

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CRI 2019-091-474
[2019] NZHC 1231**

THE QUEEN

v

EDMUND ALAN JENKINS

Hearing: 31 May 2019
Counsel: G J Burston for Crown
J Bonifant for Defendant
Judgment: 31 May 2019

JUDGMENT OF ELLIS J

[1] Mr Jenkins is charged with murdering Edith Roderique on 5 March 2019. He is 75 years old. He has no criminal history.

[2] It has been evident from the outset that there would be an issue about whether Mr Jenkins was fit to stand trial. The process for determining that under the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the Act) has been undertaken. This judgment records my determination of the issues arising under that process, with reasons.

Section 8A inquiry: is the defendant unfit to stand trial?

[3] Section 7 of the Act provides that a court may make a finding that a defendant is unfit to stand trial at any stage after the commencement of the proceedings and until

all the evidence is concluded. A determination of unfitness is governed by s 8A, which relevantly provides:

- (1) The court must receive the evidence of 2 health assessors as to whether the defendant is mentally impaired.
- (2) If the court is satisfied on the evidence given under subsection (1) that the defendant is mentally impaired, the court must record a finding to that effect and—
 - (a) give each party an opportunity to be heard and to present evidence as to whether the defendant is unfit to stand trial; and
 - (b) find whether or not the defendant is unfit to stand trial; and
 - (c) record the finding made under paragraph (b).
- (3) The standard of proof required for a finding under subsection (2) is the balance of probabilities.
- ...
- (5) If the court records a finding under subsection (2) that the defendant is unfit to stand trial, the court must inquire into the defendant's involvement in the offence under section 10, 11 or 12, as the case requires.

[4] In Mr Jenkins' case, the Court received reports from two consultant psychiatrists, Dr Justin-Barry Walsh and Dr Anthony Duncan. Both gave evidence at the hearing today.

[5] On 22 March 2019 Dr Barry-Walsh assessed Mr Jenkins as unfit to stand trial. At that stage, he was uncertain as to whether Mr Jenkins was insane at the time of the offending.

[6] Dr Duncan assessed Mr Jenkins twice. On 20 May 2019 Dr Duncan reported that Mr Jenkins was (in his view) fit to plead but unfit to stand trial. He was also of the view that Mr Jenkins "may well have a defence of insanity available".

[7] On 28 May 2019 Dr Barry-Walsh provided an updating report, following a further interview with Mr Jenkins the day before. In it, he helpfully summarises his previous report as well as Dr Duncan's.

[8] In short, the expert evidence was that Mr Jenkins has a history of depression and is now presenting with a “frontal lobe type picture” with memory problems, impairment in executive functioning and difficulties with language. While he had first presented with persecutory ideation associated with delusions and hallucinations, this has now abated somewhat. Dr Barry-Walsh suggested that this paranoid illness was likely secondary to dementia, which was his primary diagnosis.

[9] Dr Duncan also diagnosed frontal lobe dementia. He also suggested that, as a result of Mr Jenkins’ frontal lobe dysfunction there may have been an element of automatism in his actions on the day in question.

[10] As to the unfitness inquiry, Dr Barry-Walsh said:

Mr Jenkins has a dementing illness and in my view this would easily conform to the concept of mental impairment. With regards to the criteria within [the Act] Mr Jenkins, in my second assessment with him in particular, struggled to discuss the plea options or demonstrate understanding of the consequences of the pleas available to him. His view that he would leave it to his lawyer I suspect at least partly reflects impairment in executive function. Because of his problems with language, secondary to his dementia Mr Jenkins has difficulty providing narrative and explanation. I am not satisfied he could adequately instruct counsel.

Although he understands the nature and purpose of court proceedings in a broad manner when one applies the Presser¹ criteria there are substantial impairments. I am confident that he would struggle to make his version of the facts known to the court and counsel, indeed I doubt he would have any realistic capacity to do this. I am not satisfied he would be able to follow the course of proceedings.

It is therefore my view that Mr Jenkins is unfit to stand trial. His unfitness arises from a dementia. This is likely to be progressive over time and there is little prospect of Mr Jenkins being restored to a state where he might become fit to stand trial.

...

[11] There was no challenge to the evidence of either Dr Duncan or Dr Barry-Walsh. In my view their evidence establishes that Mr Jenkins is mentally impaired (by virtue of his dementia) and, on the balance of probabilities, he is unfit to stand trial.

¹ Derived from *P v Police* [2007] 2 NZLR 528, (2006) 23 CRNZ 804 (HC) at [24] and [43].

Section 10 inquiry

[12] Given my finding that Mr Jenkins is unfit to stand trial, it was necessary to move to the second stage of the assessment, which is governed by s 10 of the Act. In the event of a finding of unfitness:

(2) The court must decide whether the court is satisfied, on the balance of probabilities, that the evidence against the defendant is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged.

[13] For the purposes of that inquiry, subs (3) provides that the court may consider—

- (a) any formal statements that have been filed under section 85 of the Criminal Procedure Act 2011;
- (b) any oral evidence that has been taken in accordance with an order made under section 92 of the Criminal Procedure Act 2011;
- (c) any other evidence that is submitted by the prosecutor or defendant.

[14] Although Ms Bonifant's advice was that Mr Jenkins accepted the allegations in the police Summary of Facts, both Dr Duncan and Dr Barry-Walsh were of the view that Mr Jenkins did not have capacity to give those instructions due to his confusion and lack of clarity around the events in question. The most that could be said with confidence was that Mr Jenkins knew that Ms Roderique was dead and that he "must have" done it. It seems to me that it would therefore be unsafe simply to proceed on the basis of his admission.

[15] The Crown has filed (under s 85 of the Criminal Procedure Act 2011) a formal statement by Detective Sergeant Anna Grant which summarises and attaches other formal statements and evidence relating to the police inquiries.

[16] The evidence is that Mr Jenkins and Ms Roderique were in a relationship of three years and lived separately. Mr Jenkins lived in a Retirement Village on the Kapiti Coast but Ms Roderique frequently visited him and spent the night.

[17] On 5 March 2019, they were sleeping in Mr Jenkins' villa at the Retirement Village. Mr Jenkins woke up to his alarm at 7:30 am and woke Ms Roderique. They had a conversation then he went to the bathroom and to get a glass of water. He noticed a knife on the bench that had not been put away. He picked it up and went back to the bed, holding the knife over her. She saw the knife and began screaming. He stabbed her repeatedly in the chest. She fell to the floor.

[18] At some point during the attack, the medical alert button on the bed was pushed alerting staff to attend. When the first staff member arrived, Mr Jenkins showed her Ms Roderique's body. The staff member confirmed she had no pulse. Mr Jenkins had blood on him and said to the staff member "I did it, I did it, I did it". He repeated those words on a number of occasions to other staff members.

[19] Ms Roderique was later confirmed to be dead. Mr Jenkins told police he had meant to scare her with the knife as a joke but she "jumped" at him and screamed. His recollection of what exactly had happened next was hazy but he acknowledged stabbing Ms Roderique.

[20] A post mortem subsequently confirmed that Ms Roderique had died from multiple stab wounds to her chest.

[21] Even without reliance on the admission proffered by Ms Bonifant the evidence I have summarised above is more than sufficient to satisfy me on the balance of probabilities that it was Mr Jenkins who was responsible for Ms Roderique's death. Indeed, I would go so far as to say that there is no possibility that her injuries were inflicted by anyone else.

Terms of on-going detention

[22] Section 24 of the Act provides that when the court has sufficient information on the condition of a defendant found unfit to stand trial, 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.

[23] In the present case, the relevant order under subs (2) would be that the defendant be detained in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992. Subs (3) provides that before the court makes such an order, the court must have received evidence, under subsection (1)(b), about the defendant from at least 1 health assessor who is a psychiatrist.

[24] Dr Barry-Walsh addressed the question of disposition. He advised his view that:

- (a) Mr Jenkins is charged with murder;
- (b) in light of the unusualness of the circumstances surrounding the killing, Mr Jenkins' behaviour and the nature of his illness, there are legitimate issues as to the ongoing risks he may pose to himself and others; and
- (c) the only reasonable option in terms of disposition would appear to be as a special patient, which would allow for secure containment while his risk is further assessed (a process which may take months or years).

[25] I accept that assessment and accordingly make an order that Mr Jenkins is to be detained in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Name suppression

[26] Previous orders in the proceeding for interim name suppression were to expire at the conclusion of this hearing. Ms Bonifant did not seek the continuation of name suppression or seek a final order for suppression of Mr Jenkins' name today. Name suppression now lapses.

Release of reports

[27] The three psychiatrists' reports are to be released to Mr Jenkins' responsible clinicians.

Rebecca Ellis J