

SUPREME COURT OF QUEENSLAND

CITATION: *Andres v The Officer of the Director of Public Prosecutions*
[2011] QSC 395

PARTIES: **KLAUS JULIUS ANDRES**
(Applicant)
v
DIRECTOR OF PUBLIC PROSECUTIONS (QLD)
(Respondent)

FILE NO/S: 579 of 2011

DIVISION: Trial

PROCEEDING: Application for bail

ORIGINATING COURT: Supreme Court, Cairns

DELIVERED ON: 13 December 2011

DELIVERED AT: Cairns

HEARING DATE: 12 December 2011

JUDGE: Henry J

ORDER: **Application dismissed**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – BAIL – GROUNDS FOR GRANTING OR REFUSING – where applicant charged with murder – where applicant in show cause position under s16(3) *Bail Act 1980 (Qld)* – where assessment of strength of prosecution case and risk of failure to appear.

Bail Act 1980 (Qld), s16
R v Hughes [1983] Qd R 92, considered
Williamson v DPP [2001] 1 Qd R 99, considered
Keys v DPP (Qld) [2009] QCA 220, considered
Sica v DPP (Qld) [2010] QCA 18, considered
Plomp v R (1963) 110 CLR 234, cited
Edwards v R (1993) 178 CLR 193, cited
Weissensteiner v R (1993) 178 CLR 217, cited
Azzopardi v R (2001) 205 CLR 50, cited
Lacey v DPP [2007] QSC 291, cited

COUNSEL: A J Glynn SC for the applicant
R Griffith for the respondent

SOLICITORS: O'Reilly Stevens Bovey for the applicant
Director of Public Prosecutions (Qld) for the respondent

- [1] The defendant/applicant Mr Andres has applied to be admitted to bail for the offences of murder, interfering with a dead human body, two charges of fraud and three charges of unlawful possession of a weapon.
- [2] In summary, the police allege Mr Andres murdered his wife and interfered with her dead body on or about 30 October 2011. It is alleged he attempted to use her Commonwealth Bank card on 1 and 2 November 2011. Further, it is alleged that in the course of a police search on 20 November 2011 of a storage facility rented by Mr Andres, police found a semi-automatic handgun, two pump-action shotguns and an air rifle which Mr Andres' was not in lawful possession of.
- [3] Section 16 of the *Bail Act* 1980 provides for the manner in which the discretion whether or not to grant bail is to be exercised. It relevantly provides:

“16. Refusal of bail

(1) ...a court...shall refuse to grant bail to a defendant if the court...is satisfied –

- (a) that there is an unacceptable risk that the defendant if released on bail –
- (i) would fail to appear and surrender into custody; or
 - (ii) would while released on bail –
 - (A) commit an offence; or
 - (B) endanger the safety or welfare of a person who is claimed to be a victim of the offence with which the defendant is charged or anyone else's safety or welfare; or
 - (C) interfere with witnesses or otherwise obstruct the course of justice, whether for the defendant or anyone else...

(2) In assessing whether there is an unacceptable risk with respect to any event specified in subsection (1)(a) the court...shall have regard to all matters appearing to be relevant and in particular, without in any way limiting the generality of this provision, to such of the following considerations as appear to be relevant –

- (a) the nature and seriousness of the offence;
- (b) the character, antecedents, associations, home environment, employment and background of the defendant;
- (c) the history of any previous grants of bail for the defendant;
- (d) the strength of the evidence against the defendant...

(3) Where the defendant is charged - ...

...

(b) with an offence to which s 13 applies...

the court of police officer shall refuse to grant bail unless the defendant shows cause why the defendant's detention in custody is not justified and, if bail is granted...must include in the order a statement of the reasons for granting bail or releasing the defendant...”

The offence of murder is an offence to which s 13 applies and accordingly it is for the defendant to show cause why his detention in custody is not justified.

- [4] It was observed in *Sica v DPP (Qld)*¹ that the cases emphasise the abnormal or extraordinary nature of the grant of bail in matters to which s 16(3) applies. That observation was consistent with the earlier observation in *R v Hughes*² that in most cases s 16 will produce the same result as the common law rule that where murder is charged bail ought not be granted other than in exceptional circumstances because, if no more appears and if coupled with a strong *prima facie* case, the nature of the offence of murder is sufficient to raise an inference that the defendant, if released on bail, would fail to appear and surrender into custody.
- [5] Those observations are not a bar to the grant of bail in cases where murder is charged. Rather they reflect the practical consequence of the defendant being in a show cause position in respect of a charged offence with such a grave potential punitive outcome as to inevitably ground a risk of the defendant failing to appear and surrender into custody. It is important to bear in mind however that, as was observed in *Williamson v Director of Public Prosecutions*³, no grant of bail is risk free and a consideration of whether there is an unacceptable risk requires a consideration of the individual circumstances of each case.
- [6] Turning to the circumstances of this case, Mr Andres is alleged to have killed his wife, disposed of her body by reducing it to waste through the application of acid and then pretended on inquiry that she had left him and he did not know where she was.
- [7] His wife of five years, the alleged deceased Li Ping Cao, resided with him in a house in the Cairns suburb of Brinsmead. By the time of Ms Cao's disappearance, on about 30 October 2011, the marriage had become an unhappy one, marred by arguments. The defendant had become romantically involved with a woman from Thailand with whom he shared email correspondence professing his desire to live with her as his wife, disclosing his belief his current wife suspected his involvement with another lady and indicating his need to be very careful.
- [8] Ms Cao was last seen alive by friends on the evening of 29 October 2011. On 9 November 2011, concerned at not having seen her for a lengthy period, they reported her missing to the police. When police then spoke with the defendant he indicated she had accused him of infidelity and packed her bags on 30 October 2011 and apparently left him when he was absent from the house on Monday, 31 October 2011.
- [9] In the course of the ensuing police investigation, the police discovered evidence Mr Andres was in possession of property Ms Cao would be unlikely to have left behind had she merely separated from Mr Andres. For instance he was in possession of Ms Cao's Commonwealth Bank card and twice tried to use it at an automatic teller machine. Further, the police executed a search warrant at the Westpac Bank and in searching Mr Andres' safety deposit box found a gold necklace with a lady-beetle pendant and a silver ring with a diamond stone, both of which items Ms Cao was in the habit of wearing. The safety deposit box also had a set of two gold round earrings that belonged to Ms Cao's deceased mother and were of such sentimental value to Ms Cao that it is unlikely she would leave them behind or give them to anyone else.

¹ [2010] QCA 18, at [54].

² [1983] Qd R 92 at 96, cited in *Sica* and in *Keys v DPP (Qld)* [2009] QCA 220.

³ [2001] 1 Qd R 99

- [10] During a police search of Mr Andres' residence they found, in an urn containing the remains of his first wife, an iphone belonging to Ms Cao.
- [11] The investigation also discovered a letter addressed to Centrelink Cairns purportedly signed by Ms Cao and Mr Andres on 29 October 2011 authorising Centrelink to deposit Ms Cao's carer's allowance into Mr Andres Westpac account. Investigators discovered Centrelink received such a letter on 8 November 2011. Given the poor state of the relationship it is unlikely Ms Cao would have sanctioned such an arrangement.
- [12] There has been no contact by Ms Cao with anyone, which is out of character and of itself strongly suggests she is dead. The evidence of Mr Andres' activity and the outcome of searches outside the marital residence strongly support that inference.
- [13] On 31 October 2011 Mr Andres purchased 20 litres of hydrochloric acid at Bunnings. On 2 November 2011 he purchased a further two 20 litre drums of hydrochloric acid from Bunnings, this time using the Commonwealth Bank card of Ms Cao. There is a pool at the marital residence but it is unlikely such large amounts of acid were needed to reduce high pool water pH balance.
- [14] On 7 November 2011, Mr Andres was seen wheeling a yellow lid recycle bin in the vicinity of his driveway in the course of which he fell and some discoloured water was seen to flow from the bin. He promptly hosed down the affected area. The description of one witness was that the spilt water did not look clear and it looked like there was lots of "*little stuff*" in it. Another witness described the substance as being like a "*minced substance*" with "*clumps of what looked like pinky substance that had no real texture*".
- [15] During the later police investigation it was noticed that there were areas of grass that appeared to have been burnt as well as patches where turf had been replaced, consistent with a chemical such as acid being amongst the spilt substance, resulting in the death of some grass.
- [16] Police searched the stormwater pit in front of Mr Andre's residence. They there found two dental prostheses, one a six-unit full anterior porcelain bridge and the other an upper posterior two-unit bridge. Excavation of the drain ensued and when gravel taken from the drain was sifted a second two-unit lower posterior dental prosthesis bridge was located. A small amount of apparently biological matter was also found in the stormwater pit but the DNA analysis of that item has not yet been completed.
- [17] Ms Cao was a Chinese national. On the information presently to hand from China Ms Cao had dental prostheses that were consistent with those found. The dental evidence is likely to become more detailed as further dental information is obtained from China. However the available evidence strongly supports the inference that the dental prostheses found in the stormwater drain were those of Ms Cao. As the respondent submitted, the chance that dental prostheses of configurations the same as Ms Cao's yet not belonging to her would be located in the stormwater pit at the front of her premises must be remote.
- [18] On 9 November 2011, Mr Andres hired a self-storage facility in the Cairns suburb of Earlville. The security log for that premises indicates activity at his facility on 9 and 14 November. Security footage from the facility shows him carrying suitcases

and eskies in and out whilst wearing gloves. By the time the police searched the facility on 20 November, the suitcases and eskies were no longer present, although the firearms, the subject of *Weapons Act* charges were located.

- [19] On the existing evidence there appears to be a strong prosecution case that Mr Andres disposed of his wife's dead body. The apparent cover up of his wife's death renders it unlikely her death was from natural causes. In the absence of evidence of any involvement by a third party there appears to be a strong circumstantial case that it was Mr Andres who caused his wife's death. The applicant submits in effect that the case is significantly less strong as to whether Mr Andres caused his wife's death unlawfully, that is, committed manslaughter, let alone that he intended to kill or do grievous bodily harm to her, that is, committed murder. The submission, in effect, is that merely because Mr Andres appears to have gone to elaborate lengths to cover up his wife's death it does not follow that the worst ought be assumed as to the circumstances under which she met her death.
- [20] The applicant's submissions as to the strength of the case flow to a large extent from the absence of any evidence as to the circumstances under which Ms Cao's death was caused. It needs to be appreciated that the decision at hand involves a consideration of the evidence, as it is presently known. This is not a case in which the defendant has, to date, laid claim to an accidental killing or a killing in self-defence or under provocation. To the contrary the evidence as it stands includes apparently false versions of events given by Mr Andres in his police statement and in his taped interview with police in which there is no indication given of what in truth happened to his wife.
- [21] It would be premature to make any assumption as to whether Mr Andres will remain silent as to the apparently true position and what directions that might attract at trial⁴, however, his apparent lies to investigating police and his apparent desire to be free to pursue a new relationship are each categories of evidence⁵ which tend to strengthen the circumstantial case of murder against him. On the evidence as it stands there exists a moderately strong *prima facie* case of murder. That of course is no commentary upon what the eventual strength of the case will be at trial, but it is a relevant consideration in the present bail application.
- [22] The applicant has no relevant criminal history and is ordinarily a law abiding citizen. He is 68 and retired. He was born in Germany and migrated to Australia with his then wife Monica and their son in 1982. Monica died from cancer in 2005. He has had no contact with his family in Germany since 2005. He was estranged from his son and his son's wife and child from 2005 to 2010. However in the last year or so he has been in regular contact with his son and grandson. His son holds and has held responsible positions in government. He is willing to stand surety for his father for \$100,000 and to have his father reside with him.
- [23] The applicant suffers from chronic neck and lumbar pain for which he receives CT guided injections into his lumbar region. No evidence from a medical practitioner has been advanced on his behalf. I accept he may suffer significant pain if he does not receive these injections but there is no evidence he will not receive adequate, as distinct from ideal, treatment for his pain while in custody. I do not regard his

⁴ See for example *Weissensteiner v R* (1993) 178 CLR 217; *Azzopardi v R* (2001) 205 CLR 50.

⁵ See *Edwards v R* (1993) 178 CLR 193 as to lies and *Plomp v R* (1963) 110 CLR 234 as to motive.

evidence of his condition as tending in any material way to support an argument he has shown cause why his detention in custody is not justified.

- [24] A more significant consideration is the delay likely to be experienced in the matter being brought to trial. The matter requires the gathering of further forensic evidence as well as dental evidence from China. There will also be the time consuming series of appearances characteristic of practice in the criminal jurisdiction of the Magistrates Court in Queensland since late 2010. The case is unlikely to be committed for trial until the second half of next year, after which the prosecution will have a further six months in which to present an indictment. Once that occurs the trial will likely be heard within several months, there presently being no significant delay in the hearing of matters in the Cairns Supreme Court once indictments are presented. However there is a real prospect that the trial will not be heard until early 2013. Consistently with the approach taken in *Lacey v DPP*⁶ and *Keys v DPP (Qld)*⁷, this as an important matter to be balanced against other relevant considerations. However it is not determinative and, as was observed in *Sica v DPP(Qld)*⁸, delay will assume more importance where, unlike in this case, the prosecution case is weak.
- [25] Some weight was also placed in submissions on the inconvenience for Mr Andres and his advisors in having to prepare his defence while he is custody. Nothing was advanced to suggest that level of inconvenience was out of the ordinary for a prisoner on remand. In any event, there are other more weighty considerations of relevance in this matter.
- [26] The applicant puts weight on Mr Andres ties to the jurisdiction, which are in effect that he has resided in Cairns since about 1996, owns his home at Brinsmead and has a son, daughter in law and grandson who live locally. It is also submitted his son's standing surety for \$100,000 would also be a powerful inducement for him to remain in the jurisdiction and answer the charges. The force of his local ties to blood relatives and the importance to his conscience of his son's surety not being put at risk are plainly considerations in his favour however they are tempered by the fact that he was estranged from his son and his son's family for five of the last six years.
- [27] More significantly, the *prima facie* case against Mr Anders is moderately strong and the consequence for him as a 68 year old of a conviction for murder is that he would likely spend the balance of his life in prison. Therefore there exists a powerful motive for him to not appear in answer to his bail if released. In the circumstances of this case I do not regard the risk of non-appearance as sufficiently countered by his jurisdictional ties and the imposition of a surety and requirements that he forfeit his passport and report to police regularly, none of which prevent a determined defendant from absconding.
- [28] The concern that Mr Anders would fail to appear is inevitably influenced by the extraordinary lengths he apparently went to in order to cover up his wife's death. The strong *prima facie* evidence of how he apparently disposed of his wife's body should not be ignored in the present exercise. It may not be evidence of how his wife died but it is relevant to a consideration of bail and acceptable risk in that it

⁶ [2007] QSC 291

⁷ [2009] QCA 220

⁸ [2010] QCA 18

bespeaks an apparently strong and clinical determination to avoid being prosecuted over her death and a preparedness to break the law to achieve that end.

- [29] In all of the circumstances the risk of Mr Anders failing to appear and surrender into custody if granted bail is unacceptable.
- [30] The applicant has not shown cause that his detention in custody is not justified. The application is dismissed.