

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. Almestadi*,
2017 BCSC 2075

Date: 20171026
Docket: 27246
Registry: Vancouver

Regina

v.

Thamer Hameed Almestadi

Before: The Honourable Madam Justice Fleming

Oral Reasons for Judgment

Counsel for the Crown:	D.J. Porte
Counsel for the Accused:	C.L. Leggett T.J. Duncan
Place and Dates of Trial:	Vancouver, B.C. October 10-13, 17-20 & 23, 2017
Place and Date of Judgment:	Vancouver, B.C. October 26, 2017

[1] **THE COURT:** The accused, Thamer Hameed Almestadi, has entered pleas of not guilty to the charges contained in the three-count indictment, count 1 being that he attempted to commit the murder of Mary Hare on or about October 4, 2016, at or near the University of British Columbia; count 2 being that he committed the aggravated assault of Ms. Hare; and count 3 being that he committed the assault of Ms. Hare, each on the same day and at the same location. All three charges relate to a single brutal attack on Ms. Hare that occurred in her room on the third floor of Salish House, a student residence at UBC, on October 4, 2016. At the time, Ms. Hare and Mr. Almestadi were first-year students. He was also living at Salish House in a shared room on the fourth floor.

[2] Mr. Almestadi agrees the evidence establishes beyond a reasonable doubt that on the morning of October 4, 2016, he went to Ms. Hare's room, carrying a knife and planning to kill her. He then violently attacked her by slashing her throat with the knife and choking her until she was rescued by several people. Ms. Hare suffered physical injuries during the attack including three lacerations to her throat, the most significant of which was approximately five inches long and one-inch-wide, abrasions to her throat, a cut to her shoulder, and an injury to her trachea. Ms. Hare was taken to hospital by ambulance where she received fairly extensive medical treatment that involved suturing the wounds to her neck, which have left her with visible scars, and various examinations of her larynx and esophagus.

[3] Mr. Almestadi admits that Ms. Hare's injuries constitute wounding and disfiguring, averments for the offence of aggravated assault.

[4] Mr. Almestadi asks the court to find that at the time of the alleged offences, he was suffering from a mental disorder that rendered him incapable of knowing the acts he committed were morally wrong, and to render a verdict that he is not criminally responsible on account of mental disorder, relying upon s. 16 of the *Criminal Code*, R.S.C. 1985, c. C-46 [*Criminal Code*], defined as "An Act respecting the Criminal Law" of Canada.

Legal Framework

[5] Section 16 of the *Criminal Code* reads:

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.

[6] Section 2 of the *Criminal Code* defines "mental disorder" as a "disease of the mind", which the Supreme Court of Canada in *Cooper v. R.*, [1980] 1 S.C.R. 1149, at p. 1160, defined as including:

...any illness, disorder or abnormal condition which impairs the human mind and its functioning, excluding however, self-induced states caused by alcohol or drugs, as well as transitory mental states such as hysteria or concussion. In order to support the defence of insanity the disease must, of course, be of such intensity as to render the accused incapable of appreciating the nature and quality of the violent act or of knowing that it was wrong.

[7] The term "wrong" in s. 16 of the *Criminal Code* has been interpreted to include morally wrong. In *R. v. Oommen*, [1994] 2 S.C.R. 507, the Supreme Court of

Canada considered what it means to know an act is morally wrong. At p. 518 Justice McLachlin, as she then was, concluded:

The crux of the inquiry is whether the accused lacks the capacity to rationally decide whether the act is right or wrong and hence to make a rational choice about whether to do it or not. The inability to make a rational choice may result from a variety of mental disfunctions [sic]; as the following passages indicate these include at a minimum the states to which the psychiatrists testified in this case -- delusions which make the accused perceive an act which is wrong as right or justifiable, and a disordered condition of the mind which deprives the accused of the ability to rationally evaluate what he is doing.

Overview

[8] There is no dispute about the material facts in this case. The evidence of the Crown includes the testimony of several witnesses, admissions of fact pursuant to s. 655 of the *Criminal Code*, photographs, and a recorded statement Mr. Almestadi gave to the police about ten hours after he attacked Ms. Hare. The witnesses for the Crown included Ms. Hare who remained remarkably composed throughout the whole of her testimony, several other UBC students who testified about their observations of Mr. Almestadi before, during and or after his attack on Ms. Hare, three police officers, as well as a paramedic who spoke with Mr. Almestadi shortly after his arrest. Mr. Almestadi has admitted to the voluntariness of his recorded statement. In addition to testifying in his own defence, Mr. Almestadi relies upon the expert opinion evidence of notable forensic psychiatrist, Dr. Jeanette Smith, who prepared a report dated July 17, 2017, and the report of Dr. Christopher Robertson dated October 6, 2017, regarding an assessment I ordered Mr. Almestadi to undergo, pursuant to s. 672.11(b) of the *Criminal Code*.

[9] Mr. Almestadi told police, Drs. Smith and Robertson, and this Court that shortly before his attack on Ms. Hare, he believed he had received a message from God commanding him to kill her. In her report and during her testimony, Dr. Smith expressed the opinion Mr. Almestadi was suffering from a mental disorder involving a brief psychotic episode when he attacked Ms. Hare on October 4, 2016, which very likely rendered him incapable of knowing that his actions and attempting to kill her were morally wrong. Based on his account, Dr. Smith concluded Mr. Almestadi

believed he was carrying out the will of God and therefore, in fact, his actions were morally right.

[10] Dr. Robertson's opinion is much the same. Regarding the presence of a mental disorder, he writes:

It is my opinion that in the days prior to the index event and at the material time, Mr. Almestadi was experiencing symptoms of psychosis; his perceptions were not based in reality due to presence of a mental disorder.

[11] Dr. Robertson also opines that due to the delusional belief God wanted him to sacrifice Ms. Hare, Mr. Almestadi's ability to apply the knowledge the act was wrong was compromised at the time of the attack.

[12] Mr. Almestadi bears the burden of proving he was not criminally responsible by reason of a mental disorder on a balance of probabilities. The Crown takes the position the evidence supports the conclusion Mr. Almestadi attempted to commit the murder of Ms. Hare, but also, the court can find, on a balance of probabilities, that he was, at the time of the alleged offences, suffering from a mental disorder so as to be exempt from criminal responsibility. In other words, the Crown does not dispute the evidence establishes to the requisite standard of proof that Mr. Almestadi was suffering from a disease of the mind that rendered him incapable of knowing the acts of violence he committed against Ms. Hare were morally wrong. Consistent with its position, the Crown has not challenged Mr. Almestadi's credibility or the reliability of the expert opinion evidence.

Facts

[13] Bearing in mind the absence of any meaningful dispute regarding the facts to be found or the inferences to be drawn from those facts, what follows is a discussion of my findings.

Mr. Almestadi's Prior Circumstances

[14] Prior to September 2016, Mr. Almestadi had never experienced any mental health issues or displayed any violent or antisocial behaviour or problems with anger.

[15] He grew up in Saudi Arabia, the youngest of seven children and the only male. His family life was happy and stable. He was and remains close to his parents and his sisters. All of his sisters are educated married women. Mr. Almestadi has many nieces and nephews. He and his family members are religious Muslims.

[16] Mr. Almestadi was a capable student who excelled academically without making much effort. After high school, he decided to study English in Canada and, in 2015, he attended an English language college in Toronto for several months. Apart from being disappointed in the quality of the school, he enjoyed the experience and was socially active. While he was in Toronto, he smoked marihuana and drank alcohol for the first time.

[17] Mr. Almestadi enrolled in the English Language Institute at UBC in or about August 2015, after visiting with friends and family in Saudi Arabia. He lived with Lisa Gill and her family in Vancouver as a homestay student before moving to a house located on campus that he shared with other students. Ms. Gill found Mr. Almestadi to be a happy, well-adjusted, responsible young person.

[18] Mr. Almestadi was accepted into the applied science program at UBC in or about June or July of 2016. He moved into a shared room at Salish House around September 4 of that year. While living in Vancouver, Mr. Almestadi smoked marihuana regularly, if not daily. He stopped a couple of times, but he decided to quit altogether at the beginning of September 2016, intent on doing well at university.

Mr. Almestadi Meets Ms. Hare

[19] Ms. Hare was also a first-year student at UBC. Although they saw each other occasionally around the residence, Mr. Almestadi and Ms. Hare met and spoke only once, two or three weeks before October 4, 2016. Mr. Almestadi was outside Salish House smoking a cigarette at the time. They introduced themselves and chatted for a few minutes. Both he and Ms. Hare describe the encounter as friendly and brief. Mr. Almestadi found Ms. Hare attractive and, after they met, he looked at her profile

on Facebook on occasion. He saw other women on campus he also found attractive. He seemed to view himself as not permitted by his faith to date women.

Mr. Almestadi's Deterioration

[20] In the weeks leading up to his attack on Ms. Hare, Mr. Almestadi became increasingly stressed about his inability to study and keep up with his coursework. Uncharacteristically, he struggled to concentrate and focus and began to fall behind. Mr. Almestadi's sleep schedule was disrupted or, as he put it, turned upside down. He was often up all night and sleeping during the day. He did not have much of an appetite and he felt worried and confused.

[21] Other applied science students also found themselves stressed by the demands of the applied science program. At some point during September 2016, however, Mr. Almestadi also stopped attending his classes regularly. One of his instructors, who taught a computer science lab he had missed on two occasions, observed that Mr. Almestadi seemed very stressed and had not completed the quizzes she had assigned. Another expressed concern to the associate academic advisor because Mr. Almestadi had not only missed several classes, but in late September 2016, appeared apathetic about doing so.

[22] Mr. Almestadi spoke with family members in Saudi Arabia regularly. About one week before his attack on Ms. Hare, his mother detected "something different" about him during a telephone conversation. He did not laugh and he did not seem to want to talk. When she asked him what was wrong, he did not explain. She was concerned enough that she offered to come to Canada to visit with him, but Mr. Almestadi declined and tried to reassure her.

[23] Mr. Almestadi's mother arranged for his sister, Noha, to call him because the two were particularly close. When she spoke to him days before the attack, he told her he was having difficulty studying and felt depressed. He complained of being homesick. During their conversation, he "frequently became quiet" and would "start contemplating". She suggested he speak to someone at the university who could

help him and said she would call the following day. They did not speak again, however, until after his attack on Ms. Hare.

[24] Mr. Almestadi often talked with Mr. Scanlan, another first-year student living in the room next door at Salish House. In late September 2016, Mr. Almestadi told Mr. Scanlan he was falling behind and he was not sure what he was going to do, indicating he was thinking of seeing a counsellor.

[25] At some point in September 2016, Mr. Almestadi also began to develop paranoid ideas and to feel strange and uncomfortable. Sometimes when he was walking or skateboarding around campus, he perceived that people were looking at him strangely and talking about him. He believed his math professor was singling him out during class. At some point, he also thought his math professor was trying to send him a message.

[26] In late September, Mr. Almestadi told a residence advisor he was feeling paranoid, as if people were watching him, and high, which he described as a feeling of extreme nervousness and not due to drug use. He also told her he was not studying much, really missing home, and thinking about deferring school, indicating he was unsure if university was for him. They agreed he needed some help and she referred him to counselling services. By then, Mr. Almestadi had attended UBC Hospital seeking help for his problem with concentration. The first available appointment was some time away, but he was told he could call any morning to inquire about cancellations. He tried that once, but there was nothing available that day.

[27] On October 3, 2016, Mr. Almestadi started studying in the house lounge late in the evening. Around 1:00 a.m. on October 4, 2016, he was joined by two other students, Ashik Abrar and Nitin Kumar, who were also applied science students. Mr. Almestadi found his focus was actually better that night. Mr. Abrar recalled him asking physics questions from time to time. At one point, he saw Mr. Almestadi staring at his computer screen, but Mr. Abrar said they all did that because the problems they had to solve were so complex and difficult.

[28] Mr. Almestadi continued to study until about 7:00 a.m. taking breaks occasionally. Mr. Scanlan recalled speaking with him outside Salish House around 2:00 or 3:00 a.m. They talked about school. Mr. Almestadi said he was “fully behind” and really stressed out. Again, he indicated he was not sure what he was going to do.

The Morning of October 4, 2016

[29] Mr. Almestadi attended math class on the morning of October 4, 2016. He struggled to concentrate and, again, felt his professor was sending him messages as if interpreting his mind. He left the class to wash his face hoping that would help. When he returned, Mr. Almestadi heard the professor make a comment about Godzilla. He was confused about whether it was directed at him. After class, Mr. Almestadi saw a man outside Tim Hortons talking on the phone. He thought the man was talking to his math professor about him. He also thought he saw his math professor wearing different clothes on the other side of the street looking towards him.

[30] Mr. Almestadi felt so confused and uncomfortable that he went back to his room. He was completely lost in his thoughts about what he had seen and heard. He felt scared and as though he might die. He decided to try and calm himself by listening to an audio recording of a surah from the first chapter of the Quran. The surah included a story about Moses asking people to sacrifice a particular cow for God which Mr. Almestadi had listened to many times before. When he listened this time, however, it came to him God was asking him to kill Ms. Hare. He felt as though his thoughts and the audio track were connected. He was shocked by the message so he played the story a second time to make sure he had heard it correctly. After listening a second time, he had no doubt he was receiving a message from God to kill Ms. Hare. Mr. Almestadi retrieved a knife from a package on his shelf in his room. He looked in the mirror and was shocked by the cold look on his face. He took the knife and lay on his bed not sure what to do. He played the track for a third time, but stopped partway through, when he began to feel as though he was wasting time and was running late.

[31] Mr. Almestadi left his room with the knife in his pocket intending to find and kill Ms. Hare. He felt he had no choice but to do what he had been ordered to do by God and did not consider the consequences. Irrationally, Mr. Almestadi thought he might find Ms. Hare where they first met, outside of Salish House so he looked for her there first. Once there, he decided to look for her at the commons block. He saw two men speaking to one another. One said something like, "If plan A doesn't work, go to plan B". Mr. Almestadi understood they knew what he was about to do and it was also somehow related to his math professor. He went to the residence and saw two Asian students leaving the building. Mr. Almestadi said one of them looked at him and was smiling and laughing while doing a slow motion walk. Mr. Almestadi also interpreted this behaviour as acknowledgment of his plan to kill Ms. Hare. After he went to the commons block and then to the third floor looking for Ms. Hare's room, he found her name on the door of Room 350.

[32] Ms. Hare had just woken up when she heard a soft knock and then a second knock at the door. As she turned the door handle, the door was thrown open and Mr. Almestadi put a knife to her throat. He started cutting right away. Ms. Hare was terrified and started screaming. She was so afraid there would be no one around to hear her, given the time of day. At some point, she broke the knife and held the blade in her hand. Although she was stabbing at his arm, Mr. Almestadi had his hands on her throat and would not let go. He was choking her and she "realized" he was going to kill her. Mr. Almestadi made a strange and scary growling sound. At some point, Ms. Hare fell on her back and he got on top of her, placing the whole of his weight onto her neck. She felt everything going black as she began to lose consciousness but recalled finding what she described as super human strength and standing up with Mr. Almestadi on her back. Ms. Hare saw people in the hallway, was relieved, and fell over onto the rug in her room. She remembered people helping her, although it took a while. Ultimately, she said she ran into the hall and lay down crying and crying. She was so tired and wanted to go back to sleep.

[33] Mr. Almestadi remembered Ms. Hare screaming and saying "sorry". When asked about the noise he made while attacking her, he said he tried but could not

remember the word used by Moses to ensure the sacrifice of the cow was for God so instead he said a word of Islam to himself at the time. Ms. Hare had done nothing wrong and he felt no anger towards her before or during the attack. Until listening to the surah that day, he had never thought about hurting her. He purchased the package of knives sometime earlier when he was living in shared housing, because he had to provide his own cutlery and not with the intention of ever harming anyone. He began to choke Ms. Hare when he no longer had the knife in his hand. During the attack, he was aware she was having a hard time breathing and her face had turned purple, but he continued. The only reason he stopped was because people came to her rescue.

[34] Those who intervened in the attack observed that Mr. Almestadi appeared emotionless, task oriented, and completely focused on Ms. Hare. With the exception of a single glance at Racheal Ayugi when she knocked one of his arms away from Ms. Hare, he gave no indication he noticed other people as they came into the room and tried to stop him. To Luca Berg, Mr. Almestadi seemed as though he was on a mission or as if something was driving him. Adam Casey noticed Mr. Almestadi did not react even when he placed him in a chokehold.

[35] After he was released from the chokehold and sitting in a chair, it was as though Mr. Almestadi had snapped out of a trance or woken up from a nightmare. He looked quizzical or confused. Mr. Casey asked him if he was on drugs, and Mr. Almestadi replied "no". None of the witnesses who engaged in rescuing Ms. Hare and struggling with Mr. Almestadi detected any odour of marihuana or alcohol. None was found during subsequent searches of his belongings, his room, and his person.

[36] To be clear, I accept Mr. Almestadi's uncontradicted evidence the last time he smoked marihuana was in or about early September 2016, which was corroborated by his roommate, Noel Bennett, who saw him smoke marihuana once around that same time and otherwise never saw him with marihuana or smelled it in the room.

Circumstances Following the Arrest

[37] After he was arrested, Mr. Almestadi was taken to the RCMP detachment and placed in police cells. Paramedic Jamie Grant met with him there. He was unresponsive at first and then said he could not remember, when asked how he had received some injuries to his hand. He was able to recall going to math class and feeling as though people were talking about him, his math teacher singling him out, and being followed after class. Mr. Almestadi was very quiet and composed but appeared quite fearful.

[38] During his subsequent interview with police, Mr. Almestadi was much more engaged and able to recall the events leading up to his attack on Ms. Hare. He was at times emotional and expressed concern for Ms. Hare. It is apparent he was struggling to make sense of his thoughts, feelings, and actions. He talked about listening to the story of Moses and his mind being directed to Ms. Hare. He referred to an evil species called Jinn and having the thought that Ms. Hare was the devil.

[39] On October 7, 2016, Dr. Hediger completed a court-ordered fitness assessment of Mr. Almestadi at the Forensic Psychiatric Hospital. He denied any delusions, hallucinations, or mood symptoms. Dr. Hediger's report indicates Mr. Almestadi was somewhat guarded, but also appeared very calm, settled, and cooperative. Dr. Hediger's opinion was Mr. Almestadi did not meet the criteria for a finding he was unfit nor was he certifiable at that time.

Dr. Smith's Assessment

[40] Dr. Smith's assessment is based on four interviews or, more accurately, three interviews and one attempted interview with Mr. Almestadi, an interview of his parents and sister, and a review of numerous documents, some of which are also in evidence, as well as his recorded statement to police. Dr. Smith met with Mr. Almestadi on October 10 and 16, 2016, at the Forensic Psychiatric Hospital. The third and fourth interviews which occurred on November 7, 2016, and July 4, 2017, took place at the Surrey Pretrial Centre.

[41] For much of the first interview, Mr. Almestadi was cooperative and very pleasant. He did not appear depressed, anxious, or suspicious. Dr. Smith found his mood incongruous. He voiced regret for assaulting Ms. Hare, but at the same time he observed everything that happens is God's will, including his violence against her. At one point, he explained as a Muslim he could not have gone on a date with Ms. Hare, and he actually should not have anything to do with Dr. Smith either. Then he dismissed those comments remarking he talked to women all the time.

[42] Mr. Almestadi had no difficulty recounting his personal history. When discussing his thinking and perceptions leading up to October 4, 2016, however, his account was more difficult to follow. He relayed to Dr. Smith that he had received a message to kill Ms. Hare while listening to the story from the Quran involving Moses telling the people to sacrifice a cow, but he also told her he realized God would not tell him to kill anyone. He wondered, therefore, if it was an evil spirit masquerading as God who had actually commanded him to do so.

[43] Dr. Smith attempted to gain a better understanding of Mr. Almestadi perception by repeatedly probing him for some time. All of a sudden, he said, "I can't cope with this anymore". He seemed to detach from her at that point and began chanting in Arabic. When she tried to interrupt him, he looked at her and said, "There, you smiled again", and he left the room abruptly. Dr. Smith found the experience quite unsettling.

[44] Dr. Smith attempted to interview Mr. Almestadi again on October 15, 2016. He was very friendly and immediately apologized for his previous behaviour. He told Dr. Smith, however, he did not believe he should be alone with a woman because it was against his religion. Despite her efforts to persuade him otherwise, he insisted on ending the interview.

[45] Dr. Smith met with Mr. Almestadi's parents and one of his sisters on November 7, 2016. They clarified there was no cultural or religious barrier to him being alone with a professional woman. Dr. Smith interviewed Mr. Almestadi later that same day. He again apologized and said, in fact, he had simply made an

excuse to end the second interview because he could not see any purpose in seeing a doctor, in particular, a psychiatrist. He told her he had harboured suspicious thoughts about Dr. Hediger and about her that had “got him”. He now accepted he had been misinterpreting events. He explained when he read the Quran around the time of his attack on Ms. Hare, the words had a very personal special meaning for him. He told Dr. Smith he no longer believed his actions were morally and religiously justifiable.

[46] Dr. Smith interviewed Mr. Almestadi for the last time more recently in July 2017. She described his presentation and affect as entirely appropriate. He did indicate however he occasionally had unusual paranoid thoughts. For example, although he injured his hand playing sports, when it hurt sometimes, he would think an inmate he did not like was causing the pain. He was able to examine the thought and conclude it was not rational. He was also able to explain that he had believed Dr. Smith was a test sent by God during their first interview, the test being he should refuse to be alone with a woman. When she smiled, he had interpreted this as a sign he was correct and left the room abruptly.

[47] Dr. Smith viewed his explanation as consistent with what she observed on October 10, 2016. She concluded Mr. Almestadi was experiencing an active psychotic symptom that day, which had many parallels to the symptoms he had before and during his attack on Ms. Hare. She also regarded those symptoms as support for the description he gave for his motive for his actions.

Analysis

[48] As the Crown points out, in order to find Mr. Almestadi not criminally responsible pursuant to s. 16 of the *Criminal Code*, I must be satisfied on a balance of probabilities that two elements have been established by the evidence. The first is that Mr. Almestadi was suffering from a mental disorder at the time of the alleged offences and the second is that same mental disorder rendered him incapable of knowing the acts he was committing during his violent attack on Ms. Hare were morally wrong.

[49] Turning to the first element, the presence of a mental disorder is a legal determination informed by the expert psychiatric evidence. Although I am entitled to accept some, none, or all of the evidence given by any witness, the expert opinion evidence of Drs. Smith and Robertson is entirely consistent and uncontradicted. The material factual assumptions underlying their opinions have been established by the evidence. Further, given the acuity of Dr. Smith's testimony, which further developed the careful, thoughtful analysis set out in her report, I am entirely persuaded by her opinions regarding Mr. Almestadi's mental state before, during, and after his violent attack on Ms. Hare.

[50] Based on her assessment, Dr. Smith formed the opinion that Mr. Almestadi's mental state was abnormal for approximately two weeks before the alleged offences and for approximately two weeks after. She opines that during that time, he was experiencing psychotic symptoms that included delusional beliefs and delusions of reference or perceiving people engaged in everyday activities to be talking about him or sending him messages. He also experienced a change in mood toward depression, he lost interest in socializing, and his ability to study was compromised by poor concentration. Dr. Smith concluded that it was more likely than not that Mr. Almestadi experienced a brief psychotic episode and the alleged offences occurred after he had been experiencing psychotic symptoms for about two weeks, namely, paranoid delusions, which I accept.

[51] In coming to that conclusion, Dr. Smith considered the possibility that Mr. Almestadi's psychotic symptoms were triggered by the use of cannabis. The exemption from criminal responsibility provided by s. 16 is not available when a person is rendered incapable by a mental disorder that is self-induced. She concluded it is likely an adverse reaction to cannabis would have occurred during the time he was using the drug habitually up until in or about early September 2016. There is no evidence to suggest that happened, however. She offered the further opinion there is no recognized withdrawal syndrome from cannabis, which leaves the body very gradually over days and weeks. Therefore, she concluded it is unlikely

that cannabis played a role in triggering the brief psychotic disorder, which I also accept.

[52] Dr. Smith considered the other possibility that Mr. Almestadi was deliberately exaggerating or fabricating his symptoms, including his abnormal beliefs and perceptions. She explained that given the consistency of his account over time and with the observations of others, she formed the opinion his account is highly likely to be reliable. In her view, the absence of any antisocial personality traits and any other explanation for his actions at the time of the alleged offences also rendered the possibility of malingering unlikely.

[53] I have reached the same conclusion on this point based on my own assessment of Mr. Almestadi's credibility, which is that he was doing his best to tell the truth when he testified. I place almost no weight on Mr. Almestadi's demeanour, which was very different from the friendly, cooperative presentation described by Dr. Smith and displayed during much of the police interview. Throughout the trial, Mr. Almestadi sat very rigidly and almost absolutely still. His facial expression was always very serious and intent. During his testimony, he remained much the same, speaking very quietly and quickly.

[54] What is significant is the content of Mr. Almestadi's evidence, which was both internally and externally consistent, meaning the evidence he gave during direct and cross-examination was consistent and his testimony was consistent with the other accounts of the events he had previously given. The consistency of his testimony with the evidence of several other witnesses, including those who interacted with Mr. Almestadi before the alleged offences occurred, and those who observed him during and after his attack on Ms. Hare, is perhaps an even more important factor in my assessment of his credibility. Further, there is simply no evidence that Mr. Almestadi had any motive other than his delusional belief for attacking Ms. Hare, such as anger, hostility, aggression, or even the impulse to remove her as a source of temptation, in light of an apparent religious prohibition on dating and his attraction

to her. But for the terrible violence he inflicted on Ms. Hare, the witnesses describe Mr. Almestadi as a quiet, friendly, kind person.

[55] There is no question the brief psychotic disorder diagnosed by Drs. Smith and Robertson is a mental disorder that falls within the legal definition of a disease of the mind.

[56] Turning to the second element, it is also clear to me from the fact and expert opinion evidence that Mr. Almestadi's brief psychotic disorder rendered him incapable of knowing his attempt to kill Ms. Hare was morally wrong. As Dr. Smith describes, Mr. Almestadi was interpreting events on the morning of October 4, 2016, through the lens of paranoia. He perceived his math professor was sending him hostile messages and perhaps calling him names. When he saw someone using the phone, he understood that person to be talking about him. He felt confused and uncomfortable by what he was experiencing.

[57] Mr. Almestadi is a religious person. Attempting to calm himself, he turned to the Quran and listened to a story about Moses he had heard many times before. On that day, however, he interpreted the story as a personal message to him from God commanding him to sacrifice Ms. Hare, a young woman he had spoken with only once. Shocked by the message, he listened again which removed all doubt. He started to listen for a third time, but then felt compelled to act without further hesitation. Believing he was bound to comply with God's command, he arrived at Ms. Hare's room armed with a knife experiencing further delusions along the way. Although aware of the physical consequences for Ms. Hare while he was cutting her throat with a knife and choking her, he continued his violence, focused on the task of trying to kill her because he felt compelled to do so, until forced to stop by the intervention of others.

[58] Accepting Mr. Almestadi's evidence and the opinions of Dr. Smith and Dr. Robertson, I find it very likely that on October 4, 2016, Mr. Almestadi was suffering from a brief psychotic disorder and the resulting delusions rendered him incapable of knowing that his actions were morally wrong. More specifically, his

delusions made him perceive killing Ms. Hare as something he was morally required to do and deprived him of the ability to rationally evaluate his actions. I therefore find him exempt from criminal responsibility pursuant to s. 16(1) of the *Criminal Code*.

[59] Mr. Almestadi, I would ask you to stand, please.

[60] In these circumstances, s. 672.34 of the *Criminal Code* directs that I render a verdict that you committed the acts that form the basis for the offences charged in counts 1, 2, and 3 of the indictment, but you are not criminally responsible on account of mental disorder.

[61] I grant an order pursuant to s. 672.45 deferring disposition and a further order pursuant to s. 672.46(2) varying the current detention order and order that Mr. Almestadi be detained in custody by a hospital pending disposition by the Review Board, that hospital being the Forensic Psychiatric Hospital located at 70 Colony Farm Road in Coquitlam, British Columbia.

“Fleming J.”