BRITISH COLUMBIA REVIEW BOARD

IN THE MATTER OF PART XX.1 (Mental Disorder) OF THE CRIMINAL CODE R.S.C. 1991 c. 43, as amended S.C. 2005 c. 22, S.C. 2014 c. 6

REASONS FOR DISPOSITION
IN THE MATTER OF

AMANDA HEATHER STUERZL

HELD AT: **Forensic Psychiatric Hospital**
Port Coquitlam, BC
March 14, 2019

BEFORE:
CHAIRPERSON: **B. Walter**
MEMBERS: **Dr. P. Constance, psychiatrist**
M. Majedi

APPEARANCES:
ACCUSED/PATIENT: Amanda Heather Stuerzl
ACCUSED/PATIENT ADVOCATE: T. Reyes
DIRECTOR AFPS: J. Uppal, Dr. E. Wang
ATTORNEY GENERAL: L. Hillaby

INTRODUCTION AND BACKGROUND

[1] On March 14, 2019, the British Columbia Review Board convened an annual hearing to review the disposition of Amanda Heather Stuerzl, the accused in this matter, who is now 36 years of age.

[2] We are entitled to accept some, none or all of the evidence before us. While we have considered all of the evidence on record in this case, we only recite that which is necessary to our decision.

[3] This is Ms. Stuerzl's thirteenth hearing since her NCRMD verdict given on August 28, 2003. Her background, both behaviourally and clinically, has been canvassed in the course of those previous hearings and need not be repeated, although it remains part of the evidentiary record and under active consideration.

[4] From a relatively young age, Ms. Stuerzl experienced numerous hospital admissions as of about 2002. Details may be found at Exhibit 5 in the record. She had no formal criminal history. She carried a diagnosis of mental illness and depression, including schizoaffective disorder, psychosis not otherwise specified, bulimia, as well on Axis II, borderline personality issues. She also presented with some history of marijuana use which is in the distant past at this point in time.

[5] Ms. Stuerzl had been a resident of a mental health boarding home where she damaged a window, uttered threats and was arrested in a psychotic state. There is evidence that she had behaved in an assaultive manner previously at the same boarding home. Her index charges were mischief, as well as uttering threats. For the record, these are by all accounts and as the parties agree, not at the seriously violent end of the types of offences and behaviours the Review Board commonly deals with.

[6] After the index offence, Ms. Stuerzl was given a diagnosis of schizophrenia. Following the NCRMD verdict she was committed to FPH. She was consistently in custody between 2003 and 2016, a period of some 13 years. She demonstrated considerable in the way of mental instability, including psychosis, and behavioural issues including unauthorized absence, self-injurious behaviour and aggression to staff including the infliction of injury. She was considered severely ill and profoundly psychotic for some time. However, even as early as her second hearing in March of 2004, at which she was

detained, the Review Board commented that she barely met the jurisdictional threshold of significant threat.

[7] It was not until 2006 or thereabouts that Ms. Stuerzl's stability improved to the point where she was able to undertake day leaves and even a visit leave. Her physician reported "substantial and remarkable improvements". However, she required considerable support due to her ongoing fragility. Attempts to place Ms. Stuerzl in boarding homes were unsuccessful and typically ended in returns to hospital.

[8] Significant obstacles to Ms. Stuerzl's progress have included not only her schizophrenic illness, but the fact that she is also diagnosed with intense anxiety, OCD and an eating disorder.

[9] By 2015, given her objective mental stability, her positive progress and participation in programs and the absence of further interpersonal conflicts, and what was termed her "impeccable behaviour", Ms. Stuerzl was enabled to begin visit leaves to what was then referred to as Coast Cottages. Since her conditional discharge in May of 2016, she has remained at the CTC program and more recently, in her independent apartment which is supported and financially subsidized by the Coast Foundation. She has also obtained employment, gained insight in terms of accepting her schizophrenic diagnosis, gained some social confidence, and has demonstrated fastidious medication compliance which she self-administers.

[10] The Review Board had significant difficulty in maintaining its jurisdiction over Ms. Stuerzl at the last hearing on the basis of significant threat. But given her persuasive pleas to continue to receive FPS support, her evident fragility and exquisite sensitivity to stress and anxiety, the Board was persuaded to afford her a further disposition of discharge subject to conditions. The Reasons for that decision are found at Exhibit 57. In continuing its jurisdiction on the basis of Ms. Stuerzl's "other needs" as set out in s. 672.54 of the *Criminal Code*, the Board expressed both its reluctance to continue its jurisdiction, and underlined the principle that its jurisdiction is not premised on what might be in the "best interests" of the accused.

EVIDENCE

[11] For the current hearing, Ms. Uppal, in her report and orally, confirms that Ms. Stuerzl has continued to attend the forensic outpatient clinic at least every three weeks. She enjoys a positive therapeutic relationship with her treatment team. Ms. Stuerzl remains compliant in all aspects of her treatment and the team's directions. She also sees a psychologist to bolster or enhance her coping strategies and deal with her vulnerability to stress and intense anxiety which Ms. Stuerzl has, in the past, labelled as “torture”.

[12] Ms. Stuerzl was again provided with an opportunity to move into the CTC training apartment in September, where she also has outreach support three times per week. Ms. Uppal reports that Ms. Stuerzl has transitioned well to independent living. She has been in no conflicts with peers. She self-administers her medications and attends fastidiously for monthly blood work. Her mental state has remained stable with no relapse to psychosis. She is committed to continued treatment adherence even if that is to be provided by a community mental health team. Her insight and acceptance of her schizophrenic illness has increased. Although she finds it stressful and hopes for alternative employment in the future, she has gained part-time employment at a McDonald's for 15 hours per week.

[13] Considering her success at independent living, Ms. Stuerzl’s residence will convert from Coast support to market housing, with a subsidy from a community mental health team. Ms. Uppal says that her FPS treatment team will continue to support and assist her to transition to a community mental health team as long as necessary in order to properly integrate her into community mental health services. Ms. Uppal is confident that Ms. Stuerzl's insight and coping skills have grown, that she looks forward to her future and is committed to treatment compliance.

[14] Given her exquisite sensitivities and fragility, it is entirely expected that Ms. Stuerzl will indeed continue to experience fluctuations in her mental state in the future, as she has in the past. However, these fluctuations have occurred and been handled without Ms. Stuerzl resorting to anything amounting to aggressive or dangerous behaviour towards others.

[15] Dr. Wang, who is the treating psychiatrist, adopts the factual base set out in Ms. Uppal's report. He endorses Ms. Stuerzl's diagnoses, including chronic schizophrenia,

OCD, generalized anxiety disorder, and the eating disorder. He resiles at this point from any diagnosis of personality disorder and says that he has not seen any symptoms thereof since he has known her.

[16] Dr. Wang reports that the accused continues to experience chronic anxiety which is treated mainly by psychological counselling. He has not seen, and she has not shown, overt symptoms of psychosis beyond her chronic residual symptoms of voices that she experiences while she is praying. She now accepts her diagnosis of schizophrenia. Dr. Wang expresses some confidence that Ms. Stuerzl will continue to adhere with treatment in the community and believes that she is, all in all, ready to transition to a civil mental health team, with the support of himself and Ms. Uppal. She has gained the resources, skills, and has the support to successfully effect such a transition. She will continue to receive psychological counselling to help maintain the skills she has gained already, at least during the transition.

[17] Dr. Wang agrees that Ms. Stuerzl will continue to be vulnerable to destabilization in the community, but he believes that such periods can be identified and dealt with before they lead to any violent behaviour, or even serious aggression. Ms. Stuerzl has also demonstrated her ability to refrain from engaging in difficult and stability-threatening relationships.

[18] Dr. Wang reminds us in his risk assessment that the index offences essentially consisted of verbal aggression and property damage, followed by episodes of assaultiveness and threatening while in FPH. Currently, despite a diagnosis of treatment resistant schizophrenia, Ms. Stuerzl is not actively or overtly psychotic beyond some residual symptoms. She harbours no antisocial or violent attitudes. Her exquisite sensitivity and chronic anxiety are treated and managed. As distinct from her history of non-compliance and UA behaviour, Ms. Stuerzl's insight has improved. She is fully engaged with treatment and will continue to be so, has stable accommodation, and is open to a transition to community services. She is financially frugal and has realistic employment goals.

[19] For her part, Ms. Stuerzl indicates that she is now more ready for absolute discharge than she has been in the past. She continues to worry and experiences stress about the potential for transition to community services. Although she intends to remain

medically compliant as long as advised by a physician, and despite the fact that she functions almost entirely independently, her anxiety is such that she says she would not mind remaining on a conditional discharge, although she acknowledged the tenuousness of the Review Board's jurisdiction over her. Ms. Stuerzl would like less stressful employment at some point in the future. She would also like to expand her social group beyond patients or peers whom she met in hospital. She eloquently describes the functional impacts of anxiety. She is somewhat concerned that despite having frequently raised her chronic life-long eating issues, these have not been a focus of helpful treatment. She acknowledges that seeing a therapist has been of assistance.

ANALYSIS AND DISPOSITION

[20] The Board's decision making is governed by s. 672.54 and s. 672.5401 of the *Criminal Code* which provide:

> **672.54** When a court or Review Board makes a disposition under subsection 672.45(2), section 672.47, subsection 672.64(3) or section 672.83 or 672.84, it shall, taking into account the safety of the public, which is the paramount consideration, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused, make one of the following dispositions that is necessary and appropriate in the circumstances:
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> > **(a)** where a verdict of not criminally responsible on account of mental disorder has been rendered in respect of the accused and, in the opinion of the court or Review Board, the accused is not a significant threat to the safety of the public, by order, direct that the accused be discharged absolutely;
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> > **(b)** by order, direct that the accused be discharged subject to such conditions as the court or Review Board considers appropriate; or
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> > **(c)** by order, direct that the accused be detained in custody in a hospital, subject to such conditions as the court or Review Board considers appropriate.
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> **672.5401** For the purposes of section 672.54, a significant threat to the safety of the public means a risk of serious physical or psychological harm to members of the public — including any victim of or witness to the offence, or any person under the age of 18 years — resulting from conduct that is criminal in nature but not necessarily violent.

[21] ***Calles v. British Columbia (Adult Forensic Psychiatric Services)***, 2016 BCCA 318, confirms that the codification of the definition of significant threat in s. 672.5401, has not changed its interpretation:

> A significant threat to public safety is defined in s. 672.5401 of the *Criminal Code* to mean "a risk of serious physical or psychological harm to members of the public – including any victim of or witness to the offence, or any person under the age of 18 years – resulting from conduct that is criminal in nature but not necessarily violent". The threat posed must be more than speculative and be supported by the evidence. It must be significant "both in the sense that there must be a real risk of physical or psychological harm occurring to individuals in the community and in the sense that this potential harm must be serious. A minuscule risk of grave harm will not suffice", nor will a high risk of trivial harm: **Winko**, at para. 57. *(para. 15)*

[22] In ***R. v. Carrick***, 2015 ONCA 866, the Court specifically adopted the above formulation from ***Winko*** and added:

> In short, the "significant threat" standard is an onerous one. An NCR accused is not to be detained on the basis of mere speculation. The Board must be satisfied as to both the existence and gravity of the risk of physical or psychological harm posed by the appellant in order to deny him an absolute discharge *(Par. 17)*

[23] ***Re Sokal***, 2018 ONCA 113, at paragraph 15:

> The threat posed must be more than speculative in nature; it must be supported by evidence. The threat must also be "significant", both in the sense that there must be a real, foreseeable risk of physical or psychological harm occurring to individuals in the community and in the sense that this potential harm must itself be serious: *R. v. Ferguson*, 2010 ONCA 810, at para. 8. The likelihood of a risk materializing and the seriousness of the harm that might occur must be considered together: *Re Carrick*, 2015 ONCA 866, at para. 16.

[24] In short, the determination we must make in this case is a legal rather than a clinical decision. We cannot detain an accused, for example, for treatment simply because they present a risk to themselves or that it is in their best interest to remain in the forensic system if they do not also present a significant threat to the public. If we conclude that a person is a significant threat, however, such considerations may inform a decision whether a particular disposition is necessary and appropriate, applying the criteria set out in s. 672.54, but such considerations plainly have no place in determining the threshold question of jurisdiction itself.

[25] On our analysis of the evidence provided, in particular with respect to the issue of significant threat, we are simply unable on the legal and the jurisdictional analysis, to conclude that Ms. Stuerzl continues to meet the threshold for our ongoing jurisdiction over her. As Mr. Hillaby eloquently stated, the criminal justice system is not established or intended to meet the sorts of ongoing needs that Ms. Stuerzl clearly has, absent posing a threat of serious harm to the public.

[26] In ***Re Pellett***, 2017 ONCA 753, the Ontario Court of Appeal said:

> We acknowledge that imposing an absolute discharge may not be in the appellant's best interests. However, this is not relevant to the determination under s. 672.54 of the *Code*: see *R. v. Ferguson*, 2010 ONCA 810, 271 O.A.C. 104, para. 45; and *Re Wall*, para. 30. There is a risk that the appellant will cease taking her medication, and that her condition will worsen, perhaps quite quickly. However, the appellant is entitled to be discharged unless she constitutes a significant threat to the safety of the public.
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> The evidence failed to meet the "onerous" standard under s. 672.54. The appeal is allowed. The decision of the Board is set aside. In its place, and pursuant to s. 672.78(3)(a), we order an absolute discharge. *(par. 32 - 33)*

[27] In ***R. v. Ferguson***, 2010 ONCA 810 at paragraph 45, Doherty, JA said:

> [ ] I recognize that this may well not be in the appellant's best interests. The Review Board is, however, absent a reasonable finding of significant threat, not constitutionally permitted to impose limitations on the appellant's liberty even though they may be in the appellant's best interests.

[28] For those reasons, as well as Ms. Stuerzl's own somewhat reluctant approbation, we conclude that she is not only entitled, but in law must be absolutely discharged from this scheme, and we wish her well in her future endeavours.

Reasons written by B. Walter in concurrence with Dr. P. Constance and M. Majedi.