

COURT OF APPEAL

McMURDO P  
WILLIAMS JA  
JERRARD JA

Appeal No 8163 of 2002

PHILLIP JOHN GLATTBACK

Respondent (Applicant)

and

DIRECTOR OF PUBLIC PROSECUTIONS

Appellant (Respondent)

BRISBANE

..DATE 06/09/2002

JUDGMENT

THE PRESIDENT: This is an appeal by the Director of Public Prosecutions from an order of the learned primary Judge's grant of bail to the respondent.

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The respondent has been charged with murdering his partner, the mother of his four year old child, on 12th of July 2002. The learned primary Judge admitted the respondent to bail on his own undertaking with the usual conditions and with the further conditions that he reside at a Capalaba address; that he report in person daily to the officer-in-charge of Capalaba Police Station; that he not approach within 100 metres of any international point of departure and surrender any passport to the officer-in-charge, Capalaba Police Station; that he have no contact, either directly or indirectly, with any person named as a witness other than Virginia Peters and Andrew Hunt and that he be admitted to bail upon a surety in the amount of \$100,000.

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Because the respondent is charged with murder, the learned primary Judge was required to refuse bail unless the respondent showed cause why his detention in custody was not justified; Section 16(3) Bail Act 1980 (Qld).

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The learned primary Judge observed that the case against the respondent was a strong one. As to that observation, there was a body of evidence about his prior violence towards the deceased, including a prior threat to kill. He had been convicted of a breach of domestic violence order and placed on 12 months probation which expired only the day before the

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killing. On the morning of the death, neighbours heard  
escalating violence from the couple's house and the deceased  
saying, "Please, Phil, don't kill me. Please don't, please  
don't". A witness, who was a neighbour of the respondent and  
10 the deceased, confronted him about his abuse of the deceased  
in September 2000. His response was to slap the deceased hard  
in the face knocking off her glasses. When the neighbour  
remonstrated, he drew his face very close to the neighbour's  
and raised his fist at her. The neighbour was a witness on  
20 the charge of breach of domestic violence order. On a number  
of occasions during the respondent's probation period for that  
offence, he intimidated the neighbour by repeatedly tailgating  
her for several kilometres on about 10 occasions. She is  
understandably afraid of him. The neighbour's account of  
30 events on 12 July 2002 prior to the death of the deceased  
contradicts the exculpatory account given by the respondent  
and she is an important prosecution witness. She was too  
afraid of the respondent to enter his home on the evening of  
the deceased's death and to intervene on behalf of the  
40 deceased and instead contacted police.

The new evidence of a negative blood alcohol level reading in  
the deceased's blood appears to further strengthen the  
prosecution case by weakening the claims made by the  
50 respondent to police.

Although her Honour recognised that flight was a real concern,  
she concluded that the risk was acceptable because of the  
respondent's family and property ties. As to that

observation, the respondent immigrated to Australia from England in 1967 and his parents and immediate family now reside in the Brisbane area. His elderly father is currently very ill, hospitalised and visited daily by his mother. His mother, brother, his brother's partner, their children and the respondent's four year old child to the deceased all reside together at Capalaba. The respondent is residing at that address as a condition of his bail. The respondent owns a considerable amount of property in the Brisbane area but all of it is mortgaged. Whilst he had a well paid position as a senior analyst computer programmer with a leading computer company, it seems he has now lost that job. His bank accounts have been frozen. There is no suggestion he has assets outside the jurisdiction.

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In granting bail, the learned primary Judge considered that the imposed bail conditions provided sufficient safeguard against the risk of interfering with witnesses. Her Honour was influenced in reaching that conclusion by the fact that the killing occurred in circumstances where there had been a mutual resumption of cohabitation rather than a flagrant breach of a domestic violence order. Her Honour concluded there was no evidence of any actual violence perpetrated by him on anyone other than the deceased and that although the neighbour had understandable concerns, the respondent's conduct towards her did not involve any actual physical harm. The fist-raising was in the heat of the domestic violence incident and the tailgating was not temporally related to any Court case. These incidents did not give her Honour serious

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concern that they would be repeated if the respondent were placed on bail for murder.

As I have noted, the onus is on the respondent, having been charged with the serious offence of murder, to show cause why his detention in custody is not justified. The case against him appears strong and, if convicted of either murder or manslaughter, he will spend a substantial period in custody. There is a real risk he could be sentenced to mandatory life imprisonment. This means that flight is a real possibility. Although he has property ties in Queensland, the evidence does not establish that his equity in these properties substantially exceeds his liabilities. He has significant family ties in Brisbane but that is not unusual and would not necessarily prevent flight from someone determined to abscond because of fear of a lengthy prison sentence. A very generous surety has been provided by a female friend of the respondent who has placed her only substantial asset, her home, as security. There is no material to suggest why the respondent would feel obliged to honour that surety. The material demonstrates that the respondent has deceived other women in the past. His former lover learned only the day before the killing that the respondent had resumed his relationship with the deceased providing, the prosecution alleges, a motive for the killing.

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Even with the provision of the substantial surety and other bail conditions, I am not persuaded that there is no real risk that the respondent would abscond whilst on bail.

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Furthermore, as Mrs Clare, for the appellant, points out, the respondent would be living whilst on bail in stressful circumstances with his mother, brother and partner, and three young children in the one household. As the trial approaches and with his history of domestic violence, there is a real prospect of his reoffending.

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I am conscious that this is a discretionary exercise to which the principles of *House v. The King* (1936) 55 CLR 499 apply. To the concerns that I have already articulated must be added the understandable fears of a neighbour witness who has been intimidated by the respondent in the past after she intervened on behalf of the deceased and offered herself as a witness. In this combination of circumstances, I am persuaded that the learned primary Judge erred in finding that the respondent showed cause why his detention in custody was not justified in that there was no unacceptable risk in granting him bail. I would allow the appeal, set aside the order of the 2nd of September 2002 and, instead, order that the application for bail be refused.

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Is it necessary to issue a warrant, Mrs Clare?

MRS CLARE: I would ask for one, yes.

THE PRESIDENT: And are you asking that it issue at-----

MR MARTIN: No, lie in the Registry till, say, 3.30 today.

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THE PRESIDENT: Mr Martin, Justice Jerrard tells me that the prison is unable to accept someone who surrenders himself at that time and that his understanding is that it would need to be done no later than 1 p.m. Do you know if that's so or, Mrs Clare, do you know if that's so?

MRS CLARE: I can't speak of the time but I do know that there

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is a cut off period. No, I can't assist in relation to this specific time-----

THE PRESIDENT: Yes, I think this-----

MRS CLARE: -----at this point but I could clarify that if it's important.

THE PRESIDENT: Well, it's 12 o'clock now.

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MR MARTIN: I would suggest then that he surrender himself to the Cleveland Police Station but they're simply arrangements to be made with the police officer, not to trouble your Honours with that.

THE PRESIDENT: Perhaps it's nothing - really no need for me to - just to make the order that he's remanded in custody and a warrant is issued for his arrest.

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MR MARTIN: I would ask that it lie until 3.30 so that he can go of his own volition to the police station.

THE PRESIDENT: Well, it may mean he'll be held in the watch-house.

MR MARTIN: That seems the unfortunate consequences but-----

THE PRESIDENT: Thanks, Mr Martin.

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MRS CLARE: Your Honour, I've been advised that if he surrenders himself to Cleveland Watch-house they'll accept him this afternoon and that he can later be transferred to Brisbane.

THE PRESIDENT: The warrant is to lie in the Registry until 3.30 this afternoon.

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WILLIAMS JA: Strictly this is an appeal against the grant of bail but it could also be regarded as an application to this Court for the revocation of bail pursuant to section 30 of the Bail Act 1980.

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The material before the Judge at first instance, particularly when regard is also had to the interim certificate of blood analysis admitted into evidence before this Court, was not

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capable of discharging the onus on the respondent to show that his detention in custody was not justified.

It was accepted that this Court should proceed on the basis of the prosecution case on murder was strong. In my view, there are unacceptable risks associated with the issues of flight, further offending and interference with witnesses. The bail granted 2 September 2002 should be revoked and the respondent remanded in custody. I agree with the orders proposed.

JERRARD JA: I agree with the reasons expressed by the President and Justice Williams and with the orders proposed.

THE PRESIDENT: Yes, the orders are as I have outlined.

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