# MENTAL HEALTH COURT

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| CITATION: | *Re TSR* [2004] QMHC 012 |
| PARTIES: | **REFERENCE BY THE DEFENDANT'S LEGAL REPRESENTATIVE IN RESPECT OF TSR** |
| PROCEEDING NO: | 0297/2002 |
| DELIVERED ON: | 18 February 2004 |
| DELIVERED AT: | Brisbane |
| HEARING DATES: | 10 September, 11 December 2003 |
| JUDGE: | Wilson J |
| ASSISTING PSYCHIATRISTS: | Dr J M Lawrence<br>Dr J F Wood |
| FINDINGS AND ORDERS | **(1) Finding that the defendant was not of unsound mind at the time of any of the offences with which he has been charged;**<br>**(2) Finding that the defendant is fit for trial;**<br>**(3) Order that the proceedings against the defendant for all of the alleged offences be continued according to law.** |
| CATCHWORDS: | MENTAL HEALTH – DECLARATION OR FINDING OF MENTAL ILLNESS OR INCAPACITY – where the defendant is charged with 133 offences over approximately two years – where most charges are fraud or attempted fraud - where defendant has schizoaffective disorder – where defendant has a personality disorder – where the defendant heard voices – whether voices were command hallucinations – hypomanic drive – where conflicting expert psychiatric evidence as to whether defendant was deprived of any of the capacities in s 27 *Criminal Code* 1899 (Qld) – whether at the time of any of the alleged offences defendant was of unsound mind as described in schedule 2 of *Mental Health Act 2000* (Qld)<br><br>*Criminal Code* 1899 (Qld) s 27<br>*Mental Health Act* 2000 (Qld) schedule 2 |
| COUNSEL: | CFC Wilson for the defendant<br>D Grealy (on 10 September 2003), J Tate (11 December 2003) for the Director of Mental Health<br>M Nicolson for the Director of Public Prosecutions |
| SOLICITORS: | Bell Miller for the defendant<br>The Crown Solicitor for the Director of Mental Health<br>The Director of Public Prosecutions |

[1] **WILSON J**: TSR ["the defendant"] faces 133 charges over a period of approximately two years. Most of the charges are fraud, although there are also attempted fraud and break and enter charges. The matter of his mental condition in relation to the alleged offences was referred to this Court by his legal representative.

[2] The Court must determine whether at the times of the alleged offences he was deprived by mental disease of one or more of the following capacities:

1. the capacity to understand what he was doing;
2. the capacity to control his actions;
3. the capacity to know that he ought not to do what he did.

See *Mental Health Act* 2000, s.267(1), the definition of "unsound mind" in the Dictionary in Schedule 2 of that Act, and the *Criminal Code* s27.

[3] The defendant was born on 15 July 1983. He was born in Sydney where he spent his early years. He was the only child of his parents' union; they separated when he was about 8 years old. His father, a hotelier, remained in Sydney and ultimately remarried and fathered two more children. The defendant and his mother moved to Brisbane when he was about 10. For a time his mother was in a de facto relationship. His father has been described as very obsessional, and his maternal grandmother was for a time a patient in Callan Park, a psychiatric hospital in Sydney. There are no details of their psychiatric diagnoses (if any) available.

[4] The defendant suffered from a childhood conduct disorder and a personality dysfunction. He may have had some sort of minimal brain dysfunction as a child. His social skills were always poor and he had behavioural problems at preschool and school. He attended a succession of schools, and was finally asked to leave part way through year 11. He commenced a TAFE course, but again he encountered social problems. During his childhood the defendant consulted psychologists and paediatricians. There was a tentative diagnosis of mild attention deficit disorder with behavioural and emotional difficulties. From the late 1990's he was a patient of Dr Brian Ross, a child psychiatrist. There is no report from Dr Ross before the Court.

[5] According to his mother, from about 2000 the defendant's behaviour was disturbed, withdrawn and suspicious. He thought people were talking about him and that they were "out to get him". Late that year he started to commit offences of dishonesty.

[6] The offences with which the defendant is charged span the period from 1 November 2000 to 11 December 2002. Periods of almost continual offending in Queensland were broken by about two months in Sydney from mid-January to mid-March 2002, imprisonment on remand from 2 April to 9 August 2002 and further imprisonment on remand from 13 December 2002 to 29 May 2003.

[7] The offences allegedly committed to March 2002 included breaking and entering his neighbour's house, and unauthorised transactions on the neighbour's bank accounts amounting to about $24,000. The neighbour had gone away, leaving the defendant his key and security code. The defendant worked out the PIN number for the neighbour's bank account (which was very similar to the security code), and used it to effect the bank transactions.

[8] The offences in this period also included a large number of instances of fraudulently obtaining credit cards by supplying false and misleading information and making extravagant claims about his income and assets (eg that he had an annual income of up to $395,000 and that he had a house worth $2.75 m). One instance involved the fraudulent deposit and withdrawal of a cheque for $3.8m. He also fraudulently acquired or attempted to acquire mobile phones on almost 30 occasions. On some of those occasions he acquired a phone and a subscriber service, and then used the dealer's name and authorisation code to cancel the service, saying that the customer had never received the phone. He also fraudulently acquired or attempted to acquire other goods and services from a variety of stores. The value of these transactions or attempted transactions was in excess of $53,000.

[9] In December 2001 Dr Ross referred the defendant to Dr Donald Grant, an adult psychiatrist, for a second opinion. By then Dr Ross had prescribed anti-depressant (cipramil) and tranquillising (valium) medication. Dr Grant found the defendant very unco-operative and very difficult to examine. He was arrogant, overbearing and domineering and quite grandiose in self-assessment. He was rather rude and obnoxious in his behaviour. Dr Grant considered he had a severe personality disorder and wondered whether there might be some underlying organic or psychotic process. His assessment was incomplete when the defendant went to Sydney. The Court was informed that the defendant continued to offend in a similar fashion whilst in Sydney, and that there were unresolved charges there. On his return to Brisbane, the offending continued until he was taken into custody on 2 April 2002.

[10] According to the prison medical records, on 16 April 2002 the defendant told a nurse that he had been treated by Dr Ross for the past six years, initially for depression, although he had developed symptoms of schizophrenia about 12 months previously. When he was unwell, he heard voices. Dr Ross had prescribed cipramil (an anti-depressant) and olanzapine (an anti-psychotic) medication, as well as valium. A psychiatric registrar took a fuller history on 26 April 2002. The defendant was stressed about being in prison and sleeping badly. He said another prisoner had attempted to rape him. He heard voices between 10 am and 3 pm, saying things about his sentence. The anti-psychotic medication was continued.

[11] On 2 August 2002 the defendant was seen by Dr Peter Fama, a psychiatrist, in prison. Dr Fama noted "long history of voices but now clear of that". The defendant told Dr Fama that some time during 2000 he had begun to feel persecuted and to hear voices. He believed that some unknown people wanted to kill him. The voices began as whispers, and then as several quite loud male voices all around him. They would tell him often and repeatedly to carry out frauds, to steal, to harass people who had treated him poorly. He said, looking back, that he believed he had no choice, and no control over what he did:

> “I just couldn't stop. I was obsessed. Voices were telling me I could do it, I could do it.”

He told Dr Fama he believed that if he managed to resist the voices' urgings, he would die from poisoning.

[12] The defendant did not tell his mother about the voices. He told Dr Fama that for a long time he felt ashamed of hearing and obeying the voices, and so he did not

reveal them to Dr Ross until late, just before his arrest and imprisonment. Dr Ross prescribed anti-psychotic medication. He did not mention the voices to police when he was interviewed on 19 March 2001, or when further interviewed on 27 March 2002. The first record of his reporting the voices which is before the Court is in the prison medical records.

[13] At the time of his initial assessment, Dr Fama considered that the defendant had been suffering from paranoid schizophrenia for the past two years or so. He said -

> "In the light of the unusual and largely irrational nature of his behaviour, coupled with his mental ill-health as also attested by his mother, I have no difficulty in concluding that throughout the period of the offences [the defendant] was indeed afflicted by a mental disease within the usual meaning of Section 27 of the Criminal Code. He would have understood what he was doing, namely carrying out repeated fraudulent transactions and persistent harassment and stalking of store employees. However, from the history obtained I think it probable that [the defendant] would have been deprived at all times of both the capacity to control his actions and the capacity to know that what he was doing was wrong. He believed that his hallucinatory voices represented real beings of some kind who had the power to make him do things, especially things that would otherwise be criminal but which he thought appropriate in those circumstances. But even without specific hallucinatory urges and commands in relation to each of the individual incidents, the history indicates that [the defendant's] disorder was constant and pervasive, effectively suspending rational control and moral awareness."

[14] From shortly before his release from prison in early August 2002, the defendant became non-compliant with his prescribed medication. By mid-October 2002 the offending had recommenced, and it continued until his further arrest in mid-December 2002. It involved repeated use of the same neighbour's credit card to obtain goods and services to the total value of more than $11,000, and fraudulently obtaining and using another credit card in the neighbour's name to acquire goods and services worth approximately $15,000.

[15] The defendant was in prison from 13 December 2002 until 29 May 2003. While he was there, he was interviewed by Dr Jill Reddan, psychiatrist, on 11 April 2003.The defendant told Dr Reddan that about a year before his imprisonment he had begun hearing voices. He said he would hear a very pleasant female voice which was a comfort to him. He also heard a male voice which would swear and instruct him to kill himself and to engage in various illegal activities. He said that he mostly heard these voices at night, but sometimes when he woke in the morning the male voice would say something nasty to him or swear at him. He said that on a number of occasions he asked the male voice "Why?" and the male voice replied, "Because you are no good. You're a waste of space." On a number of occasions the male and female voices argued with each other. He told Dr Reddan that he acted on the instructions of the male voice. When she asked him why, if he acted on the instructions of the male voice, he did not suicide, he said that he did not like being told to harm himself and did not wish to do so, but that the instructions would worry him. He said he had told Dr Ross about the voices, but that the doctor had not listened to him. He said that when he was prescribed olanzapine (an anti-psychotic),

it "stopped all [his] dramas". I will return Dr Reddan's assessment of the defendant shortly.

[16] The defendant was interviewed again by Dr Grant on 29 August 2003. He observed a very marked contrast with his previous presentation. He was polite and well controlled, established a rapport quickly and apologised for his previous presentation and behaviour. Dr Grant said in his report of that examination -

> “There was no evidence of any thought disorder. [The defendant] described no delusional beliefs currently but his mother noted that in the past he had reported some paranoid ideas. [The defendant] reported, to direct questioning, the presence of auditory hallucinations over a period of about two and a half years as reported in the body of the history. These hallucinations ceased when he went on to treatment with Zyprexa [olanzapine] and are not present currently. At times the hallucinations had been of command type but he did not attribute his offending behaviour to the hallucinations. However, he did attribute the behaviour to an overwhelming sense of being driven to behave in the way he did for reasons that are now very unclear to him.
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> [The defendant’s] mood is currently normal and his affect at interview was entirely normal. In retrospect his affect during the previous interview would have been consistent with him suffering from significant mood disturbance of a hypermanic [sic] type. The grandiose, narcissistic presentation of the last assessment is no longer evident. Features which I previously attributed primarily to narcissistic personality traits now appear much less obvious.
>
> [The defendant] now demonstrates good insight into the fact that he has suffered from a mental illness. He recognises that his medication is important in controlling that illness and that his current normal mental status is something that he has not experienced in a long time. There is no evidence of any cognitive deficit and [the defendant] is probably of above average intelligence.”

Dr Grant recorded this about the defendant's explanation for his offending behaviour -

> “[The defendant] said that he now believes that at the time of the offences he couldn’t stop himself behaving in that way. He can’t really explain why it was occurring. He told me, to direct questioning, that he had been hearing voices for about two and a half years. He told me that he had mentioned these voices to Dr Ross but he had tended to laugh them off and not regard these reports as being significant. He had put [the defendant] on Cipramil which is an anti-depressant. [The defendant] reported that these voices were both male and female and he would hear them quite frequently. They would be there when he was driving his car or when he was listening to the radio. Sometimes at night he would also hear them. There would be a female voice who was nice and sweet but a male voice who was much more aggressive. At times the voices would instruct

> him to do things and at times they would be in conflict. They would also tell him to kill himself.
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> I asked [the defendant] about the relevance of the voices to his offending behaviour. He said, ‘It wasn’t just because of the voices that I did the offences’. He recalled at least one instance where the voices instructed him to buy things. He remembered being at a clothing shop in the Valley and a male voice saying repeatedly, ‘Just buy it’. He remembers buying a lot of things on that day and feeling that he just couldn’t stop himself doing it. This was despite the fact that he didn’t need the things he was buying and that there was no doubt he would get caught. He just couldn’t help himself. However, he does not feel that the voices, as such, were the reason for the behaviour. It was simply a feeling that he had to do what he was doing.
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> I talked to [the defendant] about the fact that he did not report hallucinatory voices when I last saw him. He said he did not know why he hadn’t told me but he could not recall me asking him directly. He believes that if he had been asked directly he would have told me about them.”

[17] Dr Grant examined the defendant a third time on 21 November 2003. He reported remaining well and not experiencing any psychotic symptoms such as hallucinations since the interview on 29 August 2003. He said he had not reoffended, and did not ever wish to do so. He was living with his mother and undertaking university studies. He said he was compliant with his anti-depressant and anti-psychotic medication, and had missed taking it only on a couple of occasions when distracted. Dr Grant spoke with the defendant’s mother who said that she had had no concerns about him since the end of August 2003. He appeared to have remained well, stable, happy and conforming to normal behavioural expectations.

[18] In his second and third reports Dr Grant expressed the opinion that the defendant was suffering from schizoaffective disorder throughout the total period of his offending. He said in the third report -

> “My opinion in regard to [the defendant’s] diagnosis is unchanged from my report of 1 September, 2003. He presents quite a complex diagnostic problem because of the long history of dysfunction throughout his childhood with odd personality traits and behaviour. From aged 17 he then developed a probable schizo-affective psychosis which was affecting him throughout the period of all of the offences. The illness was marked by some paranoid ideation, marked changes in his affect with hypo-manic features and probable auditory hallucinations.
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> Following my assessment in August, 2003 I organised for [the defendant] to undergo chromosomal analysis. The report on this analysis showed no abnormality. This therefore does not contribute to any understanding of the causes of possible minimal cerebral dysfunction during his childhood. Similarly, the EEG and MRI brain scan did not contribute to any understanding in this regard.

> I remain of the opinion that [the defendant] would not have committed these offences if he had not suffered from his schizo-affective psychosis. I believe that the illness was producing an intense drive in him to behave in the anti-social manner illustrated by all of the offences. This intense drive, combined with the effects of auditory hallucinations, was in my opinion sufficient to deprive [the defendant] of control over his behaviour in a clinical sense. I believe he would not have behaved in this way had he not been ill and the influence of the illness is seen in an examination of the nature and quality of his offences. In particular, the disinhibition and grandiosity evident in the offences, along with the irrationality and certainty that he would be caught, all point to the influence of his illness over his behaviour.
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> I believe that his illness was present throughout the whole period of all of the offences and that in my opinion he, therefore, was unsound of mind at the time of all of the offences by virtue of loss of control. The capacity of knowing that he ought not to do the act would also, in my opinion, have significantly impaired but possibly not deprived."

[19] Dr Fama re-examined the defendant on 18 November 2003. In August 2002 he had told Dr Fama about hearing voices. This time he told Dr Fama also about hearing voices in the last three months of 2002 - chiefly males and a female. He said that the female voice was soft and supportive and that it reassured him that he was "doing all right". The male voices were much harsher, and urged him to harm himself and to carry out crimes. They would say: "Buy things, do things...". Further, he remembered being in Coles hearing people talking about him. He felt compelled to carry out all the offences, even though he realised on many occasions that they were really pointless and that he would inevitably be caught in the end.

[20] Dr Fama revised his opinion in this way -

> "In my first report, I diagnosed that disease as paranoid schizophrenia.
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> Dr Grant has regarded it as a schizoaffective psychosis. In the light of the history of overactivity and strong drive coupled with the present full remission of symptoms, I agree that the condition is probably better described as schizoaffective in nature. Either way, it has certainly been a mental disease.
>
> I adhere to my view that [the defendant's] disorder probably deprived him of both the capacity to control his actions and the capacity to know that what he was doing was wrong. I accept that as [the defendant] has said he 'just couldn't stop.' He manifests both kinds of deprivation right to the end when on 11 December 2002 he rolled up to the Cleveland Police Station to report on bail while brazenly sporting illicitly-obtained property on his person. To my mind this was not mere youthful bravado but actual insanity."

[21] Thus by the time of the hearing both Dr Grant and Dr Fama considered that from about the age of 17 the defendant had suffered a mental illness which they diagnosed as schizoaffective disorder. Dr Grant considered that the defendant had been deprived of the capacity of control, and Dr Fama thought that he had been deprived of the capacity of control and of the capacity to know that he ought not to do the acts in question.

[22] Dr Reddan did not accept this diagnosis. She was uncertain whether the defendant was suffering from a mental illness. She was sceptical about the self reports of voices, and she noted that he was apparently selective in acting on the supposed command hallucinations. At any rate, she doubted that they were true hallucinations. Further, in her view there were other likely explanations for the defendant's behaviour such as conduct disorder, and the salutary experience of some months' imprisonment may have accounted for the marked change noted by Dr Grant. She observed that a urine drug screen ordered at the time of her second examination had not revealed the presence of his prescribed anti-psychotic medication. She concluded that if the defendant was suffering from a mental illness, it was most likely bipolar affective disorder, and she was not satisfied that it deprived him of any of the relevant capacities at the times of the alleged offences.

[23] Diagnosis of mental disorder in someone of the defendant's age at the times of these offences can be very difficult. As Dr Wood, one of the assisting psychiatrists, lucidly explained, schizoaffective disorder is a mental illness with elements of both schizophrenia and mood disorder acting in combination. The symptoms of schizophrenia of most significance in this case are hallucinations and paranoia. The relevant elements of affective disorder, an underlying drive, elevated mood and grandiosity, were at a hypomanic level.

[24] Neither Dr Grant nor Dr Fama would have been satisfied of any deprivation of capacity but for the voices. However, as I shall explain, they attached differing weights to the various factors in arriving at their ultimate conclusions.

[25] Dr Grant considered the drive from the illness to be the major factor, but the voices were also of significance. Without them, the diagnosis would be less clear (probably bipolar affective disorder), and without them he would probably not have been deprived of the capacity of control. At any rate, the deprivation of capacity was a close call. Dr Grant adopted what he called a "macro approach" to the deprivation of capacity. When cross-examined about the degree of concentration, planning and attention to detail apparently attending some of the offences, he explained that the drive associated with the illness did not prevent concentration and attention to detail, and indeed some people who are manic are able to be in charge of detail to a much greater extent than people who are normal. He said that while it might appear that the defendant had the capacity to control individual acts, the overall picture was one of lack of control. While there was some variation in his behaviour, there were not periods of normality in between obvious episodes of mood disturbance when the offending was occurring. He noted that during the first period of imprisonment, while the defendant took his anti-psychotic medication regularly, the voices settled down. However, he stopped taking the medication when his release was imminent, and after the effects of the medication had worn off, he became unwell again and started reoffending. He clearly did not accept that the conduct disorder was an adequate explanation for the offending; noting the great change in the defendant between his two examinations, he opined that somehow the anti-depressant and

anti-psychotic medication had affected his pre-existing problems as well as his mental illness.

[26] Dr Fama attributed the deprivation of capacities to both the voices and the increased drive. He said that the defendant could not stop, because he heard continual voices urging him to do these things. He believed that if he did not do them, he would be punished, probably poisoned. As well, there was increased drive and abnormal overactivity at a hypomanic level. He may well have understood that what he was doing was unlawful, but he lacked capacity to understand that it was morally wrong. What was important was to carry out the task he believed he had been given. The presence of the voices was thus essential to Dr Fama's opinion. They did not individually order him to carry out each offence, but they were in the background setting the scene and urging him that he could do things. He concluded that he ought to do them. He did not always act on the voices, but it is very common for people who experience such hallucinations to respond to them often, but not always. Like Dr Grant, Dr Fama found it impracticable to question the defendant about every offence. He took a global history and also questioned him about several individual offences.

[27] There was debate as to whether the self reports of voices were genuine, and if they were, whether the voices were true hallucinations or some other mental phenomena. When the defendant was first sent to prison, he was taking anti-psychotic medication which he said had been prescribed by Dr Ross. Although there is no evidence from Dr Ross, it was accepted that he was his treating psychiatrist, and there is no reason to doubt that it was he who had prescribed that medication. The prison records show complaints of hearing voices. Dr Grant told the Court that there were a number of factors which led him to conclude that the voices were genuine hallucinations, including the clear history given by the defendant, that they were in external space, that there was more than one voice, that they were male and female, that they gave a variety of instructions and that they were present in a variety of circumstances. He contrasted pseudo hallucinations that might be experienced by someone with a dissociative disorder or a borderline personality disorder. Although he did not go into as much detail on this aspect, Dr Fama was clearly of similar view.

[28] Dr Lawrence, one of the assisting psychiatrists, explained that for hallucinations to result in a deprivation of capacity, they need to be command hallucinations which have a direct influence on a person's behaviour. According to the account the defendant gave Dr Fama on his first examination, they were indeed commands accompanied by adverse consequences if they were not obeyed. That element of harm was not reported to anyone else. Dr Lawrence advised that command hallucinations usually emerge in a time of quiet. The prison records indicated that the voices were experienced during the day, but I note that he told Dr Reddan that the voices usually emerged at night, and sometimes first thing in the morning. That the voices experienced in prison said things about the sentence suggested that they may simply have been a reflection of the defendant's plane of thought.

[29] I am persuaded by the evidence of Dr Grant and Dr Fama that the defendant experienced genuine hallucinations. I accept their opinions that from about the age of 17 he suffered a schizoaffective disorder. However, I am not persuaded on the balance of probabilities that the hallucinations were all command hallucinations rather than mere encouragement. Nor am I persuaded on the balance of

probabilities that he was responding to an hallucination at the time of each offence with which he has been charged, or that an hallucination was a contributing factor at the time of any particular offence.

[30] With the possible exception of Dr Fama, none of the medical witnesses suggested that hypomania alone could result in a deprivation (as opposed to impairment) of capacity. And Dr Fama's analysis in the present case depended on the presence of both command hallucinations and hypomania.

[31] Dr Wood explained that in the case of a schizoaffective disorder, drive at a hypomanic level and the psychotic component could be present over a sustained period of many months, sufficient to deprive a person of capacity over the entire period. However, I am not satisfied on the balance of probabilities that that was so in this case.

[32] This Court is obliged to consider the defendant's mental condition relating to each offence with which he has been charged. It is not open to it to adopt a broad brush "macro" approach. While I accept that the defendant was suffering from a mental illness at the time of each offence, I am not satisfied to the requisite standard of proof that he was deprived of any of the relevant capacities at the time of any particular offence.

[33] On the evidence the defendant is fit for trial.

[34] The Court's findings and orders are as follows –

(a) that the defendant was not of unsound mind at the time of any of the offences with which he has been charged;

(b) that the defendant is fit for trial;

(c) that the proceedings against the defendant for all of the alleged offences be continued according to law.