IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CRI-2008-092-007733

THE QUEEN

v

MARK PAUL WARREN

Hearing: 29 April 2009

Appearances: D A Marshall and I M Brookie for Crown
A C Balme for Accused

Judgment: 29 April 2009

ORAL JUDGMENT OF VENNING J

Solicitors: Crown Solicitor, Auckland
Copy to: A C Balme, Auckland

Introduction

[1] The accused Mark Paul Warren is charged that on or about 12 December 2007 at Auckland he caused the death of Stephen Curry by an unlawful act, namely dangerous driving and thereby committed manslaughter. He is also charged that on the same date he caused the death of Young Soon Hwang by an unlawful act, namely dangerous driving and thereby committed manslaughter. Finally, he is charged that on the same date he drove a vehicle in a dangerous manner which, having regard to all the circumstances, was dangerous to the public and by that act caused injury to Ji Young Baek.

[2] Through counsel he has indicated he wishes to enter a plea of not guilty on grounds of insanity. The effect of s 23 of the Crimes Act 1961 is that every person is presumed sane at the time of doing that act until the contrary is proven. But s 23 also has the effect that no person can be convicted of an offence by reason of an act done when they are labouring under a disease of the mind to such an extent as to render that person either incapable of understanding the nature and quality of the act involved or of knowing that the act was morally wrong having regard to commonly accepted standards of right and wrong.

[3] Before the Criminal Procedure (Mentally Impaired Persons) Act 2003 was enacted a verdict of not guilty on the grounds of insanity for serious crime had to be entered as a result of a jury deliberation whether or not the Crown accepted that such a verdict was inevitable. The Criminal Procedure (Mentally Impaired Persons) Act changed that. A Judge sitting alone, as I am, may now make an insanity finding without the need for a jury to be directed on that matter in certain circumstances and provided certain criteria are met.

[4] Section 20(2) of that Act provides that in order to return a verdict of not guilty or to conclude the accused is not guilty on grounds of insanity a Judge must be satisfied on three matters:

- first that the accused has indicated he intends to raise the defence;

- second, that the Crown agrees the only reasonable verdict on the evidence available is not guilty on account of insanity; and

- third, on the basis of expert evidence, that the accused was insane within the meaning of s 23 of the Crimes Act at the time of the commission of the offence.

[5] The first two requirements are satisfied in this case. It is now for me to make a determination as to the third based on the evidence that I have heard. To do so it is necessary to put the matter in context and refer to the background to the offences before the Court as summarised in the summary of facts before the Court.

Factual background

[6] I record that I have received and accepted evidence as to the circumstances of the offences and the accused's involvement in them by way of affidavit from the officer-in-charge of the prosecution, Constable Karl Bevin. That affidavit annexed a number of witnesses' statements, police inquiries and also an interview by the police with the accused. The affidavit was produced as evidence of the offending by consent.

[7] The summary of facts is drawn from the material referred to in the constable's affidavit. The accused arrived in New Zealand in September 2006, at the time holding a United Kingdom driver's licence. As I understand it he has never held a current New Zealand driver's licence. On 12 December 2007 at about 10 past 9 at night he was the driver of a Toyota Altezza car, travelling south on State Highway 20, Mangere. Travelling with him in the front passenger's seat was his friend and one of the victims in this case, Mr Stephen Curry. Driving towards the airport the accused was travelling at a speed in excess of 100 kilometres an hour. In fact the evidence of the experts is it was in excess of 160 kilometres an hour at the time of the impact. Mr Curry was concerned at the speed. Fearing for his own safety Mr Curry sent several cellular text messages to a friend, Ms Kelly Taylor,

telling her to phone the police as the accused was driving dangerously at high speeds. A police dispatcher spoke with Ms Taylor and was arranging to have a patrol car dispatched to the area. As the accused approached two cars ahead of him, one in each lane, he swerved between them at speed and crossed from the outside lane to the left lane. The accused's car then veered to the left while travelling through an easy right-hand bend, forcing the car's left wheels to strike the kerb. The accused's car then veered sharply back to the right, sliding and rotating across both lanes becoming airborne when it struck the raised concrete median island. At this time approaching the accused's car in the opposite direction from the Auckland airport were the victims Ms Ji Young Baek and her mother Ms Young Soon Hwang. The accused's car, having rotated about 180 degrees impacted heavily into the front of their car. The force of the impact shoved their car backwards and it ended up facing the airport. It was extensively damaged. The accused's car was also extensively damaged and effectively crushed. It came to rest upside-down.

[8] Both of the accused's victims, Stephen Curry and Young Soon Hwang died at the scene due to the severe injuries they sustained as a result of the collision. Ms Ji Young Baek received serious injuries from the collision and was hospitalised for approximately two months for treatment to injuries including broken ribs, leg, ankle, foot, lacerations and skin grafts which required 100 stitches.

[9] The accused was taken to hospital to be treated for his injuries. A blood specimen was not taken because it could have been prejudicial to his health.

[10] The police analysis of the collision showed tyre marks stretching over a total distance of approximately 95 metres. As I noted a speed analysis showed that the speed at the commencement of the loss of control was in excess of 160 kilometres an hour. The road was dry. The scene inspection revealed no abnormal substances on the road surface that could have contributed to the crash. Both vehicles involved in the crash had no faults that could have contributed to the crash.

[11] When interviewed later the accused stated he believed he was in a time machine and was invisible when he exceeded 100 kilometres an hour and could pass through walls and matter.

[12] At the time of the collision the accused had been in New Zealand for approximately 15 months and was driving as an unlicensed driver.

Psychiatric assessments

[13] The accused has been assessed by two psychiatrists for the purposes of today's hearing. First, Dr Krishna Pillai, consultant forensic psychiatrist employed by the Waitemata District Health Board working currently at the Mason Clinic in Auckland, and second, Professor Graham Mellsop, Professor of Psychiatry, University of Auckland.

[14] The accused's past psychiatric history is reported in Dr Pillai's report. I summarise it as follows.

[15] There is a family history of psychiatric illness. The accused's mother reported her father was manic depressive. He remained on medication for much of his adult life.

[16] Mr Warren stated he first had contact with mental health services in 2002 when he attended a drug rehabilitation centre. As part of that programme he was prescribed antidepressant medication. He continued to take that medication over the next couple of years. The accused's next contact with health services was in 2004. At the time he felt tired, suffered lack of energy, felt low in the mornings and was over-sleeping. He saw a general practitioner who diagnosed depression. The medication was changed to a different type of antidepressant medication.

[17] The accused reported that his next episode of mood disturbance occurred after he had shifted to New Zealand. It started in February 2007.

[18] In 2007 the accused was studying travel tourism. By February and March he began to feel depressed and suicidal. He felt uncomfortable around others and worried about his future. He had feelings of nausea, dizziness and felt stressed out. He attended his general practitioner at the time. The general practitioner prescribed an antidepressant and a sedative tranquiliser. Within a few days of beginning to take

this medication the accused noticed his mood was lifting and he reported feeling a lot perkier. He considered that he became a star student. He became more and more active to the point of hyperactivity. The accused finished the first semester of the course in June 2007. At the time he was still seeing the general practitioner every three months for a renewal of the antidepressant prescription.

[19] In September 2007 the accused fell ill due to an episode of pleurisy for which he was treated with antibiotics and had a short period of bed rest. From the end of September 2007 those that knew the accused reported a change in his behaviour. He was reported as becoming irritable, short tempered and began to have strange beliefs. He became aggravated and antagonistic towards his mother and argumentative and aggressive. Such behaviour was out of character for him.

[20] About this time he started to hear voices inside his head advising him what to do. Some were his own thoughts and some came into his head. He began to feel "super spiritual" and believed he could see angels and demons and good and bad in people.

[21] He decided to move from Tauranga to Auckland in October and November 2007 and he shared a flat with Mr Curry, one of the victims.

[22] The accused then embarked on a frenetic night life and his erratic behaviour increased. He thought he was very clever and very wealthy. He thought he had unlimited money and was royalty, better than everyone else. In late November he bought himself a car. He thought the type of car he bought was the car of God and that God had told him to buy it. The weekend before the offending he drove to Tauranga to visit his parents. He took his cousin Kim and her boyfriend with him. Kim reported the accused drove dangerously fast on the journey. When he was challenged about it he told her the car was a time machine, invincible and could not crash. His family reported that his behaviour was inappropriate over the weekend. His parents were unable to cope and he was asked to leave. After he left he called his parents from a cellphone and was talking to them about a time machine. The accused reports that at the time he believed if you locked all the doors in his car and

completed a circuit then the car became a time machine. He also stated he thought he was a number of cartoon characters.

[23] The accused returned to Auckland the day before the offending. He called his father from Auckland that day telling him not to worry, that he would get him out of there. That was because he considered his mother was evil and she controlled the world. He reported feeling invincible at the time and considered he could pass through objects. He was convinced the car was a time machine.

[24] On the day before the offending he resigned from his job. He also visited his cousin Kim. She says that on that day he was really weird and crazy. She said he was fidgety and talked very fast. He referred to a number of inventions. He said he was going to meet the Prime Minister in Wellington and he was going to buy his father a million dollar boat. He believed he had invented astro-flyers, a device allowing one to jump large distances. He also had thoughts of magnetising the streets and pavements in Auckland so that people could use hover boards. He believed the world was organised for him. He believed the faster he drover the safer he was. He said he did not think about other people on the roads as he assumed he would just pass through them and survive.

[25] On the night before the offending he parked outside Mr Webber's house where he remained all night listening to music. The next day he had an argument with his flatmate. He decided to move into a hotel. Because of his erratic behaviour he was trespassed from the property and required to leave. At that time he decided to go to the South African Consulate in Wellington and claim diplomatic immunity. He asked his flatmate to book him a ticket to Wellington and asked him to accompany him to the airport. The accused can remember packing his bags but that is the last thing he can remember before the accident. His next memory is approximately 10 days later.

[26] A number of other people have referred to the accused's erratic behaviour late in 2007, particularly December 2007 before the offending. Following the collision the accused was hospitalised. During the course of the treatment at the hospital the accused was observed to present with elevated mood, lack of sleep, poor

concentration and distractibility. He had a range of grandiose beliefs about inventing a robotic leg and being able to access substantial sums of money in investments. When well enough he was transferred to the psychiatry unit at Middlemore Hospital but he remained significantly deluded over the ensuing weeks. That behaviour was documented. He was discharged home to the care of his parents in Tauranga on 4 February 2008 and has remained under the care of a consultant psychiatrist since then.

Disease of the mind

[27] As a result of his examination of the accused Dr Pillai is of the opinion that the accused should be diagnosed with bi-polar affective disorder and that the accident occurred at the climax of the accused's deteriorated mental health in 2007. The decline began with the symptoms of depression, which in the context of treatment of anti-depressant medication rapidly changed to symptoms of hypomania and later mania. In the weeks leading up to the offences the accused developed a range of psychotic symptoms, including auditory hallucinations, grandiose delusions and bizarre delusions of special abilities.

[28] Given the previous history of treatment for depression and the positive family history for bi-polar disorder Dr Pillai is confident in the diagnosis of the accused with bi-polar affective disorder, commonly known as manic depressive and that the accused suffered a manic episode with psychotic features in the latter half of 2007.

[29] Professor Mellsop is also of the opinion that in 2007 and into 2008 the accused suffered from a bi-polar mood disorder and that he was floridly psychotic in the days leading up to December the 12th, the time of the offending. He agrees that a manic episode of a bi-polar mood disorder can properly be regarded as a disease of the mind. I accept the experts' evidence the accused suffered from a disease of the mind.

[30] Of course the Court must be satisfied that the accused was subject to that disease of the mind at the time of the offending. There is a potential difficulty in that the accused has no direct recollection after packing his bags and leaving the house

until about 10 days after the accident. However, both experts are confident that the accused would have been suffering from that disease of the mind at the time of the accident. They are confident in their opinions because of the evidence of independent parties relating to the actions and comments attributed to the accused immediately prior to the incident and also the accused's behaviour immediately after he became well enough to communicate with doctors in the hospital following the accident.

[31] Professor Mellsop noted the following points in his evidence. First, there is a picture leading right up to the time of the victim's texts about speeding and the records of the police, in other words in the minutes and hour before the offence, that is entirely consistent with the picture that had developed over the preceding weeks. Next, given the nature of the illness, the time course for manic disorder does not include the possibility of it suddenly stopping over a period of an hour or so. Thirdly, Professor Mellsop considered the dramatic observations of the medical staff at Middlemore of an only half conscious person post the accident were also entirely consistent with the condition subsisting. Finally, the subsequent one, two and three months after the accident describes a clinical picture exactly the same as that described by independent parties and the accused immediately prior to the accident.

[32] I accept on the basis of that evidence and those opinions that the accused was suffering from a disease of the mind at the time of the accident.

Section 23(2) considerations

[33] The next issue is whether that disease of the mind was such as to render the accused incapable of either understanding the nature and quality of his actions or, alternatively, of knowing that the act was morally wrong. The onus is on the accused to demonstrate it is more likely than not that the disease of the mind was such as to lead to either of those conclusions.

[34] In their reports for the Court the experts both agreed that the accused was insane because of the disease of mind but differed slightly in the emphasis and their approach as to whether the accused was capable of understanding the nature and

quality of the act or omission or of knowing that the act or omission was morally wrong, having regard to commonly accepted standards of right and wrong.

[35] Dr Pillai said that in his opinion the accused ceased to have an understanding of his car as a vehicle travelling in a physical world at the time of the offence. He considers it likely the accused was not aware of the nature and quality of his actions at the material time.

[36] In his report Professor Mellsop considered it likely that the accused knew the nature and quality of the act or omission in that he knew he was driving a motor vehicle. But Professor Mellsop accepted it could be argued he did not recognise he was driving at excessive speed. The point was expanded upon in the discussion during Professor Mellsop's evidence. The Professor was prepared to accept that if the nature and quality of the act in question was an act of driving a car dangerously then he would be moved towards accepting that the accused, because of his psychotic condition, would not have recognised that he was driving a car dangerously.

[37] On balance and in light of the evidence I have heard I accept that at the time of the accident the accused's mental condition was such that he was so deluded he would not have understood that he was driving a car dangerously. From his point of view he was essentially in a time capsule, his pre-conditions of being in a car with the doors locked and driving at such a speed were met so that he was no longer in a car but in a time capsule. His perception was such that he did not understand he was driving a car dangerously.

[38] In any event the medical experts are in rather more agreement on the second point, namely whether the accused knew that his actions were morally wrong having regard to the commonly accepted standards of right and wrong. In Dr Pillai's opinion the presence of the delusions before and after the event were such that the accused would have been incapable of understanding the dangerousness of his actions at the time of the alleged offending. For his part Professor Mellsop considered that because of the accused's psychotic thinking he would have been incapable of recognising moral right or wrong in the sense the community

understands those words. Not only was he unable to recognise the acts were dangerous or unlawful but further, because of the psychotic nature of the accused's mental state, such perceptions were simply not relevant to someone who had such superior status and abilities as the accused, then delusionally believed he had.

[39] The evidence of the experts satisfies me that both of the tests in s 23(2) are met.

Finding of insanity

[40] I therefore make the finding on the basis of the evidence presented to the Court that the accused is not guilty of the three counts he faces on the grounds of insanity.

Disposition

[41] That is not the end of the matter. The issue for the Court now becomes what the appropriate orders may be. Section 23 of the Criminal Procedure (Mentally Impaired Persons) Act requires the Court to make inquiries to determine the most suitable method of now dealing with the accused.

[42] Counsel for the Crown invites the Court to direct a report be obtained for the purposes of s 24 of that Act, particularly to focus on whether the detention of the accused is necessary under s 24(2) or whether the accused should be treated as a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or otherwise in accordance with the provisions of s 25 of the Act.

[43] The Crown suggest that the report could be sought from the Midland Regional Forensic Psychiatry Services who currently have care of the accused. In anticipation an appointment has been provisionally arrange for such an initial assessment.

[44] I therefore direct a report to be obtained as to the matters noted above, particularly whether the detention of the accused is necessary under s 24(2) or

whether other means of treatment would be appropriate in this case. I direct that the evidence that has been presented to this Court is to be made available to the health professionals carrying out that assessment, in particular the comments of Professor Mellsop as to the history of two to four episodes and the potential for relapse or further episodes.

Bail

[45] The Crown does not oppose bail. Counsel is not aware of any reason why it should not continue in the meantime. The accused is remanded on existing conditions of bail for the preparation of such a report. It is an additional condition of bail that he attend the appointment that has been arranged for 20 May 2009 at 10.30 a.m. at the Regional Forensic Psychiatry Service, 40 Clarence Street, Hamilton.

Suppression of name

[46] There has to date in this case been suppression of the accused's name. The only basis upon which name suppression would continue in a case of this nature is if there was evidence before the Court to suggest that name suppression was required for the successful treatment of the accused. There is no such evidence before the Court. There is no basis for continued name suppression. The suppression order will lapse as from today.

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Venning J

Addendum

[47] The disposition hearing should be before me. If the report is available in time, I could deal with the matter on Friday 26 June 2009 at 9.00 a.m.

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Venning J