



BRITISH COLUMBIA REVIEW BOARD

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

REASONS FOR DISPOSITION IN THE MATTER OF

CHAD HEINZ NEUENDORF

HELD BY: Video
December 8, 2021

BEFORE: **CHAIRPERSON:** S. Boorne
MEMBERS: Dr. P. Constance, psychiatrist
 P. Cayley

APPEARANCES: **ACCUSED/PATIENT:** n/a
ACCUSED/PATIENT COUNSEL: D. Abbey
DIRECTOR, AFPS: Dr. P. Narayan,
 Dr. N. Druhn,
 L. Burkholder
DIRECTOR'S REPRESENTATIVE: D. Lovett, QC
ATTORNEY GENERAL: G. Nelson

INTRODUCTION AND BACKGROUND

[1] On December 8, 2021, the British Columbia Review Board convened a hearing to review the disposition of Chad Heinz Neuendorf. At the conclusion of the hearing, the Board reserved its decision. We subsequently granted Mr. Neuendorf an absolute discharge. These are our reasons.

[2] Mr. Neuendorf is before the Board as a result of a verdict of not criminally responsible on account of mental disorder dated January 24, 2014 on two counts of assault. The index offences were committed on November 15 and 17, 2013 against residents of the psychiatric facility where Mr. Neuendorf was living. Mr. Neuendorf was suffering from Huntington's disease at the time of these offences.

[3] Mr. Neuendorf's background and history have been reviewed in previous reasons for disposition and will not be repeated. Significantly, Mr. Neuendorf has been detained at the Forensic Psychiatric Hospital (FPH) and since late 2016, he has been managed in long term seclusion. He is 41 years old and is diagnosed with Huntington's disease with features of psychosis, movement disorder, mood symptoms, behavioural problems and cognitive impairment.

[4] Mr. Neuendorf has been excused from his previous seven Review Board hearings. An application to excuse him from the current hearing was brought by assigned counsel Mr. Abbey on November 29, 2021. The Crown consented and the Director did not oppose the request. In light of the foregoing, the panel Chair ordered that Mr. Neuendorf be excused from the hearing. At the request of the parties, Dr. Constance attended the seclusion room where Mr. Neuendorf resides in the company of Crown counsel and Mr. Abbey. Dr. Constance was satisfied that Mr. Neuendorf would be unable to meaningfully participate in the hearing. We therefore proceeded in his absence.

EVIDENCE AT THE HEARING

[5] To prepare for the current hearing we were provided with a psychiatric report from Dr. Narayan, Mr. Neuendorf's treating psychiatrist, a psychological report from Dr. Druhn and a social work report prepared by Ms. Burkholder. Dr. Narayan, Dr. Druhn and Ms. Burkholder testified.

[6] Dr. Narayan testified that a number of new developments have taken place since he submitted his report. Approximately six weeks ago, Mr. Neuendorf began to have occasional episodes of incontinence. About 10 days ago these episodes increased to multiple times each day. He has been unable to get up and get to the toilet to relieve himself. Just a few days before the hearing, Mr. Neuendorf was transferred to a hospital bed with side railings. Initially, he was placed in restraints to prevent him getting out of bed or falling. These are no longer necessary and he is no longer in a locked seclusion room. Two staff members observe him constantly, 24 hours per day.

[7] Dr. Narayan testified that Mr. Neuendorf's clinical presentation is rapidly deteriorating and it is unclear whether he even understands where he is. It appears Mr. Neuendorf is bedbound and unable to get around. He does not pose a significant threat to staff. The treatment team held a

consultation with the palliative care team at Fraser Health last week. According to the consultation, it is felt that Mr. Neuendorf is rapidly approaching the end of his life and is not expected to survive beyond the next six months. The focus of treatment at this point is to provide care and comfort. Medical staff at the hospital are in the process of consulting with Mr. Neuendorf's sister about the possibility of obtaining a Do Not Resuscitate order.

[8] Dr. Narayan testified that if Mr. Neuendorf were to be discharged absolutely, he would remain at FPH pending a placement at the Hillside Centre in Kelowna. Hillside is currently the only facility that may be prepared to accept Mr. Neuendorf due to his violent background and forensic status. Under questioning, Dr. Narayan confirmed that while Mr. Neuendorf remains capable of inflicting physical harm, given his involuntary physical movements, it is unclear whether any recent physical contact with staff was intentional or not. He agreed that using trained staff who approach Mr. Neuendorf with caution greatly reduces the risk of injury.

[9] Dr. Narayan testified that staff at FPH are not trained to deal with palliative patients but an outside team has agreed to come in to train staff to manage him until he can be transferred. Given the uncertainty of a transfer to Hillside or to another facility, the treatment team is looking at converting part of an existing cottage on the hospital grounds and moving Mr. Neuendorf there with a dedicated staff complement to care for him. He also confirmed that Mr. Neuendorf's legal status would not impact the decision to move him to another part of the hospital.

[10] Dr. Druhn testified that he was not aware of any other designated neuropsychiatric facility besides Hillside that might be available to take Mr. Neuendorf as a patient. He agreed that much of Mr. Neuendorf's aggression is likely simply a neurological manifestation of his illness. As his condition has declined, his involuntary movements have increased and it is possible that he experiences a fear response when people approach him, which increases the involuntary nature of the movements.

[11] Ms. Burkholder testified that it is more challenging to transfer a patient to a facility like Hillside if they are not under Review Board jurisdiction where they can be returned to FPH if the need arises. Ms. Burkholder testified she would be meeting with Mr. Neuendorf's sister within the next week to explore options with her.

[12] At the conclusion of the evidence, the Crown asked whether the panel would be willing to consider an adjournment for 30 days in order to obtain clarity on whether Hillside was prepared to accept Mr. Neuendorf. After considering the matter, the panel declined indicating that our duty is to consider whether Mr. Neuendorf constitutes a significant threat at the time of the hearing.

[13] In closing submissions, the Director sought a custodial disposition for compassionate reasons in order to attempt to facilitate transfer of the accused to the Hillside Centre. The Crown and Mr. Abbey, appointed counsel for Mr. Neuendorf, argued that an absolute discharge was appropriate.

ANALYSIS AND DISPOSITION

[14] The Board must first consider whether Mr. Neuendorf constitutes a significant threat as defined by s. 672.5401 of the *Criminal Code*. A person is a significant threat if they pose “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.” If they do not pose such a threat, they are entitled to be absolutely discharged. If they do pose a significant threat to the safety of the public, we must then determine the necessary and appropriate disposition.

[15] We are unanimously of the view that Mr. Neuendorf no longer constitutes a significant threat to the public. He has suffered from Huntington’s Disease for many years and his condition has recently deteriorated to the point where he is effectively bed ridden and at the end stage of his life. While Mr. Neuendorf did inflict injury to a staff member several months ago, the weight of the evidence suggests that this was accidental. We accept the evidence of Dr. Druhn that any displays of aggression at this point are likely a neurological manifestation of his illness. We also accept the evidence of Dr. Narayan that as long as staff are trained and approach him with caution when assisting him, the risk of injury is significantly reduced.

[16] We grant Mr. Neuendorf an absolute discharge, effective as of the date of this hearing.

Reasons written by S. Boorne with Dr. P. Constance and P. Cayley concurring.

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