

# Court of Queen's Bench of Alberta

Citation: R v Elder, 2020 ABQB 660

Date: 20201103  
Docket: 180864431Q1  
Registry: Edmonton

Between:

**Her Majesty the Queen**

- and -

**Donna Colleen Elder**

Accused

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**Reasons for Judgment  
of the  
Honourable Mr. Justice B.R. Burrows**

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[1] Donna Colleen Elder drove her car from its parking place outside a KFC store into her 86-year-old mother, Katherine Triplett, who was waiting for her outside the store. The impact pushed her mother through the window and wall of the store. The car partially entered the store. Ms. Elder backed up out of the store and then drove into the store again. The car came to a stop when about half of it was inside the store. Ms. Elder's mother was very seriously injured.

[2] Ms. Elder has pleaded "Not criminally responsible by reason of mental disorder" to each of the three offences charged in the indictment. The charges are:

1. Attempted murder of Katherine Triplett by striking her with a motor vehicle – CC s. 239(1)(b)
2. Aggravated assault of Katherine Triplett – CC s. 268
3. Dangerous driving causing bodily harm – CC s. 249(3)

The events giving rise to these charges occurred on July 18, 2018 in Edmonton, Alberta.

[3] At the time of her pleas I confirmed with Ms. Elder that she understood:

- that the onus would be on her to prove on a balance of probabilities that she was not criminally responsible by reason of mental disorder in respect of the offences charged;
- that if I found that she had satisfied that onus, the question of an appropriate disposition would then be decided, possibly by the Alberta Review Board;
- that she could be sent to hospital and be required to stay there unless and until the Alberta Review Board determined that it was no longer necessary that she remain there;
- that, potentially, the restriction on her liberty could be greater than if she were convicted of the offences charged.

[4] At the beginning of his submissions following the evidence, Mr. Quist, for the Crown, conceded that the evidence would not prove Count 1, attempted murder, beyond a reasonable doubt and invited an acquittal on that charge.

***Not Criminally Responsible***

[5] *Criminal Code* s. 16 provides:

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.

[6] The section also provides that the onus to prove that a person was not criminally responsible is on the party that raises the issue, in this case, the Accused, Ms. Elder. Further, the section provides that the applicable standard of proof is a balance of probabilities.

[7] Three elements must be proved in order for s. 16 to apply:

1. That Ms. Elder was suffering from a mental disorder at the time of the events giving rise to the charges, and
2. That at that time, Ms. Elder was, because of the mental disorder, incapable of appreciating the nature and quality of her acts, or
3. That at that time, because of the mental disorder, Ms. Elder was incapable of knowing that her acts were wrong.

[8] There appears to be no issue in this case as to the first of these three elements. The mental health experts who testified both in the Defence case and in the Crown's case agreed that at the time of the events leading to the charges, Ms. Elder was suffering from a mental disorder. They did not agree as to the proper diagnosis of that mental disorder, and, significantly, they did not agree whether the mental disorder was one which would likely involve the hallucination which Ms. Elder testified she experienced at the relevant time.

[9] Among the mental health experts, issue is joined in respect of the second and third elements. Ms. Elder's counsel, Mr. Hurley, did not concede that the evidence did not prove the second element, but he took the position that whether it did or not, the evidence did prove the third element on a balance of probabilities. Mr. Quist for the Crown submitted that neither the second element nor the third element was proved to the required standard.

[10] I turn to a review of the evidence presented in this trial.

## ***The Evidence***

### ***The Agreed Statement of Facts***

[11] The trial began with the receipt into evidence of an Agreed Statement of Facts which set out the basic events which transpired on July 18, 2018 and some of the more significant evidence adduced at the preliminary inquiry. The Agreed Statement of Facts, without the attachments mentioned in it, is appended to these reasons.

[12] The attachments to the Agreed Statement of Facts included a disc containing photos of the scene as the police found it, audio recordings of what was said when Ms. Elder was being transported to the police station and before her video recorded interview with police began, and the video recorded interview. The transcript of the preliminary inquiry in these proceedings at which 11 witnesses testified, is also attached to the Agreed Statement of Facts.

[13] As to the video of the police interview, at its commencement Ms. Elder is seen entering the interview room where there were two books on the table. At least one of them was the Bible. Before sitting down at the table, she pushed both books onto the floor.

[14] She was interviewed by a female officer and answered virtually none of the officer's questions. Her repeated response was, "I want to go back to my cell."

### ***Ms. Elder***

[15] Ms. Elder was 60 years old at the time of the events of July 18, 2018, which resulted in the charges ("the Events"). She has no criminal record. She had never previously been arrested by police.

[16] She was raised by her mother – her parents having divorced when she was 11. She is the second youngest of five siblings.

[17] After completing high school, she obtained a B. Ed. and was employed as a teacher for about 29 years. For about nine years of that time, from 1978 to 1987, she was a nun, a member of the Ursuline Sisters. [The various references in the evidence to this tenure as a nun vary significantly as to its length.] From 1987 to 1993 she was a member of the Koinonia Association, a religious teaching community. She left that religious community about the same time as she first recognized that she was suffering from depression.

[18] Ms. Elder acknowledged in cross-examination, that her relationship with some people in the Roman Catholic Church had gone "sour" and that contributed to her leaving the Church. She did not confirm that she had had a strong disagreement with people in the church about exorcism as had been mentioned in one of the expert reports. She acknowledged that at the time she left the religious community, she felt that she had been misled by things she had been told when she entered it.

[19] Ms. Elder testified that she retired from teaching in 2014. For the last 18 years of her teaching career she was on medical leave because she suffered from depression. During the years of medical leave, she taught part time.

[20] When, in 1993, Ms. Elder recognized that she suffered from depression, she sought medical assistance and as a result came under the care of a psychiatrist, Dr. John Dewart, for the following 20 years.

[21] Ms. Elder testified that she has “checked myself into a hospital” four of five times in the last 20 years because she was not feeling mentally “all right”. On one or more of those occasions she received electro convulsive therapy (ECT) which, she testified, severely affected her memory. In cross-examination, she agreed that she had felt betrayed by her psychiatrist, Dr. Dewart, because the electro convulsive therapy he prescribed for her had been harmful.

[22] The hospital stays included a two-week hospitalization in May 2018, about two months before the Events. She testified that she did not know why she was in hospital on that occasion. On that occasion she was under the care of a psychiatrist, Dr. War.

[23] Ms. Elder testified that she has experienced auditory hallucinations. The first time was about ten years ago – so eight years before the Events. She heard male and female voices which were telling her to hurt herself. She would put a rope around her ankles to try to prevent herself from hurting anyone else.

[24] She testified that she also perceived that people were watching her and following her when she was driving or when she was in a store. These perceptions first occurred in 2017. She did not tell her doctors or anyone else including her family members about these experiences because she was afraid she would be sent to hospital and she was afraid to go there.

[25] She also testified that she had perceived that there was a green light in her mother’s television which was shining even though the television was not turned on. She told her sister-in-law about that perception.

[26] She testified in cross-examination that in times when she was hearing voices, she would hear them quite frequently – about once or twice a week. The content was usually threatening to her, critical of her. It was a male voice – the same voice each time. The voice would go on and on – not just one comment. She would hear the voice for a half hour or an hour. She would have to leave the room to stop the voice. The perception that people were following her was mostly when she was driving but it also happened when she was walking.

[27] Ms. Elder testified that she stopped hearing the voices, and stopped perceiving that she was being followed, about two months after she started getting monthly injections of Invega Sustenna, a treatment for schizophrenia. I understood her evidence to be that she was started on that treatment sometime after the Events.

[28] Ms. Elder testified that she was her mother’s primary caregiver from December 1, 2016. Her mother had several health issues, including dementia, and she asked Ms. Elder to look after her. Ms. Elder’s residence was about two miles from her mother’s, but from December 1, 2016, Ms. Elder started staying overnight at her mother’s home most nights so she could be there if her mother needed attention during the night. She slept on the couch or on the floor outside her mother’s bedroom. She was in her own residence maybe three times a month.

[29] At the time of the Events, Ms. Elder was supposed to be taking prescribed medications for many mental and physical health issues including depression, anxiety, hyper-thyroid, high blood pressure, acid reflux, insomnia, and heart function. She was not however taking several of the medications because, if she did, she would not hear her mother in the night when her mother needed help.

[30] On the nights she slept in her own home she did not take her medications either – because her mother would sometimes phone her in the night or early morning, or because she forgot to take them.

[31] She testified that she and her mother would have arguments but she never hit her mother. She was never physically violent with her mother.

[32] She was asked, in cross-examination, what sorts of things would cause her to get angry with her mother and responded that she would get angry when her mother would not give her a straight answer.

[33] Also, in cross-examination, she agreed that her mother blamed her for having to go into hospital sometimes, though it was not Ms. Elder's fault. This upset Ms. Elder. It also upset her when her mother said mean things to her. But she could usually handle that.

[34] She testified in cross-examination that she has not had difficulty controlling her temper. She said when she gets angry she usually throws something – a tennis ball, papers.

[35] She was asked in cross-examination about a psychologist, Dr. Jeanna Wong, whom she saw until it was necessary to end the therapeutic relationship because, according to Ms. Elder, "We were not good for each other." She did not agree that she had become too attached to Dr. Wong or that her own behaviour went outside of the doctor-patient relationship. She considered it unfair of Dr. Wong to have ended their relationship. She acknowledged that she got angry with Dr. Wong and had expressed that anger in some written messages. She acknowledged in cross-examination that she now thinks that she was "out of line" in the messages she sent. She testified that the last time she saw Dr. Wong was in November, 2017.

[36] She denied that when she was at Alberta Hospital and had been angry with Dr. Zedkova, she had kicked a chair in her anger.

[37] She testified that she had noticed that her anger became less common after she began to receive the Invega Sustenna injections after the Events, and when she took another medication, Wellbutrin, which she had been prescribed before July 2018 but which she had stopped taking prior to the Events.

[38] She further agreed that several times in her life she has been let down by people she trusted and that has been hard for her.

[39] Ms. Elder testified that she finds it difficult to trust men, she thinks this is because she felt abandoned by her father as a child.

***The Events of July 18, 2018 and the Days Before and After***

[40] As to the days leading up to the Events, Ms. Elder acknowledged that on July 12 she went to Emergency because she was feeling "stressed out". She felt pins and needles all over her body. After being at the hospital for a short time she was feeling better. She was given an appointment for July 18 at 10:00 a.m. and she went home.

[41] Ms. Elder acknowledged in cross-examination that the next day, July 13, she saw Dr. Dewart. She told him that her mother had said she needed her own space and that Ms. Elder should go home. She testified that her mother had made the same request on a few previous occasions. Ms. Elder was content to sleep at her own condo if her mother did not want her at her place – but, she testified, she loved staying with her mother. Ms. Elder acknowledged that she was upset at her mother's request that she not stay with her because her mother was not capable of looking after herself, did not want to move into a care home, and no one else in the family was available to move in with her mother.

[42] On July 16, she went back to Emergency because she was still experiencing the pins and needles feeling and feelings of anxiety and stress. Part of the stress was caused by having to wait for a phone call regarding an appointment with a urologist whom she wanted to see because of a kidney issue.

[43] On July 18, she missed the 10:00 a.m. appointment that had been arranged during her July 12 Emergency Room visit. She had attended at 11:30 a.m. She was frustrated that she had missed the appointment. She was told she would have to come back the following day, July 19.

[44] After missing the appointment, she went back to her own residence and watched television. Her mother phoned at about 4:30 p.m. and said she wanted either Chinese food or KFC for supper. Ms. Elder said she would come over and they would both go to get the food. When Ms. Elder got to her mother's home, her mother decided she wanted KFC. There was no argument.

[45] On the way to KFC there was no issue or argument between Ms. Elder and her mother.

[46] Ms. Elder testified in examination in chief that when they got to KFC, she dropped her mother off and then parked her car. In cross-examination she testified that her mother was in the car when she parked it and that they walked together across the parking lot to the KFC store.

[47] The parking place was not immediately next to the KFC store. It was across a driving lane between parking places next to the KFC building and a second rank of parking places on the far side of the driving lane. Ms. Elder backed her car into a parking place in the second rank. She backed into the parking place to make it easier to pull out when leaving the KFC – and to make it harder for anyone following her to get in her way.

[48] Ms. Elder and her mother went into the KFC store and ordered their food without any issues. When they came out of the KFC store Ms. Elder's mother stayed by the store while Ms. Elder went to her vehicle. The plan was that she would drive her vehicle the short distance to where her mother was and pick her up.

[49] Ms. Elder testified that when she got into her vehicle, she heard a male voice. It was a friendly voice. She could also hear female voices muttering something but she could not make out what they were muttering. The male voice told her that "the pepper haired woman was going to hurt my mother".

[50] Ms. Elder testified initially that she saw the pepper haired woman. She testified that the pepper haired woman "must have been in front of me." She later testified that she was not sure she had seen the pepper haired woman.

[51] Ms. Elder had never heard the voice that spoke of the pepper haired woman before. She had never seen the pepper haired woman before.

[52] Ms. Elder testified that the male voice did not say how the pepper haired woman was going to hurt her mother. Ms. Elder felt anger. She thought the pepper haired woman was a real threat to her mother because the voice said so.

[53] Ms. Elder testified that having gotten into her vehicle, she checked all directions before moving it. She started the car and then she was inside the KFC store. She drove into the store to stop the pepper haired woman from hurting her mother. She did not remember that she drove into the store twice.

[54] Ms. Elder testified that she did not know whether she had hit anyone. In examination in chief, she testified that she was not sure whether she was trying to hit the pepper haired woman when she drove into the KFC store. In cross-examination she testified that she was not trying to kill the pepper haired woman with her car in order to protect her mother. She testified that she was certainly not trying to hurt her mother. She never had and never would hurt her mother. She did not intentionally drive at her mother. She testified that she did not know if she had intended to hurt the pepper haired woman. In cross-examination she testified that she did not know how driving her car into the side of the KFC would protect her mother.

[55] After the collision, Ms. Elder tried to get out of her car to see the damage that had been done to the KFC but could not because a man blocked her from doing so. [This is consistent with other evidence – see para. 15 of the Agreed Statement of Facts.]

[56] She does not remember rocking back and forth while she was sitting in her car when it was inside the KFC – when she was being prevented from leaving her car. She does not remember saying the name “Jessica” over and over again or that she rocked back and forth. [See para. 16 of the Agreed Statement of Facts.] She does remember saying that name while in the police car later. She does not know who Jessica was.

[57] After the Events, Ms. Elder was taken to the police station to be interviewed. She acknowledged in cross-examination that while in the police car, she said, “No more. No more.” She denied that what she meant was that her mother would not be able to mistreat her again.

[58] In examination in chief, when asked why she pushed the Bible from the table of the interview room onto the floor, she testified it was because she was angry that she was there in the police station. She testified that she was not hearing voices at that time.

[59] From the police station she was taken to the Edmonton Remand Center and stayed there for about a week. She did not hear any voices there. She saw Dr. Bhatia there. At that time, Ms. Elder did not tell Dr. Bhatia about the voices she had heard at the KFC because she did not trust her. Later when she had come to trust Dr. Bhatia, she told her about the voices.

[60] From the ERC she went to Alberta Hospital Edmonton. Initially, she did not tell the doctors who attended upon her there that she had heard voices at the KFC because she was scared and did not trust them. When some trust developed between her and the doctors who saw her, she told them about the voices. Even then she did not tell them everything about the voices for lack of trust and fear for what the consequences would be.

[61] She testified that after she had been at Alberta Hospital Edmonton for a while, she started to feel better both physically and mentally.

[62] While she was at Alberta Hospital Edmonton she was seen by Dr. Syed, a psychiatrist who testified for the Crown at this trial. Dr. Syed prepared a report about Ms. Elder. Dr. Syed concluded that Ms. Elder did not meet the criteria for being not criminally responsible under CC s. 16(1).

[63] Ms. Elder read Dr. Syed’s report while she was at Alberta Hospital Edmonton and was upset with its contents and while upset and in his presence, she walked angrily toward him. She did not hit him. She was not otherwise physically violent toward him. She did not threaten him.

[64] Ms. Elder also testified that while at Alberta Hospital Edmonton she called Dr. Zedkova, who was Dr. Syed's supervisor, a bitch. She did not, as she testified, remember why she had done so. She expected it was a reaction to something Dr. Zedkova said to her.

[65] In cross-examination, it was put to Ms. Elder that her reports to Dr. Syed about the voice she heard after she left her mother outside the KFC store changed over the course of her meetings with Dr. Syed. It was put to her that at the first meeting she said she remembered nothing from the time she got into her car until she found herself in the police car. Ms. Elder did not remember saying that to Dr. Syed. It was put to her that at the second meeting she told Dr. Syed she had heard a voice saying, "No more. No more" and that she remembered nothing more until she was in the police car. She testified that she vaguely remembered telling Dr. Syed that. Finally, it was put to her that it was not until the third meeting with Dr. Syed that she reported that the voice said the pepper haired woman was going to hurt her mother. Ms. Elder testified that she remembered telling Dr. Syed that. Asked for an explanation as to why she would remember more detail further in time from the incident, she could offer none.

[66] Ms. Elder acknowledged that she told Dr. Syed that she had believed she had to get rid of the pepper haired woman. She did not acknowledge telling Dr. Syed that she said that she decided to use her car to do so because that was the only thing she had to hurt with. Neither did she remember telling Dr. Syed that she was not looking through the windshield when driving forward toward the KFC. She agreed that such driving conduct would be very unusual.

[67] Ms. Elder agreed in cross-examination that she told Dr. Syed that sometimes when angry while driving she would accelerate up to the speed limit or five kph above the speed limit and then slow down and then accelerate again. She said she would only do that when there was no one else on the road. She did not agree that on the occasion of the Events she used her car to express frustration and had caused an accident. She strongly denied that she had driven the car forward in an uncontrolled reaction to something her mother said which had made her angry.

### ***Danich Anheliger***

[68] Ms. Anheliger is Ms. Elder's sister-in-law. They have known each other for about 47 years. They are about the same age.

[69] Ms. Anheliger testified that she began to have concerns about Ms. Elder's mental health about eight months before the Events. Ms. Elder seemed to be withdrawing from contact with family members other than her mother. It seemed that because Ms. Elder was having to do a lot with her mother, she did not have energy to be with the rest of her family. Ms. Anheliger confirmed that after the Events she told Dr. Syed that before the Events Ms. Elder seemed depressed and that "being with Mom all the time did not help."

[70] Ms. Anheliger referenced one incident in particular. She and Ms. Elder had gone to Ms. Elder's bank where Ms. Elder needed to have access to her safety deposit box. Ms. Elder adamantly believed that the bank had let someone into her safety deposit box. She got very angry. She ripped up the bank's safety deposit box access record card.

[71] Ms. Anheliger testified that though she had seen Ms. Elder angry, she had never seen her anger manifest in violence. She had never seen Ms. Elder be angry at, or violent towards her mother who, given her dementia, could at times be very difficult to deal with – she would blame Ms. Elder for things that had nothing to do with Ms. Elder.

[72] Ms. Anheliger referenced another incident when Ms. Elder was adamant that there was a green light shining on an old and unused television in her mother's residence. Ms. Elder believed there was a camera inside the television which was recording her and her mother. Ms. Anheliger and her husband, David, Ms. Elder's brother, went over to the residence to deal with Ms. Elder's concern. David pulled the television out from the wall to show Ms. Elder that the television was not plugged in. Ms. Elder remained adamant that the green button would light up on its own.

[73] Ms. Anheliger also noticed that when she was driving with Ms. Elder, Ms. Elder was concerned that other vehicles were following her.

[74] Ms. Anheliger testified that Ms. Elder was devoted to the care of her mother. Though she had her own residence she would stay most of the time at her mother's residence. Anything that her mother needed, Ms. Elder would address. She focussed on making sure her mother ate properly, got to her medical appointments, and had all the assistance she needed.

[75] In May 2018, Ms. Elder was in hospital on a mental health ward for about two weeks. Ms. Anheliger visited her. Ms. Anheliger believed that Ms. Elder was improving while at the hospital.

[76] Ms. Anheliger testified that Ms. Elder did not mention to her that she heard voices at the time of the Events.

[77] Ms. Anheliger confirmed that she had spoken to Ms. Elder by telephone the day before the Events and thought that her voice sounded happy and that she seemed "OK".

[78] Ms. Anheliger saw Ms. Elder at the Edmonton Remand Centre two or three days after the Events. Ms. Elder seemed blank to Ms. Anheliger, like she was trying to block something out. She did not seem aware of everything.

[79] Ms. Anheliger saw Ms. Elder several times at Alberta Hospital Edmonton. She did not seem any different than she had at the Edmonton Remand Centre.

[80] Ms. Anheliger testified that Ms. Elder does not generally trust people. Ms. Elder has told Ms. Anheliger on occasion that she did not trust the diagnosis given to her by medical people.

### ***The Mental Health Experts***

[81] There were four expert witnesses who testified at this trial – Dr. Bhatia, a psychiatrist and Dr. Dewhurst, a psychologist, both called by Ms. Elder's counsel, and Dr. Syed, a psychiatrist and Dr. Haag, a psychologist, both called by the Crown.

[82] It is apparent, in my view, that each of these four highly qualified medical practitioners gave very careful and highly professional consideration to the matters they had been asked to address. Each of them prepared a very detailed report which is in evidence. Three of them expressed their medical opinion on the question of whether Ms. Elder, at the time of the Events, appreciated the nature and quality of her acts and whether she understood their wrongfulness. Two of them concluded that she did. One concluded that she did not. They did not agree either as to the appropriate diagnosis of Ms. Elder's mental illness at the time of the Events.

[83] The major point of dispute among the medical experts is as to whether Ms. Elder's condition at the time of the Events was one which could have involved a psychotic hallucination of the type she described in her evidence. Dr. Syed and Dr. Haag concluded that it was unlikely

that Ms. Elder experienced a hallucination at the relevant moment. Dr. Bhatia concluded that it is likely that she did.

[84] Obviously, the evidence of these medical experts is vitally central to the decision I am called on to make. The extent of the detail in their reports is massive. I will not attempt even to summarize it here. I will set out my understanding of their respective opinions, dealing with the reports in the order they were written. The medical experts' testimony at trial was consistent with their written reports. In my view, it would add nothing to review that testimony in addition to their respective reports in these reasons.

***Dr. Rahell Syed***

[85] Dr. Syed, a psychiatrist, saw Ms. Elder when she was sent to Alberta Hospital Edmonton shortly after the Events. His report was completed on September 23, 2018. After detailing all of the information he gathered from a number of third-party sources, Dr. Syed described his own observations of Ms. Elder in several interviews he had with her over the course of several days.

[86] Over the course of those interviews Ms. Elder provided inconsistent information regarding what happened immediately before she drove into her mother and the KFC store.

[87] In the first interview, Ms. Elder said that she did not remember anything between the time she got into her car after leaving her mother next to the KFC store and finding herself sitting in the back of a police car. As I understand it, this first conversation involved several people – Ms. Elder and “the assessment team”.

[88] Ms. Elder asked to see Dr. Syed again several days later. She said that when she got into her car after leaving the KFC she heard a repeating echo saying “no more, no more.” The echo got progressively louder. When she drove forward she was looking only at the hood of the vehicle. She did not know why she did not look at where she was going. She did not remember colliding into the KFC or backing up and colliding into it a second time. She remembered being concerned that someone inside the restaurant may have been hurt, attempting to get out of her vehicle, and being blocked inside it. By this time the voice which said, “no more, no more” had gradually decreased in volume and went away. “She reported she did not think about her mother at all during the entire ordeal.”

[89] Ms. Elder asked to see Dr. Syed again sometime later. She had prepared notes and read from them. She advised that for the previous four or five months she had been having an odd perceptual experience that lasted a few minutes. These included, when she was leaving hospital in May 2018, a voice saying, “you have to get out of here” and “woman will hurt” and “peppered hair girl.” She also reported hearing a voice in June 2018 while in her home. And on the day of the Events, when she got into her car after leaving the KFC, she heard a voice “that made statements like ‘mom’, ‘don’t let her hurt your mom anymore’, ‘look ahead, peppered hair girl’ and ‘don’t let her hit my mom’”. When Dr. Syed asked how this connected to her driving into the KFC she said, “The vehicle was all I had to hurt her”, and that she had decided to use the vehicle “to get rid of the peppered hair girl.” She said, however, that she did not see the peppered hair girl and did not look up when she accelerated her vehicle forward. She said she assumed the girl was in front of the KFC.

[90] Dr. Syed asked her if she thought her actions were the right thing to do. She responded, “It’s never the right thing to do to hurt someone.”

[91] As I read Dr. Syed's report, he did not believe that Ms. Elder was being truthful with him when she reported that at the time of the Events she was hearing voices. He so concluded on the basis that she had not mentioned the voice during their initial conversation and that her subsequent versions of what she perceived immediately prior to driving into the KFC were inconsistent with each other.

[92] Dr. Syed was also of the view that Ms. Elder's description of the auditory "perceptions" did not "strongly point to genuine psychotic symptoms, namely auditory hallucinations, which tend to be more persistent and consistent."

[93] In his report, Dr. Syed discussed a number of possible diagnoses for Ms. Elder. His diagnoses, which I understand he listed in order of their certainty, were:

- Adjustment disorder with mixed disturbance of emotions and conduct
- Borderline personality disorder
- Paranoid personality disorder
- Persistent depressive episode query with mood congruent psychotic features, with intermittent depressive episodes.

[94] As I understand his evidence, psychosis is not a symptom of any of these diagnoses except the last, the diagnosis which, though possible, Dr. Syed considered to be the least likely. He explained his doubt about this fourth diagnosis as follows:

When she was admitted to hospital in May 2018 with paranoid delusions her mood improved within a few days and she denied experiencing the paranoid thoughts within a few days of her hospitalization as well. The rapid improvement in her depression and the amelioration of her psychosis in the absence of any major changes to her medications would be highly unusual for a major depression episode with psychotic features. Typically, patients with this illness have a severe depression that does not spontaneously improve within a few days especially when the depression is severe enough to cause a psychosis. Furthermore, it appears that Ms. Elder may not have been experiencing a severe depression as she stated that she last felt severely depressed in the mid-1990s. Furthermore, Ms. Elder reported that the intensity of her thoughts would increase in the presence of Katherine [her mother] and decrease in her absence. This would also be atypical for a major depression with psychotic features because the psychosis tends to be persistent. Therefore, a major depression disorder with psychotic features is less likely for Ms. Elder.

[95] In Dr. Syed's opinion Ms. Elder appreciated the nature and quality of her actions.

[96] Dr. Syed's opinion is that whether or not Ms. Elder was hearing a voice at the time she drove into her mother and the KFC, she "clearly knew that a car can hurt or kill a person". She had told Dr. Syed that her car was the only thing she had to hurt with, when the voice told her that her mother was in danger. Dr. Syed noted:

Even if one accepts the scenario that Ms. Elder did not intend to hurt her mother while hurting/killing the girl, it is unclear . . . what specific symptoms of her mental illnesses, including psychotic symptoms, prevented her from seeing her

mother in front of her car (or other potential victims in the restaurant) and thus from appreciating the nature and quality (the physical consequences) of her act.

[97] Dr. Syed also concluded that Ms. Elder understood the moral and legal wrongness of her act. His conclusion in that regard was founded on her statement, made at her first interview with Dr. Syed a few weeks after the Events, that, “It’s always wrong to hurt someone”.

[98] Dr. Syed also referenced the fact that immediately after Ms. Elder crashed her vehicle into the KFC she tried to get out and later in the assessment interview said she did so because she wanted to see if anyone needed help. This, Dr. Syed noted, indicates a recognition that she had caused harm. Dr. Syed wrote:

Even if Ms. Elder was experiencing a psychosis at the time of the alleged offence, it is unlikely that she lacked the capacity to know the wrongfulness of her actions while committing the offence and then regained it immediately afterwards. Therefore . . . Ms. Elder likely had the ability to understand the moral and legal wrongness of her action despite her mental disorders.

[99] Dr. Syed concluded that Ms. Elder does not meet the criteria for exemption from criminal responsibility under *CC* s 16(1).

***Dr. Andrew Haag***

[100] Dr. Haag is a psychologist in the Forensic Assessment Unit of Alberta Health Services. In that capacity he was involved in the evaluation of Ms. Elder’s criminal responsibility at the time of the Events.

[101] Dr. Haag’s report is dated September 27, 2018. Like Dr. Syed’s report it presents exhaustive detail regarding Ms. Elder’s psychosocial history, relationship history, employment, and psychiatric history. The report then carefully reviews the information which Dr. Haag received concerning the current criminal charges against Ms. Elder including police file information, witness statements, and what Ms. Elder told Dr. Haag in the course of several interviews.

[102] As in her interviews with Dr. Syed, Ms. Elder initially reported that she did not remember hearing or seeing anything from the time she got into her car after leaving her mother next to the KFC building until she found herself in the back seat of a police car. But in their final interview, which was about nine weeks after the Events, Ms. Elder reported similar detail as she had reported to Dr. Syed in her later interviews with him. Dr. Haag wrote: [I point out, to prevent confusion, that Dr. Haag wrote his report in the third person.]

During the 2018/09/27 clinical interview, Ms. Elder noted that she went to the KFC with her RAV4. Ms. Elder noted that after getting her food from the KFC, Ms. Elder started to hear voices when she was in her RAV4 (in contrast to Ms. Elder earlier stating to Dr. Haag that she could not remember what happened after getting into her RAV4). Ms. Elder noted that she heard a male voice saying “mom” repeatedly. Ms. Elder noted that the voice then said, “don’t let her hurt your mom anymore.” When probed who “her” referred to, Ms. Elder noted that “her” referred to a woman with “pepper hair.” Ms. Elder noted that she did not know this female. Ms. Elder stated that she then screamed, “what are you fucking talking about. Just leave me alone.” Ms. Elder noted that the voice then said, “look ahead . . .” and indicated that the peppered hair female was ahead of the

vehicle. Ms. Elder then stated, “she’s not going to hurt my mom.” Ms. Elder then placed her foot on the accelerator of her vehicle. Ms. Elder stated that she did not see Katherine in front of her; rather, Ms. Elder saw the “pepper haired” female. Ms. Elder noted that she wanted to hit the woman with the pepper hair so she would not hurt Katherine. Ms. Elder noted that she did not remember backing up or accelerating a second time.

. . . Ms. Elder then noted that the only thing that Ms. Elder could see when in Ms. Elder’s vehicle was just the female with pepper hair; no one else or nothing else. . . Ms. Elder stated that she did not know where Katherine was. Ms. Elder noted that when she left KFC she told Katherine to wait. Ms. Elder then stated that she was not sure if Katherine waited inside or outside the restaurant. Ms. Elder insisted that voices told Ms. Elder that the peppered hair female was going to hurt Katherine.

. . . [A]fter propelling the vehicle into the pepper haired female and into the KFC, Ms. Elder attempted to get out of the driver’s side door of her RAV4. However, the RAV4 door was noted to have been obstructed in some manner by a wall. Ms. Elder noted that she was attempting to leave the vehicle to see if someone was hurt. Ms. Elder then stated, “I thought someone must be hurt. I wanted to help this person.”

. . .

Ms. Elder was asked if it was wrong to hurt the victim (either Katherine or the female with pepper hair.) Ms. Elder initially answered the question indirectly. Ms. Elder stated, “I don’t believe in violence. I don’t believe in hurting people. I don’t [even] like to see an animal hurt.” Ms. Elder then noted that “of course it would be wrong if I hit somebody.”

[103] Dr. Haag reported that in this final interview, Ms. Elder told him of several other occasions in 2018 prior to the Events when she heard voices. She told him of eight instances prior to the Events and two instances following the Events. Dr. Haag noted an absence of corroborating information regarding the information Ms. Elder gave him in this regard.

[104] Dr. Haag’s diagnosis of Ms. Elder’s mental illness was:

- Persistent Depressive Disorder with occasional psychotic features
- Schizoid Personality Disorder
- Paranoid Personality Disorder

[105] He considered Ms. Elder’s:

. . . claims of auditory hallucinations to be unsubstantiated and non-credible. In other words, Dr. Haag was not convinced that the evidence, in its totality, supported Ms. Elder’s claims of experiencing auditory hallucinations or referential delusions.”

[106] As to Ms. Elder’s appreciation of the nature and quality of her actions, Dr. Haag concluded:

It is Dr. Haag's opinion that there was no evidence considered for this report to suggest that Ms. Elder failed to appreciate the nature and quality of Ms. Elder's actions at the time of any of Ms. Elder's alleged offences.

[107] As to her ability to recognize that her actions were wrong, Dr. Haag reviewed evidence that supported the conclusion that Ms. Elder was angry with her mother at the time of the Events. This evidence was:

- Ms. Elder had been asked in a clinical interview if she and her mother had argued and she said, "I'm sure we had one argument" in the days before the Events. Ms. Elder also said that it would have been about something "stupid" and that she did not remember what it had been about.
- The police file indicated that after she had been taken to the hospital with severe injuries, Ms. Triplett told police that she and Ms. Elder had gotten into an argument while they were eating at the restaurant. [The Agreed Statement of Facts in paragraph 2 states that Ms. Elder and Ms. Triplett did not eat at the restaurant. "They received their order and took it outside." The Agreed Statement of Facts in paragraph 12 says that at the hospital Ms. Triplett told police that she remembered eating and arguing with her daughter. Her memory of eating together in the KFC was inaccurate – they had not eaten.]
- The police officer who interviewed Ms. Elder after the Events noted that Ms. Elder looked angry, not sad.
- A witness at the scene who held Ms. Elder in her vehicle reported that he thought she looked, "pissed off".
- Ms. Elder was under a lot of stress in the context of caring for Ms. Triplett.

[108] Further, Dr. Haag inferred from the fact that Ms. Elder reported that she wanted to get out of her car when it was lodged partially inside the KFC because she wanted to help whoever was hurt, that she was aware of and could remember the act of driving into someone.

[109] Dr. Haag again noted that there was no third-party corroboration for Ms. Elder's claim that she had been hearing voices in the months preceding the Events.

[110] Dr. Haag noted that even if Ms. Elder's report of an auditory hallucination was true, she did not report that the voice told her Ms. Triplett was in imminent danger or that "potentially lethal action was required to stop Katherine from being hurt." This, Dr. Haag observed, made it difficult to conclude that hearing the voice "would have led to a moral justification for potentially lethal action."

[111] Finally, Dr. Haag noted that Ms. Elder had not given a "psychotic explanation/rational" for reversing her vehicle and accelerating a second time towards Ms. Triplett.

[112] Dr. Haag concluded that "there was no information reviewed that suggested Ms. Elder lacked the capacity to understand that her actions were morally wrong". Indeed, he observed that her answer when, several weeks after the Events, she was asked specifically whether she thought what she had done was wrong, was, "Of course it would be wrong if I hit somebody."

[113] Dr. Haag expressed his final conclusion as follows:

Globally, it is Dr. Haag's clinical opinion that, in the balance of probabilities, Ms. Elder suffered from a disease of the mind at the time of the alleged offences. However, the evidence also suggested to Dr. Haag that Ms. Elder was aware of (1) the nature and quality of her actions and (2) Ms. Elder was aware (and had the capacity to know) that her actions at the time of the alleged offence were morally wrong. Given the above, it is Dr. Haag's opinion that Ms. Elder should not be afforded a s. 16 defense for any of the current alleged criminal charges.

***Dr. Niti Bhatia***

[114] Dr. Bhatia is a forensic psychiatrist with Forensic Assessment and Community Services, which is operated by Alberta Health Services.

[115] Dr. Bhatia saw Ms. Elder initially at the Edmonton Remand Centre within days of the Events and concluded that Ms. Elder was fit to stand trial, but recommended that Ms. Elder be admitted to Alberta Hospital Edmonton for an assessment of her criminal responsibility.

[116] Dr. Bhatia's brief report as to her meeting with Ms. Elder at the ERC, which is dated July 25, 2018, reports that Ms. Elder did not "elaborate on the commission of the index offences or her thought process at the material time." She said she had no recall. However, "[s]he denied experiencing auditory or visual hallucinations and neither did she voice any delusions."

[117] In her fitness assessment report, Dr. Bhatia's explained her recommendation for a criminal responsibility assessment on the basis of Ms. Elder's ". . . present state of acute mental health concerns, possible underlying psychosis and the documented history of such" as well as the seriousness of the offences charged.

[118] Dr. Bhatia was not involved in the criminal responsibility assessment at Alberta Hospital that followed. After Ms. Elder was released from Alberta Hospital Edmonton, she attended on Dr. Bhatia for treatment at FACS for about a year and a half. Dr. Bhatia reviewed the criminal responsibility assessment reports written by Dr. Syed and Dr. Haag. She also consulted with Dr. Dewart who was Ms. Elder's treating psychiatrist for 20 years prior to the Events.

[119] Dr. Bhatia had suspected that Ms. Elder was psychotic at the time of the Events when she saw her at the ERC. Dr. Dewart told her that he had also suspected that Ms. Elder was psychotic when he was treating her. Dr. Bhatia was concerned about the conclusions that had been reached in the criminal responsibility assessment at Alberta Hospital Edmonton, as set out in the reports of Dr. Syed and Dr. Haag. She contacted Ms. Elder's counsel to advise him of her concern.

[120] Dr. Bhatia prepared a report on the subject of Ms. Elder's criminal responsibility at the time of the Events. Her report is dated August 20, 2019.

[121] In her report she set out what Ms. Elder told her about the Events:

Pertaining to the commission of the index offences. Ms. Elder said that on the day of the accident, she "parked across from the KFC . . . we went inside and ordered chicken, drinks and I think fries and gravy. Then I walked out to the RAV4 and I didn't see anyone or hear anything. Then I got into the car started hearing the male voice of the dominant male and other voices in the background, but I couldn't make out what they were saying. Then the male voice said that the peppered haired woman was going to hurt my mom and the voice kept saying (that) over and over." She described the voice saying that, "very loudly and

aggressively.” She was scared and believed it, she thought “why would he say it, and I said in my angry voice no one is going to hurt my mom.” Her mother was just outside “she was waiting for me to pick her up.” She added that she did not see her mother when she drove into the KFC to stop the pepper haired lady from harming her mother. Apparently, the voice said other things to her which she was not comfortable divulging. Ms. Elder stated she was seeing the pepper haired woman from the time the voice told her to hit her. This woman did not have a face “it was blank.” She said “after I hit her, I tried getting out of the car but couldn’t, the door was against the wall, I moved to the passenger seat and there was a male there I think, and he said I wasn’t going anywhere. The police then handcuffed me.” When sitting in the cruiser she kept repeating to herself “no more . . . no more” meaning the pepper haired woman was not going to hurt her mother anymore.

[122] In her report Dr. Bhatia reviewed Ms. Elder’s psychiatric history. She noted that the history included instances of auditory hallucinations going back many years. Ms. Elder also reported seeing a bright flashing light of unknown origin outside her residence. Dr. Bhatia prescribed an oral anti-psychotic medication which reduced the frequency of Ms. Elder hearing voices and seeing lights. Subsequently Dr. Bhatia prescribed Invega Sustenna the injection of which made the auditory and visual hallucinations disappear completely.

[123] Ms. Elder told Dr. Bhatia that she had concealed the hallucinations she experienced from Dr. Dewart because Dr. Dewart reminded her of her father whom she disliked immensely and because she resented the fact that Dr. Dewart had treated her with electro convulsive therapy. The ECT had caused her to lose several years of her life – it had severely affected her memory. Though Dr. Dewart had suspected that she suffered from psychosis and had prescribed anti-psychotics, she had not taken them.

[124] Ms. Elder also told Dr. Bhatia that she had not told other doctors of her hallucinations because she was embarrassed and was afraid of the associated stigma.

[125] Dr. Bhatia set out her diagnostic conclusions regarding Ms. Elder as follows:

In my clinical understanding, Ms. Elder suffers from a psychotic disorder in association with depression. She may suffer from a schizoaffective disorder of the depressive type as she was observed to be psychotic in the absence of depression by the writer. This is typical for schizoaffective disorder rather than Depression associated with psychosis. Be that as it may, the treatment of both disorders is similar. She had been psychotic with both paranoid delusions and hallucinations since her early twenties. These intensified after her father’s demise when she was in her mid-thirties. She also suffered from depression the treatment of which she was accepting of.

[126] As to criminal responsibility, Dr. Bhatia accepted that Ms. Elder was acutely psychotic at the time of the Events. What Ms. Elder told her was consistent with Dr. Bhatia’s own observations of Ms. Elder a few days after the Events at the ERC, the fact that she had features of psychosis when hospitalized in May 2018, her family’s observation of her psychotic state in February 2018, and her previous treating psychiatrist’s suspicions. Dr. Bhatia concluded:

Ms. Elder's account of experiencing auditory and visual hallucinations causing the commission of the index offences dovetails well with her history and presentation. Subject was trying to prevent her mother from being harmed by the "pepper haired" lady who she tried to run over. In the writer's opinion, during the commission of the index act, subject was acutely psychotic and unable to appreciate the nature and quality of her actions or know their wrongfulness, both legal and moral. Thus, the defense of Not Criminally Responsible is applicable in this case.

[127] The final paragraph of Dr. Bhatia's report is, in my view, of particular significance:

Other pointers towards her psychotic state are firstly the bizarre nature of the offence. The act of driving into the KFC was not only inexplicably bizarre but also contrary to the subject's relationship with her mother which was described as close. There had never been any acts of aggression in the relationship and subject was providing care for her ailing mother which undermines the likelihood of violence towards the victim. Further, she was observed to be psychotic by her family in the preceding months.

***Dr. Ann Marie Dewhurst***

[128] Dr. Dewhurst saw Ms. Elder on two occasions in June 2020 at the request of Ms. Elder's counsel. She administered psychological tests on Ms. Elder's second visit. Her report is dated September 3, 2020.

[129] In her report Dr. Dewhurst summarizes the information she received from Ms. Elder with regard to her family history, education and employment, mental and physical health, and the Events.

[130] As to the results of the psychological tests which Dr. Dewhurst administered, she reported:

- That a test designed to measure the likelihood that Ms. Elder would engage in deliberate impression management or in self-deception despite general attempts to be honest, indicated that Ms. Elder's responses in the tests administered were likely to be valid without attempts at impression management or self-enhancement.
- That in a test designed to provide information about a person's personality and in particular their coping strategies and self-perceptions, while Ms. Elder's profile was generally valid, "... her response pattern suggested the possibility that Ms. Elder exaggerated her complaints and problems and as a result the profile may overrepresent the extent and degree of significant findings."

The test indicated that "... [i]t is likely that Ms. Elder experiences significant thinking and concentration problems accompanied by prominent distress and dissatisfaction with life. ... Ms. Elder endorsed items that suggest she experiences unusual perceptual or sensory events (including full-blown hallucinations) and/or unusual ideas that may include magical thinking or delusional beliefs. ... [Ms. Elder] likely questions and mistrusts the motives of those around her, despite the nature or history of her relationships with them ...

- That in a test designed to measure “neuropsychological symptoms, affective disturbance, and test-taking attitudes,” Ms. Elder “produced a valid profile with a slightly elevated defensiveness scale . . . typical of individuals who are rigidly inflexible or moralistic in attitude or who have severe cognitive impairment.”
- That in a test which measures “immediate memory, visuospatial/constructional skills, language, attention, and delayed memory”, Ms. Elder’s responses indicated that she experiences significant difficulties in both immediate and delayed memory functions, and that her ability to sustain attention was impaired.

[131] In discussing the results of a test designed to assess the risk for future violence, Dr. Dewhurst observed:

There are several relevant clinically related risk factors that were likely influencing [Ms. Elder’s] behaviour at the time of the incident (i.e. lack of insight, experiencing significant psychotic episodes and limited engagement in treatment for her disorder). At the same time, she expressed no specific intent to harm her mother or any thoughts of harming others.

...

As she departed from normal routines, Ms. Elder appears to have experienced increased difficulty managing her mental health. While Ms. Elder could describe her mental health issues, she appears to have limited insight into her illness. She acknowledged the long-standing auditory hallucinations were distressing. She coped with the voices by doing what they said to do, and this sometimes had her engage in distressing and painful behaviours, such as tying herself up. While she spoke to others about being followed, she did not identify her increased paranoia as part of her mental health problems escalating. She did not talk to anyone about the frequency and intensity of these intrusive hallucinations, and about how her experiences were changing under the new demands of caring for her mother. Ms. Elder reported that she heard one of her voices telling her that the “peppered haired woman” was going to hurt her mother and she believed that voice and started her car in motion. It appears the lack of sleep, disruption of routine, and increased interpersonal contact, may have caused Ms. Elder’s psychosis to deepen and she responded protectively but aggressively in her confusion. She expressed being confused about what had occurred during the incident until she was informed by the police about who had been hit by her car.

[132] In her report, Dr. Dewhurst expressed no opinion as to whether the elements required to be proved in order for the Court to find that Ms. Elder was not criminally responsible were established.

[133] In her testimony, Dr. Dewhurst stated that she accepted that Ms. Elder believed that she had experienced a hallucination at the time of the Events. She testified that given the results of Ms. Elder’s testing, she would expect Ms. Elder’s tellings of her story to be inconsistent – as indeed they were. If left alone Ms. Elder can think through a matter and find the answer – but in a demand setting she might “confabulate”, that is, say what she believes her interlocutor wants to hear – or say nothing.

***Have the elements of CC s. 16 been proved?***

[134] In my assessment, Ms. Elder believed the content of her testimony at trial to be true. However, the reliability of her testimony as to the detail of what occurred during the Events is low. I think that is understandable. As she testified in Court, and as she related the detail of the Events to the medical professionals, Ms. Elder was a rational and intelligent person attempting to provide a logical explanation for conduct in which she engaged at a time when her mental disorder was causing her mind not to operate logically – a difficult, if not impossible, task. The detail of her account is therefore understandably inconsistent within each telling and from telling to telling. But beyond the detail – her evidence that at the time of the Events she was experiencing and reacting to a hallucination is, in my view, reliable. I believe that aspect of her evidence.

[135] I also accept Ms. Elder's evidence that there had been no dispute or argument between her and her mother that might have generated anger or a revengeful response from Ms. Elder. As noted, Dr. Haag concluded otherwise (see para. [107] above). In my view, the matters he relied on to reach that conclusion are extremely weak as proof that there had been an argument in the face of Ms. Elder's denial that there had been one.

[136] At the risk of over-simplifying, I understand Dr. Syed and Dr. Haag to have concluded that Ms. Elder probably did not experience a hallucination at the time of the Events because:

- a. her story changed over the course of the interviews Dr. Syed and Dr. Haag had with Ms. Elder. It was not until the late interviews that she talked about the voice telling her that the pepper haired woman would hurt her mother, and
- b. psychosis is not a feature of the most likely diagnoses Dr. Syed and Dr. Haag believe are appropriate for Ms. Elder's mental disorder.

[137] I question the reasonableness of these reasons for rejecting Ms. Elder's account that she experienced a hallucination at the relevant time.

[138] Both Dr. Syed and Dr. Haag found that it is a feature of Ms. Elder's mental disorder that she has serious difficulty trusting others – especially men. Also, Ms. Elder's past experience with treatment for mental illness included electro convulsive therapy which she believed had caused her serious harm and which she wished to avoid. Given these circumstances, that she held back the most significant aspect of her account of what occurred when she got in her car at the KFC, that it involved a hallucination, until later interviews, seems consistent with her not being willing to share that detail until she had built up a certain level of trust with Dr. Syed and Dr. Haag.

[139] This explanation seems to me more likely than that she invented the hallucination aspect of her account in order to improve the likelihood that Dr. Syed and Dr. Haag would conclude that she was not criminally responsible. The latter explanation ascribes to Ms. Elder a significantly greater understanding of the medical and legal significance of a hallucination than is likely in my view.

[140] Further, Ms. Elder is an intelligent person. In my view, it is likely that she would appreciate that such obvious changes to her story over a short period of time would raise doubt as to her credibility. This argues against her having given greater and inconsistent detail in later accounts with the intention and expectation that anyone would be misled. It seems to me more

likely that she did so, despite this concern, because she believed what she said in the later accounts was true.

[141] I note that in several aspects of their assessments, Dr. Syed and Dr. Haag rely on the absence of a logical explanation for what Ms. Elder did. I am not convinced that it is appropriate to look for logic, or to discredit Ms. Elder because her accounts of the Events given when not experiencing a hallucination do not logically explain what happened during the hallucination.

[142] Further, among Ms. Elder's personal characteristics, as I perceive them, is that she is highly principled. She left the religious community for reasons of principle. She is offended when blamed for something that is clearly not her fault. In my view, being a highly principled person, it is unlikely she would invent the hallucination aspect of her account. More likely than not, she believed the hallucination aspect of her account to be true. More likely than not, it is true.

[143] As to psychotic hallucination not being a usual feature of the mental illnesses Dr. Syed and Dr. Haag diagnosed, I find it difficult to accept that route to the conclusion that Ms. Elder did not experience a hallucination. It appears that diagnosis of mental illness is far from an exact science. I note that the three mental health experts in this case, assessing essentially the same information, each gave different diagnoses of Ms. Elder's mental illness.

[144] In my view, Dr. Bhatia's conclusion that there probably was a hallucination at the relevant moment is reasonable. It is founded on Dr. Bhatia's own observation of Ms. Elder within days of the Events at the ERC and her suspicion on that occasion that Ms. Elder was psychotic; on the suspicion of Dr. Dewart, who was Ms. Elder's psychiatrist for 20 years, that Ms. Elder suffered from an undiagnosed psychosis; on Ms. Elder's history of having experienced auditory hallucinations for many years and in the recent past; and, most significantly, on the exceedingly bizarre nature of Ms. Elder's conduct in driving her vehicle into a person and a building, reversing and doing so a second time.

[145] I find Dr. Bhatia's reasoning convincing. I rely on it and Ms. Elder's evidence in concluding that Ms. Elder probably experienced the hallucination she described in her evidence when she got into her car at the KFC.

[146] As to the second and third elements of *CC* s. 16 specifically, in my view, more likely than not, Ms. Elder did not appreciate the nature and quality of her actions which resulted in the charges.

[147] I accept that Ms. Elder probably appreciated the nature of the act of stepping on the accelerator, the act of driving forward, the act of not braking, the act of reversing, and the act of driving forward a second time.

[148] However, in my view, it is unlikely that, in the moment, she appreciated the quality of those acts in the context in which she engaged in them. In my view, it is unlikely that, in the moment, she appreciated that her actions would harm her mother. I note that causing harm to her mother, Ms. Triplett, is a common element of the three offences with which Ms. Elder is charged.

[149] My reason for so concluding is that Ms. Elder's conduct was so fundamentally bizarre. Even if she and her mother had argued, which the evidence does not establish, for Ms. Elder to drive her car into her mother, through the wall and window of the KFC building which she had just exited and which she knew had several other people in it, and to thereby endanger several

lives including her own and cause very significant property damage to the building and her own car, is an exceedingly disproportionate reaction to any real stimulus that could possibly have existed. It is not on any scale of likely reactions to anything. I cannot believe that Ms. Elder appreciated the quality of those actions. I find that she probably did not. I find that, in the moment, given the hallucination she was probably experiencing, she was probably incapable of doing so.

[150] If I am wrong in that conclusion, in my view, for essentially the same reason, I conclude that Ms. Elder probably did not appreciate that her actions were morally wrong.

[151] Dr. Syed and Dr. Haag have concluded otherwise. It appears to me that they have done so largely on the basis of what Ms. Elder told them several weeks after the Events – that she said, “It’s always wrong to hurt someone.” and that she said that, when her vehicle came to a stop lodged inside the KFC, she wanted to get out to see if anyone needed help.

[152] In my view, Dr. Syed and Dr. Haag may have given inappropriate weight to what Ms. Elder said long after the Events and when not affected a hallucination. In my view, what Ms. Elder said in her interviews with Dr. Syed and Dr. Haag on this point may have little significance in determining what she appreciated at the time she actually did the act when, as I have found, she was probably experiencing a hallucination.

[153] Again, Ms. Elder’s acts were so fundamentally bizarre that it is difficult to conceive that at the time she did them she recognized that they were wrong. She is a person who, though prone to anger, is not historically prone to extremely bizarre conduct in reaction to anger. And, again, she is a person who normally is highly principled. Her conduct here is so far off reasonable conduct for anyone, and so very far off reasonable conduct for Ms. Elder herself, that in my view, it is likely that at the relevant moment her mind failed her – she did not process the nature and quality of her actions or their wrongfulness. In that moment, in my view, she was probably incapable of doing so.

[154] I am satisfied that the evidence establishes on a balance of probabilities that at the time she committed the acts which gave rise to the offences charged, Ms. Elder was incapable of appreciating their nature and quality and that she was incapable of appreciating that they were morally wrong. I am satisfied that the requirements of *CC* s. 16 have been proved on a balance of probabilities.

[155] Given the Crown’s invitation to do so (see para. [4] above), I find Ms. Elder not guilty of Count 1 of the Indictment, attempted murder. I direct that an acquittal be entered in respect of that Count.

[156] I find that Ms. Elder is not criminally responsible for the offences charged in Counts 2 and 3 of the Indictment, by reason of mental disorder.

Heard September 26 to October 2, 2020.

**Dated** at the City of Edmonton, Alberta this 3<sup>rd</sup> day of November, 2020.

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**B.R. Burrows**  
**J.C.Q.B.A.**

**Appearances:**

Anders Quist  
for the Crown  
Brian Hurley  
for the Accused

## **Appendix – Agreed Statement of Facts**

[1] On July 18<sup>th</sup>, 2019 the accused, Donna Colleen Elder (aged 60 years) and her mother, Katherine Triplett (aged 86 years) attended together at a Kentucky Fried Chicken and Taco Bell restaurant at the Meadowlark Shopping Centre, at 8730-156 Street, Edmonton, Alberta. They arrived at the KFC/Taco Bell at shortly after 6:00 p.m. A number of staff and other patrons were present in the restaurant.

[2] The Accused and Ms. Triplett went inside and placed an order for take out at the fount counter. Ms. Triplett appeared uneasy to the cashier who took their order. They received their order and took it outside.

[3] Ms. Triplett stood on the sidewalk adjacent to the restaurant and in front of a large window. It was hot, sunny weather and clear road conditions. The time was about 6:15 PM.

[4] The Accused got into her motor vehicle, which was a Toyota RAV 4 SUV parked a short distance away. She drove it towards the restaurant.

[5] The accused drove straight at Ms. Triplet and struck her, knocking her through the window and into the restaurant. The RAV 4 also came through the window into a seating booth behind it, shattering all the window glass and destroying the wall below the window. The vehicle's Crash Data Retrieval unit indicated the accelerator was "greatly" depressed before the collision.

[6] Ms. Triplett was thrown onto the booth's table and slid off its far edge onto the floor. The table and double bench seat were broken and pushed forward by the RAV 4. Fortunately, no one was occupying the booth at the time.

[7] The Accused put the RAV 4 into reverse and backed out of the broken window. Then she put the vehicle into drive and drove a second time through the window into the restaurant, pinning Ms. Triplett against the broken furniture. Witnesses heard a loud engine acceleration sound before the RAV 4 entered the second time.

[8] Ms. Triplett suffered multiple compound fractures to her left lower leg and crushing of the soft tissues. Her leg was nearly severed. She lost approximately one liter of blood at the scene. Her pelvis was fractured in multiple locations and there was one fracture to her lumbar spine. Her nose and adjacent facial bone were fractured. She had a laceration to her chin and others to her arms and right leg. Her left elbow was injured, including a possible un-displaced fracture to the ulna bone.

[9] Bertha and Mary French were the first bystanders to come to Ms. Triplett's aid. They are a mother and daughter who were seated at the adjacent booth. Ms. Triplett stated to them, "I don't know why my daughter Donna would try to kill me." At times she screamed, complaining of pain and crying "Help me!" Other people approaching noted these first two bystanders looked pale and faint. They took over attending to Ms. Triplett. Ms. Triplett gave her name and asked bystanders to call her son Steven Forester in St. Albert.

[10] Ms. Tara Mititsala and her fiancé, Mr. Aaron Pops, attempted to console Ms. Triplett. Ms. Triplett said to them, "I don't know why she tried to kill me". She also wondered "why her

daughter had done this to her". When Mr. Pops suggested that they pray, Ms. Triplett prayed for Jesus to help her daughter.

[11] When police arrived on scene and asked Ms. Triplett if she could remember where she was eating, she said she did not. She said she did recall eating with her daughter, although they had not eaten yet.

[12] Later at the hospital, Cst. Fried asked Ms. Triplett about the event. She said she did not remember where she was eating, she remembered that she was eating with her daughter. She remembered arguing with her daughter. At that point Ms. Triplett stopped answering any further questions the officer had for her. Cst. Fried was aware that Ms. Triplett had been given fentanyl at the hospital for her pain. He was unaware of any medication she had received from first responders. Cst. Fried was unaware of any pre-existing mental or physical conditions Ms. Triplett may have had.

[13] During hospital care the same day efforts were made to save Ms. Triplett's left lower leg and foot. However, after three days it was determined that it could not be saved and her left leg was amputated at the knee. Ms. Triplett required an invasive procedure to repair a damaged artery in her pelvic area. Her already poor respiratory health became worse during her treatment in hospital due to her immobility and the requirement of a feeding tube.

[14] At the scene, after the second collision the RAV 4 came to rest partially inside the restaurant with the driver's side door pinned shut by the window frame it had come through. See attached photos in Appendix A.

[15] Devon Findley arrived on scene and noticed the Accused move over to the passenger side of her RAV 4. She opened the door and began to exit. Before the Accused could step outside the vehicle Mr. Findley rushed up and pushed the Accused back inside the vehicle saying, "Get the fuck inside, bitch." She did not resist in any significant way. He closed the door and held it shut. All the doors and windows of the RAV 4 were shut. The Accused appeared uninjured and was later assessed at the scene as uninjured.

[16] The Accused began to scream a name that sounded to Mr. Findlay like, "Jessica! Jessica!" The Accused rocked forwards and backwards in her seat, bending at the waist. She may have bumped the back of her head on the headrest a couple of times. She did not look at Findlay, but kept on rocking and screaming. At one point she put one foot up on the dash and bounced her leg in a nervous fashion.

[17] Ms. Tara Mititsala arrived on scene shortly after Mr. Finlay. She observed Ms. Elder inside the motor vehicle and noted her facial expression appeared angry with a tightening mouth and squinting eyes.

[18] Mr. Jeff Faron did not testify at the Preliminary Inquiry but wrote a statement to police. He indicated that he and his wife ate dinner at the Meadowlark KFC/Taco Bell and in fact sat at the booth where the vehicle came to rest. When he and his wife were leaving the restaurant, he held the door for two ladies that fit the description of Ms. Elder and Ms. Triplett. When he held the door for them he noted that they seemed "in their own world". He noted that his vehicle appeared in the background of the video of the incident shown in the local news. He described the two women as quiet with no noticeable arguing or dispute while they were in the restaurant.

[19] Mr. Findlay remained at the vehicle door until Cst. Marshman attended. Cst. Marshman was the first Edmonton Police Service member to deal with Ms. Elder. He noted that the

Accused was staring blankly through the windshield. She was seated in the passenger seat with both feet on the floor.

[20] Edmonton fire fighter, Mr. Kyle Hardy, entered the backseat of the RAV 4 and asked the Accused a series of questions about her level of consciousness and possible injuries. He indicated that the patient stared at the same spot and stated nothing until the patient said, "It doesn't matter." Mr. Hardy did not testify at the Preliminary Inquiry but provided a statement to police.

[21] Cst. Marshman opened the passenger door and asked if the Accused was all right but she did not respond. He told her she was under arrest for assault with a weapon, took her out of the vehicle, and placed her in handcuffs. She did not react verbally but physically cooperated with this, getting out of the vehicle on her own power. Her eyes appeared watery, consistent with tears. He asked if she had any weapons and she told him about a knife in her pocket, which he located and took away. He placed her in the back of his police vehicle.

[22] After assessing the scene and Ms. Triplett, Cst. Marshman returned to the Accused in his police vehicle and told her she was under arrest for aggravated assault and that she had the right to contact a lawyer, with the standard recitation. When he asked if she understood the Accused said, "Yes." When he asked if she wanted to call a lawyer she said she would like her brother to call. When he said she was not obliged to say anything unless she wished to do so, but whatever she said may be given in evidence and asked if she understood she said, "Yeah." The officer believed that by this time the Accused had made eye contact with him.

[23] The Accused was taken out of the police vehicle and assessed by Tyler Verban, an Edmonton firefighter, who found her unusually unresponsive. He noted she was not responding normally. She stared downward instead of making eye contact. She did not respond to some of his questions and answered others about any physical injury or problem she might have had by merely stating, "No." She refused to squeeze his hand upon request.

[24] While on route to Edmonton Police Service's West Division office in a police vehicle driven by Cst. Marshman the Accused quietly repeated the words, "no more, no more" for some time. When Cst. Marshman asked her if she felt suicidal and what she meant by "No more", the Accused denied she was suicidal and said, "It's for me."

[25] When searched more thoroughly at EPS West Division office by a female officer, the Accused was found to have about \$1300.00 in cash and some pills of more than one size.

[26] Throughout her dealings with police, the Accused tended to be docile and at times unresponsive. At no time did she present in any way that caused police officers to wonder if she was not completely sober. The Accused appeared to use the private telephone room with an ordinary level of ability. The police requested a mental health exam be performed on Ms. Elder.

[27] That night the Accused was interviewed by police. The audio recording of her being taken from a cell to an interview room and the video recording of her interview are both included in a computer CD as Appendix B.

[28] Attached as Appendix C is the Preliminary Inquiry transcript in this matter.