IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CRI 2008-292-39

THE QUEEN

v

TIARE TOWIHI NATHAN

Hearing: 24 June 2009

Appearances: Aaron Perkins and Claire Ryan for Crown
David Niven for Accused

Judgment: 24 June 2009

JUDGMENT OF HARRISON J

SOLICITORS
Meredith Connell (Auckland) for Crown
David Niven (Auckland) for Accused

Introduction

[1] Mr Tiare Nathan is charged with murdering Saishwar Krishna Naidu in South Auckland on 25 January 2008.

[2] It is not in dispute today that Mr Nathan killed Mr Naidu by multiple stab wounds inflicted with a knife. However, through his counsel, Mr David Niven, Mr Nathan has given notice that he intends to raise the defence of insanity. Two highly qualified psychiatrists, Dr Craig Immelman and Dr Rees Tapsell, have examined Mr Nathan and concluded that at the time he killed Mr Naidu he was incapable of understanding that his actions were morally wrong. Thus, the Crown accepts that the only reasonable verdict is not guilty on the ground that Mr Nathan was suffering from a disease of the mind and was insane: s 23 Crimes Act 1961.

[3] However, I have the role of oversight in the public interest. I must undertake a two-stage inquiry. First, I must be satisfied on the basis of the expert evidence provided in writing and orally that Mr Nathan was insane when he committed the offence. Second, if I am satisfied that Mr Nathan was insane, I must determine whether his detention is necessary and, if so, whether he should be held in hospital as a special patient or in a secure facility as a special care recipient: ss 20, 23 and 24 Criminal Procedure (Mentally Impaired Persons) Act 2003.

[4] I acknowledge formally the tragedy of these events, particularly for Mr Naidu's family and for Mr Nathan's whanau. Mr Naidu's father has addressed me this morning, supported by his daughter. Words cannot express my acknowledgement, but not my understanding, of the unbearable sense of loss suffered by all of them; that is, by Mr Naidu, his wife, his daughter, his son-in-law, and the wide family. The death of a much loved son and brother has shattered their lives in every way.

[5] Also I acknowledge Mrs Nathan's words of remorse and contrition for her whanau and those offered by Mr Nathan's father.

[6] Finally, I acknowledge the presence in Court today of Dr Renfree, representatives of the Mason Clinic, Detective Senior Sergeant Lendrum and Detective Sergeant Mariu.

Facts

[7] Mr Naidu, who was then aged 22, was working as a shop assistant at the Finlayson Superette, owned by his father, in Manurewa. On the afternoon of Friday, 25 January 2008, Mr Naidu was working behind the counter, close to the shop entrance. Mr Nathan, who was then aged 16 years, entered. The two young men had never met. Mr Nathan approached Mr Naidu and started punching him in the face. Mr Naidu pressed the internal alarm and attempted to protect himself by putting up his hands and arms.

[8] Another shop assistant, Ms Josephine Rounds, then saw a knife in Mr Nathan's right hand. She saw him use that knife to stab Mr Naidu about 15 times, including in the chest area. Ms Rounds attempted to divert Mr Nathan but without success. She describes the stabbing as 'over and over again'. She said that:

> The guy with the knife did not say one single word; he did not make any noise.
>
> The guy with the knife had a normal expression on his face.
>
> There was no anger, there was no emotion on his face whatsoever.
>
> It was just like something he had to do.

[9] Eventually Mr Naidu fell to the floor and Mr Nathan ran away. He was apprehended by others in the vicinity. Mr Naidu died shortly afterwards.

[10] The random nature of this attack is obvious. There was no apparent motive. Mr Nathan did not attempt to steal anything from the shop. As I have said, the two young men were completely unknown to each other. They did not apparently exchange words beforehand. The attack was unprovoked but, as I shall explain later, premeditated. Mr Nathan had no prior history of violence. The only possible

explanation can lie in his personal circumstances, and in particular in events over the preceding six months.

Personal Circumstances

[11] Mr Nathan was born and raised in South Auckland. He has a number of siblings, full and half, aged between 29 and four years.

[12] Most unfortunately, his mother suffered from extensive alcohol and drug dependency. His father was left with the responsibility, which was very onerous, of attempting to raise a young family. There is evidence that Mr Nathan's mother consumed alcohol and drugs heavily during her pregnancy. Very sadly, she died by committing suicide when Mr Nathan was aged about eight years.

[13] Mr Nathan has been principally raised since the age of six years by his paternal grandmother who is a social worker. He has enjoyed a loving relationship with her. She has by all accounts been an exemplary caregiver. Mr Nathan attended primary, intermediate and then secondary school. He was diagnosed as suffering from difficulties with academic performance and learning.

[14] Mr Nathan started drinking alcohol and using cannabis regularly at about the age of 14. His intellectual quotient was subsequently assessed as in the extremely low to borderline range of intellectual function at 72, with a marked discrepancy between his verbal and non-verbal reasoning abilities. Mr Nathan stopped attending school at about age 15 years. Evidence is now available from a Forensic Dual Diagnosis Assessment conducted at the time that Mr Nathan began to suffer depression and reported substance induced blackouts; that is, episodes of dense memory loss.

[15] As I have noted, Mr Nathan's conduct over the six months preceding his offence is particularly relevant. In September or October 2007 he went to Northland to stay with his father and his father's new whanau. Mr Nathan has since told Dr Immelman and Dr Tapsell, and also Dr Renfree and other specialists, that he started to develop what can only be described as paranoid thoughts. He heard

strange voices. He believed that others were watching him. He thought they may be gang members who were plotting to kill him. Of particular and sinister importance is Mr Nathan's belief formed at that time that external voices were directing him to kill someone. Some television news programmes assumed special significance. His sleeping patterns changed. He began staying up all night and sleeping through the day.

[16] Mr Nathan's father became, understandably, worried. He has advised doctors that he noticed his son had become increasingly withdrawn, isolative and non-communicative. He noted that he was also very distractible. He often stared into space and at times appeared frightened and agitated. In his father's words, he was 'in another world'. He disappeared without warning and returned to Auckland in mid November.

[17] The same abnormal pattern of behaviour continued when Mr Nathan returned to live with his grandmother. She reported that he was:

> … eating food off the floor, eating much less than normal, showering less, waving his arms in the air, talking to himself, laughing at nothing…

She also noted that he was sleeping in the driveway.

[18] In Mrs Nathan's own words:

> He was in his own world; he was worrying me for a whole month; he was in his room all day; he hardly ate … strange behaviour, really strange.

[19] Mrs Nathan became so worried that she referred her grandson to her general practitioner. This was during a consultation relating to her own health on 9 January 2008. She asked the doctor to talk with her grandson about the risks of dropping out of school and her fear that he was taking drugs. The doctor reports that Mr Nathan was not very talkative. He acknowledged, though, that he was taking drugs. The doctor advised him that he should exercise and play sport.

[20] The doctor also conducted a depression scale test. His main concern was whether or not Mr Nathan was suicidal. Mr Nathan's score did not cause the doctor

unusual concern and he did not decide to refer Mr Nathan for psychiatric assistance. He thought that Mr Nathan:

> … was a teenager going off the rails a little bit and trying to assert himself as an adult…

[21] I accept Dr Immelman's evidence given today under cross-examination that the test administered by the general practitioner was not a reliable gauge of Mr Nathan's mental state. Its function is different to that of determining whether or not Mr Nathan was suffering from a mental disorder. It was, as Dr Immelman explained, in the nature of a filter used by medical practitioners to decide whether or not a young person should be referred for official assistance.

[22] Mr Nathan has told both psychiatrists a consistent story. He says that in the days leading to his offending the external voices were almost constant and very distressing. They were directing him, he says, to kill someone; otherwise, in his own words, his life would be a waste or in vain. He was convinced that gang members in Manurewa were planning to kill him. He thought he might go to hell.

[23] Eventually, Mr Nathan has told both psychiatrists, he decided he had to kill somebody. The night before the offence he decided he would go to the local dairy owned by Mr Naidu's parents where he would find somebody that he had to kill. The finality of this decision induced a sense of calmness, erasing the preceding emotions of fear, anxiety and uncertainty.

[24] In preparation Mr Nathan took a sharp knife from his grandmother's kitchen. He did not sleep well the night before. He did not eat breakfast. He hid the knife and left home, intending to walk to the dairy and to kill whomever was in the shop. When he arrived and saw Mr Naidu, he decided instantaneously to kill him. He remembers running up to Mr Naidu and inflicting multiple stab wounds. He does not remember what he was thinking or feeling at the time. He acknowledges that he did not know Mr Naidu and had never met him before.

Insanity

[25] Against that background, I must determine the first question: that is, whether or not the expert evidence satisfies me that Mr Nathan was insane at the time he committed this offence.

[26] Both psychiatrists have read from their reports in Court today. The contents are well known to those familiar with the case. I will simply recite extracts, because I accept what each of them has said. Dr Immelman says this:

> … there is clear evidence of a decline in normal psychosocial function prior to 25 January 2008 (when he was arrested), which is in keeping with a prodrome (an early symptom indicating the onset of a disease, namely Schizophrenia). In my view, Schizophrenia is Tiare's primary concern.

[27] Dr Immelman also notes:

> It also appears that Tiare has experienced psychotic symptoms which have been treatment resistant to a significant degree, despite adequate compliance with antipsychotic medication. That has meant that Tiare has needed to progress to Clozapine, an atypical antipsychotic used for treatment-resistant Schizophrenia requiring close monitoring including regular blood testing.

[28] He says further:

> There is overwhelming evidence that Tiare was psychotic immediately after his arrest. There is good information that Tiare was most likely psychotic prior to his arrest. As such, it is not unreasonable to conclude that Tiare was psychotic at the time of the alleged offending, which is also in keeping with his own account, including his report of command hallucinations.

[29] In Dr Immelman's opinion Mr Nathan was suffering from a disease of the mind. He was legally insane in that he was not capable of appreciating the moral wrongdoing of his conduct.

[30] Dr Tapsell's conclusion is to the same effect. He says this:

> … I believe that Mr Nathan suffers from Schizophrenia – Paranoid Subtype. Further, it is clear to me that at the time of the alleged offending Mr Nathan was acutely psychotic with clear symptoms of command auditory hallucinations, delusions of a persecutory and self-referential nature, formal thought disorder and significant behavioural disturbance.

> Whilst Mr Nathan also reports a history of heavy and frequent substance misuse I believe that this is independent of his schizophrenia as evidenced by the fact that he continued to experience signs and symptoms of psychosis for many months after the alleged offending, despite clear abstinence from alcohol or substance misuse.

[31] Dr Tapsell later says this:

> … I believe that Mr Nathan understood the nature and quality of his actions, at that time. In particular, he knew that he was stabbing the victim and that stabbing was likely to cause serious injury or death. Indeed, this was his expressed goal.
>
> In considering Mr Nathan's account of the events leading to the alleged offending and considering all of the other information available to me, I believe that Mr Nathan was, at the time of the alleged offending, so psychotic that he had been robbed of his normal moral judgment and, as a consequence, I believe that he was incapable of understanding that his actions were morally wrong... I believe that the combination of the delusional beliefs which he held at that time … and the compulsive nature of the command auditory hallucinations that he was experiencing explain what can only be described as a tragic series of events which make no sense otherwise and which are clearly out of character for him.

[32] Both psychiatrists have given supplementary oral evidence today. Dr Tapsell has explained in greater detail the nature of schizophrenia, its signs and its symptoms. I accept his evidence. I accept, as have other Judges of this Court, that schizophrenia is a disorder within the meaning of a disease of the mind for the purpose of the criminal definition of insanity.

[33] As I have said, I must independently determine whether or not the expert evidence satisfies me that Mr Nathan was criminally insane when he committed this offence. I am in no doubt that the psychiatrists are correct. Of necessity, their conclusions post-date or follow the event. There is, of course, an element of reconstruction. Each psychiatrist has had to form his independent opinion based upon a combination of evidence spanning a lengthy period of time preceding, contemporaneous with and subsequent to the offending. In significant part the findings of each psychiatrist depends upon the accounts given by Mr Nathan, his grandmother and his father.

[34] But there is, as Ms Ryan and Mr Niven have stressed today, a common thread of consistency. I am satisfied that it excludes any possibility of fabrication or

collusion. I am satisfied that the accounts given are entirely genuine and reliable. The consistency also extends, of course, to the nature of the accounts given separately to each psychiatrist and to Dr Renfree and others at the Mason Clinic.

[35] Additionally, I am satisfied that there is decisive corroboration of the conclusions reached by the experts from these factors. First, the extreme nature of Mr Nathan's offending, which in all respects was completely out of character. Second, the observations made by Dr Immelman of Mr Nathan's condition while he was the subject of a video interview by police officers immediately after committing the offence. Third, the observations by Dr Renfree and others of Mr Nathan's behaviour immediately after he was committed to care. Fourth, and very importantly, the evidence of positive changes in his mood, his communications, and his conduct since the prescription of acceptable medication, clozapine, in recent months.

[36] All these factors provide a proper evidential basis for the conclusions reached by Dr Immelman and Dr Tapsell and leave me in no doubt that Mr Nathan was criminally insane at the time he committed the offence. Accordingly, I find him not guilty of the charge of murder on that ground.

Special Patient

[37] The second and mercifully brief issue is the question of disposition. As noted, there are two alternatives. I must determine whether or not Mr Nathan is held in hospital as a special patient or in a secure facility as a special care recipient. There is no dispute that Mr Nathan must be detained. Both psychiatrists are satisfied that he should be held as a special patient. I agree.

[38] It is important, for the benefit of Mr Naidu's family, that I read these extracts from Dr Immelman's supplementary report. I introduce them by recording Dr Immelman's observations confirmed by Dr Tapsell that there has been a significant improvement or progress in Mr Nathan's overall wellbeing in recent months. He now shows good insight. He understands he suffers from mental illness. He has also agreed that he requires support to adhere to his medication regime.

[39] Dr Immelman says this:

> However, Mr Nathan is also a teenager, and [I] note clinical research which indicates the ongoing development of frontal lobe (executive) function up until age 25. This means that – compared with someone in their late 20s or 30s – someone in their teens is more likely to act impulsively, with less planning and capacity to appreciate consequences. These cognitive functions are largely governed by the frontal lobes. His psychotic illness and history of substance abuse may also impact on development of mature brain functioning.
>
> Therefore it is [my view] that Mr Nathan is at some risk, unless subject to some form of oversight and ongoing support, of discontinuing his oral medications, and resuming his substance abuse, even in the light of his current statements of intent.
>
> …
>
> Juxtaposing Mr Nathan's good progress, with his risk of relapse, and the potential dangerousness of his future actions if mentally unwell, and considering Mr Nathan's own interests as well as the safety of the public, [I] would support Mr Nathan having special patient status …

[40] These conclusions are supported by Dr Tapsell's oral evidence given in Court today. He has confirmed that Mr Nathan's diagnosis of schizophrenia is permanent. He will require care, supervision and control for a lengthy period of time. If and when Mr Nathan's status as a special patient is altered and he is freed back into the community will be for the medical experts to decide. But all understand that he will require a lengthy period of special care before he is even considered suitable for release. Accordingly, I make an order that Mr Nathan be detained as a special patient.

[41] I conclude by expressing my appreciation to counsel for both parties; my particular appreciation to the medical specialists, Dr Immelman and Dr Tapsell, and also to Dr Renfree and the others who have provided immediate care at Mason Clinic. Once again I also acknowledge Mr Naidu's family and Mrs Nathan, her son and supporters. I thank you for your time and forbearance today.

Rhys Harrison J