
CANADA / JUDGMENT

R. v. Shearer

2020 BCSC 116

COURT

Supreme Court of British Columbia

DECIDED

31 January 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 116 R. v. Shearer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Shearer,

2020 BCSC 116

Date: 20200131

Docket: 33552

Registry: Dawson Creek

Regina

v.

Candice Dawn Shearer

Restriction on publication: Pursuant s. 516 of the Criminal Code of Canada

Before: The Honourable Mr. Justice Williams

Reasons for Judgment

Counsel for the Crown:

J.S. Temple

M.R. Blow

Counsel for the Accused:

J.V. Myers

D. Ferguson

Place and Date of Trial/Hearing:

Dawson Creek, B.C.

December 2-5 and 10-12, 2019

Place and Date of Judgment:

Dawson Creek, B.C.

January 31, 2020

- [1] Candice Dawn Shearer is before this Court, charged with having committed the second degree murder of Anna Sheppard, on or about November 12, 2016 at or near Dawson Creek, British Columbia.
- [2] The matter proceeded as a judge alone trial, commencing on December 1, 2019 and continuing over seven days.
- [3] The Crown called a total of five witnesses; the defendant called one witness.
- [4] In addition to the witnesses, two agreed statements of fact were filed. Together, they establish a fairly comprehensive evidentiary basis.
- [5] Submissions were made on December 12, 2019, and judgment was reserved to today's date.

The Circumstances

- [6] I will commence with a general overview of the circumstances as disclosed by the trial evidence. Following that, I will set out in greater detail some of the evidence of particular relevance to the issues raised in the case and by the submissions of the parties.
- [7] The victim, Anna Sheppard, was 66 years of age at the time of her death. She resided in Dawson Creek. Her residence was located at [redacted]; she shared her home with her son Berry and his common law partner, the defendant.
- [8] At the time, Mr. Sheppard was working at various job sites in the Dawson Creek area. Generally, he would leave the house early in the morning and return around dinner time. Neither of the other two occupants of the home, that is, Ms. Sheppard and Ms. Shearer, worked outside the home and as a consequence they were around the house a fair amount.
- [9] It is clear that there was a difficult relationship between the two women. Not infrequently, there were disagreements; there were sometimes arguments and on occasion, there was physical violence between them.
- [10] November 12, 2016 was a work day for Berry Sheppard. He rose early in the morning, had his breakfast with Ms. Shearer and then left for the job site. He returned that afternoon at approximately 5:00 p.m. or shortly after. As he approached the home and entered the front door, he saw the defendant seated on the steps leading up to the main living level. He

described her looking like a little girl who "was afraid to tell her father that she had done something wrong". His testimony was that she told him that she had done something really bad, that his mom was dead in the bathroom, and that she had been there all afternoon. He said Ms. Shearer indicated to him that he did not want to go "there", that is, to the upstairs bathroom.

- [11] Mr. Sheppard in fact did go to the upstairs bathroom where he discovered the body of his mother. She was on the floor, with her head between the tub and the toilet. There was considerable blood at the scene and it was obvious that she had been the subject of a violent attack.
- [12] Mr. Sheppard then had some further conversation with Ms. Shearer. He suggested that they go to the police, but said she did not want to do that. As a result, he drove with her to a friend's house, where they remained for a short while. He then took Ms. Shearer to her father's home in Pouce Coupe, a community about 10 minutes distant from Dawson Creek. Mr. Sheppard then went to the RCMP detachment where he reported what had occurred.
- [13] The police attended at the scene, arriving at 7:19 p.m. They found Ms. Sheppard in the bathroom. It was apparent that she was dead and had been for some time. The scene was photographed extensively, and a number of those photographs are in evidence.
- [14] Police officers also went to the residence of Ms. Shearer's father where they located Ms. Shearer. She was arrested at 8:31 p.m. and taken to the Dawson Creek detachment where she was lodged in cells.
- [15] The body of Ms. Sheppard was subject of a post-mortem examination. The pathologist, Dr. James Stephen, testified at trial and his report was filed as an exhibit.
- [16] As part of the investigation, photographs of the scene were examined by police officers with special bloodstain pattern analysis expertise. One of those officers, Inspector Diane Cockle, testified at trial and tendered a report of findings and conclusions.
- [17] With respect to timing, Berry Sheppard testified that he arrived home at approximately 6:00 p.m. on November 12. In the agreed statement of facts, it is admitted that Ms. Sheppard's sister, Ms. Konopad, last saw the victim alive shortly after 2:00 p.m. that day, as the two of them left the library. Ms. Sheppard had indicated that she was going home to read a book.
- [18] My recitation of the circumstances and the evidence is substantially less extensive than might ordinarily be expected. That is because the Crown and the defence have reached agreement on a great many relevant facts. A number of the admissions are concerned with quite routine matters such as continuity of exhibits and I see no need to detail them here. Of particular relevance, though, is the admission by the accused that she caused all of the injuries to the body of Ms. Sheppard that were observed by the pathologist at the time of the autopsy - the injuries that resulted in the death of Ms. Sheppard.

- [19] However, as noted earlier, there are certain aspects of the evidence that require a more detailed review.

The Injuries to Anna Sheppard

- [20] The pathologist, Dr. Stephen, concluded that Ms. Sheppard's death was caused by a combination of injuries, some caused by blunt force and others that were inflicted by a sharp implement, probably a knife. It is clear from Dr. Stephen's evidence and the photographs that have been filed that the injuries to Ms. Sheppard were extensive, severe and the result of a particularly violent attack.
- [21] The blunt force injuries included subarachnoid hemorrhaging, probably caused by forceful blows to the head. There was extensive bruising to Ms. Sheppard's face, including black eyes and bruising on the inside of her lips and left cheek. Dr. Stephen noted substantial facial redness at autopsy; in his opinion, this was bruising, as opposed to post-mortem lividity. Dr. Stephen also found bruising underneath the skin of Ms. Sheppard's scalp which he attributed to an impact at or near the top of her head.
- [22] The autopsy also disclosed extensive evidence of injury to Ms. Sheppard's torso and her arms. The torso injuries included five broken ribs on her left side, and seven broken ribs, as well as a pneumothorax, on the right. There was extensive bruising to Ms. Sheppard's forearms, particularly her left forearm, as well as to her wrist, knuckles, fingers and backs of her hands. Dr. Stephen was of the opinion that these were defensive wounds. Bruising was noted on her knees and hip.
- [23] In addition to the blunt force injuries, there were a total of eight wounds inflicted by a sharp implement: there were seven stab wounds to the right side of Ms. Sheppard's neck, as well as a single incised wound measuring 5.6 cm x 1.7 cm. which went from the left of the midline of her neck, across the midline, to the right of her neck. That incised wound penetrated as deep as the voice box and severed the larynx. Dr. Stephen noted that the incised wound had a scalloped appearance, which he testified was indicative of a sawing or in-and-out motion of the knife-like object that was used to inflict the injury.
- [24] The incised wound severed the jugular vein. The carotid artery was not damaged.
- [25] Although he was unable to say with complete certainty, Dr. Stephen expressed the opinion that the sharp wounds were inflicted after the blunt force injuries.
- [26] Generally, it would appear, in light of Dr. Stephen's testimony, that the cumulative effect of the blunt force injuries would have been to render Ms. Sheppard incapacitated and likely unconscious, and that the stab and slash injuries were inflicted after that point.
- [27] In summary, Ms. Sheppard was subjected to a violent and extensive attack. While it cannot be said with any certainty how long the attack lasted, the totality of the injuries would have taken considerably more than a brief time to inflict.

Animus between Ms. Sheppard and the Defendant

[28] Earlier I made reference to this feature. In fact, there is a substantial body of evidence that supports the conclusion that the defendant had a hostile animus toward Ms. Sheppard.

[29] Evidence of this state of affairs was the subject of a voir dire prior to the commencement of trial. The Crown sought to lead a number of items of such evidence; Ms. Shearer opposed its admission on the basis that it was hearsay in nature. At the conclusion of the voir dire, the Court admitted some, but not all, of the proposed evidence.

[30] As the trial proceeded, it became apparent that both the Crown and Ms. Shearer were relying upon that evidence to support their respective views of the case. The Crown relies on the evidence of animus to prove the defendant's intent to kill. As for the defence, their psychiatric expert relies, in part, on Ms. Shearer's animus toward the victim in concluding that she was suffering from a significant psychotic disorder at the time of the attack.

[31] The evidence of animus between Ms. Sheppard and the defendant includes the following:

- copies of entries from journals kept and written by Ms. Sheppard, describing hostile conduct toward her by Ms. Shearer;
- a photograph of Anna Sheppard taken in July 2014 depicting her with facial bruising and black eyes;
- photographs taken on July 7, 2014, extracted from Ms. Sheppard's cell phone, showing bruising on her face;
- a photograph taken on July 21, 2014, showing Ms. Sheppard with a black eye, also extracted from her cell phone;
- emails from Ms. Sheppard to herself, extracted from her cell phone, containing content similar to her journal entries;
- testimony from Ms. Sheppard's daughter, wherein she described the deceased Ms. Sheppard telling her in July 2014 that she had been attacked by the accused, which caused the bruising indicated in one of the photos;
- evidence that an RCMP officer met with a woman by the name of Anna Sheppard who reported that she had been attacked by a female person who lived with her;
- evidence of observations made by Ms. Sheppard's sister, two years prior to the event at bar, of marks on Ms. Sheppard's neck and arm, and Ms. Sheppard's statements to her sister that the accused had attacked her from behind and grabbed her neck; and
- evidence of observations made by Ms. Sheppard's sister on a different occasion, noting marks of injury to Ms. Sheppard's arm and Ms. Sheppard's statements to her sister that the marks were from an attack by the defendant.

[32] In addition, Berry Sheppard also testified as to the acrimony that he observed between the two women.

Bloodstain Pattern Analysis Evidence

[33] Inspector Cockle was tendered by the Crown as an expert witness in the field of bloodstain pattern analysis. Her qualifications were accepted and she testified with respect to an analysis that she and a colleague made of crime scene photographs, particularly of the bathroom where Ms. Sheppard's body was found. As well, her report was received as an exhibit at trial.

[34] I do not propose to recite the evidence in detail. However, from Inspector Cockle's testimony, the report and the photographs, I am satisfied that the stabbing events and a physical struggle took place in the bathroom. I note that there was no evidence of any other location having been involved. Inspector Cockle's opinion is that there were at least two locations in the bathroom where there was evidence of a struggle having occurred: one of those was an area by the northwest corner of the bathtub; another was beside the tub and adjacent to the toilet. Ms. Sheppard's body was found with her head situated between the toilet and the tub. I conclude that she probably came to that location after the stab wounds had been inflicted. As well, the evidence suggests that Ms. Sheppard was not upright but, rather, near the floor, at the point the sharp wounds were inflicted.

[35] I am also satisfied that there was an effort made by Ms. Shearer to clean up after the event. That conclusion is supported both by the findings of Inspector Cockle and the observation by the attending police officers that there was a strong smell of disinfectant in the room when they first entered.

[36] The weapon used to inflict the stab and slash wounds was never recovered.

The Psychiatric Evidence Adduced by Ms. Shearer

[37] Ms. Shearer called one witness; that was Dr. David Morgan, a forensic psychiatrist.

[38] As I will discuss later, the Crown challenged the admissibility of Dr. Morgan's evidence. I will address those challenges in due course, but for now will simply summarize his evidence.

[39] Dr. Morgan examined Ms. Shearer on two occasions, once in January 2018 and once in February 2018. The interviews totalled four hours.

[40] In forming his opinions, Dr. Morgan relied upon the content of his interviews with Ms. Shearer, the observations that he made of her in those interviews, as well as other collateral sources of information. These sources included police reports, the witness statements of Berry Sheppard and Chloe Gauthier, and the report of another mental status examination that had been conducted at an earlier point by another psychiatrist.

- [41] Dr. Morgan concluded that, at the time he interviewed Ms. Shearer, there was a psychotic disorder present, notably, a schizophrenic illness.
- [42] Dr. Morgan testified that the DSM-5 (the recognized diagnostic manual of psychiatric disorders) lists three principal criteria for a finding of schizophrenia:
- a) disorganization in thought and speech;
 - b) delusions, which he defined as a fixed false belief held with unshakeable conviction; and
 - c) hallucinations, defined as the perceiving of a stimulus without the stimulus actually being present.
- [43] Dr. Morgan said that he saw evidence of significant thought disorganization in his interactions with Ms. Shearer. He also said that, at the time of his interview, he saw evidence of "grandiose and persecutory delusional beliefs, and certainly there was evidence of hallucinations." With respect to delusions and hallucinations at a time proximate to the offence, Dr. Morgan relied principally upon what Ms. Shearer told him, as well as the observations made by others, notably, the police officer who interviewed Ms. Shearer post arrest (from his examination of the transcript), and the statements of Berry Sheppard and Ms. Gauthier.
- [44] Dr. Morgan was also of the view that, with regard to her mental health, Ms. Shearer displayed evidence of an abnormal personality structure. He concluded that this was, in part at least, attributable to a number of childhood experiences that she reported having had. He considered any role that substance abuse might play in that condition, but did not find it to be of any significant contribution.
- [45] Dr. Morgan further concluded that the mental disorder was present and active - that she was experiencing acute psychotic symptoms - at the time of the offence, and that it affected the defendant's behaviour at the material time.
- [46] With respect to the defendant's mental condition at the time of the offence, Dr. Morgan opined that there were three salient factors which contributed to the situation:
- a) Ms. Shearer's extant mental illness had deteriorated over the approximately two-week period preceding the offence, the evidence of which included other persons believing that Ms. Shearer was in need of professional help;
 - b) Ms. Shearer's personality structure, which he described as a borderline personality disorder, including among its features a fear of abandonment and emotional volatility; and
 - c) The long term acrimonious or conflictual relationship between Ms. Shearer and the victim;
- [47] Dr. Morgan testified that his opinion with respect to Ms. Shearer's mental state at the time of the offence was buttressed by the evidence of the extremely brutal and extensive nature of the attack on Ms. Sheppard. He opined that this was indicative of a seething, explosive anger, an irrational rage. He referred to the notion of hot violence, which he characterized

as indicative of an emotional state, as opposed to cold violence, which he described as more instrumental, or inflicted for a purpose. He expressed the view that the injuries to Ms. Sheppard were more likely of the former type, consistent with his theory of the defendant's mental state at the time.

- [48] As regards the evidence that Ms. Shearer had apparently attempted to clean up the scene after the event, Dr. Morgan said that seemed to be consistent with panic: the realization that she had done something wrong and attempted to clean up the evidence.
- [49] Dr. Morgan also made reference to the fact that Ms. Shearer did not leave the scene after the event, but waited for Berry Shepard to return and then suggested the two of them leave together. This he saw as consistent with her fear of abandonment by Berry Sheppard and her view that Ms. Sheppard was in the way of her relationship with Berry Sheppard.
- [50] Dr. Morgan testified that he considered whether his findings supported a finding of NCRMD - not criminally responsible on account of mental disorder - but did not believe that the mental illness was so severe at the time that it deprived her of the capacity to appreciate the nature and quality of her actions or to know that they were wrong. Rather, he concluded that her condition "may have reduced her ability to appreciate what was going on."
- [51] That is a summary of the evidence which was offered by Dr. Morgan. As I will discuss below, the admissibility of his evidence is very much in dispute, and it will be necessary to examine which components of his opinion are properly to be considered by the Court.

Evidence of the Defendant's Mental State (Non-Expert)

- [52] Two witnesses called by the Crown spoke of their observations of Ms. Shearer, both generally and in the time period proximate to the offence at bar.
- [53] Berry Sheppard had been in a common-law relationship, albeit somewhat sporadic, with Ms. Shearer for a period of 12 years. He testified as to his observation that Ms. Shearer's mental state had declined in the time period leading up to the offence. He described this as having occurred over a substantial period of time, and described conduct that he said supported his view, including that he observed her on occasion giggling to herself when there was no apparent reason for that conduct. He said that there were occasions when he would be awakened at night by her laughing to herself. Again, he noted that there was no evident reason for the laughing. He also testified that she complained of headaches and deep head pain, and that she would often sleep for long periods of time.
- [54] Sometime prior to the event at bar (the dates were not made clear in the evidence), Mr. Sheppard and Ms. Shearer moved to and lived in Trail, BC for a time. At some point, Mr. Sheppard returned to the Dawson Creek area and Ms. Shearer followed later.

- [55] Mr. Sheppard testified that since Ms. Shearer's return to Dawson Creek, she had not been employed. He said that she mostly stayed at the house, and did not have company over. To Mr. Sheppard's observation, Ms. Shearer had little interaction with his mother. He described Ms. Shearer as withdrawn, distant and socially isolated from other persons.
- [56] Mr. Sheppard also described Ms. Shearer frequently making reference to evil spirits and sometimes referred to them visiting her and controlling her head. She also told him that evil spirits were trying to stop her heart and put a spell on her.
- [57] Chloe Gauthier was another Crown witness. She is a first cousin of the defendant and has known her all her life.
- [58] Ms. Gauthier testified that, after Ms. Shearer returned from Trail, she (Ms. Gauthier) made observations that caused her to become worried about Ms. Shearer's well-being. Specifically, she was concerned about some of the things that Ms. Shearer was saying, including references to spells and Indian medicine, and a concern that "somebody" was doing something to her.
- [59] Ms. Gauthier made specific reference to an occasion in October 2016, shortly before the event at bar. She described that Ms. Shearer came to visit with her at her place. Ms. Gauthier said that she had been speaking with Ms. Shearer on the back porch of her home and then, at one point, went inside the house. She noticed that, even though she was alone, Ms. Shearer was continuing to carry on a conversation by herself - talking and laughing to herself. Although this was intended to be an overnight visit, Ms. Shearer, without explanation, left the house in Ms. Gauthier's mother's vehicle and then returned in the middle of the night. Ms. Gauthier said that she was quite concerned about Ms. Shearer's mental health, particularly based on these observations and the fact that Ms. Shearer had complained of an unbelievable headache.
- [60] Ms. Gauthier testified that, because of her concern, she placed a call to the mental health unit in order to arrange for Ms. Shearer to be seen and treated by a doctor. Evidently that did not lead to anything because the authorities advised her that Ms. Shearer would have to actively take part in receiving psychiatric help.

Summary of Findings of Fact

- [61] I am satisfied that on the afternoon of November 12, 2016, sometime after approximately 2:30 p.m., Ms. Sheppard returned to her home from the library. After she arrived, and once she was inside the house, there was a confrontation between herself and Ms. Shearer, likely instigated by Ms. Shearer. The confrontation turned physical. In the course of the confrontation, which occurred principally in the bathroom, the defendant violently attacked Ms. Sheppard. The attack initially consisted of blunt trauma, likely inflicted by fists and, I suspect, stomping. After Ms. Sheppard was no longer able to defend herself, Ms. Shearer attacked her with a sharp-bladed instrument, probably a knife, and inflicted a total of eight wounds. Seven of the wounds were in the approximate area of the neck. The eighth was very

significant and went across the throat.

[62] Following the attack, as Ms. Sheppard was dead or dying, Ms. Shearer attempted to clean up the bloody scene in the bathroom. She then awaited Berry Sheppard's return from work.

Positions of the Parties

Position of the Crown

[63] The Crown submits that the actus reus of the offence of murder having been admitted, the sole issue for this Court to determine is whether or not the requisite intent, that is, the mens rea, has been proven.

[64] In the Crown's submission, the protracted nature and multiple means employed in the attack is probative of a specific intention to kill. Given the infliction of the eight edged-implement wounds and the extensive blunt force injury, the Crown says it is an inevitable conclusion that this was a prolonged, sustained and directed attack, such that the only reasonable inference to be drawn is either that:

- (a) the defendant inflicted injuries of such number and magnitude and directed to such vital regions of the body that the intent to cause the death of Ms. Sheppard is manifest, or
- (b) the defendant intentionally inflicted injuries to Ms. Sheppard of such gravity that she (the defendant) knew that there was a substantial degree of probability that the nature, magnitude and number of injuries would cause Ms. Sheppard's death and she proceeded reckless of the actual consequences.

[65] The Crown says that there are a number of bases to support that conclusion, including:

- The defendant had an animus toward Ms. Sheppard;
- The attack was extensive and lethal in nature;
- There is no reason to believe that the defendant incurred any injury of any significance;
- On the basis of the evidence of both Berry Sheppard and the defendant's father, it would seem that she was oriented as to person, place and time when observed after the event, and that (based on Berry Sheppard's evidence) she was cognizant of the consequences of her actions; and
- There is no basis to find that the defendant was other than sober at the time; that is, there is no basis to believe that she was intoxicated by either alcohol or drugs.

[66] As noted, the Crown opposes the evidence of Dr. Morgan being considered. Specifically, the Crown says that his opinion is based on information from the defendant that is not in evidence. The Crown also contends that Dr. Morgan's opinion is not material to the issues at bar. Additionally, the Crown says that there is a lengthy time lag between the event and Dr. Morgan's interviews of the defendant. Finally, the Crown says that any opinion expressed by Dr. Morgan with respect to intent is immaterial because his field is psychiatry and the issue of intent is a legal matter.

[67] In short, the Crown says that Dr. Morgan provides a reconstructed explanation for why the killing occurred, which opinion is based upon three elements. In the Crown submission, one of those, that is, Dr. Morgan's conclusion that the defendant suffers from a borderline personality disorder, and his views as to her personality structure generally, are entirely improper because they are based solely upon information provided to him by the defendant.

Position of the Defence

[68] The submission of the defence is relatively straightforward. The defendant says that there is abundant evidence of a mental disorder, and that, accordingly, there is a reasonable doubt as to Ms. Shearer's ability to measure and foresee the natural consequences of her actions at the material time. In support of that position, the defence points to:

- Evidence of Ms. Shearer's general mental deterioration in the lead up to November 12, 2016;
- Evidence of psychotic delusions, including delusional persecutorial beliefs, in the lead up to and shortly before November 12, 2016;
- Evidence of a long-standing acrimonious relationship between Ms. Shearer and Ms. Sheppard;
- Physical evidence of a rage fuelled attack on November 12, 2016;
- Evidence that Ms. Shearer remained at the scene of the incident and focused on Mr. Sheppard's reactions to her actions; and
- Expert opinion evidence speaking to Ms. Shearer's mental state at the time of the incident based on evidence admissible at trial.

[69] In light of these considerations, Ms. Shearer says that the evidence raises a doubt as to whether she was sufficiently sane and sober on November 12, 2016, such that the Court should not draw the common sense inference that she intended the natural consequences of her actions in relation to Ms. Sheppard.

Relevant Legal Principles

[70] In setting out the relevant legal principles, both here and also later in these reasons, I have drawn heavily from my decision in *R. v. B.E.*, 2019 BCSC 1442, in light of the fact that, while the facts are quite dissimilar, there are a number of concepts that are relevant to both cases.

[71] I commence with a statement of principles that will guide this Court's deliberation and that must be applied in the determination of verdict. Those are as follows:

1. The defendant is presumed to be innocent unless and until this Court is satisfied that the Crown has proven her guilt to the standard of proof beyond a reasonable doubt;
2. The onus of proof lies upon the Crown; there is no obligation on the defendant to call evidence or to prove anything; and

3. The criminal standard of proof beyond a reasonable doubt will apply in respect of each element. Any doubt on any element must be resolved in favour of the defendant. Unless the Crown proves all of the essential elements of the offence charged or any included offence, a verdict of "not guilty" must result.

[72] The definition of murder as provided in the Criminal Code, as relevant to the matter at hand, is s. 229(a):

229 Culpable homicide is murder

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

[73] In order for the Crown to prove the murder charge against the defendant, it must satisfy the Court to a standard of proof beyond a reasonable doubt of two principal elements:

(1) That the defendant caused the death of the victim (actus reus); and

(2) That, at the time the defendant acted to cause the death, she meant to cause the victim's death or meant to cause the victim bodily harm that she knew was likely to cause death, and was reckless as to whether death ensued or not (mens rea).

[74] In these reasons, I will sometimes refer to the latter element as the requisite specific murderous intent, even though the word intent is not used in the provision.

[75] Also relevant to the matter at hand is the lesser included offence of unlawful act manslaughter. This offence is not expressly defined in the Criminal Code. For practical purposes, it is a residual category of unlawful killing: an unlawful killing that is neither murder nor infanticide.

[76] Essentially, to prove guilt of manslaughter, the Crown must prove beyond a reasonable doubt two elements: (a) that the accused caused the death of the victim, and (b) that the accused caused that death unlawfully. The second element of the offence is proven where the death is caused by an unlawful and dangerous act. An unlawful act is an act that is an offence under the law. With respect to the requirement that the act be dangerous, that is established if a reasonable person in the same circumstances would realize that the unlawful act would likely put another person at risk of bodily harm. Bodily harm means any hurt or injury that interferes with another person's health or comfort in something more than a brief or minor way. It is not necessary that the prosecution prove that a reasonable person would realize that the unlawful act would likely cause the death of that other person.

[77] The difference between the two offences is that murder requires the Crown to prove beyond a reasonable doubt that the defendant had the specific murderous intent as defined.

- [78] Proof of unlawful act manslaughter does not require that the defendant intended or meant to cause the death of the victim. It is sufficient that the Crown establish the general intent required for the unlawful act.

Discussion and Analysis

- [79] In light of the extent of agreement between the parties in this case, only one essential issue is in dispute. Given that the defendant admits having caused the injuries which resulted in Ms. Sheppard's death, this Court must determine Ms. Shearer's criminal liability for that death. Has the Crown proven, to the standard of proof beyond a reasonable doubt, that Ms. Shearer had the requisite intent for the offence of second degree murder? If that proof is not made out, then the defendant submits that a conviction should be entered for the lesser included offence of manslaughter. That is the issue this Court must decide.
- [80] When determining an accused's actual intent, courts may, in certain circumstances, have recourse to what is known as the common sense inference. *R. v. Seymour*, [1996] 2 S.C.R. 252 describes this inference as follows:
- [19] When charging with respect to an offence which requires proof of a specific intent it will always be necessary to explain that, in determining the accused's state of mind at the time the offence was committed, jurors may draw the inference that sane and sober persons intend the natural and probable consequences of their actions. Common sense dictates that people are usually able to foresee the consequences of their actions. Therefore, if a person acts in a manner which is likely to produce a certain result it generally will be reasonable to infer that the person foresaw the probable consequences of the act. In other words, if a person acted so as to produce certain predictable consequences, it may be inferred that the person intended those consequences.
- [20] It used to be a standard instruction to juries that there was a presumption that a person intends the natural and probable consequences of his or her acts. However, the Ontario Court of Appeal wisely held in *R. v. Giannotti* (1956), 115 C.C.C. 203, that, rather than a presumption, it should be considered a reasonable inference which may be drawn but is not required to be drawn by juries. This reasoning was subsequently affirmed in *Mulligan v. The Queen*, [1977] 1 S.C.R. 612.
- [21] The common sense inference as to intention, which may be drawn from actions of the accused, is simply a method used to determine the accused's actual intent. the jury must be instructed to take into account the evidence of the accused's consumption of alcohol or drugs, along with all the other evidence which is relevant to the accused's intent, in determining whether, in all the circumstances, it would be appropriate to draw the permissible inference that the accused intended the natural consequences of his actions.

[81] In *R. v. Robinson*, 2010 BCSC 368, Mr. Justice Joyce summarized when and how the "common sense inference" is to be applied, noting the modern one-step analytical approach to determining whether the accused had the actual intent:

[107] Of course, the Crown has the burden to prove the requisite intent under s. 229(a)(ii) beyond a reasonable doubt. Because we cannot look into the mind of the accused and there is often little direct evidence of an accused's mental state, intent must generally be proven based upon inferences to be drawn from established facts. This is where use may be made of the common sense inference that a sane and sober person intends the natural consequences of his acts. But there may be circumstances that cast doubt on whether one can safely rely on the common sense inference. Such circumstances include intoxication, whether by alcohol or drugs. In addition, evidence of a mental condition that falls short of a mental disorder that renders the accused not criminally responsible, may raise a reasonable doubt as to whether the accused had the necessary specific intent. If such circumstances, either alone or in combination, raise a reasonable doubt that the accused had the subjective intent to cause bodily harm or that he had the subjective knowledge that the bodily harm he inflicted was of such a nature that it was likely to result in death, then the accused is entitled to the benefit of that doubt and cannot be convicted of murder.

[108] Furthermore, the ultimate question is not simply whether the accused had the capacity to form the specific intent, but whether because of intoxication or any other relevant circumstances he did not in fact possess that intent at the time he committed the homicide. In most cases, it is not necessary and not helpful to go through a two step process of determining, first, whether the accused had the capacity to form the intent and, secondly, if so, whether in fact he had the requisite intent. A two-step test was rejected by the British Columbia Court of Appeal in *R. v. Canute* (1993), 80 C.C.C. (3d) 403 (B.C.C.A.) where Wood J.A. said at p. 418-19:

In fact, as was pointed out in *Korzepa* [*R. v. Korzepa* (1991), 64 C.C.C. (3d) 489 (B.C.C.A.)], the two-step test in *MacKinlay* [*R. v. MacKinlay* (1986), 28 C.C.C. (3d) 306 (Ont. C.A.)] is inherently confusing. What reason could there be for requiring a jury to struggle with the elusive concept of "capacity to form an intent", when at the end of that exercise they will only be required to turn their consideration to the real legal issue, namely, the actual intent of the accused? The issue of actual intent necessarily renders the question of capacity to form that intent redundant. With respect, it seems that the only likely result of retaining the two-step approach in *MacKinlay*, with its reference to "capacity", would be to confuse the jury into considering something other than the actual intent of the accused, with potentially unconstitutional consequences.

[109] In *R. v. Robinson*, [1996] 1 S.C.R. 683, Lamer C.J.C. agreed that a two-step process is generally not necessary, although there may be cases where it is appropriate. At para. 48 he said:

48 How then should juries be instructed on the use they can make of evidence of intoxication? I am of the view that before a trial judge is required by law to charge the jury on intoxication, he or she must be satisfied that the effect of the intoxication was such that its effect might have impaired the accused's foresight of consequences sufficiently to raise a reasonable doubt. Once a judge is satisfied that this threshold is met, he or she must then make it clear to the jury that the issue before them is whether the Crown has satisfied them beyond a reasonable doubt that the accused had the requisite intent. In the case of murder the issue is whether the accused intended to kill or cause bodily harm with the foresight that the likely consequence was death.

[110] Where there is evidence of a mental condition relevant to intent, this evidence must be considered along with all the other evidence in determining whether the accused had the intent requisite for murder. Such consideration does not create the notion of diminished responsibility, which does not exist in our law. Rather it simply recognizes that if the accused was suffering from some sort of mental condition at the time of the offence, that mental condition is a circumstance that might affect whether or not he formed the necessary specific intent (see *R. v. Bailey* (1996), 111 C.C.C. (3d) 122 (B.C.C.A.)).

[111] Evidence of intoxication, whether by alcohol, drugs or both, and evidence of a mental condition or state is to be considered with respect to the question whether the accused intended to cause bodily harm as well as the question whether he had the subjective foresight or knowledge that the bodily harm was likely to cause death and was reckless whether death ensued or not, that is the accused's ability to measure and foresee the likely consequences of his actions. In *R. v. Dickson* 2006 BCCA 490, Rowles J.A. made the point at para. 53 in these words:

53 The case authorities support the appellant's argument that the instructions to the jury ought to have made a clear and specific link between the potential effects of intoxicants and a person's ability to measure and foresee the likely consequences of his or her actions. The foundation for giving such an instruction is explained in *Seymour* by Cory J. at para. 22:

One of the effects of severe intoxication is an inability to foresee the consequences of one's actions, much less intend them. It was for this reason that the Ontario Court of Appeal in *MacKinlay*, supra, at p. 332, held that the state of mind required to commit the crime described in s. 229 (a)(ii) involves an ability on the part of the accused to measure or foresee the consequences of his act and that, therefore, the jury should consider whether intoxication affected his ability to have the required foresight.

[112] While the foregoing passage speaks of intoxication, it is my view that it applies as well to evidence of a mental condition that affects a person's ability to measure and foresee the consequences of one's actions.

[82] In *R. v. Walle*, 2012 SCC 41, Justice Moldaver provided a helpful overview of how the trier of fact is to ultimately assess the accused's intent:

- [65] In the end, what is critical is that the jury be made to understand, in clear terms, that in assessing the specific intent required for murder, it should consider the whole of the evidence that could realistically bear on the accused's mental state at the time of the alleged offence. The trial judge should alert the jury to the pertinent evidence. How detailed that recitation should be will generally be a matter for the trial judge, in the exercise of his or her discretion.
- [66] After the jurors have been alerted to the pertinent evidence, they should be told that if, after considering the whole of the evidence, they believe or have a reasonable doubt that the accused did not have one or the other of the requisite intents for murder at the time the offence was committed, then they must acquit the accused of murder and return a verdict of manslaughter.
- [67] If, however, there is no evidence that could realistically impact on whether the accused had the requisite mental state at the time of the offence, or if the pertinent evidence does not leave the jury in a state of reasonable doubt about the accused's intent, then the jury may properly resort to the common sense inference in deciding whether intent has been proved.
- [83] A critical consideration in the present case is whether it is appropriate for this Court to apply the common sense inference in deciding whether the Crown has proven the element of intent. The Crown says it is appropriate to apply the inference. The defendant says it is not.
- [84] As the passages cited above make clear, whether or not to apply the common sense inference depends in significant measure on the state of the evidence of the defendant's mental circumstances at the time of the offence. Put simply, did the accused have a sufficiently "sane and sober" mind, such that the common sense inference can be drawn that she intended the natural consequences of her actions?
- [85] Typically, circumstances that may impact the state of the accused's mind for the purposes of whether the common sense inference may be drawn are intoxication (by drugs and/or alcohol) or some form of mental disruption (such as a psychiatric or psychological condition).
- [86] In short, it seems to me that the critical element is whether there is some consideration (or considerations) present which raise a reasonable doubt about the accused's mental state at the time of the alleged offence.
- [87] Accordingly, I am obliged to consider these concerns in the context of the evidence relating to the defendant's mental status at the relevant time.
- [88] That evidence, as noted earlier, includes the viva voce testimony of two witnesses, Berry Sheppard and Chloe Gauthier, and the opinion evidence of Dr. Morgan.

- [89] At the outset of any consideration of Dr. Morgan's evidence, it is necessary to deal with the objections which the Crown raised as to its admissibility and, if it is admitted, what effect it should be allowed to have. My views are as follows.
- [90] I am unable to agree with the Crown's contention that Dr. Morgan's evidence is not material to the issues at bar. Dr. Morgan was qualified as a forensic psychiatrist, and was permitted to give opinion evidence that included an assessment of the mental state of the accused leading up to the time of and on or about the date of the offence. He testified with respect to the mental status of the defendant. In the context of the issues this case raises, his evidence is material.
- [91] Dr. Morgan conducted his interview and assessment a considerable time after the offence. In fact, he did not meet Ms. Shearer until early 2018, some 14 months after the offence. That is a real concern with respect to his evidence being of assistance in understanding the defendant's mental state at the time of the offence; indeed, Dr. Morgan quite straightforwardly acknowledged that as a problem. Nevertheless, I am satisfied that his evidence can be of at least some value in relation to her mental state at the relevant time. It is obviously a situation where the Court will have to proceed carefully to determine what weight should be assigned to his opinion.
- [92] As summarized earlier, in his testimony, Dr. Morgan referred to three separate pillars that go to support his conclusion that Ms. Shearer was meaningfully affected by a psychotic disorder at the time of the offence:
- a) Ms. Shearer's extant mental illness had deteriorated over the approximately two-week period preceding the offence, the evidence of which included other persons believing that Ms. Shearer was in need of professional help.
 - b) Ms. Shearer's personality structure, which he described as a borderline personality disorder, including among its features a fear of abandonment and emotional volatility; and
 - c) The long term acrimonious or conflictual relationship between Ms. Shearer and the victim.
- [93] In the Crown's submission, it is not permissible for Dr. Morgan to proffer an opinion based upon information or evidence which he received from the defendant where that evidence is not properly before the Court.
- [94] There is no question that Dr. Morgan has relied on and accepted the truth of such information, and the Crown's objection is, in my view, valid.
- [95] For example, Ms. Shearer provided information to Dr. Morgan in the course of the interview, wherein she described events from her youth. Dr. Morgan then relied upon that information to reach conclusions with respect to her "personality structure". The concern this presents is manifest. What she has told him is hearsay; the truth of her statements is unknown and untested.

- [96] As a general proposition, in the context of expert psychiatric evidence, the authorities establish that, where the opinion is based on information which comes from an interested party or another inherently suspect source, independent proof of that information will be necessary. Absent that and, in circumstances such as this case, where the interested party has provided no sworn evidence of the relevant information, the opinion evidence, to the extent it relies on that information, is likely to be given little or no weight: *R. v. Abbey*, [1982] 2 S.C.R. 24; *R. v. Lavallee*, [1990] 1 S.C.R. 852.
- [97] As a consequence, I am unable to give effect to Dr. Morgan's opinion where it is based upon such information and his opinion must necessarily be limited in a way that recognizes that deficiency.
- [98] Objection is also taken with respect to opinions formed by Dr. Morgan which were based upon statements made by other persons. For example, he has relied upon the statements of Berry Sheppard and Chloe Gauthier. He has also relied upon an assessment report prepared by another psychiatrist following an earlier interview with Ms. Shearer.
- [99] In my view, these are legitimate criticisms and I decline to accept the opinion of Dr. Morgan where it is based upon such information, with an important exception. As regards Berry Sheppard and Ms. Gauthier, I consider that, because each of them testified at this trial and spoke to the information upon which Dr. Morgan relied, those observations can properly be taken into account by him.
- [100] Similarly, with respect to the issue of animosity between Ms. Sheppard and Ms. Shearer, he is entitled to take that into account, since that evidence is before this Court, both through the evidence of Berry Sheppard and also by way of admissions which have been filed.
- [101] However, I am in essential agreement with the Crown as regards the objection and that will inform my conclusions as to what components of Dr. Morgan's opinion can be admitted in this trial and the weight to be attached to that evidence.
- [102] In the result, I am unable to accept the total theory advanced by Dr. Morgan, based as it is upon three supporting pillars. Clearly, at least one of those is inadmissible for the reasons I have explained.
- [103] Now, with that said, I am satisfied that there are portions of Dr. Morgan's opinion that are properly based upon his expertise as well as his own observations and the observations of others that are in evidence in this trial. Given his substantial expertise in the field of forensic psychiatry, those are such as to warrant consideration by this Court.
- [104] The opinions that Dr. Morgan has expressed, which I accept are these:
- a) Psychiatric medicine, through its broadly accepted diagnostic manual, the DSM-5, recognizes three main symptoms of schizophrenia:
 - Disorganized thought processes and speaking;

- Delusions; and
 - Hallucinations.
- b) Relatedly, I accept as accurate his definitions of delusions and hallucinations.
- c) At the time of his assessment in early 2018, based upon his observations, Dr. Morgan determined that there was a psychotic disorder present, notably, a schizophrenic illness. He observed conduct exhibited by Ms. Shearer that clearly represented disorganization in her thought patterns and expression. This was readily observable, quite apart from the truthfulness of what she told him. He also observed evidence of delusional beliefs and hallucinations. I consider this to be more of an observational matter, as opposed to being purely a hearsay issue, that is, a conclusion that relies on the truth of what she said to him.
- d) With respect to Ms. Shearer's mental status and conduct at the time of the offence, if mental illness was present and active, her long-standing animosity toward Ms. Sheppard could be a contributing factor to her actions.
- e) If Ms. Shearer was suffering from mental illness at the relevant time, a deterioration in that condition could contribute to the likelihood of violence toward Ms. Sheppard.
- f) His distinction as to different types of violence: emotional violence, which can be seen to be excessive and rage driven; and instrumental violence, which is more in the nature of the violence required to accomplish an end and may not be as extreme.
- [105] In the course of cross-examination by Crown counsel, some time was spent on the issue of whether Dr. Morgan, as a psychiatrist, could opine on the issue of a party's intent. While all the nuances of the exchange were not entirely clear to me, the thrust appeared to be that Dr. Morgan accepted that the determination of intent was not for him as a psychiatrist, but rather a legal matter exclusively within the domain of the trier of fact. Notwithstanding that apparent concession, the Crown pursued the issue, evidently out of some concern that Dr. Morgan's opinion did, nevertheless, tend to speak to intent.
- [106] To be clear, I do not for a moment incline to the view that Dr. Morgan's opinion will decide that issue. It is for this Court to determine whether the Crown has proven Ms. Shearer's intent. That decision will be made on the basis of all relevant and admissible evidence, together with the applicable legal principles.
- [107] With that explanation, I turn now to the critical issue in this analysis.
- [108] I conclude that, because of the evidence of Ms. Shearer's mental state at the time of the attack, it is not appropriate to apply the common sense inference in deciding whether intent has been proven. The reasons for my conclusion are these:

- a) At the time of Dr. Morgan's assessment of Ms. Shearer, there was a significant mental disorder present: a psychotic condition, schizophrenic illness. Although that assessment was 14 months after the offence, I consider the finding to be some evidence of her condition at the time of the offence, given the other circumstances which I will note in a moment.
 - b) In the time immediately prior to the offence, Ms. Shearer was displaying signs suggestive of mental disturbance; specifically, she was observed to be talking and laughing to herself for no apparent reason, which seems consistent with the definition of hallucinatory conduct as explained by Dr. Morgan. These symptoms were notably evident to other persons who were close to her. She also made reference to someone attempting to "stop her heart", conduct which I find falls within the scope of delusional as defined by Dr. Morgan. I acknowledge that there is a hearsay dimension to her statements to this effect, but I am of the view that the significance is largely derived from the fact the words were spoken, as opposed to their truth value. They are at least some evidence of a delusional belief.
 - c) In that time period, she was also observed to be socially withdrawn and isolated.
 - d) The situation of her animosity toward Ms. Sheppard remained a persistent factor.
 - e) The strange manner in which she behaved when Berry Shepard returned to the house after work on November 12; that is, not having fled or otherwise left the scene, but rather, reporting it to him in what seems to be a straightforward way.
- [109] In accordance with the decision of the Supreme Court of Canada in Walle, and particularly the aforementioned quotation of Moldaver J., when I consider the whole of the evidence that could realistically bear on Ms. Shearer's mental state at the time of the offence, I have a real doubt as to whether she was thinking in a rational way, such that she could properly be characterized as being sane and sober at that time.
- [110] Accordingly, I cannot apply the common sense inference.
- [111] In the absence of that inference, I am unable to conclude that, when Ms. Shearer attacked Ms. Sheppard, she should be taken to have known and intended the natural consequences of her actions.
- [112] Furthermore, and to be explicit, lest that conclusion leave some uncertainty with respect to the prosecution's obligation and ability to prove the defendant's intention beyond a reasonable doubt, I will be more specific and address the issue in terms more broadly than solely with respect to the common sense inference.
- [113] For the reasons I have explained, I have a real doubt that when Ms. Shearer inflicted the wounds upon Ms. Sheppard, she was mentally competent as the law requires to prove the necessary subjective foresight to establish the offence of murder.

- [114] It must be borne in mind that the evidence with respect to the defendant's mental status is not required to prove beyond a reasonable doubt, or even on a balance of probabilities, that she did not have the necessary intent. It is only necessary that it raise a reasonable doubt in the mind of the trier of fact.
- [115] In arriving at this conclusion, I do so fully appreciating that the evidence establishes that Ms. Shearer bore a long-standing animus, toward Anna Sheppard, one on which she had previously acted to harm Ms. Sheppard. I also recognize that the attack that Ms. Shearer made on Anna Sheppard was shocking in its brutality and undoubtedly took some time to execute.
- [116] I appreciate fully that, in ordinary circumstances, where those features are present, there would be a quite compelling basis to conclude that the perpetrator must have either meant to cause the death of the victim or knew that there was a substantial degree of probability that the injuries would cause the victim's death and proceeded reckless as to the consequences.
- [117] However, given the fundamental principle of criminal law that proof of subjective foresight of death is a constitutional requirement to prove murder, coupled with the concept of reasonable doubt, where the trier of fact has a real basis to doubt that the perpetrator was of sound and functioning mind at the time of the offence, proof of that intent cannot be safely found.
- [118] There are facts about this case that may well seem to not sit comfortably with my decision.
- [119] For example, there is the matter of Ms. Shearer's attempt to clean up the scene after the attack on Ms. Sheppard. A reasonable person might well point to that as evidence of a rational and calculated killing. However, it is also consistent with the accused, in a state of mental compromise, having flown into a crazed rage, subsequently recognizing what she has done and taking steps to clean up the evidence. It does not necessarily lead to the conclusion that the attack was committed with the murderous intent that the law requires.
- [120] The underlying concept is clear. There is no more serious crime than murder. Conviction results in the imposition of a mandatory sentence of life imprisonment.
- [121] To warrant the sanction of the conviction and that sentence, the law requires that the Crown prove, to the high criminal standard of proof beyond a reasonable doubt, that the defendant caused the death and that the defendant did so with the requisite murderous intent.
- [122] The act of killing must be proven to be the willful product of a conscious and operating mind, a mind that is functioning in a competent way.
- [123] I pause to observe that the requirement I have described, a mind functioning in a competent way, has a certain generality about it.

- [124] To be clear, when I speak of an accused person's mental state being such as to raise doubt as to intent, the condition of deficiency must rise to a significant level.
- [125] It could be argued, no doubt, that in many instances where an individual has acted to cause the death of another, there is some scope to believe the act is essentially irrational - that no sane, sober and sensible person would deliberately choose to kill another human.
- [126] That is not the standard of which I speak. Culpability for murder may quite readily attach in circumstances where the act was rash, ill-considered, irrational, driven by rage, the product of lessened inhibitions or in some other way an unreasonable act.
- [127] Rather, what I am describing is a situation where there is a real basis to doubt that the perpetrator's mind was functioning so that the person was able to properly appreciate what they were doing and understand the actual consequences of their acts.
- [128] I wish to make clear, in offering these comments my language is practical, not intended to perfect and precise. Rather, I offer my observations as a way of explaining, as best I can, the basis for the decision I have reached.
- [129] The consequence of my finding is that Ms. Shearer must be acquitted of the offence of second degree murder.
- [130] That, however, is not the end of the matter. I am satisfied that Ms. Shearer caused Ms. Sheppard's death by means of an unlawful act, the offence of assault causing bodily harm. Proof of manslaughter does not require specific intent. Liability is made out where general intent is established.
- [131] On the facts at hand, Ms. Shearer admits, through her counsel, that the offence of manslaughter has been made out, and accepts that a conviction is warranted.
- [132] In my view, that concession is proper.
- [133] I am satisfied that the offence of manslaughter has been proven - Ms. Shearer caused the death of Anna Sheppard, and did so by means of an unlawful act, assault causing bodily harm. That act is both unlawful in that it is an offence against the Criminal Code of Canada, and it is objectively dangerous. Furthermore, I am satisfied that general intent is made out on the evidence. Accordingly, a conviction will be entered for that offence, which is an included offence within the charge of murder as set out on the indictment.

"Williams J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/01/2020BCSC0116.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-shearer-2020>

Prepared on 25 October 2026 · Esheria