

MENTAL HEALTH COURT

CITATION: *In the matter of Brock Wall* [2017] QMHC 11

PROCEEDING: Reference

DELIVERED ON: 28 July 2017 (delivered *ex tempore*)

DELIVERED AT: Brisbane

HEARING DATE: 28 July 2017

JUDGE: Flanagan J

ASSISTING
PSYCHIATRISTS: Dr JG Reddan and
Dr FT Varghese

DETERMINATION: **1. The defendant was not of unsound mind when the alleged offences were committed.**

2. The defendant was not of diminished responsibility when the alleged offences were committed.

3. The defendant is fit for trial.

4. The proceedings against the defendant for the alleged offences be continued according to law.

CATCHWORDS: MENTAL HEALTH – DECLARATION OR FINDING OF MENTAL ILLNESS OR INCAPACITY – where the defendant was charged with the murder of his former partner, the killing of his former partner’s unborn child, and two contraventions of a domestic violence order – where the defendant submitted that at the time of the alleged offending he was suffering from a mental illness, the symptoms of which were exacerbated by his ingestion of a number of drugs, including bodybuilding drugs – whether, when the offences were allegedly committed, the defendant was of unsound mind or diminished responsibility pursuant to s 267 of the *Mental Health Act 2000* (Qld) – whether the defendant is fit for trial pursuant to s 270 of the *Mental Health Act 2000* (Qld)

Criminal Code Act 1899 (Qld), s 304A
Mental Health Act 2000 (Qld), s 267, s 270

In the matter of Kim Margaret Earle [2016] QMHC 9, considered
R v Whitworth [1989] 1 Qd R 437; (1987) 31 A Crim R 453, applied

COUNSEL: The defendant appeared on his own behalf
J Tate for the Office of the Chief Psychiatrist

MB Lehane for the Director of Public Prosecutions (Qld)

SOLICITORS: The defendant appeared on his own behalf
Crown Law for the Office of the Chief Psychiatrist
Director of Public Prosecutions (Qld)

- [1] This is a reference in relation to Brock Wall, born 8 July 1980. The reference was filed by Legal Aid Queensland on behalf of the defendant, who is now self-represented. The reference concerns four alleged charges. Three of those charges, namely, murder, killing an unborn child and contravention of a domestic violence order, are all alleged to have been committed on 2 February 2015. There is a further charge of contravening a domestic violence order alleged to have been committed on 21 January 2015.
- [2] The circumstances of the offence are set out in the report of Dr Beech. The victim was the defendant's former, pregnant partner, Fabiana Palhares. She was approximately 11 to 12 weeks pregnant when she was killed. As at 2 February 2015, the defendant was subject to a domestic violence order which prohibited him from going to the victim's residence. In spite of this order, the defendant is alleged to have entered the residence and forced his way into the victim's bedroom.
- [3] By the defendant's account, Ms Palhares slapped him and he knocked her unconscious. He further assaulted her. He then left her, went to the garage via an internal door, and returned with a tomahawk. He hit her over the head three times with the tomahawk until she stopped making moaning noises. He left the residence and drove off. When police intercepted him shortly afterwards, he admitted that he had killed her.
- [4] This is the summary of events as recorded in Dr Beech's report dated 9 November 2016. There are three psychiatrists who have provided reports, two of whom have given oral evidence to the Court today. Dr Mann's report is dated 27 July 2015. Dr Butler has provided three reports dated 30 December 2015, 20 January 2016 and a more recent report dated 13 October 2016. Dr Beech has provided a report which is dated 9 November 2016. Both Dr Butler and Dr Beech gave oral evidence.
- [5] Dr Mann's evidence, as provided in his written report, is based on his assessment of the defendant. Dr Mann's opinion is that the defendant does not suffer from an enduring mental disease or natural mental infirmity. He has experienced periods of low mood and distress at times throughout his life. He appears to have experienced paranoia at times. Dr Mann is not convinced that the defendant suffers from any pervasive mood disorder or any psychotic disorder. He exhibited cluster B type personality traits, although the defendant does not previously appear to have received any definitive diagnosis of any personality disorder. Dr Mann continues in relation to the issue of diminished responsibility:

"I am not convinced that Mr Wall was suffering from an abnormality of mind that would have substantially impaired his capacity to understand what he was doing, control his actions or know that he ought not do what he did. I therefore do not support a finding of diminished responsibility."

- [6] Dr Mann is also of the opinion that no issue of unsoundness of mind arises.
- [7] The defendant's account to Dr Butler was that he believed he had been panicking and did not want to kill the victim. He stated that he was overwhelmed by the feeling that Ms Palhares was behaving and sounding just like his mother. This, of course, is the report of the defendant himself. In Dr Butler's opinion, in spite of the defendant's propensity towards extreme violence occurring within intimate relationships, there has not been a pattern of psychopathy associated with his general occupational and social functioning. Dr Butler's diagnosis is one of borderline personality disorder and perhaps an adjustment disorder with mixed disturbance of emotions and conduct at the time of the offending. I will shortly refer to Dr Butler's oral evidence before the Court today.
- [8] Dr Butler believes that the defendant's state of rage at the time of the alleged murder represented an extension of his personality disorder pathology and was not due to a specific abnormal state of mind that may, for instance, result from conditions such as psychotic depression, mania or a delusional psychosis. In his report of 30 December 2015, Dr Butler opines that the defendant was not of unsound mind when the alleged offences were committed. In that sense, he agrees both with the opinions of Dr Mann and Dr Beech, as well as the psychiatrists who assist the Court today.
- [9] In his reports dated 20 January 2016 and 13 October 2016, Dr Butler addresses the question of diminished responsibility. This is the primary issue in the present reference. Section 304A of the *Criminal Code Act 1899* (Qld) provides in subsection (1):
- “When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, is at the time of doing the act or making the omission which causes death in such a state of abnormality of mind (whether arising from a condition of arrested or retarded development of mind or inherent causes or induced by disease or injury) as substantially to impair the person's capacity to understand what the person is doing, or the person's capacity to control the person's actions, or the person's capacity to know that the person ought not to do the act or make the omission, the person is guilty of manslaughter only.”
- [10] In his report dated 13 October 2016, Dr Butler repeats his belief that the defendant suffers from a moderately severe borderline personality disorder causing an unstable sense of self. In arriving at his conclusion that a finding of diminished responsibility is not applicable in the present case, Dr Butler refers extensively to the recent decision of the President of this Court, Justice Dalton, in *Earle* [2016] QMHC 9. In that decision, her Honour noted that because abnormality of mind is a statutory construct, the finding will be one for the judge on the facts in every case.
- [11] The question will always be whether the personality disorder exhibited by the defendant amounts to an abnormality of mind in any given case. Her Honour held that a personality disorder is capable of producing an inherent state of abnormality of mind in the sense discussed by the Queensland Court of Appeal in *McDermott* [2007] QCA 51, that is, a personality disorder may cause an abnormal state of mind as opposed to amounting to one per se. As to the meaning of the word “substantially” in section 304A, her Honour considered that it means a significant degree of impairment to one of

the relevant capacities rather than an amount of impairment that is merely more than trivial or minimal.

- [12] By reference to these observations of her Honour, Dr Butler explains his conclusions that diminished responsibility does not arise in this case in the following terms:

“I believe that the threshold for his experiencing anger towards the victim was significantly lowered by the effects of his personality disorder at the time. Therefore, I believe his personality disorder caused an abnormality of mind which did, to some extent, inform his reaction to the stress of perceived rejection from the victim. In my opinion, his homicidal behaviour was principally informed by the intensity of the anger and a relative depletion of empathic regard for the welfare of the victim. As I indicated in my previous report, I believe that his anger was considerably greater than what most people would experience in the context of perceived interpersonal rejection.

However, I believe that anger or resentment resulting from perceived rejection is not qualitatively unique to the experience of a person with borderline personality disorder and is a frequent cause of interpersonal violence between intimate partners. On this basis, I believe that Mr Wall’s intense reaction to perceived rejection from the victim at the time of the murder was not uniquely attributable to his abnormality of mind and could also be within the realm of exaggerated normal behaviour. Also, I believe that diminished empathy towards the victim and a sense of emotional entitlement were significant contributing factors determining his behaviour and are not of themselves indicative of any personality disorder per se. Therefore, I believe that although Mr Wall was suffering from an abnormality of mind, this did not substantially deprive him of any of the capacities.”

- [13] In oral evidence, Dr Butler confirmed his diagnosis of borderline personality disorder. He believes that the defendant had symptoms of anxiety and was stressed at the time of the relevant offences. He agreed with the proposition that the defendant is often an angry man. Dr Butler’s opinion is that the defendant’s rage was due to a number of factors quite apart and distinct from his borderline personality disorder. His borderline personality disorder is, however, severe, and the aggravation of that may have resulted, according to Dr Butler, in an abnormality of mind. Dr Butler does not, however, believe this abnormality of mind substantially impaired any of the three relevant capacities. He agreed in answer to questions from both Dr Reddan and Dr Varghese that there can be a stark divergence of opinion as to any diagnosis of personality disorder. There is, he agreed, considerable weakness in identifying such a diagnosis.
- [14] Both Dr Butler and Dr Beech were cross-examined by the defendant in respect to a number of drugs, including modafinil, and other drugs and their combination with bodybuilding drugs. The question was whether, in arriving at their opinions, they had considered the effect of these drugs which the defendant alleges he had taken immediately prior to the alleged offences. Ultimately, however, there is simply no evidence before this Court that this drug or other drugs together with any combination of bodybuilding drugs affected the defendant’s state of mind. As expressed by Dr

Butler, even if there was any effect, it was not relevant to the defendant's state of mind. Essentially, there was no underlying psychotic condition for the drugs to impact upon.

- [15] Dr Beech is of the opinion that the defendant has a diagnosis of cluster B mixed personality disorder. The defendant did not have, according to Dr Beech, a major depressive disorder at the time of the offences. According to Dr Beech, like Dr Mann and Dr Butler, the defendant was not suffering from any mental illness at the time, and Dr Beech does not support a finding of unsoundness of mind. As to diminished responsibility, Dr Beech does not see the defendant's personality disorder on its own as representing an abnormality of mind. Rather it is a characteristic way of interacting with the world arising from a person's personality style. Dr Beech expresses the following opinion at page 31 of his report:

“On the other hand, and this is my opinion, I do not think the episode should be viewed in a piecemeal fashion. Mr Wall had been angry for some time with Ms Palhares. He had on the day been unable to contact her, which angered him. People on the day saw him in an angry state and he had made threats. He had been served with the DVO variation and indicated angry responses to it. He may have gone to see Ms Palhares with the hope of some form of heroic reconciliation, but from the moment she ignored him, he became angry. From there, his anger mounted and steadily escalated into rage. Although severe by any standard, there was ultimately anger and rage, a common human emotion, exceptional in this case only by severity and the extent to which Mr Wall acted on it. Psychodynamic factors might explain, but many people bring into their relationship issues from their childhood.”

- [16] Dr Beech in his oral evidence did not accept that on 2 February 2015 the defendant had an abnormality of mind. Dr Beech also did not accept that the defendant had an adjustment disorder at the time of the commission of the offences. According to Dr Beech, there is simply no evidence that points to either intoxication, psychosis, elevated state, delusions, hallucinations, or the defendant being out of contact with reality.
- [17] Dr Beech in his report, as I have identified, noted a number of ordinary matters that would explain the defendant's rage. In my view, the defendant's personality disorder as exhibited by him at the time of the commission of the offences does not amount to an abnormality of mind. I agree with Dr Beech that the episode should not be viewed in a piecemeal fashion. There are ready circumstantial explanations for why the defendant's anger escalated into a murderous rage. These are the reasons identified by Dr Beech, which I have already noted: issues of jealousy, resentment, vengeance, albeit at extreme levels.
- [18] I agree with Dr Butler's observation at page 3 of his report dated 20 January 2016, namely, that the defendant's rage associated with the offending represented a magnification of that which is often felt when one feels unfairly rebuffed or rejected. In this respect, I believe that his rage was quantitatively but not qualitatively different from a universally applicable rage response. As stated by Justice Thomas, as his Honour then was, in the decision of *R v Whitworth* [1989] 1 Qd R 437:

“There are certain mental qualities and states of mind that for reasons of policy (mainly law and order) as much as of logic, the law will not allow to be put into the balance for the purpose of this exercise in legal accountability. It now seems reasonably well established that the law will not recognise the following qualities or states of mind as valid contributing causes to an abnormal state of mind relied on by an accused.”

- [19] His Honour then identifies normal propensities or emotions, such as prejudice, anger, temper, jealousy, or in general, base natural emotions. I accept the advice of the Assisting Psychiatrists that there is no sound evidentiary basis for a finding of diminished responsibility in the present case. I also accept the advice of Dr Varghese that there is no evidence that a functional MRI scan would show schizophrenia. More importantly, however, the defendant was assessed not only by the three psychiatrists I have mentioned, but also by Dr Phillips at a time which was very close to the time of the alleged offences, namely 3 February 2015. None of those reporting psychiatrists identified in the defendant any symptoms typical of a diagnosis of schizophrenia or a schizoaffective disorder.
- [20] In those circumstances, I make the following findings: I find that when the alleged offences were committed, the defendant (a) was not of unsound mind; (b) was not of diminished responsibility; is otherwise fit for trial. I order that the alleged offences concerning Brock Wall proceed according to law.