



Dr. Dorle Kneifel has recovered remarkably after a tenant viciously assaulted her at home; now she's suing him after he was found not criminally responsible on account of a mental disorder. Angela Fama photo.

Crime and injustice

BY ROBERTA STALEY

“Dorle, you’re supposed to be dead.”

Stephen Lowry had left Vancouver physician Dorle Kneifel limp and lifeless in the bedroom after bashing her repeatedly about the head with a clock radio, then suffocating her with his hand.

During the attack, when the slight Kneifel realized that her struggles against the tall, lean young athlete—a tenant in her Dunbar home—were futile, she had played dead, even during the ensuing sexual assault. Lowry then left the bedroom. Kneifel waited, trying to quiet the pounding of her heart and the desperate inhalation of air into her lungs.

Silence.

The world outside was waking up to the muted gold of an April Sunday morning.

Still, silent.

Unravelling herself from the twist of bed sheets, Kneifel picked herself up off the bedroom floor, pulled down the black T-shirt she used as nightgown, and peeked out the door. At the same time, Lowry, who had exited the house, returned through the front entrance.

The timing was straight out of a Hollywood thriller. Except this was real-life horror.

Then Lowry uttered his chilling words.

Kneifel sprinted out of the bedroom and into the kitchen, then spun left into the dining room before Lowry caught her. “I’m not a screamer, but I made the conscious decision to scream,” Kneifel says today during an interview in that same dining room.

Lowry snatched a potted plant from a side table and smashed it over Kneifel’s head. The pair fell to the floor. Lowry, a 24-year-old former national junior cross-country ski team member, straddled the 48-year-old Kneifel. He grabbed a rock on the side table that was part of a display of treasured mementos brought to Vancouver from Kneifel’s wilderness property in northern British Columbia. “It was a good-sized rock,” Kneifel says, opening her hand, palm up, and spreading her fingers wide to show the stone’s heft. As the rock repeatedly slammed into her skull, Kneifel, unable to protect herself, “waited to have the experience of what the ultimate exiting is like”.

Kneifel pauses, a slight tremor in her voice. “I recollect being bashed over and over again, and I know I am weeping and I know that I am just waiting for my skull to collapse. Time slows down. I knew it was a beautiful sunny morning. I could smell blood and dirt and I knew I was dying.”

Michael Potter, another tenant who slept in a downstairs bedroom, opened his eyes, unsure what had awoken him. Hearing thumping from upstairs, Potter got up to investigate, curious more than anything. He saw Lowry sitting on something on the dining-room hardwood floor, swinging what he thought was his fist.

“Stephen, what are you doing?” Potter demanded.

“I’m going to kill her; she was going to kill us,” Lowry said.

“I’m going to kill you next,” Lowry then told Potter.

At this point, Kneifel says, she was “beyond speech”. Then Lowry’s “weight was lifted and there was a moment when I knew I could run”.

Potter, a 5-5 Edmontonian who had moved to Vancouver to attend culinary school, had been a hockey referee and was skilled at breaking up fights

between burly pugilists. He got behind Lowry, put him in a headlock, and wrenched him off Kneifel. The two men flew backwards into the living room, landing on a couch. Pinioned, Lowry struggled, then slumped in Potter’s arms.

Kneifel stumbled to her feet, fled out the front door to a neighbour’s home, and banged to be let in. When the door opened, she crawled into the living room. “I was in excruciating pain and was whimpering. ‘Somebody please help me; please help me.’” The neighbour, who had known Kneifel for seven years, didn’t recognize the terrified, bloody heap on the floor.

KNEIFEL HAS STRUGGLED to restore not only her health but some semblance of emotional equilibrium ever since the April 6, 2008, attack. However, such a state of grace has been challenged by Lowry’s fate. Lowry, who was charged with aggravated assault, aggravated sexual assault, and attempted murder, was declared not criminally responsible on account of mental disorder (NCRMD) in the Supreme Court of British Columbia on March 19, 2009. A finding of NCRMD means that mens rea, or guilty mind, was absent. Lowry was fully aware of what he was doing during the attack—the act itself, or actus reus, is not disputed—however, he was not aware at the time that what he was doing was wrong.

Lowry’s case was controversial, the psychiatric evidence contradictory. Several expert witnesses suggested that Lowry was “malingering”: feigning psychiatric symptoms to avoid prosecution. In a 70-page decision written after the six-week trial, Justice Wendy Baker addressed the question of malingering, raised due to Lowry’s “bizarre” behaviour during his first police interrogation. “Mr. Lowry is acting as if he was in a very bad film about a person who is communicating with extra-terrestrial beings,” Baker noted. “He groans, moans, sobs, writhes, screams, cries out, points, speaks in different voices, pretends to be seeing things that are not present and to be speaking to beings that are invisible.”

After the initial police interview, Lowry “readily admitted that he was acting”, his behaviour inspired by the science-fiction movie *The Day the Earth Stood Still*, a locally shot production on which he had been employed as an extra. Baker wrote that this attempt at deception did not disprove a pivotal report by defence psychiatrist Elisabeth Zoffmann, who testified that Lowry was psychotic when he tried to pummel Kneifel to death. Zoffmann also diagnosed Lowry as bipolar, a psychiatric disorder that can lead to delusions and hallucinations.

As a result of the NCRMD finding, Lowry was incarcerated at the Forensic Psychiatric Hospital in Port Coquitlam. His future was now in the hands of the British Columbia Review Board, a three-member, independent tribunal that makes decisions and orders pertaining to the liberty of those found NCRMD. On April 27 this year, the board gave a disposition that listed 11 conditions

of Lowry’s treatment and reintegration. This included the order that Lowry have “unescorted or unsupervised access to the community depending upon his mental condition”. The disposition also included the order that “the accused shall have overnight stays in the community for a period not exceeding 28 days for the purpose of assisting in his reintegration into society commencing on or before Oct. 27, 2010.” Such measures would be undertaken at the discretion of the hospital’s director, who is responsible for assessing Lowry’s risk to himself and others.

The thought of Lowry walking the streets fills Kneifel with dread. He is “too dangerous”, Kneifel says, seated in her tiny West Broadway medical office, the glass door and windows hand-painted in delicate pink, blue, green, and yellow flower patterns, the green waiting-room wicker chairs fading from wear. “I need for him to never have the opportunity to do this again,” says Kneifel, who was left with blood on the brain, a crushed cheekbone, facial and head lacerations, injured hands, and massive body bruising following the attack.

It is this fear and feeling of impotence that prompted Kneifel to file a civil suit against Lowry in 2008. It is not unusual for a civil suit to be launched prior to a criminal conviction in order that the victim eventually receive monetary compensation for physical and emotional harm, says Kneifel’s civil lawyer, David Anderson. However, Anderson is not optimistic that a civil suit against Lowry will be successful. It is unlikely, he says, that Lowry will ever have the monetary resources to pay damages should a court decide in Kneifel’s favour. There is also a chance that a civil judge will accept the mens rea finding of the higher criminal court and absolve Lowry. Kneifel accepts these limitations but says she feels that Lowry should be made to bear some responsibility for what he has done. A civil suit—Kneifel plans to activate it once Lowry is walking the streets—is a way, she says, for her to communicate how much damage and hurt he caused, a way to take back some power.

Kneifel tried to obtain compensation from B.C.’s crime victim assistance program, submitting a 27-page report outlining damages and financial hardship following the attack. She was eventually awarded only \$330. Kneifel’s partner, Andreas Demmers (who was out of town at the time of the attack), took a month off work to give her full-time nursing care and clean and repair the house. He received no compensation. Private insurance covered only \$4,000 of the \$15,000 monthly overhead needed to keep Kneifel’s medical office open during her four-and-a-half-month convalescence. She still needs regular chiropractic and craniosacral therapy.

Such suffering is taken into consideration by the B.C. Review Board when it’s determining the fate of NCRMD offenders, says Lyle Hillaby, the board’s agent for the provincial attorney general. Victims and/or their families submit an impact statement to the review board articulating the physical and psychological effects of a crime. However, a victim-impact statement is only one of several factors that the review board must consider, Hillaby says. These factors include the laws that pertain to NCRMD, future risk to the public, and testimony from an offender’s treatment team at the forensic hospital. In Lowry’s case, Hillaby says, he and fellow board members pressed “the hospital to provide the leave if at all possible”.

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Law requires that the review board, established under the Criminal Code of Canada, “err on the side of liberty” rather than “on the side of caution”, Hillaby says. So long as Lowry responds well to psychiatric treatment, his reintegration into society is inevitable, shepherded by laws that are designed not to “criminalize the ill”, Hillaby says.

TWO DECADES AGO, lawmakers had leeway to err on the side of caution when it came to the release of mentally ill criminals. Before 1992, criminals with a mental disorder were found “not guilty by reason of insanity” and could be held in a mental hospital or a prison indefinitely “at the pleasure of the lieutenant-governor”. This was based upon the M’Naghten Rules, named for Daniel M’Naghten, who tried to assassinate English prime minister Robert Peel in 1843 but was found “not guilty by reason of insanity”. In 1991, however, the Supreme Court of Canada declared that the M’Naghten Rules violated sections 7 and 9 of the Canadian Charter of Rights and Freedoms. These sections guarantee the right to life, liberty, and

security and the right not to be arbitrarily detained or imprisoned. Consequently, amendments were made to the Criminal Code pertaining to violent criminals with a mental disorder. Section 672.54 of the code set out three options for those declared NCRMD: absolute discharge, conditional discharge, or a custodial order. Typically, mental illness fluctuates. It can even be temporary, caused, for example, by taking prescription or recreational drugs that spark a one-off psychotic episode. Because of this, a finding of NCRMD can be made even if the accused no longer exhibits signs of a mental illness. It is only necessary that the accused prove that he was mentally disordered when the criminal act occurred for an NCRMD finding to be made. The Criminal Code takes this into account, stating in Section 672.54 (a) that if a person no longer constitutes a “significant threat to the safety of the public” then they must be given an absolute discharge. The public is rarely supportive of a finding of NCRMD, with its emphasis on reintegration, says Stephen Hart, a forensic psychologist at Simon Fraser University. “When there isn’t a criminal conviction, we don’t get the chance to denounce the person, and people feel like they have been robbed

of their chance for justice,” Hart says. Hillaby says that justice for the accused as well as public concerns about safety are well served under the rubric of NCRMD. Inmates at the 188-bed Forensic Psychiatric Hospital, where Lowry is being housed, can look forward to integration, but it is cautious and incremental, Hillaby says. The most dangerously psychotic patients are housed in a maximum-security ward and only allowed out one hour per day in a secure courtyard. As treatment, most commonly in the form of antipsychotic drugs, begins to take effect, the “continuum of liberty” inches forward, Hillaby says. A patients’ first step toward freedom is an outing with two armed guards, then visits from family, and solitary walks around the hospital’s bucolic grounds, possibly followed by bus trips to a specific destination. Ideally, Hillaby says, the individual eventually moves in with family. Once the patient is out of the hospital for 28 days in a row, he or she is considered a nonresident and is expected to visit one of the province’s six outpatient clinics for antipsychotic medication and, if on conditional release, drug and alcohol testing. “The reality is,” Hillaby says, “psychotic people tend to become manageable.” Kneifel questions whether or not

this is applicable to Lowry, given that there were suggestions of “malingering”. Justice Baker, however, wrote in her decision that she was convinced that Lowry was mentally disordered, basing her finding on a litany of events that suggested Lowry had been unravelling for several years prior to the attack. These events included panic attacks, insomnia, paranoia, interminable bouts of crying, suicidal thoughts, inexplicable anger toward his parents, and emergency hospital visits for “acute distress”. Baker noted that Lowry’s mental disintegration was not identified by his Vernon parents, Ron Lowry and naturopath Denise De Monte, who weren’t “psychologically minded”. Rather, Baker wrote, they believed Lowry’s odd behaviours were caused by “overtraining” or being “in a slump”.

BY FEBRUARY 2008, when Lowry moved to Vancouver from Vernon at age 24, his career as a cross-country ski racer was finished. He planned to attend the University of British Columbia and rented a room at Kneifel’s home. As Baker articulated, on April 2, five weeks after Lowry moved to Vancouver and four days before the attack, Kneifel received a phone call in the middle of the night from Lowry’s

father. The senior Lowry told Kneifel that his son had called him in a state of fear and paranoia. He said that his son needed to return home to Vernon and advised Kneifel to call 911. Kneifel said she would take Lowry to hospital herself. However, she was able to calm him down sufficiently to avoid a trip to the emergency ward. The next day, Kneifel called Lowry’s father, who told her he had spoken with his son, who now “sounded okay”. Nonetheless, Kneifel decided to terminate Lowry’s tenancy as soon as Demmers, who was out of town working, returned home on Sunday. That Sunday morning is when Lowry attacked and tried to kill Kneifel. NCRMD cases are especially hard on victims, as the more extreme the state of psychosis of the offender, the more “bizarre their crimes”, says Simon Verdun-Jones, a lawyer and SFU criminology professor. Verdun-Jones applauds the use of victim-impact statements, but he says they should only be “a starting point” for those who have been the target of crime. He points to Vincent Li, the schizophrenic Winnipeg man who stabbed and decapitated Tim McLean on a Greyhound bus in 2008 and was subsequently found NCRMD. The passengers on the bus were profoundly shaken by Li’s actions, says Verdun-Jones, a long-time advocate of victims’ rights. “A couple of the passengers are students who aren’t able to study because of the trauma.”

Verdun-Jones is also a staunch supporter of NCRMD, saying that B.C.’s system of reintegration and psychiatric treatment is one of the best in the world. The system is also set up to ensure that only the truly mentally ill are declared NCRMD; the offender must prove that he or she was deranged when a crime was committed. Verdun-Jones points out that there are only about 70 NCRMD cases a year in B.C. out of an estimated 600,000 criminal and drug charges that are laid annually. However, the criminal-justice system needs to ensure not only that the mentally ill become healthy again but that their victims do as well, Verdun-Jones says. “We should be putting lots of money into services for victims, especially sustained mental-health services. This would go a long way to meeting the concerns that victims and their families have.” Education is key, he adds. Victims need to learn about mental illness and how it “makes people behave the way they do. We should be more sophisticated and recognize that everyone needs services. Trauma is an especially difficult thing to live with—it takes over your life.” Victims can also develop posttraumatic stress disorder, an anxiety disorder most commonly associated with soldiers returning from war. PTSD causes a host of problems, including chronic nightmares, anger, a general inability to cope, depression, and even suicide.

Kneifel’s painful and distressing relationship with the justice system began with her coming, she says, “face to face with evil”. Thanks to the love and support of family, Kneifel today has resumed her position as a respected and contributing member of society. She is slowly regaining her mental and physical health. Kneifel is grateful that she has healed to the point where she can carry on with her medical practice, and she is thankful that her two teenagers (only one of whom was home, in the basement, on the morning of the attack) still have a mother. She is also grateful that she isn’t consumed by bitterness over Lowry and can say, with only slight hesitation, that she “wishes him well”. But there is the nagging sense that the justice system itself let her down, leaving her with no option but to pursue a civil suit against Lowry in order to receive compensation for her suffering—to simply have her suffering acknowledged. Kneifel’s belief in the goodness in the world isn’t diminished, but her trust is. Lowry will always be lurking on the periphery of her thoughts. Has he been released yet? Where is he living? Is the justice system keeping an eye on him? Is he capable of doing this again? “Nobody should go through what I went through,” Kneifel says. ♦



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