

SUPREME COURT OF YUKON

Citation: *R. v. Aleekuk*, 2008 YKSC 79

Date: 20081007

S.C. No. 08-01508

Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And

STANLEY ALEEKUK

Before: Mr. Justice R.S. Veale

Appearances:

John W. Phelps
Gordon R. Coffin

Counsel for Her Majesty the Queen
Counsel for Stanley Aleekuk

REASONS FOR JUDGMENT

INTRODUCTION

[1] Mr. Aleekuk is charged with the second degree murder of his brother, Edmund Aleekuk, on March 1, 2008. Mr. Aleekuk has pled not guilty. The Crown has consented to the matter proceeding before a judge alone on the issue of whether Mr. Aleekuk is not criminally responsible for the act committed, on the ground that he was suffering from a mental disorder that rendered him incapable of appreciating the nature and quality of the act or knowing that it was wrong. The Crown and defence counsel submit that Mr. Aleekuk committed the act of stabbing his brother, and are in agreement that he is not criminally responsible under s. 16 of the *Criminal Code of Canada*.

ISSUES

[2] The issues are:

1. Was Mr. Aleekuk suffering from a mental disorder while he committed the act?
2. Did that mental disorder render Mr. Aleekuk either incapable of appreciating the nature and quality of the act or of knowing that it was wrong?

THE FACTS

[3] I adopt the filed Agreed Statement of Facts as follows:

1. On March 1, 2008, at approximately 1:55 A.M. the Whitehorse Royal Canadian Mounted Police (the "RCMP") received a 911 call from a female requesting an ambulance. The call was from Tanya Aleekuk ("Tanya") advising that an ambulance was required at 31 Finch Crescent in Whitehorse, Yukon (the "Residence") as her brother, Edmund Aleekuk (the "Victim"), had just been stabbed.
2. The RCMP attended at the Residence at approximately 2:05 A.M. and observed the Victim lying on the floor with two visible puncture wounds to his chest. The Victim was conscious but unresponsive to the RCMP. The Victim was being assisted by Tanya, Jordan Patterson ("Jordan"), Kevin Mitchell and Brian Francis.
3. At 2:15 A.M. the Victim was taken from the Residence by ambulance to the Whitehorse General Hospital where he died from the injuries at approximately 4:30 A.M. The Victim had been stabbed two times in the upper chest and one time in the shoulder, for a total of three stab wounds.

4. Upon further investigation, the RCMP learned that the Victim lived in the Residence along with Tanya, his brother Stanley Aleekuk (the "Accused") and their father, William Aleekuk.
5. During the afternoon and evening of February 29, 2008, the Accused and the Victim had been drinking and had shared some crack cocaine at the Residence. Several other people were in the Residence also consuming alcohol.
6. Shortly before 2:00 A.M. on March 1, 2008, the Accused, the Victim and Jordan, their cousin, went into the kitchen to cook something to eat and to pour drinks. The Accused and the Victim began arguing while Jordan had his back turned to them and was pouring a drink. Jordan heard the Victim say "Jordan help me, help me" and as he turned around he witnessed the Accused stab the Victim with a knife two times. Jordan grabbed the Accused and struggled with him until he was able to get the knife away from him.
7. The Accused had stabbed the Victim three times with a paring knife from the kitchen which has a blade approximately six inches long.
8. Jordan then began to help the Victim, who was lying on the floor in the living room of the Residence, at which time the Accused kicked the Victim and was grabbed and stopped by Kevin Mitchell.
9. While people in the Residence were assisting the Victim, the Accused left the Residence on foot.

10. Initial searches for the Accused by the RCMP were unsuccessful. At approximately 3:08 A.M. on March 1, 2008, the Accused attended at the Whitehorse General Hospital complaining of an asthma attack. The RCMP were in attendance at the hospital waiting to learn about the condition of the Victim and approached the Accused. As the RCMP members approached the Accused he attempted to lunge forward and strike one of the members. The Accused was subdued and placed under arrest.
11. Throughout the arrest and while at the RCMP detachment the Accused's behaviour was extremely erratic, going back and forth from a calm state to yelling and challenging the RCMP members. The Accused also made repeated utterances about the CIA and at one point claimed that his mother was part of the CIA.
12. At approximately 4:10 A.M. the Accused provided a sample of his breath at the RCMP detachment which resulted in a blood alcohol level of 77 milligrams percent.
13. The Accused provided a statement to the RCMP stating that he stabbed the Victim because "he was a prick" and because the Victim had called the Accused a "schizophrenic nigger". He advised that he had stabbed the Victim above the heart and that he would have stabbed him more but he was stopped.
14. The Accused was first hospitalized for psychosis in January 2003. He was diagnosed with schizophrenia in January 2004, and was hospitalized in

January 2004, August 2004 and October 2005 following psychotic episodes.

15. The Accused was admitted first involuntarily and then voluntarily at the Whitehorse General Hospital in October 2005 due to an incident in the home in which he wielded a knife at his brother.

THE LAW

[4] The Defence of Mental Disorder is set out in s. 16 of the *Criminal Code* as follows:

- (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.
- (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.
- (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.

[5] The onus is on Mr. Aleekuk to establish on a balance of probabilities that he was suffering from a mental disorder when he committed the act of stabbing his brother. If he is found to have been suffering from a mental disorder it must have either:

1. rendered him incapable of appreciating the nature and quality of the act of murder; or
2. rendered him incapable of knowing that the act of murdering his brother was wrong.

[6] *R. v. Donnelly*, 2008 BCSC 137, is a similar and relevant case. There, Groberman J. found that the accused did appreciate the nature and quality of his acts in

that he recognized that he was stabbing his daughter, the wounds would kill her, and that her death would be permanent. Dr. Lohrasbe, the expert in that case is also an expert in this case. He opined that Mr. Donnelly did not appreciate the nature and quality of his acts as he was focussing on what he conceived to be God's will.

[7] Groberman J., at para. 42, explained why he rejected that opinion and found that the accused did appreciate the nature and quality of his act:

The law does not interpret the phrase *nature and quality of the act* so broadly. It does not require that an accused be devotedly concentrating on his acts so long as he understands and appreciates the consequences of what he is doing. I find that Mr. Donnelly fully appreciated the nature and quality of his acts when he used the knife to stab and slice Stephanie Donnelly's chest and neck.

[8] In considering the second part of the test and whether the accused appreciated at the time of the offence that what he was doing was wrong, Groberman J., at para. 43, adopted the test in *R. v. Chaulk*, [1990] 3 S.C.R. 1303 (there at para. 99):

... the insanity defence should not be made unavailable simply on the basis that an accused knows that a particular act is contrary to law and that he knows, generally, that he should not commit an act that is a crime. It is possible that a person may be aware that it is ordinarily wrong to commit a crime but, by reason of a disease of the mind, believes that it would be "right" according to the ordinary morals of his society to commit the crime in a particular context. In this situation, the accused would be entitled to be acquitted by reason of insanity.

[9] Groberman J. found that because the accused thought that he was fulfilling God's will, he met this test and did not know that what he was doing was wrong.

[10] At para. 45, Groberman J. set out a list of factors that assisted him in establishing that Mr. Donnelly was not faking his symptoms or malingering:

- (1) Mr. Donnelly has a verified previous history of mental illness consistent with bipolar affective or bipolar mood disorder.
- (2) There is independent corroboration of Mr. Donnelly's strange behaviour leading up to the events.
- (3) There is no suggestion of any motive for murder. Mr. Donnelly was not an abusive parent nor was he prone to have intense outbursts of anger. There was no suggestion that he was angry with Stephanie on the night in question.
- (4) Mr. Donnelly has no history of violence or of crime against anyone.
- (5) The delusions involving the will of God mesh with the strong religious beliefs that Mr. Donnelly had. Thus the manifestation of the psychosis here is in keeping with Mr. Donnelly's genuine real world beliefs.
- (6) Psychological testing has shown it to be very unlikely that Mr. Donnelly is malingering. Indeed, he has only reluctantly begun to raise the proposition that he might suffer from a mental disorder.

ANALYSIS

Issue 1: Was Mr. Aleekuk suffering from a mental disorder while he committed the act?

[11] There are two psychiatric reports filed in this case and they are in substantial agreement. Dr. Lohrasbe's report is dated May 6, 2008, and Dr. Tomita's report is dated August 24, 2008.

[12] Dr. Lohrasbe states at p. 11 of his report:

Mr. Aleekuk has many of the features of Schizophrenia, including the primary symptoms of auditory hallucinations, bizarre delusions, and gross thought disorder. From the history available, it would appear that the onset of schizophrenia was during his teens, which is the typical age of onset of this disorder.

His mental disorder is of psychotic proportions (that is, he is frequently out of touch with objective reality) and he has been only partially treated with antipsychotic medications, despite him being given adequate doses. Mr. Aleekuk provides a history of severe alcohol and drug abuse. ...

- [13] As to whether he was schizophrenic at the time of the offence, Dr. Lohrasbe states at p. 12 of his report

All available information indicates that features of mental disorder were present and active in Mr. Aleekuk at the time of the stabbing. Family and friends have reported him to be consistently (although intermittently, which is the norm in mental disorders) 'strange' in behaviour and speech in the days *prior to* the incident. Additionally, Mr. Aleekuk continues to be actively psychotic several weeks *after* the killing. This finding is significant as it gives us a definitive understanding of the severity of his mental disorder. When I interviewed him he had been free of alcohol and drugs for some seven weeks, and had been treated with high doses of an antipsychotic medication throughout that time. Yet he exhibited gross symptoms of psychosis, including hallucinations, delusions and thought disorder.

- [14] Dr. Tomita concurred in this opinion although not as forcefully as Dr. Lohrasbe. Dr. Tomita stated at p. 4 of his report.

However, the content of delusional thinking tends to remain the same over time. Dr. Lohrasbe provided a detailed description of the kinds of delusions Mr. Aleekuk had in his interview with him two months after the index offence occurred. One conclusion that I draw from Dr. Lohrasbe's description is that Mr. Aleekuk's ability to remain connected with real life events was tenuous even though he was receiving ongoing treatment with psychiatric medications. As psychotic episodes flowing from schizophrenia tend to persist for weeks or months, I can conclude that it is very likely that he had similar types of psychotic symptoms at the material time.

- [15] There is, in addition to their opinions, considerable factual support for this diagnosis at the time of the offence. I therefore find as a fact that Stanley Aleekuk was

suffering from a mental disorder in the form of schizophrenia in psychotic proportions at the time of the offence.

Issue 2: Did that mental disorder render Mr. Aleekuk either incapable of appreciating the nature and quality of the act or of knowing that it was wrong?

[16] I will first address the question of whether Stanley Aleekuk appreciated the nature and quality of his offence.

[17] On the same evening that he stabbed his brother, Stanley Aleekuk said the following:

Q: Did, did it just happen that you got upset all of a sudden?

A: I don't know. But that's kind of cool eh? A man's dead

Q: Yeah, but its (sic) your brother right?

A: So

Q: It doesn't matter?

A: No, it's still cool

Q: Its (sic) cool?

A: Yeah

Q: It's not, it's not a video game though Stanley

A: Ahh, it's not a vide (sic) game?

Q: No

A: Yeah

Q: Why do you think its (sic) cool that Edmond's (sic) dead?

A: Because he was a prick to everyone

[18] Later in the warned interview, he said:

A: I don't know, fuck, he called me a nigger like fucking, man as soon as he said schizophrenic nigger I just fucking snapped and grabbed that knife and went like that, fuck. I didn't know it would go in him, I though I was weaker than that.

Q: Yeah, but you, you didn't just do it one time there were a couple right, there's more than one

A: Yeah

Q: What did Edmond (sic) do when you did that?

A: I don't know, I stabbed him in the heart first so you know that big artery that keeps it pumping?

[19] I also consider Mr. Aleekuk's statement to a fellow inmate recorded at p. 17 of the Case Synopsis to be very revealing:

While in the Whitehorse detachment Cells, Cpl. GALE overheard a conversation between Joey VANELTSI and Stanley ALEEKUK who were in separate cells. Cpl. GALE noted the following responses as a result of ALEEKUK's Q&A with VANELTSI:

Q: What are you in here for?

A: Murder

Q: What did you do?

A: Stabbed him

Q: Were you drunk?

A: Yeah

Q: Where did you stab him?

A: 31 Finch

Q: Did he die?

A: Yes

Q: Why did you do it?

A: Because he was calling me names

Q: How do you know he died?

A: The police told me

Q: What did your lawyer say?

A: Told me not to say anything.

[20] Mr. Aleekuk made a further statement at p. 30 of the Warned Statement that evening:

Q: How many pills do you have to take a day?

A: One every morning two at night

Q: And you do that every day?

A: Yeah

Q: And it helps?

A: Yeah, it helps me from stop talking to myself

Q: Does it bother you talking to yourself?

A: Yeah

Q: Does it bother other people?

A: Yeah, I get called names because of it, by Edmond (sic)
and Tanya

Q: Yeah and other people?

A: Yeah

Q: I can understand how that would bother you.

A: Mustafa

Q: Mustafa? Sorry I didn't hear what you said?

A: Mustafa.

Q: What does that mean? that...

A: It's a planet, I bet you I'm on that planet

[21] Based on this and considerable additional information, Dr. Lohrasbe concluded at p. 14 of his report:

There is ample information to indicate that Schizophrenia has generally rendered Mr. Aleekuk incapable of experiencing reality (perceptions, interpretation, and self-awareness) in a coherent or 'real' manner. Although Mr. Aleekuk does not report a direct causal link between psychotic symptoms and the stabbing (such as hearing the devil's voice telling him to kill his brother), all available information suggests that it is likely that psychotic symptoms were of such intensity that they limited his ability to be aware of his actions and their consequences. His sudden violence was likely the result of mental disorder dominating his experience of, and reaction to, insulting phrases from the victim that day, although they were phrases that he had heard many times before. Psychosis alters reality in different ways at different times, and can unpredictably influence perception, interpretation, attribution,

and self-awareness. Psychosis can also override control of actions in response to perceived insult or challenge.

[22] Dr. Tomita, on the other hand, was less certain and stated at p. 4 of his report:

Mr. Aleekuk had some capacity to know the physical consequences of his actions at the material time. I base this on the fact that he made a statement to the police investigator that he had responded to a provocation by his brother by picking up a knife and stabbing him. There are no indications that psychosis could have interfered with his capacity to know that he by using a knife he could cause harm to another person by stabbing him; however, assuming delusions related to video games and inhabiting an alien reality were present, Mr. Aleekuk likely would have failed to appreciate that death could result because he was operating under delusional assumptions that serious injury or death was not a permanent condition.

[23] I am unable to find that Mr. Aleekuk did not appreciate the nature and quality of his act of stabbing his brother that evening. Despite the opinion of Dr. Lohrasbe, the evidence falls short on this test. In my view, Mr. Aleekuk reacted in anger and knew what he was doing.

[24] I turn now to the question of whether Mr. Aleekuk knew that the act of stabbing and killing his brother was wrong.

[25] In assessing whether Mr. Aleekuk considered the stabbing of his brother to be wrong, I rely upon the following findings of Dr. Lohrasbe at pp. 2, 3 and 4 of his report:

Mr. Aleekuk believes that he is an alien, i.e. not human. At times, he asserts this belief in a tentative manner and with an odd, knowing smile, as though expecting to be disbelieved by someone who could not grasp his inner reality; at other times he spoke with confidence, conviction, and intensity about his “alieness”. His notions of alienness appear to be derived largely from science fiction in television shows and video games, put together with his awareness that he is regarded as somehow different from other people. (Among the mentally ill, being from another planet or galaxy is sometimes preferable – with its exoticness, power, and apparent lack of stigma – to

regarding oneself as being mentally ill.) Supporting his belief in his alienness is his constant “*connection*” with “*alien friends*” who he says have accompanied him, in fact have been inside him, since his teen years. According to Mr. Aleekuk, his alien friends think that humans are “*gross*” and, as he also considers humans to be gross, this is further proof of his alienness.

...

There are other psychotic symptoms. Mr. Aleekuk acknowledged (when asked specifically about unusual perceptual experiences) long-standing auditory hallucinations, wherein he hears a multitude of voices speaking to him. He stated that “*Sometimes it’s a human voice...about humans...not obeying what they are made for...humans have little organs...extra organs...that can shatter and explode and suffocate everybody.*” ...

...

... Reality for Mr. Aleekuk is what he wishes it to be at the moment, and he does not confront events in a manner befitting the ‘ground reality’ of the event. He spoke of the death of his brother with the same tone and level of interest as he spoke of the loss of his CD player. He knows that his brother is dead, and that he was responsible for his brother’s death, but this knowledge appears to an abstraction for him, and he appears to be oblivious to the moral, psychological and personal implications of his actions. I was not able to satisfy myself that he truly understands that his brother is gone, forever; (“*Yes, he is dead...but...maybe not... could he be an alien too?*”). He talked about the fact that his brother Edmund, was his best friend and that, by and large, they got along well together and that Edmund was not dead, but he could not put those two concepts together; he would jump from one to the other.

[26] Dr. Lohrasbe concluded, at p. 14:

... Additionally, it is my opinion that Schizophrenia has also rendered him incapable of knowing the emotional and moral consequences of his actions. Importantly, he continues to be disconnected from an understanding of his actions and the impact of his actions on his own life and that of others.

[27] Dr. Tomita reached a similar conclusion at p. 5:

Mr. Aleekuk's demeanour and responses in his statement to the investigator following the offence suggest he was not particularly perturbed by his brother's death at that time. In fact, he spontaneously mentions that he was eating a hotdog while stabbing his brother. I would conclude that this type of data reflects a lack of appreciation of the moral wrongfulness of his actions.

...

... Mr. Aleekuk's lack of emotional response is consistent with a failure to appreciate that death could be a permanent condition because he was operating under delusional assumptions about living in a video game or alien world. As a result, Mr. Aleekuk's delusional thinking interfered with his capacity to know that his actions were morally wrong.

[28] In referring to the six factors enumerated by Groberman J. in *Donnelly*, they are individually consistent with the facts in this case except with respect to lack of a motive which appears to be present in that Edmund's name calling obviously made Mr. Aleekuk very angry. However, I do not find that Mr. Aleekuk is faking his symptoms or malingering. I find that Mr. Aleekuk did not and does not know that the act of stabbing and killing his brother was wrong.

CONCLUSION

[29] I conclude that Mr. Aleekuk suffered from schizophrenia at the time of killing his brother and that he did not know his actions were wrong. I find him not criminally responsible for the murder of his brother.

[30] Pursuant to s. 672.45 of the *Criminal Code of Canada*, I send this case, the supporting documents, transcript and this Judgment to the Review Board for disposition. I order that Mr. Aleekuk remain in custody pending the disposition of the Review Board. I

also order that a bail supervision report be prepared to assist the court at any future show cause hearing under s. 672.46(2) of the *Criminal Code of Canada*.

VEALE J.