A. Yes.

Q. It's not an order?

A. Right.

Q. And -- and that's what this was, right? It wasn't a command. It was -- it was a suggestion?

A. Right.

Q. That's how you interpreted it?

A. Right.

[95] The Crown also explored Mr. Donnelly's understanding of the concept of free will within the context of his religious beliefs. After reviewing these key tenets of Mr. Donnelly's faith Crown counsel then asked him whether or not they were operative on September 10, 2023:

Q. I suggested to you, sir, that you had a choice whether to stab those people that day. That's my question.

A. Yes, I had a choice.

Q. Because God never overrode your will that day, did he?

A. No, he didn't.

Q. He never does that, does he?

A. God's a gentleman.

- [96] The Crown also questioned Mr. Donnelly more generally about his illness and his perception of it on September 10, 2023. Mr. Donnelly testified that NCRMD to him means "[t]hat at the time of doing a crime a person was not mentally fit". Mr. Donnelly further testified that he is aware that he has a mental illness and that sometimes he gets manic and loses touch with reality and thinks things that are perhaps not there.
- [97] In cross-examination, Mr. Donnelly agreed that in the days leading up to September 10, 2023, and that day, he was at his baseline in terms of medication, sleep, mood and time in religious activities. When he left FPH at 1:30 p.m. he was not feeling "racy", "elated" or pre-occupied with religion. He described feeling perfectly normal and had not planned on harming anyone that day.
- [98] When questioned about why he fled after the attack, Mr. Donnelly testified that he fled because he knew what he'd done was wrong, and initially agreed he meant wrong "in the sense it had been discussed a few minutes earlier", which was that wrong is "whatever God says is wrong". A few questions later, however, he said he ran because he thought he did something legally wrong. Following this he confirmed he knew that the people in the crowd around him would see what he had done as a terrible thing.
- [99] The Crown questioned Mr. Donnelly about whether he thought that he was mentally fit on September 10, 2023. Specifically, he was questioned about comments he had made to Dr. Brink about whether he would ultimately be found NCRMD. He did not initially know why he had made certain comments to Dr. Brink. After more questioning Mr. Donnelly agreed with the suggestion that he thinks he was mentally fit at the time because when he looks back, he realizes he misinterpreted what God laid on his heart that day.

The Expert Evidence

- [100] As stated earlier, Dr. Lacroix, a forensic psychiatrist, was the only witness to provide opinion evidence regarding Mr. Donnelly's mental state at the time of the offence. In his oral testimony, Dr. Lacroix expressly adopted the contents of his earlier report.
- [101] Dr. Lacroix interviewed Mr. Donnelly three times, on December 4, 16, and 23, 2024, for a total of approximately 5.25 hours. In addition to these interviews, Dr. Lacroix also reviewed a large body of evidence prior to writing his report, including witness statements, police reports, medical records and letters between medical practitioners. He also reviewed a psychiatric report to the court, prepared by Dr. Johann Brink on March 22, 2024.
- [102] Dr. Lacroix testified that Mr. Donnelly has been diagnosed in the past with atypical bipolar disorder. He further explained that the diagnosis was "atypical" in the sense that the symptoms of his illness are not those commonly seen in individuals who suffer from bipolar disorder. Accordingly, based on his comprehensive review of the information available to him, together with his interviews of Mr. Donnelly, Dr. Lacroix formed the opinion that Mr. Donnelly qualifies for a diagnosis of schizoaffective disorder, bipolar type. Importantly, Dr. Lacroix also formed the opinion that Mr. Donnelly was experiencing a

relapse of his illness at the time of the offence, with the first manifestation of illness being an "irreducible belief or delusion that emerges without apparent cause or context". In forming his opinion, Dr. Lacroix considered:

- a. Mr. Donnelly's belief that God wanted him to harm someone;
- b. Mr. Donnelly's interpretation of an innocuous observation as support for violence;
- c. clear signs that Mr. Donnelly was not at baseline from September 12 onwards; and
- d. the similarity to Mr. Donnelly's previous violent incidents including a rapid onset of illness, inexplicable drive to violence, psychosis following the acts and no rational basis for the violence (although dissimilarities were noted regarding the lack of relationship with the victims and the lack of even subtle cues pre-offence).

[103] In finding that Mr. Donnelly was suffering from a mental disorder at the time of the offence, Dr. Lacroix found that there was ample evidence to indicate that Mr. Donnelly was experiencing an "autochthonous experience" on September 10, 2023, where he was beset by a delusion or belief that God wanted him to harm somebody in Chinatown. Dr. Lacroix noted that this thought came to the accused "fully formed, seemingly out of nowhere". During his testimony, Dr. Lacroix testified that in Mr. Donnelly's case there is a pattern where the first overt indication of illness, or symptomology, is an incident of violence that occurs without clear antecedent signs of illness, followed by more obvious signs of illness or psychosis after the fact which eventually recede.

[104] Dr. Lacroix further opined that Mr. Donnelly was fully aware of the nature and quality of his actions, but that he was incapable of making a morally grounded, rational decision because he was overwhelmed and convinced that God wanted him to stab people, such that his actions were compelled and sanctioned by God.

[105] Dr. Lacroix further opined that as a result of his psychotic illness (schizoaffective disorder, bipolar type), Mr. Donnelly was unable to know the wrongfulness of his actions at the time of the offence. He testified that he had the benefit of a well-documented pattern of illness for Mr. Donnelly, and that although he cannot be absolutely certain of his opinion, he is of the view that Mr. Donnelly was "comfortably over that line" in respect to the second branch of the NCRMD test (Mr. Donnelly's capacity to know that his actions were morally wrong). In Dr. Lacroix's opinion, this thought Mr. Donnelly received from God had to be an overwhelming belief as it was completely contrary to Mr. Donnelly's understanding and competing belief in God, and God's commandment to love thy neighbour.

[106] Dr. Lacroix testified that in his opinion, Mr. Donnelly could not make a rational decision on September 10, 2023 as his decision-making capacity was rooted in psychotic reasoning. He opined that this decision to harm people was not a personal decision based on reality but was irrational based on delusions brought on by his mental illness. At p. 19 of his report, Dr. Lacroix concludes:

In my opinion, despite the absence of indicators that Mr. Donnelly was acutely unwell prior to the September 10, 2023 offences, his subjective account of his experiences - if accepted as credible - considered alongside his pattern of illness and apparent lack of reality-based motivation for the offences, suggests his actions were driven by psychotic symptoms. Overwhelmed and convinced by the belief that God wanted him to stab people, Mr. Donnelly's psychotic illness rendered him incapable of making a morally grounded and rational decision when he opted to engage in unprovoked attacks on innocent victims. In his mind, his actions were not wrong in a moral sense, as they were compelled and sanctioned by God.

[107] Dr. Lacroix provided this opinion on a balance of probabilities and stated that he was confident in his opinion. He indicated that this was not an "edge case", where it was challenging to offer an opinion.

[108] In summary, Dr. Lacroix opined that due to his mental illness, Mr. Donnelly was unable to know the wrongfulness of his actions at the time of the offence.

Cross-Examination of Dr. Lacroix

[109] Even in the face of a thorough cross-examination, including the presentation of additional information, Dr. Lacroix did not resile from his opinion. He remained resolute that Mr. Donnelly was not capable of making a morally grounded and rational decision on September 10, 2023.

[110] The Crown challenged Dr. Lacroix on the foundations of his opinion that Mr. Donnelly was unwell on September 10, 2023. Dr. Lacroix agreed that if Mr. Donnelly said he regularly received feelings from God then a feeling from God is not necessarily a marker that he is unwell. He also agreed that if Mr. Donnelly regularly interpreted circumstances in his life as signs from God, doing so also might not be a sign he was unwell.

[111] When it was suggested that this applied to the feeling he got and the sign he interpreted on September 10, 2023, however, Dr. Lacroix demurred. In his view, since the feeling ran contrary to Mr. Donnelly's morals, values or worldview, as evinced by Mr. Donnelly's turmoil that day, these were not normal religious experiences for Mr. Donnelly. The belief was "ego-dystonic". In response to this line of questioning, Dr. Lacroix said, in part, as follows:

Though his feelings from God weren't a central focus of our discussion, the directive from God to harm people was a focus of our discussion, and that was not a normative experience for Mr. Donnelly with respect to his religious beliefs. It was the opposite, and he described how it was in conflict with his normal understanding of religion and Christianity.

[112] The Crown also suggested that there were significant differences between the prior manifestations of Mr. Donnelly's illness and the incident on September 10, 2023. As a result, the Crown suggested that Dr. Lacroix's reliance on the previous pattern was misplaced or overemphasized in his opinion. The following exchange took place on this topic:

Q And this, I'm going to suggest, is a significant difference between all three prior incidents in that in all three prior incidents, in the immediate aftermath of the violence, there were clear signs that Mr. Donnelly was unwell? Is that fair?

A. That's fair, yes.

Q. And that's a significant difference?

A. Significant difference in what sense?

Q. To your opinion.

A. To the -- to which opinion?

Q. Your opinion that he was unwell at the time of the offence.

A. It is a -- I don't know if I would assign a value that it's a significant difference. It's a notable difference.

Q. What's the difference?

A. It's -- it's not significant to the extent that I'm doubting that this last incident in 2023 represents a departure from his baseline and a recurrence of the psychotic episode. The difference is not significant to that extent that I would -- that I would question whether or not he was ill at the time.

[113] The Crown pressed Dr. Lacroix on the basis that there was a "really big difference" between Mr. Donnelly's mental deterioration after the previous incidents and the incident on September 10, 2023. While Dr. Lacroix accepted that the decompensation did not appear to be immediate, it was still significant. He noted the following:

A. It is a difference. As for the pattern of his illness, as it was understood the years before, was that violence could present itself in the absence of any warning signs or any obvious signs of deterioration. So the fact that it was a couple days after that there was some other observable signs, it's a difference to note, but not one I would change my conclusions about.

Q. So that to the extent that it's different, your opinion must get somewhat weaker? Your ability to draw the conclusion based on the past behaviour?

A. Perhaps to some degree, but it's hard - hard for me to assign a quantity or a level of degree to that. It is - it is a difference. The other differences are that his psychiatrists, after the incident, noted persistent changes in his mental status, despite instituting antipsychotic treatment. There had been the trial of clozapine, his persistent religious preoccupation I'm not sure what else to add.

[114] The Crown also allowed Dr. Lacroix to review Mr. Donnelly's evidence from the trial. The Crown then put what was described as several "nuances" in his evidence to Dr. Lacroix, in order to see if, or how, those differences affected his expert opinion. The Crown suggested that the following propositions had emerged from Mr. Donnelly's trial evidence:

- A. the feeling he got that day was one he had to interpret, suggesting a lack of clarity;
- B. he had the freedom to choose whether to hurt people or not, God never overrode his will; and
- C. the feeling was in the nature of a suggestion with no pressure.

[115] Dr. Lacroix agreed that, in his evidence elicited on cross-examination, Mr. Donnelly was not describing the message from God as amounting to a directive or compulsion or that it was overwhelming. Dr. Lacroix also noted that this evidence was different from how it had been expressed to him.

[116] Even so, Dr. Lacroix opined that on September 10, 2023, "eventually [Mr. Donnelly's] morals were overrun by this feeling from God that he ought to harm somebody that he was unable to resolve this conflict in his mind in favour of societal norms, it was resolved in the other direction. It was not a rational choice or a choice based in reality". When pressed further on Mr. Donnelly's evidence that the prompting from God was in the nature of a suggestion, Dr. Lacroix was unsure. For Dr. Lacroix, the fact that Mr. Donnelly was experiencing turmoil was indicative of something stronger than a mere suggestion. Dr. Lacroix concluded by saying that if the only evidence available to him was Mr. Donnelly's evidence from the cross-examination, that he might "change the wording" of his opinion.

Analysis

[117] In my analysis, I will first set out my observations and findings in relation to Mr. Donnelly's credibility and reliability. Then, I will turn to a consideration of the key legal questions at issue in this case: (1) was Mr. Donnelly suffering from a mental disorder at the time of the offence; and (2) was he incapable, by operation of that disorder, of knowing that his conduct was morally wrong?

Credibility and Reliability of Mr. Donnelly

[118] I am mindful of the principles set out by this Court in *Bradshaw v. Stenner*, 2010 BCSC 1398 relating to assessments of credibility and reliability. While a civil case, the principles in *Bradshaw* have been consistently relied upon in this province in the criminal context. Of note are the following comments by Justice Dillon:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the

influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) [Faryna]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (Faryna at para. 356).

[Emphasis added.]

[119] On balance, I found Mr. Donnelly to be a credible witness. At all times, I felt like he was genuinely attempting to give truthful and authentic evidence. I accept that he is a fervently religious man. He carried a Bible and quoted scripture from time to time in his testimony. He also agreed with reasonable and logical propositions, even when it was clear that the statements might be used to further Crown arguments. I do not accept any suggestion that Mr. Donnelly was motivated to lie in the hopes of landing in a more favourable institutional location. In his cross-examination, he agreed that although he would personally prefer to stay at FPH, rather than go to prison, he will go where God wants him to go. This answer sounded authentic in its giving.

[120] I also understand that both parties take the position that Mr. Donnelly was doing his best to tell the truth.

[121] In terms of his reliability, I have two concerns. First, when one considers the testimony of Mr. Donnelly that he has currently eschewed any limitation on his religious time and devotions, and Dr. Lacroix's evidence that Mr. Donnelly's level of preoccupation with religion can be an indicator of unwellness, it raises questions for me. While I found Mr. Donnelly to be thoughtful and lucid generally, he would often have very long pauses in his evidence. Sometimes, it was clear that he had simply been thinking about his answer. On other occasions, however, it became clear that he had lost the thread of the questioning. This happened several times. I do not know the precise reason for these moments of intellectual disconnection, but it was clear that Mr. Donnelly struggled at times to remain focused on the object of the questions.

[122] Second, on several occasions Mr. Donnelly gave answers which evinced some memory problems. After some questions about his self-assessment tool and whether he was using it at the time that he appeared before the Review board in April of 2023, he gave an answer that was inconsistent with what he had told the Board. He was asked:

Q. So you see that doesn't square with what you told the court just a few minutes ago, does it?

A. Yeah. I guess. I just haven't remembered I was using it.

Q. Were you honest with the board in April 2023?

A. Yes, I was.

Q. Okay. So you're -

A. I'm just off right now.

Q. And so you were doing that up until September 10th, 2023?

A. According to your records, yes. My memory is foggy.

[123] Later in the cross-examination, when asked to comment on certain things that he had said to Dr. Lacroix, Mr. Donnelly had to have his memory refreshed from the doctor's notes. The Crown then confirmed with Mr. Donnelly that his memory of the events was better when he spoke to Dr. Lacroix than it was at trial. He agreed that the events were fresher back then.

[124] After another series on questions on the second day of cross-examination, after the second time Mr. Donnelly had expressed that he had some problems with his short-term memory, the Crown had the following exchange with Mr. Donnelly:

Q. And I asked you yesterday if you ever speculated on maybe why the Spirit might have put on your heart to harm people in Chinatown, do you remember me asking you about that yesterday?

A. My short-term memory is terrible.

Q. How long has that been an issue for you?

A. My memory?

Q. Your short-term memory.

A. For a while.

Q. Well, I want to be fair to you, Mr. Donnelly, do you feel like -- you know, you've told us a lot about what you were thinking, feeling on September the 10th, 2023, do you feel like you have accurate memories of that day?

A. Somewhat.

Q. So can we depend on what you've said here in court as being things that were in your memory? Have you told us if -- if you're not sure about something?

A. I'm trying to do my best.

Q. So you're testifying honestly from what your memory is?

A. Yes.

[125] I am mindful that the events that were being discussed were two years ago. However, there were times where I did question whether Mr. Donnelly was sometimes agreeing with propositions or filling in the blanks where his present recollection failed him. The following example is one of those times:

Q The -- the follow-up question here is at what point in time that day did you have that thought?

A I'm only guessing, but I think it was just during the time that I was hanging around during the time the festival was on. I'm not clear on that, though.

[126] As such, where Mr. Donnelly's evidence in direct or cross-examination aligns with reported statements he made to Dr. Lacroix, as to his actions or thoughts on September 10, 2023, I tend to prefer those articulations as reflective of the best evidence. I do so not for the prohibited purpose that mere repetition is an indicator of truth, but because the fact that his earlier articulations were more accurate is anchored in his own evidence. The Crown confirmed that his memory was better, and his evidence was more accurate, when he spoke to Dr. Lacroix. In addition, Mr. Donnelly was taken to those statements in his direct examination and he confirmed their accuracy and adopted them. They are, thus, part of his evidence in direct and a plausible reason has been given to prefer those statements over those which might be impacted by his memory or any other aspect of his evidence at trial.

[127] With those caveats in mind, I turn now to an analysis of the legal questions that will decide this case.

Stage 1: Was Mr. Donnelly suffering from a mental disorder at the time of the offence?

[128] The Crown concedes that there is no issue that Mr. Donnelly suffers generally from a mental illness, whether it is conceptualized as bipolar disorder or schizoaffective disorder, bipolar type. Where the Crown and the defence join issue is on whether Mr. Donnelly has established that he was "unwell at the time of the alleged offence" - in the language of s. 16, whether he was suffering from a mental disorder at the relevant time.

[129] Dr. Lacroix stated in direct and cross-examination that Mr. Donnelly's belief that God was giving him instructions was a type of delusion. He explained that a delusion can present itself suddenly, with no chance of observing any prior changes to the individual. He further explained that while there can be triggers for a mental illness, often there are no triggers. The most common triggers would be the non-adherence to medication or the use of intoxicants.

[130] He agreed in cross-examination that the interpretation of circumstances as having meaning from God is not necessarily an indication that Mr. Donnelly was unwell. It is not a sign of illness that Mr. Donnelly believes God speaks to him.

[131] Dr. Lacroix did elaborate, however, that this belief that Mr. Donnelly had that God was directing him to harm someone was "ego-dystonic" (contrary to his morals and worldview) and would have caused tension, making it less difficult to come to the conclusion that it was not a normative religious experience and therefore a delusion. In cross-examination, he explained as follows:

Q. Well, so let's just engage in a bit of a hypothetical. So hypothetically, that is part of his world view. Hypothetically, he does feel, like on a regular basis, that God puts feelings in his heart, again, how are we saying that that specific feeling that God wanted him to hurt someone in Chinatown that day is a marker that he's unwell?

A. Because of -- by his description -- the conflict or tension between that idea of directive and what he understands the teachings of the Bible to be, he made that contrast himself, that that directive from God was actually at odds with what he understood the Bible and him living as a Christian to be. It was not in keeping with what he understood to be following the teachings of Christ to be, so -- and when you consider even more broadly the pattern of his illness and the observations from psychiatrists in the days that followed the offence, when that's further put into context, in my view, it's even more clear that it's illness-related.

[Emphasis added.]

[132] While Dr. Lacroix agreed that Mr. Donnelly was not displaying any symptoms detectable by nurses leading up to this incident, he explained that this was specifically contemplated by previous psychiatrists and did not affect his opinion as to whether Mr. Donnelly was experiencing a mental illness at the time. He explained this while being challenged in cross-examination:

A. His pattern of episodes of illness, first obviously manifesting with an unprovoked, unexplained violent incident, followed by a period of overt psychotic symptoms observed by clinicians in a hospital setting, there may have been a day or two between this last violent incident and when there was documentation of him being overtly unwell, and yes, there was an absence of - even in retrospect -- signs of destabilization. But this -- this was a type of scenario that, you know, could have been anticipated by his risk profile when you look at the records from years before. This is the exact kind of scenario that Dr. Meldrum was concerned about unfolding, that the first manifestation of his illness could be a violent scenario.

So even though there are those differences, I don't see them as being so large as to, at least from a critical view, see this latest episode as being not part of that pattern. I don't see this as a new episode of a different kind of a pattern of violence. Despite the differences, I see it as a continuation of that pattern.

- [133] Dr. Lacroix expressly rejected the Crown's assertion that the lack of any prior discernible symptoms of psychosis, or the presence of organized thinking, was positive evidence that Mr. Donnelly was "well" on September 10, 2023. Dr. Lacroix explained that due to the difficulty in detecting symptoms in the past, he could not infer wellness simply from the apparent absence of symptoms.
- [134] There was also evidence that Mr. Donnelly suffered a mental deterioration, or "decompensation", just over 24 hours after the incident. On this point, the Crown argued that Mr. Donnelly's decompensation only arose "two days after the fact". I find that the evidence was more nuanced than that.
- [135] First, I note that according to the Agreed Statement of Facts, immediately upon his arrest, one of the arresting officers described Mr. Donnelly as "discombobulated". He was "walking slowly and sweating profusely".
- [136] Second, a careful reading of the evidence indicates that if Mr. Donnelly's decompensation could be described as "delayed" it was only delayed by a matter of hours. Mr. Donnelly was not interviewed by police until almost six hours later at midnight that evening. Next, he was not transferred to NFPT until late the next day and was examined briefly upon his intake, where no observable symptoms of mental illness were recorded. However, only a few hours later, and just over 24 hours after the index offence, Mr. Donnelly attacked his cellmate for no apparent reason.
- [137] After that the indices of decompensation that were present on prior occasions began to appear. Mr. Donnelly refused medication and urine tests. He was placed in segregation. He was aggressive and irritable with staff, contrary to his normal behaviour.
- [138] When asked about this behavior, Dr. Lacroix made the following observations during his cross-examination:

Well, I'm looking at my report now, on page 10. When he was seen in segregation, on the morning of September 12th, he was described as looking at the staff in a confused way, and when seen by the family physician on the morning of the 12th, he uttered an expletive at the physician, refused to provide a urine drug screening, and had been refusing medications.

- [139] When asked whether the lack of immediate indicators of disorganized thinking in the aftermath of the incident makes the illness less severe, Dr. Lacroix again came back to the post-incident behaviours as an indicator of unwellness at the time of the incident:

Q. So the fact that his thinking is not disorganized is not indicative of the severity or lack thereof of his mental state at the time?

A. Well, for one, that there were observations from psychiatrists that assessed him in the days that followed the incident, that he was tangential and loose in his associations, suggesting some disorganization in his thinking, but even if those features were absent, I wouldn't conclude necessarily that the episode is less severe than prior ones. I guess it's also how you want to define

"severe" or "impairing". If an episode is so disruptive that at least a serious harm to others, or at least to major restrictions on one's liberty or living situation, you know, I would consider that evidence of it being a severe episode or impairing

[Emphasis added.]

[140] From the evidence, I accept that the accused suffered referential delusions that were ego-dystonic and interpreted "signs" further strengthening the power of that delusion at the time he attacked the strangers at the festival. Dr. Lacroix also highlighted the absence of any rational motive for the attack. Even the Crown, in its hypotheticals put to Dr. Lacroix, accepted that the idea to go to Chinatown to hurt people was not an idea which belonged to Mr. Donnelly. Both the Crown and defence accept that the accused received, or experienced, this idea from an outside source - namely God or the Holy Spirit. In other words, it was autochthonous. When this evidence is coupled with the psychiatric and criminal history outlined by Dr. Lacroix, I am satisfied that Mr. Donnelly clearly was suffering from a disease of the mind on September 10, 2023. I accept Dr. Lacroix's opinion on this subject, that it was Mr. Donnelly's illness that led to violent behaviour as the most likely scenario. I find, as discussed above, that there is ample evidence to support this conclusion.

Stage 2: Did Mr. Donnelly's mental disorder render him incapable of knowing his actions were morally wrong?

[141] In relation to this stage of the s. 16 analysis, the Crown argues that Mr. Donnelly has failed to establish, on a balance of probabilities, that his mental disorder rendered him incapable of knowing that his actions were morally wrong. Primarily, the Crown points to parts of Mr. Donnelly's evidence in cross-examination where it is argued that he has provided more nuanced testimony that renders the defence unavailable to him. In particular, it is argued that due to Mr. Donnelly's belief in the existence of "free will", he was able to make conscious and informed choices about whether or not to follow the "prompting" from God to go to Chinatown to hurt people. The Crown further argues that in his testimony in cross-examination he has now explained that the messages he received from God on September 10, 2023 are properly viewed as mere suggestions devoid of pressure. That testimony, argues the Crown, in conjunction with his testimony that he was aware that right-thinking members of society would condemn his actions, is incapable of satisfying the test for s. 16, as set out in Dobson.

[142] With great respect to the very able arguments presented by Crown counsel, I cannot accede to their position.

[143] First, I accept Mr. Donnelly's evidence in direct examination, and repeated in cross-examination, that he was "prompted by God" to go to Chinatown and hurt someone. He described this thought as "a knowing in his heart" that manifested itself to him, fully formed as he was travelling along Colony Farm Road. He testified that it was a clear thought and that it overrode his plan to go for coffee. When Mr. Donnelly gave this evidence at trial,

it was earnest, and it left me with the impression of an individual who had no choice but to completely and utterly change all of his plans for the day and to do something which he had no personal desire to do.

[144] Mr. Donnelly confirmed in his testimony that the thoughts and feelings that he communicated to Dr. Lacroix - and which were contained in Dr. Lacroix's report - were in fact accurate statements. He further testified, when asked in cross-examination, that his memory would have been better when he spoke to Dr. Lacroix than it was at trial. I find that Mr. Donnelly adopted, both explicitly and implicitly, the statements that he made to Dr. Lacroix as being a true and more accurate description of his thinking at the time of the index offence.

[145] Second, due to the manner in which the cross-examination proceeded I have concerns about the nature of the answers that were elicited by Crown counsel and the weight that should be given to them. Counsel for the Crown demonstrated a remarkable facility with the theological underpinnings of evangelical Christianity during his cross-examination of the accused. For example, Crown counsel relied on Mr. Donnelly's training as a pastor and his education in theology to elicit several key tenets of his faith, including the belief that the Holy Spirit can "lay promptings" on the heart and the importance of "free will" in Christian teachings.

[146] In particular, before he obtained the answer from Mr. Donnelly that he must have had free will on September 10, 2023, the questioning immediately preceding those questions was focused on generic discussions about Christian lifestyle, including discussions of spiritual promptings and the concept of choice. The following exchange is illustrative:

Q. There are lots of things that the Bible suggests you should do besides the activities we just mentioned. Foremost among them, you mentioned loving God and loving your neighbour. Those are the two umbrella commandments.

A. Yes.

Q. And in line with the second one, your understanding of the Bible was that it would have you be kind to others.

A. That's right.

Q. To be generous with your money?

A. That's right.

Q. You feel those things God wants you to do?

A. Yes.

Q. You have felt that a number of times while you've been at the forensic hospital. You - you felt that you - this was an occasion for you to be generous?

A. Yes.

Q. And felt the Holy Spirit would have you do?

A. Yes.

Q. And so you donated money to people who needed it?

A. Yes.

Q. And you purchased pizza for your unit?

A. Yes.

Q. These are things you feel God would like you to do right?

A. Yes.

Q. Not just generally, but those specific things at those specific times?

A. Yes.

Q. Now, all of these things that the Bible instructs you to do that you also want to do and you feel you should do, you don't always do them, do you?

A. No.

Q. Because you have free will, right?

A. That's correct.

Q. That's your understanding of how God has made you, is your free to make a choice in any given situation, right?

A. Right.

Q. And so you can always choose to be generous or not, right?

A. That's correct.

Q. You feel the Holy Spirit prompting you to help your that neighbour of your brothers who needs money, you could have chosen not to give her any money, right?

A. That's right.

Q. On any given day you can choose not to read your Bible even though you feel the spirit would have you do that?

A. That's right.

Q. And if - and if you're not in the mood, you might choose not to do it. You have done that in the past?

A. That's right.

Q. That was true of the choices you made on September 10, 2023, wasn't it? You had a choice of whether to do those things or not? You had a choice of whether to stab those people at the Chinatown Festival?

A. Boils down to it, doesn't it.

[147] Sitting and listening to this exchange, I was of the distinct impression that Mr. Donnelly was, from the perspective of an intellectual, and a theologian, agreeing with basic propositions relating to his faith put to him by Crown counsel. In the moment, and upon reflection, this evidence did not strike me as coming from someone who was relating his actual thought processes, in the moment from the day of the attack. This evidence had the ring of someone reflecting back on a state of affairs that must have existed as a matter of religious dogma - rather than as a subjective state of mind. I would also note here that when these same answers were put to Dr. Lacroix in his cross-examination, Dr. Lacroix also expressed some concern as to whether these were views which had been expressed with the benefit of hindsight.

[148] I have given much thought to these "nuances" in Mr. Donnelly's evidence that arose during his cross-examination. I have considered them individually, in the context of his evidence as a whole and in the context of all the evidence at trial. Ultimately, I find that these statements elicited by the Crown are not truly reflective of Mr. Donnelly's state of mind at the time of the events.

[149] Third, I accept the opinion of Dr. Lacroix that the choices made by Mr. Donnelly on September 10, 2023 were not rational decisions grounded in reality. Dr. Lacroix testified that any decisions that Mr. Donnelly made as following or obeying some kind of directive from God to harm people were not rational - not simply because they were messages or directives from God, but rather because the message was ego-dystonic and not part of his ordinary religious experience. It was this dissonant aspect of the referential delusion which caused the turmoil and tension described by Mr. Donnelly in the moments leading up to the stabbings.

[150] Ultimately, Dr. Lacroix concluded that Mr. Donnelly's "turmoil" with the directive that he received from God to harm people that day was ultimately resolved "in a direction that gave way to a psychotic impulse". That was the evidence that his capacity to make rational decisions was overborne. I agree.

[151] While Mr. Donnelly was aware that what he did on September 10, 2023 was legally wrong, he also knew that he was trying to "obey God". Additionally, despite Mr. Donnelly's acknowledgment during his cross-examination that members of society would view his actions as terrible, it is not clear from his evidence that this was something he was aware of at the time of the offence. While he was "in turmoil" trying to discern God's divine purpose, ultimately his will gave way to what he believed was the will of God or the Holy Spirit. I accept that for a man as devout as Mr. Donnelly, what he understood to be a clear prompting by God to act was, ultimately, irresistible.

- [152] As a result, I am satisfied that when he committed the acts giving rise to these proceedings, Mr. Donnelly lacked the capacity to apply his general moral knowledge to the particular circumstances in which he found himself. His disordered thinking deprived him of the ability to "rationally choose to commit the specific criminal act[s]" on that day: see Bharwani at para. 215; Oommen at 516.
- [153] Mr. Donnelly's realization, in hindsight, that it is likely that God did not want him to harm anyone does not assist this Court in determining what his state of mind was at the time of the offence. Nor does Mr. Donnelly's present day musing that he was likely mentally fit impact my conclusions that, at the time, he was "incapable of bringing his mind to bear on what he [was] doing": Bharwani at para. 224.
- [154] Finally, in relation to any argument on the part of the Crown that Dr. Lacroix's opinion should be given less weight such that I should find it is incapable of assisting the defence in meeting its burden of proof, I must respectfully disagree. I found Dr. Lacroix to be a knowledgeable and straightforward witness who understood his role as an independent witness. Dr. Lacroix is aware that his only job is to assist the court. I further note that Dr. Lacroix was the only expert witness to testify, and that despite a thorough cross-examination he remained unshaken in his court conclusions.
- [155] A similar argument was raised in *R. v. Prinoski*, 2005 ONCJ 291, where there was only one expert witness. There the psychiatrist called by the Crown testified that the accused was NCR. A review of the case demonstrates that the expert psychiatrist was prepared to concede some points regarding the influence cocaine consumption may have had on the accused's behaviour following the incident, acknowledging that this could possibly take away from some of his conclusions. However, his opinion that the accused was NCR did not change. In that case, Fairgrieve J. held as follows:
- [21] It is important to bear in mind the Crown's burden with respect to the issue of criminal responsibility is to establish an accused's exemption by reason of a mental disorder only on a balance of probabilities. That Dr. Klassen fairly conceded a degree of uncertainty concerning his conclusion does not lessen the weight to be given to his professional opinion, in my view, particularly when it is not at variance with the contrary opinion given by any other psychiatrist. .
- [156] I echo the views expressed in *Prinoski*. The burden on the defence in this case is one of a balance of probabilities. In my view, Dr. Lacroix fairly conceded any areas where he felt his opinion might be affected by subtle changes in the evidence. I also find that he was persuasive in his explanations as to why certain differences in the pattern of offending did not consequentially affect his opinion. I accept Dr. Lacroix's opinion, and I find his conclusions compelling.

Conclusion and Disposition

- [157] In conclusion, having considered all the evidence, I find that Mr. Donnelly has established, on a balance of probabilities, that he was suffering from a mental disorder at the time of the commission of the offence which rendered him incapable of knowing that his actions on September 10, 2023 were morally wrong.
- [158] Therefore, I find Mr. Donnelly is not criminally responsible on account of mental disorder.
- [159] I decline to exercise my discretion to hold a disposition hearing. Instead, I refer this matter to the Review Board pursuant to s. 672.45(1.1) of the Code. Accordingly, pursuant to s. 672.47(1) of the Code, the Review Board shall hold a hearing and make a disposition 90 days after this verdict has been rendered.
- [160] I also order that Mr. Donnelly be confined to the Forensic Psychiatric Hospital pending his disposition hearing, pursuant to s. 672.46(2) of the Code.
- [161] Pursuant to s. 487.051(3)(a) of the Code, I order the taking of a DNA sample from Mr. Donnelly.
- [162] I order that any transcript of the proceedings, a copy of these Reasons for Judgment, any other document or information related to the proceedings, and all exhibits filed with it, including the report of Dr. Lacroix, be sent to the Review Board without delay pursuant to s. 672.45(1.1) of the Code.
- [163] I did not wish to conclude my reasons without a word to the victims and to those following the outcome of this case. That your peaceful evening of quiet enjoyment was shattered by a sudden and violent act is tragic and was undoubtedly traumatic. I am mindful that this decision will not remedy the feeling of pain and suffering you have endured, and will continue to endure, due to the tragic events of September 10, 2023. That Mr. Donnelly has been suffering from a mental illness for many years is beyond dispute. I appreciate that may come as little solace to Ms. Leong, the Machs and many others who may now live in a state of heightened fear that they themselves may be subject to random violence. The result of my findings in this judgment should not be taken as a minimisation of those real and valid fears. However, it must also be remembered that Mr. Donnelly is not going to be leaving this courtroom and returning to the community. He will be detained in a forensic psychiatric hospital under strict supervision and will be subject to the Review Board process. When properly resourced, that stream of institutional detention and treatment can serve well to protect members of the public.
- [164] Finally, I wish to express my appreciation to all counsel for your professionalism and assistance in dealing with this difficult matter.

"Gottardi J."

- [1] Dissenting on other grounds. The majority found it unnecessary to deal with the question of Dobson's relationship to Oommen. As the minority judgment is the only one to address this issue, Karakatsanis and Martin JJ. are not in dissent on this point.
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