COUNTY OF LUNENBURG
PROVINCE OF NOVA SCOTIA
2000

NO: 988274, 988275,
988276, 988277,
988278, 988279,
988280

IN THE PROVINCIAL COURT OF NOVA SCOTIA
[cite as: R v. Crouse, 2002 NSPC 009]

BETWEEN:

HER MAJESTY THE QUEEN

versus

LARRY BEVERLEY CROUSE

DECISION

HEARD BEFORE: THE HONOURABLE JUDGE ANNE E. CRAWFORD, J.P.C.

PLACE HEARD: BRIDGEWATER, N.S.

DATE HEARD: NOVEMBER 17, 2000

DECISION DATE: DECEMBER 13, 2000

CHARGES:
s. 733.1 (1) of the Criminal Code
s. 145 (3) of the Criminal Code
s. 264.1 (1) of the Criminal Code
s. 348 (1) (b) of the Criminal Code
s. 430 (4) of the Criminal Code
s. 430 (4) of the Criminal Code
s. 253 (a) of the Criminal Code

COUNSEL: ANTHONY BROWN, SENIOR CROWN ATTORNEY
ALAN FERRIER, DEFENCE ATTORNEY

[1] The defendant Larry Crouse is charged with a number of ***Criminal Code*** offences arising out of the same incident which occurred on July 13, 2000. He has raised the defence of lack of criminal responsibility by reason of mental disorder under s. 16 of the ***Code.***

FACTS

[2] On July 13, 2000 the defendant had been out of jail for about one week, after serving a sentence for breach of recognizance by contacting his ex-girlfriend, Sherry Rhodenizer, with whom he had been ordered to have no contact. He was in Bridgewater, Nova Scotia when he saw her drive by. He testified that he bought potatoes for his mother, drove them home to her, then returned to Bridgewater where he bought an 8-pack of beer and drove to Ms. Rhodenizer's residence, a mobile home on Smiths Road, West Northfield, Lunenburg County.

[3] Ms. Rhodenizer testified that around 8:40 p.m. she went to the door to see why her dog was barking. She saw the defendant sitting on her doorstep with a bottle of beer in his hand. He did not seem to be intoxicated, but he was upset and crying, saying that he wanted a hug, that he loved her and that she had to "tell the truth" regarding another court matter.

[4] Ms. Rhodenizer said she told him repeatedly through her locked door to leave, that her mother was coming; and he left as her cousin and neighbour, Annette Corkum, came around the corner of the mobile home with Ms. Rhodenizer's son Brendan and other children. The police were called and looked for the defendant in the woods, but did not find him.

[5] Cpl. Oster testified that, following his and Cst. White's attendance at Ms. Rhodenizer's residence where they searched the near-by woods in vain for the defendant, they began patrolling between her home and the defendant's to find and arrest him for breach of his undertaking to have no contact with her. They went to the defendant's home but found no one there. Around 11:30 p.m. they were heading east on the Mossman Road toward Smith's Road when they came up behind a car which stopped ahead of them in the middle of the driving lane.

[6] Cpl. Oster pulled up alongside it, more or less blocking the road. Both officers spoke with the lone female driver, who was the defendant's sister, Gail Crouse. She was evasive as to why she was there so late at night, dressed only in a nightgown.

[7] As they were speaking with her, headlights came toward them from the direction of Smith's Road. They recognized the grey Grand Am as the defendant's mother's car, with the defendant at the wheel. He stopped the car, then put it into reverse and began to turn.

[8] Cpl. Oster got to his window and told him to stop, that he was under arrest for breach of recognizance. Cpl. Oster immediately concluded that he was intoxicated: there was a smell of alcohol from him and/or the vehicle, his eyes were "bleary" and watery and Cpl. Oster knew he had had beer with him when he had been at Ms Rhodenizer's home earlier in the evening.

[9] Cpl. Oster reached into the defendant's vehicle to shut the car off and take the keys, but the defendant ignored him and continued to turn. Cpl. Oster remained with the vehicle until it gained enough speed that it would have been dangerous to continue. The defendant drove off in the direction of Smith's Road.

[10] It took Cst. White and Cpl. Oster a few moments to deal with Gail Crouse, who was attempting to intervene. She had tried to get between Cpl. Oster and the

defendant's motor vehicle. They told her to get in her car and go home, and then they followed the defendant, whose car was by now out of sight.

[11] Meanwhile Ms. Rhodenizer and a friend whom she had asked to stay with her that night were sitting in the dark at the kitchen table talking, when they heard a car go by very slowly, then speed up and disappear. Ms. Rhodenizer assumed it was the defendant.

[12] Ten minutes later they were still sitting in the dark with the outside lights on so that they could watch what was going on outside, when Ms. Rhodenizer heard something coming really fast, and a car went into her neighbour's ditch across the road. She then heard a lot of "boring", wheels spinning, and the next thing she knew a car ran into the corner of her trailer. Everything rattled. It was the defendant's mother's silver grey Grand AM. When she heard the defendant's footsteps on the rocks outside her home, she and her friend went out the door on the opposite side of the trailer and fled to her cousin Annette Corkum's trailer two doors up the road.

[13] Blair Corkum testified that he is married to Annette Corkum, Sherry Rhodenizer's cousin, and that in July 2000 they lived two doors away from where Ms.

Rhodenizer was living on Smith's Road. On the night of July 13, 2000 he was just home from his job as a long-haul trucker when he was awakened from his sleep by noise outside. Ms Rhodenizer and her friend were on the doorstep, "huffing and puffing and panicking", asking to be let in. Mr. Corkum opened the door and let them in, although he did not really know what was going on.

[14] He said that the next thing he knew, the windows were being smashed out of his place, the side of his trailer was being punched and the defendant was trying to unlock his door through the broken window.

[15] The defendant was bloody and in a rage, screaming to be let in, calling to Ms. Rhodenizer, saying "I know she is in there -- I want to talk to Sherry."

[16] Mr. Corkum's wife and children, as well as his unbidden guests, Ms. Rhodenizer and her friend, were all screaming and crying as they cowered on the living room floor. Mr. Corkum kept holding the doorknob on the inside to prevent the defendant from unlocking it and tried to calm the defendant down, offering to come out and talk to him if he would leave the door alone. The defendant continued to yell

for Ms. Rhodenizer and punched Mr. Corkum in the face several times. Blood was spattered everywhere from a cut in the defendant's hand.

[17] Unbeknownst to Mr. Corkum while he was struggling to keep his door closed against the defendant, Ms. Rhodenizer and her friend left his trailer by his living room door. They saw the police car behind the defendant's in Ms. Rhodenizer's driveway and called to them to direct them to the Corkum residence.

[18] Gail Crouse arrived on the scene at this point and once again attempted to keep the police officers from arresting her brother. This time they arrested her and put her in the back of the police car before proceeding to the Corkum's.

[19] When they arrived there the defendant was still on the porch smashing at the Corkum's door with his fists, holding a bottle of rum.

[20] Cpl. Oster told him to stop, that he was under arrest, and flicked the bottle out of his hand with the baton he had grabbed from Cst White's holster. Cst. White said that the defendant did not respond to their commands so he sprayed the defendant with pepper spray and they took him off the porch to the ground where they handcuffed

him. Cst. Oster described him as drunk, violent and angry, with his shirt off and blood all over him. Cst. White said that he was upset, in a rage and that it took several commands, practically yelling, to get his attention. Cst. White felt that his behaviour was unusual -- the lack of acknowledgment of their presence, then frozen gestures and non-compliance. Cst. White said that his rigidity continued throughout. On the ground he started to kick and did not appear to be hearing anything Cst. White was saying to him; he just kept repeating, “Let me up; let me up.”

[21] The defendant was taken to the hospital for treatment. Cst. White noted that, in contrast to his unresponsive behaviour with them, he seemed to get along well with the doctor, whom he recognized. After his cut hand was treated and bandaged the police officers took him to the detachment cells, where he continued to resist being lodged. They dragged him into the cell backwards, still handcuffed, searched him, removed his jewellery and shoes, then his handcuffs and backed out of the cell, leaving him alone.

[22] Cpl. Oster watched him through a window in the door. The defendant pulled the bandage off his finger and started smashing it against the window. He continued to smear blood over the window and around the cell. Photos taken the next morning

show the cell spattered and smeared with blood everywhere -- on the floor, bunk and walls. On the walls the defendant's name "Larry Crouse" is printed in blood.

[23] The defendant admits most of the foregoing facts; but, he said, he was not intoxicated or impaired by alcohol. He stated that he had less than one bottle of beer when he first arrived at Ms. Rhodenizer's, and when he left he abandoned the remaining seven bottles of his eight-pack where he had deposited them in the woods on his way to Ms. Rhodenizer's. He was very upset by Ms. Rhodenizer's refusal to talk with him and by her threats to call the police and he said that he drove around aimlessly for some time trying to decide what to do. He went to New Germany and bought a pint of rum at a boot-legger's; by this time it was dark and he said he went back to the end of Smith's Road, sat and thought for a while and decided to go home. He drove past Ms. Rhodenizer's place, opened his rum and had a drink as he drove. When he came up over a hill, there were two sets of car headlights facing him, almost blocking the road. He tried to go around them, then decided to turn and was confronted by the RCMP. He got away from Cpl. Oster and decided that Sherry "was going to watch me die". He had been crying all night and everything was a jumble in his mind. He knew there was a bridge close to Ms. Rhodenizer's trailer and thought

he would hit it, but he “landed up in a ditch” across the road from her place. He “floored it” and got out of the ditch, then drove into the corner of her trailer.

[24] He said he still wanted to talk to Ms. Rhodenizer. So he followed her when he saw her run from the trailer. He did not remember how he got to the Corkum trailer, or how he knew she was inside; He remembered being at the Corkum’s door, and the police at the corner of the trailer. He said he still had the rum bottle in his hand, but that he had had only two drinks from it.

[25] The defendant admitted that while in jail awaiting trial on these matters he wrote a note to Ms. Rhodenizer, enclosing a wooden cross on a chain, which he asked her to wear as a token of his love. He arranged for a fellow inmate who was due for release to deliver this to her, and she received it the evening before trial.

[26] Dr. Emmanuel Aquino testified as an expert in forensic psychiatry. The defendant was assigned to him when he was remanded to the Provincial Forensic Psychiatry Service at the Nova Scotia Hospital in July, 2000 for assessment. He said that, after observation and interviews, he concluded that the defendant was suffering from a major depressive disorder characterized by an intense obsessive preoccupation with his girlfriend, Sherry Rhodenizer. He said that such an obsession is almost

parallel to a delusion. A delusion is an unshakeable belief; an obsession is an uncontrollable thought pattern. He emphasized the serious nature of this diagnosis; it can have similar results to a stalking situation, and, if untreated, can lead to suicide and/or homicide. It requires more than just medication for successful treatment. If the defendant were admitted to the Nova Scotia Hospital for treatment the staff would assist his reintegration with psychotherapy and occupational therapy in addition to medication. Only time would tell the outcome; it is not an easy problem to treat.

[27] Dr. Aquino was unable to determine the degree to which alcohol was a factor in the events of July 13 in part because he was uncertain as to the amount of alcohol consumed and in part because he could not determine whether the alcohol was a primary or a secondary cause, i.e. whether the alcohol alone accounted for the accused's irrational behaviour, or whether the accused was irrational anyway and drank in an attempt to self-medicate, resulting in further disinhibition.

[28] Dr. Aquino pointed to the defendant's behaviour on the witness stand -- his continuing tearfulness, his inability to look at Ms. Rhodenizer -- and his continued attempts to contact her -- e.g. by letter from jail -- when he was obviously sober and

medicated as evidence which could lead to the conclusion that alcohol was not the primary cause of his irrational behaviour.

[29] On cross-examination Dr. Aquino was clear that Mr. Crouse's problem was not a usual non-psychiatric partner relationship depression; nor did he believe it was merely "temper", although if Mr. Crouse was a spouse abuser that could make a difference to his opinion regarding the reasons for Mr. Crouse's anger.

[30] Dr. Aquino stated that all of the evidence he had heard in court did not change the opinion he expressed in his report of August 14, 2000 at p. 4:

> Based on our clinical assessment and collateral information from the crown, as well as information obtained from his parents, it is our view that the acts charged against Mr. Crouse may have been caused by the disinhibiting effects of alcohol. However, on balance, I wish to inform the court that our assessment confirmed that Mr. Crouse suffered from Profound Depression (Major Depressive Disorder) with intense obsessive preoccupation with his former girlfriend, Sherry, when he committed the acts. This disorder is a major psychiatric disorder which is characterized by frequently present tearfulness, irritability, brooding, obsessive rumination, anxiety, phobias. The most serious consequence of a Major Depressive Episode is attempted or completed suicide.

> Mr. Crouse's mental state at the time he committed the acts charged against him appear to have impaired his ability to appreciate the nature and quality of his acts and may qualify him for exemption from criminal responsiblity, pursuant to s. 16(1) of the Criminal Code of Canada. I find it difficult to give an opinion on criminal responsibility with a high level of confidence in view of the fact that Mr. Crouse was under the influence of alcohol at the time he committed the acts charged against him.

[31] Dr. Aquino put his level of confidence in his opinion as to the defendant's lack of criminal responsibility at 4 on a scale of 1 to 10.

ISSUES

(1) As to the s. 253(a) charge, has the Crown proven beyond a reasonable doubt that the defendant's ability to drive was impaired by alcohol when he met the police officers at the top of the hill?

(2) As to the s. 264.1 charge, has the Crown proven beyond a reasonable doubt that the defendant threatened Ms. Rhodenizer with death?

(3) As to the remaining charges, has the defendant made out the defence of lack of criminal responsibility under s. 16 of the ***Criminal Code***?

DISCUSSION

1. **Impaired Driving Charge**

[32] On this charge the onus is on the Crown to establish beyond a reasonable doubt that the defendant's ability to drive was impaired by alcohol.

[33] Cpl. Oster testified that he smelled alcohol from Mr. Crouse's vehicle or person when he had his head in or near the window of the defendant's car. He also noted the defendant's "bleary" eyes and concluded from that and from the fact that he had been seen with a beer in his hand earlier at Ms. Rhodenizer's residence that he was intoxicated. But he did not note any difficulty in the defendant's manner of driving -- either in the way he turned or his speed as he drove away. On cross-examination Cpl. Oster admitted that he "assumed" the defendant was intoxicated at that point.

[34] The defendant, on the other hand, denied being intoxicated and stated that he had had only part of one beer early in the evening and one "drink" of rum immediately before he met Cpl. Oster.

[35] The Crown urges me to consider all of the driving irregularities noted later (going off the road into the ditch, and driving into the end of Ms. Rhodenizer's trailer, plus the defendant's failure to achieve his stated intention of putting his car off the bridge) in order to reach the conclusion that the defendant's ability to drive was impaired by alcohol.

[36] I have no doubt that the defendant's ability to drive was impaired; but the question is, was it impaired by alcohol. All of the indicia of impairment, except the smell of alcohol, can equally be explained by the defendant's emotional and psychological condition at the time; and there is no evidence that the defendant drank more alcohol than he admits. I find that the Crown has not discharged the burden of proving alcohol impairment beyond a reasonable doubt and the defendant is therefore acquitted on this charge.

2. Threats charge

[37] On cross-examination Ms. Rhodenizer stated that she did not ever hear the defendant threaten to kill her. Although Mr. Corkum stated that at one point when he

was trying to keep the door shut against him, he heard the defendant say, "I'm going to kill you guys", Ms. Rhodenizer's denial of any threat leaves me in reasonable doubt as to whether any such threat was uttered. The defendant is therefore entitled to an acquittal on this charge as well.

3. **Lack of Criminal Responsibility under s. 16**

[38] On the remaining counts before the court under ss. 733.1, 145(3), 348(1)(b) and two counts under s. 430(4), I am satisfied that the Crown has established all of the elements of each offence, subject to the applicability of s. 16 being established by the defence on a balance of probabilities, as set out in that section as follows:

> 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.
>
> (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.

[39] From Dr. Aquino's evidence it is clear that at the time of commission of these offences the defendant was suffering from a "mental disorder", viz., a major depressive

disorder with intense obsessive preoccupation with his girlfriend. What is not so clear is whether or not it was of such a nature as to have rendered the defendant incapable of appreciating the nature and quality of his conduct or of knowing that it was wrong.

A. *Appreciating the nature and quality of conduct*

[40] As Dickson, J (as he then was) stated in *R.* v. *Cooper* 1979 CarswellOnt 60, 13 C.R. (3d) 97, [1980] 1 S.C.R. 1149, 18 C.R. (3d) 138, 51 C.C.C. (2d) 129, (*sub nom.* R. v. Cooper) 31 N.R. 234, 4 L. Med. Q. 227, 110 D.L.R. (3d) 46:

> 58 . . . I accept the view that the first branch of the test, in employing the word "appreciates", imports an additional requirement to mere knowledge of the physical quality of the act. The requirement, unique to Canada, is that of perception, an ability to perceive the consequences, impact and results of a physical act. An accused may be aware of the physical character of his action (i.e., in choking) without necessarily having the capacity to appreciate that, in nature and quality, that act will result in the death of a human being. This is simply a restatement, specific to the defence of insanity, of the principle that mens rea, or intention as to the consequences of an act, is a requisite element in the commission of a crime.

[41] In *R.* v. *Rooney* 1995 CarswellPEI 86, 126 Nfld. & P.E.I.R. 68, 393 A.P.R. 68 (P.E.I.S.C.) Jenkins J stated:

> 14 "Appreciate" and "know" are different. The verb "know" has a positive connotation requiring a bare awareness; the act of receiving information without more. The act of "appreciating" is a second stage in a mental process requiring the analysis of knowledge or experience in one manner or another: see *R. v. Barnier* (1980), 51 C.C.C. (2d) 193 (S.C.C.) at pp. 202-3.

B. *Knowing that conduct is wrong*

[42] In *R.* v. *Mathew Oommen* 1994 CarswellAlta 121, 19 Alta. L.R. (3d) 305, 30 C.R. (4th) 195, [1994] 7 W.W.R. 49, 168 N.R. 200, [1994] 2 S.C.R. 507, 91 C.C.C. (3d) 8, 155 A.R. 190, 73 W.A.C. 190 (S.C.C.)

McLachlin, J., for the court, stated:

> 26 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; 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.
>
> . . . .
>
> 31 It was also suggested that to permit an exemption from criminal responsibility in this case would be to open the door to exemption in cases of failure to exercise the will. The law has long distinguished between disorders affecting the ability to recognize what is wrong, and will to act or refrain from acting (although at the time of *M'Naghten's Case* the distinction may not have been as clear as we are wont to think: see Tollefson and Starkman, at p. 39). Moreover, the wording of s. 16(1) suggests a cognitive test. This said, *it must be recognized that impulse may be part of the mental mix which prevents a person from rationally evaluating the wrongness of his act.* As Tollefson and Starkman state at pp. 40-41:
>
> > Section 16 of the Canadian *Criminal Code* employs a "cognitive test" and does not provide exemption from criminal responsibility for people who claim that mental disorder rendered them incapable of controlling their volition. It has been recognized, however, that *evidence of irresistible impulse may be adduced as a symptom of disease of the mind which will be taken into account by the jury in determining whether the accused was suffering from mental disorder to the extent of being rendered incapable of exercising the "cognitive" functions of appreciating the nature and quality of the act or omission or of knowing that it was wrong.* [See *R. v. Wolfson* (1965), 51 D.L.R. (2d) 428 (Alta. C.A.); *R. v. Borg*, [1969] S.C.R. 551, per Hall J. at 570-71; *R. v. Abbey*, [1982] 2 S.C.R. 24, at 38-39.]
>
> 32 Finally, it should be noted that we are not here concerned with the psychopath or the person who follows a personal and deviant code of right and wrong. The accused in the case at bar accepted society's views on right and wrong. The suggestion is that, accepting those views, he was unable because of his delusion to perceive that his act of killing was wrong in the particular circumstances of the case. On the contrary, as the psychiatrists testified, he viewed it as right. This is different from the psychopath or

> person following a deviant moral code. Such a person is capable of knowing that his or her acts are wrong in the eyes of society, and despite such knowledge, chooses to commit them. To quote Herbert Fingarette, *The Meaning of Criminal Insanity* (1972), at pp. 200-201:
>
> It should be evident that we are not here reverting to the thesis that "knew it was wrong" means "judged it wrong in the light of his own conscience" ... such a definition could never be acceptable in a viable criminal law. As the courts have rightly insisted, it is a public standard of wrong that must be used, whether public law or community morality.
>
> *What we are saying here is that "knowing the nature and quality of the act or that it is wrong" in the context of insanity (and thus, rationality) means "having the capacity to rationally assess -- define and evaluate -- his own particular act in the light of the relevant public standards of wrong" ...*
>
> The preceding comments should not be taken to mean that a person is not responsible if he holds irrational beliefs, for that is not the case ... *The point is that if the person has a mental makeup which is such that he lacks even the capacity for rationality, then responsibility is vitiated. If he has the capacity but simply fails to use it, responsibility is not precluded.*
>
> (Emphasis added)

[43] Applying the foregoing to the present case, I note that:

1. Dr. Aquino's hesitancy in expressing a firm opinion as to the defendant's ability or lack thereof to appreciate the nature and quality of his acts or to know they were wrong arose from his uncertainty as to the degree of intoxication of the defendant at the time in question;

2. The defendant denies having more than part of one bottle of beer before first visiting Ms. Rhodenizer's residence, which accords with Ms. Rhodenizer's impression that he was not intoxicated at that point;

3. The defendant admits consuming part of a pint bottle of rum later in the evening before arriving at Mr. Corkum's door, but says the bottle was far from empty when it was flicked out of his hand by Cpl. Oster;

4. The defendant's behaviour until and throughout his incarceration at the RCMP lockup was equally consistent with rage and irrationality as with intoxication, particularly as he apparently acted quite normal with the medical personnel at the hospital;

5. The defendant's irrational behaviour toward Ms. Rhodenizer extended well beyond this episode, including his attempt to communicate with her by letter and gift, and continuing to his obvious difficulty in dealing with seeing her in person at the trial of these matters;

6. Dr. Aquino's emphasized the serious nature of the defendant's mental disorder and its long-term prognosis.

[44] From the foregoing I conclude that this was more than a case of the defendant failing to control his impulse; rather, it was a case where his impulse or obsession impaired his ability to rationally assess, define or evaluate his behaviour in the light of the relevant public standards of wrong to such an extent that he lacked the capacity for rationality. In other words, on a balance of probabilities I conclude that at the time of the commission of these offences the defendant's mental disorder -- his depression and obsession with Sherry Rhodenizer -- made him incapable of

appreciating the nature and quality of his actions or of knowing that they were wrong.

[45] I find that the defendant is not criminally responsible for these charges by reason of mental disorder.

Anne E. Crawford, J.P.C