

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. Johnston*,  
2021 BCSC 1932

Date: 20210921  
Docket: 46639-2  
Registry: Prince George

**Regina**

v.

**Justin James Johnston**

Before: The Honourable Madam Justice Devlin

## **Oral Reasons for Judgment Application for NCRMD Verdict**

Counsel for the Crown:

J.D. Hempstead  
J.M. Schroeder

Counsel for the Accused:

J.C. LeBlond

Place and Date of Hearing:

Prince George, B.C.  
September 20, 2021

Place and Date of Judgment:

Prince George, B.C.  
September 21, 2021

**THE COURT:** This decision was delivered in the form of *Oral Reasons*. The reasons have since been edited for publication.

### **Introduction**

[1] The accused Justin James Johnston has pled guilty to a charge of manslaughter contrary to s. 236 of the *Criminal Code*, R.S.C., 1985, c. C-46 [Code] with respect to the death of Joy Morris, his mother, on or about January 21, 2020, at or near Vanderhoof, British Columbia. A comprehensive Agreed

Statement of Facts (“ASF”) was filed in support of the plea, setting out all of the facts necessary to prove the charge.

[2] Following his guilty plea, the issue of Mr. Johnston's lack of criminal responsibility was raised by the defence, and I made an assessment order pursuant to s. 672.11 of the *Code* to determine whether Mr. Johnston was, at the time of the commission of the offence, suffering from a mental disorder so as to be exempt from criminal responsibility by virtue of s. 16(1) of the *Code*.

[3] As a result, Dr. Bhatia, a forensic psychiatrist at the Forensic Psychiatric Hospital (“FPH”), prepared an assessment opinion report dated July 19, 2021, and a supplemental report dated September 14, 2021, and they have been filed as Exhibits 1 and 2 at this hearing.

[4] Counsel for Mr. Johnston submits, and the Crown agrees, that there is a substantial volume of evidence – including the ASF, the history of Mr. Johnston's substantial mental health issues, both before and after the offence, and the expert opinion evidence – to establish on a balance of probabilities that Mr. Johnston was suffering from a serious mental disorder at the time he committed the offence, which rendered him incapable of appreciating the nature and quality of his act within the meaning of s. 16(1) of the *Code*.

[5] I wish to direct these comments to all of those who are present or have been impacted by this tragic death. I thank you for sharing with the court your thoughts and feelings. I know you are heartbroken. I want you all to know that as I proceed with my reasons today, I am mindful that this decision will not possibly remedy the feeling of pain and suffering you have endured and will continue to endure due to the loss of Joy Morris, your loving sister and mother.

### **Background facts**

[6] The ASF that was filed at this hearing sets out the details pertaining to the incident and should be read in conjunction with these reasons. Therefore, I will only briefly review some of the more pertinent circumstances of the offence.

[7] Mr. Johnston has admitted that on or about January 21, 2020, at or near Vanderhoof, B.C., he assaulted his mother Joy Morris by inflicting blunt-force trauma to her head that caused her death. Specifically, after Ms. Morris fell to the

floor, he stomped her head with such force that it caused a large hole in the kitchen floor. The ASF details the findings of the pathologist, Dr. McKinnon, regarding the nature and scope of the blunt-force trauma. The photographs of the scene filed reveal a large hole in the floor, which was identified as the impact zone.

[8] Ms. Morris lived at 6643 Sturgeon Point Frontage Road, Vanderhoof, B.C. On January 22, 2020, Mr. Johnston was stopped while driving his mother's truck. When it was discovered that Mr. Johnston did not have a valid driver's licence, the truck was impounded. The police officer left a message for Ms. Morris that her truck had been impounded, but there was no response.

[9] On March 9, 2020, Ms. Morris's daughter and another family member contacted the RCMP to report Ms. Morris missing. On March 9, 2020, members of the Vanderhoof RCMP attended at Ms. Morris's residence and discovered Ms. Morris's body lying on the bathroom floor. There was a trail of blood on the floor going down the hallway and into the bathroom, consistent with a severely injured person having been dragged down the hallway. There were indications that a violent struggle had occurred in the kitchen and dining room. The impact zone on the floor had extensive blood spatter and pooling of blood.

[10] Ms. Morris's journal was located on the kitchen table with an entry for January 21, 2020, which described Mr. Johnston coming to see her, looking for a ride to town the next day. She noted that he was confrontational and was yelling at her. Ms. Morris also noted that she told Mr. Johnston to leave or she would call the RCMP. As he left her residence, he continued to yell at her.

[11] As set out in the ASF, within the last five years, Ms. Morris had made comments to the police, family, and friends indicating her concern and fear for her safety around Mr. Johnston. Ms. Morris described occasions where Mr. Johnston had assaulted her. She also expressed concern that Mr. Johnston was not receiving his required medication for months.

[12] On March 11, 2020, Mr. Johnston was located in Penticton, B.C. and detained for the suspected murder of Ms. Morris. During a warned statement, Mr. Johnston spoke in circles and sounded delusional, resulting in his apprehension under s. 28 of the *Mental Health Act*, R.S.B.C. 1996, c. 288. He was

subsequently detained in hospital under the *Mental Health Act* for approximately one month.

[13] On April 10, 2020, Mr. Johnston was arrested for the murder of his mother, Ms. Morris. He provided a warned statement in which he denied ever knowing Ms. Morris and indicated that he believed that she had been squatting in his trailer and was illegally on his property. He also believed she would have overdosed on drugs or flailed around, but he also said he had a disagreement with the deceased and she may have “bumped her head”.

[14] As set out in the ASF, Mr. Johnston has been diagnosed with schizophrenia and has a documented history of mental illness. Mr. Johnston has a history of interactions with the police as a result of his schizophrenia and his lack of medications. On two occasions, he was apprehended under the *Mental Health Act*.

### **The Expert Evidence**

[15] As stated earlier, Dr. Bhatia, forensic psychiatrist at FPH, prepared an expert opinion report and a supplemental report, which were marked as exhibits at this hearing. Dr. Bhatia also testified via closed-circuit television and provided some further evidence regarding the basis for her opinion about Mr. Johnston's mental state at the time of the commission of the offence.

[16] Dr. Bhatia testified that she initially dealt with Mr. Johnston when he was admitted to FPH on June 24, 2021, and following that met with him multiple times for a total of six or seven hours during the period that Mr. Johnston was at FPH. From these meetings with Mr. Johnston, Dr. Bhatia obtained pertinent information she relied on for the preparation of her opinion. She also reviewed other material, including the report to Crown counsel and video clips of the post-arrest interview of Mr. Johnston, the ASF, and various medical records (including Mr. Johnston's previous assessments at FPH, hospital ER records, and medical records from the correctional facility where Mr. Johnston was being held).

[17] Dr. Bhatia testified that Mr. Johnston was diagnosed with schizophrenia in his early twenties. She explained that schizophrenia is a chronic psychotic disorder that manifests itself in psychosis and can include auditory hallucinations, delusions, and paranoia. She further explained that chronic delusions are firm and

fixed beliefs that are rigidly entrenched and not addressed by treatment. From her review of the records, Mr. Johnston's chronic delusions have been documented in previous assessments.

[18] Mr. Johnston has a history of severe mental illness dating back to at least 1998, which has resulted in several encounters with the police. For example, in February 1999, when he was 21 years old, he assaulted his then-wife, and on April 19, 1999, was found not criminally responsible for reason of mental disorder ("NCRMD"). He was treated at the FPH and received an absolute discharge on May 9, 2001. There were numerous incidents after his release from FPH resulting in interactions with the police. These incidents were connected with his schizophrenia and non-compliance with medications.

[19] In November 2017, when he was 40 years old, Mr. Johnston was charged with various offences, including causing a disturbance and assault of a police officer. He was remanded to the FPH for an evaluation and was found to be acutely psychotic at the material time. Eventually those charges were resolved without a finding of NCRMD.

[20] With respect to the period immediately before the incident, Mr. Johnston had been non-compliant with his medications and thus psychotic. Dr. Bhatia opined that given his behaviour when apprehended by the police days after the offence, considered together with his history of severe mental illness and his non-compliance with his medications, it is very likely that he was acutely psychotic at the time.

[21] The severity of Mr. Johnston's mental illness is demonstrated by the fact that even while receiving medications at FPH in June 2021, he remained delusional, paranoid, and had immense poverty of thought and speech. In Dr. Bhatia's opinion, Mr. Johnston was even more delusional than he presented, and when unmedicated, such as at the time of the offence, manifestation of his mental illness would be exacerbated. Unmedicated, Mr. Johnston would become more paranoid. His aggressive acts are triggered by his paranoid delusions. In his psychotic state, Mr. Johnston cannot gauge reality as his perceptions are severely impaired. Dr. Bhatia opined that Mr. Johnston's mental health issues presented a public safety concern.

[22] Based on her consideration of all the circumstances, Dr. Bhatia opined that Mr. Johnston committed the offence while in the throes of agitated psychosis and subsumed with paranoid delusions. Dr. Bhatia opined that Mr. Johnston's mental state at the time of the offence would impact his judgment and render him incapable of coherently appreciating the nature and quality of the act committed. Dr. Bhatia was also of the opinion that due to his acute psychosis, functioning with a disorganized thought process rife with paranoid delusions, Mr. Johnston did not possess sufficient understanding of the moral wrongfulness of his actions.

### **The Governing Legal Principles**

#### **Overview of NCRMD**

[23] Mental disorder as a basis for an exemption from criminal liability is described in s. 16 of the *Code*:

#### **Defence of mental disorder**

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

#### **Presumption**

**(2)** Every person is presumed not to suffer from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection (1), until the contrary is proved on the balance of probabilities.

#### **Burden of proof**

**(3)** The burden of proof that an accused was suffering from a mental disorder so as to be exempt from criminal responsibility is on the party that raises the issue.

[24] To meet the requirements for a defence under s. 16 of the *Code*, the accused must establish, on a balance of probabilities, either:

- a) that he was suffering from a mental disorder that renders him incapable of appreciating the nature and quality of his act (or omission); or
- b) that he has a mental disorder that renders him incapable of knowing that the act (or omission) was wrong.

### **The Legal Principles**

[25] There is no dispute as to the legal principles that govern my analysis on this application. The two-stage statutory framework was recently canvassed by Associate Chief Justice Holmes in the case of *R. v. Klein*, 2021 BCSC 743 [*Klein*]. With respect to the first stage of characterizing the mental state of the accused, Holmes A.C.J. stated as follows:

[13] The scope of “mental disorder”, for the purposes of s. 16, is very broad. It includes any illness, disorder, or abnormal condition which impairs the human mind and its functioning. The illness, disorder, or condition may be of organic or functional origin, may be curable or incurable, and may be temporary or permanent, recurring or non-recurring. However, s. 16 mental disorder does *not* include mental states brought about by self-induced intoxication: see *R. v. Cooper*, [1980] 1 S.C.R. 1149 at 1159.

[14] The question whether an illness, disorder, or condition amounts to “mental disorder” is a legal one to be decided by the trial judge. It is not a medical question, although “medical expertise plays an essential part in the legal characterization exercise”: *R. v. Bouchard-Lebrun*, 2011 SCC 58 at para. 61.

(see also *R. v. Alsager*, 2018 BCSC 858, at para. 28)

[26] The second stage of the defence provided by s. 16(1) concerns the effects of the mental disorder. At this stage, it must be determined whether, owing to his mental condition, the accused was incapable of appreciating the nature and quality of the act or incapable of knowing that the act or omission was wrong. In this case, counsel agreed that the first branch applies. Therefore, in my analysis, I must consider whether the mental disorder deprived Mr. Johnston of the mental capacity to foresee and measure the consequences of his conduct. (see *Klein*, para. 15)

[27] In this case, the *actus reus* is admitted and, having reviewed the agreed statement of facts, I am satisfied the Crown has proven the *actus reus* of the offence beyond a reasonable doubt. Therefore, I can proceed directly to consider the NCRMD defence that has been raised.

### **Analysis**

[28] I accept the evidence of Dr. Bhatia as to her diagnosis of Mr. Johnston's mental state and condition at the time of the offence. On this basis and in light of the evidence as a whole, I am satisfied, on the balance of probabilities, that Mr. Johnston was suffering from a mental disorder, namely schizophrenia, at the

time of the offence. I accept Dr. Bhatia's opinion that at the time of the offence, Mr. Johnston was acutely psychotic and that he was suffering from paranoid delusions and disorganized thought processes as a result of his schizophrenia. I am satisfied that there is ample evidence to find that Mr. Johnston was suffering from a "disease of the mind" within the meaning of *R. v. Cooper*, 1979 CanLII 63 (SCC), [1980] 1 S.C.R. 1149 at the time of the offence.

[29] With respect to the effect of the mental disorder, I agree with the submissions of counsel that there is overwhelming evidence to establish that, due to his mental disorder, Mr. Johnston was incapable of appreciating the nature and quality of his act. Given that Mr. Johnston was acutely psychotic at the time, I am satisfied that his mental disorder deprived him of the mental capacity to foresee and measure the consequences of his conduct. Mr. Johnston was incapable of appreciating the nature and quality of the act within the meaning of s. 16(1) of the *Code*.

### **Conclusion**

[30] In conclusion, having considered all of the evidence, I find that Mr. Johnston has established on a balance of probabilities that he was suffering from a mental disorder at the time of the commission of the offence, which rendered him incapable of appreciating the nature and quality of the act.

[31] Therefore, I find that Mr. Johnston is not criminally responsible on account of mental disorder.

[32] I decline to exercise my discretion to hold a disposition hearing and refer this matter to the Review Board pursuant to s. 672.45(1.1) of the *Code*. I agree with Crown counsel that the risk of violence remains high and needs to be carefully assessed. In these circumstances, I find it would be appropriate to defer the issue of disposition to the Review Board, which has the expertise to assess the issues which this case presents. The Review Board will be able to consider any additional materials, including a risk assessment. Accordingly, pursuant to s. 672.47(1) of the *Code*, the Review Board shall hold a hearing and make a disposition 45 days after this verdict has been rendered.

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



[34] Pursuant to s. 672.45(1.1) of the *Code*, I order that a copy of the assessment report be sent to the Review Board, together with the exhibits filed at this hearing, the agreed statement of facts, and other material filed at the time of Mr. Johnston's guilty plea.

[35] Finally, before we adjourn, I wish to express my sincere appreciation to counsel for your professionalism and assistance throughout this matter.

[36] Thank you, counsel, we may adjourn. Is there something you want to raise?

[37] CNSL J. HEMPSTEAD: Yes, My Lady, just more in the nature of housekeeping, if anything else. I do have a copy of a -- sort of the CPIC entries for the defendant which indicates sort of the matters from 1999 and as well 2018, whether that needs to be sent as part of the record to the -- to the Review Board. I can show that to my friend, just they may very well be aware of that already, but just to sort of complete the record in that respect.

[38] CNSL J. LEBLOND: It may be somewhat duplicitous, My Lady, but I do not object to that being forwarded to the Review Board as well.

[39] THE COURT: Okay, so we will -- you will have to give that -- file that with Madam Clerk, Mr. Hempstead, and that can be included in the package that goes to FPH.

[40] CNSL J. HEMPSTEAD: Thank you. The other aspect is --

[41] THE COURT: It was -- sorry, it would be a bit out of order, but I suppose we could mark it. I have given my ruling, but I think we could just administratively mark that as the next exhibit, so --

[42] CNSL J. HEMPSTEAD: I think so.

[43] THE COURT: Is that 5?

[44] THE CLERK: On this hearing, that would be Exhibit 4.

[45] THE COURT: All right, let us mark it Exhibit 4 then, Madam Clerk. Yes.

[46] CNSL J. HEMPSTEAD: And this matter is -- it does fall within the purview of the court making a DNA order under s. 487.051(3)(a), that is even where there has been a finding for an NCRMD.

[47] THE COURT: Right.

[48] CNSL J. HEMPSTEAD: And I think in light of the -- it would be considered a secondary -- the test to be like a secondary designation, and I am just going to go straight to that section. It says:

The court may, on application by the prosecutor and if . . . satisfied that it is in the best interests of the administration of justice to do so, make . . . an order [under] Form 5.04 in relation to . . .

-- and it is sub (a) --

. . . a person who is found not criminally responsible on account of [a] mental disorder for an offence committed at any time, including before June 30, 2000, if that offence is a designated offence when the finding is made . . .

[49] And this is manslaughter, which is a primary designated offence. We have been through the circumstances of the -- of the offence, and in light of sort of the past findings for NCRMD, which those matters would also fall within a designated offence, we would be seeking that. I don't know whether my friend is taking any issue with that, as far as security of the person and privacy and things of that nature. Certainly the results of any DNA are kept private within various databases and I do not know of any sort of personal safety concerns about the taking of the sample, whether it is by buccal swab or by -- or by a pinprick, that's probably less intrusive than vaccines that are given later to the -- that are happening at the time, so I would be seeking such an order under 487.051(3)(a).

[50] CNSL J. LEBLOND: My Lady, given the history and facts of this case, I won't be taking a position with regard to my friend's application.

[51] THE COURT: Okay, thank you. With respect to the Crown's application for a DNA order under s. 487.051(3)(a) as I have already indicated, this case and the history do identify risk with respect to extreme violence and risk to public safety which weigh heavily in favour of making an order. The impact on Mr. Johnston's privacy and security of the person would be minimal. I am satisfied that it is in the

best interests of the administration of justice to order that Mr. Johnston provide a sample of his DNA for inclusion in the DNA data bank.

[52] CNSL J. HEMPSTEAD: Thank you.

[53] THE COURT: And so I make that order.

[54] CNSL J. HEMPSTEAD: Thank you. And one last matter that I have raised with my friend is with respect to all of the exhibits that were seized by the police in this investigation, I would ask my friend whether there is anything in particular that he is looking to get back on behalf of his client, and I understand that there is none. And I just want to hand up a draft order with respect to sort of the disposition of the police exhibits that they have, and what I will be providing is a draft that says pursuant to s. 490(9) of the *Code*, that all exhibits held by the RCMP in this investigation be returned to the lawful owner or person who is entitled to its possession where such person or owner is known, and where the lawful owner or person is not known or not wanting any return of such exhibit, it can be forfeited to the Crown under 490(9), after the expiry of any applicable appeal period, to be disposed of as the Attorney General directs or otherwise in accordance with the law.

[55] There are some exhibits that were seized that would, I would think, be -- properly go back to the estate, that are being wrapped up --

[56] THE COURT: Okay.

[57] CNSL J. HEMPSTEAD: -- and other matters are police -- just general police exhibits --

[58] THE COURT: Yes.

[59] CNSL J. HEMPSTEAD: -- that they have created, so I have provided that draft. It doesn't have my friend's signature on it, I apologize, but I know that he's had an opportunity to review that draft, My Lady.

[60] CNSL J. LEBLOND: It would be by consent, in any event, My Lady.

[61] THE COURT: I am just going to have a look at this, Mr. Hempstead, and I will sign it. Okay, so I have signed your order.

[62] CNSL J. HEMPSTEAD: Thank you, My Lady. Those are the matters that I wished to raise.

[63] THE COURT: All right, thank you very much, counsel. We can adjourn.

“Devlin J.”