

CANADA / JUDGMENT

R. v. Gathergood

2020 BCSC 1311

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Supreme Court of British Columbia

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2020 BCSC 1311 R. v. Gathergood

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Gathergood,

2020 BCSC 1311

Date: 20200722

Docket: 24319-2

Registry: Salmon Arm

Regina

v.

Matrix Savage Paladin Gathergood

Before: The Honourable Madam Justice S.A. Donegan

Oral Reasons for Judgment

Counsel for the Crown:

A. Buchanan

N. Wiberg

Counsel for the Accused:

J. Avis

Place and Date of Trial/Hearing:

Salmon Arm, B.C.

July 21, 2020

Place and Date of Judgment:

Salmon Arm, B.C.

July 22, 2020

- [1] At the outset, I wish to state that Matrix Savage Paladin Gathergood is present today, as he was yesterday for his trial, by way of video-link from the Forensic Psychiatric Hospital in the Lower Mainland. Mr. Gathergood applied yesterday under s. 650(2)(b) of the Criminal Code, R.S.C. 1985, c. C-46 [Code] to be permitted to attend this way. I was satisfied that I had the jurisdiction to make such an order (R. v. Ali, 2020 BCSC 966). Mr. Gathergood signed a written waiver of his right to be physically present for his trial.
- [2] I recognized that s. 650(2)(b) of the Code is to be used sparingly and with caution, but was satisfied that Mr. Gathergood's desire to attend his trial by way of video-link was grounded in valid and legitimate reasons that do not offend public policy. I was satisfied that to allow him to do so would be beneficial to him and not prejudice his fair trial rights or the rights of other participants. Mr. Gathergood is currently confined at the Forensic Psychiatric Hospital in the Lower Mainland and is under the care of a psychiatrist and other medical professionals there. To transport him to the Salmon Arm courthouse, confine him at a police station or nearby jail facility during his very short trial during the Covid-19 pandemic would mean that he would not receive the mental health care he requires for a period of time. It would also require his quarantine while here and his quarantine upon his return. I was satisfied that these were all compelling reasons to grant his request.

Introduction

- [3] Mr. Gathergood is charged on a two-count indictment with the first degree murder of Gordon Parmenter and the aggravated assault of Paul Derkach arising out of events that occurred at a church in Salmon Arm on April 14, 2019. The sole issue in this trial is whether Mr. Gathergood is not criminally responsible for these offences because at the time he committed the acts resulting in the death of Mr. Parmenter and the serious injuries to Mr. Derkach he was suffering from a mental disorder that rendered him incapable of knowing that his acts were wrong. The defence relies on the second branch of s. 16(1) of the Code.
- [4] The issue of Mr. Gathergood's lack of criminal responsibility has been raised by the defence with the consent of the Crown. The trial proceeded as essentially a joint submission. Counsel both submit that on the basis of the Admissions at Trial marked as Exhibit 1, the expert opinion evidence of forensic psychiatrist Dr. Andrew Kolchak, and on the applicable law, I should conclude that Mr. Gathergood was suffering from a serious mental disorder at the time he committed the murder and aggravated assault and that he was not capable of knowing that what he was doing was morally wrong.

- [5] I will begin by first reviewing the relevant principles of law before outlining the uncontested facts of this case and the psychiatric opinion evidence before turning to my analysis.

Legal Principles

- [6] In cases where the defence not criminally responsible by reason of mental disorder ("NCRMD") is raised, the court is first to consider whether the Crown has proven the actus reus of the offences beyond a reasonable doubt. If the Crown has proven the actus reus beyond a reasonable doubt, the court is next to examine whether the party that raised the issue of NCRMD has established that the defence applies on a balance of probabilities. If the court determines NCRMD does not apply, the court examines whether the Crown has proven the mens rea beyond a reasonable doubt.
- [7] In this case, the actus reus of both first degree murder of Mr. Parmenter and aggravated assault of Mr. Derkach is admitted. Having reviewed the admissions of fact, I am satisfied the Crown has proven the actus reus of each offence beyond a reasonable doubt. In this case, then, I can proceed directly to consider the NCRMD defence that has been raised: *R. v. Harvey*, 2014 BCSC 1692 at para. 16.
- [8] I think it is helpful to begin consideration of this defence with a brief overview of the fundamental principles that underlie the defence provided for in s. 16 of the Code.
- [9] In *R. v. Bouchard-Lebrun*, 2011 SCC 58, the Supreme Court of Canada explained that the verdict of NCRMD "protects the integrity of our country's criminal justice system and the collective interest in ensuring respect for its fundamental principles": para. 44. The Court went on to explain at para. 45 that among those fundamental principles is that criminal responsibility can result only from the commission of a voluntary act. For an act to be voluntary in criminal law, it must be the product of the accused person's free will, which involves both physical and moral control over one's actions. The moral dimension of the voluntary act reflects the idea that the criminal law views individuals as autonomous and rational beings. This essential basis for attributing criminal responsibility gives rise to a presumption that each individual can distinguish right from wrong. The criminal law relies on the presumption that every person is autonomous and rational whose acts and omissions can attract liability.
- [10] This presumption is not absolute, however. It can be rebutted. Insanity is an exception to that principle. A person suffering from a mental disorder within the meaning of s. 16 of the Code is not considered to be capable of appreciating the nature of his or her acts and/or understanding that they are inherently wrong. In this way, the person's actions are not actually the product of his or her free will. Convicting a person who acted involuntarily in this way would, the Court held, undermine the foundations of the criminal law and the integrity of the justice system.
- [11] The Court went on to say:

- [52] However, the defence of mental disorder remains unique. It does not result in acquittal of the accused, but instead leads to a verdict of not criminally responsible. That verdict triggers an administrative process whose purpose is to determine whether the accused is a significant threat to the safety of the public, to take any necessary action to control that threat and, if necessary, to provide [page 599] the accused with appropriate care. A verdict of not criminally responsible on account of mental disorder thus gives effect to society's interest in ensuring that morally innocent offenders are treated rather than punished, while protecting the public as fully as possible.
- [53] An accused who is found not criminally responsible becomes subject to the scheme established in Part XX.1 of the Criminal Code. Parliament adopted the current scheme after this Court had held in *R. v. Swain*, [1991] 1 S.C.R. 933, that a Criminal Code provision requiring the automatic and indeterminate detention of an accused found not criminally responsible violated the right to liberty guaranteed by s. 7 of the Charter. In *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625, McLachlin J. (as she then was) explained the principles underlying the application of Part XX.1 of the Criminal Code as follows:

In summary, the purpose of Part XX.1 is to replace the common law regime for the treatment of those who offend while mentally ill with a new approach emphasizing individualized assessment and the provision of opportunities for appropriate treatment. Under Part XX.1, the NCR accused is neither convicted nor acquitted. Instead, he or she is found not criminally responsible by reason of illness at the time of the offence. This is not a finding of dangerousness. It is rather a finding that triggers a balanced assessment of the offender's possible dangerousness and of what treatment-associated measures are required to offset it. Throughout the process the offender is to be treated with dignity and accorded the maximum liberty compatible with Part XX.1's goals of public protection and fairness to the NCR accused. [Emphasis added; para. 43.]

- [12] It is with these overarching principles in mind that I will now review the conditions that must be met for s. 16 of the Code to apply.

- [13] Section 16(2) of the Code provides that:

Every person is presumed not to suffer from a mental disorder so as to be exempt from criminal responsibility

- [14] An accused who seeks to avoid criminal responsibility on this ground must prove on the balance of probabilities that at the material time he was suffering from a mental disorder that rendered him incapable of appreciating the nature and quality of the act or omission or of knowing it was wrong. In *R. v. Chaulk*, [1990] 3 S.C.R. 1303, the Supreme Court of Canada held that imposing this burden of proof on an accused person does infringe the presumption of innocence guaranteed under s. 11(d) of the Canadian Charter of Rights and Freedoms [Charter], but held that this was nonetheless a reasonable limit on that presumption in a free and democratic society.

- [15] An accused person who wishes to successfully raise the defence of mental disorder must therefore meet the requirements of a two-stage statutory test. The first stage involves characterizing the mental state of the accused. The key issue to be decided at this stage is whether the accused was suffering from a mental disorder in the legal sense at the time of the alleged offence. The second stage of the defence provided for in s. 16(1) concerns the effects of the mental disorder. At this stage, it must be determined whether, owing to his or her mental condition, the accused was incapable of knowing that the act or omission was wrong: Bouchard-Lebrun at para. 56.
- [16] In this case the focus is on the latter of these. Therefore, I must first consider whether or not Mr. Gathergood suffered from a mental disorder at the time of the murder and aggravated assault.
- [17] The Code does not contain a precise definition of "mental disorder" for the purposes of s. 16, but the phrase is defined in the general definition section found in s. 2 of the Code. There, "mental disorder" is defined simply as "disease of the mind." As the Court in Bouchard-Lebrun at para. 58 pointed out, this circular definition has required the courts to delineate this legal concept over time.
- [18] The scope of the legal concept "mental disorder" is very broad and flexible. The Court in Bouchard-Lebrun explained:
- [59] The line of authority based on Cooper clearly confirms that the scope of the legal concept of "mental disorder" is very broad. In Cooper, Dickson J. stated that the "disease of the mind" concept includes "any illness, disorder or abnormal condition which impairs the human mind and its functioning" (p. 1159). In Rabey, Dickson J. explained that "the concept is broad, embracing mental disorders of organic and functional origin, whether curable or incurable, temporary or not, recurring or non-recurring" (p. 533). While it must be borne in mind that a verdict of not criminally responsible triggers a special mechanism for the management of the accused, the inclusive nature of the definition of "mental disorder" can be explained in particular by Parliament's wish to give the public a high level of protection from persons who could be a threat to others (J. Barrett and R. Shandler, *Mental Disorder in Canadian Criminal Law* (loose-leaf), at p. 4-12).
- [60] The "mental disorder" concept continues to evolve, which means that it can be adapted continually to advances in medical science (R. v. Simpson (1977), 35 C.C.C. (2d) 337 (Ont. C.A.)). As a result, it will undoubtedly never be possible to define and draw up an exhaustive list of the mental conditions that constitute "disease[s] of the mind" within the meaning of s. 2 Cr. C. As Martin J.A., writing for the Ontario Court of Appeal, stated in R. v. Rabey (1977), 17 O.R. (2d) 1, this concept "is not capable of precise definition" (p. 12). It is thus [page602] flexible enough to apply to any mental condition that, according to medical science in its current or future state, is indicative of a disorder that impairs the human mind or its functioning, and the recognition of which is compatible with the policy considerations that underlie the defence provided for in s. 16 Cr. C.

- [19] The Court also explained that the characterization of a mental condition as a "mental disorder" is a legal exercise with a medical dimension. The Court held:
- [61] For the purposes of the Criminal Code, "disease of the mind" is a legal concept with a medical dimension. Although medical expertise plays an essential part in the legal characterization exercise, it has long been established in positive law that whether a particular mental condition can be characterized as a "mental disorder" is a question of law to be decided by the trial judge. In a jury trial, the judge decides this question, not the jury. As Martin J.A. stated in an oft-quoted passage from *Simpson*, "[i]t is the function of the psychiatrist to describe the accused's mental condition and how it is considered from the medical point of view. It is for the Judge to decide whether the condition described is comprehended by the term 'disease of the mind'" (p. 350). If the judge finds as a matter of law that the mental condition of the accused is a "mental disorder", it will ultimately be up to the jury to decide whether, on the facts, the accused was suffering from such a mental disorder at the time of the offence.
- [62] Thus, the trial judge is not bound by the medical evidence, since medical experts generally take no account of the policy component of the analysis required by s. 16 Cr. C. (*Parks*, at pp. 899-900). Moreover, an expert's opinion on the legal issue of whether the mental condition of the accused constitutes a "mental disorder" within the meaning of the Criminal Code has "little or no evidentiary value" (*R. v. Luedecke*, 2008 ONCA 716, 269 O.A.C. 1, at para. 113).
- [63] The respective roles of the expert, the judge and the jury were summarized in *R. v. Stone*, 1999 CanLII 688 (SCC), [1999] 2 S.C.R. 290. Writing for the majority, Bastarache J. stated the following:

Taken alone, the question of what mental conditions are included in the term "disease of the mind" is a question of law. However, the trial judge must also determine whether the condition the accused claims to have suffered from satisfies the legal test for disease of the mind. This involves an assessment of the particular evidence in the case rather than a general principle of law and is thus a question of mixed law and fact. The question of whether the accused actually suffered from a disease of the mind is a question of fact to be determined by the trier of fact. [Citation omitted; para. 197.]

- [20] In the event that I find Mr. Gathergood suffered from a mental disorder within the meaning of s. 16 at the time of the murder and aggravated assault, I must then turn to the second stage to determine whether there is a direct connection between his mental disorder and the murder and aggravated assault. There are two routes or branches to finding an accused NCRMD. As I have noted, counsel relies only on the second branch. The second branch requires me to examine whether Mr. Gathergood was incapable of knowing that his acts were wrong.
- [21] Justice Power summarized the principles that are to inform the analysis on the second branch in *R. v. Vandenberg*, 2019 BCSC 1838:

[58] As outlined by Chief Justice Lamer, for the majority, in *R. v. Chaulk* "wrong" means "morally wrong", as opposed to merely "legally wrong". Chief Justice Lamer stated that the defence of insanity is available where, due to a disease of the mind, the accused is "incapable of knowing that the act is morally wrong in the circumstances according to the moral standards of society" The court further clarified that the defence of insanity is available regardless of whether the accused know the act is contrary to law

[59] Chief Justice Lamer, borrowing from the House of Lords' wording in *M'Naghten's Case* clarified what the trier of fact is to ask herself when determining whether an accused was incapable of knowing the act was morally wrong [and that is]: "whether an accused was rendered incapable by the result of his mental disorder of knowing that the act committed was one that he ought not have done"

[60] In determining whether an accused was incapable of knowing the act was wrong, Justice McLachlin, as she then was, for the Court in *Oommen* emphasized [the following]:

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.

[22] The evidence of medical witnesses with respect to the cause, nature, and symptoms of the condition and how it is viewed and characterized from a medical point of view is highly relevant to the determination of these issues: *R. v. Rabey* (1977), 17 O.R. (2d) 1 (Ont. C.A.).

[23] Where, as in the case at bar, there is uncontradicted expert medical opinion evidence before the court about an accused's mental illness, his capacity to appreciate the nature and quality of his actions and his capacity to know whether or not the act was wrong, the court is required to give that opinion evidence careful consideration and not unreasonably disregard it: *R. v. Molodowic*, [2000] 1 S.C.R. 420 at para. 10.

[24] That said, the determination of the issues raised are questions of law and fact and are to be decided by the court based on the evidence adduced at trial. Accordingly, I will now turn to setting out the facts derived from the evidence adduced at trial.

Facts

[25] Section 655 of the Code permits an accused person to admit any fact alleged against him for the purpose of dispensing with proof of that fact. Where such facts are admitted, the Crown is not required to call evidence to prove those facts and I am required to take those facts as conclusively proven.

[26] Counsel have put before me a lengthy and comprehensive series of admissions of fact contained in Exhibit 1. Those admissions incorporate other admissions of fact regarding Mr. Gathergood's medical and psychiatric history that are set out in detail in Dr. Kolchak's November 18, 2019, report marked as Exhibit 2. That report was tendered by the Crown in its case with the agreement of defence.

- [27] As I found earlier, these agreed facts put beyond any doubt the finding that Mr. Gathergood committed the actus reus of both offences of which he is charged.

The Events of April 14, 2019

- [28] Mr. Gathergood admits, and I find, that he attended the Church of Christ in Salmon Arm, British Columbia, on April 14, 2019, at 10:30 a.m. There was a church service in session at the time with a few dozen parishioners in attendance seated in the main worship hall. Mr. Parmenter was seated in the front row of the worship hall. Mr. Gathergood parked his pickup truck near the front entrance of the church and went inside with his face covered. Armed with a 12 gauge pump-action shotgun, Mr. Gathergood shot Mr. Parmenter in the back of his head from a distance of about 10 to 20 metres. Mr. Gathergood initially departed the church in his truck, then returned a number of minutes later.
- [29] When Mr. Gathergood arrived back at the church in the same truck, a number of witnesses took photographs of the truck and observed him park along 5th Avenue and walk back into the church with the same firearm in hand. Mr. Gathergood went back into the church and, from a closer distance, fired two more shotgun rounds at Mr. Parmenter, who was laying on the ground. He was in all likelihood, already deceased. During this second volley of gunfire, Mr. Derkach, who was providing first aid to Mr. Parmenter, was shot in the leg.
- [30] Several witnesses in the church, one of whom was the son of the deceased, rushed Mr. Gathergood, wrestled the shotgun from him, and held him until police arrived. Mr. Parmenter died at the scene of the inflicted gunshot wounds. Mr. Derkach was rushed to hospital with serious, but non-life-threatening injuries. Mr. Derkach suffered a severe tibia fracture from the gunshot that was surgically repaired in hospital. Mr. Derkach was also treated for post-traumatic stress disorder symptoms.
- [31] Mr. Gathergood was arrested at the scene and has remained in custody since that date. He was taken to Salmon Arm General Hospital and checked over before being released into police custody. While at Salmon Arm General Hospital, Mr. Gathergood's blood was taken and analyzed. There were no signs of drugs or alcohol in his blood.
- [32] The subsequent police investigation revealed that Mr. Gathergood was well known to the Parmenter family.
- [33] The Parmenters took in many foster children over the years and were regularly lending their time in service to children and youth in the community. Mr. Gathergood grew up in a residence very close to the Parmenter residence in Silver Creek, British Columbia, an area in the southwest of Salmon Arm. Mr. Parmenter had been like a father figure in Mr. Gathergood's life and had spent considerable time with him over the years.

- [34] The police investigation also revealed that, over the last month, Mr. Gathergood's mental health had been deteriorating. His brother, Sterling Gathergood, and Mr. Parmenter had both tried to intervene with Mr. Gathergood and get him help through community-based mental health services. I will detail some of those services and facts shortly.
- [35] Mr. Gathergood gave a video-recorded statement to police in the evening of April 14, 2019 at the Salmon Arm RCMP detachment. During the statement, which was approximately one-and-a-half hours in length, Mr. Gathergood stated that he had attended the church with the intent to shoot and kill Mr. Parmenter. He knew Mr. Parmenter would likely be there as he had attended the church with the Parmenters in the past. Mr. Gathergood described how he entered the church, fired one round at Mr. Parmenter, then departed to his truck. According to Mr. Gathergood, he was unsure if he had killed Mr. Parmenter and decided to return back into the church, at which time, he fired two more rounds at Mr. Parmenter to ensure that he was dead. Mr. Gathergood stated he did not intend to shoot Mr. Derkach and described it as "collateral damage".
- [36] Mr. Gathergood stated that he killed Mr. Parmenter because he had been threatened by him. He stated that between December 2018 and April 2019, Mr. Parmenter told him that he was forced to sell his house in Silver Creek because of Mr. Gathergood. Mr. Gathergood stated that he believed Mr. Parmenter blamed him for losing the house. He could not explain why Mr. Parmenter blamed him. Mr. Gathergood believed this was the reason Mr. Parmenter wanted him dead and why Mr. Parmenter had threatened to kill him.
- [37] Mr. Gathergood also stated that in January he attended church with Mr. Parmenter a few times and as they were leaving the church on one occasion, Mr. Parmenter told him never to come back to his church or he would "shoot him with a Glock." Mr. Gathergood stated that a week or two weeks before the shooting, he saw Mr. Parmenter at the property Mr. Parmenter formerly owned in Silver Creek and that Mr. Parmenter pointed at him and gave him the finger which he construed as a further threat. He decided he needed to "end it" before Mr. Parmenter killed him.

Evidence of Mental Disorder before April 14, 2019

- [38] Mr. Gathergood admits a number of facts regarding his medical and psychiatric history prior to the shootings. All of these admitted facts support a finding that he was exhibiting a mental disorder prior to the offences.
- [39] Specifically, Mr. Gathergood admits that his closest sibling is Sterling Gathergood, that Sterling Gathergood's evidence is accurately set out in Dr. Kolchak's report and should be accepted by the court for the truth of its contents. This evidence is found in 12 numbered paragraphs in Dr. Kolchak's report under the heading, "Collateral Information from Mr. Sterling Gathergood, Brother of the Accused," at page 11. These facts are:

1. According to his brother Sterling, Matrix "started going strange" around November 2018. Some changes were nevertheless noted before that time. Sterling reported that, in July 2018, Matrix was "worried about being watched," thought that he "had implant in him" and was being "secretive." Sterling stated that, even in the two years prior to the offence, "a lot of his behaviour could be described as eccentric." Sterling reported that Mr. Gathergood was convinced that Bigfoot was living on their mountain because he heard weird sounds while he was in the bushes. He also believed in others, "strange creatures." In October 2018, Matrix would shuffle things in his room and then accuse people of entering and stealing his belongings.
2. Matrix's friend Victor added that he had been "believing in conspiracy theory and that people were after him" for one year prior to the offence. Victor stated that, while Matrix had friends in the past and would socialize, he had slowly started isolating himself. Matrix believed that he had swallowed a microphone while eating goods baked by his ex-boss's wife. He had refused to speak out loud in the 6 months prior to the offence and would only write notes. Matrix believed the microphone was growing in him and that the police was going to kidnap him and kill him in order to obtain the recorded information about his close ones.
3. In the months prior to the offence, Matrix had reported feeling responsible for Gordon Parmenter having to sell his house in Salmon Arm recently and for losing his house in Arizona years ago. Matrix also believed his coach from high school got fired, divorced, and went to jail because of him. He had explained to his brother that, while training, his coach had to help him with exercise that required "close touching" and that this had led to negative consequences for the coach. He also thought his high school science teacher wanted him dead. When questioned further, Matrix stated "I can't tell you." Matrix also believed his brother Sterling and his wife, as well as other people close to him, had wanted him dead.
4. Sterling reported taking Matrix to the hospital on several occasions for his "attacks." He said the doctors offered Matrix medication, but that they "wrote him off since they couldn't force him to take it."
5. Sterling reported that Matrix had run away one night in January. Sterling explained that he was sleeping in front of his bedroom door because he was worried that Matrix would kill himself. He had been expressing a lot of guilt about how he had acted over the years. Sterling added that Matrix had been difficult over the years, "overreacting and blowing up for little things." He described him as angry for most of his teenage years.
6. Shortly before the index offence, Matrix had left a gun with ammunition on the doorstep of a girl that lived nearby. Sterling thought that Matrix might have had feelings for her and had left the gun because he felt she was in danger. Sterling reported that Ms. Rothwell, Matrix's case manager, went to the police and that they had refused to help them.

7. Sterling stated that they had "difficult childhood" and, as they had lived "totally sheltered," it was difficult for him to identify what part of his brother's behaviour as a child was abnormal. Sterling reported that their mother is diagnosed with schizophrenia and bipolar dispor. Their father has been receiving social security for years. Sterling reported that there was "anger and hate in the household" and described physical and verbal violence at home.
 8. Sterling reported that Matrix had believed in illuminati for a while and this could be a shared family belief. Sterling himself believes in an organized society of the kind, but he stated that Matrix's concerns seemed unreasonable in the past year. Sterling added that their father had talked about the end of the world repeatedly over the course of their childhood.
 9. Sterling reported that Matrix was "really close" to Gordon and saw him as a "father figure." Gordon had introduced Matrix to hunting and gun maintenance when he was younger.
 10. Sterling reported that Matrix has collected guns since his age of majority. He had 25-30 guns in his possession. He wanted to be a gunsmith but felt he didn't have the capacities to achieve this goal. It was a shared interest between Sterling and Matrix that made them closer in recent years.
 11. Sterling reported that Matrix had not threatened Gordon before the events and had not discussed his plan. Sterling added that "if he thought anyone were to die, it would have been their parents or himself." Sterling explained that Matrix had hated him over the years for "moving on with his life." Matrix had made death threats to him repeatedly over the years. In the summer of 2018, Matrix had accused Sterling of stealing his bullets and threatened to kill him at that time. Matrix had apologized when Sterling threatred to call police, but remained suspicious according to Sterling.
 12. Sterling had talked to Matrix while he was in detention and he stated that he was not interacting with his peers and would simply adhere to his normal routine. Sterling called the detention centre because Matrix had shared with him that his food was getting stolen by his peers and he was worried that Matrix would have "another manic episode." Sterling reported that he and his father have sent letters to Matrix, but he refuses to add them to the visit list. Sterling also adds that his brother has refused to discuss the offence with him, stating that he "can't" talk about it.
- [40] Mr. Gathergood also admits that Dustin Hlina was his close friend at the time of the shootings. He admits that on the night prior to the shooting, he stayed with Mr. Hlina at Mr. Hlina's residence. On the day of the shooting, Mr. Hlina said that Mr. Gathergood left the residence between 9:00 a.m. and 11:00 a.m. He did not say anything particularly troubling and did not mention Mr. Parmenter.
- [41] Mr. Hlina had noticed a decline in Mr. Gathergood's mental health in the recent months prior to the shooting.

- [42] Mr. Hlina told police that Mr. Gathergood claimed he could hear the voice of God and often talked about secret societies.
- [43] He also said that Mr. Gathergood was extremely paranoid and would only communicate by way of notes. Mr. Gathergood would not talk out loud, as he believed he had been implanted with a microchip that was recording him. Mr. Hlina provided police with seven pages of notes between himself and Mr. Gathergood, written between January 2019 and the day of the shooting. These notes are attached as Appendix A to Exhibit 1. I have reviewed these notes and observe that, among other things, Mr. Gathergood communicated his belief that he had a microphone implanted by police and was being monitored by them, was likely to die or be placed in a "padded room", and that people wanted him dead.
- [44] By the end of March 2019, Mr. Hlina had several conversations with his mother about Mr. Gathergood's declining mental health. Mr. Hlina's mother contacted Mr. Gathergood's father and brother to ensure that they were aware of his recent decline.
- [45] Mr. Gathergood also admits that his medical and psychiatric history is accurately set out in detail in Dr. Kolchak's report of November 18, 2019, and that those details should be accepted by the court for the truth of their contents.
- [46] Dr. Kolchak detailed Mr. Gathergood's medical and psychiatric history at length in pages 2 through 13 of his report. He organized the evidence into categories, starting with background information he obtained from Mr. Gathergood directly, followed by additional background information from medical files, then medical and psychiatric history from medical files, and finally collateral information from Sterling Gathergood, the latter of which I have already outlined.
- [47] This history includes Mr. Gathergood making multiple attendances upon medical professionals for mental and physical ailments and complaints in the months leading up to the shootings, including attendances upon his case worker with the Early Psychosis Intervention Program, his family physician, emergency room physicians, and two psychiatrists. The history includes some of Mr. Gathergood's family members and Mr. Parmenter taking steps to try to get Mr. Gathergood some help for his various physical and mental complaints.

[48] The facts admitted are as follows:

BACKGROUND INFORMATION FROM MR. MATRIX GATHERGOOD

PSYCHOSOCIAL HISTORY

1. Mr. Gathergood was arrested on April 17, 2019. He had been living in his vehicle prior to his arrest and stated that it was "financial choice." Prior to that, he was residing with his 30-year-old brother who is employed by an internet business. Mr. Gathergood explained that he had left his parents' house to gain more autonomy in the middle of 2018. Although he did not feel more independent at his brother's place, he denied any conflict with him. He stated that he

was paying rent at his brother's place and that he also contributed to the household by cooking.

2. Mr. Gathergood reported that, prior to his arrest, he was working as a concrete labourer. As it was a seasonal work, he reported not working often. He stated that he liked his work and that it went well. He denied ever being fired from a job.
3. Mr. Gathergood stated that he had no issues in school. He had some academic difficulty in English. He stated that he finished high school.
4. Mr. Gathergood reported that he grew up with both his parents. He stated that he lived most of his life in Salmon Arm, but he moved to Alberta to work as a concrete labourer at one point. He was not raised religious.
5. Mr. Gathergood stated that he had "a couple of friends, people he went to school with," which he saw a few times a week. He explained that he was seeing them less often prior to his arrest as he moved to his brother's house, further from town.

MEDICAL AND PSYCHIATRIC HISTORY

6. Mr. Gathergood stated that he presented to the Vernon Jubilee Hospital in January and February of 2019 for his "depression." He was prescribed Risperidone (antipsychotic), which he took for one week and felt better afterwards. He was not admitted to the hospital. He has no previous psychiatric history. He has never attempted suicide.
7. Mr. Gathergood stated that he was diagnosed with a stomach ulcer that was seen on imaging in the ER and for which he was treated. He explained the "holes in his stomach" as a consequence of him swallowing a microphone.
8. Mr. Gathergood stated that he was not taking medication at the time of his arrest.

FAMILY PSYCHIATRIC HISTORY

9. Mr. Gathergood reported that his mother suffers from bipolar disorder and schizophrenia. He adds that "her mouth moves," which might refer to side effects from medication.

SUBSTANCE USE

10. Mr. Gathergood stated that he had been smoking marijuana for around 5 years. He was smoking most of the day and would buy 0.5 oz of cannabis every 2 days. He reported that after smoking cannabis he felt slowed, had increased appetite and slept better. He stated that he had started smoking marijuana after high school and slowly increased its use. He had only used marijuana a few times prior to his graduation from high school. He reported that he had stopped smoking marijuana in August or July 2018. Mr. Gathergood explained that the marijuana started smelling "like burnt rubber" in June 2018 and the smell slowly increased. He took it as proof that it had been tampered with, although he did not know who was responsible. He stated that he felt better once he had stopped smoking and does not

have any craving at this point.

11. Mr. Gathergood stated that he does not drink alcohol and that "it's not his thing." He denied using any drugs other than marijuana.

CRIMINAL HISTORY

12. His first contact with the law was at the time of the index offence. He denied any previous criminal history.

ADDITIONAL BACKGROUND INFORMATION ACCORDING TO MEDICAL FILES

1. In the initial assessment with the Early Psychosis Intervention (EPI) program on November 29, 2018, the case manager Shawna Rothwell indicated that Mr. Steel was currently residing with his older brother and his wife in Salmon Arm. Mr. Gathergood was working as a concrete finisher and a log peeler and supported himself financially. He was single and had no children. It was reported by Mr. Gathergood that his mother had a diagnosis of schizophrenia and bipolar disorder. He had no legal history at that time.
2. In her initial assessment, Ms. Rothwell reported that Mr. Gathergood was born in Maple Ridge, but grew up in Silver Creek where his parents still reside. He had an older brother (Sterling) and a younger sister (Samoa). After high school, he moved with his brother to Edmonton and later moved up north for work. -
3. Ms. Rothwell reported that he had been using cannabis heavily for years and might have experimented with mushrooms in the past. He quantified his marijuana use as "a lot," but reported that he had stopped using substances three months prior to this assessment.
4. At the time of this assessment, Ms. Rothwell stated that had never sought medical follow-up and had "evaded the medical system for several years." She noted that "personal and family perspective of health management is through natural approaches."
5. In the initial assessment is relayed that Mr. Gathergood was a wrestler and football player during high school and "likely experienced multiple concussions," according to his brother Sterling. No information was available regarding his developmental milestones or his childhood, although Ms. Rothwell referred to "various trauma-related experiences growing up."
6. In his December 25, 2018, assessment, Dr. Beaumont stated that Mr. Gathergood's longest job had been working on a concrete plant for a period of 2 years. He had never been fired from a job. He has completed his Grade 12. He had never had any serious long-term intimate relationships. He did have long-term friends from high school. His brother Sterling was his main support.
7. Dr. Beaumont added in his assessment that Mr. Gathergood's mother had been unwell all of his life and that he had a difficult childhood. Mr. Gathergood had mentioned that they were "quite poor when he was growing up" and that it was quite hard "growing up on social

assistance." He had six siblings. No "clear academic or developmental delay" was reported. He did not present "features to suggest any oppositional defiance disorder or conduct disorder." He had been described by his brother as an angry adolescent, affected by mother illness. His brother also denied any aggression, violence, or symptoms of hypomania or mania in the past.

MEDICAL AND PSYCHIATRIC HISTORY FROM MEDICAL FILES

1. November 29, 2018: Mr. Gathergood had his initial assessment with Shawna Rothwell, case manager from the EPI program. He was referred to EPI by Mr. Gordon Parmenter, described as "concerned family friend." Mr. Parmenter had reported that Mr. Gathergood "had beliefs that were not based in reality, such as thinking that he was somehow responsible for Gord and his wife losing the home they used to live in." He had also expressed some "confusion about God and Satan and not being sure which way he should go." Mr. Gathergood had also shared in an email that he wanted to "apologize to them before he would be gone." He also referenced an "evil spirit having put something into his heart that was causing him pain." He refused to be checked out by a medical doctor "as he was afraid that if it was discovered they would kill him." Mr. Gathergood did not feel comfortable with Shawna taking notes during the interview and had expressed concerns beforehand that she might record the session. Ms. Rothwell reported that "it became evident that Matrix was experiencing persecutory delusion involving a 'Society' that he believes controls everything." He believed that he had "shared some information with a friend about this 'Society' who then told his mom." He believed she was "involved in this 'Society' and now they are monitoring what he does." He expressed concern that if he shared too much information, he would be "offed," and wanted to protect others from knowing too much. He thought it was "only a matter of time before his family is 'offed' because of what he had already said." He stated that "people are being killed all the time due to their knowledge of the 'Society'". He explained that he "gave his brother his gun and the key for safekeeping so that he wouldn't be tempted to use them to keep him or others safe." He also believed that the police thought, "he was a terrorist and had implanted a microphone into him to record what he was saying via his vocal vibration." He communicated through writing to avoid being recorded. He denied auditory hallucinations, thought insertion, thought broadcasting, thought withdrawal, "but generally felt a loss of privacy of his thoughts due to the 'Society's' ability to monitor him." Ms. Rothwell concluded that "Matrix is a young man who is presenting with psychosis in the form of persecutors and somatic delusions. The family history of a parent with psychotic disorder, recent heavy cannabis use, and various trauma-related experiences growing up puts him at high risk of developing a psychotic disorder." When Ms. Rothwell shared her impression, he refuted this, stating that he "wasn't crazy." He was nevertheless agreeable to further appointments and weekly meetings were planned. Mr. Parmenter had also arranged for Matrix to see Dr. Heunis to rule out potential underlying physical cause for his abdominal pain.

2. December 5, 2018: Mr. Gathergood was seen by his family physician, Dr. Adriaan Heunis. Mr. Gathergood complained of stomach pain around the umbilicus and of numb spot on his back. Dr. Heunis detected a possible umbilical hernia for which he requested an ultrasound of his abdomen. He also asked for a chest X-ray, for which the results were normal.
3. December 12, 2018: Ms. Rothwell met with Mr. Gathergood on December 12, 2018, at Mr. Parmenter's house. Their appointment had been delayed because Matrix had secured employment. Although he appeared relaxed, he continued to present as suspicious and guarded, with the same delusions. He was concerned about sharing too much information. He "had, however, been able to let go of worries that he was responsible for Gord and his wife selling their house in Silver Creek by Gord assuring otherwise." Mr. Gathergood had seen Dr. Heunis in the past week and was prescribed a workup for his abdominal pain. Mr. Gathergood had plans to take a concrete finishing course in the spring and had secured a line of credit to afford it. He declined any help from community resources. Feedback from Mr. Parmenter and Matrix's brother Sterling indicated that he seemed to be doing better, was less anxious, but remained delusional.
4. December 19, 2018: Ms. Rothwell noted that collateral information was obtained from Gordon Parmenter, Mr. Gathergood's brother Sterling and his father Toby. They were concerned as he "continued to present with paranoia and had been acting in response to his delusion." While at his parents' home on December 10, 2018, he had wanted to set up a "hunting camera to monitor unfriendly visitors." Mr. Gathergood also had "previously slept on the couch with a loaded shotgun," but his firearms were now secured at his brother's home. Mr. Gathergood had also reported that he was fired from work and believed that his boss "was upset with him even though he hadn't said anything to suggest this." He was also worried that his boss "might come and destroy his car so he had set up cameras under Sterling's house." When he had spent the night at the Parmenters', he was offered a bed but preferred to sleep in a chair in the living room. Mr. Gathergood also believed that his ex-boss "had an affair with his mom and was actually his biological father, in part evidenced by having the same blue eyes." He believed that it was his boss's wife who had been contacted by the RCMP to feed him a microphone to monitor him. He had also written a letter to an NFL player whom he had met in the past to apologize for hurting him, his business and his family. In the letter, he invited this football player to "punch him in the face and to videotape this to satisfy his displeasure and watch it repeatedly for ongoing satisfaction." He was pleading for his forgiveness.
5. December 20, 2018: Mr. Gathergood was seen again by Ms. Rothwell with Mr. Parmenter. Mr. Gathergood reported that he had been reassured by Dr. Heunis's evaluation and that he was "no longer concerned" that his pain might be due to a microphone implanted by the RCMP. He "no longer felt responsible" for the Parmenters losing their home or former teachers losing their jobs. He was, however, refusing to discuss his ex-boss destroying his vehicle, stating that "he was unable to talk about what was going on." He felt that he was already putting Ms. Rothwell and Mr. Parmenter at risk because "they knew things they shouldn't."

When introducing the notion of paranoia, Mr. Gathergood answered that he was "not paranoid, just aware."

6. December 22, 2018: Mr. Gathergood was seen by his GP Dr. Heunis to discuss his test results, which were normal. He stated at this time that he was feeling better.
7. December 24, 2018: Mr. Gathergood presented to the emergency room with his brother for concern over worsening depression, suicidal thoughts and paranoia. Mr. Gathergood talked about being monitored by the RCMP. He reported low mood symptoms for about six months and stated he had thought of hanging himself in the past, but was denying any current suicidal ideation or intent. An urgent psychiatry consultation was planned for the next day.
8. December 25, 2018: Mr. Gathergood was assessed by Dr. Chari Beaumont, psychiatrist, on an urgent basis at the Vernon Jubilee Hospital. Mr. Gathergood stated having been unwell for about one year. He reported feeling depressed and frustrated with his circumstances, "which he felt was somewhat unreasonable as he was earning a good salary and was living with his brother who was taking good care of him." He also reported having episodes where he would hear voices in the past few months. He had heard things that did not make any sense and had tried to ignore these voices. He described "having one unfamiliar voice that had been talking to him intermittently over the past few months." He also described it as "almost like someone reminding you of something else." At other times, the voice would "tell him some nasty things." He had no plan to act on these thoughts and denied any command auditory hallucinations. Although he referred to having suicidal thoughts of hanging himself in the past, he described "that he did not want to kill himself because he knew it would affect his family." He acknowledged feeling worthless and having a lot of guilt about missed opportunities. His energy and appetite were both low. His concentration and memory had also deteriorated. It was the first episode of the sort and he did not acknowledge any hypomanic or manic symptoms in the past. At the time of the assessment, he stated that he "no longer believed that the RCMP had implanted anything in his body" and added that he might have been hearing these voices "because of stress." Dr. Beaumont described his affect as restricted and his thought form as somewhat impoverished. He concluded that his differential diagnosis would include possible substance-induced psychotic disorder and substance-induced mood disorder, versus schizophrenia versus major depressive disorder with psychotic features versus bipolar disorder with psychotic features given his family history. He prescribed Escitalopram (antidepressant) and Risperidone (antipsychotic). As Mr. Gathergood declined admission to the hospital and was not certifiable at that time, an outpatient follow-up appointment was planned for a few days later.
9. December 27, 2018: Mr. Gathergood was seen again by Dr. Beaumont. He reported that he had only been taking the Risperidone, and at an inferior dose than prescribed. He reported feeling "calmer" and more "hopeful." Mr. Gathergood did not want to take the Escitalopram at this stage as he felt that "taking one medication is enough for him." He agreed to increase the Risperidone. Mr. Gathergood was considering going back to work and did not feel that his symptoms would interfere in any way. His brother stated that Mr. Gathergood had been

"doing reasonably well over the past few days." He did not describe any psychotic behaviour or features and there was no evidence of mood swings. Dr. Beaumont described Mr. Gathergood as slightly more engaging in the conversation. He believed that Mr. Gathergood appeared to be doing slightly better, but was still unwell. Mr. Gathergood still declined admission to the hospital. He was referred to a psychiatrist in Salmon Arm and it was planned that he would be followed up by his case manager.

10. December 28, 2018: Mr. Gathergood met with Ms. Rothwell in the company of his brother Stirling. Although he remained guarded on presentation, he denied any paranoia and concerns about the "Society." He was "not keen on taking the medication" but understood "that they were prescribed to help him feel better." He presented no side effects.
11. January 4, 2019: Mr. Gathergood missed an appointment with Ms. Rothwell due to a date change. Mr. Gathergood's brother Sterling had said that he "appeared to be OK."
12. January 7, 2019: Mr. Gathergood was assessed by Dr. Ericka Britto, psychiatrist. He had discontinued the Risperidone three or four days before the assessment. He denied any psychotic symptoms at the time, but appeared guarded on contact and presented with a restricted affect. He stated that he felt "happy and alert." He also noted that he "felt bad that he had to get so many people involved in his issues and they have blown this out of proportion." He stated that he had "developed some insight after a week of antipsychotic medication" and that the "conspiracy theories were simply not true." Dr. Britto concluded that diagnosis of substance-induced psychotic disorder, substance-induced mood disorder, and prodrome for schizophrenic illness should be ruled out. She "strongly recommended" that he continues his antipsychotics to prevent a relapse of his psychotic symptoms. She discussed her assessment with Mr. Gathergood, his brother, and Ms. Rothwell. He was not certifiable under the Mental Health Act at this time and a follow-up appointment was planned for four weeks later.
13. January 4, 2019: Mr. Gathergood presented to the emergency room of Shuswap Lake Hospital for abdominal pain. The final diagnosis was of gastritis and the pain had improved with the use of a Pink Lady (medication for heartburn). He was started on medication to treat his gastritis. He was referred to his family doctor for a follow-up.
14. January 9, 2019: Mr. Gathergood's brother Stirling reached out to Ms. Rothwell and expressed concern about his brother's abdominal pain. Mr. Gathergood was not willing to follow up with his GP, but was waiting until he heard back from the hospital. Matrix also seemed less motivated and withdrawn, had not been to work, and was reluctant to continue his medications as he was concerned that they would make his stomach issue worse. When Ms. Rothwell discussed this with Mr. Gathergood directly, he reported that his pain was stopping him from working. He denied thinking that anything had been implanted in his stomach at this time. He agreed with encouragement to meet with Dr. Heunis.

15. January 10, 2019: Mr. Gathergood presented again at the emergency department for epigastric pain. He was described as "extremely confrontational right from first encounter, suspicious of past medical encounter and of the medication he was prescribed." He was also seen "standing in the emergency bay in his shorts stating that he was overheating." The differential diagnosis was of a potential gastrointestinal ulcer versus simple gastritis. Two recent *H. pylori* serology results were negative. Mr. Gathergood was encouraged to continue the treatment prescribed. He was referred for urgent outpatient ultrasound to rule out pancreatitis and biliary disease, and to general surgery for further investigation. He was advised to consult his family doctor for the results.
16. January 11, 2019: Ms. Rothwell discussed with Mr. Gathergood over the phone. He stated that he was "fine," but did not want to take the medication prescribed by the emergency department doctor. His explanations of his diagnosis and of the investigation prescribed were contradictory with what was noted in the ER's note. Mr. Gathergood claimed that he "had an ultrasound while in the emergency department and that every area was checked except that where his 'turmoil' is." He stated that the area was avoided, but it wasn't clear if he thought the doctors had malicious intention.
17. January 16, 2019: Mr. Gathergood was seen by Dr. Heunis for his stomach pain. He had been to the ER several times and had been taking numerous naturopathic remedies in excessive doses. Dr. Heunis described that he was "catastrophizing about the pain." Mr. Gathergood was convinced he had an ulcer and did not want an anti-acid. He had not yet had his ultrasound and a call was made to expedite a consult for a gastroscopy.
18. January 16, 2019: Ms. Rothwell received a voicemail message from Mr. Gathergood's brother expressing concern. He reported that his brother's abdominal pain was constant, that he was seeking natural remedies from the health food store and not using them as directed. Mr. Gathergood had also stated that "there was something about his stomach that he couldn't tell Sterling or Sterling would get it too." Mr. Gathergood had stated that he would die due to the pain. He had asked his brother to drain his bank account and to put his car into his sister's name in preparation. He had also been looking at gun stores online. He denied any plans to end his life at that time and had "no desire to die." He described that Mr. Gathergood was "glued to the couch," but did get up to stare at the window.
19. January 18, 2019: Ms. Rothwell spoke to Mr. Gathergood's brother. Mr. Gathergood had accused his sister-in-law of stealing one of the two bags of "Slippery Elm" he had purchased. He believed that she was part of the "Society." He stated that she knew what was wrong with him, but was withholding the information. His sister-in-law was starting to feel uneasy with Matrix living in their home, especially since he had threatened her family the summer before. It was noted that Mr. Gathergood had not made any recent threats.

20. January 19, 2019: Mr. Gathergood presented to the emergency room complaining of numbness to his left forearm and fingers. The ER physician attempted to reassure Mr. Gathergood, as there was no evidence there was anything concerning on initial examination and that the distribution of the paresthesia is atypical for common etiologies. The physician raised the question whether there was an element of somatization in this presentation. He was referred to his family physician for a follow-up.
21. January 19, 2019: Mr. Gathergood was seen again by Dr. Heunis. He appeared concerned with his sister-in-law and Dr. Heunis encouraged him to take his antipsychotic.
22. January 20, 2019: Mr. Gathergood presented again to the ER complaining of peripheral numbness. No other information is available for this consult.
23. January 21, 2019 (1 a.m.): Mr. Gathergood presented for the third time to the ER over a period of 48 hours, again concerned about tingling to his hands. He presented with a blood sugar of 4.2. The diagnosis was hypoglycemia, with possible psychosis prodrome. He was instructed to follow up with his GP Dr. Heunis and his psychiatrist Dr. Britto.
24. January 21, 2019: Ms. Rothwell spoke to Mr. Gathergood's brother Sterling in the morning. He reported that Mr. Gathergood had been talking about "needing to go to Penticton or Vancouver because he thought he was in danger." He had taken "everything he owned, including food that is nonperishable and hidden it into his room" because he was concerned that his sister-in-law might steal it. He also had wanted to go to the bank at 2 a.m. that morning to "get money to leave the area." He only retracted himself when his brother "got very firm with him." His brother had slept in front of the front door to ensure that Mr. Gathergood did not leave. Sterling also reported that Mr. Gathergood had threatened his sister-in-law on two occasions in the past three weeks. On one occasion, he "told her he would throw a bottle at her head" and she was feeling "very afraid." Additional information was obtained from Mr. Gathergood's father. Mr. Gathergood had called him the night before asking to speak with his sister. He wanted "a ride to the coast, Penticton or Golden as he was in 'imminent danger' because someone was after him." He would not share additional detail claiming it was "too dangerous." At the beginning of the afternoon, Sterling informed Ms. Rothwell that Mr. Gathergood had left the house through his bedroom window. Mr. Rothwell consulted with Dr. Heunis who agreed to complete a Form 4 for Mr. Gathergood to be brought to the hospital. This form was faxed to the RCMP. Later that afternoon, Mr. Gathergood's had called his father to inform him he was safe, but would not disclose his location.
25. January 22, 2019: Mr. Gathergood was brought to the Kelowna General Hospital by the police after his family reported him missing. Mr. Gathergood stated to the ER psychiatrist that he "believed he had hypoglycemia that induced his depression and that he had been misdiagnosed in the past." Mr. Gathergood explained that he had left his brother's residence because the environment "was stressing him out." He alleged conflicts surrounding housework. He was wanting to live at one of his sister's house in Abbotsford or Golden. He

explained that he had "rented a hotel room to relax" and he "did not answer the phone because no one should have had the number." He also stated that the Risperidone "caused him stomach pain since he had been misdiagnosed" and that it was only "a bandage on the actual problem, the hypoglycemia." The psychiatrist concluded that he presented with delusional disorder, somatic type, but that he "did not meet the dangerousness criteria for certification." He was discharged from the hospital with a prescription for antacids.

26. January 29, 2019: Ms. Rothwell received an update from Mr. Gathergood's father after his discharge from the hospital. Mr. Gathergood had been upset that the police presented to his hotel room. He stated that he "was not mentally ill and that his only difficulty was hyperglycemia." Mr. Gathergood had expressed at this time that he could be back in the area within a few days, after some respite.
27. February 11, 2019: Mr. Gathergood met with Dr. Heunis. He still had pain around his belly button, but had found the antacid very helpful. He denied any hallucinations at that time.
28. February 22, 2019: Ms. Rothwell noted that Mr. Gathergood had returned to the area and was residing with his parents in Silver Creek. He was not allowed to return to his brother's home given concern about "his mental health and potential risk to his sister-in-law and niece." When Ms. Rothwell discussed with Mr. Gathergood on the phone, he stated that "things are under control" and that he had applied for employment insurance benefits. He was planning on returning to work as a concrete finisher once the weather improved. He stated that staying with his parents was working out and that he intended to stay there until he started working. His family reported that Mr. Gathergood "attributed his prior struggles to being hyperglycemic and had been following a diet consisting of bone broth and pureed spinach."
29. March 1, 2019: Mr. Gathergood was absent to his appointment with Ms. Rothwell.
30. March 20, 2019: Ms. Rothwell was able to reach Mr. Gathergood at home and he agreed to come for an appointment that afternoon. He "engaged superficially in the interview process but remained guarded." He "sought to understand how he was located and taken to the hospital while in Kelowna." The information was given by Ms. Rothwell regarding the process as Mr. Gathergood "listened intently and slightly suspiciously" expressing some concern with the police entering his room. Mr. Gathergood, reported that he had been informed at Kelowna General Hospital that he was hypoglycemic and that this had "likely caused a change in his thinking." During this interview, he "denied paranoia, concern for his safety or the safety of others," as well as "concerns about the 'Society.'" He stated that he continued to abstain from cannabis and had no intention or desire of using it. He was still residing with his parents and although he had concern about his finances, he was scheduled to work the next day. Collateral sources had expressed concern that Mr. Gathergood was presenting ongoing psychosis. His father reported that he had "expressed concern about the safety of a friend," "had left a note to his sister stating that she needed to go to the Masonic Hall," and had "left a note on his dad's pillow to inform him that he was going to Edmonton and would be in touch." He had also retrieved his rifle from his brother's house that he was

using "to do some shooting on a friend's farm." His father added that he was "very conscientious with the handling and use of his gun." His father described him as "more stable, though not himself." During the interview, Matrix appeared to carry a utility knife in his pocket and he stated, when questioned, that it "was not illegal to carry." Ms. Rothwell concluded that the risk of recurring symptoms remained high and planned on staying in contact with Mr. Gathergood and his family. A check-in was planned in a few weeks.

31. April 2, 2019: Sterling called Ms. Rothwell to report concern about Mr. Gathergood over the past couple of weeks. He reported that Mr. Gathergood had been out with a friend firing rounds in a gravel pit when they were approached by some individuals. According to his friend, he had "took it too far verbally" and this friend no longer wanted to hang out with him. Mr. Gathergood had also left a SFS rifle at the doorstep of a girl he knew "as he was concerned about her safety." The police had been called to remove the rifle and had contacted Sterling to pick it up. Sterling had yet to pick up the gun and had informed the police of Mr. Gathergood's recent behaviour. Ms. Rothwell also contacted the RCMP to provide additional information regarding his mental state and they indicated that they might review if Mr. Gathergood should be prohibited from having firearms in his possession at this time.
32. April 10, 2019: Ms. Rothwell reported that she had a discussion with the assigned officer from the RCMP. The officer relayed that the police were not concerned for public safety at that time and would not prohibit Mr. Gathergood from possessing firearms. The plan was for Ms. Rothwell to have a discussion with Mr. Gathergood and his brother to discuss the recent incident and the rationale for his gesture. He would also be asked to hand over his firearms to his brother for safekeeping until reassessed by his psychiatrist. If Mr. Gathergood was not agreeable with this plan, she would contact the RCMP to convey this information. An appointment was scheduled for April 12, 2019. She left a voicemail to Mr. Gathergood and the appointment was confirmed with his brother Sterling, who was in agreement with the plan. She was informed at that time that Mr. Gathergood had been "laughing to himself for no apparent reason." It was seen by his family as "a signal" that he continued to experience some degree of psychosis.
33. April 12, [2019], the scheduled appointment had to be cancelled given the unexpected absence of Ms. Rothwell. When Mr. Gathergood's brother was contacted, he said that he hadn't been able to get in touch with Mr. Gathergood and that he did not expect him to be present anyway.
34. April 14, 2019: Mr. Gathergood was assessed at the Shuswap Lake Hospital, after the index offence. He was brought after his arrest to exclude a physical injury and for a mental health assessment. The ER physician reported that, in the course of disarming and restraining Mr. Gathergood, he had sustained an injury to his tongue and complained of discomfort to the left anterior neck and lower jaw region. Mr. Gathergood stated to the physician that he had committed a crime today and the physician relays in his note Mr. Gathergood's version of the events. This version is consistent with the account he gave during his stay in Forensic

Psychiatric Hospital (FPH). The physician consulted with Dr. Pretorius, the on-call psychiatrist, to ensure his evaluation was complete. Mr. Gathergood did not require an emergent psychiatric assessment within an inpatient unit at that time and was, therefore, released to custody. His physical injury appeared minor and did not require specific treatment. The emergency room physician concluded that Mr. Gathergood presented with "chronic psychosis" and "minor soft tissue contusion to neck." Of note, a urine drug screen was negative for all substances, including cannabinoids, on April 14, 2019.

COLLATERAL INFORMATION FROM KRCC

1. April 16, 2019: Mr. Gathergood was assessed for a mental health screening. He was described as presenting with "possible slight delay in response time during conversation." He had "disclosed hypoglycemia and was somewhat tangential when discussing special dietary needs due to this." His affect was described as flat and of limited emotional range. He also presented with "slight tension."
2. April 17, 2019: Mr. Gathergood was assessed by a psychologist who explained Mr. Gathergood was cleaning the floor of his cell during their encounter and described him as "devoted to keeping his cell clean." He "seemed guarded in his response" but "not distraught or seeming affectively disturbed."
3. April 18, 2019: Mr. Gathergood was again seen by the psychologist who noted the following, "No orientation, communication, or cognitive functioning difficulties of significance noted, and no signs of sensory disturbance. Content of thought appropriate and form organized for coherent expression and sequential flow. No indication of excessive anxiety or depressive symptoms. Eating and sleeping well. Mood stable and euthymic with appropriate affective presentation, although the latter appears a little blunted. Is exercising appropriate volition and engaged in his environment with a clear indication that he is motivated to take care of self."
4. May 21, 2019: Mr. Gathergood was reassessed by the psychologist after his brother Sterling had called expressing concern for him. His brother had reported that Mr. Gathergood had been "phoning continuously and seemingly somewhat paranoid and stating that something is going to happen." His brother was concerned that he would hurt someone or himself. During this meeting, Mr. Gathergood reported, "keeping to himself" in detention. He also explained that "he did not go to the police after being threatened because he knew it would be a case of he said-he said." He gave his accounts of the index offence. He stated that he would be "content to do 15 or 20 years and get out when he is 40 or so." The psychologist described that his "responses were limited in depth and more concrete in content." He also stated that his "affective expression was very blunt if not flat." His responses were described as "very literal in content." He was "future oriented but unaware of what was transpiring with his legal situation." He concluded that Mr. Gathergood was a "fairly strange and peculiar young man who seems affectively detached and prone to keep to self. Seems to be adjusting to his unit fairly well and is taking care of self. No signs of delusional thinking;

however, he does not elaborate much."

4. August 14, 2019: Mr. Gathergood was seen by the nurse and he stated that he got hit in the head. He presented a small cut to the right upper lip and stated that his neck was sore.
 5. September 27, 2019: Mr. Gathergood was again assessed by the nurse after falling off his top bunk and scraping his lower leg. He denied being assaulted. He presented with abrasions to shins bilaterally and bandages were applied.
- [49] Then the events of April 14 occurred. Again, these are only examples of evidence detailed in the doctor's report supporting the existence of a mental disorder before these offences.

Evidence of Mental Disorder after the Offences

- [50] On the day of his arrest, Mr. Gathergood was assessed at the Shuswap Lake Hospital. Mr. Gathergood reported to the ER physician that he had "committed a crime today" and relayed a version of events consistent with the version he later related to Dr. Kolchak. Noting that Mr. Gathergood presented with chronic psychosis, the physician consulted with an on-call psychiatrist who determined that he did not require an emergent psychiatric assessment within an inpatient unit and he was released to custody.
- [51] Mr. Gathergood spent some time at Kamloops Regional Correctional Centre before being brought to the Forensic Psychiatric Hospital in the fall of 2019 for an assessment of his criminal responsibility.
- [52] Dr. Kolchak interviewed Mr. Gathergood and examined him on a number of occasions in that setting. He reports at page 13 of his report:

MENTAL STATE DURING THE COURSE OF HOSPITALIZATION

1. While in the hospital, Mr. Gathergood was able to give an account of the recent events. Although his thought process was linear and organized, he presented with systematized paranoid delusions. His delusion did not only involve Mr. Parmenter and the index offence, but also unrelated monitoring by the RCMP. He did not disclose concern with the "Society." He presented with a large beard and a long hair, but he maintained good hygiene. He presented minimal eye contact and was guarded during the interviews. His thought content was not accessible. He answered with brief responses and had to be prompted to elaborate. He seemed suspicious of the interviewer and when given the warning about confidentiality, he summarized that we "could use everything against him." Over the course of the first interviews, he did not engage well. He maintained that his mood was "good." His affect was blunted. He did not appear to have perceptual disturbances and did not endorse any hallucinations. He denied any suicidal or aggressive ideations. He presented with no insight regarding his illness and delusions. On the unit, he tended to keep to himself and did not interact with peers. He was described by the nursing team as "low profile and bed seeking." When questioned on how he was doing on the unit, he answered he was "good and waiting it

out in his room, sitting there, waiting and looking at the wall." He did not want to read or watch TV because nothing seemed interesting to him. He reported feeling safe on the unit.

2. Mr. Gathergood was certified on November 5, 2019, on the basis that he presented with untreated schizophrenia for which he refused medication. He had no insight into his condition. He was informed on multiple occasion that he could appeal the decision to the Review Panel. He received an injection of Paliperidone Sustenna intramuscular on April 12, 2019. He had to be shackled and brought to the ground before he was given his injection, as he was not willing to collaborate and resisted physically. He was then brought to seclusion, where he stayed overnight as he presented with drowsiness associated with the additional medication given for agitation. He received his second scheduled injection on November 12, 2019. He understood that the injection was mandatory while he was certified and collaborated through the injection. He did not have to receive additional medication and was not brought into seclusion at that time. He has tolerated the medication well so far, without side effects.
3. When interviewed on November 12 and 13, 2019, he presented as noticeably less tense, although still slightly guarded. Mr. Gathergood stated that he did not feel any change. He still presented with the same paranoid delusions. He had no insight on his symptoms.

Psychiatric Opinion

- [53] Dr. Kolchak testified at trial on behalf of the defence. He was qualified as an expert witness in the area of forensic psychiatry, able to give expert opinion evidence on the assessment and diagnosis of mental disorders and their impact on criminal responsibility. His curriculum vitae is marked as Exhibit 3 in these proceedings. I am satisfied that he is very well qualified in his field.
- [54] Dr. Kolchak's opinions, set out in his report and confirmed by his in-court testimony, are based on sources of information that counsel agree through the admissions are accurate and include the following: nurses' notes authored on October 10, 2019; a health snapshot from KRCC; the court-ordered assessment referral; a detailed narrative from the Salmon Arm RCMP detachment for the events of April 14, 2019; Report to Crown Counsel narratives; transcribed witness statements in the police file from Peggy Parmenter, David Parmenter, Sterling Gathergood, Tobias Gathergood, Donnanne Cline, Mr. Hlina and Sandra Hlina; a transcribed statement in the police file from Mr. Gathergood; medical records from Kelowna General Hospital, Shuswap Lake General Hospital, Salmon Arm Mental Health and Substance Use, and Mount Ida Medical Centre; a phone interview with Mr. Gathergood's brother, Sterling Gathergood, on November 6, 2019, additional information from a friend present named Victor Gray; and repeated interviews with Mr. Gathergood during his hospitalization.

[55] Dr. Kolchak is very familiar with his duty as an expert witness to provide opinion evidence in the area of his speciality that is fair, objective, and non-partisan. It is clear from both his report and his testimony that he approached his task with this duty in mind. Dr. Kolchak undertook a thorough review of a large body of information. In the course of his assessment, he examined and considered:

1. the possibility of Mr. Gathergood malingering or feigning his condition;
2. the prior relationship of Mr. Gathergood and Mr. Parmenter;
3. the previous mental health issues suffered by Mr. Gathergood;
4. any previous or pre-existing animus between Mr. Gathergood and Mr. Parmenter;
5. Mr. Gathergood's mental state at the time of the offences;
6. the possibility that his psychotic symptoms were substance-induced or could be explained by substance intoxication or withdrawal; and
7. the role of the mental disorder that it had in bringing about the behaviour in question.

[56] Based on his comprehensive review of the information available to him and his multiple interviews with Mr. Gathergood, Dr. Kolchak is of the opinion that Mr. Gathergood qualifies for a diagnosis of schizophrenia. He noted that Mr. Gathergood presents with delusions, hallucinations, and cognitive impairment and that these symptoms were present at the time of the offences and have persisted over the course of his detention and hospitalization. In his opinion, Mr. Gathergood was experiencing psychotic symptoms which are part of schizophrenia on April 14, 2019. In this regard, he observed at page 16:

1. At the time of the offence, Mr. Gathergood presented with symptoms of schizophrenia. His mental state appears to have been deteriorating over the year preceding the index offence. Although he had entertained unusual thoughts, such as believing in unusual creatures or the Illuminati, for a period of time, they eventually evolved in systemized delusions which began to influence his behaviour. He had paranoid delusions involving the RCMP, the "Society" and Mr. Parmenter, which initially led to Mr. Gathergood's social isolation. He refused to talk out loud to his friends as he worried he was being monitored. He also ran away to Kelowna and moved out of his parents' house to ensure his own safety. In addition, he had reported auditory hallucinations to Mr. Parmenter and had been observed laughing to himself. The threats he has reported experiencing from the victim are likely hallucinatory experiences as there is no other collateral source which identifies any animosity between Mr. Parmenter and Mr. Gathergood or that Mr. Parmenter had made such threats.
2. In the week preceding the index offence, Mr. Gathergood's family expressed concerns regarding his mental state. They had observed symptoms which can be interpreted as psychosis. Mr. Gathergood had also presented with behaviours which reflected his delusional beliefs of being persecuted by Mr. Parmenter. For example, witness statements highlight that just two days before the offence, Mr. Gathergood presented to his friend's

house for help with his passport application. Mr. Gathergood had explained to me that he wanted to flee the country, at that time to protect himself from Mr. Parmenter.

- [57] Dr. Kolchak opines that Mr. Gathergood continues to experience symptoms from this illness through to the present day. He further writes at page 16 of his report:
3. Mr. Gathergood had been treated only briefly as he had stopped his antipsychotic after one week of treatment in January 2019. Such a short period of treatment is insufficient to lead to an improvement of psychotic symptoms. In addition, the treatment of schizophrenia requires ongoing maintenance to prevent recurrence or worsening of the symptoms. In the absence of such treatment, Mr. Gathergood continued to experience these symptoms since the time of his arrest and over the course of his hospitalization. To this day, he remains delusional and still believes Mr. Parmenter was trying to harm him and that he had a microphone implanted in his stomach by the RCMP. In addition, Mr. Gathergood presents negative symptoms that are characteristic of schizophrenia. He does not engage in activities on the unit, but rather spends time alone in his room. Long-term treatment with antipsychotics will be necessary in order to improve symptomology.
- [58] Dr. Kolchak considered and dismissed the possibility that Mr. Gathergood's psychotic symptoms on the day of the offences were substance-induced in some fashion. In this regard, he opines at page 16:
5. Although Mr. Gathergood had used marihuana in the past, he reports abstinence for at least 3 months preceding the index offence. Numerous sources confirm this and no signs of intoxication were noted in the witnesses' testimonies, police report, or during the Emergency Room visit after his arrest. In addition, a urine toxicology screen was performed on the day of the offence and no illicit substances were found in his urine. His psychotic symptoms have persisted over the following months in detention and at the forensic psychiatric hospital despite abstinence from substance use. Therefore his psychotic symptoms are unlikely to be explained by substance intoxication, substance withdrawal or substance-induced psychotic symptoms.
- [59] Dr. Kolchak testified at trial about the possibility that Mr. Gathergood could be feigning his symptoms of schizophrenia and/or malingering. The doctor explained that this is a feature of every assessment he does, but found it to be moot in his assessment of Mr. Gathergood because Mr. Gathergood continues to deny that he has a mental illness which, as Dr. Kolchak explained, is the opposite of feigning such symptoms or malingering.
- [60] Dr. Kolchak is of the opinion that as a result of his symptoms of schizophrenia, Mr. Gathergood was incapable of knowing the moral wrongfulness of his actions at the time of the offences. He opined that Mr. Gathergood knew his actions were legally wrong and could go to prison for them, but that his actions were morally justified. He wrote at page 17:

3. However, he felt his actions were morally justified to ensure his security and survival. Before the offence, despite feeling that his life was in danger, Mr. Gathergood did not believe that reaching out to the police was an option for him. He thought police would not believe him. He had tried leaving town, but was quickly located by his family and the police. He had tried to obtain a Canadian passport in hope to move to another country to avoid being harmed by Mr. Parmenter. However, Mr. Gathergood was not able to find a peaceful way of avoiding the harm befalling him.
 4. This feeling of helplessness led him on the day of the offence to impulsively take action and kill Mr. Parmenter to ensure his own survival. Mr. Gathergood's paranoid delusions led him to be convinced that if he did not murder Mr. Parmenter, he would himself be killed by Mr. Parmenter. Even after the initial shots fired at Mr. Parmenter, Mr. Gathergood felt it was necessary to return to the scene to make sure Mr. Parmenter was dead, at the risk of being caught. It is common in people with schizophrenia to have impaired judgment which can lead to poor decision making. Mr. Gathergood made the decision on the day of the offence to enter a church full of witnesses to commit murder. He also decided to go back into the church where he had previously shot the victim in front of a large group of people. Nevertheless, he prioritized killing Mr. Parmenter at the expense of his liberty, as he would likely be arrested on return to the crime scene. At the present time, Mr. Gathergood continues to believe that he made the right choice and that his own survival is worth 25 years in prison.
 5. Regarding the charges of aggravated assault, Mr. Gathergood is still unsure how he could have shot someone other than Mr. Parmenter. Although he shot his gun in a church full of people, he did not anticipate he could harm a bystander. This example of poor judgment is again inherently linked to cognitive impairment in schizophrenia.
- [61] Dr. Kolchak summarized his opinion on the role Mr. Gathergood's mental disorder had in bringing about the behaviour in question:
6. In my clinical opinion, Mr. Gathergood qualifies for an NCRMD defence for both charges. He presented at the time of the offence with symptoms of schizophrenia such as delusions, hallucinations, and cognitive impairment. Mr. Gathergood was acting on the basis of his delusions which led him to believe that his actions were morally justified. He also exhibited impairment in his decision making, and, as such, was unable to find alternative solutions or make rational decisions.
 7. Mr. Gathergood remains insightful into his actions at the time of the offence to this date. He does not recognize that he has a mental disorder and that his actions could be the result of paranoid delusions.

ANALYSIS

- [62] I accept the evidence of Dr. Kolchak as to his diagnosis and Mr. Gathergood's mental status and condition at the time of these offences. On this basis and in light of the evidence as a whole, I am satisfied on a balance of probabilities that Mr. Gathergood was suffering from a mental disorder, schizophrenia, at the time these terrible events occurred. He was experiencing serious psychotic symptoms and suffering from delusions, hallucinations, and cognitive impairment as part of his mental disorder of schizophrenia. This is, I am satisfied, a "disease of the mind" within the meaning of *R. v. Cooper*, [1980] 1 S.C.R. 1149, and the authorities that followed. The evidence in support of this conclusion is uncontradicted and ample.
- [63] I also find the evidence is overwhelming that Mr. Gathergood was experiencing symptoms of schizophrenia and was actively psychotic at the time of these offences. There is no evidence to suggest any motive for these offences. Mr. Parmenter was a father figure to Mr. Gathergood for years and was actively involved in trying to help him through his mental health difficulties in the months leading up to the murder. There is no evidence to support Mr. Gathergood's beliefs that Mr. Parmenter had been threatening him. Mr. Gathergood's paranoid delusions arising from his schizophrenia led him to believe that if he did not murder Mr. Parmenter, he would himself be killed by Mr. Parmenter.
- [64] Mr. Gathergood was able to understand the nature and quality of his actions that day. He understood, at the time, he was committing a murder and intended to kill Mr. Parmenter. He explained that after the first shot, he was worried that he had not killed him so he returned to the church and fired twice more to ensure that he had.
- [65] However, I am satisfied that at the time of the offences, Mr. Gathergood was not capable of knowing his actions were morally wrong as a result of his mental disorder. Mr. Gathergood acted on the basis of his delusions which led him to believe his actions were morally justified. He also exhibited impairment in his decision making and, as such, was unable to find alternative solutions or make rational decisions.
- [66] I am satisfied that there is no prospect that Mr. Gathergood is feigning these symptoms or malingering. I am also satisfied there is no possibility that substances were involved in the symptoms exhibited by Mr. Gathergood at the time of the offences. There is independent evidence that Mr. Gathergood gave up marihuana in the months leading up to the offences, no substances were found in his system on the day of the offences, and his symptoms have persisted while in custody and in hospital where substances are unavailable to him.
- [67] Unfortunately, Mr. Gathergood continues to have no insight into his actions at the time of the offences. He does not recognize he has a mental disorder and that his actions were the result of paranoid delusions arising from that disorder.

[68] Accordingly, I am satisfied Mr. Gathergood's mental disorder of schizophrenia render him incapable of knowing that his actions on April 14, 2019, were morally wrong. In the result, I find Mr. Gathergood committed the first degree murder of Mr. Parmenter and the aggravated assault of Mr. Derkach and is not criminally responsible of both offences by reason of mental disorder.

[69] To Mr. Parmenter's family and to Mr. Derkach and his family, I cannot begin to know the suffering you have experienced as a result of what happened on that awful day. I can appreciate that this court process and my reasons today have been difficult and probably seem rather sterile and impersonal to you. I was tasked with making a legal decision today which I have done, but I hope you know that, in so doing, I am very aware of the tragedy of your loss and the loss to the community and the grief that you must all be experiencing. I just want to say how sorry I am that you are all going through this and I wish you all the best as you try to move forward.

[DISCUSSION RE: DISPOSITION]

[70] I will accede to the joint submission that this matter should be referred to the Review Board pursuant to s. 672.471 to hold a hearing and make a disposition 90 days after this verdict has been rendered. There is evidence before me that Mr. Gathergood's risk of violence needs to be assessed and seems to be remaining high. He continues, as I heard from Dr. Kolchak yesterday, to have no insight into his illness. In view of those circumstances, I find it would be appropriate as counsel suggest to defer the issue of disposition to the Review Board which has the particular expertise to assess the issues which this case presents and which will enable a further presentation of any necessary additional materials, including a risk assessment.

[71] I am satisfied there are exceptional circumstances that warrant an extension of time for holding a hearing from 45 days to 90 days.

[72] I will also order that Mr. Gathergood be confined to the Forensic Psychiatric Hospital pending his disposition hearing, pursuant to s. 672.46(2) of the Code.

[73] Finally, the offences of murder and aggravated assault are both primary designated offences under s. 487.04. Pursuant to s. 487.051(3):

- (3) The court may, on application by the prosecutor and if satisfied that it is in the best interests of the administration of justice to do so, make an order in Form 5.04 in relation to:
 - (a) a person who is found not criminally responsible on account of mental disorder for an offence committed at any time, including before June 30, 2000, if that offence is a designated offence when the finding is made ...

In deciding whether to make the order, the court shall consider the person's criminal record, whether they were previously found not criminally responsible on account of mental disorder for a designated offence, the nature of the offence, the circumstances surrounding its commission and the impact such an order would have on the person's privacy and security of the person and shall give reasons for its decision.

[74] Mr. Gathergood has no prior criminal history and no previous findings of NCRMD. These factors weigh against the making of this order. However, the offences and the circumstances surrounding their commission, which involve extreme violence and risk to public safety, weigh heavily in favour of the order. The impact on Mr. Gathergood's privacy and security of the person would be minimal. On balance, I am satisfied that it is in the best interests of the administration of justice to order that Mr. Gathergood provide a sample of his DNA for inclusion in the DNA databank and I so order.

"S.A. Donegan J."

DONEGAN J.

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