BRITISH COLUMBIA REVIEW BOARD

IN THE MATTER OF PART XX.1 (Mental Disorder) OF THE CRIMINAL CODE
R.S.C. 1985 c. C-46, as amended S.C. 2005 c. 22

AMENDED

REASONS FOR DISPOSITION
IN THE MATTER OF

STEVEN BRADLEY ROGERS

HELD AT: Forensic Psychiatric Hospital
Port Coquitlam, BC
September 21, 2017

BEFORE:	ALTERNATE CHAIRPERSON:	I. Friesen
	MEMBERS:	Dr. R. Stevenson, psychiatrist
		Dr. L. Murdoch

APPEARANCES:
ACCUSED/PATIENT: Steven Bradley Rogers
ACCUSED/PATIENT COUNSEL: D. Abbey
DIRECTOR AFPS: Dr. M. Hediger, B. Lohmann
DIRECTOR'S COUNSEL:
ATTORNEY GENERAL: M. Donnelly

Amended March 14, 2018: Paragraph 6 – removed.

INTRODUCTION AND BACKGROUND

[1] On September 21, 2017, the British Columbia Review Board (the Board) held an initial hearing in the matter of Steven Bradley Rogers, who was found not criminally responsible on account of mental disorder (NCRMD) on August 11, 2017. At the conclusion of the hearing Mr. Rogers was detained in custody at the Forensic Psychiatric Hospital (FPH).

[2] Although we have considered all the evidence on record, for the purpose of these Reasons, we only recite that which is necessary to our decision.

[3] The index offence of the second-degree murder of J.C. occurred on September 16, 2014. J.C. was a house manager at Nanaimo House; a New Westminster transition house associated with the Last Door Recovery Society. The accused was a resident at Nanaimo House and undergoing treatment for a number of addictions. He was residing in the room next to J.C. At some point prior to the murder, the accused developed the belief that he was required to kill J.C. “to save his soul and everybody else’s souls”. Mr. Rogers obtained a hammer and a knife. He entered the victim’s room in the middle of the night, struck him in the temple and stabbed him in the heart. The attack was violent and fatal. Mr. Rogers later told police that he wanted J.C. to suffer as little as possible and to die quickly.

[4] After the murder, Mr. Rogers had a shower, left the residence and spent the night in a Burnaby hotel room. From there he traveled to Oppenheimer Park in Vancouver and the streets of the downtown east side. He had an altercation with Vancouver Police at 6:30 pm on September 16, 2017. He attempted to swing at an officer, while claiming he was Superman. He exhibited symptoms consistent with the use of crystal methamphetamine. He was arrested and detained overnight. The next morning he returned to the Last Door’s main office in New Westminster, told employees he needed help to detox. He then confessed that he had murdered J.C.

[5] Mr. Rogers is 28 years old. He grew up with his parents in Saskatoon Saskatchewan. He struggled in school and experienced difficulties with focus and motivation. He left home at the age of 21, worked in the restaurant industry and engaged in a “party” lifestyle. He abused alcohol, marijuana, cocaine and crystal methamphetamine. When he was approximately 23 years of age, he moved back home with his parents. They became concerned that he was isolating himself. He spent up to 15 hours a day on his computer and his self-care began to decline. Around this time, he was involved in a car accident and hit his head on the steering wheel. He later told others that he died in that accident. His parents attended counseling with

him and he was assessed by a psychologist (Exhibit 3). The report queried the possibility of depression and suggested further exploration. Various treatment options were considered. Mr. Rogers was sent to the Last Door Treatment Center to address his addictions to substances, alcohol and on-line media. Prior to the index offence, Mr. Rogers resided at Nanaimo House for 3 months and worked at the Boathouse Restaurant. Mr. Rogers reported that he did not use any substances for 13 months prior to the index offence.

[6] At trial, three experts assessed Mr. Rogers to provide opinions on whether he was eligible for an NCRMD verdict. The experts disagreed. They all experienced difficulties with diagnostic clarity. Dr. Murphy found no evidence of prior mental disorder to support a NCRMD verdict. She noted the lack of a full and objective social history. Dr. Lohrasbe opined that the proper diagnosis fell somewhere on the schizophrenia spectrum. Dr. Hediger diagnosed psychotic disorder. Both Dr. Lohrasbe and Dr. Hediger supported an NCRMD verdict and found some support for a diagnosis of personality disorder.

EVIDENCE AT THE HEARING

[7] In preparation for the hearing, the Board received the reports and transcripts from the NCRMD verdict (Exhibits 1, 3 - 9), victim impact statements (Exhibits 2 a-d), the report of Dr. Hediger dated September 3, 2017 (Exhibit 11) and the report of the case manager dated September 1, 2017, (Exhibit 10).

[8] Mr. Rogers has recently been re-admitted to FPH after the NCRMD verdict and is in the early stages of treatment. Dr. Hediger testified that further assessment is needed to clarify Mr. Rogers' diagnosis and treatment path. Dr. Hediger now supports a diagnosis of schizophrenia. The treatment team will inquire into the possibility of a personality disorder, and evidence of a past head injury. The team will also assess whether there has been any functional deterioration, and the possibility of malingering. It is too early to assess Mr. Rogers' insight into his illness and to come to a conclusion as to his prognosis. At this point, Mr. Rogers has a rudimentary understanding that "something is wrong" and that he "needs help". He denies hallucinations and specific delusions, but he continues to espouse unusual thoughts. He has an interest in eastern philosophies and believes he lives on a "different plane". He has difficulty with thought processes and loses his train of thought in conversation.

[9] During the NCRMD assessment, Dr. Hediger extensively examined the accused's use of substances and could not conclude that it was a factor leading to the index offence. The treatment team will continue to pursue the question of whether substance abuse played a part in the index offence.

[10] Dr. Hediger recently commenced treatment with anti-psychotic medication. The accused's first dose was taken on the date of the hearing. Dr. Hediger deliberately delayed medication in order to assess Mr. Rogers' untreated symptoms in hospital and to rule out possible lingering effects of drug use while he was incarcerated at Fraser Pretrial Center.

[11] Mr. Rogers has been calm and settled during his admissions to FPH. He is living on A2 unit, and is coping well on a daily basis. It will be important to assess the accused's ability to cope with stressors. On the day prior to the murder, the accused had planned to move into the basement apartment of one of his counselors, but the move was delayed. There is a possibility that the stress of the move precipitated the index offence.

[12] Mr. Rogers has so far been cooperative and engaged with his treatment team. The plan is to move him to A4 unit for treatment after initial assessments are completed.

[13] Dr. Hediger has been unable to conduct a complete risk assessment. Dr. Hediger suspects that the accused might be experiencing underlying paranoia and auditory hallucinations even though the accused denies this. Mr. Rogers displays disorganized thought and behaviours, as well as prominent negative symptoms. The treatment team is unable to predict the future course of Mr. Roger's illness and behaviours at this time. Dr. Hediger recommended a custodial order with no community access.

[14] Mr. Rogers was reluctant to testify, and counsel advised that he would not be able to fully articulate his thoughts. He answered questions put to him by the parties and members of the panel.

[15] When asked about the index offence, Mr. Rogers said he felt strange at the time, like he was in "overdrive" and that he had a "secondary body". He experienced delusions and paranoia. He believed he "sold his soul to the devil", and felt "international fantasy" as well as "impending doom". He believes these thoughts and feelings began 4 to 5 years ago, but he has not experienced them for approximately 3 years. He does not feel that he is "necessarily ill" at the present time. He is not "out of control" but feels "mildly temperamental" and a "little trapped". Mr. Rogers testified that he is obsessed with seeking signs of "how the universe is trying to guide me". He knows that his thoughts do not "necessarily have a solid footing in reality".

[16] Mr. Rogers is in agreement with the plan of his treatment team but sees it only as a "good idea for now". He is not sure how the whole process works. He is concerned that his doctor "may not read between the lines" and that the issue "might not be entirely taken care of". He prefers not to take medication forever as he believes medications are "terrible for your

health" and may "snowball into a big pharmaceutical trip". He would prefer to take alternative medicines instead of conventional approaches.

[17] Mr. Rogers said he was a binge alcoholic before his admission to Nanaimo House. He was also a regular marijuana user but only used crystal methamphetamine on the one occasion after the index offence. He believes he is presently experiencing a "self-motivation issue" and "not putting enough effort into" his life. Mr. Rogers had difficulty maintaining his focus during the course of his testimony, and his answers tended to trail off unintelligibly.

VICTIM IMPACT STATEMENTS

[18] The *Criminal Code of Canada* provides for the admission of Victim Impact Statements (VIS) at NCRMD disposition hearings:

> **672.5(14)** A victim of the offence may prepare and file with the court or Review Board a written statement describing the physical or emotional harm, property damage or economic loss suffered by the victim as the result of the commission of the offence and the impact of the offence on the victim.

[19] A number of VIS' were filed prior to the hearing (Exhibits 2a -2d). Counsel for the accused objected that some portions of recently filed VIS were inappropriate and inadmissible, and went beyond the permissible purposes described in the section. The Board noted that portions of some of the statements were critical of the accused, criticism of the court making the NCRMD verdict and opined that harsh sentencing options were appropriate for the accused.

[20] The B.C. Court of Appeal in ***R. v Bremner****,* 2000 BCCA 345, quoting from ***R. v. Gabriel*** (1999), 1999 CanLII 15050 (ON SC), 137 C.C.C. (3d) 1; 26 C.R. (5th) 364 (Ont. S.C.), commented on the purpose of victim impact statements in criminal sentencing hearings at para. 26:

> Without, in any fashion, diminishing the significant contribution of victim impact statements to providing victims a voice in the criminal process, it must be remembered that a criminal trial, including the sentencing phase, is not a tripartite proceeding. A convicted offender has committed a crime – an act against society as a whole. It is the public interest, not a private interest, which is to be served in sentencing.

And further at para. 27:

> Impact statements should describe "the harm done to, or loss suffered by, the victim arising from the commission of the offence". The statements should not contain criticisms of the offender, assertions as to the facts of the offence, or recommendations as to the severity of punishment.

> Criticism of the offender tilts the adversary system and risks the appearance of revenge motivation.
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> Attempts to state, or presumably to restate, the facts of the offence usurps the role of the prosecutor and risks inconsistency with, or expansion of, prior trial testimony, or facts read in, and agreed to, on the guilty plea appearance. Such was the case in *R. v. McAnespie* (1993), 82 C.C.C. (3d) 527 (Ont. C.A.) (reversed (1993), 1993 CanLII 50 (SCC), 86 C.C.C. (3d) 191 (S.C.C.)) where additional disclosure by the complainant, relating to the offence, was made by the complainant in her victim impact statement.
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> The Attorney General represents the public interest in the prosecution of crime.
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> Recommendations as to penalty must be avoided, absent exceptional circumstances, i.e., a court-authorized request, an aboriginal sentencing circle, or as an aspect of a prosecutorial submission that the victim seeks leniency for the offender which might not otherwise reasonably be expected in the circumstances. The freedom to call for extraordinary sentences, beyond the limits of appellate tolerance, unjustifiably raises victim expectations, promotes an appearance of court-acceptance of vengeful submissions, and propels the system away from necessary restraint in punishing by loss of liberty (s. 718.2(d) of the *Code*; *R. v. Gladue*, *supra* at para 40, 41, 57, 93). It has been suggested that frequently the victim's limited knowledge of available sentencing options may lead the victim to rely on more severe options: H.C. Rubel, *Victim Participation in Sentencing Proceedings* (1985-86), 28 C.L.Q. 226 at 240-241. The independent neutrality of the judiciary requires that the court not react to public opinion as to the severity of sentences: *R. v. Porter* (1976), 33 C.C.C. (2d) 215 (Ont. C.A.) at 220 *per* Arnup J.A. [Footnotes omitted.]

[21] VIS ought not to contain recommendations as to sentence or criticisms of the accused. Further, VIS ought not to contain criticisms of the trial judge or of the NCRMD verdict. At an NCRMD disposition hearing, the focus is properly directed towards public safety, and the treatment and rehabilitation of the accused. In this context, criticisms of the accused as well as harsh sentence recommendations from victims are inappropriate and unwarranted. Criticisms of the trial judge invite disrespect for the court process and ought not to form part of the proceedings.

[22] In an effort to save time at the hearing, the Board asked counsel for the Attorney General and counsel for the accused to reach agreement on edits to the impugned portions of the VIS'. Over the break, counsel was able to agree on revisions. The revised VIS were re-filed and considered. Three family members read their statements at the hearing. They paid tribute to J.C. and described the impact of his death on their lives and the lives of their loved ones.

ANALYSIS AND DISPOSITION

[23] All parties supported the jurisdiction of the Review Board in the form of a strict custodial disposition. The Board easily concluded that the threshold of significant threat to the

safety to the public under s. 672.5401 of the *Criminal Code* is met. Mr. Rogers has recently been found NCRMD for the violent, unprovoked and fatal assault of a sleeping man. There are many inquiries and assessments yet to be undertaken to properly understand Mr. Roger's course of illness, and his diagnosis and treatment. His risk to the community cannot be determined because the team does not have sufficient information. Further information such as the accused's past psychiatric history, school records, potential triggering and precipitating events, and history of drug use will assist in developing a full diagnostic and treatment picture. Mr. Rogers has no real insight into his illness, or the index offence. His team is at the early stages of determining appropriate medication and course of treatment. There is no way to predict what events might trigger Mr. Rogers to similar dangerous behaviour in the future. The public safety requires that the Review Board continue its overview over the course of treatment of the accused.

[24] For the same reasons, the Board agreed that a custodial disposition is the necessary and appropriate disposition. There is presently no opportunity to manage and supervise Mr. Rogers in the community in a way that would be sufficient to minimize his risk to the public.

[25] This matter will be reviewed in the usual 12-month period.

Reasons written by I. Friesen, in concurrence with Dr. R. Stevenson and Dr. L. Murdoch

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