

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)

BETWEEN:

HER MAJESTY THE QUEEN

Appellant (on appeal)
(Appellant)

- and -

MEREDITH KATHARINE BOROWIEC

Respondent
(Respondent)

FACTUM OF THE APPELLANT ATTORNEY GENERAL OF ALBERTA

PURSUANT TO RULE 42 OF RULES OF THE SUPREME COURT OF CANADA

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**JULIE MORGAN
JOANNE DARTANA
Counsel for the Appellant**

Justice and Solicitor General
Appeals, Education & Prosecution Policy Branch
3rd Floor, Centrium Place
300, 332 – 6 Avenue S.W.
Calgary, AB T2P 0B2
Phone: (403) 297-6005
Fax: (403) 297-3453
Email: julie.morgan@gov.ab.ca

**ANDREA SERINK
Counsel for the Respondent**

Serink Law Office
Barristers & Solicitors
600, 630 – 6th Avenue SW
Calgary, AB T2P 0S8

Phone: (403) 719-7500
Fax: (403) 713-3669
Email: as@serinklawoffice.ca

**D. LYNNE WATT
Ottawa Agent for the Appellant**

Gowling Lafleur Henderson LLP
Barristers & Solicitors
2600, 160 Elgin Street
Ottawa, ON K1P 1C3

Phone: (613) 233-1781
Fax: (613) 563-9869
Email: lynne.watt@gowlings.com

**MOIRA DILLON
Ottawa Agent for the Respondent**

Supreme Law Group
Barristers & Solicitors
900 – 275 Slater Street
Ottawa, ON K1P 5H9

Phone: (613) 691-1224

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FACTUM OF THE APPELLANT

PART I – OVERVIEW AND FACTS

Overview

1. In Canada, a mother can kill her baby with the *mens rea* required for murder and escape conviction for murder, as long as there is *some* evidence that her mind was disturbed as a result of giving birth or lactation.
2. The concept of a “disturbed mind” has no definition. The result is a lack of guidance for trial judges, juries, experts and law enforcement as to the level of disturbance required. To date, courts have been unable, or unwilling, to define the concept of “mental disturbance”, preferring to leave the matter to Parliament.
3. This case illustrates the need to legally define the mental disturbance. If *any* kind of disturbance, however slight, arising from the stress of giving birth, would meet the requirement for infanticide, a biological mother would almost never be convicted of murder for intentionally killing her child within a year of birth, even though she appreciated the nature and consequences of her actions and knew it was wrong. This is inconsistent with the legislative intention and the courts’ obligation to protect children.
4. Between 2008 and 2010, the Respondent, then 26 to 29 years old, gave birth to three babies inside her home. After giving birth, she wrapped each baby in a towel, placed each baby in a garbage bag, tied the bag, then unceremoniously disposed of each newborn in a garbage dumpster outside her apartment. The first two babies were not recovered. The third baby was fortuitously discovered and rescued from the dumpster shortly after the Respondent had discarded him there.
5. At some point during each pregnancy the Respondent, who did not want children, was aware she was pregnant, but did not want to deal with it. She denied being pregnant and lied to her coworkers, telling them she had cysts removed in order to explain the protruding belly she had, that quickly disappeared. Only after she left her second baby in the dumpster did she admit to a co-worker that she had been pregnant, but even then lied about having miscarried. The

Respondent provided two statements to police. In the second statement she admitted the live birth and discarding of all three babies.

6. The Respondent was charged with two counts of murder in relation to her first two newborns. The focus of the murder trial rested largely upon the Crown disproving infanticide beyond a reasonable doubt. Two psychiatric experts testified. They generally agreed that the Respondent used denial as a coping mechanism in every aspect of her life, and that due to her denial, she was stressed during the birthing process. According to the experts, she described feeling “depersonalized” (disconnected to her body). There was no evidence of a major depressive disorder, mood or anxiety disorder or a psychosis. The experts differed in their conclusions as to whether her mind was “disturbed” when she killed the newborns.

7. While satisfied the Respondent willfully killed two newborns, the Trial Judge found her guilty of infanticide instead of murder. In doing so, he failed to apply any legal standard with respect to what constitutes mental disturbance. In remarking that the abandonment of her children was “absolutely contrary to the nurturing that humankind depends on for its propagation” and that her actions were “bizarre,” he inferred that the act of killing, in and of itself, demonstrated the existence of a mental disturbance sufficient to justify the lesser offence of infanticide. This reasoning is untenable - if the act of killing itself were enough to establish a disturbance, no mother would ever be convicted of murder for intentionally killing her newborn child.

8. To prevent such blanket application of infanticide to all mothers who kill their newborn children regardless of their true moral blameworthiness, there has to be a threshold for mental disturbance. The Appellant submits that the legal definition should be: a woman has a disturbed mind if her psychological health is substantially compromised because she recently gave birth and has a newborn to care for. This test balances the purpose of the section of recognizing a reduced responsibility for some mothers whose disturbed state caused them to kill their infant, with society’s interest in ensuring the protection and well-being of its most vulnerable members.

Facts

The delivery and disposal of Baby #1

9. In late 2007 to early 2008, coworkers noticed that the Respondent (then 26) appeared pregnant.¹

10. The Respondent told police that it was “fairly late” in her first pregnancy that she knew she was pregnant.² She wanted to tell her boyfriend and “wanted to fix everything” but she also didn’t want to upset him or “deal with it.”³ The Respondent did not recall the specific date but remembered feeling guilty about what she did.⁴ She gave the following details:

- a. She was in bed when she gave birth. Her boyfriend was in Fort McMurray. The roommate was asleep and did not wake up.⁵
- b. The baby was face up when she first saw it. She did not know if it was a boy or girl and didn’t want to look at it. She saw that the baby’s head was bald and that “it was a little mouth.” She could not picture the baby during the interview and had no other details. She did not remember the afterbirth or cutting the umbilical cord or what she did with it.⁶
- c. She wrapped the baby in a towel (from the bedroom floor) and put the baby inside a garbage bag while she was still in the house. She tied off the top of the bag and

¹ She had gained weight in her stomach area Murphy-Blain – *Appellant’s Record* “AR” Vol 1 at p 185; Boudreau - AR Vol 2 at pp 4-5; Cook - AR Vol 2 at pp 22-23; Riopel - AR Vol 2 at pp 32-33; Whelly -AR Vol 2 at pp 65-66; the Respondent was tiring easily, leaning and resting a lot and was generally slower per Murphy-Blain - AR Vol 1 at pp 188; Boudreau saw the Respondent rocking back and forth leaning over. The Respondent said she had stomach cramps, but Boudreau thought the Respondent was in labour as the cramps came in waves and the Respondent looked pale. The Respondent called in sick the next day and when she returned to work, the day after, she no longer looked pregnant - AR Vol 2 at p 5.

² Transcript - *Interview of Meredith Borowiec dated November 16, 2011* [“ November statement”] – AR Vol 5 at p 105/14-22; November Statement –AR Vol 5 at p 85/7-11 (no home kit); November Statement – AR Vol 5 at p 106 (had her period; did not have test just had a feeling)

³ November statement – AR Vol 5 at p 108

⁴ November statement – AR Vol 5 at pp 85-86, 103

⁵ November statement - AR Vol 5 at p 85/12-16 (in bed); November Statement — AR Vol 5 at pp 106-107, 116 (boyfriend away roommate asleep)

⁶ November statement – AR Vol 5 at pp 109-110 (baby’s face); November Statement – AR Vol 5 at p 120 (no memory of cord)

put the bag, with the baby, in the dumpster that was about half full. She did not hear any sounds after.⁷

- d. The first baby was quieter than the last baby and made more of a “kitten sound”. She heard the baby when she was upstairs in the bedroom before she wrapped it up.⁸
- e. She did not cover the baby’s face. She demonstrated how she picked the baby up, with her right arm in front of her slightly bent at the elbow. She said “*like...I don’t know*” and appeared emotional, then said she was “*done.*” She did not bump or drop the bag with the baby in it.⁹
- f. It was wintertime but she did not wear a jacket when she went outside. No one was around and it was after 11pm. After putting the baby in the dumpster, she went back inside, changed the sheets then went to sleep. She did not recall any other cleaning.¹⁰
- g. After giving birth she “felt pretty decent.” She did not have any pain or cramping.¹¹

11. The Respondent said that when she realized there was a baby “*it’s like something took over me...like something I wasn’t doing.*” She said she was terrified and scared during the delivery. After disposing of the baby, the Respondent said she was scared and remorseful but thought “*it was over*” and that she had fixed the problem.¹²

12. The Respondent called in sick that day and returned to work the day after. Coworkers saw that her “belly” was gone.¹³ Just before lunch, one co-worker noticed that the Respondent had blood running down her thighs. By way of explanation, the Respondent lied, telling

⁷ November statement – AR Vol at pp 103-104, 116 (tying bag); November Statement – AR Vol 5 at p 124 (no sounds)

⁸ November statement – AR Vol 5 at pp 122-123

⁹ November statement – AR Vol 5 at pp 112, 114; Video of November Statement at 3:31:30pm [not reproduced]

¹⁰ November statement – AR Vol 5 at p 115 (no jacket); November Statement – AR Vol 5 at pp 119, 126 (back inside)

¹¹ November statement – AR Vol 5 at p 117 (pretty decent); November Statement – AR Vol 5 at p 119 (no pain)

¹² November statement – AR Vol 5 at p 118/9-16

¹³ Murphy-Blain - AR Vol 1 at pp 185-186; Boudreau - AR Vol 2 at pp 5-6; Riopel AR Vol 2 at pp 33/1-5, 34/26-34

coworkers that a doctor had drained a growth in her uterus.¹⁴ The Respondent admitted to police that she lied to her co-worker to “sweep it under rug.”¹⁵

The delivery and disposal of Baby #2

13. The Respondent was pregnant for the second time in July 2009 and was 27 to 28 years old. She told police that the “*same thing happened as on the third one.*” (She gave birth and deposited the newborn in the dumpster).¹⁶

14. During this second pregnancy, coworkers noticed that the Respondent appeared pregnant (again) due to her growing stomach.¹⁷ The Respondent’s demeanour and personal hygiene worsened with this second pregnancy.¹⁸ She denied being pregnant. To explain her physical changes to coworkers, she lied by saying she had cysts in her uterus that would grow and would rupture or need draining.¹⁹

15. The Respondent knew she was pregnant at about 6 months. She felt fear, remorse and said she “*didn’t know what to do.*” She thought her mom or dad would be angry and she didn’t want to lose her boyfriend. She was “mad at herself” for not dealing with it.²⁰

16. The Respondent gave birth in the bathroom. Her boyfriend and his brother were downstairs.²¹ After giving birth she did “*the same thing. I got so scared, terrified... started crying and again it was like something washed over me and just took over...just took over my body and I didn’t...something just took over me.*”²² She gave the following details:

- a. She was on the toilet when she gave birth. The baby was face-up, but she didn’t know if it was a boy or girl. She picked him up (out of the toilet). She wrapped

¹⁴ Boudreau AR Vol 2 at p 7/5-7; told Murphy-Blain she had fluid drained - AR Vol 1 at pp 186, 187, 200

¹⁵ November statement – AR Vol 5 at p 86

¹⁶ November statement - AR Vol 5 at pp 60, 128

¹⁷ Whelly - AR Vol 2 at pp 66-67; Murphy-Blain - AR Vol 1 at pp 188/39-190/22; Boudreau - AR Vol 2 at pp 7-8; Cook - AR Vol 2 at pp 24-25 (Respondent said she was “totally fine”); Riopel - AR Vol 2 at pp 35-36; Black - AR Vol 2 at p 55 (Respondent had “typical pregnancy symptoms”). New co-worker Joudrey saw protruding stomach; Respondent said she was not pregnant but had uterine cysts. Respondent looked unwell but was working normally and said she was fine. A week or so later the Respondent’s stomach was smaller - AR Vol 2 at pp 43-45

¹⁸ Boudreau - AR Vol 2 at p 8/36-38

¹⁹ Joudrey - AR Vol 2 at p 43/32-36; Whelly - AR Vol 2 at p 75/40-41 (Respondent said she had cysts); November statement – AR Vol 5 at pp 53-54, 91 (she admits she did not have cysts)

²⁰ November statement – AR Vol 5 at pp 128-131

²¹ November statement - AR Vol 5 at pp 131-132; 139

²² November statement – AR Vol 5 at pp 132-133

the baby in a towel then put him in the bathroom garbage bag and went downstairs. The first bag was unsealed. When she looked inside the bag she couldn't see the baby, just part of the towel. She did not see the towel move. She put the bag in the taller bin and sealed the second garbage bag. She told her boyfriend and his brother that she was taking the garbage out and took the bag, with the baby, outside and put it in the dumpster. She did not remember which dumpster but it was in the same proximity as the dumpster where Baby #3 was found. She did not drop the baby.²³

- b. She took the baby out of the toilet before the afterbirth because she didn't want the infant to get dirty. She said she did not know how she cut the umbilical cord.²⁴
- c. She did not know when she heard the baby cry, probably not long after giving birth. She agreed that the baby was still in the toilet when she heard a cry. It was a "tiny cry." The baby made just the one sound.²⁵
- d. She thought she was tired of the whole situation. It's "*like something took over me...I wasn't...it sounds dumb. I wasn't in control*"²⁶ When asked if she was worried about her boyfriend hearing or seeing anything when she came downstairs (with a baby in a garbage bag) she replied "*No. I guess but I don't (sighs) I wasn't normal...I wasn't normal Meredith at all*" She said "*maybe*" she thought she would not lose her boyfriend if he didn't know about the baby. She agreed she was a little afraid her boyfriend and his brother would see (the baby). She said she didn't know what she was thinking "*I obviously wasn't thinking rationally. Um, I don't know what I was thinking.*"²⁷
- e. She didn't know why she wrapped the baby in a towel. She agreed it was to keep baby warm and suggested it was to "protect" the baby.²⁸

²³ November statement – AR Vol 5 at pp 134, 139, 143-145

²⁴ November statement – AR Vol 5 at pp 134-135

²⁵ November statement - AR Vol 5 at pp 137, 141

²⁶ November statement - AR Vol 5 at p 138/9-15

²⁷ November statement – AR Vol 5 at pp 140, 152/2-5

²⁸ November statement – AR Vol 5 at p 142

- f. The dumpster was not really full. She didn't hear any sounds when she placed the baby in the dumpster. She felt horrible and was bleeding. She did not say anything to her boyfriend or his brother. When she went inside, she went upstairs and said she was taking a nap but didn't sleep. She washed the sheets, as there was a bit of blood on the bed, but she doesn't remember any other clean up.²⁹

17. The Respondent returned to work a week later. Coworkers again noticed that her "belly" was gone.³⁰ Ms. Black, saw that the Respondent was "in a very good mood". She asked the Respondent what happened and the Respondent broke into tears and said she had a miscarriage over the weekend and that she wasn't aware that she was pregnant, it was a surprise. The Respondent described how her boyfriend took her to the hospital where they "sucked everything out" then let her go home.³¹ This was a lie.

18. Another co-worker, Ms. Whelly, also asked what happened. The Respondent denied being pregnant, but when Whelly challenged the Respondent, the Respondent admitted knowing she was pregnant, but "*didn't want to deal with it; didn't want to think about it*". The Respondent was upset when questioned. The Respondent said she had miscarried. She said she told the doctor that she didn't want to be pregnant, didn't want to deal with being pregnant, pretended she wasn't pregnant and the doctor gave her a card to talk to a counsellor. Whelly suggested that "something is wrong" if the Respondent was pretending not to be pregnant even though she knew she was, and that the Respondent should seek help. The Respondent also said that her boyfriend did not know she was pregnant but she had talked to her mother about it.³²

19. The Respondent confirmed with police that she did not have a miscarriage but had left the newborn in the dumpster.

²⁹November statement - AR Vol 5 at pp 146-150

³⁰Riopel - AR Vol 2 at p 37/29-31; Murphy-Blain - AR Vol 1 at p 190/24-28; Joudrey - AR Vol 2 at pp 44-45; Black - AR Vol 2 at p 56

³¹Black - AR Vol 2 at p 57/10-24 (Black hugged her and said if she ever needed to talk, she would be there)

³²Whelly - AR Vol 2 at pp 71-72

The delivery and disposal of Baby #3

20. Coworkers noticed the Respondent's third change in appearance in the summer of 2010; it was more noticeable this time. The protruding belly appeared to "drop" by October 2010.³³ On October 19, 2010 the Respondent (29) gave birth around noon. The newborn (Baby #3) was found, crying, discarded in a dumpster.

21. The Respondent texted her co-worker Ms. Jourdrej at 12:36 pm and asked if Jourdrej was willing to take the Respondent's shift the next day, as previously discussed. Jourdrej called and texted a number of times after that but received no response.³⁴

22. Police arrived at 1:30 pm, shortly after the infant was rescued. The Respondent was sitting on her step, watching the activity, with a blanket wrapped around her waist that had blood on it. She told an officer that she didn't see anything but her boyfriend told her a newborn baby was found in the dumpster. She provided her name and date of birth, she provided her boyfriend's name and explained that she was not at work as she was sick. The officer asked about the blood. The Respondent lied, saying that she experienced heavy menstrual cycles since a miscarriage in July 2009.³⁵ [Later, it was confirmed she did not have a miscarriage].

23. EMS personnel saw stretch marks on the Respondent's abdomen, blood on the blanket near her waist, blood on her ankles and noted that she appeared a little bit anxious. The Respondent again lied, repeating that she had a previous miscarriage due to stress and had heavy menstrual cycles. She said she woke up to bleeding and went through two tampons. She questioned the presence of EMS as there was "*nothing wrong*".³⁶

24. In the ambulance, after the Respondent was arrested for child endangerment, EMS asked if she gave birth. The Respondent told the medic she gave birth "*around noon*" and that she was "*sorry*." The Respondent "*didn't know what to do*" and felt "*awful now*."³⁷

³³ Cook - AR Vol 2 at pp 27-28; Murphy-Blain - AR Vol 1 at pp 191-192; Boudreau - AR Vol 2 at pp 10-11; Jourdrej saw the mass drop - AR Vol 2 at p 73/16-18

³⁴ Jourdrej - AR Vol 2 at pp 47-48

³⁵ Cst. Hsu - AR Vol 1 at pp 110-112

³⁶ EMS Westby - AR Vol 1 at pp 146, 150-151; EMS Karst - AR Vol 1 at pp 135-137; Cst. Hsu - AR Vol 1 at pp 113-114; also EMS notes (tendered as part of Exhibit 8 at trial) - AR Vol 6 at p 8

³⁷ Cst. Hsu - AR Vol 1 at pp 115-116

25. The Trial Judge held that the Respondent understood what was happening when she spoke to police and EMS on scene (about 90 minutes after she gave birth).³⁸ He found that she was an intelligent person who had a strong memory and that she understood the police caution.³⁹

26. At the hospital, the Respondent told the hospital staff she did not know she was pregnant and gave birth around noon. She said she “*didn’t know what to do*”. She was alone and “panicked” and put “it” in the dumpster.⁴⁰ She was “shocked” and wanted it to “go away.” She expressed regret and denied depression. The psychiatry referral noted no reported symptoms or signs of a major mood, anxiety, cognitive psychotic or substance use disorder.⁴¹

27. The Respondent said she wasn’t tired and “...*nothing was different*”. She explained that the baby came out into the toilet. She wrapped it in a towel. The baby was not moving. She cut the cord and put the baby in the bathroom garbage, then in the kitchen garbage and took him to the dumpster. It “*was all a blur*”. In retrospect, she said it was the “*wrong decision*” but said she was “*shocked... panicked...and scared...I didn’t know how to handle the situation*”. She took the baby to the dumpster thinking: “*I wanted it to go away...but maybe I wanted to get caught*”. She went home, had a cigarette, and went to lie down. Her boyfriend came home and said there was a baby in the dumpster, then she went outside. She described being scared and ashamed, “*this is not me...I’d like to know what made me so shocked and unaware to make a decent decision*”. She wished she could go back and “*do the right thing*”. She said “*I didn’t really understand what I was doing*” and repeatedly stated she was sorry and didn’t wish to hurt anyone. She described feeling disconnected: “*like it wasn’t me but I couldn’t stop it*”. After seeing her boyfriend she felt more connected. She denied any derealization. She denied any disturbance to concentration or appetite but had noticed a decrease in energy.⁴²

28. In her second pregnancy (after which she falsely claimed to have miscarried) she knew she was pregnant as she looked pregnant and felt different. She didn’t tell her boyfriend and wasn’t prepared to have a baby (didn’t have things at home, did not seek out prenatal care) then she “miscarried” which was a “*blessing in disguise*”.⁴³

³⁸ Transcript – *Ruling on Voir Dire #1* [“*Voir Dire #1*”] - AR Vol 1 at p 157/19-20

³⁹ *Voir Dire #1* - AR Vol 1 at p 162/4-10

⁴⁰ Emergency Care charts - AR Vol 6 at pp 7, 14

⁴¹ Psychiatry consult dated October 20, 2010 - AR Vol 6 at p 25

⁴² Psychiatry consult dated October 20, 2010 - AR Vol 6 at pp 18-19

⁴³ Psychiatry consult dated October 20, 2010 - AR Vol 6 at p 19

29. Her remorse and distress were considered normal for her situation. She had an identifiable pattern involving limited coping abilities and the utilization of “denial” as a defence mechanism as illustrated by her prior pregnancy.⁴⁴

30. The Respondent did not tell hospital staff about the intentional killing and discarding of her two prior babies.

The first statement to police (October 19, 2010)

31. The police interviewed the Respondent in the hospital, about 6 hours after she gave birth to Baby #3. The Appellant has created a summary of the statement, contained in Appendix A.⁴⁵

32. The Respondent told police that she didn’t know she was pregnant and “*did a horrible thing.*” She “*panicked*” and put the baby in a dumpster. She repeated that she was sorry. She was “*really scared all day, especially when that happened*” and “*didn’t know what to do.*”⁴⁶ Her immediate reaction was to try to make “it” (the baby) go away.⁴⁷ When asked if she was pregnant before, the Respondent lied about having had a miscarriage.⁴⁸ It was later confirmed she did not have a miscarriage.

33. The Respondent said this pregnancy felt different (from her “miscarriage”) as “*everything was normal.*”⁴⁹ She knew she was pregnant but wasn’t willing to admit it. She had made herself aware of symptoms so she would deal with the pregnancy the “*proper way.*”⁵⁰ She provided a detailed account of putting the baby in the bathroom garbage, putting the newborn in a larger bag, then in the dumpster. She recalled cutting the umbilical cord while the baby was on the floor. She described that he felt “squishy”. After putting the baby on the floor she sat there “*trying to figure out what to do.*” She told police that she would not have known her name if she was asked [although she *did* know her name when police talked to her on scene]. Her immediate reaction was to make the baby “*go away*”.

⁴⁴ Psychiatry consult dated October 20, 2010 - AR Vol 6 at p 25

⁴⁵ Summary of the Respondent’s October 19, 2010 Statement [Appendix TAB A]

⁴⁶ Transcript -*Interview of Meredith Borowiec dated October 19, 2010* [“October statement”] - AR Vol 3 at pp 72-73

⁴⁷ October statement – AR Vol 3 at p 136

⁴⁸ October statement – AR Vol 3 at pp 122-124

⁴⁹ October statement – AR Vol 3 at p 66

⁵⁰ October statement – AR Vol 3 at pp 116-117

34. The Respondent repeated that she was scared, she was not prepared to have a baby or be in that situation and that she “*didn’t know what to do.*”⁵¹ She repeated that she couldn’t think properly.⁵² She thought she was in such a state because “*maybe I knew I wasn’t doing the right thing.*”⁵³ The Respondent said she didn’t know she was capable of this until today. When asked if there had been a previous time where she’d done something and not known why, she replied “*nothing to this degree.*”⁵⁴ She did not tell police about the two prior babies.

The second statement to police (November 2011)

35. On November 16, 2011, police arrested the Respondent for attempted murder, criminal negligence, failing to provide the necessities of life and abandonment and subsequently interviewed her.⁵⁵ The Appellant has created a detailed summary of the statement, contained in Appendix B.⁵⁶

36. The Respondent was emotional as she told police she “*never wanted to hurt my baby.*”⁵⁷ She said if she had known that she was pregnant she would have “*handled it differently.*”⁵⁸ The Respondent admitted to falsifying a WCB report relating to a workplace fall in July 2010 as she didn’t want the doctor to check if she was pregnant.⁵⁹ She suspected she was pregnant at about 6 months but she did not tell her boyfriend as she thought he’d probably never talk to her again.⁶⁰

37. For the delivery, she remembered having pain and then it was “*like a blur.*”⁶¹ She remembers putting the baby in a garbage bag, closing it and taking it outside and putting it in the dumpster.⁶² She provided details about Baby #3. The Respondent told police that she was terrified, she felt like she could not control anything and didn’t know what she was thinking.

⁵¹ October statement – AR Vol 3 at pp 80-83; 93

⁵² October statement – AR Vol 3 at pp 155-157

⁵³ October statement – AR Vol 3 at p 100

⁵⁴ October statement – AR Vol 3 at p 103

⁵⁵ Voir Dire #1 – AR Vol 1 at pp 164/40, 165/30-34

⁵⁶ Summary of the Respondent’s November 19, 2011 Statement [Appendix TAB B]

⁵⁷ November statement - AR Vol 4 at p 39/7-10

⁵⁸ November statement – AR Vol 4 at p 185

⁵⁹ November statement - AR Vol 5 at pp 36-37

⁶⁰ November statement - AR Vol 5 at pp 41, 50

⁶¹ November statement – AR Vol 4 at p 42/4-14

⁶² November statement – AR Vol 4 at p 76

She wished things were different: that she could have caught herself and been “*sane Meredith*” and do the “*right thing*.”⁶³

38. She shook her head ‘no’ when asked if she had ever been in that situation before.⁶⁴ She said she had a previous miscarriage and no other pregnancies.⁶⁵ The Detective challenged her about prior pregnancies, and telling coworkers that she had cysts, which made the Respondent angry.⁶⁶ After describing the co-workers’ observations, the Detective asked what happened during the second pregnancy, the Respondent said “*same thing as the third one*.”⁶⁷ The police arrested her for two counts of murder. When the interview continued, she gave details about the two previous babies (as described above).

The Respondent’s circumstances

39. The Respondent was in a stable relationship with her boyfriend since 2007 and had been living with him and his brother. Her boyfriend is the father of all her babies. She had been working at the same job during the pregnancy and delivery periods.

40. The Respondent completed high school with good grades. She completed one year of university and was considering becoming a veterinarian technician. From the medical records, the Respondent’s parents divorced when she was 9 years old. Her father was verbally abusive and critical. When her mother remarried, her step-father was abusive. The Respondent became the primary caregiver for her step-sister and also dealt with her mother’s emotional needs. Her mother had a history of depression, alcohol abuse and suicidality. The Respondent moved out of the house when she was 19 years old. She had a tumultuous relationship with her mother but they continued to have contact. The Respondent denied any prior psychiatric history.

41. The Respondent was friends with her co-worker Boudreau who remained in contact after Boudreau stopped working at the pub. Boudreau told the Respondent she has support and anything that she needs. She suggested that the Respondent could leave the baby on her doorstep. The Respondent told Boudreau that she did not want kids.⁶⁸

⁶³ November statement - AR Vol 4 at pp 55-56 (“not easy to talk about”), 57/18

⁶⁴ November statement – AR Vol 4 at p 62

⁶⁵ November statement - AR Vol 4 at pp 107-108

⁶⁶ November statement – AR Vol 5 at p 55

⁶⁷ November statement – AR Vol 5 at p 60/13

⁶⁸ Boudreau - AR Vol 2 at pp 8/29-30, 10-11, 12, 16-17

Expert evidence

42. Two experts testified: Dr. Hashman (the court-appointed expert) and Dr. Smith (retained by defence). Both experts were qualified to give opinion evidence in forensic psychiatry and assessment of retrospective mental states.

43. In 2012, the Court ordered a psychiatric assessment.⁶⁹ During the 60-day period, the Respondent was under observation at the Southern Alberta Forensic Psychiatry Center (SAFPC). Both experts reviewed the hospital records, which included psychological and psychosocial reports and interviews,⁷⁰ and the disclosure package with the videotaped police interviews.

44. Dr. Hashman conducted the court-ordered assessment. He was of the opinion that the balance of the Respondent's mind was not disturbed when she abandoned the three newborns. He observed that the Respondent was inconsistent: during some interviews she admitted to being aware that she was pregnant and at other times she claimed not knowing she was pregnant until delivery. When pressed, the Respondent could recall events in significant detail, as she did in the police interviews, but otherwise she used denial to avoid speaking about the events.⁷¹ In his opinion, from what she described, her mental state was more akin to being stressed as opposed to being dissociated. She was able to provide detailed recollection as to what happened, how she disposed of the bodies, where her partner's brother was for Baby #1 and that she walked by her partner and his brother for Baby #2. She immediately returned to her normal routine.

45. In his opinion, the Respondent's behaviour was inconsistent with someone who was suffering from a major mental disturbance.⁷² He did not see a disproportionate level of distress.⁷³ In his opinion, depersonalization (detachment from oneself) is a common occurrence when a person is stressed.⁷⁴

46. Dr. Hashman explained that people who commit neonaticide (killing an infant within 24 hours of birth) typically do not suffer from a mental disorder but have concerns about their ability to cope. He noted the Respondent's fear of losing her partner's support, that she was

⁶⁹ Pursuant to s 672.11(c) *Criminal Code* - Dr. Hashman's Report dated June 1, 2012 was filed as part of the hospital records in Exhibit 16 (but is attached separately for convenience) – AR Vol 6 at pp 65-80

⁷⁰ Psychological Assessment – AR Vol 6 at pp 29-43; Psychosocial Assessment – AR Vol 6 at pp 44-64

⁷¹ Dr. Hashman's Report - AR Vol 6 at pp 65-80

⁷² Dr. Hashman's Testimony - AR Vol 2 at p 105/9-17

⁷³ Dr. Hashman's Testimony - AR Vol 2 at p 106/29 – 107/5

⁷⁴ Dr. Hashman's Testimony - AR Vol 2 at p 129/16-20

unprepared to be a parent and did not have the desire to be a parent. In his opinion, the Respondent lacked coping skills and made bad choices but “did not appear to be suffering from a disturbance of the balance of her mind.”⁷⁵ The Respondent’s pregnancy denial was a coping mechanism. By providing stories about weight gained she was putting the thoughts out of her immediate awareness. In his view, she was hoping that the pregnancies would go away and was dealing with it in an immature way rather than getting the proper medical attention.

47. Dr. Smith, the expert retained by the defence, examined the Respondent in February and March of 2013. Dr. Smith considered the seven hours of interviews she conducted with the Respondent, in addition to the hospital records and police statements. In her career, she treated women who had killed their babies and was familiar with psychiatric issues proximate to childbirth, but this was the first time she had ever been involved in conducting an assessment.⁷⁶

48. Dr. Smith agreed with Dr. Hashman with respect to “just about everything”.⁷⁷ The Respondent was noted to have low self-esteem and tended to “push things under the carpet” rather than face difficult decisions.⁷⁸ The lies told by the Respondent to coworkers protected her from the unacceptable fact of being pregnant. In Dr. Smith’s opinion, the Respondent’s descriptions of “not being in control”, “like something took over”, not being “normal” and “unable to think clearly” were consistent with significant depersonalization.⁷⁹ The Respondent’s labour pain and the process of giving birth triggered this depersonalization.⁸⁰

49. Dr. Smith stated that the literature indicated women who deny pregnancy pervasively are considered to be high risk for developing dissociative symptoms and depersonalization in the aftermath of giving birth as a consequence of the traumatic birthing process. The result is a sense of anxiety, derealization or confusion.⁸¹ In Dr. Smith’s opinion, the symptomology was that of a “disturbance of the mind”.⁸² The symptoms ranged from a minor sense of numbness and unreality from sleep deprivation and jet lag to a full blown out-of-body experience.⁸³

⁷⁵ Dr. Hashman’s Testimony - AR Vol 2 at p 106

⁷⁶ Dr. Hashman’s Testimony - AR Vol 2 at pp 134-135

⁷⁷ Dr. Hashman’s Testimony - AR Vol 2 at p 148

⁷⁸ Dr. Hashman’s Testimony - AR Vol 2 at p 142/1-20

⁷⁹ Dr. Smith’s Report dated November 13, 2013 at paras 27-28 – AR Vol 6 at pp 86-87

⁸⁰ Dr. Hashman’s Testimony - AR Vol 2 at p 176

⁸¹ Dr. Smith’s Testimony - AR Vol 2 at pp 146-147

⁸² Dr. Smith’s Testimony - AR Vol 2 at p 182/25-32

⁸³ Dr. Smith’s Testimony - AR Vol 2 at pp 152-153

50. Dr. Smith was of the opinion that the Respondent's mind was "disturbed." The Respondent's coping mechanism of denial, involving all three births, produced unexpected delivery, resulting in high levels of panic and anxiety, triggering depersonalization.

The fourth baby

51. During the 2012 psychiatric assessment, it was discovered that the Respondent was pregnant. She gave birth, for the fourth time, while in custody. The Respondent was not permitted to stay in denial: there was prenatal care followed by a planned delivery. She did not experience the symptoms of depersonalization that she described in the three prior deliveries.⁸⁴

Trial Decision

52. The Trial Judge found that the confession was reliable.⁸⁵ The Respondent was "reliving a real memory" when describing each set of circumstances. He found that the Respondent wilfully intended to cause the death of her two newborn children.

53. The Trial Judge went on to consider whether the Crown had disproven infanticide. He said Dr. Hashman erred by equating a mental disorder with disturbance of the mind. He suggested that Dr. Hashman used the wrong test as "balance of the mind" was *not* the test for infanticide and evidence of acute mental disturbance, mental disorder, or significant mental illness was not required.⁸⁶

54. The Trial Judge accepted that the Respondent did not have a mental disorder at the time that she killed her two newborns, but there were "symptoms showing a mental disturbance as part of the process of dissociation". He said that the Respondent's actions in disposing of her newborn infants was explained by "her mind being disturbed as a result of her not yet having fully recovered from the effects of giving birth". The Trial Judge looked at the "case as a whole": the Respondent had no criminal record and no psychopathic or sociopathic tendencies. He stated that she delivered three babies at home, alone, wrapped them in towels and put them in a dumpster thinking someone (else) may help them. [In her statement she said she was not

⁸⁴ Dr. Smith's Testimony - AR Vol 2 at p 176

⁸⁵ Trial Judgement - AR Vol 3 at pp 49-50

⁸⁶ Trial Judgement - AR Vol 3 at pp 61-62

thinking someone will find “this” and help.⁸⁷] With the third baby, despite seeing police, she stayed outside wrapped in a bloody blanket, watching the activity. He said that her abandonment of her children “is absolutely contrary to the nurturing that humankind depends on for its propagation”. The Trial Judge stated that the Respondent’s “bizarre actions”, along with Dr. Smith’s opinion, told him that the Respondent’s mind was “disturbed as a result of the births” and he found her guilty of two counts of infanticide.⁸⁸

Court of Appeal Decision

55. Côté, J.A. and McDonald, J.A. for the majority dismissed the Crown appeal on the basis that the trial judge did not err in his analysis of the law of infanticide as it currently exists or the law generally. While the trial judge did err in failing to address discrepancies in the information relied on by the defence expert that was a matter of weight not a question of law. The “wooly” wording in the section was deliberate.⁸⁹ The only way to find a question of law alone would be to interpret the words in s. 233 more narrowly and that was a question for Parliament not the courts.

56. Wakeling, J.A. dissented on the interpretation of the legal standard for infanticide and would have allowed the appeal and ordered a new trial on two counts of second degree murder. He reviewed the section and noted the dearth of guidance on what “disturbed” means. He suggested a test to determine the requisite mental state for infanticide: a woman has a disturbed mind if her psychological health is substantially compromised because she recently gave birth, she has a newborn to care for, and, as a result, her ability to make rational decisions which promote the best interests of her newly born child is substantially impaired.⁹⁰

57. In his view, having the “baby blues” would not suffice but postpartum psychosis would. Women who experience something in between (i.e. postpartum depression) *may* meet the criteria depending on the severity of the depression.⁹¹ As neither the trial judge nor the experts worked

⁸⁷ November statement – AR Vol 5 at p 7/12-17

⁸⁸ Trial Judgement - AR Vol 3 at p 62

⁸⁹ *R v Borowiec*, 2015 ABCA 232 at paras 31-32 - AR Vol 1 at p 10

⁹⁰ He chose “substantially” as Parliament would not have reduced the consequences for such a serious crime in relation to a minor diminution of the mother’s psychological health – see *R v Borowiec*, 2015 ABCA 232 at paras 98, 149-158 – AR Vol 1 at pp 64, 82-85

⁹¹ *R v Borowiec*, 2015 ABCA 232 at paras 152-155 – AR Vol at pp 82-84

with this standard, he was not satisfied that the trial judge properly applied the aspects of a disturbed mind to the facts, and would have ordered a new trial.

PART II – ISSUES

Question in Issue

What is the legal standard for infanticide in Section 233 of the *Criminal Code of Canada*?

PART III – ARGUMENT

Overview

58. A test is needed for when a woman's mental state is sufficiently disturbed (from not having fully recovered from childbirth or from the effects of lactation) to reduce culpability for killing her newly born child. It was not the intention of Parliament to allow for *any* level of disturbance, however slight, arising from the stress of giving birth, to meet the requirement of this partial defence.

59. This Court's task is the admittedly difficult one of interpreting an outdated section that has been the subject of much justifiable criticism over the decades. The focus of this appeal is on the definition of the requisite disturbance, which should be: that the accused's psychological health was *substantially* compromised, at the time she caused the death of her newborn, as a result of not having fully recovered from the effects of giving birth or lactation.

60. The Appellant will review the history and criticisms of the section and show that, while there may be no perfect answer to the interpretive conundrum, the Appellant's proposed test is the best fit.

61. In the present case, the trial judge erred by failing to apply any legal standard and a new trial on two counts of murder should be ordered.

Background

62. Culpable homicide that is not murder or infanticide is manslaughter: the three offences should be considered mutually exclusive.⁹² Infanticide is the only form of culpable homicide that does not have a maximum sentence of life imprisonment. There is no minimum sentence and the maximum sentence is five years imprisonment.⁹³

63. Historically, women charged with murdering their infants were often servants where pregnancies were a result of a relationship with their employer or his son. At the time, unwed mothers faced oppressive social and economic conditions including the stigma of illegitimacy,

⁹² *Criminal Code*, RSC 1985, c C-46, s 234

⁹³ *Criminal Code*, RSC 1985, c C-46, s 237

poverty, loss of employment and social isolation. Juries were sympathetic and were reluctant to convict these women of murder where the punishment was death.⁹⁴

64. Since 1624, the English Parliament has made several legislative attempts to address the situation. The *Infanticide Act* was introduced in 1922 based on questionable medical beliefs that a woman who killed her child soon after birth was less morally culpable and less responsible for her actions.⁹⁵ In 1938 the legislation was amended by adding the effect of lactation and limiting the application to where the child was under a year old.

65. Historically, Canadian juries were also reluctant to convict “young emotionally distraught mothers in dire social and economic circumstances” of murder which would result in the death penalty.⁹⁶ In 1948, Parliament responded by enacting the infanticide legislation, modeled off the English Legislation, with little legal policy analysis and no debate on the validity of the underlying medical assumptions about the effects of childbirth on women.⁹⁷

66. The section was enacted to create a reduced culpability homicide offence where a woman “loses her power of control” as a result of the social and economic imposition of having a newborn, but where her “degree of mental derangement” does not rise to the level of insanity.⁹⁸ Parliament created a connection between the process of childbirth and mothers who kill their infants, in the absence of any compelling medical or scientific evidence to support the link.⁹⁹

⁹⁴ Eric Vallillee, “*Deconstructing Infanticide*” (2015) Vol 5: Iss 4, *Western Journal of Legal Studies*, Article 1 [Tab 24]; The Honourable Madam Justice B.M. McLachlin, “*Crime and Women – Feminine Equality and the Criminal Law*” (1991) 25 *UBC Law Rev* 1 [Tab 19]

⁹⁵ The Honourable Madam Justice B.M. McLachlin, “*Crime and Women – Feminine Equality and the Criminal Law*”, *supra* at p 4 [Tab 19]

⁹⁶ *R v B (L)*, 2011 CarswellOnt 1214 (CA) at para 71 [Tab 3], leave to appeal dismissed, *R v B (L)*, 2011 CarswellOnt 10522 (SCC) [Tab 4]

⁹⁷ Kirsten Johnson Kramer, “*Unwilling Mothers, Unwanted Babies: Infanticide in Canada*” (Vancouver: UBC Press, 2005) at pp 4, 86-87, 94-96 [Tab 32]

⁹⁸ Ottawa, Dominion of Canada, *Debates House of Commons*, 20th Parl, 4th Sess, Vol V, (14 June 1948) at 5184 (Diefenbaker) and 5185 (Ilsley) – applies to cases where there is “not the degree of mental derangement amounting to insanity [Tab 22]; see also, Sanjeev Anand, “*Rationalizing Infanticide: A Medico-Legal Assessment of the Criminal Code’s Child Homicide Offence*” (2009-2010) 47 *Alta Law Rev* at para 11 [Tab 27]

⁹⁹ Judith Osborne “*The Crime of Infanticide: Throwing out the Baby with the Bathwater*” (1987) 6 *Can J Family L* at pp 54-55, 58 [Tab 30]; Kirsten Johnson Kramer, PhD & William D. Watson, PhD, “*Canadian Infanticide Legislation 1948 and 1955: Reflections on the Medicalization/Autopoiesis Debate*” (2008) 33:2 *Can J Sociology* at pp 240-241 [Tab 18]; Eric Vallillee, “*Deconstructing Infanticide*” *supra* at p 8 [Tab 24]; and The Honourable Madam Justice B.M McLachlin, “*Crime and Women – Feminine Equality and the Criminal Law*” *supra* at p 6 [Tab 19]; Isabel Grant “*Desperate Measures: Rationalizing the Crime of Infanticide*” 14 *Can Crim L Rev* at p 267

67. In 1955, the provision was amended to its current form, which reads:

A female person commits infanticide when by a wilful act or omission she causes the death of her newly-born child, if at the time of the act or omission she is not fully recovered from the effects of giving birth to the child and by reason thereof or of the effect of lactation consequent on the birth of the child her mind is then disturbed.¹⁰⁰

68. Infanticide is the only crime that includes what appears to be a mitigating mental condition as an element of the offence.

Criticisms

69. The infanticide provision remains despite criticisms that it is based on assumptions between mental disturbance and the effects of childbirth or lactation that are not supported by science.¹⁰¹ As one author notes, “to *automatically* reduce moral culpability based on the presence of medical/mental factors is arguably regressive and entrenches outdated ideas on a woman’s mental capacity and how it is invariably affected by reproduction.”¹⁰²

70. The law is also criticised for being outdated. If the legislative rationale was partially based upon the reluctance of juries to convict, it is not clear reluctance remains. In Alberta, by way of anecdotal example as to how society’s views have changed, two juries convicted a young mother of murder in the case of *R v Effert*.¹⁰³ It was the Court of Appeal that substituted a verdict of infanticide after the second conviction. Society’s views have changed in relation to single motherhood, equality of women and the recognition of society’s duty to protect children.¹⁰⁴

[Tab 25]; see also, Kirsten Johnson Kramar, “*Unwilling Mothers, Unwanted Babies: Infanticide in Canada*”, *supra* [Tab 32]

¹⁰⁰ *Criminal Code*, RSC 1985, c C-46, s 233, and related provisions, *Criminal Code*, RSC 1985, c C-46, s 672.11(c) and *Criminal Code*, RSC 1985, c C-46, s 663

¹⁰¹ Rebecca S. Zaretsky, “*Parents Who Kill Their Babies: Why the Discrepancy and Leniency in Sentencing is Not Justified*”, (2012) 59 CLQ 418 at pp 426-428 [Tab 26]; Sanjeev Anand “*Rationalizing Infanticide: A Medico-Legal Assessment of the Criminal Code’s Child Homicide Offence*” *supra* at pp 714-715, 722-723 [Tab 27]; Linden, Fortin, Lemelin, Reid, Maingot, Cote, Handfiled and Fitzgerald “*Criminal Law, Homicide*” Law Reform Commission of Canada, (1984), Working Paper No 33, at p 76 [Tab 21]; Ottawa, “*Debates of the Senate*”, *Official Report, Hansard*, 35th Parl, 1st Sess, Vol 3 (7 Nov 1995) at p 2221 (Anne Cools) [Tab 23]

¹⁰² Gus Kim, “*The Floodgates*”: *How R v LB May Make Available the Infanticide Defence to Accused Murderers with the Baby Blues*, (2013) 17 Can Crim L Rev 217 at para 3(b) [Tab 31]

¹⁰³ *R v Effert*, 2011 CarswellAlta 670 (CA) [Tab 6]; leave to appeal refused *R v Effert*, 2011 CarswellAlta 1699 (SCC) [Tab 7]

¹⁰⁴ The Honourable Madam Justice B.M. McLachlin, “*Crime and Women – Feminine Equality and the Criminal Law*” *supra* at p 5 [Tab 19], see also Sanjeev Anand, “*Rationalizing Infanticide: A Medico-Legal Assessment of the Criminal Code’s Child Homicide Offence*” *supra* at pp 718-280 [Tab 27]

71. Children are no longer considered to be property and are recognized to be amongst the most vulnerable in society.¹⁰⁵ The protection of children is now a universally accepted goal.¹⁰⁶ Canada is under international obligations to protect children from violence at the hands of caretakers.¹⁰⁷

72. Other criticisms point to unjust results: the excuse is not available for a woman who is in a disturbed state from the effects of giving birth, but kills an older child, or spouse. Nor is it available for adoptive mothers, men or other caregivers who suffer from the same socio-economic factors.¹⁰⁸ If an infant abandoned in a dumpster lives, an offender can be convicted of attempted murder which has a maximum of punishment of life imprisonment. If the infant is gravely wounded, maimed, or has its life endangered as a result of an assault, an offender can be convicted of aggravated assault with a maximum sentence of 14 years.

73. These problems will only be eliminated if infanticide were to be abolished. The accused's mental state and its impact on intent would be considered in relation to whether verdicts of manslaughter or not criminally responsible on account of mental disorder were appropriate. The Appellant acknowledges this can only be accomplished through Parliament. That said, as long as the infanticide provisions remain in the *Criminal Code*, there is a pressing need for some purposive guidance on the interpretation of the provisions. Specifically, the meaning of mental disturbance must be clarified.

Mental disturbance is undefined

74. The elements of infanticide are:
- a. the accused is a female person;
 - b. the victim is her newly born child, defined as 12 months old and under (s. 2);
 - c. the accused's wilful act or omission caused the death of her child;
 - d. the accused had not fully recovered from the effects of giving birth;

¹⁰⁵ *R v Laberge*, 1995 CarswellAlta 556 (CA) at para 28 [Tab 12]; see also *R v Levkovic*, 2013 CarswellOnt 5132 (SCC) at para 68 [Tab 14]

¹⁰⁶ See *R v Sharpe*, 2001 CarswellBC 83 (SCC) at paras 170-180 [Tab 15]

¹⁰⁷ See *Canadian Foundation for Children, Youth & the Law v Canada (Attorney General)*, 2004 CarswellOnt 252 (SCC) at paras 31-32, 34 [Tab 1]

¹⁰⁸ Rebecca S. Zaretsky, "*Parents Who Kill Their Babies: Why the Discrepancy and Leniency in Sentencing is Not Justified*", *supra* at pp 430-432 [Tab 26]

- e. the accused's mind was disturbed by the birth of child or the effect of lactation consequent to birth;

75. The *Criminal Code* does not define *disturbed* or *mental disturbance*. So long as infanticide remains in the *Criminal Code*, it falls to the courts to create greater certainty having regard to the purpose of the section and the applicable principles of statutory construction.¹⁰⁹ So far, lower courts dealing with infanticide have failed to provide any clarity.

76. The sentencing judge in the case of *R v Coombs*, in *obiter*, suggested that it must be a “very low threshold”, one that is far below the level of NCR.¹¹⁰ In *R v B (L)*¹¹¹ the trial judge suggested that the *disorder* (which he suggested could include biological, social and psychological factors) need not reach the level of NCR, but should not be so low as to disrespect the memory of the victim.

77. Adding to the confusion, in the 1955 amendments the term “balance of her mind” was removed from the infanticide provision, yet remains in the related sections:¹¹²

- S. 672.11(c): The court has authority to order an assessment of the mental condition of the accused if it has reasonable grounds to believe that such evidence is necessary to determine whether the *balance of the mind* of the accused was disturbed at the time of commission of the alleged offence, where the accused is a female person charged with an offence arising out of the death of her newly-born child.
- S. 672.21(3)(d): Evidence of a statement made by the accused during the course and for the purpose of an assessment is admissible for the purpose of determining whether the *balance of the mind* of the accused was disturbed at the time of commission of the alleged offence, where the accused is a female person charged with an offence arising out of the death of her newly-born child.

¹⁰⁹ *R v H (AD)*, 2013 CarswellSask 304 (SCC) at para 19 [Tab 11]

¹¹⁰ *R v Coombs*, 2003 CarswellAlta 1396 (QB) [Tab 5]; cited by the majority in *R v Borowiec*, 2015 ABCA 232 at para 45 – AR Vol 1 at p 55

¹¹¹ *R v B (L)*, 2008 CarswellOnt 5270 (SCJ) at paras 59, 66 [Tab 2] - leave to appeal dismissed, *R v B (L)*, (SCC) *supra* [Tab 4]

¹¹² *Criminal Code*, RSC 1985, c C-46, s 672.11(c); *Criminal Code*, RSC 1985, c C-46, s 672.21(3)(d); *Criminal Code*, RSC 1985, c C-46, s 663

- S. 663: “Where a female person is charged with infanticide and the evidence establishes that she caused the death of her child but does not establish that, at the time of the act or omission by which she caused the death of the child...
(b) *the balance of her mind* was, at that time, disturbed by reason of the effect of giving birth to the child or of the effect of lactation consequent on the birth of the child, she may be convicted unless the evidence establishes that the act or omission was not wilful.”

78. It has been suggested that the “balance of the mind is disturbed” may have a different meaning than “her mind is then disturbed”.¹¹³ The Trial Judge in this case appeared to suggest that there was a difference and that the court-appointed expert was wrong to use “balance of the mind”.¹¹⁴ As it would make little sense for the assessment section to have a different concept of “disturbance” from the offence section, the sections should be interpreted as having the same requisite disturbance.¹¹⁵

79. Given the absence of a definition for “disturbance of the mind”, there may be a tendency to believe that a mother who kills her newly-born child *must* have been disturbed.¹¹⁶ It happened in the present case: the Trial Judge stated that the homicides were *explained* by her mind being disturbed and that the abandonment was “absolutely contrary to the nurturing that humankind depends on for its propagation”.¹¹⁷ If this indeed were the test, then all mothers who kill their newborn children will always, by virtue of having committed the act itself, be mentally disturbed for the purpose of meeting the definition of infanticide.

80. Without more certainty, trial judges and juries are left with the instruction that “disturbance” means whatever judges and juries think it means. This was the case for the second

¹¹³ Lisa Silver, “*R v Borowiec On Infanticide: Does the Crime Fit the Times?*” (10 Aug 2015), Lisa Silver (Blog) online: <http://ablawg.ca/2015/08/10/r-v-borowiec-on-infanticide-does-the-crime-fit-the-times/> [Tab 28]

¹¹⁴ Trial Judgement - AR Vol 3 at pp 61-62

¹¹⁵ The majority suggested it was unlikely there was a difference, *R v Borowiec*, 2015 ABCA 232 at para 49-50 – AR Vol 1 at pp 55-56

¹¹⁶ *R v Coombs*, *supra* [Tab 5]

¹¹⁷ Trial Judgement - AR Vol 3 at p 62

jury trial in the case of *R v Effert*,¹¹⁸ as well as the jury trial in *R v Leung*.¹¹⁹ As this Court has stated, such vagueness mocks the rule of law.¹²⁰

81. The lower the effective threshold for what qualifies as “disturbed,” the greater the number of accused mothers who can raise the defence. Elimination of the threshold requirement appears to open the door for “baby blues” or personality traits to ground infanticide defences. If a hypothetical mother is frustrated or angry due to a newborn’s crying or the resulting lack of sleep, and wilfully kills her infant, this passing or temporary state of frustration should not be sufficient to qualify as “disturbed”, nor should character traits or other conditions having no bearing on the decision to kill. The court must carefully balance the need to provide certainty and guidance with the purpose of the section (providing a partial defence to some murders) while mindful of the obligation to protect children. The test proposed by the dissent meets this balance.

Proposed test for mental disturbance

82. The test proposed by Justice Wakeling should be adopted, with modification. The test should be that a woman has a disturbed mind if her psychological health is substantially compromised because she recently gave birth and has a newborn to care for.¹²¹ Justice Wakeling chose the word “substantial” as Parliament would not have reduced the consequences for such a serious crime in relation to a minor diminution of the mother’s psychological health.¹²² This test recognizes the need for a “target” threshold for the mental state that accords with the purpose of this section.

¹¹⁸ In the case of *R v Effert*, (CA) *supra* [Tab 6], the second jury was instructed “The meaning of the word ‘disturbed’ is important. ... [I]t doesn’t mean mentally ill. ... It means just what ordinary people mean when they say it”. See Sanjeev Anand “*Rationalizing Infanticide: A Medico-Legal Assessment of the Criminal Code’s Child Homicide Offence*”, *supra* at para 10 [Tab 27]

¹¹⁹ In the case of *R v Leung*, Jury Instruction and Charge, April 2014, BCSC (currently under appeal to BCCA) at p 53, [Tab 29] - “disturbed” is given its ordinary meaning. It can mean mentally agitated, emotionally or mentally unstable, mental discomposure. It is an interference with the individual’s normal way of reasoning – the mind does not operate logically or reasonably or normally by reason of nor being fully recovered from the effects of giving birth...does not need to rise to the level of a mental illness...it is not enough to simply be upset because of the circumstances. There must be a link between the disturbance of the mind and the effects of giving birth.

¹²⁰ *R v Levkovic*, *supra* at para 1 [Tab 14]; Lisa Silver, “*R v Borowiec On Infanticide: Does the Crime Fit the Times?*” – criticism, *supra* [Tab 28]

¹²¹ *R v Borowiec*, 2015 ABCA 232 at para 98 – AR Vol 1 at p 64

¹²² *R v Borowiec*, 2015 ABCA 232 at para 150 – AR Vol 1 at p 82

83. Justice Wakeling suggested that as a result of substantially compromised psychological health, the accused's ability to make rational decisions which promote the best interests of her newly born child is substantially impaired. This aspect of the test fails to account for intentional killings, which are never in the best interests of the victim, and effectively brings the test back to the assumption that if a woman kills her child she must be "crazy". This part of his test should not be adopted.

84. When developing the context of a provision, social values and context play a significant role and the partial defence should evolve to reflect contemporary social norms.¹²³ Defining "disturbed mind" as substantially compromised psychological health resulting from the effects of giving birth and caring for a newborn, is consistent with the intended purpose of the section for the following reasons:

- a. It establishes the need for a nexus between the birth of the child and the mental disturbance as required by the section.
- b. It confirms that a significant level of mental disorder must be present.¹²⁴ That is, it must be something beyond the usual stress and biological effects of delivering a baby. A transient state like frustration or anger or "baby blues" is insufficient.
- c. Finally, it provides a workable test that is more consistent with society's view of protecting children while ensuring that the threshold mental state falls short of that required for s. 16 *Criminal Code* (not criminally responsible by reason of mental disorder).

85. Justice Wakeling's test has already been criticized for relying too heavily on medical/psychological aspects.¹²⁵ However, the test focuses on the correct question: is the accused's mental state so compromised that it reduces her culpability?

¹²³ *R v Levkovic*, *supra* at para 48 [Tab 14]; and *R v Tran*, 2010 CarswellAlta 2281 (SCC) at paras 15-19 (social norms) [Tab 16]

¹²⁴ Ottawa, Dominion of Canada, *Debates House of Commons*, *supra* – applies to cases where there is "not the degree of mental derangement amounting to insanity" [Tab 22]; see also Sanjeev Anand, "*Rationalizing Infanticide: A Medico-Legal Assessment of the Criminal Code's Child Homicide Offence*", *supra* at para 11 [Tab 27]

¹²⁵ Lisa Silver, "*R v Borowiec On Infanticide: Does the Crime Fit the Times?*"- *supra* [Tab 28]

86. The socio-economic factors historically considered (such as stress, poverty, isolation) would be relevant, but would have to significantly contribute to her state of mental health. In the absence of a disturbed mental state, such conditions do not excuse the wilful killing of an infant. Poverty and friendlessness do not diminish culpability within any recognized framework of criminal justice, at least not for the purpose of conviction. The law should not give any credence to the notion that females, the stressed or the poor are inherently less responsible for their actions; to do so is to play upon discriminatory biases and promote unfair stigmatization.

87. On a charge of murder, where there is an air of reality to the defence (some evidence of disturbed mind), the Crown must negate at least one of the elements of infanticide. Generally the only contentious issue is whether the accused's mind was disturbed, since the other elements of infanticide either clearly exist or do not exist. The Crown would have to prove beyond a reasonable doubt that the accused's psychological health was not substantially compromised from the effects of giving birth or lactation.

88. The assessment must be based on all the evidence that could bear on the accused's mental status, not just her self-reporting. A non-exhaustive list of factors to consider when assessing the level of the mental disturbance could include:

- a. Medical or psychological evidence, including any history of psychological issues and whether these were exacerbated by giving birth or lactation;
- b. The extent to which the accused appreciated the nature and consequences of her actions and appreciated that they were wrong (unlike s. 16, this would not be the sole determiner);
- c. The accused's awareness of, and behavior during, pregnancy, including denial or concealment of pregnancy and preparations for becoming a parent or not;
- d. Whether the accused's behaviour was rational immediately before and after giving birth;
- e. The accused's circumstances at the time, including unwanted pregnancy, lack of social supports, abusive relationships, financial instability, social and economic stresses that may exacerbate, but not substitute for, a mental disorder.

- f. The details of the wilful act or omission itself such as goal-oriented behavior or the accused's ability to recall events.¹²⁶

Disturbance in context

89. The proposed test for mental disturbance makes sense from a policy perspective. For the test to work, however, it must also fit with other existing components of the infanticide legislation. So far courts have only focused on parts of the scheme and have not analyzed it as a whole. The Appellant will now integrate the test with other elements and review two problematic aspects of the mental disturbance analysis: 1) the lack of a requirement for a causal connection between the mental disturbance and the act that resulted in the death of the child and 2) the characterization of disturbed mental state as part of *actus reus* as opposed to *mens rea*. The Appellant submits that the proposed test offers a cohesive and purposive interpretation of the infanticide provisions. The defence of infanticide must be interpreted as requiring a substantial impairment to psychological health that is causally connected to the act of killing, and the disturbed mental state must be part of the *mens rea*, otherwise, most mothers suffering from even a minor disturbance would escape conviction for murder. This could not have been Parliament's objective.

Causal connection is required

90. The section purports to recognize a condition which makes the female accused less morally culpable for killing her infant. It has been suggested that infanticide does not require any causal connection between the disturbance of the mother's mind and the decision to do the act that caused her child's death. It is said to be an "*assumption* that if a woman with a disturbed mind kills her child, the disturbance is *what led to the killing*" [emphasis added].¹²⁷ This sounds remarkably like the suggestion that proof of the disturbance may be found in the killing itself, a disturbing tautology untethered to logic.

¹²⁶ See *R v B (L)*, (CA) *supra* [Tab 3]; leave to appeal dismissed, *R v B (L)*, (SCC) *supra* [Tab 4]; *R v Guimont*, 1999 CarswellQue 4735 (CA) [Tab 10]; *R v Effert*, (CA) *supra* [Tab 6]; *R v G (A)*, 2003 CarswellOnt 2311 (CJ) [Tab 8]; *R v Coombs*, *supra* [Tab 5]; Isabel Grant "*Desperate Measures: Rationalizing the Crime of Infanticide*" *supra* at p 253 [Tab 25]

¹²⁷ *R v Guimont*; *supra* at para 12 (emphasis added) and para 13 [Tab 10], "The legislator presumes in a way that the mental disturbance connected to the birth caused the murder".

91. Other partial and full defences such as intoxication and NCR require a causal connection to the *mens rea* of the offender, consistent with the general recognition that external or internal factors affecting *mens rea* may reduce or eliminate criminal culpability.¹²⁸ Put simply, the Court is concerned about the degree to which the offender has a “guilty mind”.

92. An imperfect comparator to infanticide may be found in provocation. Like infanticide, the defence will only apply where the accused had the necessary intent for murder and acted upon this intent. Also similar to infanticide is that the pre-amendment version of provocation was a poorly drafted anachronism. However, unlike infanticide, courts have not hesitated to interpret the defence of provocation to ensure that not all cases of temporary upset and/or loss of self-control would qualify. The addition of an objective element (a wrongful act or insult sufficient to deprive an *ordinary* person of the power of self-control) to the subjective element (the accused must have acted in response to the provocation on the sudden before there was time for his or her passion to cool) requires provocation to be interpreted in accordance with contemporary social norms and values.¹²⁹ Although provocation is meant to partially excuse an accused’s conduct out of compassion to human frailty, to be recognized *at law*, the insult must be of sufficient gravity to cause a loss of self-control, as objectively determined. Accordingly, being short-tempered or unusually excitable does not give one the right to murder. Furthermore, a causal connection is required between the provocation and the act of killing.¹³⁰ This causal connection, combined with the objective component, ensure that not all instances of loss of self-control will be excused.

93. Infanticide must similarly be interpreted to include an objective standard to reflect modern societal values. The disturbance of the mind must be of sufficient gravity to substantially compromise the psychological health of the mother, and must be seen to have objectively caused the wrongful act or omission that resulted in the death. The murder must have occurred as a *consequence* of the mother’s compromised mental state. Unless interpreted this way, infanticide will continue to apply to virtually all mothers experiencing a slight disturbance at the time they intentionally killed their child, regardless of their actual moral blameworthiness.

¹²⁸ Gus Kim, “*The Floodgates*”: *How R. v. L.B. May Make Available the Infanticide Defence to Accused Murderers with the Baby Blues*, *supra* at para 3(c) [Tab 31]

¹²⁹ *R v Tran*, *supra* at paras 9-38 [Tab 16]

¹³⁰ *R v Tran*, *supra* at paras 29, 37 [Tab 16]

Mental state is part of the *mens rea*

94. In the case of *R v Guimont*,¹³¹ the Quebec Court of Appeal suggested that there does not need to be a connection between the mental "disturbance" and the act that led to the death of the newly born child. This led the Ontario Court of Appeal in *R v LB* to conclude that the mental disturbance constitutes part of the *actus reus* as opposed to *mens rea*.¹³² This is contrary to the general notion that the *actus reus* constitutes the prohibited conduct and the *mens rea* constitutes the guilty mind required to find criminal responsibility.¹³³ To categorize a disturbance of the mind affecting the *mens rea* (guilty mind) of the offender as part of the *actus reus* of the offence does not accord with the notions of basic criminal law.

95. If the concept of a mental disturbance were to be characterized as *actus reus*, it would have to exist as a "circumstance" element.¹³⁴ The partial defence would apply whenever the background state of "mental disturbance" exists. Such treatment would effectively eradicate any threshold for mental disturbance and any requirement for causation. This view has the effect of failing to protect vulnerable infants and suggests that women in such circumstances are less inherently capable and ought to be excused even in circumstances where the "mental disturbance" is unrelated to the decision and intention to murder.

96. It may be worth noting that the disturbance ought not to impact the voluntariness of the conduct. If the mental disturbance causes a woman "to lose all control" of her actions, the appropriate analysis would be automatism. In such circumstances the burden would be on the accused to establish that her condition rendered her actions involuntary.

97. To approach the disturbed mental state as being part of the *mens rea* better accords with the concern of society and the courts to consider the moral culpability of an offender. The conduct of an offender who kills as a result of a disturbance of the mind, and is at the same time found to be criminally responsible, would be sufficiently criminally blameworthy to merit

¹³¹ *R v Guimont*, *supra* [Tab 10]

¹³² *R v B (L)*, (CA), *supra* at para 59 [Tab 3]; leave to appeal dismissed, *R v B (L)*, (SCC) *supra* [Tab 4]

¹³³ Kent Roach, "*Criminal Law*, 4th ed.", (Toronto: Irwin Law, 2009) at pp 8-9 [Tab 20]

¹³⁴ *Actus reus* may involve not only physical *conduct* but also attendant *circumstances* and resultant *consequences*. See *R v Greenwood*, 1991 CarswellOnt 118 (CA) at para 27 [Tab 9]; *R v Latouche*, 2000 CarswellNat 1673 (CMAC) at paras 19, 31 [Tab 13]; *Woolmington v DPP*, (1935) AC 462 (HL) [Tab 17]

punishment, but certainly not the extreme punishment imposed for murder.¹³⁵ Parliament could not have intended that the mere presence of any level of mental disturbance, unrelated to the killing, would suffice to properly found a verdict of infanticide. The disturbance must meet the threshold of substantially compromised psychological health, and that mental disturbance must have caused the murder.

The Trial Judge failed to apply any legal standard to mental disturbance

98. The Trial Judge found that the Respondent wilfully caused the death of two newborns.¹³⁶ He then had to consider if the Crown disproved any element of infanticide beyond a reasonable doubt. However, he failed to apply *any* legal standard for requisite mental disturbance to the circumstances relating to *each* baby. This error is illustrated in three ways: using the conduct to determine the mental state; failing to articulate the test used and failing to appreciate relevant evidence relating to mental disturbance.

The conduct determined the mental state

99. The Trial Judge improperly relied on the conduct to determine the mental state. To him, the Respondent's actions were "bizarre" and "absolutely contrary to the nurturing that humankind depends on for its propagation" and therefore her mind *must* have been disturbed. Such an approach would result in a verdict of infanticide in every case where a mother kills her infant within one year of birth.

Failure to articulate a test

100. The Trial Judge found that "balance of the mind" was not the test for infanticide. He rejected Dr. Hashman's evidence in part because Dr. Hashman had relied upon "balance of the mind" as the test for infanticide. The Trial Judge believed that "balance of the mind" was different from "mind is disturbed". As discussed above, "balance of the mind" and "mind is disturbed" must be interpreted as having the same meaning. Of greater concern, the Trial Judge did not suggest what the test was or what level of disturbance (arising from the effects of childbirth) would be sufficient.

¹³⁵ *R v Tran*, *supra* at paras 21-22 [Tab 16]

¹³⁶ AR Vol 3 at p 50

101. It fell to the Trial Judge to determine whether the Respondent's self-reported level of depersonalization, described as "being aware of what she was doing, but feeling detached" satisfied the legal concept of her "mind is disturbed."

102. Instead, he adopted the defence expert opinion, without analyzing the level of disturbance, and found that the Crown had not disproven infanticide. In the present case, the expert's opinion became the judgment in relation to mental disturbance. A clearly defined test is required to assist trial judges in their role as the one who determines the ultimate issue.

Failure to appreciate evidence of mental state

103. In this case, the central issues were: 1) was the Respondent's mind "disturbed" when she killed two newborns and 2) was her mental disturbance a result of not having fully recovered from giving birth. Arguably, the trial judge should have considered causation as a third issue. In determining whether the level of depersonalization met the requirement for infanticide, the Trial Judge failed to consider the Respondent's detailed account of *each* birth, her goal-oriented behaviour, her personal circumstances beyond not having a criminal record or psychopathic tendencies, and her pattern of rational behavior and wilful blindness.

104. In Dr. Smith's view, there was evidence of a mental disturbance that was based on depersonalization in response to the stress and anxiety of the unexpected delivery. The Respondent's symptoms ranged from a minor sense of numbness and unreality (like sleep deprivation and jet lag) to an out-of-body experience."¹³⁷ The Respondent may have felt "detached from her mind and body" but she was aware of what she was doing and she knew it was wrong.¹³⁸ There was no evidence regarding a finite term for this condition; it was described as "transient" and situational. When the depersonalization ended, the Respondent's lifelong coping mechanism of denial "kicked in."¹³⁹

105. The Respondent's detailed account of *each* birth should have been considered, as according to Dr. Smith, depersonalization would make things seem distorted.¹⁴⁰ For each baby the Respondent recalled a number of details, including:

¹³⁷ AR Vol 2 at p 146/14-22

¹³⁸ Dr. Smith's Testimony - AR Vol 2 at pp 153/12-15, 177/7-41

¹³⁹ Dr. Smith's Testimony - AR Vol 2 at pp 152, 162

¹⁴⁰ AR Vol 2 at p 176/15

- where her boyfriend and his brother were;
- the first baby's cry was quieter;
- the dumpster was half full;
- she tied off the bags;
- she took the second baby out of the toilet before the afterbirth;
- she wrapped the baby in a towel and changed the sheets after.

The second time, the Respondent gave birth in the bathroom and concealed the baby in a smaller bag before putting him/her in the larger bag. She also had the presence of mind to move away from others.¹⁴¹

106. For each baby, the Respondent demonstrated goal-oriented behavior indicating rational thought. She wrapped each baby in a towel, put the babies in a bag that she tied off and put the baby in a dumpster. She efficiently concealed the infants and disposed of them in a way that would not draw attention.

107. The Respondent went to work the day after killing her first baby and was back at work within a week of killing the second.¹⁴² The Respondent was a mature individual with social support. She was educated, working full-time, and lived with her long term boyfriend and his brother. She was ambivalent about having children¹⁴³ and didn't know if her boyfriend would be angry about the pregnancy but she didn't want to lose him.¹⁴⁴

108. Perhaps the best independent evidence of the Respondent's state of mind came from the similar act evidence relating to the third baby. The Trial Judge found she was an intelligent person who had a *strong memory* and understood the police caution.¹⁴⁵ Yet, when determining the mental state, he failed to consider that the Respondent was conversing with police, providing her name and details about herself and her boyfriend, as well as providing the false story about a miscarriage, ninety minutes after giving birth. This evidence demonstrates rational thought and an uncompromised mind.

¹⁴¹ AR Vol 2 at p 174

¹⁴² Dr. Hashman's Testimony - AR Vol 2 at pp 114/39-115/6 - for the 2008 pregnancy, she was back to work the next day and for 2009 pregnancy she was back to work within a week

¹⁴³ Dr Smith's Testimony - AR Vol 2 at p 142

¹⁴⁴ November statement - AR Vol 5 at p 131/8-14

¹⁴⁵ Voir Dire #1 - AR Vol 1 at p 162/4-10

109. The Trial Judge failed to consider the Respondent's pattern of behaviour, her wilful blindness and the impact of childbirth on her mental state. Despite her experience with Baby #1, and her uncertainty about becoming a parent, the Respondent found she was pregnant again. She didn't tell anyone and hoped the baby would "go away." She repeated her lies to co-workers to explain changes in her appearance. She concealed the second birth from her boyfriend and his brother (who were home), leaving the baby to die in the dumpster so she could return to her normal routine. Remarkably, the entire scenario played out, again, a third time. The Respondent lied to co-workers and even falsified a WCB report to avoid having the third pregnancy detected.¹⁴⁶ Being in denial does not mean she was unaware.

110. Finally, the Trial Judge failed to consider whether her denial and avoidant personality traits were an effect from not having fully recovered from giving birth, or a condition that was exacerbated by birth or a personality trait that existed independent of giving birth. For the fourth baby, where she was not permitted to deny her pregnancy, there was no mental disturbance.

111. While the disposal of her children may be contrary to the nurturing humankind relies on, it was a *pattern of repeated behaviour* for the Respondent. Every baby she had, other than the fourth baby she had while under strict supervision, was wrapped in a towel, concealed in a garbage bag and left to die in a dumpster. In the present case, the result might have been different had the Trial Judge properly considered whether the level of mental disturbance, if any, in the circumstances of each baby, met the legal requirements of infanticide, and if had he not abdicated this duty to the experts.

Conclusion

112. The defence of infanticide is vague, outdated and rife with problems. At the moment there is no clear guidance as to what constitutes a "disturbed mind". The Appellant has suggested a test that will provide direction to judges and juries with respect to this confused area of law. The test should be that a woman has a disturbed mind if her psychological health is substantially compromised from the effects of giving birth and caring for a newborn. The mental disturbance must have caused the woman to have intentionally killed her baby, and must be part of the *mens rea* of the offence. Like the partial defence of provocation, which at one time was

¹⁴⁶ November statement – AR Vol 5 at p 36-37

also thought to be controversial and archaic, the infanticide provision requires a purposive and prosocial interpretation that would prevent this defence from being applied across the board to all mothers who kill their newborn children while only mildly disturbed. The Appellant's proposed test accomplishes this goal and meets the courts' moral and legal obligation to protect the most vulnerable members of our society.

113. As no legal standard was applied to assess the level of mental disturbance at trial, the appeal should be allowed and a new trial ordered on two counts of second degree murder.

PART IV – COSTS

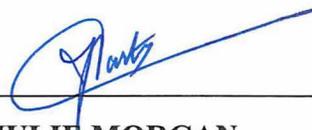
114. The Appellant makes no submissions regarding costs.

PART V – ORDER SOUGHT

115. The Appellant asks that the appeal be allowed and a new trial on two counts of second degree murder be ordered.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Calgary, Alberta, this 13th day of November, 2015.


for **JULIE MORGAN**
COUNSEL FOR THE APPELLANT


JOANNE DARTANA
COUNSEL FOR THE APPELLANT

JM/keI

JAD/keI

PART VI - TABLE OF AUTHORITIES

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3	<i>R v B (L)</i> , 2011 ONCA 153, 2011 CarswellOnt 1214 (CA) at para 59	65, 88(f), 94
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8	<i>R v G (A)</i> , [2003] OJ No 2335, 2003 CarswellOnt 2311 (CJ)	88(f)
9	<i>R v Greenwood</i> , 67 CCC (3d) 435, 1991 CarswellOnt 118 (CA) at para 27	95
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19	The Honourable Madam Justice B.M McLachlin, “ <i>Crime and Women – Feminine Equality and the Criminal Law</i> ” 25 UBC Law Rev 1 1991 at pp 4, 5, 6	63, 64, 66, 70
20	Kent Roach, “ <i>Criminal Law, 4th ed.</i> ”, (Toronto: Irwin Law, 2009) at pp 8-9	94
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22	Ottawa, Dominion of Canada, <i>Debates House of Commons</i> , 20 th Parl, 4 th Sess, Vol V, (14 June 1948) at p 5184 (Diefenbaker) and at p 5185 (Ilsley)	66, 84(b)
23	Ottawa, “ <i>Debates of the Senate</i> ”, <i>Official Report, Hansard</i> , 35 th Parl, 1 st Sess, Vol 3 (7 Nov 1995) (Anne Cools) at p 2221	69
24	Eric Vallillee, “ <i>Deconstructing Infanticide</i> ” (2015) Vol 5: Iss 4, Western Journal of Legal Studies, Article 1 at p 8	63, 66
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30	Judith Osborne “ <i>The Crime of Infanticide: Throwing out the Baby with the Bathwater</i> ” (1987) 6 Can J Family L at pp 54-58	66
31	Gus Kim, “ <i>The Floodgates</i> ”: <i>How R. v. L.B. May Make Available the Infanticide Defence to Accused Murderers with the Baby Blues</i> , (2013) 17 Can Crim L Rev 217 at paras 3(b), 3(c)	65, 69, 91
32	Kirsten Johnson Kramar, <i>Unwilling Mothers, Unwanted Babies: Infanticide in Canada</i> (Vancouver: UBC Press, 2005) at pp 4, 86-87, 94-96	66

APPENDICES

A) Summary of the Respondent’s October 19, 2010 Statement

B) Summary of the Respondent’s November 19, 2011 Statement

PART VII – LEGISLATION AT ISSUE

Criminal Code, RSC 1985, c C-46, s 233

233. Infanticide

A female person commits infanticide when by a wilful act or omission she causes the death of her newly-born child, if at the time of the act or omission she is not fully recovered from the effects of giving birth to the child and by reason thereof or of the effect of lactation consequent on the birth of the child her mind is then disturbed.

233. Infanticide

Une personne du sexe féminin commet un infanticide lorsque, par un acte ou une omission volontaire, elle cause la mort de son enfant nouveau-né, si au moment de l'acte ou de l'omission elle n'est pas complètement remise d'avoir donné naissance à l'enfant et si, de ce fait ou par suite de la lactation consécutive à la naissance de l'enfant, son esprit est alors déséquilibré.

Criminal Code, RSC 1985, c C-46, s 234

234. Manslaughter

Culpable homicide that is not murder or infanticide is manslaughter.

234. Homicide involontaire coupable

L'homicide coupable qui n'est pas un meurtre ni un infanticide constitue un homicide involontaire coupable.

Criminal Code, RSC 1985, c C-46, s 237

237. Punishment for infanticide

Every female person who commits infanticide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

237. Punition de l'infanticide

Toute personne du sexe féminin qui commet un infanticide est coupable d'un acte criminel et passible d'un emprisonnement maximal de cinq ans.

Criminal Code, RSC 1985, c C-46, s 663

663. No acquittal unless act or omission not wilful

Where a female person is charged with infanticide and the evidence establishes that she caused the death of her child but does not establish that, at the time of the act or omission by which she caused the death of the child,

- (a) she was not fully recovered from the effects of giving birth to the child or from the effect of lactation consequent on the birth of the child, and
- (b) the balance of her mind was, at that time, disturbed by reason of the effect of giving birth to the child or of the effect of lactation consequent on the birth of the child,

she may be convicted unless the evidence establishes that the act or omission was not wilful.

663. Aucun acquittement à moins que l'acte ou omission n'ait été involontaire

Lorsqu'une personne du sexe féminin est accusée d'infanticide et que la preuve démontre qu'elle a causé la mort de son enfant, mais n'établit pas que, au moment de l'acte ou omission par quoi elle a causé la mort de l'enfant :

- a) elle ne s'était pas complètement remise d'avoir donné naissance à l'enfant ou de la lactation consécutive à la naissance de l'enfant;
- b) son esprit était alors déséquilibré par suite de la naissance de l'enfant ou de la lactation consécutive à la naissance de l'enfant,

elle peut être déclarée coupable, à moins que la preuve n'établisse que l'acte ou omission n'était pas volontaire.

Criminal Code, RSC 1985, c C-46, s 672.11(c)

672.11 Assessment order

A court having jurisdiction over an accused in respect of an offence may order an assessment of the mental condition of the accused, if it has reasonable grounds to believe that such evidence is necessary to determine

- (c) whether the balance of the mind of the accused was disturbed at the time of commission of the alleged offence, where the accused is a female person charged with an offence arising out of the death of her newly-born child;

672.11 Évaluation

Le tribunal qui a compétence à l'égard d'un accusé peut rendre une ordonnance portant évaluation de l'état mental de l'accusé s'il a des motifs raisonnables de croire qu'une preuve concernant son état mental est nécessaire pour :

- c) déterminer si l'accusée inculpée d'une infraction liée à la mort de son enfant nouveau-né était mentalement déséquilibrée au moment de la perpétration de l'infraction;

Criminal Code, RSC 1985, c C-46, s 672.21(3)(d)

672.21(3) Exceptions

Notwithstanding subsection (2), evidence of a protected statement is admissible for the purpose of

- (d) determining whether the balance of the mind of the accused was disturbed at the time of commission of the alleged offence, where the accused is a female person charged with an offence arising out of the death of her newly-born child;

672.21(3) Exceptions

Par dérogation au paragraphe (2), une preuve d'une déclaration protégée est admissible pour :

- d) déterminer si l'accusée inculpée d'une infraction liée à la mort de son enfant nouveau-né était mentalement déséquilibrée au moment de la perpétration de l'infraction;

APPENDIX TAB A

**Summary of the Respondent's October 19, 2010 statement to police relating to Baby #3
[Taken in hospital]**

AR Vol 2 – Tab 4 [page number is referenced in parenthesis]

Police interviewed the Respondent in the hospital at 5:52 pm, close to 6 hours after she gave birth to Baby #3. The interview segments totaled about one hour and 35 minutes. There was a 40-minute break.

The Respondent was born in Toronto and had been in Calgary for about four years. (p 70) She had moved to Jasper then went to Calgary as it was something different. She was currently working at the Sheraton downtown as a server. She did one year of university after high school (p 91). She was living with her boyfriend and his brother. (p 72)

When asked why she was “here right now” the Respondent cried as she said she delivered a baby and didn’t even know she was pregnant. She “did a horrible thing.” She panicked and put it in a dumpster and was sorry. She was “really scared and I’ve been really scared all day, especially when that happened” and she “didn’t know what to do.” (pp 72-73/11)

She and her boyfriend have been together a little over three years. She has not been with anyone else. (pp 73-74)

She gained weight a few months ago, about 10-15 lbs. She had her period throughout the pregnancy. (pp 74-75)

When asked if she was ever pregnant before she replied she had a miscarriage over a year ago and was 6 months pregnant at the time. She was asked how she knew she was pregnant and had a miscarriage at that time. She replied it was “kind of obvious” and she experienced abnormal pain. She went to the doctor and they told her she had miscarried and they had to induce labour to “get it out.” (p 75) She thought she knew she was pregnant but didn’t necessarily want to admit it (p 76).

This pregnancy felt completely different (from the miscarriage) as “everything felt normal” to her and being pregnant did not cross her mind. (p 76)

She talked about having kids before with her boyfriend. He was “okay with it” when she was pregnant last time. She thought it hit him harder that it was a miscarriage. Both knew they went through something traumatic but did not talk about it a whole lot. (pp 77-78)

She thought she knew all along that she was pregnant before she miscarried “to be honest with you.” (p 77/13-15)

This time she did not feel like there was anything inside her or that there was anything different from normal. About 4-5 months ago she noticed weight gain but did not keep gaining weight so it did not “set off any alarms” for her. (p 78/7-12)

The next time she noticed anything was within last couple of days. She had cramps and thought they were normal female cramps (p 78/17-19). She was up all night and the cramps got worse in morning before it all happened. She started to think “well maybe this obviously isn’t, you know, what’s supposed to be happening and maybe, you know, I am delivering a baby” and she got scared and did not know what to do. Mild cramps started around 10 pm and got worse as the night went on. Nothing came out of her before delivering, aside from going to the bathroom. At some time in that morning she probably realized she was delivering a baby (A397-A398)

She was at home when the cramps started. She first noticed it hurt a bit more than usual during a walk and it got worse. It changed from cramps to something more around 3-4 am. She didn’t tell anyone as she didn’t want to be a pain and wake anyone up and was scared. The feeling would come and go. Once she realized it was not cramps and she was maybe delivering a baby she was petrified. She was scared of what she was going to “do with everything” as she was not prepared to have a baby. She was scared of how would she tell her boyfriend and how would she do it physically (pp 79-81)

She didn’t know where to start, what to do or how to approach the situation. She thought her boyfriend would have been shocked if she told him, but not angry or as hurt as he is now. She was not prepared for that kind of thing to happen, not prepared to have a baby or be in that situation. She was scared of everything. She’s always afraid to ask for help (p82).

She had been using birth control (the pill). (p 83)

She miscarried last July and it may have been a “relief” just because they were not financially set for that (A401-A402). She and her boyfriend didn’t talk about (the miscarriage) a lot. It didn’t really hit her until about a week or so afterward. She got a little depressed afterward and took some time off work to get herself together. (p 84)

Just recently her boyfriend was talking about – he’s the one that talked about kids and things like that. [crying]. She never wanted kids, or even thought about it, until she met her boyfriend. She could see it working with him. (p 84/21-85)

She was upstairs in her bedroom when she realized (she was having a baby). Her boyfriend was at work. He had been home during the night then left about 10-10:30am. She told him she didn’t feel well. She did not tell him about being pregnant. After her boyfriend left, she couldn’t sleep due to the cramps. She sat in shower, went back to the bedroom and then back to bathroom. It was like an instinct to start pushing and she did (pp 85-87).

The baby came out after couple minutes, half hour, an hour. She was standing over the toilet. He came out and wasn’t moving or crying. She cut the cord and put him outside [crying] (p 89).

The baby came out head first. She started crying and “freaking out” because she didn’t know what to do. The baby came out and there was blood afterward. The baby went into toilet, not completely submerged. She cut the cord with nail scissors or tweezers. When the baby first came out she couldn’t hear him crying and didn’t look at him really close. (pp 90-91)

She pulled the baby so he was above the surface (of the water in the toilet). She pulled his head out of the water. She did not hear any noise from him. She put him in the garbage can in the bathroom, took the bag out and brought it downstairs and the big garbage bag was full. She put that bag and took baby outside. (A410) [She then says “oh god” and is crying]. The inside bag was open. The outside bag was closed. She was freaking out “not knowing if...kind of thinking what should I do?” She didn’t know what to do. She said “it was like a mile a minute. I couldn’t even...I wouldn’t know my name at that moment if you asked.” She was scared. (p 93)

“I guess I maybe just wanted it to go away or something. I don’t know...But, I mean, in the same breath maybe I did it cause I wanted somebody to find out so I could get help cause I didn’t know what to do in that situation.” She was scared of facing reality of situation, telling her boyfriend. She was scared of saying “what are we going to do.” It wasn’t planned or expected. (p 94)

She loosely knotted the bigger bag at the top (p 94/22). She put it in the dumpster outside her apartment. She did not hear a cry or anything. She did not see anything out of the ordinary. She did not check him once he was in the bags. She did not see him moving. There was other food in the bag. The big bag was just a black garbage bag the other was a Superstore shopping bag. She set the bag in the dumpster (not violently but like she would any other garbage bag). The dumpster was fairly empty. (pp 95-96)

She did not hear anything when she put the bag in the dumpster. When asked what was going through her mind at that point: she was “wondering if I made the right decision. Obviously not...and I just wanted it all to be over.” She probably thought the baby was dead because he came out dead. She didn’t hit it and it was not moving the whole time she dealt with it (not very long, half an hour, but could have been less). She did not try to do something for the baby but should have because it was her responsibility. What she did was not right. (pp 97-97)

When asked why she didn’t do something, she says “I know it sounds ridiculous but I have no idea, to be honest with you. I can’t, I can’t even comprehend as to why I did it...I was scared but I should have done so many things differently today.” She wishes she had (done something) if she could do it again she would. She doesn’t know why she reacted the way that she did and it scares her. (p 99)

She should have called 911 as soon as it happened and dealt with whatever she had to deal with. She did something “horribly horribly wrong” and she’s “really really sorry” – sorry everyone’s had to deal with this. She doesn’t know if her boyfriend ever wants to talk to her or see her as she hurt him (p 100).

When asked why she thinks things happened this way the Respondent says “I couldn’t tell you. To be honest, like I said before, I’m not a malicious person. I’m not a violent person. I’m not...I

don't know...it scares me that I did that." It scared her that she did this and it made her wonder what's "going on in my head." (p 101/5-13)

If she heard something from the baby she would like to say she would have stopped but judging by her earlier behaviour she didn't know. (p 101/16-21)

She always thought she would react differently in crazy situations like that and obviously did the wrong thing. After putting the bag in the dumpster she went back home. She smoked a cigarette inside, then went upstairs and lied down. She tried to "wrap her head" around what happened. Then her boyfriend came home. He yelled through the door that he could hear a baby in the dumpster. He slammed the door behind him and ran outside. She went outside and sat on the front steps while people milled around and tried to figure this out. The cop started talking to her and brought her to the hospital. (pp 102-103)

When asked if there had been a time before this where she'd done something and not know why, she replied "nothing to this degree." (p 103)

She and her boyfriend get along well. He is the first person in a long time she can talk to, although he has to coax her sometimes. She loves him and he is the last person in the world she would want to hurt or have him think less of her. She sometimes bottles her emotions and he forces the emotion/what's bothering her out. They are pretty good at being completely honest and straightforward with each other. No physical arguments or hitting between them. (p 106-107)

Her boyfriend's brother was home and left for work around 7:15-7:30 am. (pp 107/21-108/3)
They live in a townhouse with two levels. The bedrooms are on the upper level and the kitchen is on the main level. (p 109) There is a history of mental illness in her family. Her mother is manic-depressive. (p 110)

[The officers leave and return.]

The Respondent is feeling tired and scared. Scared of what is going to happen to her and the people she cares about (her boyfriend). She worried about her boyfriend and doesn't know how he will react: it could be shock, anger, confusion, hurt. He loves her and to come home and have this happen would shock and confuse him. She loves him more than anything. (pp 115-116)

Before this happened they had plans to get married and have a house. Her boyfriend was going back to school in January. She was planning to be a vet assistant and maybe someday open her own restaurant or animal rescue. They did not have concrete plans for having a family but it was never out of the question. Right now would not be the ideal situation as they wanted to be established, have their own place and be financially stable then potentially take the next step. (pp 116-117)

She loves her parents but is not close to them. She talks to her mom every couple of months or so. Her mother threatened to commit suicide when the Respondent was nine. She loves and

respects her mom and dad. She cares about her friends. She has two close friends in Calgary. Her friend, Darcie, and her boyfriend knew she was pregnant in 2009. (pp 118-122)

Her miscarriage happened in the house. She had abnormal pain. A little blood came out. Her boyfriend took her to a clinic the next day. Doctors confirmed she had a miscarriage and “took everything out that needed to be taken out” and told her she may be anemic as she had lost blood.

The doctor gave her a “req” (requisition) for lab tests and she took time off work to get her head around it. She went to the clinic at the Superstore near 4th Street and Centre Street (Hunterhorn) and saw an Asian doctor. They “took everything out” in the doctor’s office using “tools and whatnot.” She had lost blood overnight. She said the doctor said there was not much left. She could have pushed the foetus out but doesn’t know. (pp 122-124)

For the miscarriage she knew she was pregnant but was not willing to admit it. She had her periods throughout. This time (the 2010 pregnancy) she made herself more aware of symptoms and situations and what she would feel like if she was pregnant as she wasn’t willing to let “it” happen again. If she was pregnant she would deal with it in the “proper way like you’re supposed to.” She doesn’t recall anything happening that caused the miscarriage. “...like last night I don’t remember the time, time previous before that all that clearly anymore. I think I probably blocked some of it out...” She says she may have pushed the foetus out, the doctors could have taken it out, she didn’t know. She may have blocked the whole thing out as it was more traumatic than she wanted to believe. She and her boyfriend haven’t really talked about it (the miscarriage). (pp 125-128)

She was taking a birth control pill since she was 19-20 years old. When she was pregnant last time she was on the pill, they had unprotected sex and she went back to taking the pill. She was pretty regular at taking the pill. Her boyfriend knew she was pregnant this time. (pp 128-129)

She saw the baby and stream of blood. She didn’t smell anything out of the ordinary. She felt scared and panicky. She recalls the mess in their bathroom (newspaper on the floor, stuff on the counter, toilet paper roll, and toilet brush). She remembers the afterbirth coming out, it was dark, reddish and kind of flat. It went into the toilet and the baby was on floor when that happened. (pp 130-132)

She nods “yes” that the baby came out head-first (into the toilet). She pulled the shoulder so the baby wasn’t submerged under water. She stood for a couple of minutes or couple seconds maybe then there was a big stream of blood. She pulled the baby out (of the toilet). The baby was on the floor. She looked at it and didn’t know what to do. [crying] A few minutes later she had cramps and sat on toilet. The after birth came out and she flushed it down the toilet. She put baby in the garbage can and took it outside. (p 132)

She cut the umbilical cord when she sat on toilet and the baby was on the floor. She cut it because she knew it had to come detached somehow, from the little knowledge she has of this kind of thing. The baby wasn’t making any noise. She didn’t notice any limbs moving. She assumed it was dead, didn’t try to find out more than that or fix it but should have. She said the baby felt “squishy.” She picked him up under his armpits and put him on the floor. She put a

towel down on the floor (it may have been white). After putting the baby on the floor she cut the cord. Then she sat there trying to figure out what to do. (pp 133-135)

When asked what was going through her mind she said she couldn't give an answer. She couldn't think properly and wouldn't have known her name if you had asked. She repeated that she couldn't think properly, couldn't function. Her immediate reaction was to try to make it go away. That was "obviously the wrong...well of course the wrong reaction." (p 136)

The baby wasn't moving or making any noise. She did not do anything to move him or touch him. When asked why she said she didn't know, maybe it scared it. She thought it was dead and that it looked dead. She remembered that there was not much in the garbage can as she had changed the bag a couple days before, but maybe empty toilet paper rolls, hair product container. She picked the baby up from the floor and put him in the garbage can. She did that with the towel around him. Put him in and pulled the bag out. She saw "everything sort of happen at once: kind of like it flashed before [her] eyes." She remembers thinking "am I doing the right thing or like what am I doing?" She was trying to calm herself to point where she could make rational decision. She thought she was in such a state because maybe she knew she wasn't doing the right thing and was maybe a bad person. "... maybe I knew I wasn't doing the right thing...and like I said, maybe I just wanted it to like all be over and, you know, be done with." (pp136-139)

It crossed her mind that the baby may not be dead but she didn't do anything to find out. She did not hear him cry. She tried not to look at him so she wouldn't have to see this happening. She didn't think she wanted him to be dead. But looking at him was a harsh reality to face at that moment and she wasn't thinking logically/rationally by any means. (pp 139-140)

She remembers putting the lid on the garbage can "for some stupid reason." Then went downstairs to where the kitchen garbage was and took him outside. [crying] (p 141)

She was wearing pajama pants and a sweatshirt hoodie. She left baby on the floor, in the towel to get dressed. He was on the floor no more than two minutes. After getting dressed she grabbed the bag and went downstairs and put it in another bag. She remembers putting flip flops on. She tied the other bag up and took it to the dumpster. She didn't hear anything and wasn't looking for any movement. She did not see anyone outside. She used one hand to put the bag into the dumpster. At that point she was thinking that maybe it was over and that she did something wrong. She thought he could be alive and should have called 911 before this "whole thing" happened and should have run inside and called 911. She thought that when the bag was out of her hand. Her other thoughts were that "it was over...just the whole ordeal. And, but then... another part of me said that it wasn't and that maybe I was gonna get caught for doing. Because, I mean, what an awful thing to do." Maybe she wanted (police) to find it. For her to even do that "something's obviously wrong..." because she's not a maliciously violent person or anything like that. (pp 142-145)

She walked back into the house, slower than usual. She walked up the stairs and had a smoke. She thought about checking the baby then thought she'd draw attention to herself. She is crying and says she "is so sorry" she did this. (p 145)

She is sorry that she hasn't been the best person. When she realized she was having a child she didn't respond right away. She didn't call any one. She didn't try to get help. She wasn't even able to call her boyfriend and say what was happening and ask for help. She is sorry that she hurt people: the baby, her boyfriend, any of her friends who are going to know about this, her family. They will think she is "nuts" and maybe she is, she doesn't know. She doesn't know anything anymore. She does not know herself anymore after today. (pp 146-147)

She smoked inside. She had the smoke downstairs and was downstairs for a little bit. Then she went upstairs, got into bed, turned the TV and was watching some movie when her boyfriend came home and yelled through the door "there's a baby in the dumpster...somebody found a baby in the dumpster." He closed the door behind him and ran out. She went downstairs and looked out the kitchen window to see what was going on. There were police vehicles and the tape went up. People were looking around. There was a girl at the end "that must have found it" she went and sat outside. The officer asked her if she was spoken to yet and she said no. He asked if she was home all day and she replied that she was home sick from work. He asked if she saw anything out of the ordinary and she said no. He saw blood on her pants. She thought he would think she was worth talking to. She had a blanket wrapped around herself. The officer did not ask about the blood. The Sergeant came over and asked if she was sick and that EMS was going to check her and they brought her to the hospital. (p 147-149)

The first time she told someone about what happened was in the ambulance. She remembered one of the EMTs asking about the blood. She said it was from a heavy period. She had "no idea" why she said that, it's something else she shouldn't have done today. (p 149-150)

No one had talked to her about the baby. The interviewing detective told her that the baby was alive. She replied "I didn't know that. Good...I'm obviously not fit to be a mother right now so..." She was really glad he was alive and her "stupid actions" didn't take an innocent life. When asked what should happen with the baby, she repeated she was not fit to be a parent right now. She didn't know what her boyfriend wanted to do; if he wanted to do it on his own he had her permission. The baby needs to go to a good home and be raised happily. If he wanted to keep the baby she would have to start over without him. Once she leaves the hospital she doesn't know if her boyfriend wants to talk to her or see her or if she'll have a job. (p 151-153)

The detective explains that there is an emergency protection order for the baby right now. The Respondent asks what she is potentially facing with the charges and what it means. The detective explains that police have to finish talking to witnesses and searching but there was a high likelihood she'll be charged, then go to a Justice of the Peace who will make decisions. The Respondent said she had been talked to about a "psych assessment." The Respondent would stay in hospital and get healthy. The detective says she was really cooperative, which was appreciated. The Respondent says she is not going to run away from it, she shouldn't have and is sorry that she did (run away). If she could do over she'd do the right thing: stop herself as soon as she thought that she was delivering a baby and phone 911 saying this is her situation, someone please help me. She was a bit surprised the baby was still alive as she smokes, but she was glad, relieved and happy. She should have known he was alive she should have "taken two seconds to get her shit together". (pp 153- 157)

Her boyfriend does not have kids neither does his brother. It had been awhile since she went to the doctor to get birth control. She last took the birth control “like the day before yesterday. What’s the day today, Tuesday? I definitely took (indiscernible).” She thinks she had one drink of wine on Monday. She had some ‘weed’ Saturday or Sunday. No other drug use. (pp 157-158)

She was asked to describe how the baby looked in the towel. She explained that the towel wasn’t thrown on him but she didn’t fold it or wrap it around him. She picked him up and picked the towel up with him. She thought the towel was white as they have white “ugly” striped towels. It would have been an average bath towel. She pulled it over (to put the baby on it) as it was on the floor. The baby was in the toilet before she put him down on the floor and before she grabbed the towel. It was probably right after she cut the cord. She would have had one hand on the baby, grabbed the towel, pulled it over and pulled him out and put him down. She wiped down the toilet seat and put it all in the garbage. She cut the cord with tweezers as she lost her nail scissors six months ago. It was not very easy but didn’t take that long, a couple of minutes, five minutes at most. She was standing over the toilet when she cut the cord. Nothing stood out as her water breaking, she peed a little heavier in the middle of the night and had diarrhea. (pp159-166)

When she went to lay down after she wrapped herself in a towel and the blanket. The police have the blanket; the towel would be at her house. (pp 167-168)

When asked what her plan was when her boyfriend came home, if no one found the baby the Respondent said it was a “good question.” She probably would have sat there and thought twice about things and hopefully “come clean” and tell her boyfriend the truth. “...but again I didn’t know I was capable of this until today.” (sigh) (p 169)

She asks police if her boyfriend is okay, if he was home and knows where she is: “does he care?” The detective says that he is speaking to police as a witness. (p 170)

APPENDIX TAB B

Summary of the Respondent's November 16, 2011 statement to police

AR Vol 3 – Tab 4 [page number is referenced in parenthesis]

The Respondent was arrested on November 19, 2011 for attempted murder, criminal negligence, failing to provide the necessities of life and abandonment. She was taken to the police station and interviewed. The interview was recorded. The interview started at 10:31 am and continued to 4:59 pm, with breaks. The total interview time was 6 hrs 2 minutes.

The Trial Judge found that the only way to understand this interview is to watch it and listen to it as the transcript provides limited understanding. He notes the Respondent's body language during the interview was the same as it was when she was in the room alone; she was sometimes emotional during the interview. The emotion appeared genuine and arose when she was thinking about or reliving what happened – she said she did not want to relive the memories.

The Respondent figured (her arrest) was coming at some point. Her boyfriend is standing by her. They've been together four and a half years (p 38-39).

Her boyfriend knows she's not a violent person. She never wanted to hurt her baby (crying). Her boyfriend and both families stuck by her (p 39)

She talked to her mom and dad about it (delivering the baby and putting him in dumpster) when it first happened and they were shocked. She told her family what she told everybody: "That it was like I couldn't control anything. It was like ...it sounds stupid but like an out of body experience almost...like I couldn't control anything and I'm terrified and ..." She didn't think she was thinking about losing her boyfriend. She says "...like I wasn't thinking about...I don't know what I was thinking...I don't think I was." It (the birth) scared her. (pp 40-41)

She didn't feel like talking about it as she "said all this a hundred times." (p 41)

The Respondent called in sick to work as she had really bad cramps. She doesn't remember a lot. She slept most of the morning. All she remembers is having pain and then it's "kind of like a blur." She remembered that it happened on October 19. (p 42).

The Respondent had a normal night at home then started not to feel well in the evening, it felt like food poisoning she had to go to bathroom constantly (p 43). She remembers pain and feeling like she had to push then "everything's completely...I don't remember any noise or anything." She says that her boyfriend phoned during "all this" but she did not remember the phone ringing. She guesses that she pushed and the baby came out in the bathroom. She didn't know what to do and was really scared. She was not expecting to have a baby. She thinks the baby was in the toilet. She tried to clean him off. She says "I don't know it's like I remember doing things but it's like it wasn't me doing it. I'm not like that." (p 44-45)

She said all this (before) and didn't want to have to go through it again. She remembered going downstairs and wrapping the baby up in a towel. She says "I assume I put him outside" as she

doesn't remember doing it (p 46-47). She wrapped him in a towel and put him in a garbage can and took the garbage out. But "he's not garbage though." (p 47). It's hard for her to talk and think about (p 48). She had no idea when she realized she was in labour, or if she ever realized. She had "no idea" what was happening and what she was going to do. (p 51) She might have been in the bathroom when she delivered but was not sure. She didn't think she delivered in the bed. She didn't remember throwing up "a whole lot." (p 52) She was in bed when cramping started and had the sensation to push when she was in bathroom (p 53).

She didn't want to talk about it and asked where she would be after. The detective explained that she would be processed. (pp 53-54)

She was afraid of reliving what happened and realizes she made horrible mistake. "(B)ut it wasn't me...that's not who I am..." She wishes she could explain and give specifics but she can't. All she can say is that she "never ever wanted to hurt anyone." She wishes things were different. She wishes she could have caught herself and been "sane Meredith" and do the right thing but that didn't happen. (pp 55-56). It's not easy to talk about what happened. (p 57). Her current thoughts were: she's a horrible human being and this is what she did and her life is over, "everything's over" (p 58).

She made a mistake a year ago and can't understand what took the police so long (p 61).

She didn't know if she broke her water. Maybe it broke when she was in the bathroom (p 62). She doesn't remember a lot but agrees the day is imprinted in her mind (p 63). She was on the toilet when she pushed, or maybe standing over it. She says she doesn't remember. She just remembers more pain and the baby coming out. She remembers being terrified and didn't know what to do and shocked that this happened (pp 64-65). She thinks the baby was in the toilet, face up. She remembers the afterbirth coming out while she was standing up. She picked up baby and took him out of the toilet. He was above the water; she saw his face and thought his eyes were open. She didn't know what his mouth was doing. The baby was still attached by the cord so she cut it with tweezers. She doesn't remember any crying or noise and said "it was like an out of body experience" and she "didn't know what was happening." (pp 65-69)

She was pretty sure she used a towel to wipe baby off "around the head maybe" (p 69). She doesn't remember any crying. She remembers thinking that he must be dead as she didn't hear anything. She thought he was really little and he was really quiet (p 70). She described the baby as reddish pinkish. She didn't know how to describe umbilical cord, "kind of slimy I guess." She did not wipe the umbilical cord (p 71). When asked how she knew it was a boy she says "I looked, well I didn't necessarily at the time. Um, they told me that it was a boy" (when she was at the hospital). She then says she knew it was a boy as she looked down and saw his penis. She didn't remember his legs moving (p 72). She remembers he was pink and she didn't wipe him off for long. She "kind of swaddled him almost" (p 73) but didn't hold him up to herself. She didn't know if his arms moved. The towel was white with stripes on it (p 74) she didn't think she wrapped it over his head, just one side over the other then went downstairs (p 75). She remembers putting him in a garbage bag, closing it and taking it outside and putting it in the dumpster (p 75) both roommates were at work and it was late morning early afternoon (p 78). She took off the lid and placed baby in garbage; she assumes baby was face up but doesn't know.

She did not flip him or anything like that (p 79). She doesn't remember any noise or crying or any jerky movements. (pp 80-81)

She doesn't know what she was thinking and says "why would I do that if I knew what I was thinking...I don't even – I don't know what I was thinking. I just remember being scared and panicked and shocked." (p 82)

She could have covered him up but doesn't remember doing anything intentional (p 82). She put the baby in garbage bag put it up and took it outside (p 83). She was wearing pajama pants and a hoodie (p 84). She had taken her clothes off when she realized what was going on (labour) and thinks she put clothes back on after (p 85). She used tweezers from the bathroom to cut the cord; she used the pincher end to cut across cord and rip it while in bathroom and the baby was on floor in the towel (pp 86-87.)

She probably suffered a lot of blood loss; when she woke up she felt light headed but at the time she "wasn't really thinking about anything" (p 88). She put the tweezers on the counter when she was done and thinks she flushed afterbirth down the toilet. She used a towel to wipe herself off (p 89-90). She says she must have showered as her hair was wet when she went to the hospital. She then remembers that she showered after taking the baby outside and says "who does that?" (p 91-92). She went outside dressed in pyjamas and a hoody but nothing extra, no jacket. (p 93-95) She does not remember putting clothes back on after giving birth. She starts to say she remembers then says she doesn't remember much and doesn't know how to answer what she remembers from going outside and that she doesn't remember anything. (p 95)

She was probably carrying the bag in her right hand as she does everything with her right hand; she put the bag in the dumpster on the left side. (p 96) She didn't "fling it or anything" she just put it in there. The dumpster was pretty empty. It was Tuesday which was garbage day. She remembered hearing the garbage truck outside early that morning (p 97). She didn't remember hearing the baby at any point (pp 98-99). She didn't really look at the bag as she carried it (p 99). After putting the bag in the garbage she went home, had a cigarette and went upstairs to sleep (p 100). She didn't know if he (the baby) had hair or his eye colour (at the time) she didn't remember anything. She nods "yes" when asked if she remembered seeing baby's penis when he was in the toilet (p 102). When asked if she had any thoughts about him being alive when he was in the toilet she says "No. I didn't know. I would have done something about it" (pp 103-104) She didn't remember noises or weird movements or anything like that (p 106). She says she had a miscarriage a year and a half prior (p 107). Her body didn't change a whole lot (during pregnancy) and she still had her period [crying] if she had known (she was pregnant) she would have handled it differently (p 107).

She tells police there were no other pregnancies (p 108). She is shown photos of the dumpster and recognizes garbage from the house including shampoo and dog treats (pp 111-113). When shown bedroom photos she said that was where the cramping started, she doesn't think she gave birth in bedroom as she remembered being in the bathroom when "that whole process happened" (p 114-115). She identifies tweezers (p 115 and p 120). She does not remember cleaning up (p 115 and p 118).

The towel she grabbed was in the washroom probably where they kept clean towels (p 118) Both boys were gone (p 121). She doesn't know what she'd have done if neighbour came by as "I did something I never thought I would do" (p 122-123) She was afraid of everything that had happened, was in shock and couldn't believe what had happened and "it's like I didn't even know what I was doing. It's like I...like you could have asked me my name and I wouldn't have known." "...I was so out of it and this stuff is so out of character for me. Like I've never done anything like this before. I've never hurt anything." (p 124)

She thought baby was dead at a certain point, she didn't hope he was dead but agreed she wanted it (the baby) to go away. (p 126-127)

If her boyfriend was aware (of the pregnancy) he'd do anything to help her. (p 128/1-6)

She wished she "would have been able to stop myself and do the right thing" and says she's a bad person and asks "who does this?" (p 128) She is still scared and terrified as she doesn't know what was going to happen to her (p 129). She wondered why she was so scared and shocked and wonders why she "couldn't do anything" (p 130).

She remembers the baby crying when she was downstairs; a low cry when he was in the garbage and she put him down (p 133-135)

She did not want to relive it (p 135) She thought she was a bad person for this horrible thing she did (p 136). She doesn't want to screw up as she screws everything up. She didn't want her kids to have to go through what she did (pp 138-139). She asks what kind of punishment she was going to get (p 145). She apologized before and was in therapy to deal with her personal issues as she realized she is "so broken" from the way she grew up (pp 146-147)

She didn't crave anything more than normal during pregnancy. Her appetite didn't change. No smells made her nauseous. She smoked throughout the pregnancy. (pp 150-151)

She said she was 6 months along when she previously miscarried (pp 154-155). Her boyfriend never asked if she was pregnant or commented on weight (pp 164-165, 183-184 and 194). People at work commented and she said she took a pregnancy test and it was negative (p 165-A167). She said she didn't know women could get periods while pregnant (p 168). During the miscarriage she had some pain and bled. She went to doctor a couple of days later and was told she had miscarried. She was 6 months along and had her periods (pp 171-173).

She was asked once she realized she had the baby and baby survived did she wanted to keep it: she says "um, yeah. I think if I would have been with, you know, normal me I...absolutely ... once everything went down...social services involved I always said I wanted him in my life I wanted to keep him." She has never seen Baby #3. (pp 177-178)

In hindsight, she noticed her lower back hurt (p 180). She said coworkers never confronted her about being pregnant (p 182). She had mood swings but nothing extreme. (p182)

If she had known (she was pregnant) she would have handled it “the right way” (p 185). She told her boyfriend what she told everyone else: “I don’t know what happened to me. I don’t mean to hurt anybody” (pp 190-191).

She didn’t tell her boyfriend about the miscarriage (pp 192-193)

She didn’t tell anyone (that she gave birth to baby #3) while she was the on steps because she was scared; she says she should have said something (p 195) but was “kind of in a blur.” She said: “I didn’t really know what was happening and we got in the ambulance and he said you’re under arrest and I said okay, started crying and I apologized” (p 196)

She did not think “somebody will find this; somebody else will help.” (p 196/12-17)

After putting baby out she went back to bed she was thinking that she was terrified she didn’t understand what had happened. She was “shocked”; “like in a blur.” (p 199).

The detective plays a video and the Respondent recognizes a blue blanket with flowers in the dumpster, although she thought she wrapped baby in a towel (p 203). She never dropped him (p 205)

She texted Allison (Jourdreya) on October 19th about changing/switching shifts as Allison wanted the Respondent’s all day shift. Allison left her a message about looking at the schedule wrong. (p 207 and 210-211) but also says she doesn’t remember using phone (p 208).

She didn’t know why she asked police if babies were previously put in garbage, maybe for confirmation that she’s not the only one (pp 214-215). She shook her head “no” when asked if she put a baby in dumpster before and said she would tell detective if she did. (p 216).

She had a conversation with coworkers about not wanting kids (p 219). On October 18 she asked to switch shifts for Wednesday (p 220).

She falsified report to WCB (relating to a workplace fall July 29, 2010). She said it was “‘cause I’m stupid” but agreed it may have been because she didn’t want the doctor to check her if she was pregnant “‘cause I’m a horrible human being” (p 225-226)

She thinks she’s a disappointment to everybody. (p 228). She agreed that she thought if she didn’t admit (being pregnant) it would just go away (p 229).

She started to suspect she was pregnant about 6 months and did home pregnancy test (that was false) (p 230). She emphasized that her boyfriend had “nothing to do with this.” (p 234) She thought about an abortion but didn’t want to do that because she “didn’t want to hurt the baby.” (pp 237-238)

She didn’t drink excessively, or smoke or try anything else to cause a miscarriage. (p 238-239) She did not tell her boyfriend when she knew she was pregnant. When asked “why” she shrugs. She nods “yes” that she wanted to tell him. She thought he’d probably never talk to her again. (p

239). She was not afraid for her safety if her boyfriend knew and was not worried he would leave her (p 240).

Clients probably noticed (that she looked pregnant) but no one said anything (p 240)

The Detective challenges the Respondent in relation to prior pregnancies. The Respondent is shocked by the suggestion of a November 2008 pregnancy. The second suggestion of July 2009 is when she said she had a miscarriage. (p 241)

The Respondent was angry at the suggestion of prior pregnancies by co-workers. She never had water or cysts in her uterus and doesn't know why she would say that to co-workers. She then says she is "done" (with the interview). (p 242-243)

The Detective shows video of a co-worker's statement, suggesting the co-worker is concerned that the Respondent was denying what appeared to be an obvious pregnancy. The Respondent says that she "was taught to deny everything. My mom is like that. She just pushes it under the rug." And maybe she learned that behaviour. (p 244-245)

The co-workers' observations of the changes in the Respondent's appearance are read aloud by the Detective. One co-worker, Ms. Black, recalled the Respondent saying she was a "terrible person" repeatedly. When asked why she would say that about herself; the Respondent said she was a "terrible person", she always felt like that and had low self-esteem. The Respondent thinks she is a terrible person. (p 247-249)

Admission regarding second pregnancy

The Detective asks what happened during the second pregnancy, the Respondent says "same thing as the third." (p 249). She is arrested in relation to the two previous babies. (p 249-251).

The Respondent asks the Detective to tell her boyfriend that she is sorry and asks if she can write him a letter (p 252). After speaking with counsel, the Respondent is returned to the interview room. The Detective reads aloud the letter for her boyfriend. In it, the Respondent apologizes for "all of this." She lied to and misled her boyfriend. She appreciated everything he did for her and loves him. She explains that she didn't know why she did "these acts". She was scared and "didn't know how to handle anything." (p 254-255)

The Respondent asks to smoke her last cigarette. She says her lawyer told her not to say anything. The detective lets the Respondent have a cigarette and asks if she should give the letter to the boyfriend and the Respondent says yes. The detective asks if the boyfriend knew about the other two (babies) and the Respondent shook her head "no." After the October delivery, her boyfriend did not ask whether it (pregnancies) happened before. (p 256-259)

The Respondent says she "just never thought I'd be able to do anything like this. I thought I was better than that." She agreed she was afraid of telling her mom and dad. Her lawyer would be calling them. When suggested she would have better control if she called her parents, the

Respondent replied “I don’t have control over anything. My life is ruined and I ruined it.” (p 259-260)

She wonders if she was going to be able to sleep that night. The detective suggests she is probably exhausted emotionally and physically; she will at some point in life go on and is not a monster. The Respondent asks why the detective is being nice to her. The detective responds that it is respect and the way she’d want to be treated if in the Respondent’s shoes. The Respondent says she’s never been in trouble before and wishes she could turn back time. (p 261-264)

The Respondent apologizes to the detective for not telling her before and is sorry she didn’t just come out and admit to it. (p 265)

The detective returns to observations of a co-worker, Ms. Black, who saw the Respondent’s belly was getting big and firm in November 2008 and thought it was due to pregnancy. In July 2009 the co-worker said: the Respondent called in sick; when she returned to work her face was thinner, she did not have a belly and said she had a miscarriage. The co-worker said there were tears in the Respondent’s eyes and she said her boyfriend took her to the hospital where they sucked everything out. (p 267-268)

The detective pauses to note that police pulled the medical records and know that is not true. The Respondent says “yeah” and feels horrible. She agreed that it felt like she “was drowning and couldn’t swim hard enough to get out” (when she knew she was pregnant) (p 268-271)

The detective reviewed the observations of another co-worker, Ms. Boudreau, during the first pregnancy. Boudreau thought the Respondent appeared pregnant but she would deny; the Respondent appeared to be full term and in labour as she leaned against the bar complaining about cramps and a sore back. The next day she called in sick. When she returned to work her stomach was smaller. (p 271-272)

The Respondent was not worried that it wasn’t her boyfriend’s baby. When she went back to work (after giving birth) she wanted to tell people but didn’t know how. She didn’t try to talk to co-worker and figure out how to get help. She “swept it under a rug.” (p 272)

After giving birth to the first baby, the Respondent went back to work the next day. She was on the stairs and had blood running down her thighs. She had given birth in the apartment. She didn’t know at what point she knew she was pregnant. It was similar to the last (October 2010) experience. She didn’t recall the date or the month but remembered going to work the next day and blood running down her legs. She said Ms. Boudreau did not offer any sympathy or ask why. She nods “yes” that she explained it was her period. She did not think she was having cramps. She told co-workers she had a problem with her uterus and had to get her stomach drained to “sweep it under the rug” and admitted she “made that shit up.” (p 273-275)

Her boyfriend did not know anything about the first baby. He was at work when she gave birth. It happened at night. Her boyfriend was in Fort McMurray. It was fairly late. She was positive it

was her boyfriend's child. She says she is not talking about it. She took the day off work as her regular day off. (p 276-277)

For the second pregnancy, Ms. Boudreau says the Respondent was denying being pregnant; she remembered seeing the Respondent's stomach "drop." Ms. Boudreau saw the weight just in the Respondent's belly for the first pregnancy; belly "poofed up" and she had weight gain everywhere for the second pregnancy and for the third pregnancy the weight gain was in the belly. She said the Respondent was outgoing and became more withdrawn (p 278-279).

The Respondent remembered telling her co-worker Ms. Joudrey in April 2009 that she wasn't pregnant, she had uterine cysts in her abdominal area that grew and made her appear pregnant, until she gets them drained. She said this to explain it away. She does not remember Ms. Joudrey calling her asking if she wanted to talk. She doesn't remember anyone wanting to help. (p 279-A281)

Her boyfriend never asked during the three pregnancies if she was pregnant. (p 282-283)

She nods her head "yes" at the suggestion that she was normally outgoing and becoming withdrawn which was her "cry for help" (p 283)

Ms. Murphy was another co-worker who was worried about the Respondent and was concerned that the Respondent's boyfriend was causing this. (p 283-286). The Respondent told her friend, Ms. Nalder about a cyst that made her look pregnant. The cyst went away and the Respondent did not look pregnant any more. (p 286)

The Respondent says she is scared and is sorry for all she has done and all the people she hurt in the process and says she is a terrible person. (p 286)

During the first pregnancy Ms. Snell saw the Respondent's stomach getting bigger then one day it was smaller. The Respondent had told her she went to a walk-in and had fluid drained from her stomach. A year later (second pregnancy) the Respondent appeared pregnant but denied. (p 287)

The Respondent wishes she could have done something and been able to handle it properly and not hurt anyone. (p 287-288)

She doesn't want to say anything or talk. The first baby was her boyfriend's. She shakes her head "no" that there was no concern it was someone else's baby. It was just the three times, there were no other pregnancies. (p 289)

Details relating to the first baby

She did not put the babies in the same spot each time. The first baby was in the further dumpster. She put it in a garbage bag. She had the baby in the bedroom. She doesn't know at what point she knew she was pregnant with the first baby. She doesn't know or remember how

she cut the umbilical cord. She had the same feelings: terrified and horrified about the situation. (p 290-291)

She was not afraid of her boyfriend. She said she didn't remember going into the bathroom to deliver the first baby. She doesn't want to talk about it. She does not remember a lot about the first one. She remembers it happening and feeling really guilty about what she did. She was in bed and she gave birth. She doesn't know if it was a boy or girl. She did not look at it as she didn't want to. She wrapped it in a towel. She put it outside in a garbage bag. She put it in the bag before she left the house. She put it in the farthest dumpster. She probably lifted the bag with two hands as that's the way she always put the garbage in. She "would imagine" there were other things in the garbage. (p 291-294/13)

It was fairly late in the first pregnancy when she knew she was pregnant. She had her period throughout the pregnancy. She did not take any pregnancy tests. She just had a feeling. She doesn't remember where the placenta went. It was her first pregnancy. Her boyfriend was in Fort McMurray. Her boyfriend's brother (Ryan) was home but asleep. She was probably in bed when she had cramps but didn't know. The detective suggests "looking through that window" and seeing how things played out as the Respondent was probably in shock. The Respondent nods "yes" that this was her first pregnancy. She agreed she wanted to tell her boyfriend (about the pregnancy) and she "wanted to fix everything" and she "wanted to do the right thing." She never did as she didn't know how. She didn't know how to handle the situation and didn't want her boyfriend to be upset with her. She didn't want to deal with it. She thought he'd be upset because she was pregnant. (p 294/14-297/17)

She probably grabbed the towel (that she wrapped the baby in) from the bedroom floor. She didn't know what sex the baby was. She didn't remember or know if the baby made any noises. She doesn't remember and didn't believe the baby had hair (says "mm-hmm" to the suggestion that the baby was bald). The baby was face-up when she first saw it. Her boyfriend's brother had no part in anything. She was sure the labour was longer than she thought but it seemed to go by (indiscernible). She did not see anything else about the baby. She doesn't remember how much later the afterbirth came out. She got up. She nods her head 'yes' that she grabbed the towel from the bedroom floor. The sheets were bloody. She shook her head 'no' when asked if she had tearing and didn't remember tearing. She had "no idea" what she did with afterbirth. She did not cover the baby's face when she wrapped it in a towel. She demonstrated how she picked up the baby saying "like...I don't know." (p 297/18-301/8)

The Respondent says she's "done." She understands that the detective is doing her job but she is "done" and not talking anymore. The detective says that the Respondent is doing "really good" and she is trying to get the Respondent to have closure; the Respondent is trying to 'sweep it under the rug' again, talking about this stuff is not her comfort area. She asks if the Respondent wants to change that and the Respondent sighs and says "yeah." (p 301/11-302)

The Respondent nods her head 'yes' that she put the baby in the kitchen garbage first just like with the last baby. It was a dark bag. She nods 'yes' that she tied the top. She doesn't know when she heard the baby first. She did not drop the baby at all. She nods 'yes' that she just carried it downstairs. She doesn't know if she changed her clothes. She probably was not

wearing clothes when it happened and would have gotten dressed. It was wintertime. She did not wear a jacket when she went outside. No one else was around. She nods 'yes' that she put the bag in with two hands. The dumpster was about half full. She did not know or remember what day of the week it was. She did not bump or drop the bag before putting it in the dumpster. she does not know at what point she saw movement. She doesn't remember the afterbirth. She was not cramping afterward and "felt pretty decent." After she put the baby in she stopped and then went back in the house. She was scared, remorseful and thought it was over. She nods 'yes' that she thought it was under the carpet and she fixed the problem like her mother taught her. She doesn't remember cleaning the bathroom or anything like that but knows she changed the sheets. (p 302-308)

The Respondent said she did not have any pain. It was the first time she gave birth. She shakes her head 'no' she did not have tearing. She did not remember cutting umbilical cord or doing anything with it. When she realized there was a baby there "it's like something took over me...like something I wasn't doing. Took over me." The detective suggests that's the way she reacted she fixed the problem. The Respondent didn't know how much the baby moved when it was laying there. The detective suggests looking through a window at the bed to remember. The Respondent does not remember if there was a penis. She nods 'yes' that the head was bald. She doesn't know if the baby had open eyes. When asked about the mouth she said "I don't I don't know. It was a little mouth. I don't know." She doesn't remember anything odd. The baby did not have white or red stuff on it. She cannot picture the baby. She doesn't think she turned the baby face-down when she wrapped it. The first baby was quieter than the last one. The Respondent says 'mm-hmm' to the suggestion that it was more of a kitten sound. She heard the sound when she was upstairs in the bedroom. She nods her head 'yes' that this was the only sound she remembered. It was before she wrapped the baby up. She just placed baby in garbage downstairs. She did not remember any sounds at that point. She did not hear sounds between the kitchen and dumpster or after she put the baby in the dumpster. She corrects the detective when the detective said 'her' in relation to the baby. The Respondent had no idea if it was a boy or a girl. The Respondent never understood how people can say they 'feel' the baby is a girl. She didn't think she was carrying low. (pp 308-314)

She did not stay at the dumpster long and went home. It was late, at least after 11pm. She did not see anyone out walking or in the area. She went back to the apartment and went to sleep. She nods 'yes' that she cleaned the sheets first. She didn't remember if she cleaned anything else. She did not talk to her boyfriend or anyone after. She did not know when the garbage would be emptied after; she guessed a couple or a few days later. She confirmed it was winter and she didn't wear a coat out. She didn't remember being cold. (p 315-317)

She nods 'yes' it was the first year she was with her boyfriend. (p 317/4-6)

Details relating to the second baby

She was pregnant for the second time in July 2009. She knew she was pregnant at about 6 months. She nods 'yes' that she was getting her period through the pregnancy. She noticed she gained weight. When she realized she was pregnant she felt fear, remorse, not knowing what to do. She did not look into an abortion or call anyone for help or advice. She did not ask anyone

for help. She grew up and was the one who did everything and she got used to 'taking her lumps.' She did not take a home test to confirm she was pregnant or go to any medical clinics. She nods 'yes' that she was thinking "oh shit, I'm pregnant again." She was angry at herself for not dealing with it. She felt fear and didn't know what to do. She realized at about 6 months. Her body did not go through a whole lot of changes, but enough she supposed that she should have known right away. She didn't know what to do or handle it. She agreed she thought her mom or dad would be angry with her. She didn't know about her boyfriend and didn't want to lose him. (p 317-320)

She was at home in the bathroom of the same apartment when she gave birth. She was on the toilet. Her boyfriend and his brother were downstairs. She doesn't know if it was the 17th or around there. She gave birth and did the same thing. She got so scared, terrified. She started crying and again it was like something "washed over me and just took over...just took over my body and I didn't...it...something just took over me." (p 320-322)

She was sitting on the toilet and when she looked down there was a baby. She doesn't know if it was a boy or girl. She didn't look. The baby was face-up. She took him up, clean up and got a towel. She put it in bathroom garbage and then took out the bathroom garbage to the dumpster. She doesn't remember which dumpster. It was in the same proximity where the other one was. (p 322-323)

The afterbirth went into the toilet. The afterbirth came out pretty much right after the baby. She doesn't know how she cut the cord. She took the baby out before the afterbirth. She didn't want the baby to get dirty. She didn't know if the baby's eyes were open. She sees a blank face. She doesn't remember if the baby had hair on its head. She didn't know the position of the baby in the toilet. She picked the baby up using a towel. She had no idea which towel. She shakes her head 'no' that she didn't cover the baby's head. She did not drop the baby at any point. She probably heard the baby cry not long after she gave birth. She nods 'yes' that the baby was in the toilet when she heard it cry. It was a tiny cry. She didn't know if she was afraid that her boyfriend would hear the baby. She was just tired of the whole situation and "it's like something took over me....you know, I wasn't...it sounds dumb. I wasn't in control...like it...cause I wouldn't...God I can't believe these things." (p 323-327)

She took it down to the kitchen garbage. Her boyfriend and his brother were in the living room. When she came down with the bag, there was no sound. She put it in the garbage and said she was taking out the garbage and did. She nods 'yes' that she had the baby wrapped in a bag before she went downstairs. She got that bag from the bathroom garbage from the upstairs bathroom. It was a grocery/shopping bag. She wasn't worried about her boyfriend hearing or seeing anything when she came downstairs. "No (shakes head no) I guess but I don't (sighs) I wasn't normal...I wasn't...normal Meredith at all." The detective suggested that the Respondent was 'sweeping it under the rug' like she was taught and was thinking she wouldn't lose her boyfriend if he didn't know about it. The respondent replied "maybe." She was a little afraid of them seeing it. The baby did not make another sound downstairs. It made just the one sound upstairs. She didn't know why she wrapped it in the towel then agreed it was to keep it warm and to "protect it." (p 328-331)

She placed the baby in the garbage in the house. She just placed it in there. The bag from upstairs was not sealed. When she looked down as she was carrying the bag she couldn't see the baby just a part of the towel. She put the bag in the taller bin and sealed the second bag. She was probably not dressed (when she delivered) and would have gotten dressed after but she doesn't know what she was wearing. She does not remember if she took anything else out with the bag. She did not see anyone outside. When she walked outside she did not hear anything from the baby. She doesn't know if she took the baby to the first or second dumpster but it was one of the two. The dumpster was not really full. She placed the bag in with both hands. She did not hear any sound. When asked if she smelled or heard anything she shook her head 'no.' When asked if she saw anything she said no. She shook her head 'no' when asked if she felt anything (officer was going through the senses to trigger memory). The Respondent felt horrible. She was bleeding and thought she bled into her pants. When asked if she used something to soak the blood she nodded 'yes' and nodded 'yes' again that she did that in the bathroom. She used a tampon on the second and third births but can't remember the first. She didn't remember any cramps during the second birth. She did not say anything to her boyfriend or his brother when she went back in the house; she went upstairs to take a nap but did not sleep. She washed the sheets as there was a bit of blood. She doesn't know if her water broke on the bed. (p 332-339)

She did not wash the sheets after the third delivery, just the first and second ones. She never dropped the bag any of the three times she disposed of babies; only heard one sound from each baby. Only had a cigarette after the third baby (p 339-340)

When asked what she was thinking when she went back to bed (after the second delivery) she replied "I was thinking...I don't know what I was thinking. I obviously wasn't thinking very rationally. Um, I don't know what I was thinking." She knew the babies were alive when she put them in the dumpster. She was horrified with herself. She did not confide in anyone. Between the deliveries she thought of calling for help or counselling but didn't know how to approach the situation. The detective asked if the Respondent wondered why she reacted differently from others (like when they found the baby) and what her thoughts were. The Respondent replied "What was wrong with me." (p 341-343)

She shakes her head 'no' that she did not take medication or anything before the incidents; or try to drink or eat more before the two pregnancies. She did not have a teen pregnancy that she had to hide or a pregnancy with her previous boyfriend. The detective says for a woman to have a child, even when not married, nowadays is really not a big deal. The Respondent replies "No, I know." When asked what caused so much fear, she replies "That I wouldn't be able to do it. That I'd be a bad mom like my mom was." She didn't understand why this is happening. She wished she could explain it. She wanted to tell her boyfriend many times but did not. (p 343-345)

If she got pregnant again she would "handle it the right way." She said she wasn't pregnant now; she had her period three weeks ago and did not have symptoms. (p 346)

She is seeing a counsellor at the Foothills. Right after it happened she saw Dr. Gagnon then went to Ontario for a while and saw a 'bunch of doctors.' When she returned she saw Dr. Gagnon on

a regular basis. She shook her head ‘no’ that she did not talk to her about what they talked about today, just the last baby. (p 348-349)

After the second baby she didn’t know how long it was before the dumpster was emptied. She nods ‘yes’ that she put it in there walked away and didn’t want to look back. She shakes her head ‘no’ there is nothing else she remembers about the pregnancies and did not remember the sex of the first two. She thinks she didn’t want to know the sex. For the third baby she looked and wanted to look. (p 350-351)

The Respondent writes letters to her boyfriend and to her mom and dad. In the letter to her boyfriend she says she is incredibly sorry for what she put him through. She is not a vicious creature that does these types of things. She wished she could explain. “It was like something came over me. I wanted to tell you but was afraid of losing you and didn’t know how. He had every right to never want to see or hear from her again. She is truly sorry for ruining his life and regrets every day her mistakes. She hopes he can find happiness and get over the misery she caused. “I’ve never handled these things correctly and this is a prime example. I was taught at a young age to sweep everything under the rug and deny.” She doesn’t know what her punishment will be but treasured the good times they had. She will always love him and regrets everything she did and everything that was never said. She is a horrible human being for doing this and wishes she wasn’t “as fucked up” as she was. She wants him to be happy. She would turn back the clock if she could. (p 355-357)

In her letter to her parents she says she doesn’t know why they married at all; it would have benefited everyone as she would not have been born. She wished she could spare them the shame of being her parents. She “coped over the years by not coping, by pretending nothing is wrong when truly everything is wrong.” She failed at life and has lost everything; she wished she could turn back time and be who they wanted her to be. She imagines she will be in jail for a long time and is sorry for the shame of that. She regrets things and made many mistakes but regret none more than this one. She betrayed everyone and will never forgive herself. She asks that she not hate her too much as she hates herself enough. (p 357-358)

When asked what she thought would happen when she put the babies in the dumpster she says “Um, I don’t know. I...it was like (sighs)...I don’t know. (crying) I was hoping maybe somebody would help them.” She knew what was likely going to happen – other garbage on top and the truck would take them away. When asked if she intended for the first one to die she replied “I, I didn’t want anybody to get hurt. I just...(crying).” (p 359-360)

She does not remember putting the third baby in a bag in the bathroom before going downstairs. She is done with talking. The police have asked her a million questions. The detective says he baby was found in a white bag inside the black bag. The Respondent says she doesn’t remember, she remembers going downstairs but doesn’t remember doing that in the bathroom. For the second baby she remembered butting it in a white bag before going downstairs. (p 360-362)

For the first baby she did not try to suffocate or kill the baby while upstairs. “I didn’t want to hurt it. I...I’m not, I don’t have violent tendencies. I don’t have violent behaviour.” (p 363/6-8)

For the second baby she didn't know he would not cry when she took him downstairs. The detective points out that when she looked in down she saw the towel, so it was covering the baby's face and asks when she did that. The Respondent doesn't know and says she must have done it in the bathroom but does not know and she can't explain. She did not do anything to the baby to make sure it did not cry: she didn't try to hurt it, she did not hit it or anything like that. (p 363-364)

When asked, on the first time she put the baby in the dumpster, if she knew that was going to kill the baby – the Respondent said she was not answering that or any more questions. (p 365)

She repeats that she did not know what sex the babies were. She saw blank faces. Part of her didn't want to know. She does not remember any other details about being upstairs. She did not do anything to the baby to muffle the sounds: "I didn't try and hurt it. I didn't...I didn't...I don't know...It...I can't explain my actions. You know it sounds crazy, but I can't explain my actions." "I can't explain it. I don't know what happened to me that made me do those things...I'm not violent. I am not..." The detective asks again about what she thought would happen to the babies, the Respondent said she was not answering as a) she did not want to and b) she was in enough trouble. She did not want to say anything to make it worse. She agrees that she wanted it to go away and nods her head 'yes' that she knew what was going to happen. (p 365-370)

The Respondent repeats that she does not remember trying to hurt the baby in any way. She wrapped the second baby in the same way, with a towel. She does not remember if the towel was around the head. She does not remember doing that but doesn't remember a lot of things. The detective says the Respondent heard the baby and asked what she did so that the baby wouldn't do anything when she went downstairs and what thoughts were in her head. The Respondent says she is "done." When asked if she is afraid to say what happened in the room, she replies that she doesn't know what happened in the room so she is not afraid. She can't explain it "this is not my normal behaviour. I can't explain it. I don't understand it and I can't explain it...and I'm done." (p 371-373)

She's asked if she needs the washroom or wants to write any more letters, she says 'no'. The detective takes the letters to give to the boyfriend and her parents. The Respondent asks if her boyfriend has been contacted. So far as the detective knew he had not been contacted, but suggested it may be best if he heard from the Respondent but offered to contact him. The Respondent said it did not matter as he wasn't going to want her anyway. (p 373-374)

The interview ends and the detective gives the Respondent a police phone. The Respondent is in the room alone from 1836h-2004h until an officer arrives to transport her.