

Case Name:
R. v. Harvey

**Between
Regina, and
Aaron Harvey**

[2014] B.C.J. No. 2251

2014 BCSC 1692

2014 CarswellBC 2626

116 W.C.B. (2d) 392

Docket: 76480

Registry: Nanaimo

British Columbia Supreme Court
Nanaimo, British Columbia

M.A. Humphries J.

Heard: June 23-27, 30, July 2-5, 7, 8, 14, 28, 29, 2014.

Judgment: September 5, 2014.

(195 paras.)

Criminal law -- Criminal Code offences -- Offences against person and reputation -- Homicide -- Second degree murder -- Trial of Harvey, charged with the second degree murder of his father -- Harvey's father was stabbed multiple times -- In statements to police, Harvey said that he stabbed his father to prevent his father from poisoning him -- The Court was satisfied beyond a reasonable doubt that Harvey inflicted the wound that resulted in his father's death -- However, Harvey suffered from a major mental disorder and, at the time he stabbed his father, was rendered incapable of knowing that his actions were morally wrong -- Harvey found not criminally responsible by reason of a mental disorder -- Criminal Code, s. 16.

Criminal law -- Elements of the offence -- Mens rea -- Insanity or mental disorder -- Finding of not

criminally responsible -- Trial of Harvey, charged with the second degree murder of his father -- Harvey's father was stabbed multiple times -- In statements to police, Harvey said that he stabbed his father to prevent his father from poisoning him -- The Court was satisfied beyond a reasonable doubt that Harvey inflicted the wound that resulted in his father's death -- However, Harvey suffered from a major mental disorder and, at the time he stabbed his father, was rendered incapable of knowing that his actions were morally wrong -- Harvey found not criminally responsible by reason of a mental disorder -- Criminal Code, s. 16.

Trial of Harvey, charged with the second degree murder of his father. Harvey's father was stabbed multiple times and the cause of death was a wound to his neck which almost severed the jugular vein. In statements to the 911 operator and police, Harvey said that George Bush had arranged for assassins to live in the apartment below him and that his father had repeatedly injected him with poisonous polonium. He further stated that he had stabbed his father to prevent being poisoned again. Although initially found unfit to stand trial, Harvey was subsequently found not unfit to stand trial. The Defence took the position that Harvey acted in self-defence and should be acquitted. The Crown took the position that it had proven all the elements of murder, including intent, and that the defence of self-defence had no air of reality. Crown Counsel made it clear from the outset that they intended to raise the issue of not criminally responsible by reason of mental disorder if Harvey were found guilty.

HELD: Harvey found not criminally responsible by reason of a mental disorder. The Court was satisfied beyond a reasonable doubt that it was Harvey who stabbed his father and inflicted the wound that resulted in his father's death. He failed to establish the objective requirement that his belief that he acted in self-defence was reasonable in the circumstances. As a result, the defence of self-defence had no air of reality. However, Harvey suffered from a major mental disorder and, at the time he stabbed his father, was rendered incapable of knowing that his actions were morally wrong.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, 1982, R.S.C. 1985, App. II, No. 44, Schedule B, s. 10(b)

Criminal Code, R.S.C. 1985, c. C-46, s. 2, s. 16, s. 34(2), s. 650(2)(b), s. 672.11(b), s. 672.45(1.1), s. 672.46(1)

Mental Health Act, RSBC 1996, CHAPTER 288,

Counsel:

Counsel for the Crown: Jacqueline Gaudet, Nicholas Barber.

Counsel for the Defence: Kelly Bradshaw.

Reasons for Judgment

1 M.A. HUMPHRIES J.:-- Aaron Harvey is charged with the second degree murder of his father, Roger Harvey, on February 13, 2013 in Nanaimo, B.C.

2 The trial began with a *voir dire* on the admissibility of a statement taken on February 14, 2013 at the Ladysmith detachment of the RCMP. During this statement, Aaron Harvey said, among other things, that Roger Harvey was not his real father; he was an agent of George Bush who had arranged for assassins to live in the apartment underneath the apartment where Aaron and Roger lived, that Roger Harvey had repeatedly injected Aaron Harvey with poisonous polonium, and Aaron Harvey had stabbed Roger Harvey to prevent being poisoned again.

3 At the conclusion of the *voir dire*, defence counsel advised that she had no submissions to make on the issue of voluntariness. She had also informed the court that she had given notice of a possible issue under s. 10(b) of the *Charter*, but after hearing the evidence and taking instructions from her client, that issue was not pursued.

4 The court, having heard the evidence surrounding the circumstances of the statement, the statement itself, and the evidence of Dr. Wanis on the issue of whether Mr. Harvey had an operating mind at the time the statement was taken (that is, whether he knew what he was saying, its potential use to his detriment, and whether he understood the police caution - see *R. v. White* [1994] 2 S.C.R. 914, at para. 45), declared the statement admissible.

5 The entirety of the evidence of the following witnesses from the *voir dire* was agreed to be admissible at trial:

Judy Ostling

Cst. Blakey

Cst. Desjardines

Cst. Gelderblom

Cst. Maizis

Cst. Staniforth

Cst. Boucher

Cst. Phillip

Cpl. Stone

Cst. Swanson.

6 As well, a portion of Dr. Wanis's evidence on the *voir dire* was made part of the trial at the request of defence. A transcript of the relevant part of his evidence was prepared and marked as an exhibit.

7 The exhibits from the *voir dire* became exhibits at trial.

8 Counsel for the Crown made it clear from the outset that they intended to raise the issue of not criminally responsible by reason of mental disorder ("NCRMD") pursuant to s. 16 of the *Criminal Code* if Mr. Harvey is found guilty of a criminal offence.

9 Section 16(1) provides:

- (1) No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.

10 Mr. Harvey has been the subject of two fitness assessments. The psychiatrist who assessed him on March 8, 2013, found him unfit to stand trial. He was detained at the Forensic Psychiatric hospital for treatment and was reassessed on May 15, 2013. The psychiatrist on the second assessment was of the opinion that, after two months of treatment, Mr. Harvey was not unfit to stand trial, although he remained certified under the British Columbia *Mental Health Act*.

11 "Unfit to stand trial" in s. 2 of the *Criminal Code* means:

unable on account of mental disorder to conduct a defence at any stage of the proceedings before a verdict is rendered or to instruct counsel to do so, and, in particular, unable on account of mental disorder to

- (a) understand the nature or object of the proceedings,
- (b) understand the possible consequences of the proceedings, or
- (c) communicate with counsel.

12 Mr. Harvey has been held at the Forensic Institute, and attended court from there by video-link by agreement between the defence and the Crown, and with the permission of the court under s. 650(2)(b) of the *Criminal Code*, because the stress involved in removing Mr. Harvey from that environment and any disruption in the course of his medications would likely interfere with his level of fitness. Mr. Harvey's mother was present in the room with him at the Forensic Institute during the trial.

13 Mr. Harvey, having been declared fit, is entitled to instruct counsel as he wishes. He instructed his counsel not to raise an issue under s. 16 of the *Criminal Code*, but to pursue a defence based on self-defence.

14 The court in *R. v. Swain* [1991] 1 S.C.R. 933 emphasized that the accused, if fit, must have complete control over his defence. Thus the Crown is prevented from raising NCRMD against the wishes of an accused unless and until he has been found guilty (and before a conviction is registered), or if the issue arises as a result of the conduct of his own defence.

15 As a result of the respective positions, which have changed as the trial proceeded, this trial has been fraught with procedural issues.

16 In the normal course, where the accused raises NCRMD, the court will be required to consider whether the Crown has proven the *actus reus* beyond a reasonable doubt. If it has, the court considers whether it has been established, on a balance of probabilities by the party that raised the issue, that NCRMD applies, and finally, if it does not, whether the Crown has proven the necessary *mens rea* beyond a reasonable doubt, taking into account the evidence on mental disorder (see *R. v. David* (2002) 169 CCC (3d) 165; *R. v. Brown* 2006 BCSC 1581, relying on *R. v. Chaulk* [1990] 3 S.C.R. 1303). I note that the court in *Chaulk*, at para. 118, would require the Crown to tender as part of its case evidence that will establish the existence of all the elements of the offence with which the accused is charged. This must include intent, but in *David*, the Ontario Court of appeal said it is preferable to consider whether the accused committed the act forming the subject matter of the charge, and then go on to s. 16 before considering intent. The court pointed out at para. 51, that in some cases it is desirable not to segregate capacity and intent.

17 However, where the accused refuses to raise the issue of NCRMD, a situation is created, apparently not anticipated in *Swain*, where an accused who is not unfit to stand trial maintains a set of obviously delusional beliefs that make an assessment of his intent in that unreal context

completely artificial, but until there is a determination as to whether the Crown has proven the offence (which includes proof of intent) beyond a reasonable doubt, the Crown will not be able to raise the issue of mental capacity to form that very intent. It is not entirely satisfactory to say the Court should then just resort to a finding of manslaughter, because in the circumstances here the unlawful act which would form the basis of a manslaughter verdict, with the required intent for that lesser offence, was driven by the very same delusional beliefs and is subject to the same concern regarding lack of capacity.

18 The contents of Mr. Harvey's statements to the 911 operator, Cst. Blakey, and his statement to Cst. Boucher (all of which I will set out in more detail below) raise serious concerns about his mental state at the time of the offence. Very briefly, as mentioned above, Aaron Harvey believes that George W. Bush, the CIA, and various forms of "mind tech" were directing his father, the victim Roger Harvey, to hire assassins or to act on his own to rape and torture Aaron Harvey, and to poison him by the repeated use of needles of polonium. He also believes he must protect from these same threats an imaginary daughter, Honor, who was born to the actress Jessica Alba through sperm stolen from Mr. Harvey. Thus Aaron Harvey, according to the statement to Cst. Boucher, felt compelled to kill Roger Harvey specifically to prevent another imminent bout of polonium poisoning.

19 However, all of this evidence was adduced by the Crown. There was no attempt in cross-examination by the defence to deal with that evidence otherwise than on its face. That is, Mr. Harvey's particular set of delusions remained unquestioned and unexplored, except as they might provide him with a subjective justification for acting in self-defence. There was no attempt to relate his delusions to mental capacity.

20 Following the completion of the Crown's case, both Crown and Defence made submissions on whether the Crown had proven its case beyond a reasonable doubt. If the Court found that the Crown proved its case beyond a reasonable doubt, resulting in a verdict of guilty, this would permit the Crown to adduce evidence of NCRMD before a conviction was registered.

21 The Crown argued that it had proven all the elements of murder, including intent. The defence submissions concentrated on whether the Crown had proven the intent required for murder based on various evidentiary issues, and also raised the issue of causation, which I will deal with later. As well, defence argued that the defence of self-defence has an air of reality given Aaron Harvey's beliefs and the evidence of Dr. Wanis from the *voir dire* that the beliefs were real to Mr. Harvey and thus his action in killing Roger Harvey would be justified. Defence argued that assuming the court accepted that the defence of self-defence has an air of reality, that the defence should be successful in substance as well.

22 Defence counsel pointed out that the Crown argued that the delusional beliefs contained in Mr. Harvey's statements to Cst. Boucher cannot ground a defence of self-defence; therefore it would be unfair to let the Crown rely on those same statements to prove intent to kill.

23 During submissions, the Court raised a concern as to how to deal with intent in general, the specific intent required for murder, and the issue of self-defence, without considering the issue of mental capacity. The Crown mentioned the possibility of being able to consider the course of cross-examination as raising the issue of Mr. Harvey's mental state, or at least constituting an acknowledgment by the defence that such an issue exists, but said that in view of *Swain*, they decided not to attempt to get into the issue in the Crown's case.

24 Also during submissions, the issue arose of whether the Court could raise NCRMD on its own, given that s. 672.11(b) allows the Court to order an assessment at any time. In *R. v. Piette*, [2005] B.C.J. No. 2688, Wedge J. held on a summary conviction appeal that the court could not do so. The decision to raise NCRMD must remain with the defence and possibly the Crown, given *Swain*. The offence in that case was fairly minor and the accused had long since recovered from any mental issues.

25 The conclusion in *Piette* was questioned in *R. v. Fluxgold*, 2009 ONCJ 201 where the court found that the Crown had proven the *actus reus* (sexual assault) without the complainant's consent, and ordered an assessment under s. 672.11(b) since neither the Crown nor the defence were prepared to raise the issue. The Court was apparently ready to consider NCRMD on its own, but in the end was spared having to do so by the decision of the Crown to raise the issue.

26 In the case before me, there are serious issues of public protection involved that were not necessarily present in either *Piette* or *Fluxgold*, nor in *Swain*, where Mr. Swain had been held at the pleasure of the Lieutenant-Governor under the system as it then existed for many years. The Court in *Swain* decided to end the matter by staying proceedings.

27 However, similar to *Fluxgold*, the court here was saved from having to decide whether to raise NCRMD itself because, following the defence submissions on the merits, the Crown took the position that the conduct of the defence had put the accused's mental capacity into issue, even though the defence had not called evidence. They argued that "the conduct of the defence" would include challenge to the Crown's witnesses by cross-examination, or the substance of submissions refuting the Crown's case.

28 The defence initially objected, as counsel submitted that she had dealt with the delusional belief system only in the context of whether the Crown had proven the specific intent required for murder, and in any event, whether the defence of self-defence would negate any unlawful act.

29 The exception to the rule that only the defence may raise NCRMD prior to a verdict is articulated in various ways in *Swain*:

30 Para. 40:

...This is not to say that if an accused chooses to raise evidence which tends to put his or her mental capacity for criminal intent into question but falls short of

raising the defence of insanity (within s. 16), the Crown will be unable to raise its own evidence of insanity. In circumstances where the accused's own evidence tends to put his or her mental capacity for criminal intent into question, the Crown will be entitled to put forward its own evidence of insanity and the trial judge will be entitled to charge the jury on s. 16.

31 Para. 41:

If an accused chooses to conduct his or her defence in such a way that the accused's mental capacity for criminal intent is somehow put into question, then the Crown will be entitled to "complete the picture": by raising its own evidence of insanity and the trial judge will be entitled to charge the jury on s. 16.

32 Para. 43:

The common law rule which was enunciated in *R. v. Simpson*, [1977] O.J. No. 2264, supra and *R. v. Saxell*, [1980] O.J. No. 3895, supra, does not limit the Crown to raising insanity only in circumstances where an accused's own defence puts his or her mental capacity for criminal intent into issue.

33 Para. 71:

While the Crown would be limited to raising evidence of insanity only after the trier of fact was satisfied that the full burden of proof on *actus reus* and *mens rea* had been discharged or after the accused's own defence has somehow put his or her mental capacity for criminal intent in issue, the accused would have the option of raising evidence of insanity at any time during the trial.

...if during the course of the trial an accused raises evidence of mental impairment which (in the view of the trial judge) tends to put his or her mental capacity in issue, the Crown will be entitled to lead evidence of insanity and the trial judge will be entitled to charge the jury on the insanity defence within the meaning of s. 16.

34 Para. 72:

...the Crown may raise evidence of insanity if the accused's own defence has (in the view of the trial judge) put the accused's capacity for criminal intent in issue. In these circumstances the Crown's ability to raise evidence of insanity is not inconsistent with the accused's right to control the conduct of his or her defence because the very issue has been raised by the accused's conduct of his or her defence. Furthermore, as was stated, above, the Crown's ability to raise evidence

of insanity only after an accused has put his or her mental capacity for criminal intent in issue does not raise the problem of the Crown's being able to place an accused in a position where inconsistent defences must be advanced.

[emphasis added in all paragraphs]

35 It is clear from some of the statements set out above from *Swain* that the court contemplated the accused calling evidence. However, most of the statements refer only to the conduct of the defence.

36 Following the conclusion of the submissions, the court reserved on the question of whether the Crown could raise NCRMD as a result of the conduct of the defence. Within a day or two, the court received a letter from defence counsel advising that she would be meeting with Mr. Harvey and her instructions may change. In fact they did, and when court resumed, defence counsel advised that she was now instructed not to oppose the issue being raised in the Crown's case. The court asked to have clarified the basis upon which the Crown was being allowed to tender psychiatric evidence of NCRMD in its own case, given *Swain*. Defence stated that she conceded that her cross-examination of Dr. Wanis in the *voir dire*, which formed part of the trial, had raised the issue, although she did not agree that submissions alone could put NCRMD in issue.

37 The Crown was thus permitted to reopen its case on the merits and call Dr. Wanis on the issue of NCRMD, and the defence called Dr. Lohrasbe. I will deal with the opinions in more detail later, but both doctors had no difficulty in giving the opinion that Aaron Harvey suffers from a major mental disorder (schizophrenia and schizoaffective disorder) and meets the criteria for the second branch of s. 16 (incapable of knowing that the act was wrong), and although the first branch (incapable of appreciating the nature and quality of the act) is not as amenable to psychiatric analysis, both were prepared, according to their respective oral testimonies, to adopt it as applicable to Mr. Harvey as well.

38 During the trial Aaron Harvey was well-behaved, polite, attentive, and respectful of the court. He appeared to understand clearly the process and the role of his counsel, with whom he chose to speak regularly during the proceedings. However, he apparently maintains his belief in his innocence based on the necessity to act in self-defence.

39 Thus, despite the psychiatric evidence, the defence continues its primary position that Aaron Harvey acted in self-defence and should be acquitted. A secondary argument of causation was advanced.

40 The submissions then proceeded in accordance with the procedure referred to in *David, supra*. That is, if the court does not accept the defence of self-defence and is satisfied beyond a reasonable doubt that Aaron Harvey is guilty of culpable homicide (without deciding at this stage whether the culpable homicide is murder or manslaughter), then the court will go on to consider the issue of

NCRMD.

41 If the court is not satisfied on the balance of probabilities that NCRMD applies (the burden being on the Crown who raised the issue), the defence argues that the Crown has not proven the necessary intent for murder, thus leading to a verdict of manslaughter.

Evidence

42 A 911 call came into the Nanaimo RCMP at approximately 5:40 p.m. on February 13, 2014 from a man calling himself the "king of kings, lord of lords", asking if Honor was safe, and saying he had to defend himself. He told the operator that "in this life", his name is Aaron. The conversation was disjointed and confusing, with references to George W. Bush. Aaron said Roger, ultimately discovered to be the deceased, was not his real father and had murdered him and mistreated him.

43 The 911 operator had Aaron confirm that he was at the address that had come up on the call. She thought the call should be checked out but did not think it was urgent. She sent it to the dispatcher.

44 Cst. Blakey was dispatched to "check well-being", a call he considered routine. He was given no information about the content of the call. He arrived at the apartment building in full uniform around 7:00 p.m. or shortly thereafter and dialled the apartment number. A person said "hello". Cst. Blakey identified himself as a police officer and asked if he could come up. He was buzzed in and went to the apartment. A large male, 5'10", 260-300 lbs, opened the door dressed in a white linen suit and shirt in the pattern of an American flag. His hair was wet and he appeared to have just showered. Cst. Blakey said the male had an English accent (on the tapes and in conversation with Mr. Harvey, he appears to have an American drawl at times, although some pronunciations are English).

45 Cst. Blakey identified the accused, Aaron Harvey, as the man who answered the door.

46 Cst. Blakey and the accused had a conversation at the door along the lines of the one with the 911 operator, with references to George W. Bush and a girl whom Cst. Blakey understood to be named Anna or Hannah. The accused said this girl was his daughter, aged 4. He said Jessica Alba, the actor, had stolen his sperm.

47 Cst. Blakey testified that he was not at ease with the situation, but he could see nothing illegal. He was about to leave, but felt there was something wrong, so he asked the accused if he wanted to tell him something he did not want the neighbours to hear. The accused invited him into a clean and very sparsely furnished apartment. Despite the continuation of the strange conversation, there was nothing of obvious concern and Cst. Blakey was again about to leave when the accused said "I had to do it." Cst. Blakey: "What?" The accused: "It was self-defence." Cst. Blakey: "Is there anyone else here?" The accused: "Yes, my false dad. Do you want me to show you?" "Yes."

48 The accused took the officer down the hallway and pointed at the last door. The officer could see an elderly male in the room, apparently stabbed. There was a lot of blood. He did not see a weapon.

49 Cst. Blakey asked Mr. Harvey: "What did you do?" The accused said: "I had to, it was self-defence."

50 Cst. Blakey said, "You're under arrest" and reached for his handcuffs. The accused assumed an aggressive stance with his fists up. Cst. Blakey testified he was very alarmed, given how big Mr. Harvey was, that he was apparently ready to fight, and that he was alone with him. Nevertheless, the officer remained calm, put away the handcuffs, and called the code for "officer needs assistance" on his lapel radio - 10-33. This call was made at 7:11 p.m. Cst. Blakey unsnapped his pistol and the accused put his fists down.

51 The radio traffic was heavy as officers began to respond. Cst. Blakey wanted to keep communications open and get to somewhere he could be found by his fellow officers so he pressed the button to keep his mic open. At one point he can be heard on the radio saying "possible self defence". He could not say in his testimony whether he was directing this comment to the radio or repeating something to Mr. Harvey. He said he was having two conversations at once and the situation was hectic.

52 Mr. Harvey said "It's okay, I know you've got procedures."

53 Cst. Blakey decided to take the elevator, rather than the stairs, to the lobby. He said Mr. Harvey was calm and cooperative, asking about "Hannah".

54 Cst. Blakey and the accused went outside the building and across the street to the police car which was parked in a parking lot. Cst. Blakey put Mr. Harvey in the car. He had not searched him at this point, and Mr. Harvey was not in cuffs.

55 Cst. Blakey had spoken into his radio earlier telling his colleagues not to use lights and siren and to back off, as he had already seen the aggressive reaction Mr. Harvey had to the handcuffs. He told Dispatch: "I think I have a body upstairs".

56 Cst. Maizis and Cst. Veillette arrived at 7:16 p.m. within seconds of each other, followed by Cst. Desjardines, and Cst. Gelderblom, who had been asked by the Staff Sergeant to assume control of the scene until the serious crime investigators arrived.

57 Meanwhile, Cst. Blakey arrested Mr. Harvey for assault causing bodily harm and read him his *Charter* rights. Mr. Harvey said he wanted to speak to Legal Aid.

58 Cst. Veillette, Cst. Ramsay, and Cst. Chung obtained entry to the apartment building after buzzing various numbers on the keypad. They went initially to the apartment next door, but soon

learned they had the wrong apartment, and went into Mr. Harvey's apartment, which was unlocked. They found no one in the apartment, except Roger Harvey, who was lying in a bedroom down the hall. At 7:24, Cst. Veillette radioed that there was a body, cold, a lot of blood. He saw a knife on a desk to the left of the door. The blade of the knife was bent at an angle, and a piece of the handle near the blade was broken off and found on the floor.

59 The three officers were told by the watch commander to leave the apartment and keep it secure and await the paramedics. Cst. Ramsay had touched Roger Harvey's leg, finding it cold, and that had been reported over the radio. Since the apartment was cold and Roger Harvey had shorts on, Cst. Ramsay thought he should go back to double check for vital signs, which he did, finding none, and confirmed at 7:33 p.m. that Roger Harvey was dead. The paramedics, Mr. Hoenhaus and Mr. Sawyer, arrived, soon followed by the general investigations officers. Both paramedics testified that there were no signs of life and that rigor mortis appeared to have set in. Mr. Hoenhaus, who examined Roger Harvey's head, noted dried and congealed blood.

60 Meanwhile, down in the parking lot, Cst. Gelderblom arrested Mr. Harvey at 7:28 p.m. for murder and recited his *Charter* rights again.

61 Cst. Gelderblom explained Mr. Harvey's *Charter* rights in layman's terms after reading from a card. He asked Mr. Harvey many times if he wanted to speak to a lawyer. Mr. Harvey said he did not - he said he "could beat Barack in a court battle right now."

62 Cst. Desjardines took custody of Mr. Harvey at the scene. His interactions are all recorded. He told Mr. Harvey he would be taken to the Nanaimo detachment and, once there, would be allowed to contact a lawyer. Mr. Harvey said "Maybe." He said "God almighty says I should have a lawyer". Cst. Desjardines said they would get him hooked up with a lawyer. Mr. Harvey continued to talk about being attacked and Cst. Desjardines told him he wanted to talk to him about it but he had to make sure he understood his rights and they would let him speak with a lawyer. He told Mr. Harvey it was not fair if he started to talk to him if he hadn't had a chance to speak to a lawyer first.

63 Cst. Desjardines took Mr. Harvey to the Nanaimo detachment, with Cst. Maizis driving. They arrived around 8:00 p.m. Once there, Cst. Maizis went in to find a room. The building was under repairs and they waited outside in the car for almost an hour before being sent to the Ladysmith detachment because there were no cells available in Nanaimo.

64 Cst. Desjardines asked Mr. Harvey what his name was and if he took any medication. Mr. Harvey said he had been in a mental health facility and Cst. Desjardines asked when, and about his medications. Mr. Harvey continued to ask about his daughter Honor. Cst. Desjardines asked who Honor lives with and her mother's name and location. Mr. Harvey said Honor's mother's name is Joanna Arianne Stevenson, and she had been murdered in Italy in connection with the Pope resigning. He expressed concern several times about George W. Bush using "tech" on him, and also mentioned the CIA.

65 Other than that, no questions were asked of Mr. Harvey, except casual conversational responses to Mr. Harvey's comments about George W. Bush and the CIA.

66 Before being transported to Ladysmith by Cst. Maizis, with Cst. Desjardins recording the entire interaction, Mr. Harvey was taken into an interview room in Nanaimo where he was photographed and his clothes were seized. He was given a jumpsuit to wear. This process was videotaped. Mr. Harvey protested several times that the process was illegal.

67 Once at Ladysmith, Mr. Harvey was booked into a cell around 9:30 p.m. and looked at the list of lawyers. He chose "Kelly Bradshaw" as the person "his father", that is, God, wanted him to have as a lawyer and insisted on waiting for her, although she was not immediately available on the phone. Cst. Desjardines encouraged him to speak to someone else in the meantime, and to speak to Ms. Bradshaw later, but Mr. Harvey refused. He was put into a cell, and Ms. Bradshaw called the detachment within a few minutes and had a private conversation with Mr. Harvey.

68 Cst. Stone took photographs of the scene. He photographed a bloody knife with a bent blade on the desk by the door in Roger Harvey's room. He also photographed clothing and shoes with blood on them from Aaron Harvey's room.

69 Cst. Swanson was the exhibit officer. He seized a number of exhibits, including swabs of various surfaces. He seized the knife from the desk and some damaged headphones from the floor of Roger Harvey's bedroom. He found that he could hear the TV sound when he unplugged the headphones from the TV. The TV was on and the volume was up. He seized some journals from Aaron Harvey's room which appeared to be a daily report of what the accused felt was happening to him.

70 Ms. Steward-Kobewka, the manager of the apartment building testified that Aaron Harvey came in to the office on one occasion to complain about something in the suite below his bedroom. She sent the building maintenance man, Mr. Bailey, to check it out. He could find nothing. Mr. Bailey thought this was 4 or 5 months before the offence.

71 DNA swabs were taken from Aaron Harvey for comparison purposes on October 29, 2013. Mr. Harvey asked the officers if they were going to do a paternity test.

72 Cst. Eggen watched videos that were found on the video camera located in the living room of the apartment. One was played in court in which Mr. Harvey filmed his foot, claiming he "took a stab wound to the foot today, either through the floor or in my bedroom". Other lengthy videos showed several hours of a darkened room while Aaron Harvey slept.

73 The history of searches on Aaron Harvey's computer showed searches, among many others, for information on the poisoning of Alexander Litvenenko by polonium, DNA, a father's duty to family, the definition of high treason, mind reading tech, police duty to investigation, and the right to a safe place to live.

74 The report of Sgt. Cockle, an expert in blood stain pattern analysis, was entered by consent.

75 Evidence on continuity of exhibits was adduced through various officers, although no issue was ultimately taken with continuity.

76 Inquiries of other tenants in the building resulted in nothing of significance to the investigation.

Cause of Death

77 Dr. Lee, the pathologist testified. She said there were four stab wounds on the left face and neck, 2 to 6.5 cms in length. The deepest stab wound, the one to the jugular vein, was 8-10 cms deep and 5 cms long.

78 Dr. Lee said the cause of death was a wound to the neck which almost severed the jugular vein. She could not say how long it would take a person with such an injury to die. Whereas with arteries, it takes seconds to minutes, with a vein, it is harder to estimate, but it is not unexpected that the person will maintain a certain level of activity after being receiving such an injury. The injury would require surgery to repair it.

79 As well as the injuries on the left face and neck, there was a shallower 8.5 cm incision on the right lower neck, deep stab wounds to the right and left flank and lower back, and many wounds to the hands and right wrist and forearm, consistent with defensive wounds.

80 Roger Harvey also had fractured ribs on his right front, consistent with collapsing onto the ground.

DNA

81 Ms. Martin from the forensic laboratory testified as to the results of the DNA analysis of the various swabs that were taken from the apartment and clothing.

82 The samples and swabs of DNA from various surfaces were almost all from Roger Harvey. A few were mixed samples from two contributors, likely Roger Harvey and Aaron Harvey. There was one sample, which was presumptive for blood, on a small area on a white t-shirt that came only from Aaron Harvey.

Statements

83 No issues were raised or submissions addressed to the admissibility of the statements made to the 911 operator, Csts. Blakey, Gelderblom, Desjardines, or Maisis. There is very little, if anything, in those statements that was not covered or repeated in the voluntary and admissible statement to Cst. Boucher, which I will describe in detail below. Nearly all of Mr. Harvey's statements were volunteered and were not the result of any questioning by the police, who repeatedly warned him

not to speak. Cst. Blakey asked one question after seeing the body: "What did you do?" and Mr. Harvey answered "I had to, it was self-defence," something he had already said to Cst. Blakey as well as to the 911 operator, without context.

Statement to Cst. Boucher, February 14, 2013

84 At 10 a.m. on the morning after Mr. Harvey was arrested and taken to Ladysmith, Cst. Boucher conducted an interview of Mr. Harvey. Mr. Harvey was given newly purchased clothing to wear and taken to the interview room. The interview lasted two hours. Mr. Harvey was allowed into the garage area and allowed to smoke four cigarettes after the interview was over. He was then taken to court and turned over to the custody of the sheriffs.

85 As the interview with Cst. Boucher began, Mr. Harvey asked if he should have his lawyer with him. Cst. Boucher responded that Mr. Harvey had had an opportunity to speak to a lawyer and would not have the lawyer present for the interview. Mr. Harvey was asked if he had understood the advice he had received. He said: "Sort of, didn't make sense to me really, cause...well see, I understand the system as flawed."

Cst. Boucher: You understand that system as what?

Mr. Harvey: As completely flawed.

Cst. Boucher: As flawed?

Mr. Harvey: Like if I had my way, as the king of kings, Lord of the Lords, I'd have testing centres everywhere, with mind reading tech and I'd regularly test people to make sure they hadn't done anything wrong since their last testing. Not only that but not, to make sure they hadn't done anything wrong. To...to pro...just for their own protection to have the trackers and com links like this. Better than like the secret service have.

86 This conversation continued for a few exchanges, coming around to George W. Bush. Cst. Boucher said "Okay, I'd like to talk about that some more, I just wanna make sure, I just wanna make sure it's clear that you did have a chance to talk to a lawyer."

Harvey: I try, yeah I wouldn't lie to you.

Boucher: So you did have that opportunity, you spoke to the lawyer?

Harvey: I spoke to Kelly I think.

Boucher: Kelly? This is Kelly Bradshaw.

Harvey: Yeah it is, Yes Kelly Bradshaw.

87 Cst. Boucher explained Mr. Harvey's right to silence and asked Mr. Harvey if he understood. Mr. Harvey said "It means that my intel could be used, it may be in the future. That what I say, the intel, or what I say even if it's true or false could be used possibly in a court room."

88 Cst. Boucher continued with the secondary warning, telling Mr. Harvey:

I want to make sure it's very clear to you that any threats or promises that were ever made to you, if any were ever made to you, they shouldn't affect whether you say anything here. What you say here needs to be entirely voluntary.

89 He asked Mr. Harvey what that meant to him. He said:

Mr. Harvey: It means that if they made any threat or promise that you'll look into it.

Cst. Boucher: Right. I would look into it. But it shouldn't affect whether you say anything while you and I speak. It shouldn't have any impact on whether you, whether you tell me something or whether you don't tell me something. Okay, so anything you tell me during this interview should be completely voluntary and shouldn't be coerced in any way. Does that make sense?

Mr. Harvey: Ah, nah, I wasn't scared or anything that's for sure.

Cst. Boucher: You weren't scared?

Mr. Harvey: No. But um, I don't remember any promises.

90 Mr. Harvey then asked again if he could have his lawyer here right now. Cst. Boucher said no, he had had his chance to speak to a lawyer. Mr. Harvey then briefly compared the English, Canadian, and American systems, and mentioned George W. Bush again.

91 Cst. Boucher told Mr. Harvey he had been arrested and was being interviewed in connection with a stabbing death of someone in his apartment yesterday. He told Mr. Harvey he had an important part to tell about what happened, he wanted to know all about it, and why it happened.

92 During the interview, which lasted two hours, Mr. Harvey described many things, including being constantly attacked, raped, assaulted, and poisoned repeatedly by polonium administered by needles by assassins who lived in the apartment under his, and by Roger Harvey. Mr. Harvey said he had called 911 "ages ago" asking the police to search for assassins downstairs.

93 Mr. Harvey said his water and food were tampered with. He also mentioned a concern with Cash Warren (apparently Jessica Alba's husband) who had stolen his sperm and had a child with Jessica Alba. This appears to be the child Honor whom he mentioned many times during his interactions with the police. There appears to be no issue that this daughter is imaginary. He also mentioned a woman named Joanna, whom he said is Honor's real mother and was murdered in Italy.

94 During the interview, Mr. Harvey admitted to stabbing Roger Harvey, apparently in self-defence, to stop the continued assaults and poisonings he said were being inflicted on him at the instance of George W. Bush, but mainly perpetrated by Roger Harvey.

95 Mr. Harvey was calm and talkative throughout the interview, seeming relaxed, drinking coffee, volunteering information and being responsive.

96 At times he became vague and muttered, and occasionally seemed to be listening to something or someone.

97 When questioned about the actual details of the stabbing, he was hesitant, evasive, and answered only after long pauses. He said several times that he would tell everything if he could have a cigarette. Cst. Boucher said told Mr. Harvey he did not want what he said to be dependent on whether he got a cigarette or not. Cst. Boucher repeatedly asked what had happened to Roger.

98 Mr. Harvey eventually said (p. 29):

When your own bedroom where you sleep is a poison stab wound pit, with poop smells coming up and orgasm smells and noises downstairs, technology noises

like people who (indecipherable) fornicating loud.

Cst. Boucher: Let's get back to Roger

Mr. Harvey: Yeah, he was in on it. He would spike. He would go into his bedroom or something, carry something around in his pocket and when I wasn't looking he'd spike my drink. Do you know what it's like to survive polonium?

Cst. Boucher: No, I don't.

Mr. Harvey: It's horrible, it's horrible...and then he just, I didn't even know when he was doing it. I was like, holy, am I gonna die today? He just keep spiking, spike, and I was getting my guts up. I was like, okay, this guy wants to murder me. And he's in on torturing me and nipping me and poisoning me and doing wrong to me.

...

Cst. Boucher: So I can understand that you thought Roger was killing you.

Mr. Harvey: He was...I swear to God I've been raped and tortured by tech for seven years...

...people that defend themselves are good people to me (p. 33).

Cst. Boucher: Were you just defending yourself? When you stabbed Roger, did you think you were just defending yourself?

Mr. Harvey: If I hadn't of I wouldn't survive another poisoning. I couldn't handle any more torture rape. I woke up in the morning in my bed and it felt weird in my butt. I've, I woke up with someone's coming with a needle and put sores on my body. I put hand cream on my hands and I even burned them. Roger had it, Roger

was in on all of that...If, I knew after I made the deal with George W. Bush for Honor, no more super powers. That I wouldn't survive the next spiking. So I defended myself.

Cst. Boucher: Okay, how did you defend yourself?

Mr. Harvey: My father, who I can prove is my father, the creator of the universe, the creator of the universe, he wanted me to. Father did.

Cst. Boucher: He wanted you to what?

Mr. Harvey: Stand up for myself. Stop taking all of the everything.

...

Cst. Boucher: So how did you stand up for yourself? ...

Mr. Harvey: I just...it's like an agent before they spike you to death. I just took him out.

Cst. Boucher: You took him out?

Mr. Harvey: So he wouldn't, I couldn't handle being spiked anymore or raped or tortured. I couldn't handle.

Cst. Boucher: How did you take him out? (long pause while Mr. Harvey whispered to himself)

Cst. Boucher: I believe that you thought you had to do it, I believe that you

thought you were standing up for yourself.

Mr. Harvey: No, I *was* standing up for myself.

Cst. Boucher: How did you take him out? (long pause) It's okay to tell me, how did you take him out?

Mr. Harvey: (long pause) I just took him out. Was just sick of being scared, curling up in my bed scared like, no not scared, just sick of being [worked or raped] in my own home.

Cst. Boucher: How did you take him out? Where did you stab him? How did you take him out? Cause when you say take him out you're talking about stabbing right? With a kitchen knife? (long pause). I really appreciate you being honest with me. It's probably hard to talk about this but...

Mr. Harvey: George was trying to make me.

...

Cst. Boucher: (p. 35) Where was Roger when you took him out? It's okay to tell me. Where was he when you took him out?

Mr. Harvey: He was in the bedroom, where he gets the spike, where he was hiding the spikings...He was just, he said something to me, he slandered me down or something.

99 Mr. Harvey then stared off into space, appearing to be in communication with someone, presumably George W. Bush. He said "George wants me to lie...he's trying to make me laugh, he's using tech to make, to bring out the wrong look on me."

100 Mr. Harvey appeared to try to get Cst. Boucher to understand his actions and accept that he acted in self-defence, saying things such as:

Would *you* take *me* out if I wanted to nip you with polonium? (p. 37)

You're recording, I have had the most crimes committed against me. And I'm under attack till the war's over by George W. Bush and affiliates. And I did defend myself from assa...um Roger, the a, an assassin, and I took him out, I stabbed him. (p. 39)

I never did anything wrong to him and he did so much wrong to me. Yeah, how could, like, it was, it was hard to be so strong because like to think in your head, ahh, this guy's sick, sick. How can he do that, you know? Just keep spiking, yeah, over and over again. Father. (p. 40)

..First I wanna ask you if you think, if you're in a, if you're into attack or it's defence in retaliation. Like say George Attacked Iraq. He committed all sorts of crimes, but at Pearl Harbour, the navy retaliated on the Japs in Midway. Two different metaphors. (p. 41)

...how disturbing is that having to walk back into a facility where you've been stabbed with polonium. Wouldn't you be disturbed by that? ...Let's say you and me and you could survive polonium. Well, I can't anymore but, and you walked into this place where you've been stabbed before when the same people were around pretending to like you. (p. 47)

101 Mr. Harvey eventually said he took the knife from the kitchen, he verified with "the Father" (there were many references to his real parents whom he believes are God and the Virgin Mary) that that was what he wanted him to do. He said, at page 52 of the transcript, in response to Cst. Boucher's request to take him through it step by step:

Like a dirty agent and a straight agent, going at it. Like he's murdering me. He started murdering me. So I took him out so he couldn't murder me anymore.

Cst. Boucher: How did you take him out?

Mr. Harvey: I just went (snaps his fingers) doing it like that.

Cst. Boucher: Okay. How did you do it?

Mr. Harvey: Like just as fast as you can go like...not running, but just...

Cst. Boucher: And how many times, how many times did you stab him?

Mr. Harvey: Just til he was dead, to well, to, he shut down, he stopped breathing.

Cst. Boucher: You stabbed him until he stopped breathing? So did you stab him after he fell to the floor?

Mr. Harvey: Yeah I didn't want him to be able to hurt me anymore.

102 Mr. Harvey told Cst. Boucher that Roger Harvey said "Aaron, Aaron, stop, help, he's killing me..."

103 Mr. Harvey was asked if he felt sorry. He said Roger Harvey was burning in hell forever, and if Roger Harvey had not committed crimes against him, he would "love him to pieces". He said:

I didn't murder him. I gave him the death penalty for all his crimes. ...I'm the son of the creator and I can prove it. I gave him the death penalty for all his crimes. Especially high treason. I'm, I can prove it, I am the king of kings. (p. 55)

104 Moving sequentially through the episode (which the interview did not, as Mr. Harvey skipped back and forth in recounting the events), Mr. Harvey said he left the knife on the desk and then took a shower, put on his best clothes, had a few cigarettes while negotiating terms for the safety of his daughter, and called 911 after he knew she was safe. Cst. Boucher asked him if he called the police because he wanted them to find Roger (p. 47).

Mr. Harvey: No, I wanted, cause I wanted them, I wanted the straight ones to do the right, take the right action that, I wanted them to...If they had, if they had, if they had answered, come see me at the first 911 call I put in, which was ages ago, there's probably a record of it, I would have told them Roger and downstairs and the mental health how disturbing is that having to walk back into a facility where you've been stabbed with polonium. Wouldn't you be disturbed by that?

105 When Cst. Boucher asked what the knife looked like, Mr. Harvey said "You've been to the crime scene." Cst. Boucher said he had not and asked about the knife again. Mr. Harvey eventually

identified the knife in a photograph as similar to the one he used.

106 When he was told he would be taken to court, Mr. Harvey was surprised.

So you're charging me? How can you charge someone with a crime they didn't commit? I wouldn't charge *you* because it's, it's, it's what you can, it's who you are and what you can prove and who's side you're on. It's not what, people can say anything.

107 Mr. Harvey asked Cst. Boucher if he would get time to build his case and was told he would, with access to lawyers.

108 Mr. Harvey was then taken to the garage area where he was allowed to smoke four cigarettes. Cst. Boucher testified he would have been allowed that opportunity regardless of what he had said.

Evidence from the psychiatrists and mental health worker

109 Ms. Winspear, who works in the Assertive Community Treatment center ("ACT) testified about her personal knowledge of Aaron Harvey, as well as information gathered from his records, without objection.

110 She testified that Aaron Harvey started attending their center in May of 2011. He saw a psychiatrist every two weeks or once a month. He received long-acting injections every month and oral medications daily. Roger Harvey decided he would be responsible for the daily medications as he was concerned with adherence. Aaron Harvey was treatment resistant, that is he presented with delusional content, even at his best and on his medications. He could function to some extent, but was always distressed and hearing voices.

111 Ms. Winspear had examined Aaron Harvey's records and was aware of treatment he had received in England. She said he was receiving medicine by injection for a short time there but it was switched to oral. He began to receive medication by injections once he returned to Canada.

112 She said Aaron Harvey was committed in the summer of 2011 in Nanaimo, and when discharged from the hospital on extended leave, he was still certified under the *Mental Health Act*. Ms. Winspear was aware of the report to the apartment property manager, which she said was February of 2012.

113 She testified that Aaron Harvey had called 911 on November 17, 2012 to report being poisoned by a cigarette. An ACT team went to the apartment to discuss it and talked to Roger Harvey. They agreed Aaron Harvey could remain in the apartment. She said she believed Roger Harvey had cancelled the call to the police.

114 Ms. Winspear testified that Aaron Harvey saw the psychiatrist at ACT the day before the incident on February 12, 2013. According to the records, he had fixed delusions but was stable

within that range. He believed he was a chosen one, that others had been poisoning him, following and monitoring him.

Dr. Wanis

115 In the portion of the evidence of Dr. Wanis from the *voir dire* that was admitted at trial, he said reality and delusion can be mixed. He agreed that a diagnosis of schizophrenia can lead the person listening to the mentally disordered person to dismiss what is said. He agreed that Mr. Harvey was adamant that what he was saying was provable, and he agreed that Mr. Harvey was convinced that what he is saying is true. Dr. Wanis testified that, to Mr. Harvey, his descriptions of torture and poisoning are reality. Mr. Harvey also believes that what he did is a reasonable response.

116 At trial, when testifying on the issue of NCRMD, Dr. Wanis emphasized that he would like to have conducted an interview with Mr. Harvey but was not afforded the opportunity to do so. He reviewed Aaron Harvey's file, listened to the recorded statements, and watched the video statement. He said it is well established that Mr. Harvey suffers from a major mental illness of a psychotic nature, chronic and treatment resistant. He was seen by the community mental health doctor the day before the offence in order to receive an injection and was still harboring delusions at that time. During the offence itself, he was acutely delusional and paranoid, believing that his father was going to kill him, believing his father was an assassin and not his real father. Shortly after the offence, Mr. Harvey was certified under the *Mental Health Act* by two experienced forensic psychiatrists. Dr. Wanis said Mr. Harvey's mental illness is treatment-resistant, will require a long time of chronic supervision and treatment, and from time to time he will relapse.

117 Dr. Wanis said he could not offer a diagnosis without an interview, but in his opinion, all the material shows a consistent diagnosis by other psychiatrists of a Chronic Psychotic Disorder (Schizophrenia, interchangeable with Schizoaffective Disorder).

118 In his report, Dr. Wanis said:

In my opinion, Mr. Harvey was suffering from an Acute Psychotic, Paranoid Episode. He was being slowly poisoned and was going to be killed by his father who he believed was an assassin. Although he might have appreciated the nature and the quality of the act that his father was not his father and he understood the legal wrongfulness of the act i.e. that stabbing could kill his father, he did not understand the moral wrongfulness of the act. An act that would have been unacceptable to him if he was not psychotic became acceptable under the influence of delusions and he morally rationalized it. Hence in my opinion he satisfies clinical criteria for a NCRMD finding on his charge.

119 When in the witness box, Dr. Wanis said that although he concentrated on the second branch of s. 16, in his opinion Mr. Harvey was so psychotic that he could be found NCRMD on both branches of s. 16.

Dr. Lohrasbe

120 Dr. Lohrasbe was able to conduct a lengthy interview with Mr. Harvey some days after the event. He said Mr. Harvey kept his eyes fixed on the ceiling while he would repeat the questions and seem to consult with someone. When asked who he was consulting, he said it was God. He testified that Mr. Harvey suffers from a major mental disorder (schizophrenia with schizoaffective disorder) and suffered from this disorder at the time of the incident. He stated in his report that there is a direct link between his mental disorder and the homicide in that Mr. Harvey's psychotic symptoms were likely the dominant factor driving his actions. At the time of the offence, it is likely that Mr. Harvey would have been incapable of knowing that his actions were wrong, and thus his psychiatric assessment would support a legal consideration for finding Mr. Harvey NCRMD for the death of his father.

121 Dr. Lohrasbe also discussed whether Mr. Harvey could appreciate the nature and quality of his actions when he is unable to separate the "reality" in his head from outer reality. In psychiatry, the mental processes contemplated by the term "appreciate" cannot be separated from the ability to differentiate internally from externally generated information. Thus Mr. Harvey is likely NCRMD under the first branch of s. 16 as well, but that is more a legal determination than a psychiatric one, and his symptoms provide a more ready link to the second branch. Dr. Lohrasbe stated in his report "... it is highly unlikely that Mr. Harvey could have maintained his moral compass, his ability to know, in the real world, what was right and what was wrong when he attacked his father". He testified that Mr. Harvey's mental capacity affected his ability to foresee consequences in real life.

122 To give an opinion on whether Aaron Harvey could foresee that Roger Harvey would die from being stabbed, Dr. Lohrasbe said he did not have the data he needed - that is, Aaron Harvey's thoughts and motivations.

123 Dr. Lohrasbe was asked about the significance of Mr. Harvey's statement that he stabbed Roger Harvey until he stopped breathing. He said he would not make too much of this statement as it was made after Aaron Harvey had been told Roger Harvey was dead, and he would be engaging in retrospective delusions.

124 Dr. Lohrasbe said if he were to consider whether Mr. Harvey met the first branch of s. 16 on a psychiatric level only, he would say that Mr. Harvey clearly did not appreciate the nature and quality of his actions. However, s. 16 requires a legal determination, not a psychiatric one, and it is not as easy to relate psychiatric concepts to legal ones when considering the first branch of s. 16.

125 Both doctors were asked about the significance of a 911 call and whether it showed a shift out of a delusional state. Dr. Wanis said Mr. Harvey was still delusional and believed he had killed an assassin. He understood someone was injured or killed, and so he called 911. Dr. Lohrasbe said it would be like a slap in the face, a shift in consciousness, but he would not be brought right out of his delusional state.

ISSUES

126 The issues are:

1. *Has the Crown proven the actus reus, that is, that Mr. Harvey committed a culpable homicide, beyond a reasonable doubt?*
 - (a) was there a break in causation arising from the delay in police response?*
 - (b) is the defence of self-defence available to Mr. Harvey?*
2. *If the Crown has proven the actus reus for culpable homicide, does NCRMD apply?*
3. *If not, has the Crown proven the necessary intent for second degree murder?*

CULPABLE HOMICIDE

127 The Crown says it has proven beyond a reasonable doubt that Aaron Harvey killed Roger Harvey on February 12, 2013, in Nanaimo, B.C., that Roger Harvey could not have survived, even if the police had responded immediately, and that the defence of self-defence has no air of reality, or if it does, that it does not apply.

128 I am satisfied beyond a reasonable doubt that it was Aaron Harvey who stabbed Roger Harvey and inflicted the wound to the jugular vein that resulted in Roger Harvey's death. There was no one else present in the apartment, no one else resided there, and Aaron Harvey's statements to Cst. Blakey and Cst. Boucher are clear that he stabbed Roger Harvey.

129 The first issue raised by the defence is causation. The defence argues, based on the evidence of Dr. Lee, that it is open to say, on the evidence, that Roger Harvey could have survived and been saved if the police had responded immediately. Dr. Lee said only the wound to the jugular vein was fatal, and she could not say how long it would have taken Roger Harvey to die from that wound. She said a wound to the jugular vein would require surgical intervention to repair it. She said some level of activity could be maintained for a period of time. Dr. Lee was unable to give a time of death and was not provided with all the information needed for a proper investigation, such as ambient or body temperature.

130 The defence points out that the 911 call was made at 5:40 p.m. and the police did not arrive

for approximately an hour and twenty minutes. The officers were not immediately satisfied that Roger Harvey was dead and had to check a second time. Although rigor mortis was present, Dr. Lee said it could be speeded up if the person was active prior to death. The defence says the presence of defensive wounds suggests a struggle, and thus activity. Perhaps Roger Harvey and Aaron Harvey got into a fight before the stabbing; as Aaron Harvey told Cst. Boucher, "he slandered me down".

131 The defence submits that although Aaron Harvey said he stabbed Roger Harvey until he was dead, he is not a doctor; he may well have believed Roger was dead, but it is likely Roger Harvey was not dead when he fell to the ground.

132 Although Mr. Harvey said in his statement that he had a shower, put on his best clothes, negotiated for his daughter's safety and had some cigarettes before calling 911, it is possible that he mixed up the sequence of events, since Cst. Blakey said Mr. Harvey's hair was wet when he answered the apartment door, as if he had just gotten out of the shower. Thus Mr. Harvey could have called 911 right away, and then gone on to do the other things he told Cst. Boucher about, giving an opportunity for rescue if the police came immediately.

133 The defence relies on *R. v. Nette* 2001 SCC 78:

(44) In determining whether a person can be held responsible for causing a particular result, in this case death, it must be determined whether the person caused that result both in fact and in law. Factual causation, as the term implies, is concerned with an inquiry about how the victim came to his or her death, in a medical, mechanical, or physical sense, and with the contribution for the accused to that result. Where factual causation is established, the remaining issue is legal causation.

(45) Legal causation, which is also referred to as imputable causation, is concerned with the question of whether the accused person should be held responsible in law for the death that occurred. ...In determining whether legal causation is established, the inquiry is directed at the question of whether the accused person should be held criminally responsible for the consequences that occurred.

134 The court in *Nette* quoted from G. Williams' *Textbook of Criminal Law* (2nd ed. 1983):

When one has settled the question of but-for causation, the further test to be applied to the but-for cause in order to qualify it for legal recognition is not a test of causation but a moral reaction. The question is whether the result can fairly be said to be imputable to the defendant.

135 The Crown says Aaron Harvey stabbed Roger Harvey as Roger Harvey sat watching TV with the headphones on. Aside from the defensive wounds to Roger Harvey's hands which are

consistent with trying to fend off a stabbing, there is no sign of a struggle or fight, other than Roger Harvey's unsuccessful fight for his life. There was not a mark on Aaron Harvey. The blood is confined to the area where Roger Harvey was lying; he did not break his fall, but collapsed to the ground, a conclusion supported by the rib fractures.

136 As well, Aaron Harvey told Cst. Boucher he got a knife from the kitchen, after verifying it with "the Father" that that is what he wanted him to do. He reported Roger Harvey saying only "Aaron, Aaron, stop him, he's killing me."

137 The Crown says Mr. Harvey's statements to Cst. Boucher show that Mr. Harvey believed Roger Harvey had stopped breathing by the time he stopped stabbing him. Perhaps instantaneous surgical intervention could have saved Roger Harvey, but rigor was well advanced by the time the police and paramedics had arrived.

138 The defence has carefully examined the evidence and made the best case possible for the argument on causation, but in my view, there is no doubt that Aaron Harvey stabbed Roger Harvey in the jugular vein and that this was the factual and legal cause of his death.

139 Although the defence suggests that this was not a "sneak attack" upon a man watching TV with headphones on, there is nothing to support a struggle or argument between Aaron and Roger Harvey prior to the stabbing. Aaron Harvey was not marked or injured. There is a lot of blood at the "crime scene" as Aaron Harvey referred to it in his statement, and it is all around Roger Harvey's body. Otherwise the room is not in disorder. Roger Harvey's ribs were fractured from collapsing on to the ground.

140 The evidence is all consistent with the theory of the Crown - that Roger Harvey was in his bedroom alone watching TV when Aaron Harvey, convinced that another polonium poisoning was imminent, got a knife, went to the bedroom and stabbed him repeatedly. The headphones were on the ground; the TV was on and feeding through the headphones, as Cst. Ramsay testified.

141 The chance that Aaron Harvey, faced with Roger Harvey's bleeding body, realized what he'd done and called 911, thus giving Roger Harvey a chance for survival with surgical intervention had the response been immediate, is simply speculation and not sustainable on the evidence.

142 Aaron Harvey, when given a choice of police or ambulance by the 911 operator, asked for the police. His concern when speaking to the operator was Honor and George W. Bush, not Roger Harvey. The rambling and confusing content of the call is of course part of the delusional world Aaron Harvey lived in, and it is those delusions that caused the operator not to see the call as one requiring immediate attention. Aaron Harvey said he had been spiked and had to defend himself. Although he did mention once that Roger Harvey had murdered and mistreated him, the main threat he mentioned was George W. Bush, whom he said had been raping him and torturing his mind. It is not possible to make sense of the information provided by Mr. Harvey and there was nothing in the call that would prompt a concern for an immediate response.

143 Even if the police had responded immediately following the eight minute call with the 911 operator, there is no realistic chance that Roger Harvey would still be alive and able to be saved with surgical intervention, despite Dr. Lee's inability to ascertain precisely the time of death. Dr. Lee was not asked for an outside range of time to die. However, it was ten minutes from the detachment to the scene, perhaps less if a car were already in the area. Once the police arrived and dealt with Aaron Harvey, something that would not be straightforward, given Cst. Blakey's experience, the paramedics would have to be called. Then Roger Harvey would have to be transported to a hospital for surgery.

144 Dr. Lee said in some cases of a wound to the jugular vein, blood can ooze out. In this case she said the cut to the jugular vein was big, a near severance of the vein. The photographs show that a large quantity of blood was pooled under the body near the neck, which is, in my view, an indication that Roger Harvey was bleeding heavily from that wound. It does not suggest oozing.

145 In addition, there are the statements voluntarily given by Aaron Harvey to Cst. Boucher. Aaron Harvey admitted stabbing Roger Harvey until he was dead, and calling 911 because he wanted the police to investigate the assassins who lived downstairs, not because he wanted to save Roger Harvey. As well, his statement is permeated with allusions to self-defence. It was necessary, according to Aaron Harvey, to kill Roger Harvey because Roger Harvey was poisoning him with polonium, he wanted to prevent that happening again, and he would have no defence against it after he negotiated a deal for the safety of his daughter.

146 According to *Nette*, for second degree murder, at para. 72, the accused's acts must be a significant contributing cause of the victim's death (as opposed to an essential, substantial and integral part of the killing of the victim as is required for first degree murder).

147 Considering all of the evidence, I am satisfied that the Crown has proven beyond a reasonable doubt that Aaron Harvey caused the death of Roger Harvey, factually and legally. His actions were at the very least a significant contributing cause of Roger Harvey's death. There is no issue of multiple causes, break in causation, or other factual or legal considerations that would lead to a question of whether Aaron Harvey should be held responsible for the consequences that occurred, as discussed in *Nette*. Whether he is *criminally* responsible is, of course, a matter for consideration under s. 16.

Self-Defence

148 This offence happened one month before the coming into force of the new section on self-defence. Counsel all agree that s. 34(2) is the appropriate section to consider:

- (2) Every one who is unlawfully assaulted and who causes death or grievous bodily harm in repelling the assault is justified if

- (a) he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purposes; and
- (b) he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm.

149 The Supreme Court of Canada has dealt with this section in *R. v. Petel* [1994] 1 S.C.R.3, and *R. v. Cinous* [2002] 2 S.C.R. 3, stating at para 93 of *Cinous* that there are three constitutive elements of self-defence under s. 34(2):

- (1) the existence of an unlawful assault; (2) a reasonable apprehension of a risk of death or grievous bodily harm; and (3) a reasonable belief that it is not possible to preserve oneself from harm except by killing the adversary.

...

Each of the three elements has both a subjective and an objective component. the accused's perception of the situation is the "subjective" part of the test. However, the accused's belief must also be reasonable on the basis of the situation he perceives. This is the objective part of the test. ...the approach is first to inquire about the subjective perceptions of the accused, and then to ask whether those perceptions were objectively reasonable in the circumstances.

150 In *Cinous*, the accused believed he was about to be killed by his criminal colleagues because he wanted to leave the group and had told them so. He agreed to meet them for one more theft, and while driving to the location with two members of the group in the car, he stopped at a gas station and got out of the car to buy windshield washer fluid. Convinced he was to be killed that night, he returned to the car and shot one of the men. The other fled.

151 The majority in the Supreme Court of Canada held that the accused had established an air of reality to both the subjective and objective aspects of the first two elements of self-defence set out above (the existence of an assault and the reasonable apprehension of death or grievous bodily harm), and also had established the subjective component of the third (the belief in the absence of alternatives to killing). However, he had not established the objective component of the third because there were other reasonable options available to him, even if one accepted that calling the police was not a realistic option for him. He could have waited in the service station or fled.

152 In Mr. Harvey's case, the defence says he has demonstrated an air of reality to all three elements, both subjective and objective. He clearly believed Roger Harvey was poisoning him and

was going to do it again. Given his belief, this was objectively reasonable. He feared a deadly attack; this was reasonable, given his beliefs, according to Dr. Wanis. He believed there was no other way out, and this was reasonable because he had no finances, was under Roger Harvey's control, and believed he could not trust the RCMP, given his previous call to them which had been ignored.

153 The defence argues that, although Mr. Harvey's beliefs are based on a mistake of fact, his perception is reasonable in the circumstances and should not be dismissed simply because it is based on delusion.

154 The defence also relies on the statement in *R. v. Proulx*, [1998] B.C.J. No. 1708, July 17, 1998, CA023334 (BCCA), at para. 27, that an honest but reasonable mistake as to the existence of an assault is permitted in the context of s. 34(2).

155 It is the Crown's position that there is no air of reality to the defence of self-defence. While, according to *Cinous*, the court must not weigh the evidence, make findings of fact, or draw determinate factual inferences in assessing whether there is an air of reality to a defence, outlandish, fanciful, and confusing defences should not be considered by a trier of fact. Common sense is at the core of the determination (*R. v. Larose*, 2013 BCCA 12). The validity of the self-defence justification does not lie in the eye of the accused but in the values and perception of the community (*R. v. Pilon*, 2009 ONCA 248).

156 Overall, the Crown says Mr. Harvey's belief that he needed to kill Roger Harvey to prevent further polonium poisonings by Roger Harvey himself as well as by other assassins at the direction of George W. Bush is not reasonable.

157 I agree with the Crown that Mr. Harvey's perceptions of the circumstances surrounding the attack on Roger Harvey are not those of an ordinary man, even one operating under a mistake, and do not meet the test of "reasonable and probable grounds" for the mistaken perception (see *Reilly*, below). Within the delusional world of Mr. Harvey, I am prepared to accept that he has satisfied the subjective requirements for self-defence. However, he cannot establish the objective requirements that his belief is reasonable in the circumstances. The phrase "reasonable in the circumstances" cannot be modified by "as Mr. Harvey perceived them to be", which is what the defence argument requires in order to be successful, unless those perceptions caused him to make a mistake that an ordinary man might make in the same circumstances - that is, unless his perceptions were objectively reasonable.

158 In *R. v. Reilly* [1984] 2 S.C.R.396, the court considered the effect of intoxication on the availability of self-defence under s. 34(2), and said:

Since s. 34(2) places in issue the accused's perception of the attack upon him and the response required to meet it, the accused may still be found to have acted in self-defence even if he was mistaken in his perception. Reasonable and probable

grounds must still exist for this mistaken perception in the sense that the mistake must have been one which an ordinary man using ordinary care could have made in the same circumstances.

...

...although intoxication can be a factor in inducing an honest mistake, it cannot induce a mistake which must be based upon reasonable and probable grounds. The perspective of the reasonable man which the language of s. 34(2) places in issue here is the objective standard the law commonly adopts to measure a man's conduct. A reasonable man is a man in full possession of his faculties.

...

An intoxicated man may hold a reasonable belief, i.e. the same belief a sober man would form viewing the matter before him upon reasonable and probable grounds. Where he does so, however, it is in spite of his intoxication.

...

...if the accused is intoxicated, he is not deprived of the defence provided by the subsection so long as the objective test is met by the existence of reasonable and probable grounds for the accused's perception of the nature of the assault upon him and the response required to meet it.

[emphasis added]

159 Although that case dealt with intoxication, the comments are apt in the present analysis.

160 The court in *Cinous* stated that the proper approach is to first inquire about the subjective perceptions of the accused, and then to ask whether those perceptions were objectively reasonable in the circumstances. In order for the defence of self-defence under s. 34(2) to have an air of reality, the trier of fact, acting reasonably, must be able to come to the conclusion that Mr. Harvey's perceptions were reasonable. If the trier of fact cannot reasonably come to the conclusion that the accused perceptions were reasonable, even if the trier accepts the testimonial evidence of the accused as true, the defence has no air of reality and should not be considered.

161 The court said at para. 97:

There is no authority for the proposition that reasonableness is exempt from the air of reality test, or that evidence satisfying the air of reality test as to the subjective component of the defence will automatically confer an air of reality upon the whole defence.

162 As Binnie J. pointed out in his separate concurring reasons, the accused wished the jury to judge the reasonableness of his conduct by the rules of his criminal subculture, which is the antithesis of public order. Here, in order for Mr. Harvey's defence of self-defence to have an air of reality, the reasonableness of his conduct would have to be judged by the rules that govern his delusions, which is the antithesis of the reasonable man. That is not the objective standard adopted by the law.

163 I am satisfied that the Crown has established beyond a reasonable doubt that the defence of self-defence has no air of reality.

Section 16(1) - NCRMD

164 Having determined beyond a reasonable doubt that Mr. Harvey committed the act of killing Roger Harvey, that there is no issue of causation, and that the defence of self-defence has no air of reality, I am satisfied beyond a reasonable doubt that the Crown has proven Aaron Harvey committed a culpable homicide.

165 It is now necessary to consider the argument raised by the Crown, and supported as an alternative position by the defence, that Aaron Harvey should be found not criminally responsible by reason of mental disorder. The Crown is content with a finding that Aaron Harvey meets the second branch of s. 16(1). The defence submits a finding should be made on both branches, and that Aaron Harvey satisfies both.

166 I have outlined the opinions of Dr. Wanis and Dr. Lohrasbe. I have no difficulty in accepting, given the longstanding documentation of Mr. Harvey's condition and the many times he has been assessed, that he suffers from a major mental disorder - that is schizophrenia with a schizoaffective disorder.

167 Notwithstanding my acceptance of the doctors' opinions, a medical diagnosis that the accused suffers from a major mental disorder is not a legal determination that Mr. Harvey suffers from a mental disorder under s. 16(1).

168 In *R. v. Parks*, 75 C.C.C. (3d) 287, Lamer C.J.C. said:

Because "disease of the mind" is a legal concept, a trial judge cannot rely blindly on medical opinion.

169 He then quoted the Ontario Court of Appeal in *R. v. Rabey* (1977) 37 C.C.C. (2d) 461:

If the question what particular mental conditions or mental disorders constitute disease of the mind were to be determined by the opinion of medical witnesses, then the scope of the defence of insanity under s. 16 of the Code would vary according to the choice of expert witnesses called to testify, since the existence of disease of the mind, apart from natural imbecility, constitutes the necessary foundation for insanity, and it is abundantly clear that medical opinions differ as to what mental conditions constitute a disease of the mind.

I take the true principle to be this: It is for the judge to determine what mental conditions are included within the term "disease of the mind" and whether there is any evidence that the accused suffered from an abnormal mental conditions comprehended by that term. The evidence of medical witnesses with respect to the cause, nature and symptoms of the abnormal mental condition from which the accused is alleged to suffer, and how that condition is viewed and characterized from the medical point of view, is highly relevant to the judicial determination of whether such a condition is capable of constituting a "disease of the mind". The opinions of medical witnesses as to whether an abnormal mental state does or does not constitute a disease of the mind are not, however, determinative, since what is a disease of the mind is a legal question.

170 The term now used is "mental disorder" rather than "disease of the mind", but this remains a valid statement of the law on this subject.

171 Considering the evidence of the doctors, Aaron Harvey's medical history, and the content of the various statements, particularly the statement given to Cst. Boucher, I have no difficulty in accepting that Aaron Harvey suffered from a mental disorder within the meaning of s. 16(1), and that he suffered from this condition on February 12, 2013 at the time of the offence. In fact, Mr. Harvey was examined as recently as the day before the event, and found to be stable within the parameters of his fixed delusions. He was given his long-acting injection that day, probably adding to his delusion of being "nipped" repeatedly and recently by polonium.

172 Next, there must be a direct connection between Aaron Harvey's mental disorder and the homicide. Both doctors were confident that the mental disorder was the dominant factor directly related to the homicide, and given the content of Aaron Harvey's statements to Cst. Blakey, Cst. Boucher, and the 911 operator, there is no other reasonable conclusion. I accept their opinions, given the nature, duration, and strength of Mr. Harvey's delusions, and the content of his statements.

173 Both doctors had no difficulty in stating that Mr. Harvey met the second branch of s. 16(1) within the parameters as understood by psychiatry - that he was incapable of knowing that his act was morally wrong, which is the test used in *Chaulk, supra*.

174 The doctors were less certain of the first branch, although not inclined to dismiss it because of the strength of Mr. Harvey's delusions.

175 I will begin with a consideration of the applicability of the first branch of s. 16(1) to Mr. Harvey - that is, was he suffering from a mental disorder that rendered him incapable of appreciating the nature and quality of the act.

176 The defence submits this branch applies to Mr. Harvey. The Crown did not submit otherwise, but rested its submissions on the second branch.

177 "Appreciate" is not the same as "know", which is mere cognition. According to *R. v. Cooper* [1980] 1 S.C.R. 1149, "appreciate" includes an emotional and intellectual awareness of the significance of the conduct; it may involve the estimation and understanding of the consequences of the act. The Supreme Court of Canada adopted the following as the test:

...was the accused person at the very time of the offence - not before or after, but at the moment of the offence - by reason of disease of the mind, unable to appreciate not only the nature of the act but the natural consequences that would flow from it?

178 The court stated that the accused must appreciate the factors involved in his act and must have the mental capacity to measure and foresee the consequences of it; he must have a perception, an ability to perceive the consequences, impact, and results of a physical act.

179 The defence submits that Aaron Harvey's delusions give his act an "entirely different character", to use a phrase from *R. v. Kirkby* [1985] O.J. No 166. The court in *Kirkby* speculated, *in obiter*, that a person under the delusion that he is a monarch executing someone for high treason, or a paranoid schizophrenic who kills a neighbour whom he believes is killing him and his family with thought waves, could come within the first branch of s. 16(1) because he would have transformed the act of killing into something other than murder - an execution, or self-defence, that is, a legally justified killing.

180 However, in *R. v. Landry* [1991] 1 S.C.R. 99, McLachlin J. said:

This Court has made it clear on a number of occasions that the first branch of s. 16(2) refers to an incapacity to appreciate the physical character of and the physical consequences which flow from an act or omission [cites omitted]. Collateral factors, such as an accused's emotional attributes or his or her capacity to appreciate the penal consequences associated with an act or omission are not relevant under the first branch of s. 16(2) [the equivalent of the present s. 16(1)].

181 In Aaron Harvey's case, it is evident from his statements that he was aware he was killing Roger Harvey as he deliberately stabbed him, and he knew Roger Harvey would die. That was the

whole point of stabbing him - to prevent Roger Harvey from poisoning him in the immediate future. In that sense, he appreciated the nature of the act and the natural consequences that would flow from it. I keep in mind Dr. Lohrasbe's caution that we do not have access to Aaron Harvey's thoughts and motivations at the very moment of the stabbing, and that he may have reconstructed his thoughts later after learning that Roger Harvey was dead. However, it is apparent from his statements, his repeated requests for a lawyer, and his comments on the law that he appreciated the factual and legal consequences that could flow from his actions, but he was certain his actions were justified on the basis of self-defence. He attempted many times during his statement to get Cst. Boucher to recognize and accept that he had acted in the only way he could.

182 An examination of Aaron Harvey's statement shows that at the time of that interview, he appreciated what he had done and had a reason for doing it. While acting within the world of his delusions, Mr. Harvey was aware of his physical actions. He had a good recollection of his thought processes as he went through them step by step. He recounted consulting with "the Father" and ascertaining what he was supposed to do. He was aware he had gone to the kitchen, gotten a knife, and deliberately and intentionally stabbed Roger Harvey in order to kill him. I also accept that he believed he acted in self-defence as a result of his delusions. However, the belief that he acted in self-defence goes to whether Mr. Harvey was capable of knowing that the act was morally wrong rather than whether he appreciated the nature and quality of his physical act. The belief that his act would not attract penal consequences because it was self-defence does not trigger the application of the first branch of s. 16(2) (*R. v. Abbey* [1982] 2 S.C.R. 24, reiterated in *Landry*).

183 Despite the doctors' testimony that each of them could be persuaded that, in psychiatric terms, Mr. Harvey could not appreciate the nature and quality of his act, I have difficulty reaching a conclusion on a balance of probabilities that Mr. Harvey falls within the first branch of s. 16(1) on a legal basis, and I will move to the second - was Mr. Harvey suffering from a mental disorder that rendered him incapable of knowing his act was wrong.

184 In *R. v. Chaulk*, the Supreme Court of Canada considered the meaning of "wrong". Lamer C.J. writing for the majority, at para. 97, said:

...it is plain to me that the term "wrong" as used in s. 16(2) must mean more than simply "legally wrong". In considering the capacity of a person to know whether an act is one that he ought or ought not to do, the inquiry cannot terminate with the discovery that the accused knew that the act was contrary to the formal law. A person may well be aware that an act is contrary to law but, by reason of "natural imbecility" or disease of the mind, is at the same time incapable of knowing that the act is morally wrong in the circumstances according to the moral standard of society. This would be the case, for example, if the person suffered from a disease of the mind to such a degree as to know that it is legally wrong to kill but, as described by Dickson J. in *Schwartz*, [1977] 1 S.C.R. 673, kills "in the belief that it is in response to a divine order and therefore not morally

wrong".

185 The court went on to adopt, at para. 98, a statement contained in an article by Alan Mewett. After setting out various scenarios, Professor Mewett said:

This only leaves a situation where he is capable of knowing that the act was contrary to law but incapable both of knowing that to act contrary to law was condemned by people generally and of knowing that this particular act was condemned by people generally. I would have thought that such an accused (who must be the rarest of all individuals) is precisely one who ought to be found not guilty by reason of insanity.

186 The court qualified this statement:

The qualification that I would make of Professor Mewett's comments is that the insanity defence should not be made unavailable simply on the basis that an accused knows that a particular act is contrary to law and that he knows, generally, that he should not commit an act that is a crime. It is possible that a person may be aware that it is ordinarily wrong to commit a crime but, by reason of a disease of the mind, believes that it would be "right" according to the ordinary morals of his society to commit the crime in a particular context. In this situation, the accused would be entitled to be acquitted by reason of insanity.

187 This qualification, in my view, clearly applies to Mr. Harvey. It is obvious, from the excerpts set out above from his statement, that he knew it was a crime to kill a person. However, he not only felt he was justified in killing Roger Harvey, he felt he had to kill him in order to prevent himself from being poisoned and to protect his daughter, and he thought people in general would accept that he had done so in self-defence. I have referred to some examples of what he considered to constitute self-defence, both generally and in his specific circumstances, and at one point he told Cst. Boucher that "people that defend themselves are good people to me."

188 Mr. Harvey, in speaking to Cst. Boucher, referred to "the crime scene", showing an awareness that it was legally wrong to kill a person, but was surprised he was being charged because it was evident to him that he had acted in self-defence.

189 Mr. Harvey's continued attempts to get Cst. Boucher to understand why he killed Roger Harvey could be taken to show that, at the least, he was aware that his actions required justification, and this could undermine the contention that he did not know his actions were morally wrong. However, taken in the context of the whole statement, it is clear that Mr. Harvey was trying to convey the extent and imminence of his danger to Cst. Boucher and was convinced that he had no option but to act as he did.

190 There is no doubt, on all the evidence, that Aaron Harvey suffers from a major mental

disorder, that he is deeply delusional, has been for many years, and that he was suffering from delusions arising from that mental disorder at the time of the stabbing. I accept that he believed he was being poisoned repeatedly, that he had a daughter to protect, that he could not withstand another attack of polonium, and he had to act to save himself from death or grievous bodily harm, and his daughter from harm. Aaron Harvey was not under any threat of harm from Roger Harvey and the delusions were an operating factor in Aaron Harvey's decision to stab Roger Harvey.

191 I accept that, within the context of his delusions, Mr. Harvey believed he acted in self-defence and at the time he stabbed Roger Harvey, he was rendered incapable, because of his mental disorder, of knowing that his actions were morally wrong.

192 Taking all of the evidence into consideration, I am satisfied that the Crown has proven on the balance of probabilities that Mr. Harvey meets the criteria of the second branch of s. 16(1), that is, that he was, at the time he killed Roger Harvey, not capable, as a result of a major mental disorder, of knowing that his act was wrong.

193 I am therefore satisfied on the balance of probabilities that Mr. Harvey, having been found beyond a reasonable doubt to have committed a culpable homicide, is not criminally responsible by reason of mental disorder.

194 Subject to the submissions of counsel, this matter is referred to the Review Board in accordance with s. 672.45(1.1) of the *Criminal Code*. Mr. Harvey shall be held in accordance with s. 672.46(1) pending further disposition.

195 I wish to thank counsel for the assistance they provided to the court throughout this case.

M.A. HUMPHRIES J.

---- End of Request ----

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