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

REASONS FOR DISPOSITION
IN THE MATTER OF

DANIEL DAVID WITHAM

HELD AT: Forensic Psychiatric Hospital
Port Coquitlam, BC
April 7, 2017

BEFORE: ALTERNATE CHAIRPERSON: F. Hansford, QC
MEMBERS: Dr. L. Grasswick, psychiatrist
K. Polowek

APPEARANCES: ACCUSED/PATIENT: Daniel David Witham
ACCUSED/PATIENT COUNSEL: D. Abbey
DIRECTOR AFPS: Dr. M. Khan, D. Westell
ATTORNEY GENERAL: L. Hillaby

INTRODUCTION AND BACKGROUND

[1] ALTERNATE CHAIRPERSON: On April 7, 2017, the British Columbia Review Board (the Board) convened a hearing pursuant to s 672.81(1) of the *Criminal Code* at the Forensic Psychiatric Hospital (FPH) in Port Coquitlam in respect of Daniel David Witham, a 31-year-old man who was found not criminally responsible on account of mental disorder (NCRMD) on July 8, 2008 in respect of a charge of attempted murder. The index offence occurred on May 4, 2008 in Kimberly, British Columbia. Mr. Witham attacked a former acquaintance from high school, acting under the psychotic delusions that she was the Antichrist whom God had told him to kill. He used significant quantities of marijuana in the weeks preceding the commission of the index offence. He assembled weapons and other items to carry out his plan. When all was ready, he attended at the victim's home and ordered her to come out. When she refused and yelled for assistance, he panicked and stabbed her through the arm with a knife. He then fled the scene.

[2] Mr. Witham's personal and forensic histories have been reviewed in detail in prior Reasons for Disposition. Accordingly, 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 accused carries a diagnosis of schizoaffective disorder, in remission since 2008. He was first admitted to a psychiatric ward in 2005. Upon discharge, he became non-compliant with treatment. In 2006, he went to Toronto. He remained in that city for approximately a year, living in shelters or on the street. He returned to Kimberly. He experienced significant symptoms of his illness, including auditory hallucinations and acute paranoia, throughout this period of his life. His mental stability was further impaired by substance abuse.

[4] Mr. Witham was detained in hospital following the NCRMD verdict until conditionally discharged in May 2012. He has remained in the community since then under consecutive conditional discharges. He last appeared before the Board on April 8, 2016. The Board noted in its Reasons for Disposition that while he was largely stable and symptom-free, he was subject to considerable stress in his life. His mother, described in previous reasons as "the matriarch of the family", wished him to return to Alberta to be close to family and his partner, a man with whom he had been in a relationship for approximately 4 years, would not agree to a projected move to Kelowna. Mr. Witham perceived a growing emotional

distance with his partner leading to a number of significant conflicts and cessation of their intimate relationship.

[5] The accused prefers to avoid conflict. He is somewhat passive, and as a result issues with his family and partner were unresolved at the date of his last hearing. In November 2015, conflict with his partner and employer were so stressful that he applied to be re-admitted to Coast Cottages and when this proved impossible, to FPH. Readmission was declined in both cases, and his situation quickly resolved in cooperation with his treatment team. This episode illustrates the speed at which Mr. Witham can become overwhelmed and the difficulty that he generally experiences resolving conflicts in his life due to personality features of ambivalence, avoidance, and approval seeking.

[6] The Board found at his last hearing that Mr. Witham was vulnerable to stress and despite his pro-social attitudes, engagement with treatment and insight into his illness, he still had a “significant distance to go in attaining a stable environment with reasonable plans to take into account his own needs”. The Board was concerned at how easily he could become overwhelmed by stress and anxiety and noted his continuing dependence upon forensic services for help when he does feel overwhelmed.

EVIDENCE AT THE HEARING

[7] In preparation for this hearing, the Board received and reviewed a Case Management Report prepared by Mr. D. Westell dated March 29, 2017 (Exhibit 46) and a psychiatric report prepared by Dr. M. Khan dated March 22, 2017 (Exhibit 45). Dr. Khan, Mr. Westell and Mr. Witham all testified orally.

[8] Dr. Khan reported that Mr. Witham attended appointments on time, properly dressed, and was pleasant. He had been making sincere efforts to reintegrate into the community. His insight was significantly improved. There have been no concerns with consumption of alcohol or drugs for at least 6 years. He continues to reside with his same-sex partner, who works as a care aide. Mr. Witham reported that this relationship was good “overall”, although no longer intimate. He described his former partner as “a good friend”. Mr. Witham remains employed at a gas station.

[9] Mr. Witham still plans to move to Kelowna where he can live in a house owned by his brother at a very low rent. His partner is still unlikely to agree as he is securely employed at their present location, but has left open the possibility of moving open for the moment.

The house in Kelowna will not be available until August 1, 2017. Mr. Witham did not consider their relationship as necessarily sundered irrevocably.

[10] Mr. Witham does not intend to move to Alberta, as his father recently passed away and his mother has now retired. Mr. Witham was able to handle the death of his father without decompensating. It is quite possible that his mother will move to Kelowna and reside with him in his brother's house. Mr. Witham intends to pursue employment in the restaurant industry or at a gas station. He will be able to work part-time and retain his PWD disability benefits. He continues to keep in touch with his family in Alberta and intends to visit them regularly. His brother and half-brother lived near Kelowna, and he is very close to them and their families. They are very supportive of him.

[11] Mr. Witham has attended psychological counselling to learn about assertiveness and to acquire additional coping skills. He remains a committed Christian although he has forgone fellowship with a congregation. He explores and researches his faith in personal study and in discussion with a friend who is a Jehovah's Witness. He continues his hobby of publishing music online as a DJ and is followed by approximately 50,000 people on Twitter. He enjoys faith-based Christian TV channels.

[12] Mr. Witham readily acknowledged to Dr. Khan that he was psychotic and abusing cannabis of the time of the index offence. He described contemporaneous suicidal and homicidal ideation. He does not feel that he will ever go back to that state of mind, asserting that he will continue to take his medication and abstain from abusing alcohol, cannabis, or any other illegal drugs. He denies having any animus against anyone and described the index offence as "a big mistake". He has completed counselling sessions with Dr. Strub, a psychologist, which he found very useful. He felt his insight into his illness and his coping skills were improved due to this intervention.

[13] Dr. Khan confirmed Mr. Witham's diagnoses as schizoaffective disorder, in remission, polysubstance abuse in remission (alcohol and cannabis), and childhood ADHD. His mental state has remained stable and he has cooperated fully with treatment. His speech is always goal directed, although it can be mildly pressured when he is excited or tense. His affect is always reactive, euthymic and his description of his mood has consistently been "good at all times". He has proven able to handle stressful situations in his life, including the admission of his mother to hospital and the death of his father without apparent decompensation. He denies suicidal or homicidal thoughts or plans.

[14] Mr. Witham testified on his own behalf. His evidence was well organized, and he presented his positions in an articulate manner. If absolutely discharged, he intends to remain in his present residence with his partner until August and then move to Kelowna whether or not his partner accompanies him. Their relationship is currently at the stage where they are more roommates than partners. His partner intends to “check it out” once Mr. Witham is resident in Kelowna and has not ruled out moving in with him. Mr. Witham does not consider moving to Alberta to be a realistic alternative.

[15] Mr. Witham is reconciled to the possibility that his partner will not accompany him to Kelowna. His mother may or may not join him in Kelowna. If she does, he will have her support and the support of his brother and his family, and his half-brother, who all live in or about Kelowna. He described a good relationship with both brothers and with his two sisters in Alberta. Mr. Witham assured the Board that his family was well able to recognize symptoms of his illness at or about the time of the index offence. They gave him good advice respecting the need to proactively seek out assistance which he regrets not having followed.

[16] Mr. Witham stated that he also intends to seek out help at the local mental health clinic in Kelowna. He has already called the clinic and been assured that he qualifies for their assistance. They are unwilling to conduct an intake interview until he arrives in the city.

[17] Mr. Witham acknowledged that he has schizoaffective disorder with a mood component and that when ill, he can experience auditory hallucinations. At the time of the index offence, he thought he was involved in a spiritual contest between God and the Devil. He understands that such thoughts were delusional. He could identify the warning signs of decompensation as paranoia, emergence of voices, grandiose ideas about his place in the religious universe, becoming overly zealous about religion, prolonged fasting, and becoming overzealous about proselytizing. He is now very concerned about the possible development of grandiose delusions about religion and watches for them diligently.

[18] Mr. Witham is committed to abstinence. He regards the consumption of marijuana as a factor in the development of psychosis before the index offence. This led him not only to committing the index offence but to suicidal thoughts into “doing a lot of self-harm”.

ANALYSIS AND DECISION

[19] The Director, “based on Mr. Witham’s risk profile” took no position in respect of his disposition. Crown Counsel submitted that Mr. Witham should receive a conditional

discharge in the same terms presently in effect. Mr. Witham maintained that he was entitled to be absolutely discharged because he did not constitute a “significant threat” as defined by s. 672.5401 of the *Criminal Code*.

[20] We are obliged to determine independently whether Mr. Witham is a significant threat, regardless of the position adopted by the parties. If he is not, then he is entitled to an absolute discharge. Mr. Witham does not bear any burden of proof in this respect and the Director must establish that he remains a significant threat. The term “significant threat” is defined by s. 672.5401 of the *Criminal Code* as “a risk of serious physical or psychological harm to members of the public… resulting from conduct that is criminal in nature but not necessarily violent”.

[21] The Board has consistently held since its decisions in the ***Davis, Lacerte*** and ***Baranyais*** cases that in this context, the words “a risk” must be interpreted as equivalent to “a significant risk”. The Board’s assessment of risk must not be speculative in nature and must be supported by the evidence. In that sense, a risk is considered speculative if characterized by a desire to “wait and see” what might happen when an accused moves into an untested environment and new circumstances, when otherwise it would be considered low (***See e.g. Re Marzec, 2015 ONCA 658).***

[22] Dr. Khan advanced an HCR-20 based risk analysis, at the end of which he concluded “Mr. Witham at this point of time does pose low risk of violence to self and others based on his currant risk assessment”. He confirmed this characterization of the risk that Mr. Witham poses in his oral testimony.

[23] Dr. Khan also considered Mr. Witham’s discharge plans to be “realistic and achievable”. His illness has been in remission since 2008. He is compliant with, and allegiant to, his medication regimen and reports no significant side effects. The main obstacle to their success would be the possible withdrawal of support from his partner and his Forensic Psychiatric Services Team, without suitable replacement. Mr. Witham, we note, has become reconciled to the former possibility and has taken steps to arrange for continuing support from a community based team. He is generally forthcoming with his treatment team and enjoys a reasonable therapeutic relationship. There is no reason why this could not be transferred to a community-based team. His current treatment team will be able to assist pending establishment of a new treatment team in Kelowna.

[24] Although the index offence was extremely serious, there was no previous documented history of violence. There is no history of any attempt to perpetrate sexual violence, no prior history of antisocial behaviour, and no evidence of an antisocial prior lifestyle. After his admission to hospital in 2008, his condition steadily and significantly improved. He has been able to secure part-time employment at a gas station for three years, in contrast to his previous history of being unable to sustain employment.

[25] In Dr. Khan's opinion, Mr. Witham demonstrates awareness of his mental illness and understands the role that drug abuse played in decompensation. He exhibits no active symptoms of the major psychiatric disorder and denies any delusions or hallucinations. No symptoms of his mental illness have appeared over the last year. Mr. Witham does not exhibit any affective, behavioural or cognitive instability. There has been a significant decline in Mr. Witham's levels of anxiety and guardedness since 2012.

[26] Crown Counsel raised questions respecting the possibility that Mr. Witham's present religious faith might again be compromised by psychotically based delusions involving grandiose religious beliefs and practices, leading him to commit offences against people in pursuit of his understanding of religion. Religious delusions played a role in the commission of the index offence. He submitted that Mr. Witham's solo pursuit of religious studies might make him particularly vulnerable to the development of further delusions.

[27] In contrast, Dr. Khan stated that Mr. Witham has good insight into his previous delusional thinking and experienced the onset of psychotic beliefs as an unpleasant event. He is happy to be well and respectful of the symptoms of his illness. Dr. Khan considers that Mr. Witham's good attitude towards his illness and his fear of decompensation would protect him from succumbing to religious faith delusions in the future. In our view, Mr. Witham also demonstrated in his evidence that he was alive to this possibility and had given specific thought to the development of religious delusions when considering early indications of decompensation.

[28] Based on Mr. Witham's history, Dr. Khan considered that any decline and reemergence of such symptoms would likely be obvious in the community. His previous psychosis developed over a fairly long period of time before he acted on his delusional beliefs. They have not reemerged since the index offence. His continued adherence to olanzapine, his prescribed antipsychotic medication, will also have a prophylactic effect, as will the coping techniques taught in the Cognitive Behavioural Therapy he recently

undertook. He has good insight into the warning signs of his decompensation. He has also been proactive in contacting his treatment team in the hospital when he considers that help is required. The only period of instability since the index offence was in November 2015, and Mr. Witham immediately sought out help before any substantial decompensation.

[29] When responding to Crown Counsel's questions respecting these issues, Mr. Witham was able to draw a clear distinction between grandiose religious beliefs in which religion centred on him, as opposed to being a normal human being seeking God. He identified the former as delusional and stated that if he again felt that way, he would report it to his treatment team. Dr. Khan and Mr. Westell assessed his present attitude towards religion as more spiritual than merely religious. It appeared that his religious practice falls within conventional Christian norms.

[30] The only expert assessment of risk before us is advanced by Dr. Khan, who considers Mr. Witham to be a low risk of causing serious harm of a criminal nature. The only caveat advanced respecting this characterization is that possible disruptions in his environment in the future might increase his level of stress and possibly, particularly if he is not well supported, lead to decompensation in his mental state and the return of psychosis.

[31] We accepted Dr. Khan's opinion that Mr. Witham represents a low risk of causing serious harm of a criminal nature in the future. This conclusion is amply supported by the evidence cited above. The concerns and caveats advanced by Crown Counsel and by Dr. Khan are in our opinion speculative in nature. To refuse an absolute discharge in the circumstances would be based, in essence, on a need to "wait and see" how matters turn out for Mr. Witham over the next year. Since his last hearing, Mr. Witham has improved and developed a sound discharge plan, thereby addressing the concerns noted by the Board after that hearing. We therefore found that he was not a significant threat as defined by s. 672.5401 of the *Code* and was entitled to an absolute discharge.

Reasons written by F. Hansford, Q.C. in concurrence with Dr. L. Grasswick and K. Polowek.