

**IN THE HIGH COURT OF NEW ZEALAND
TAURANGA REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TAURANGA MOANA ROHE**

**CRI-2020-070-2331
[2020] NZHC 2700**

THE QUEEN

v

TEHIIRITANGA HILL

Hearing: 14 October 2020
Counsel: A J Pollett for Crown
A D Hill for Defendant
Judgment: 14 October 2020

JUDGMENT OF BREWER J

Solicitors:
Pollett Legal (Tauranga) for Crown
Andrew Hill (Rotorua) for Defendant

Introduction

[1] Mr Hill faces one charge of murder. He has, through his lawyer, indicated he intends to raise insanity as a defence. The Crown Solicitor agrees that the only reasonable verdict on the charge is one of not guilty on account of insanity. As a result, if I am satisfied, on the basis of expert evidence, that Mr Hill was insane within the meaning of s 23 of the Crimes Act 1961 at the time of the commission of the offence, then I must find him not guilty on account of his insanity.¹

[2] The hearing today has two purposes. The first is for me to decide whether Mr Hill is not guilty of murder on account of his insanity. If that is my finding, then the second purpose is to decide the best mental health treatment option for Mr Hill.

Background

[3] I will start by looking, briefly, at the agreed factual background.² I have to do this because there are inherent vulnerabilities when mental health problems exist. A Judge must be satisfied there is a proper background of evidence on which a finding of not guilty on account of insanity can be made.

[4] In my view, I need to be satisfied the evidence of Mr Hill's involvement with the murder would withstand an application for discharge under s 147 of the Criminal Procedure Act 2011. If the evidence is sufficient that a reasonable Judge or jury, properly directed, could reasonably convict Mr Hill on the charge of murder, then that is enough. That is the threshold which all prosecution cases must cross in order to be viable.

[5] Mr Hill is the biological son of the partner of the deceased, Ms Pania Melrose. In the weeks preceding 12 June 2020 there were a number of occasions where Mr Hill had been aggressive towards Ms Melrose.

¹ Criminal Procedure (Mentally Impaired Persons) Act 2003 ("the Act"), s 20(2).

² Mr Hill has formally accepted the Crown summary of facts pursuant to s 9(2), Evidence Act 2006.

[6] On the morning of Friday, 12 June 2020, Mr Hill was at the house where his father lived with Ms Melrose. Mr Hill's father left the house and Mr Hill was then alone with Ms Melrose.

[7] At approximately 10.30 am, Ms Melrose phoned Mr Hill's father and told him that Mr Hill was becoming aggressive towards her.

[8] A short time later Ms Melrose phoned Mr Hill's father again. This time Ms Melrose cried on the phone about Mr Hill's aggressive behaviour towards her. Mr Hill took the phone and said to his father, "she's the one to blame, it's all her fault, it's getting ugly".

[9] Mr Hill's father tried to calm Mr Hill down and said he would be home soon.

[10] After the phone call, a physical confrontation took place outside on the front lawn of the address between Mr Hill and Ms Melrose. Ms Melrose was in no way to blame for this.

[11] Mr Hill had a hammer and he struck Ms Melrose eight or nine times about the head and face causing her to fall to the ground. The injuries Mr Hill inflicted were fatal. Ms Melrose died shortly afterwards.

[12] When Mr Hill's father returned to the house he found Ms Melrose lying on the lawn of the property with the bloodied hammer nearby.

[13] Mr Hill's father found Mr Hill inside the house having just had a shower. The father and another relative restrained Mr Hill until the police arrived.

[14] Mr Hill told the police he believed Ms Melrose was performing satanic rituals at the house and that she had taken control of his mind placing him in a trance and preventing him from leaving the address. Mr Hill admitted he had inflicted the blows with the hammer.

[15] I am satisfied there is a proper evidential basis or evidential background for me to consider the issue of insanity.

Insanity

[16] I now turn to the issue of insanity at the time of the offending. The relevant provisions of s 23 of the Crimes Act 1961 are:

- (1) Every one shall be presumed to be sane at the time of doing or omitting any act until the contrary is proved.
- (2) No person shall be convicted of an offence by reason of an act done or omitted by him or her when labouring under natural imbecility or disease of the mind to such an extent as to render him or her incapable—
 - (a) of understanding the nature and quality of the act or omission; or
 - (b) of knowing that the act or omission was morally wrong, having regard to the commonly accepted standards of right and wrong.
- (3) Insanity before or after the time when he or she did or omitted the act, and insane delusions, though only partial, may be evidence that the offender was, at the time when he or she did or omitted the act, in such a condition of mind as to render him or her irresponsible for the act or omission.

[17] I have received and read the report of Dr Dean, a consultant psychiatrist, dated 24 August 2020. I have also read a report obtained on behalf of Mr Hill by Dr Galpin, also a consultant psychiatrist. That report is dated 10 September 2020. Counsel for the Crown and counsel for Mr Hill are content for me to admit the evidence of Dr Dean and Dr Galpin in the form of their reports without formal proof. That is appropriate and I will do so. In the same way, I will have regard to a report from Dr Galley, another consultant psychiatrist, dated 20 July 2020.

Dr Galley's report

[18] Dr Galley reported on Mr Hill because he was remanded for a psychiatric assessment pursuant to s 38 of the Act. The purpose of the report, therefore, was to address Mr Hill's mental health in the context of him having been arrested for murder and being expected to take part in the criminal justice process.

[19] Dr Galley was aware that Mr Hill had been seen by a forensic psychiatrist after his arrest and had been diagnosed as having a first episode psychosis. Dr Galley concurred with that diagnosis.

[20] Mr Hill had received treatment since his arrest and Dr Galley considered that as a result Mr Hill was fit to stand trial. Dr Galley commented:

Given the stage of proceedings and the gravity of the index offence, I have not explored the issue of insanity in detail for the purposes of this report. However, as an initial steer to the court, I would submit the opinion that there are ample grounds to consider a defence of insanity. Mr Hill's self-report suggests he was labouring under a disease of the mind at the material time and his behaviour appeared to be influenced by delusions, such that a defence of insanity could be further explored by his counsel.

Dr Dean's report

[21] Dr Dean's report of 24 August 2020 was commissioned by the Crown Solicitor. He was asked to consider whether Mr Hill has a defence of insanity available to him.

[22] From the background reports available to Dr Dean, and in the light of his own interview with Mr Hill, Dr Dean said that Mr Hill appeared to be experiencing symptoms of psychosis for several months prior to the homicide. Mr Hill's father had taken him to see his general practitioner who had referred him to Community Mental Health Services and had prescribed Risperidone.

[23] Dr Dean recorded that following Mr Hill's arrest he was seen by Prison Mental Health Services. Mr Hill was diagnosed with psychosis and commenced on Olanzapine, an antipsychotic medication, and Lorazepam, an anxiolytic medication used for distress.

[24] Mr Hill remembered being taken to the doctor by his father in the days prior to the homicide. He told Dr Dean he had been increasingly persecuted and believed he was being controlled by the devil. He believed animals were staring at him and could sense the devil in him. He believed the devil was trying to get him and he believed Satan was going to come from the earth and take him to hell. He told Dr Dean he believed the television was directed at him:

In particular he believed his father's partner was a witch, could read his thoughts and was taking over control of his body. He began to hear voices, which became worse after he began medication. The voice was often indistinct and spoke in tongues, such that he could not understand what was being said. The voices were threatening. He described visual distortions, seeing demonic images when looking at faces. He began to see significance in symbols and numbers, believing that they were signs from the devil.

[25] Dr Dean goes on to recount Mr Hill's report of the events leading up to the homicide and of the homicide itself:

[Mr Hill] reported getting up at around 8 or 9 o'clock in the morning. His father left the home at around 9 am to play golf, leaving him at home with the victim. He believed the victim was controlling his thoughts and making him do things. He felt he had no control over what he was doing and she was preventing him from leaving his home. He described having thoughts inserted in his head and hearing voices from Satan, making him feel upset, angry, agitated and scared. He believed his father's partner was part of a devil cult and had made a pact with the devil to hurt him.

[Mr Hill] described approaching his father's partner. He wanted to make a telephone call to his father to seek reassurance and ask for help. He felt he needed his father to protect him from the devil. However the victim told him to go away; she appeared scared of him.

[Mr Hill] recalled the victim hanging the washing out on the clothesline. He was feeling increasingly agitated, pulling her to the ground to take the phone from her. He recalled hitting her in her face and running inside so he could talk to his father. He then walked out again, to find the victim with a hammer in her hand. He recalled an overwhelming fear she was going to kill him, he was going to be sent to hell and the devil was taking over his body to prevent him from leaving the house through satanic rituals performed by the victim. He recalled trying to wrestle the hammer off the victim and they ended up on the lawn. He felt his body was being controlled and he struck the victim eight times with the hammer. He recalled hitting the victim and seeing the hammer strike eight times, although did not believe the actions were his own actions. He cannot recall what happened to the hammer, although believed he left it beside the victim on the lawn.

[26] Dr Dean's diagnosis is as follows:

[Mr Hill] presents with symptoms consistent with a psychotic disorder. He presented with features of mood instability, disorganised thinking, delusions and hallucinations. He described symptoms consistent with first rank symptoms of schizophrenia, namely passivity phenomena, with made thoughts, actions and feelings. His symptoms have improved with antipsychotic medications. He currently presents with features consistent with negative symptoms of psychosis, including poverty of thought, superficial thinking, detached affect and amotivation. He has been diagnosed with a first episode psychosis and this is most likely consistent with schizophrenia.

[27] Dr Dean considers that because of his schizophrenia Mr Hill was suffering from a disease of the mind at the time of the homicide.

[28] Dr Dean considers that Mr Hill understood that hitting Ms Melrose multiple times with a hammer could kill her and so he understood the nature and quality of his actions. However, Mr Hill believed his actions were morally justified at the time of the homicide. It is Dr Dean's opinion Mr Hill was unable to understand the moral wrongfulness of his actions having regard to the commonly held standards of right and wrong and therefore has a defence of insanity available to him.

[29] Dr Dean recommends Mr Hill should be found not guilty by reason of insanity.

Dr Galpin's report

[30] Dr Galpin's report dated 10 September 2020 was commissioned by Mr Hill's counsel. In a comprehensive report, Dr Galpin goes into Mr Hill's upbringing and family history, including reports by members of his family about Mr Hill's deteriorating mental health in the period before the homicide. It was that evident deterioration in Mr Hill's mental health that led to his father taking him to see the family doctor. Mr Hill started taking the prescribed risperidone (an antipsychotic medication) just a day before the homicide.

[31] Dr Galpin reviewed the previous reports on Mr Hill by mental health professionals and examined Mr Hill himself on 19 August 2020. Dr Galpin gives his diagnosis as follows:

A range of psychotic experiences are described by Mr Hill, his father and sister. They are also documented in the contemporaneous evidence provided in the discovery file, as well as from Mr Hill's clinical record. These psychotic symptoms were present prior to, contiguous with, and after the alleged offending. They have also been noted in a custodial context in immediate aftermath of the alleged offending, and are noted to have responded to an appropriate dose of an appropriate antipsychotic agent within an appropriate time frame. These factors provide strong supportive evidence that Mr Hill was experiencing a significant breakdown in his mental capacity and was suffering from an acute psychotic illness with substantial delusions (fixed pathological, false beliefs) hallucinations (false perceptions), disorganised thinking consistent with formal thought disorder (loss of logical connectedness between adjacent phrases in speech), and secondary intense anxiety. In terms of diagnosis, I believe that Schizophrenia is the most appropriate. I favour the

diagnosis of **Schizophrenia** due to lack of progression of Mr Hill's developmental trajectory, reflecting likely 'negative symptoms' of Schizophrenia predating the psychotic symptoms emerging, with problems in the area of motivation, energy and drive predating the active 'positive' symptoms ('psychotic phenomena: delusions, hallucinations and disorganised thinking'). Psychotic symptoms on review of his GP notes and by family history have been present, intermittently initially, probably for 2 or 3 years, hence ruling out Schizophreniform disorder. A primary underlying General Medical Condition with psychotic symptoms is an unlikely diagnostic possibility.

[32] Dr Galpin is of the opinion that although Mr Hill understood the nature and quality of his actions he lacked appreciation of the moral wrongfulness of what he was doing because of his disease of the mind. Accordingly, Dr Galpin believes it is highly likely the court will find that Mr Hill was insane at the time of the homicide.

Decision on insanity

[33] The standard of proof on the defence of insanity is the balance of probabilities. On the evidence, I am satisfied on the balance of probabilities that at the time of the offending Mr Hill was labouring under a disease of the mind to such an extent as to render him incapable of knowing that striking Ms Melrose with the hammer was morally wrong, having regard to the commonly accepted standards of right and wrong. I accordingly find Mr Hill not guilty of the charge of murder on account of his insanity.

Disposition

[34] Pursuant to s 23 of the Act, I must order that inquiries be made to determine the most suitable method of dealing with Mr Hill under either s 24 or s 25 of the Act. Section 24 provides:

- (1) When the court has sufficient information on the condition of a defendant found unfit to stand trial or acquitted on account of his or her insanity, the court must—
 - (a) consider all the circumstances of the case; and
 - (b) consider the evidence of 1 or more health assessors as to whether the detention of the defendant in accordance with one of the orders specified in subsection (2) is necessary; and
 - (c) make one of the orders referred to in paragraph (b) if it is satisfied that the making of the order is necessary in the

interests of the public or any person or class of person who may be affected by the court's decision.

- (2) The orders referred to in subsection (1) are that the defendant be detained—
 - (a) in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (b) in a secure facility as a special care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.
- (3) Before the court makes an order specified in subsection (2)(a), the court must have received evidence, under subsection (1)(b), about the defendant from at least 1 health assessor who is a psychiatrist

[35] It will be seen from this that an order under s 24 would require the detention of Mr Hill.

[36] Section 25 provides:

- (1) If, after considering the matters specified in section 24(1)(a) and (b) concerning a defendant found unfit to stand trial or acquitted on account of his or her insanity, the court is not satisfied that an order under section 24(2) is necessary, the court must deal with the defendant—
 - (a) by ordering that the defendant be treated as a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (b) by ordering that the defendant be cared for as a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or
 - (c) if the person is liable to be detained under a sentence of imprisonment, by deciding not to make an order; or
 - (d) by ordering the immediate release of the defendant.
- (2) Before the court makes an order under subsection (1)(a), the court must be satisfied on the evidence of 1 or more health assessors (at least 1 of whom must be a psychiatrist) that the defendant is mentally disordered.
- (3) Before the court makes an order under subsection (1)(b), the court must be satisfied on the evidence of 1 or more health assessors that the defendant—
 - (a) has an intellectual disability; and
 - (b) has been assessed under Part 3 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; and

(c) is to receive care under a care programme completed under section 26 of that Act.

(4) In the exercise of its powers under subsection (1), the court may take into account any undertaking given by, or on behalf of, the defendant that the defendant will undergo or continue to undergo a particular programme or course of treatment.

[37] A major difference between an order under s 24 and s 25 is that a s 25 order does not require detention.

[38] I have previously discussed with counsel for the Crown and counsel for Mr Hill what inquiries should be made in the present case. I have received further reports from Dr Dean and from Dr Galpin as to disposition. It is agreed that I should receive them and rely upon them.

Dr Galpin's further report

[39] Dr Galpin's report on disposition is dated 6 October 2020.

[40] Dr Galpin notes:

- (a) Mr Hill's history of presenting to Psychiatric Services is of some years duration.
- (b) Mr Hill's mental health deteriorated over time.
- (c) The homicide occurred in the context of being on appropriate, but early, treatment for his psychotic disorder.
- (d) Mr Hill's use of violence occurred suddenly and shockingly.

[41] Dr Galpin's "clear opinion" is that in the interests of Mr Hill, Ms Melrose's family, and others who might become at risk in the future, Mr Hill should become a special patient pursuant to s 24(2)(a) of the Act.

Dr Dean's further report

[42] Dr Dean's further report is dated 7 October 2020.

[43] Dr Dean notes:

Although Mr Hill has responded to antipsychotic medication, his insight and understanding of his condition remains limited. His long term adherence to medication and psychiatric follow up has not been adequately tested in a community setting to ensure his long term stability. He has no previous psychiatric treatment and would benefit from an active psychiatric rehabilitation programme to assist him to develop a full understanding of his condition, understand early warning signs of relapse and be able to respond to them, come to terms with his alleged offending and manage complex relationships within the community and his whanau as a result of the charges he is facing.

[44] Dr Dean is of the opinion that Mr Hill is mentally disordered as defined by s 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992. Further, he is of the opinion Mr Hill poses a risk to the public and cannot be adequately managed as a s 25 patient under the Act. In Dr Dean's opinion, Mr Hill requires special patient status. Dr Dean recommends disposition subject to s 24(2)(a).

Discussion

[45] Counsel for the Crown and counsel for Mr Hill agree with the opinions expressed by Dr Galpin and Dr Dean. I concur.

[46] Sections 24 and 25 of the Act provide that I can consider an order under s 25 if I am not satisfied that an order under s 24 is necessary. It will not be necessary only if I am satisfied that the making of a s 24 order is not necessary in the interests of the public or any person or class of person who may be affected by the court's decision.

[47] In my view, the interests of the public in a situation such as this go to the reasonable assurance of public safety.

[48] Mr Hill has been diagnosed with a major depressive disorder, namely schizophrenia. As a result of that disease of the mind, Mr Hill became suddenly and lethally violent. Thanks to the treatment he has been receiving he has made good

progress. But his current condition, when considered against his history of mental health problems, means he poses a serious risk to the health and safety of others.

[49] I accept the opinions of Dr Dean and Dr Galpin. I am satisfied that if Mr Hill is made a special patient then that will best serve the public interest. I note that as a special patient there will be a further level of protection because that status will continue until such time as a responsible Minister, on appropriate advice, is satisfied it is safe to change Mr Hill's status.

[50] I consider detention as a special patient is also in Mr Hill's interests. It is the regime that will provide him with the highest level of long-term care according to his needs.

Result

[51] I order, pursuant to s 24(2)(a) of the Act, that Mr Hill be detained in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

[52] I note that Ms Melrose's identity has been suppressed in order to protect the victims. Counsel have advised me that the victims do not want the suppression order to continue. Accordingly, I revoke the order suppressing publication of Ms Melrose's name.

Brewer J