

THE PROVINCIAL COURT OF MANITOBA
Winnipeg Centre

BETWEEN

Her Majesty the Queen)	Brian R. Bell and
)	Daniel T. Angus, for the Crown
)	
- and -)	
)	
C.J.P.)	G. Gregory Brodsky, Q.C.
)	for the Accused
)	
)	Judgment delivered:
)	September 16, 2011

These reasons are subject to a mandatory publication limitation pursuant to section 110(1) of the Youth Criminal Justice Act.

HEINRICHS, ROBERT, P.J.

INTRODUCTION

[1] J.O., known as “Seth” by family and friends, was stabbed to death by C.J.P., a friend, on the afternoon of September 20, 2009. His death came as a result of a single stab wound from a kitchen knife, which had a blade at least 9 inches in length. It had entered Seth’s chest and penetrated through his lungs into the pulmonary artery and bronchus. 911 was immediately called and neighbours, who were contacted, came quickly and began performing CPR. The RCMP and EMS, or Emergency Medical Services, arrived minutes later. EMS frantically attempted to keep Seth alive; in spite of their efforts, Seth died at the scene of the stabbing. There was severe blood loss and his heart shut down.

[2] C.J.P. was born on June 18, 1992 and so he was 16 years and 3 months of age on the day of the stabbing. He pleaded guilty to second-degree murder and the Crown applied, pursuant to the relevant sections of the *Youth Criminal Justice Act*,

hereafter referred to as the *YCJA*, to have C.J.P. serve an adult sentence for the crime he committed. The Crown's application proceeded by way of a hearing before me on May 24 and 25, 2011. This is the Court's decision with respect to whether or not a youth sentence imposed on C.J.P., in accordance with the purpose and principles set out in s. 72, s. 3(1)(b)(ii) and s. 38 of the *YCJA*, would have sufficient length to hold him accountable for his offending behaviour. If the Court is of the opinion that a youth sentence is not sufficient, an adult sentence must be imposed.

THE MURDER

[3] Sometime in the late morning or early afternoon of September 20, 2009, Seth and another mutual friend, R.P., attended to the C.J.P.'s residence to call on C.J.P. He was not at home at the time and the two friends were met at the door by C.J.P.'s younger brother, C.P. According to C.P., he opened the door slightly to tell them that C.J.P. was not at home. Seth and R.P. then pushed open the door and walked past him straight into C.J.P.'s room, which they searched. They soon came out and told C.P. that C.J.P. did not have any smokes or money. R.P. admitted this was what was said, but explained they were only joking around in saying that C.J.P. owed them smokes and money. R.P., however, stated that they were let into the house by C.P. and did not force their way in. As they were leaving, R.P. grabbed a bag of chips from the kitchen island or table. When C.P. tried to grab it back and prevent them from leaving with the bag of chips, Seth held C.P. back. The confrontation resulted in C.P. falling into a chair which was knocked over, causing a dent in the floor. Seth and R.P. then left C.J.P.'s residence. According to R.P., the grabbing and taking of the bag of chips and the ensuing scuffle was also meant as a joke.

[4] C.J.P. came home and spoke to C.P. who was now downstairs playing video games. C.P. says that C.J.P. questioned him about whether he had caused the dent in the floor. He said "no" and C.J.P. said "oh, ok" and went outside. C.P. observed that at the time, C.J.P. "didn't seem mad or anything."

[5] When Seth and R.P. left, they went back to R.P.'s house and continued with the washing and cleaning of their dirt bikes. R.P. then received a call on his cell phone from C.J.P., who was asking if R.P. wanted to come back to his residence and "hang out". R.P. told C.J.P. that Seth was with him and then agreed that the two of them would come over.

[6] When Seth and R.P. arrived at C.J.P.'s residence, they went to the garage. Once they were seated, C.J.P. and Seth shared a smoke. They then moved their chairs around so that R.P. could close the garage door, as he did not want his parents driving by and noticing them smoking. Then C.J.P. stated that he had

something to show them and that he had hidden it close by. He then moved his sweater off the ground and picked up a big knife that had been underneath. In his statement to the police, R.P. described what happened next as follows:

“And he was showing us and he was saying, “Oh yeah, this thing would really kill someone if it like hits, like if you used it or whatever”. And he was just saying how it was cool and stuff like that. And I told him that it wasn't cool and just like put that away. Like I didn't want anything to have to do with any of that stuff. And then C.J.P. got this weird look in his face for a couple of seconds and then that's when it just happened, then he just went and stabbed Seth. And then I didn't even see it happen. Like I just seen C.J.P. like go at Seth and then I didn't even see the knife after that. And then after that, I didn't know what happened so I got up and I was slowly walking backwards. And I didn't think he actually stabbed him, I thought it was a joke or something. And then I like asked him, I was like, “Did you stab him? Did you get stabbed?” And then Seth went and walked around the vehicle in the garage and then he threw up blood. And that's when I just started heading for the door. And then he picked up a shovel. Seth picked up a shovel and then that's when I just ran out the door, ran straight to my house which is just like down the road.”

[7] While R.P. was running to his home, Corbin, who had heard a big bang, came to the door leading to the garage. He saw Seth on the ground and C.J.P., who seemed to be scared, asked him to call 911. As soon as Corbin had the 911 operator on the phone, C.J.P. grabbed the phone. He told the 911 operator that he had just stabbed his friend and his friend was dead. Corbin left to find the nearest neighbour. He found Paul, a neighbour across the street, who immediately attended to C.J.P.'s residence and began performing CPR on Seth. More neighbours arrived shortly, after including R.P.'s father and another neighbour. They did what they could to help until the RCMP and EMS arrived.

[8] While waiting, R.P.'s father saw C.J.P. with a cigarette in his hand, shaking his head and continually pacing back and forth, then following him, then sitting in a chair in the garage, standing up, then sitting down. C.J.P. had his fingers crossed and at one point in time C.J.P. said, “I didn't mean, I didn't mean to stab him.”

[9] The second neighbour noticed C.J.P. sitting in a lawn chair by the garage having a smoke and looking nervous and in shock. When asked, “What happened?” C.J.P. made a number of statements to him, including:

“I fucking stabbed him”, and

“They were in my house, they dented my floor, I had nothing else to do but to stab him”, and

“He shouldn’t have died like that, he shouldn’t have died like that”, and

“I fuckin’ killed him. I stabbed him, I didn’t want to stab him, but I fuckin’ had to”.

[10] Within minutes of the arrival of the RCMP, C.J.P. was arrested and told of his rights and cautions.

COURT PROCEEDINGS, REPORTS AND EXHIBITS

[11] On October 29, 2010, the court accepted a plea of guilty to second-degree murder. A Pre-sentence Report and Forensic Assessment were ordered by the Court. Through no fault of C.J.P.’s, there were some delays in having the reports completed and in setting the hearing dates for May 24 to 26, 2011. The pre-sentence report was completed by a probation officer, W. Cameron and the Forensic Assessment was completed by Dr. Keith Hildahl, a psychiatrist with Youth Forensic Services. At the hearing, the Crown filed the following, all marked as Exhibits:

1. Sentencing Material (Adult Sentence Application of the Crown);
2. A Book of Authorities;
3. Victim Impact Statement prepared by D.N., mother of Seth;
4. *Curriculum vitae* of Dr. Hildahl;
5. Summary of Institutional Behaviour from MYC, dated May 2, 2011;

Then later in the proceedings:

8. A Victim Impact Statement prepared by Seth’s brother, J.P.

[12] At the hearing, the Crown referred to Seth’s sister E.C. and her Victim Impact Statement contained in filed Sentencing Material and read aloud K.N.’s Victim Impact Statement. She too is Seth’s sister. After that was done, D.N., Seth’s mother, read her Victim Impact Statement. These statements clearly evidence the total and absolute devastation they have felt and still struggle with each and every day as a result of the murder of their son and brother. For them, life will never be the same.

[13] The Crown then called its only witness, Dr. Hildahl. Prior to reviewing his report and testimony, the Court will review the pre-sentence report.

THE PRE-SENTENCE REPORT AND SUPPLEMENTARY REPORT

[14] The following is a summary of the relevant information contained in Mr. Cameron's pre-sentence report:

1. C.J.P. has been attending school while in MYC. The probation officer notes that: "His work habits are like a 'roller coaster'. At times he is very motivated and can accomplish a lot, and he is capable of very good work. C.J.P. is not afraid to ask questions when needed, and he is able to work independently. On the other hand, C.J.P. is sometimes unfocused and gets little done in class, but he is not noisy or rude." As well, he notes "C.J.P. is bright and personable. He is an excellent role model in the classroom. C.J.P. gets along well with other students, and offers help when he can. C.J.P. follows direction, and responds well to suggestions." In spite of working in the cafeteria for a couple of months, C.J.P. had completed 17 ½ credits as of September 2010.
2. Prior to coming into custody, C.J.P. had been living with his parents and brother, C.P. During the months leading up to the murder, there had been increasing tension in the home between C.J.P. and his parents. C.J.P.'s use of drugs was the main issue. C.J.P. admits to using marihuana fairly regularly starting at age 14; he also abused prescription medications from time to time and experimented with cocaine in January 2009. His mother was able to get C.J.P. to attend AFM for an assessment and some counselling between February and May, 2009.
3. C.J.P.'s mother and father explained to the probation officer the sequence of events, doctor's appointments and medications prescribed given to C.J.P. between June and September, 2009. They described C.J.P.'s behavioural and attitude changes during those months as frightening and told the probation officer that in their opinion, if C.J.P. had not been on the medications Prozac and Seroquel - Prozac in particular - the murder would not have happened. They expressed significant frustration with the medical profession, believing their concerns were not taken seriously during those months. The effect that Prozac may have had on C.J.P. committing this crime will be discussed later in these reasons.

4. Most of C.J.P.'s friends were also using illicit drugs, and a few were involved in criminal activity. C.J.P. had no gang association or involvement. He told the probation officer that in the summer of 2009 he was trying to find some new friends not involved in drugs, even though he continued to use some drugs himself. C.J.P. had no prior involvement with probation services. (In the court proceedings, the Crown confirmed that C.J.P. had no criminal record.)
5. When the probation officer discussed the murder with C.J.P., he heard words of regret, including "if I could go back I would not have done it and I would have called the Police to report them". He wishes it had never happened and that he could bring Seth back. He also explained that he did not plan to kill Seth but just intended to injure him. He could not explain why he hid the knife under some clothing in advance, but still claimed he acted impulsively. In the probation officer's assessment, "C.J.P. seemed confused regarding his thoughts and reasoning prior to the offence occurring."
6. There have been two assault incidents that C.J.P. has been involved in while at MYC. On October 13, 2009, C.J.P. was involved in what is described as an unprovoked assault incident. Then on February 25, 2010, a second assault incident occurred, however, MYC classified this as an assault incident that was provoked by another resident. Staff at MYC have noted that these two incidents are examples of anger and frustration C.J.P. displayed when first admitted to MYC. Since then staff report C.J.P. has found positive ways to deal with problems and they now consider him a role model for other residents. He has done very well within the institutional setting and his behaviour has remained consistent.
7. C.J.P. has been taking advantage of the programming and counselling available to him while at MYC. As of the date of the pre-sentence report, December 15, 2010, he had completed the Thinking Awareness Group, attended AA for the past ten months, and was receiving weekly visits for spiritual care from the Pastor and the Youth Worker at his church. Pastor L. noted

a significant change in C.J.P. from the first six months of his time in custody to the time of the report being prepared. He described C.J.P. as showing no remorse or feelings about the murder at first, but now showing remorse and demonstrating that he is a caring person. As well, he noted that C.J.P.'s maturity level fluctuates between that of a teenager and that of an adult.

8. Pastor L. and the staff at MYC noted that during the first few months at MYC, C.J.P. showed no signs of remorse. His Case Manager even questioned whether C.J.P. had the capacity to feel guilt about his actions. Pastor L. described C.J.P. as being "completely numb" during the first 6 months. As they have pointed out, all of that changed sometime early in 2010.
9. A Manitoba Corrections Level of Services Case Management Inventory risk assessment was also completed on C.J.P. The assessment concludes C.J.P. is at medium risk to re-offend. The significant risk factors include negative peer association, intoxicating substance use, and use of leisure/recreation time. Other factors of note were the family interactions and education/employment issues.
10. The court also has the benefit of a "Behavioural Summary for Pre-sentence Report - Supplementary Report" which was prepared. It is an update on C.J.P.'s behaviour at MYC from December 2010 through March 2011. That report advises that C.J.P. continues to work in the institutional canteen and continues to attend school. He is described as upbeat and someone who is trying his best. There have been no incidents and he follows the rules, does not complain, works hard and participates fully in all activities. He continues to be a role model to others in his cottage.

DR. HILDAHL'S REPORT AND TESTIMONY

[15] Dr. Hildahl is the Chief Executive Officer of the Manitoba Adolescent Treatment Centre, the Medical Director for the Child and Adolescent Mental Health Program of the Winnipeg Regional Health Authority and a Psychiatric Consultant. He has been a practicing psychiatrist since 1985. He has prepared approximately 350 forensic assessments for court purposes, approximately 20 dealing with adolescents charged with homicide. Between December 2010 and

January 2011, he read the police reports, reviewed a number of medical charts and reports on C.J.P., met twice with C.J.P. and interviewed C.J.P.'s parents. His forensic assessment was completed in January 2011. He concludes that in the summer of 2009, there were two significant psychiatric diagnostic considerations with respect to C.J.P.: (1) a Major Depressive Episode, which was in remission during the time of his assessment and report and, (2) Mixed Substance Abuse, primarily of opiates and cannabis.

[16] In his report, Dr. Hildahl reviewed the medical charts he had access to and noted that on June 23, 2009, C.J.P. went to see a family doctor due to depression and was placed on 20 mg of Prozac a day. A second doctor was seen on July 28, 2009 and in addition to continuing the 20 mg a day of Prozac, Seroquel was prescribed to assist in C.J.P.'s sleeping difficulties. On Sept. 3, 2009, C.J.P. saw a psychiatric resident at the Health Sciences Centre and that doctor increased the Prozac from 20 mg to 30 mg a day. All of this took place while his parents reported an increasing aggressiveness in C.J.P.'s behaviour. His sleep patterns changed; he was sleeping less; he said his mind was racing and that he vomiting. He took an overdose of Lorazepam and blacked out for a length of time. He was cutting himself. He was threatening his father and others and did such things as punch the garage door and talk about slitting his wrists. One time his father had to take a knife from him, fearing that C.J.P. would harm himself. His parents tried to get the doctors to listen to them about the concerns they had. To them, it was clear that his behaviour had deteriorated since being placed on Prozac. Their concerns apparently went unheeded. Dr. Hildahl writes, "Prozac has been reported to cause agitation and irritability as a side effect, and given the parents' (sic) description of the summer, this is a plausible consideration." As well, he concludes that, "The Prozac which was prescribed . . . may have contributed to the increased agitation, irritability, and threatening behaviour, and certainly the mixed substance abuse had an effect on C.J.P.'s personality and his underlying judgment." The conclusion of his report is that, "Both the Prozac and the Mixed Substance Abuse provide context for the murder, however, neither appears to be causal. The events of September 20, 2009, which are deliberate and organized, remain largely unexplained by C.J.P."

[17] Dr. Hildahl testified in these proceedings as an expert regarding disorders, recommending treatment, forecasting prospects of rehabilitation and risk assessment with respect to adolescents. He confirmed the observations and conclusions he made in his report. He noted that C.J.P.'s parents were appropriately concerned about their son's regressive behaviour in the summer of 2009. After considering all that they had told him, the medical charts available to him and after meeting with C.J.P. and noting his almost immediately improved

behaviour while at MYC, Dr. Hildahl's conclusion was that "the behaviour the parents were seeing was part of the parent-child interaction over that summer and not attributable to the Prozac."

[18] Dr. Hildahl confirmed that an incident of tomato throwing and being aggressive towards another resident and one of two choking episodes that C.J.P. was involved in at MYC occurred before C.J.P. was taken off of Prozac on November 21, 2009. As well, under cross-examination, Dr. Hildahl confirmed that given the "half life" of Prozac, there is a reasonable possibility that C.J.P. still had a small amount of Prozac in his system when the second choking incident at MYC occurred later in December 2009.

[19] Dr. Hildahl testified that he himself has prescribed Prozac for a number of years, and he has not written or published any articles about Prozac. He was aware of the Health Canada warnings concerning prescribing Prozac to adolescents, but explained that it was still authorized for use with adolescents, under the watchful eye of the prescribing doctor. When asked what he would have done if he had been the treating psychiatrist on September 3, 2009, based on the information available to him, he reluctantly admitted that he would not have increased the Prozac dosage, given the concerns noted in C.J.P.'s behaviour, he may have considered another medication in place of the Prozac. Dr. Hildahl also agreed, under cross-examination, that he could not rule Prozac out as far as being a factor in C.J.P.'s suicide attempt in the beginning of July 2009.

[20] Dr. Hildahl interviewed C.J.P. in person on two occasions when preparing his report. He did not establish a rapport with C.J.P. and commented that C.J.P.'s range of emotions were quite narrow and that C.J.P. did not appear to be processing his emotions in a significant manner. Dr. Hildahl did not see any evidence of remorse and it appeared that C.J.P. could not provide an answer for why he had committed the murder. C.J.P. had not processed his motivations. Dr. Hildahl confirmed these observations when he testified and said that he therefore would not recommend long term therapy for C.J.P., not because C.J.P. is not in need of it, but because it did not appear to Dr. Hildahl that C.J.P. would engage and take advantage of counselling. As a result, Dr. Hildahl believes there are concerns about future risk of harm by C.J.P. to others or himself.

[21] When questioned further about C.J.P.'s deterioration over the summer of 2009 and C.J.P.'s state of mind during that time, Dr. Hildahl admitted that it is possible that C.J.P. simply could not understand why he had committed the murder and was not capable of explaining it.

[22] When asked what kind of ongoing treatment would be recommended for C.J.P., Dr. Hildahl stated that it should include a substance abuse program that

“had some teeth in it” and individual therapy with an experienced clinical psychologist or psychiatrist. In his opinion, this clinician would need to be “experienced in developing relationships and feeling relationships with young people who are difficult to engage.” C.J.P. continuing with his education would be important as well. Dr. Hildahl agreed that four years would be a very reasonable amount of time in which to complete the programming and therapy. His only hesitation was the fact that he had not been able to build rapport with C.J.P. and C.J.P. had not been able to give him an explanation for what had happened.

REPORTS AND MATERIALS FILED BY THE DEFENCE

[23] Defence Counsel filed the following as exhibits:

6. A Book of Authorities;
7. A Report and Supplemental Materials Prepared by Dr. Peter Breggin (by agreement of Counsel, the articles and publication notices at Tabs 3, 4, 11 and 13 were not to be considered);
9. *R. v. Mink*, a decision of the Provincial Court of Manitoba;

During my deliberations, I discovered that a lengthy report prepared by C.J.P.’s parents for Dr. Breggin and included in his report was missing a number of pages. Therefore, on August 4, 2011, two further exhibits were filed:

10. A 33-page report prepared by C.J.P.’s parents;
11. A 5-page letter to Dr. Breggin from C.J.P.’s parents.

DR. PETER BREGGIN’S REPORTS AND TESTIMONY

[24] The Crown consented to Dr. Breggin sitting in court through Dr. Hildahl’s testimony, and when it was Dr. Breggin’s turn to testify, the Crown agreed that he could testify as an expert in the area of psychiatry and the use and adverse effects of psychiatric medication. Dr. Breggin has been a practicing psychiatrist in Washington, D.C., Maryland and New York since 1968. He has taught and consulted extensively and has published more than 20 books and 40 articles in the field of psychiatry. He has given numerous presentations and has led training courses related to Clinical Psychopharmacology. He has testified in court as an expert in his field more than 70 times. Most of those cases have involved questions involving the use and effects of psychiatric drugs.

[25] As a part of his area of expertise, Dr. Breggin has researched, written and testified in court about antidepressants, including the adverse effects these drugs have had on children and adolescents. He has particularly focussed on a group of antidepressants which are known as “Selective Serotonin Reuptake Inhibitors”, or SSRIs, as they are commonly called. They include the brand names Prozac, Luvox, Paxil, Zoloft, Celexa and Lexapro.

[26] Dr. Breggin was retained by C.J.P.'s counsel to evaluate what role, if any, Prozac may have played in this tragedy. Dr. Breggin reviewed all of the police reports, witness statements, and medical records that defence counsel had received. He also received a report and letter prepared by C.J.P.'s parents, which are now Exhibit #s 10 and 11 in these proceedings. As well, he interviewed C.J.P. by telephone in August and September 2010 and spoke to Paul Carnegie, C.J.P.'s Case Manager at MYC, in August 2010.

[27] Dr. Breggin's report chronologically outlines what happened with each of the doctors that C.J.P. saw in the summer of 2009, what concerns or information each of the doctors had at the time (at least what is available from the medical charts he saw), what medications were prescribed and what C.J.P.'s noted behaviour was during this time. Some of the behaviour is outlined in Dr. Hildahl's assessment, however he also relies on the extensive details provided to him in the report and letter he received from C.J.P.'s parents. To Dr. Breggin it is absolutely clear that the progressively deteriorating behaviour C.J.P.'s parents saw that summer was as a result of his exposure to Prozac and the building up of the drug in his body. Dr. Breggin notes that each one of the abnormal behaviours exhibited by C.J.P. and the side effects he talked about are specifically what Health Canada has warned about with respect to the drug Prozac. They include anxiety, agitation, panic attacks, insomnia, irritability, hostility, aggressiveness, impulsivity, akathisia (psychomotor restlessness), hypomania and mania. Parents and caregivers are warned to monitor for "the emergence of agitation, irritability, unusual changes in behaviour, and the other symptoms described above, as well as the emergence of suicidality, and to report such symptoms immediately to health care providers." C.J.P.'s parents were alarmed by what they saw happening with their son that summer, and did exactly what was recommended: tell the health care providers. They did this again and again during that summer; in spite of their concerns and the Health Canada warning label on Prozac, the medication was not discontinued for C.J.P.

[28] Dr. Breggin outlines in his report that only C.J.P.'s family doctor seems to have noted a connection between the Prozac and C.J.P.'s deteriorating behaviour that summer. C.J.P.'s family doctor had prescribed the Prozac on June 22. On July 4, after hearing about C.J.P.'s overdose two days earlier, he referred C.J.P. to the Health Sciences Centre where C.J.P. was seen that day. However when he saw C.J.P. again on July 23, he charted a number of concerns about C.J.P.'s mood, sleep and reaction to the drug. He requested a consultation and assessment, suggesting that another antidepressant should be considered for C.J.P. He again referred C.J.P. to the Health Sciences Centre, noting his concerns in the "Request for Consultation". This family doctor next saw C.J.P. for a sore throat and inflamed

ear on August 24, but quickly saw that C.J.P. had deteriorated significantly. His notes include the following comments, "Prozac worse – more aggression. Irritable." and "Have mobile crises unit – come assess him – I will call psychiatrist to reassess him ASAP." It is not clear from the medical records that Dr. Breggin was able to review that this phone call was made; however, C.J.P. was back at the Health Sciences Centre on August 28. Apparently no psychiatrist was available that day and he and his parents met with a therapist instead.

[29] C.J.P. did see a psychiatrist on July 4, July 28, and September 3, 2009. In spite of the concerns his parents outlined on each occasion and the reports which had been provided by his family doctor, the Prozac was continued on July 4 and July 23 and increased on September 3.

[30] Dr. Breggin also writes that the highest risk time period is shortly after starting the drug or after drug dose increases. He notes that in C.J.P.'s case there was a suicide attempt ten days after he began taking Prozac, and then the murder sixteen days after the dose was increased. In his testimony he called this "classic Prozac".

[31] To Dr. Breggin, the warning signs were there early on and then became increasingly obvious. C.J.P. should have been taken off Prozac. Unlike Dr. Hildahl, Dr. Breggin was adamant that he would have discontinued the Prozac almost immediately, if he had been C.J.P.'s doctor.

[32] Dr. Breggin also went on to explain that through his interviews with C.J.P. and a review of all of the collateral information, it was apparent that, except for some occasional marijuana use and the July 2 drug overdose, C.J.P. was not using illegal drugs or abusing prescription drugs during that summer. As a result, he does not find that ongoing substance abuse was a significant factor in C.J.P.'s deteriorating behaviour that summer. In this, he disagrees with Dr. Hildahl.

[33] Dr. Breggin takes note of Dr. Hildahl's concern that C.J.P. did not express any remorse for the murder. Dr. Breggin states that this is in marked contrast to his own impression of C.J.P., to what the author of the pre-sentence report writes and to what his case manager, Paul Carnegie, told him. There were clear expressions of remorse, a wish that it had not happened and a desire to apologize, even though C.J.P. knew it would likely not mean anything to the victim's family.

[34] Dr. Breggin also addressed Dr. Hildahl's concern about C.J.P.'s lack of explanation for the murder. Dr. Hildahl assessed the attack as "deliberate and organized" and that it remained "largely unexplained by C.J.P." after interviewing him on two occasions. Without disputing that a knife had, at some point in time, been placed under a blanket in the garage by C.J.P., Dr. Breggin does not see this attack as deliberate or organized. His assessment is that it simply remains

unexplained and, "this is typical of an irrational, out-character violent assault committed while under the influence of Prozac and other stimulating antidepressants." In his testimony, Dr. Breggin elaborated as follows:

"I've evaluated dozens and dozens of people who have had adverse drug reactions that have caused them to do a crime or violence or some other aberrant behaviour and they always are puzzled about what happened. They always wonder why they make that choice. They cannot put themselves into the shoes of the person who did the crime. . . . in the beginning, they have trouble feeling remorse, because they don't even have a sense that they did it. They believe they did it, because they are not liars. Therefore, they are told that they did something horrible and they believe the truth of it, but they do not feel it. They often don't remember it and they just don't know how to come to grips with it and it takes a lot of time before they can make any sense of it."

[35] In his report, Dr. Breggin states the following by way of conclusions:

1. Within a reasonable degree of medical certainty, I believe that Prozac drove C.J.P. into a state of severe agitation with manic-like symptoms including mood swings, confusion, irrationality, extreme irritability, hostility and violence.
2. The Health Canada warnings were written to warn against exactly what happened to C.J.P. Prozac beyond any reasonable doubt was the culprit that caused this otherwise inexplicable violent outburst.
3. A month or two after his incarceration, C.J.P. at his own request was withdrawn from Prozac, and his mental condition improved. This is additional evidence that Prozac was the causative agent. According to my evaluation and according to the evaluation of his counsellor, Paul Carnegie, who has seen him on a daily basis since the start of his incarceration, C.J.P. has no major mental disorder and no personality or character disorder. His behaviour has been excellent. He has none of the characteristics of a perpetrator of violence. His basic normality further confirms that he no longer poses a risk of violence toward anyone and that his mental deterioration and resultant violence would not have taken place without exposure to Prozac.
4. I believe C.J.P. has now outgrown his youthful involvement with illegal drugs. Furthermore, he was using only marihuana at the time of

the incident and had not abused other drugs for approximately six months. Drugs other than Prozac were not involved in a causal way in the assault. However, any youth who abuses drugs has a risk of recidivism, and I would require him to have continued therapeutic help and supervision after release for a period of two or more years.

5. C.J.P. does not need psychiatric drugs and should not be exposed to them. If he remains free of psychiatric drugs, I do not believe he will be a continued risk of re-offending.

[36] In his testimony, Dr. Breggin commented on Dr. Hildahl's concern over a lack of rapport with C.J.P. as follows:

"...building rapport is the job of the psychiatrist or the therapist. It is not the job of the patient. It is our job to build rapport. I did not find him hard to build rapport with on the telephone and not at all when I met him. He has, certainly has rapport with the people around him. That is why he has built rapport with Mr. Carnegie. Mr. Carnegie described him as kind of your model counsellor patient that he talked about issues, that he had remorse, that he had empathy and especially after the effects of the Prozac began to wear off... So there's no question from other people about building rapport with this young man."

[37] Dr. Breggin in his testimony confirmed that the two areas of ongoing treatment for C.J.P.'s rehabilitation should be:

1. addiction treatment, specifically for drugs, and,
2. family counselling or therapy, depending on an ongoing clinical assessment. He also comments that given the conflict that existed between C.J.P. and his parents in the summer of 2009, C.J.P. should be living outside of the family home, under supervision, and visiting or working with his parents in therapy.

[38] Dr. Breggin believes that all of this treatment, counselling and therapy could be accomplished within a four to seven year time frame.

THE LAW TO BE APPLIED

[39] The Crown has given notice under section 71 of the YCJA asking that the court impose an adult sentence for this murder. The test to be applied is found in following section of the YCJA. It reads as follows:

72.(1) In making its decision on an application heard in accordance with the section 71, the youth justice court shall consider the seriousness and circumstances of the offence, the age, maturity, character, background and

previous record of the young person and any other factors that the court considers relevant, and

(a) if it is of the opinion that a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and section 38 would have sufficient length to hold the young person accountable for his or her offending behaviour, it shall order that the young person is not liable to an adult sentence and that a youth sentence must be imposed; and

(b) if it is of the opinion that a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and section 38 would not have sufficient length to hold the young person accountable for his or her offending behaviour, it shall order that an adult sentence be imposed.

(2) The onus of satisfying the youth justice court as to the matters referred to in subsection (1) is with the applicant.

[40] The subparagraph 3(1)(b)(ii) referred to is found in the section of the YCJA titled "Declaration of Principle". It reads as follows:

3. (1) (b) the criminal justice system for young persons must be separate from that of adults and emphasize the following

(ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity.

[41] Section 38 of the YCJA reads as follows:

38. (1) The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation into society, thereby contributing to the long-term protection of the public.

(2) A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:

(a) the sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances;

(b) the sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances;

(c) the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence;

(d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons with particular attention to the circumstances of aboriginal young persons; and

- (e) subject to paragraph (c), the sentence must
 - (i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1),
 - (ii) be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and
 - (iii) promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community.

38(3) In determining a youth sentence, the youth justice court shall take into account

- (a) the degree of participation by the young person in the commission of the offence;
- (b) the harm done to the victims and whether it was intentional or reasonably foreseeable;
- (c) any reparation made by the young person to the victim or the community;
- (d) the time spent in detention by the young person as a result of the offence;
- (e) the previous findings of guilt of the young person; and
- (f) any other aggravating and mitigating circumstances related to the young person or the offence that are relevant to the purpose and principles set out in this section.

[42] Under section 42(2)(q)(ii) of the YCJA, the maximum youth sentence that the court can impose for second-degree murder is seven years. This includes a committal to continuous custody that must not exceed four years from the date of committal and is to be followed by a placement under conditional supervision to be served in the community. As a result of the Manitoba Court of Appeal decision in *R. v. P. (N.W.)* 2008 CarswellMan 443, 2008 MBCA 101, 235 C.C.C. (3d) 125, [2008] 12 W.W.R. 591, 231 Man. R. (2d) 61, 437 W.A.C. 61, 79 W.C.B. (2d) 99, it is clear that while consideration must be given to the time that a youth has already spent in custody on the charge, credit for time actually served does not have to be given. This was applied in a recent Manitoba Court of Queen's Bench case, *R. v. H (J.J.)*, 2010 CarswellMan 402, 2010 MBQB 177, where the court imposed the maximum seven year sentence for two charges of second degree murder on a youth who had been in custody for nearly three years, without deducting any time already served.

[43] This means that in C.J.P.'s case, having spent almost exactly two years in custody since the murder, the longest youth sentence he could serve is those two years of custody, plus 4 more years of custody, plus three years of conditional supervision in the community.

[44] If C.J.P. is to be sentenced as an adult, the sentence would be life imprisonment with no eligibility for parole until he had served seven years of that sentence.

WHAT DOES THE YCJA MEAN BY ACCOUNTABILITY?

[45] A key component to the test set out in section 72 of the YCJA is the word "accountability". The Ontario Court of Appeal in *R. v. O. (A.)*, 2007 Carswell 1181, [2007] W.D.F.L. 1492, 222 O.A.C. 38, 218 C.C.C. (3d) 409, 84 O.R. (3d) 561, stated the following in explaining what the word means and how it is to be applied in determining if a youth sentence would be of sufficient length for an offender:

42. The combined effect of ss. 72, 3 and 38 is to identify accountability, as the purpose that the youth court judge must consider when deciding to impose an adult sentence on a young person. Accountability is achieved through the imposition of meaningful consequences for the offender and sanctions that promote his or her rehabilitation and reintegration into society. The purpose of accountability in this context would seem to exclude accountability to society in any larger sense or any notion of deterrence.

46. In our view, accountability in this context is the equivalent of the adult sentencing principle of retribution as explained by Lamer C.J.C. in *R. v. M. (C.A.)* (1996), 105 C.C.C. (3d) 327 (S.C.C.) at paras. 80 and 81:

Retribution in a criminal context, by contrast, represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment and nothing more. . . .

Retribution as well, should be conceptually distinguished from its legitimate sibling, denunciation. Retribution requires that a judicial sentence properly reflect the moral blameworthiness of that particular offender. The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct. In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law. [Underlining in original, italics added.]

47. In our view, for a sentence to hold a young offender accountable in the sense of being meaningful it must reflect, as does a retributive sentence, "the moral culpability of the offender, having regard to the intentional risk taking of the offender, the consequential harm caused by the offender, and the normative

character of the offender's conduct". [Underlining omitted.] We see no other rational way for measuring accountability.

THE SERIOUSNESS AND CIRCUMSTANCES OF THE OFFENCE

[46] C.J.P. has pleaded guilty to second-degree murder. The only offence more serious in the Criminal Code is first-degree murder. C.J.P. acted alone when he committed this murder. It was an intentional act and death was reasonably foreseeable when the act was committed. The stabbing to death of his friend happened after C.J.P. had hidden a knife under a sweater in the garage where he and his two friends were later sitting and sharing a cigarette. While Dr. Hildahl finds that the actions of C.J.P. that day were deliberate and organized, the evidence is that when C.J.P. came home that afternoon and found out from his brother that Seth had caused the dent in the kitchen floor, he did not directly call Seth or question him about it. R.P. states in his statement to the police that C.J.P. called him up after the incident with C.P., Seth and him. C.J.P. was not angry and simply asked if R.P. would like to come over or "hang out". It was R.P. who advised C.J.P. that Seth was with him and nothing was even said about Seth coming along. Even when the three of them were "hanging out" in C.J.P.'s garage, everything was fine until C.J.P. had picked up the knife to show them and suddenly had a "weird look in his face". Dr. Breggin's explanation of the effect Prozac was having on C.J.P.'s behaviour both before that day and in committing an impulsive, inexplicable violent act that day corresponds with the evidence; as Dr. Breggin states in his report, there was no significant deliberation or organization by C.J.P. that afternoon.

OTHER YOUTH SENTENCES FOR SECOND DEGREE MURDER

[47] There are cases from many provinces where youth have been sentenced to an adult sentence for second-degree murder, however, there are also many cases where a youth sentence is imposed. (See Parts 10 & 11 of the Youth Criminal Justice Manual written by Harris & Bloomenfeld.) In Manitoba there appear to be no reported cases where a youth charged with second degree murder has been sentenced to an adult sentence; there are many cases where they have been sentence to a youth sentence (sometimes with the consent of the Crown):

1. *R. v. K. (C.J.)* (1994), 88 C.C.C. (3d) 82, 92 Man. R. (2d) 173. A youth with no previous record stabbed his girlfriend to death at a party where both had been drinking alcohol.
2. *R. v. H. (J.J.)* (previously cited). A fourteen year old with no previous record shot and killed his adoptive mother and adoptive sister in their home.

3. *R. v. G. (R.A.)* 2001 MBPC 54. A fourteen year old with no previous record stabbed an adult to death when robbing him for some jewellery.

4. *R. v. E. (R.), G. (E.), G. (S.) & N. (J.)*. This is an unreported Queen's Bench decision from August 26, 2011. Five teenage youth, including these four, who were all 16 or 17 years of age, chased the victim into a cemetery and stabbed and beat him to death with knives, a machete and a baton. The fifth youth, *R. v. D. (D.)*, had also been given a youth sentence.

THE AGE, MATURITY, CHARACTER, BACKGROUND AND PREVIOUS RECORD

[48] C.J.P. was 16 years and three months of age at the time of the murder. The summer leading up to the murder was one of great immaturity for C.J.P. as he was struggling with drug addiction, peer pressure and conflict with his parents, all the while dealing with depression. He had grown up in a normal middle class family, living with his mother, father and brother. While C.J.P. had been using illegal drugs and spoke of having friends involved in criminal activity, C.J.P. had no gang involvement and no criminal record.

[49] When assessing his character, there are three time periods to consider:

1. According to his parents, C.J.P. was a happy, well-adjusted normal child. He was involved in many positive activities as a child and had many friends.
2. Early in 2008, his parents noticed a change in C.J.P.'s personality and soon came to believe that C.J.P. was using illegal drugs. From that point in time until September 2009, there was a continual struggle to provide therapy and treatment for C.J.P. and he responded positively from time to time but through the spring and summer of 2009 it was a downward spiral for C.J.P. C.J.P.'s character during this time was dominated by his mood swings, conflict with his parents, and depression. Once on Prozac he also became irritable and aggressive.
3. After some time in custody, when C.J.P. was finally free of the effects of the illegal drug use and the Prozac he had been medicated with, there was a noticeable change in his personality and behaviour. His case manager, other staff at MYC, his pastor, the probation officer and Dr. Breggin have clearly seen a youth who is now polite, compliant, reliable, and trustworthy. Mr. Carnegie described to Dr. Breggin the changes in C.J.P. when off the Prozac as follows, "He just became normal, like a normal person. It's hard to believe that the guy sitting

in from of me committed the offence. He's been terrific. I don't have a bad word to say about him."

OTHER RELEVANT FACTORS

[50] The fact that C.J.P. committed an intentional act of stabbing his friend in which death was reasonably foreseeable is a significant aggravating circumstance that must be taken into account. However, in C.J.P.'s particular personal circumstances there is another significant factor which has to be considered. C.J.P. was on Prozac pursuant to his doctors and psychiatrist's recommendations and prescriptions. As has been well documented by his parents and written about and testified to by Dr. Hildahl and Dr. Breggin, C.J.P.'s behaviour deteriorated while on Prozac. While C.J.P. may not have realized it, he had become irritable, restless, agitated, aggressive and unclear in his thinking. It was while in that state he overreacted in an impulsive, explosive and violent way. Now that his body and mind are free and clear of any effects of Prozac, he is simply not the same youth in behaviour or character. He committed the act of murder and has acknowledged his wrong doing with his guilty plea to second degree murder. However there is clear medical and collateral evidence that the Prozac affected his behaviour and judgment, thereby reducing his moral culpability. C.J.P. himself asked to be taken off Prozac once in custody and appears to now have a clear understanding of the negative effects Prozac had on him in the summer of 2009. When measuring accountability for this youth and his offending behaviour, this is a significant, relevant factor.

LIKELIHOOD OF REHABILITATION AND REINTEGRATION INTO SOCIETY

[51] Dr. Hildahl and Dr. Breggin agreed that C.J.P. will need some further addictions treatment, specifically with respect to illicit drugs. As a result of being in custody for two years, C.J.P. is "clean", in other words there are no drugs in his system; however, both doctors believe that C.J.P.'s extensive use of a number of different drugs in 2008 and 2009 puts him at risk to get re-involved in drug use once out of a custodial setting, if he is not provided with further treatment and counselling. The kind of treatment and counselling necessary is readily available and could be accomplished over the next few years. It can be done within the parameters of a youth sentence.

[52] The second area of treatment both recommend for C.J.P. involves individual or family counselling and therapy. Dr. Hildahl believes this will only be accomplished through an experienced clinical psychologist or psychiatrist. Dr. Breggin suggests an ongoing clinical assessment would be needed to determine what counselling or therapy would now be appropriate. C.J.P. should not be living

in the family home upon release, but under supervision elsewhere, but visiting and participating in the counselling or therapy. Dr. Hildahl agrees that this could be accomplished within four years; Dr. Breggin suggests a time frame of up to seven years might be necessary.

[53] Dr. Hildahl has reservations about what could be accomplished with C.J.P. and the recommended course of treatment. His hesitation is as a result not being able to build rapport with C.J.P. when meeting with him and in not getting a satisfactory explanation from C.J.P. about why he committed the murder. His concern, as a result, is that C.J.P. would not engage in the treatment process. There is ample evidence, however, that C.J.P. can and has engaged with others who have seen him and are in contact with him on a weekly and daily basis. There has been no difficulty in building rapport. It is clear from all they have said and written that the prospects of rehabilitation for C.J.P. are very good. This is a youth who can be re-integrated into society. As Mr. Carnegie told Dr. Breggin, "We all talk about rehabilitation in the mission statement and we have an opportunity this time. We wouldn't give him a chance? When you get a guy who does stand out, we say we can invest in this guy, and why wouldn't we?"

CONCLUSION

When all of the relevant factors in this particular case and the unique circumstances of this young offender are considered, this court finds that a youth sentence will have sufficient length to hold C.J.P. accountable for his offending behaviour, the murder he committed on September 20, 2009. Pursuant to section 72 of the YCJA, C.J.P. will not be liable to an adult sentence; a youth sentence will be imposed.

"ORIGINAL SIGNED BY:"
HEINRICHS, ROBERT, P.J.