

MENTAL HEALTH COURT

CITATION: *Re Bjorland* [2005] QMHC 026

PARTIES: **REFERENCE BY THE DEFENDANT'S LEGAL REPRESENTATIVE IN RESPECT OF LEE BJORLAND**

PROCEEDING NO: 0052 of 2004

DELIVERED ON: 5 May 2005

DELIVERED AT: Brisbane

HEARING DATE: 5 May 2005

JUDGE: Holmes J

ASSISTING PSYCHIATRISTS: Dr J F Wood
Dr D A Grant

FINDINGS AND ORDER:

1. **At the time the offences were committed the defendant was suffering from unsoundness of mind as defined in schedule 2 of the *Mental Health Act 2000* (Qld);**
2. **The defendant is to be detained as a forensic patient in the Gold Coast District and Area Network Authorised Mental Health Service.**
3. **Limited community treatment in the nature of more than overnight limited community treatment is to commence immediately on the following conditions:**
 - a) **That the patient reside at a stated address or at a place approved in advance in writing by the authorised psychiatrist;**
 - b) **That the patient attend all follow up appointments and in-patient care as required by the authorised psychiatrist;**
 - c) **That the patient comply with the requirements of the authorised psychiatrist in relation to the taking of prescribed medication and other treatment;**
 - d) **That the patient refrain from using alcohol and illicit drugs and co-operate fully in random medical tests for the detection of those substances as required by the authorised psychiatrist;**
 - e) **That the patient not drive a motor vehicle unless permitted to do so by the authorised**

psychiatrist.

CATCHWORDS: MENTAL HEALTH – DECLARATION OR FINDING OF MENTAL ILLNESS OR INCAPACITY – where the defendant is charged with entering premises with intent, armed robbery and possession of a knife in public – where uncontested evidence that defendant suffers from schizophrenia which has involved episodes of psychosis – whether defendant of unsound mind, as defined by the *Mental Health Act 2000*, Schedule 2, at the time the alleged offence occurred – whether defendant deprived of one or more of the capacities in s 27 of the Criminal Code – whether a forensic order should be made

Criminal Code 1899 (Qld), s 27

Mental Health Act 2000 (Qld), schedule 2

COUNSEL: Mr D Shepherd for the defendant
Mr J Tate for the Director of Mental Health
Mr R Martin for the Director of Public Prosecutions

SOLICITORS: Legal Aid Queensland for the defendant
The Crown Solicitor for the Director of Mental Health
The Director of Public Prosecutions

- [1] Mr Bjorland is charged with entering premises with intent, armed robbery and possession of a knife in public. All of those events are said to have happened on 12 September 2003.
- [2] The account on which I am proceeding for the purposes of this reference is that contained in the QP9: the fundamentals of what is said to constitute the offence.

"At about 2.00 p.m. on 12/9/2003 at the Gold Coast the defendant entered the (National Australia Bank, Surfers Paradise) carrying a large kitchen knife in his belt and in possession of a note. He handed this note to...the teller. The note demanded money.

As a result the defendant was given a bag of money with an exploding dye in the package. The defendant did not speak nor produce the knife. (The teller) became frightened when she read the note and gave the money to the defendant because of this. The defendant made no effort to disguise his appearance. Upon leaving the bank the dye exploded and the defendant was intercepted by police in possession with (sic) a sum of money covered in dye and the knife still in his belt.

The defendant declined to be interviewed and video footage of the offender committing the offence was gathered from the bank. The only comment the defendant made was, 'I wanted the money to get out of this shit hole'."

- [3] Mr Bjorland is 32 years old. He has no history of dishonest or violent offending. There is a consensus that he suffers from schizophrenia which has involved episodes of psychosis. The question here is whether that mental illness deprived him of any of the relevant capacities at the time of the offences.
- [4] His medical history is of course of enormous importance. He has had a number of admissions to the Gold Coast Hospital which are detailed in the report of his treating psychiatrist, Dr Gutjahr, dated 25 January 2004. The diagnosis of

schizophreniform psychosis was made in August 2001 on his first admission to the Gold Coast Hospital. On that occasion he was admitted as an involuntary patient with hallucinations, vivid dreams, high anxiety and depression. It appeared that there had been a prodrome stage of one to three years during which his functioning had deteriorated.

- [5] There was a further admission in October 2001. There were other admissions, referred to in Dr Gutjahr's report, in 2002. In 2003, in April, he was admitted for a period of approximately a month under an Emergency Examination Order. He had made threats to kill his mother. It is said that he presented with grandiose and persecutory delusions and visual and auditory hallucinations. He was discharged on 21 May and followed up in the community.
- [6] Importantly, as a part of that follow up, Dr Gutjahr reports that Mr Bjorland was seen on 10 September 2003 by the community team at the Southport clinic. He was relapsing into his schizophrenia. The Southport clinic staff reported that he had constant auditory hallucinations, like a radio, with derogatory content and command character. The command character at that point in time was to molest his daughters, but there was the obvious point that he had no daughters. He was suffering from visual hallucinations. That date, of course, is two days before the offences in question here.
- [7] It is to be noted that after being taken into custody on 12 September, on his account at least to Dr Beech, Mr Bjorland walked first to the Tweed Heads Hospital from Southport and then back to the Gold Coast Hospital. On his admission to the Gold Coast Hospital, he was seen first in the emergency department. He informed staff who first assessed him, "It's impossible to sleep. When I do sleep I have vivid dreams like a radio in my head telling me what to do." In response to the inquiry, "What?", he said, "Radio told me to rob a bank last week." He was asked, "Did you?", and he said, "Yes."
- [8] He was admitted to the hospital. On other occasions, while in hospital, Mr Bjorland spoke of the condition he had been in prior to the alleged offending. He described, on 17 September, hallucinations when he was not drinking. While drinking he felt it did not touch him. He said there was a radio in his head, which he could not control, telling him to do things. Those voices had become calmer.
- [9] On 7 October 2003, he spoke about the armed robbery case. He said that music had given him a message; a song, telling him to trash a bank, over and over again. At the time of the offence he had not been sleeping, was very psychotic and was hallucinating.
- [10] On 8 October, he reported that he had thought he was Jesus and had ideas of reference from the radio to rob the bank. The song was playing in his head, "Go and rob a bank," and he went and tried to rob the National Australia Bank. Those are all contemporary accounts of what he was experiencing.
- [11] Dr Gutjahr first became Mr Bjorland's treating psychiatrist in November 2003. She took a history from him of the circumstances of the offending. Again, he had told her that he had not slept before the offence for some time. His head felt like a radio station with lyrics going through his head; one of them was "Trash a bank". He heard those voices continuously. In the morning of 12 September he had thoughts of killing his brother and took a kitchen knife, but decided not to kill him as it was too violent. Dr Gutjahr explained, in giving evidence, that she did not think that the thought of killing his brother, who had been aggressive to him in the past, was a psychotic thought. That was to be distinguished from the direction to rob the bank, which, she said, was a psychotic process.

- [12] Mr Bjorland told Dr Gutjahr that he took the knife with him in his clothing and walked down to the bank, where he usually got his money. He described to her going into the bank, writing the note on the deposit slip and accidentally dropping the knife and picking it up. He said he did not threaten anyone with the knife and gave the note to the bank teller, who gave him the money in the shopping bag.
- [13] Dr Gutjahr considered that Mr Bjorland did have the capacity to know it was morally wrong to rob a bank and the capacity to understand what he was doing. What he lacked was the capacity, she said, to control his actions. In her view, he was responding to command hallucinations in the form of the message in the song at the time of the offence and, thus, was of unsound mind.
- [14] Dr Ziukelis examined Mr Bjorland in May 2004. He did not, at that stage, have the assistance of any supporting documentation or the reports of Dr Gutjahr or, indeed, a later report of Dr Beech. To Dr Ziukelis, Mr Bjorland said that he had had the experience of songs in his head, with the instruction to trash a bank. His brother was bashing him, he felt cornered. He said that he needed money to get away from where he was living with his brother. Apart from needing money, he said he did not really know why he carried out the robbery. Dr Ziukelis gives the direct quote, "I just had ideas going through my head. I thought I was supposed to do it and stuff."
- [15] To Dr Ziukelis, Mr Bjorland indicated that he had made the decision to carry out the robbery the day before doing so. He had walked into his own local bank branch and said, "Give me money." He warned the teller that he had a knife but did not display it. He wore no mask and made no attempt to disguise himself and he described, then, being apprehended immediately afterwards by police.
- [16] Dr Ziukelis accepted that Mr Bjorland was schizophrenic at the time, but did not think that Mr Bjorland suffered from unsoundness of mind in committing the offence. He based that view on the description of the events which he was given; that is, that the robbery of the bank was because Mr Bjorland needed money to get away from the brother. He said that was not based on psychotic phenomena. He agreed with some propositions which Mr Martin put to him, that the hesitation in carrying out the robbery suggested that Mr Bjorland knew that it was wrong and that there was certainly organisation to the extent of writing a note.
- [17] Dr Ziukelis conceded in evidence that Mr Bjorland was experiencing auditory hallucinations in the form of the perception of the radio telling him what to do, but said that that did not, nonetheless, mean that he did not know what he was being told was wrong or that he lacked the capacity to resist it. So, in effect, Dr Ziukelis said, Mr Bjorland might well have been psychotic, but he was committing the crime for other reasons. Dr Ziukelis was subsequently provided with the reports of Dr Gutjahr and Dr Beech and the records of the Gold Coast Hospital. They did not, essentially, affect his view.
- [18] To Dr Beech, Mr Bjorland described disturbing dreams and visual hallucinations starting about a month before the alleged offences, a belief that his mind had been taken over as though it were a radio, that Armageddon was approaching, that he was the chosen one and that he was being sent messages in dreams and in song lyrics.
- [19] He also developed, on what he told Dr Beech, hallucinations of danger from his brother and his mother's boyfriend. He had a belief that his brother would kill him and, hence, thoughts of killing his brother. Dr Beech said that to resist the drive to kill the brother, it seems, on the account given to him, Mr Bjorland developed the idea to leave town in order to escape, and then thought that the song was speaking to him and giving him the solution when it said "Trash a bank". It was following that message that he had the idea to rob the bank as a solution and, to that end, he took a knife from his house and hid it in his jacket.

- [20] In Dr Beech's view, Mr Bjorland was in a psychotic state, driven by what he thought was the message contained in the song lyrics, when he robbed the bank. Dr Beech considered him to be so affected by his psychosis as to be deprived of the capacity to know what he was doing was wrong. Dr Beech described some difficulty in distinguishing between the loss of capacity for control and the capacity to know what he was doing was wrong; not an uncommon dilemma. He certainly seemed to think that the loss of the capacity of control was an arguable interpretation. In any event he thought that Mr Bjorland was acting on a command hallucination.
- [21] I should mention that Dr Gutjahr had taken a history that Mr Bjorland had drunk two bottles of beer on the day in question. That has not been raised as an issue. Dr Beech expressly said in his report he did not think that Mr Bjorland's actions resulted from alcohol intoxication; rather, they were driven by schizophrenia.
- [22] Mr Martin, for the Director of Public Prosecutions, argued that the commission of the offence had obvious rational aspects: that Mr Bjorland's behaviour in robbing the bank exhibited some control and rational thinking. He did not display his knife overtly; he used a note rather than speaking to the teller. Mr Martin said, accepting the schizophrenia and accepting some impairment in Mr Bjorland's capacities, one still would not arrive at the conclusion of the deprivation of capacities.
- [23] Mr Martin also made the point that there were significant variations as between the accounts given to doctors and upon which they acted, particularly Dr Beech. In the first instance, Dr Gutjahr thought that the beliefs about the brother were not psychotic, whereas Dr Beech received them as distinctly psychotic and a part of the overall delusion under which Mr Bjorland was acting. All the doctors got varying reasons about why the knife was taken to the bank, whether it was coincidental or for the purpose of alarming the teller or otherwise. There was also a variation regarding when the idea of robbing the bank was formulated. Dr Ziukelis got an account of it being the day before. Dr Beech presented it as spontaneous. Dr Gutjahr had an account of the knife being first acquired to kill the brother whereas the others had presented to them no such purpose. There are certainly other matters of detail which are varied throughout the accounts given by Mr Bjorland.
- [24] One must first look to the acts surrounding the offences themselves. It is certainly true that they are equivocal. As Mr Martin said, there are elements which could be construed as organisation in the form of the use of a note and the absence of any overt display of the knife. On the other hand there is the complete lack of disguise at what seems to have been a local bank. There is the lack of the attempt to flee. Those things might be consistent with psychosis or on the other hand they might simply indicate an absence of planning or a lack of organisation short of a lack of capacity.
- [25] So far as the difference in the expert evidence goes, it seems to be to some extent a matter of degree. Doctors Beech and Gutjahr take Mr Bjorland's account of being driven by the song lyrics as an example of command hallucination. Dr Ziukelis thinks on the account he received, at any rate, that it does not rise to that level and he says, in effect, that there is a rational explanation for the offence which he was given.
- [26] It is true, I think, that there is a rational explanation: that the events at the bank might be rationally explained, short of deprivation of capacity, and the motivation also as given to Dr Ziukelis appears on its face rational. But I think to depend too heavily on those aspects is to take the whole affair out of context. One cannot ignore Mr Bjorland's history of previous admissions to hospital; the fact that he appeared to be psychotic two days before this; there was his behaviour on release from custody, it would appear, of walking from hospital to hospital and certainly there is his account on admission of being instructed by the song lyric. Those things

seem to me more compelling than the vaguer account given to Dr Ziukelis some 10 months later. And even in Dr Ziukelis' account there is, as Dr Grant and Dr Wood observed, a cue: "I just had ideas going through my head. I thought I was supposed to do it and stuff." That was not pursued, it seems, by Dr Ziukelis, but it does seem consistent with command hallucination.

- [27] There are certainly substantial variations in the accounts given to the doctors, but given the nature of the disorder I think that that is not surprising. The difficulty in articulating precisely what Mr Bjorland did and why he did it is not unusual in this kind of context. Both Dr Wood and Dr Grant have explained the difficulties which arise - I will not repeat those - in the giving of accounts in the context of a disorder such as this.
- [28] I should say that I do give some preference to Dr Gutjahr's opinion given her greater experience as a treating psychiatrist with Mr Bjorland. Essentially because of the features surrounding the alleged offences, the history, the immediate reference to the hallucinatory message from the radio, it seems to me that, taking an objective view, the evidence of Dr Gutjahr and Dr Beech ought to be preferred. I note that Drs Grant and Wood also support that view and I am comforted in that.
- [29] I conclude on the balance of probabilities that Mr Bjorland was, by reason of psychosis, deprived of the capacity to control his actions at the relevant time and consequently that he was of unsound mind at the time the offences were committed. I am satisfied that a forensic order should be made in the terms of the submission of the Director of Mental Health. I will make an order requiring the detention of Mr Bjorland in the Gold Coast District and Area Network Authorised Mental Health Service.
- [30] I approve and order immediate implementation of limited community treatment in the nature of more than overnight limited community treatment on the following conditions:
1. That the patient reside at a stated address or at a place approved in advance in writing by the authorised psychiatrist;
 2. That the patient attend all follow up appointments and in-patient care as required by the authorised psychiatrist;
 3. That the patient comply with the requirements of the authorised psychiatrist in relation to the taking of prescribed medication and other treatment;
 4. That the patient refrain from using alcohol and illicit drugs and co-operate fully in random medical tests for the detection of those substances as required by the authorised psychiatrist;
 5. That the patient not drive a motor vehicle unless permitted to do so by the authorised psychiatrist.