

MENTAL HEALTH COURT

CITATION: *In the matter of LGF* [2018] QMHC 9

PROCEEDING: Reference

DELIVERED ON: 18 October 2018

DELIVERED AT: Brisbane

HEARING DATES: 19 October 2017; 11 December 2017; 3 April 2018; 28 June 2018; 10 August 2018, and 10 September 2018.

JUDGE: Dalton J

ASSISTING PSYCHIATRISTS: Dr ASB Davison and Dr RE Phillipson

DETERMINATION: **1. In relation to the charge of stealing on 24 November 2014 the defendant was not of unsound mind.**

2. In relation to the charge of murder on 2 January 2015 the defendant was not of unsound mind.

3. In relation to the charge of murder on 2 January 2015 the defendant was of diminished responsibility.

4. The defendant is fit for trial.

5. The charge of stealing on 24 November 2014 and the charge of manslaughter on 2 January 2015 should proceed according to law.

COUNSEL: K Prskalo for the defendant
J Tate for the Office of the Chief Psychiatrist
MB Lehane for the Director of Public Prosecutions (Qld)

SOLICITORS: Legal Aid Queensland for the defendant
Crown Law for the Office of the Chief Psychiatrist
Director of Public Prosecutions (Qld)

[1] The defendant is charged with the murder of her mother, Ruth Agnes Dodd, on 2 January 2015. She is also charged with stealing on 24 November 2014. The evidence does not establish any defence to the stealing charge. The remainder of this judgment deals with the murder charge. It is not contended by any party, nor does the evidence establish, that LGF was of unsound mind at the time of the killing. On the evidence before this Court she was of diminished responsibility at the time of the killing.

[2] Three psychiatrists reported to the Court. Dr Voita made a report pursuant to s 238 of the *Mental Health Act 2000* (the Act) dated 18 June 2015.¹ Dr Grant made a report pursuant

¹ Interview 6 March 2015.

to s 422 of the Act dated 22 January 2016² and Dr Heffernan made a report pursuant to s 422 of the Act on 22 June 2016.³

- [3] The autopsy report shows that the deceased died from a stab wound to her left neck which severed her carotid artery. She had a bruise on the right side of her face, and an irregular bruised area measuring 15 x 12 x 7 centimetres on the left side of the neck. There were also bruises on the deceased lady's forehead.
- [4] Police attending the scene found a black handled knife located next to Mrs Ruth Dodd's body, with bloody footprints (the defendant's) leading to the bathroom. There was a quantity of the defendant's hair found in the deceased lady's hand.
- [5] Mrs Ruth Agnes Dodd was 71 years old at the time she was killed. Her daughter, the defendant, was 36 years old. The defendant was one of five children and the family was troubled and unhappy. The defendant had a history of alcohol and drug use. She ran away from home aged 14 and was then maintained in a sexual relationship by a man aged 40 to whom she had two children. Aged 30, the defendant began a relationship with a man named Dennis. The relationship lasted three years. The defendant and Dennis used drugs together. At age 34 the defendant began a relationship with a man named Vern. The relationship with Vern seems to have been more sexual than domestic. They both used drugs. Notwithstanding her relationship with Vern, apparently Dennis continued to support the defendant. She was living with Dennis up until he was jailed in October 2014.
- [6] The defendant had an antagonistic relationship with her mother for most of her life. Mrs Ruth Dodd very much disliked Vern. The defendant's relationship with him was a source of conflict in which all three participated. Once Dennis was jailed in October 2014, the defendant was forced to live rough, or to stay either with Vern or her mother. The defendant's possessions were at her mother's place, but the defendant disliked staying there. Sometimes she slept in a park and other times she stayed in a motel. Vern lived with his brother and the defendant was not welcomed (at least) by Vern's brother.
- [7] At the time of the killing the defendant was using drugs on a daily, or almost daily, basis, as she had been for years. She was also, in the unanimous opinion of the psychiatrists reporting to the Court, psychotic, independently of the intoxicating effects of this drug use. In addition, she has Borderline Personality Disorder. Drugs, psychotic illness, the defendant's dysfunctional personality, and the longstanding antagonism between the defendant and her mother all played a role in producing the state of mind in which the defendant killed her mother.
- [8] I canvassed the law as to diminished responsibility in some detail in the matter of *Greenfield*⁴ and will not repeat what I said there. The only evidence is that the defendant suffered from schizophrenia at the time of the killing. Schizophrenia is an abnormality of mind within the definition of s 304A of the *Criminal Code*. I am satisfied that on the evidence before the Court, ignoring the effect of intoxication, that abnormality of mind

² Interview 23 December 2015.

³ Interview 3 June 2016.

⁴ [2017] QMHC 4.

significantly impaired the defendant's capacity to control herself at the time of the killing. In those circumstances, the partial defence of diminished responsibility is established.

- [9] The Mental Health Court has no function to determine factual disputes of any significance – s 268 of the Act. Further, if factual matters before this Court, material to the opinions of the reporting psychiatrists, are in dispute, this Court cannot determine the reference – s 269 of the Act. This reference involves far many more factual uncertainties and contradictions than a typical matter in the Court. I have had to consider both s 268 and s 269. I am convinced that there is no s 268 dispute. Further, I am satisfied that there is a sufficiently clear factual basis to support the psychiatric opinion of Doctors Grant and Heffernan. The facts are sufficiently clear to allow a proper basis to prefer those opinions to that of Dr Voita.
- [10] I will now explain my reasons for the conclusions I have reached. In this judgment, transcript references are to the hearing on 19 October 2017 unless otherwise stated.

Defendant's Arrival at her Mother's Home on 1 January 2015

- [11] The deceased lady lived in a two-storey home. Upstairs were three bedrooms and a living area. The living area was furnished in the main as a lounge-room. Between it and the kitchen proper was a wooden table used as a desk. The defendant slept in a bedroom downstairs. There were internal stairs.
- [12] The defendant bought her illicit drugs from drug dealers who were husband and wife. A statement police took from the female drug dealer was to the effect that at about 3.00 am on 1 January 2015 the defendant arrived outside her house claiming to have been bashed. She says that the defendant then slept on her couch until at least midday. The defendant then left the house somewhere between 3.30 and 4.00 pm. Someone picked her up, but the witness did not know who. Unfortunately the statements taken from the drug dealers do not say when, during this time, the defendant took drugs.
- [13] The version of events the defendant gave to Dr Voita was that she was bashed around 1.00 am on 1 January 2015. She then went to the home of her drug dealers. She stayed there until 3.00 or 4.00 pm, when Vern picked her up, and they went for a drive to buy morphine. Then they had an argument and he pushed her out of his car close to her mother's house at 4.00 pm. She went into her mother's house and injected morphine there at about 4.30 pm. She went to sleep at about 6.00 pm. She told Dr Voita about a police attendance (see below).
- [14] Dr Voita's report is not clear about the defendant's drug use prior to the offending. Her oral evidence was that the defendant said she used amphetamine on the afternoon before the killing, but then she seemed to renege.⁵ Further, her written report was that the defendant injected morphine on the morning of the killing, although it is not clear whether this was before or after the killing.⁶ A history of these two occasions of drug use was not

⁵ tt 1-4-5.

⁶ p 11.

obtained by anyone else. On the other hand, Dr Voita was the only reporting psychiatrist who did not obtain a history of amphetamine use at 5.00 or 6.00 am on 1 January 2015.

- [15] As to morphine use on 2 January, Dr Voita's report says that the defendant "injected IV morphine 100 milligrams on the morning of her arrest, and 120 milligrams just before her arrest." It seems unlikely that she injected morphine just before her arrest at about 6.00 pm because at that stage she was wandering about in the streets, having left her drug dealers' house at about 2.30 pm. I would also comment that the combined amount of 220 milligrams is, on the evidence in this case, a very large amount of morphine, particularly as she had taken 100 or 120 milligrams the evening before, which was still having an effect on her. As well, Dr Voita records that LGF told her that the drug dealer gave her morphine and ice when she visited after the killing, somewhere between 1.30 and 2.30 pm on 2 January.⁷ This does not fit with what Dr Voita records earlier.
- [16] In her conclusion at p 19 of her report Dr Voita says that LGF was intoxicated with morphine and amphetamine at the time of the killing. While her report is to the effect that LGF had used morphine at 4.30 pm on the afternoon before the killing and perhaps (unclearly) the next morning before the killing, she gives no basis to assume intoxication with amphetamine at the time of the killing except for a general history she obtained from LGF that she used amphetamine on a daily basis.⁸ Even this is not clear because Dr Voita says, at another part of her report, that the defendant was using amphetamine only three times a week.⁹
- [17] Dr Voita was not able to clarify these matters in her oral evidence.¹⁰ My view at the time she was giving evidence was that Dr Voita had no recollection of what LGF told her and had become confused about the matter. In the circumstances, I am not prepared to accept Dr Voita's version of drug use even as a competing factual version to that which the defendant gave to Drs Grant and Heffernan. The information which she collected is unclear and, in my view, unreliable.
- [18] The defendant told Dr Heffernan that she went to the residence of some drug associates and bought amphetamine on the evening of 31 December 2014. She was waiting for Vern to pick her up and went to get cigarettes from a service station. She was bashed on the way back. Then she went to a friend's house (it is unclear whether this is a reference to the drug dealer) and injected one point of amphetamine. She said she did not sleep and that she injected ice again around 5.00 am on 1 January 2015. She stayed with drug associates (again, perhaps the dealers) for the rest of the day, and at about 5.00 pm in the afternoon, Vern collected her. They were driving; they argued; he pushed her out of the car near her mother's house.
- [19] The defendant did not want to go to her mother's house, but she had nowhere else to go. She felt high on amphetamine when she arrived there. She injected herself with 100 mg of morphine at about 5.00 pm at her mother's house that afternoon. Then she felt "good".

⁷ p 13 of her report.

⁸ p 11 of her report.

⁹ p 14 of her report.

¹⁰ tt 1-3 – 1-5.

Then there was an attendance at the house by police (see below). Then she fell asleep at about 7.00 pm. This was the first time she had slept for three days.

- [20] The defendant told Dr Grant that she was bashed at about midnight on 31 December 2014 as she was walking to a service station. At about 6.00 am on New Year's Day she visited her drug dealer, bought amphetamine, and took it intravenously. After that she was picked up by Vern. They had a fight in the car. He kicked her out of the car while it was still moving near her mother's house. The defendant did not want to stay with her mother but she had nowhere else to go. She injected herself with 100 mg of morphine at about 5.00 pm that afternoon. She then went to sleep.
- [21] On 1 January 2015 Mrs Ruth Dodd rang police to complain that Vern had rung her and threatened to slit her throat. Two police officers attended Mrs Dodd's house at approximately 6.30 pm on 1 January 2015.¹¹ The defendant said to Drs Grant and Heffernan that she called out to police from the house that her mother was lying about the allegations. One officer saw the defendant on an upstairs veranda but reported that she did not say anything. He noted she appeared to be talking to her mother as the police left, but did not hear what was said. The other officer said she could hear a female voice inside the house; the voice was talking normally. Mrs Ruth Dodd said to police that her daughter had been "curled up in a ball and she didn't know what was wrong with her" earlier in the evening. However, she said her daughter was fine now and was talking on the phone.
- [22] The police who attended this call seem to have spent some time speaking to Mrs Ruth Dodd. They both found her hard to understand. She showed them a two page letter which she had written to the defendant recently. It was a series of complaints. The police statements indicate that the police attendance was careful and conscientious and it is difficult to think that they would have missed the defendant calling out to them if that had occurred.
- [23] In amongst the police crime scene photographs is a photograph of a letter from Ruth Dodd to the defendant dated 30 December 2014. It was found on a cabinet in the defendant's bedroom. It might be the letter that Mrs Dodd showed police when they attended. The content is similar to that which the female officer recorded in her statement. Unfortunately only the first page of it was photographed. It reads:

"30-12-2014. pm.

[LGF]. I said I'd give you the day take you where you needed to go. I have a rite to lock my house securely.

During the day I searched under every pot plant NO key found & now Vern knows our key arrangement.

[LGF] STOP LYING

You didn't say you would be home late I waited up until after 10 pm.

You awoke me at 10/40 pm. By the time I got the wood out of the track you were running off with accusations & imaginations & beliving what you imagine.

¹¹ Statements Brown and Carter.

You left home at 13 because you couldn't keep your room tidy and you still can't abide by clean living you chose to go using one parent against the other by making up stories about the other parent to get your way. You are still that lazy Rebel. Unreliable." (my single underlining)

- [24] Mrs Ruth Dodd kept a diary. Police photographs show an open diary on the table used as a desk. It records the following at 1 January 2015:

“had a very quiet day.

I received a ph call from Vern said he's coming over to cut my throat you dog. I phoned 000. Then I went down to check the wood in the track [security in the sliding door] & found [LGF] lying on the floor between the wall and the mattress. I thought she was dead but on checking she began crying I just want to be left alone I don't want to talk to anyone. She tried to convince the police I made the story up. [LGF] spent the night talking to herself non stop & picking what she claims were worms in her flesh.”

- [25] At the space for 2 January 2015 was the following entry:

“early AM 6. A light shower of rain. I found a nectarine seed on floor in front of fridge & a few cherry trees [sic] in sink. So at least [LGF] did eat something but she waited until I went to bed. A wet orange spotted pair of undies were left on my Table – [LGF] took my Filleting knife down to her room. At 9.43 AM I went down & asked if she had a knife of mine in her room. She said yes she'd bring it up soon. Then she accused me of taking her phone. She claimed I always take it. I have NO interest in her phone & have never taken it.”

- [26] Dr Voita interviewed Vern on 13 March 2015. He told Dr Voita that after arguing with the defendant on New Year's Eve, he spent some time with the defendant in the afternoon of New Year's Day. They looked for her necklace, and found it, at the spot she said she had been bashed the night before. Vern said that he dropped the defendant at her mother's at about 4.30 or 5.00 pm and admitted that he pushed her out of the car because she did not want to go. He admitted that he rang the deceased lady on her landline at some point after that. He said he rang the mother's landline because the defendant did not answer her mobile. He said that at about 6.30 pm the defendant rang him on the landline and told him that her mother had locked her in the house and that the police were there, as her mother had told the police that he (Vern) had threatened to cut their throats.

The Morning of 2 January 2015

- [27] The defendant told all three reporting doctors that she woke up at about midnight and went to the kitchen to get a knife to cut some passionfruit which she wanted to eat with yoghurt. Each of the reporters either expressly states, or implies, that the defendant took the knife downstairs to her bedroom. She told Dr Voita that the knife in question was a “filleting and pairing [sic] knife”. The police photos of the defendant's bedroom show a yoghurt container and some cut passionfruit. The defendant told the psychiatrists that she discovered her phone was missing. She thought her mother had taken it. She told

Dr Heffernan that she felt angry and trapped because without her phone she could not ring Vern to come and pick her up.

- [28] The defendant told all three reporting doctors that on the morning of 2 January, on finding that Mrs Ruth Dodd was visiting one of her neighbours, she assumed that she was complaining about her. She called out to the neighbour that she should not take any notice of what her mother said. The defendant told Dr Voita and Dr Heffernan that she called out from the house. She told Dr Voita her mother had locked her in the house, as was her mother's habit. She told Dr Grant that after she killed her mother she had to search for the house keys to let herself out of the house.
- [29] The neighbour said she was talking to the deceased that morning at about 10.10 am. Mrs Dodd came to visit, and the neighbour asked if she was okay because she looked a bit pale. Mrs Dodd said she had just had a threatening phone call from the defendant's boyfriend – he had said he was going to stab her to death. The neighbour said the defendant was in the backyard and yelled at her mother and the neighbour over the fence while standing on a garden bed. The defendant then walked off, mumbling to herself. The police material shows that the neighbour was definite about the defendant being in the backyard, not locked in the house at the time she yelled.¹²
- [30] The neighbour said that the deceased lady told her that her filleting knife was missing after the defendant arrived the previous night, and that the defendant had told her (on enquiry) that she had it downstairs.
- [31] About an hour later (11.00 am) the neighbour heard yelling and screaming. Another witness heard an argument between two women at about 10.25 am at the deceased's address. She could identify the deceased's voice yelling and screaming and swearing, very angry. She thought the other participant was trying to calm the situation.

The Killing

- [32] The defendant's account to Dr Voita of the events immediately prior to the killing was as follows. She said her mother went to the next-door neighbour's house and was talking to her. She said she was locked in the house by her mother as she had been on a number of occasions. She said she yelled out to the neighbour not to trust her mother. Dr Voita's report reads:

“[LGF] stated she was in the kitchen and took the knife with her upstairs to her bedroom as she wanted it to cut a mango. She said it was a filleting and pairing [sic] knife.

She that [sic] she then went upstairs again and looked in her mother's room upstairs and saw a camera in her [mother's] room, which her mother had accused Vern of stealing. She stated that her mother came up the stairs and said, 'I am trying to help you and I have called the police'. She stated that she initially grabbed her mother by the neck and was shaking her. She then grabbed the knife which, was on the table. She stated that she said to her

¹² Statement paragraph 6 and an addendum statement from the neighbour, and statement of Cupitt.

mother ‘I am sick of this ... here’ and then stabbed her in the neck. She stated that she had not planned this in any way ... She stated that she recalled thinking at the time that she was sick of her mother calling the police because she had not done anything. She stated that her mother always acted like a victim and made up stories and said people stole things from her.” (my underlining)¹³

[33] The defendant told Dr Voita she thought this occurred around 11.00 am. She said that she knew what she did was wrong and she stated that she had not intended to kill her mother.

[34] The defendant told Dr Grant that after her mother asked for the knife on the morning of 2 January 2015 she returned it, “placing it on a kitchen bench”. Dr Grant was told that when Mrs Ruth Dodd returned to the house after visiting the neighbour the defendant became suddenly very angry with her and said something like, “I’m sick of you trying to hurt me”. She was angry because she had found some belongings in her house which her mother had said Dennis had stolen. The anger was also fuelled by other longstanding issues.

[35] The defendant:

“... describes suddenly grabbing her mother by the neck and squeezing her neck in a stranglehold. Her mother was shouting out that she was hurting her and they struggled. [LGF] said her actions were quite impulsive. She was not sure what she intended. She had not thought that she would want to kill her mother. Her thinking about her actions was not at all fully formulated.

During the struggle, [LGF] turned and picked up the knife from the bench, saying, ‘Here’s your fucking knife that you wanted’. She made a punching motion with the knife, not really aiming particularly for any part of her mother’s body, but the knife entered her mother in the neck and blood immediately spurted everywhere. Her mother went down to the floor and was very clearly dead. Nothing more had been said.” (my underlining)

[36] The defendant told Dr Heffernan that after visiting the neighbours her mother came back upstairs and told her, “the police are coming”. Dr Heffernan continued:

“She said she was scared, fearing a similar event to her previous interaction with police. [LGF] recalled becoming overwhelmed by anger and grabbing her mother round the neck, shouting ‘I am sick of you hurting me’. She recalled her mother saying ‘I was only trying to help you’. She said that they wrestled and ended up near the table where the knife was and at this point ‘I grabbed the knife and stabbed her and said “here is your fucking knife”’. [LGF] told me ‘I didn’t mean to kill her’. ‘I don’t know why I did what I did.’

...

¹³ I think Dr Voita has misunderstood the layout of the house. She assumes that the bedrooms were upstairs and the living areas were downstairs – see the underlined parts.

[LGF] told me that after she stabbed her mother she saw her fall to the ground and that she knew she had died because of the blood loss. ...”

- [37] The crime scene photographs show that the deceased lady was killed in the lounge-room. This is evident both from her position on the floor, but also the blood pattern on the wall and curtain. There is a discrepancy between accounts as to whether or not the knife had been left on the kitchen bench or on the table. The table is perhaps two metres from the position of the deceased lady’s feet; the closest part of the kitchen bench is perhaps four metres.

Section 268, Intention to Kill

- [38] The Prosecutor submitted that from the descriptions given by the defendant to all three reporting psychiatrists, but particularly from the description Dr Grant gave, underlined in the extract at [35] above, that there was a dispute of fact about whether the defendant had an intention to kill or do grievous bodily harm at the time of the killing. Such a dispute would prevent the Mental Health Court making a finding of diminished responsibility.¹⁴ While the defendant told the reporting psychiatrists that she did not intend to kill her mother, I do not think that she meant she was raising the defence of accident or saying that she stabbed without forming any intention to act. The doctors did not understand it that way.¹⁵ To the contrary, she told them that she was very angry with her mother; had strangled her, and had then picked up the knife and used it deliberately. Further, counsel for the defendant submitted, correctly in my opinion, that on the facts of this case there could not be any dispute that the actions of the defendant were intended at least to cause grievous bodily harm.

After the Killing

- [39] The defendant told Dr Grant that she showered and then searched for the house keys because she was locked in the house. Then she took her mother’s car, intending to drive to Castle Hill and kill herself. Then she decided that she needed to have some drugs before she could kill herself and went to see her dealers. After that, she said that she was driving around in a disorientated way looking for Dennis, even though Dennis was in prison. She told much the same thing to Dr Voita and Dr Heffernan.
- [40] There are numerous witness statements from this time. They bear on an assessment of the defendant’s state of mind at the time of the killing.
- [41] The 17 year old daughter of one of the defendant’s friends received a visit from the defendant sometime after 11.00 am. She thought that the defendant did not want to leave, even after being told her friend was not home. She thought she sounded desperate, but she did not really want to talk to her. She describes that, “there was something weird about [LGF] that day, more than usual. I can remember that as soon as possible I went back inside. I locked the front door behind me.”

¹⁴ *Re RWC* [2002] QMHC 15 per Wilson J, followed in *Hansen v Director of Public Prosecutions & Anor* [2006] QCA 396, [23].

¹⁵ Dr Voita, tt 1-30-32; Dr Heffernan, tt 1-76-77, and Dr Grant tt 1-50-53 and t 1-62.

- [42] A shop assistant recalls that the defendant came into the shop which she visited regularly. CCTV times put this visit as starting at 12.10 pm and finishing at 12.14 pm.¹⁶ She thought the defendant was acting “a bit weird, but she was always a bit strange”. She put her head down when she talked and said, “They took the only thing that I love away from me.” She said this a couple of times. The defendant also said, “They want to get my block of land off me but they won’t get it.” The defendant walked around in circles and asked, “What is this”, pointing to a chalkboard.
- [43] Then the defendant walked off. She got into a small blue car (which had belonged to her mother). She had trouble driving it. She hit a post and could not put the car into reverse. The shop assistant followed her out and asked whose car it was. The defendant said, “It’s hers and she hates me driving it”. The shop assistant thought she sounded very strange when she said this. The shop assistant tried to help her manoeuvre the car but could not. Eventually somebody from a nearby hotel came and assisted her. He had a reason to put his involvement close to 12.30 pm.
- [44] The defendant’s next stop was a Caltex service station where she bought energy drinks, a meat pie and a packet of cigarettes. CCTV showed that the defendant arrived at 12.44 pm and left at 12.47 pm on 2 January.

Statements made to Female Drug Dealer

- [45] The defendant’s male drug dealer said that the defendant arrived at their house around 1.30 pm and her hair looked damp. The female drug dealer spoke to the defendant in the kitchen. The defendant used amphetamine. The defendant said, “I will be going to jail for a long time.” She started rocking and she looked strange. She whispered to the witness, “I have taken care of one of my problems, I have killed my mother.” She demonstrated a strangling grasp. The defendant acted a stabbing motion with her hand.
- [46] The male drug dealer was in the lounge-room. His wife started sending texts to him relaying what the defendant was telling her. When the defendant went to the toilet the two dealers had a brief conversation. She told her husband there was a blue car parked down the road, so he went to look at it. He knew the car to be the defendant’s mother’s car and had never seen the defendant drive it. As a result of his concern he called triple 0 at 2.22 pm on 2 January 2015.¹⁷
- [47] The female drug dealer continued to talk to the defendant in the kitchen. The defendant said her mobile phone was missing when she woke up that morning. The defendant told her that she was using a knife and that her mother asked her for the knife to cut a mango. Her mother would not use another knife because her mother said that the defendant had her favourite knife. According to what the defendant said, this “set her off”.
- [48] The defendant made abusive remarks about her mother and said, “My mother and Vern are working to get [me] locked up and take my land from me.” This statement was likely

¹⁶ Statement of Hogan.

¹⁷ This is the time Dr Voita cites. I cannot see where she got it from, but it fits with the police witnesses Dobinson and Cheeseman who were tasked to attend the deceased’s home at 2.30 pm.

not a wholly psychotic belief.¹⁸ The defendant said something to the effect that she found things which belonged to her at her mother's house that she thought Dennis had taken, and which caused arguments between the defendant and Dennis. She had now discovered that it was her mother who had taken them. There is no evidence that this was a psychotic belief.

- [49] The defendant said she saw a psychiatrist once who told her that she could not remember anything before the age of five because she had been abused. The defendant said that she remembered her mother being pregnant but yet there was no baby from this pregnancy. She saw a picture of Vern's daughter who looked exactly like "what my sister would have looked like". The defendant said, "My mother got rid of my sister as a baby and gave her to Vern who raised her as a daughter."
- [50] Eventually the defendant said, "I had better take the car back to Ruth. I have had it for a while." She then left; unfortunately just before police arrived.
- [51] From the time her drug dealer rang the police, police were looking for the defendant and her mother's car. She was located at nearly 6.00 pm that night. There were sightings of her looking for friends or acquaintances and behaving as though she were lost or aimless. Presumably she was quite intoxicated with methylamphetamine. Just before police located her she went to McDonald's.

Conduct after Arrest

- [52] The police arrested the defendant for murder and immediately warned her. She was able to explain the warning accurately enough in her own words. She told them, in response to enquiries as to her fitness to be questioned, that she had been hit around the head on New Year's Eve. She accurately told police where a sharp was located in one of her pockets. She told the police that her brain, ears and head hurt and told them she was supposed to see a psychologist in a couple of days. She told police:
- "... I got told my life was over yesterday ... got told you're all finished. Your life's over. You're finished. And I'll make sure you lose every single thing. So far, they did. Oh, at least in the watch-house I won't get stalked and harassed and mentally and emotionally and physically and sexually tortured and abused. Just got to worry about my girls. He doesn't torture them. That's all that worried me ... my girls. You like your job?"
- [53] Generally, the conversation with police was inappropriate on her part. Dr Grant thought she sounded intoxicated, and fatuous – t 1-65. She would certainly have been intoxicated, having so recently used amphetamines.

¹⁸ Her mother had recently had her taken to a psychiatric ward for assessment. The evidence is that Vern had to be restrained by police as he tried to prevent this. The records at The Park show that the defendant did own land and it may not be too unrealistic to think Vern may have wanted it. While she was at The Park arrangements were made for the defendant's father to be her agent to deal with the land, and there does seem to be some element of prophylaxis in this.

[54] By 11.00 pm that night the defendant was much calmer. She was polite but minimally responsive when police attempted to conduct a formal record-of-interview. During the recording the defendant looks and sounds quite collected. She has put her hair into a bun and she very calmly and rationally explains her position to police. She explains that she wants to contact a solicitor because she understands that she is on a very serious charge. She explains this to police before they give her the formal warnings. She says that she knows the name of a particular solicitor. She says she is unsure whether she needs to nominate a particular solicitor now. If she does, she would nominate that person. However, she would prefer to have time to make enquiries to find another solicitor. After that, police take her through the lengthy formal warning process. She sits patiently and agrees to it, notwithstanding she has already made her position clear. Then, she reiterates her position and explains:

“Um, I don’t believe at the moment I am, I will say be honest here, I do not believe much at the moment, I believe I just experienced a huge a pretty much mental breakdown in the last, you know, say couple of months. And that I don’t believe that I am really, I should be putting myself in a you know, position to you know, yeah you know um ... make sound judgment, a lot of things have been very confusing for me so I don’t want to confuse you or myself any more and ...”

[55] The defendant has already expressed the hope that police would respect her decision not to talk to them. It can be seen that in this passage she is very rational and indeed there is a level of sophistication about her – she is astute to point out that she is acting not only in her own interests but also in the police officers’ interests – she does not want to confuse them.

[56] During the process of formally identifying the defendant in this interview, police ask her where she was born. This is after the time when she has indicated that she does not wish to speak to them unless she speaks to a solicitor first, and her answer must be viewed in that context. She says that she has been told that she was born in Townsville but she is not sure about that. This answer, and the odd prevaricating way she gives it, is capable of supporting the idea that she has in mind doubts about her parentage, although no doubt other interpretations are open.

Conversation with Law Enforcement Participant

[57] At the watch-house an undercover police agent (a LEP) was put into the cell with the defendant. Sometime around 4.00 pm on 3 January the defendant tells the LEP that her boyfriend is actually her father and that her mother “just went along with it” for three-and-a-half years – that is, just went along with the defendant having a sexual relationship with her father for three-and-a-half years. She said she became suspicious because her boyfriend and mother were talking, and then they put her in “the nut-house” so they could get together (she means sexually). She says she realised that her boyfriend looked exactly like her younger brother and had the same ears as she did. She realised that her father had never acted as though he were her father and “the penny dropped”. She expressed the view that her mother had known for 36 years (her age) and been lying to her all that time.¹⁹ She says that she now remembers her boyfriend from the time she was a child –

¹⁹ The defendant was 36 years old; Vern 44, and the deceased 71.

all her memories have come back. She saw evidence for her belief in the fact that her mother once remarked that her boyfriend had come into her life a bit late. Further, she thought that her boyfriend had more or less admitted the fact because he sometimes signed his texts “Papa Bear”.

- [58] In the context of her boyfriend’s culpability in all this, she says that her boyfriend is a paedophile²⁰ who abused her when she was a child and that her mother let him do this. She says Vern had Dennis put in jail. She says Vern set up the bashing on New Year’s Eve. She says her boyfriend was an ex-policeman and a “dog” and that the police were aware of the things he did but protected him.²¹ She says Vern lies about his age and she thinks he is about 60 years old.²² She says the worst part about all of that was that she really loved him.
- [59] In the context of how this has affected her she says, “They’ll probably lock me up and throw away the key” and then, “Who knows maybe I’ll get put in a mental ward and fucking filled full of drugs and turned into a fucking zombie (laughs). Who knows?”
- [60] She asks the LEP why she was in the watch-house. The LEP says that she was on fraud charges but she thought the police would not be able to prove it and explains why: the LEP’s boyfriend alleges she used his credit card, but how will the police prove this was without his permission? The defendant gives her the advice “Don’t talk about it then”. That is, she gives the LEP good advice in the circumstances postulated.
- [61] The defendant blames Vern for dumping her at her mother’s when he knew she did not want to go there. She says that as soon as Vern had Dennis put in jail he kept dumping her at her mother’s even though she hated that. She said: “It’s like he knew I would, it’s like he knew I would explode. It’s like he knew I would ... I would flip.” She describes that she “lost it. Lost it completely.” She describes that Vern and her mother were “pushing me and pushing me”.
- [62] The defendant says that she “lost the plot” and did something “very unthinkable”. She says, “Pretty much I had a fight with my mother and now she’s dead”. She says that:
- “They just him and her [Vern and her mother] they were just pushing me and pushing me. They knew exactly what they were doing playing with me. Oh your phone, I don’t know where your phone is. Isn’t it, hasn’t Vernon got your phone? ... fucking bullshit ... I fucking had everything taken away from me. And then Vernon just turned on me ... tells me and dumps me and then dumps me at the one place I never wanted to be. For that for a reason. I didn’t want to be there ... if you don’t go to a place it’s for a reason. You know what I mean? ... for a reason it’s because you can’t handle those ... handle it. You know because you can’t handle that person. Or you don’t like that place.”
- [63] Then she says:

²⁰ Vern has a criminal record, but no convictions of this type.

²¹ Vern has never been a policeman.

²² This is incorrect. Vern was born in 1969.

“Oh there’s no excuse. There’s really no ... oh well really I’ll get my psychologist because I ... I’ll get him to do a report because I’m ... he can do a report on everything that’s happened to me and they fucking use that report. They can use ... everything that’s happened to me ... I know it’s no excuse. I know I gotta take responsibility for what I’ve done. I know I’ve gotta take responsibility for the situation. ...”

- [64] Talking about her approach to being charged with murder, the defendant says, “I’m going to bring every fucking thing up ... I will drag everything out of the woodworks”. She makes many complaints about her mother which do not sound psychotic but, amongst them, lists that she let her have sex with her own father and did not tell her. She asks, “What kind of mother would let you do that? A sick one. A sick mother that’s let the father tamper with the baby.” She explains to the LEP, “I got borderline personality and don’t handle stress well. ... I snapped. I snapped because I don’t handle it ... I can’t handle stress. I can’t handle the bullshit.” She makes reference to Vern abusing her and says that was the reason, “I couldn’t even remember before I was five right ...”

Collateral Material as to Motive and State of Mind

- [65] There is some further material which might be thought to support a non-psychotic motive for the killing and to demonstrate a history of violence by the defendant. I will summarise that now.
- [66] In amongst the deceased lady’s papers are notes of the defendant being verbally aggressive to her and occasionally suggestions of physical violence by her.
- [67] On 4 January 2015 a passer-by told police outside the deceased lady’s house that the daughter of the deceased told him that she was going to kill her mother approximately six months earlier. The deceased lady did have other daughters, although it seems that his statement did most likely refer to the defendant.
- [68] A brother of the deceased lady had dinner with her on 16 November 2014. She told him that the defendant and Vern had been coming to her house demanding money and threatening her. She said that if she did not give them money they got nasty. The deceased complained that one of her sons wanted her house and threatened that if she did not give it to him he would burn it down with her in it. She thought that this son and Vern were going to kill her and Vern had said this to her face.
- [69] Another brother of the deceased said that the deceased complained that the defendant was always sneaking Vern into the deceased lady’s house when she stayed with her mother. The deceased did not want Vern in her house. This brother said that over the years the defendant had made threats to harm and kill her mother. This brother spoke to the deceased around Christmas 2014. The deceased said that Vern and one of her sons had both been threatening her. Vern was threatening her because she would kick him out of the house if she caught him there. Vern had told her that he was going to stab her in the

throat and cut her head off. The deceased lady said that one of her sons had threatened to kill her on several occasions since about November 2014.²³

- [70] One of the deceased lady's nieces gave a statement to police. On 22 November 2014 the deceased told her that the defendant was using drugs heavily and always asking for money and that Vern was controlling and manipulative of the defendant, which affected her behaviour towards her mother. Mrs Ruth Dodd had told this witness that the defendant and Vern were living with her and that she had asked Vern to leave but he would not. He had suggested that she move out instead. She said she was afraid of Vern. She further complained that one of her sons was asking her for money and had told her that he owned the house. She said the son had threatened to burn down the house with her in it if she did not move out.
- [71] One of the defendant's brothers described the defendant being physically violent towards her mother when she was a teenager. When he spoke to his mother at about Christmas time she told him that the defendant's behaviour was getting worse; she was having arguments with her and with Vern; Vern was stalking her, and that she was considering getting a domestic violence order against them both.
- [72] One of the defendant's daughters told police that she was aware that the deceased accused the defendant of verbally abusing her. Her grandmother also told her that the defendant and Vern got into physical fights which she found frightening. This daughter said that in October 2014 the defendant rang her and made accusations that she and her sister had slept with Vern. She was aware that the defendant had made accusations that the deceased lady, Mrs Ruth Dodd, was sleeping with Vern. The defendant's second daughter described similar things. She remembered that her mother would throw glasses, plates and cups at Dennis, and hit him with a closed fist. She recalled that Mrs Ruth Dodd told her that the defendant had stabbed Dennis. She described Vern being very violent, including physically violent to her mother.
- [73] Notes on the Justices Examination Order (JEO) file (see below) include:
- “Phone call from Mrs Dodd expressing concern about [LGF]. She received a call from Vern, [LGF]'s boyfriend, looking for her. He informed Mrs Dodd that he had taken her home from hospital when she went to see another friend Dennis, apparently she stabbed him requiring suturing. She also apparently ‘bashed’ a woman who asked Dennis for a cigarette and was apparently arrested by QPS. Vern has informed Mrs Dodd that Dennis is giving [LGF] ice and morphine.”
- [74] The Prosecutor submitted that when the threats which the deceased had reported regarding Vern Power, and in particular his threat to slit her throat the day before she was killed, are considered, together with the influence which Vern had on the defendant, there

²³ This son had been staying in the downstairs bedroom in November and December 2014. He had put nine kitchen knives between the mattress and the floor. He told police he did that because he was frightened his mother would attack him: she had waved a knife at him in anger. The police never had these knives examined for fingerprints. The defendant slept on this mattress. There was a base between the mattress and the floor. The knives were found between the base and the floor. In the absence of fingerprints, I am not prepared to infer that the defendant knew the knives were there.

may have been a motive on the part of the defendant to carry out Vern's wishes. The defendant's propensity sometimes to use violence was relevant to this. Alternatively, if the defendant believed the accusations by her mother were false, these circumstances might give a non-psychotic reason, ie., retribution, for the defendant to carry out what she regarded as the false accusation levelled against Vern the day before. In my view, this thinking is simply speculative.

- [75] Further, while the evidence which I have summarised as to the defendant's motive and state of mind and her propensity to violence is quite extensive, in my opinion it is not sufficient to seriously raise the prospect of a planned intentional killing. However, I do regard this evidence as relevant to the defendant's state of mind at the date of the killing because it shows the level of antagonism between the defendant and her mother and the rather desperate circumstances in which the defendant was thrown together with her mother for want of any other accommodation.
- [76] I turn now to the evidence of the defendant's interaction with mental health care professionals before and after the killing.

Psychiatric Admission 23-24 October 2014

- [77] The defendant's mother took out a JEO against her in October 2014. As it is recorded, her concerns were the defendant's mental state including "erratic behaviour, drug use and previous paranoia". Police had trouble finding the defendant. When they did, she was irritable and demanded a solicitor look at the JEO before she would engage in any assessment. She attempted to abscond and had to be physically restrained.
- [78] On admission on 23 October 2014 she was examined by a psychiatrist. Because she seemed to have no obvious mood or psychotic disorder, she was taken off the involuntary JEO but agreed to stay overnight on a voluntary basis. She was examined again on 24 October. Once again there was no evidence of any acute mental illness found and she was discharged. On 27 October 2014 a nurse saw the defendant as part of the follow-up post-JEO. It appeared to the nurse that the defendant was mildly intoxicated and that her thinking was slightly tangential at times, but she thought that may have been related to intoxication. The nurse could find no signs of mental illness and discharged the defendant from follow-up. She did make a note, "mother concerned re behaviour and bizarre thoughts".

Attendance on a Psychologist

- [79] In September 2014 the defendant contacted a counselling service which she had attended in the past, asking to speak to the particular psychologist she had spoken to in the past. There is evidence that this psychologist was the psychologist to whom she attributed the statement that sexual abuse before the age of five might lead to a lack of memory before that time. There is a note of this contact dated 15 September 2014:

"So this is an unusual phone call. [LGF] called saying she needed some help as she had had her identity stolen, she doesn't know what to do, someone is using her name for the doctor and the bank, someone has stolen her money. Someone keeps breaking into her apartment. ... She said she was seeing [the

named psychologist] but he said he can't help her anymore. She doesn't have a phone but you can call her on Van's [sic] phone, she said she is always with him ...”

- [80] There are records of the service unsuccessfully attempting to contact LGF and make an appointment for her from mid-October 2014, until finally on 23 December 2014 the defendant attended upon the psychologist who she had seen in the past. The psychologist's note was:

“Client presented as being agitated and emotionally distraught, claiming she wanted to resume counselling in relation to early childhood memories about potential sexual abuse as a child under five years of age. She also said that she remembered experiences of abandonment, when her mother was away and she still had it today, waking up at night in a panic and nobody was around her.

Client questioned whether the man she considered being her father, a former Vietnam veteran, was her real dad, as he looked differently. She said that she had questioned her mother about it, but she did not give her a clear answer.

Client also mentions that she misses her former boyfriend, with whom she still has sexual relations, as he was in prison for the last three months.” (my underlining)

Assessments of Mental State after Arrest

- [81] **By a Nurse.** At the watch-house the defendant was assessed by a nurse on 5 January 2015. Amongst other things, she said that she believed that her partner (Vern) was having an affair with her mother and also that her partner was her biological father because one of her brothers and partner had similar body parts, and her mother had said, “he came into my life too late”.
- [82] **By Dr Reilly.** The defendant was transferred to jail and seen by Dr John Reilly (now the Chief Psychiatrist) from Prison Mental Health Services on 15 January 2015. It is apparent that the examination was a detailed one. Dr Reilly returned and conducted another detailed examination the next day with another experienced forensic psychiatrist, Dr Neillie.
- [83] On 15 January 2015 the defendant told Dr Reilly that in October 2014 she had read a book “How to Unlock Your Subconscious Mind”. She told him that a psychologist had told her that because she could not recall what happened to her before the age of five years, she may have been sexually assaulted. She said that reading the book brought this back and she realised that Vern “was the face to a fantasy I'd had all my life”. Recently Vern had said, “You don't know who I am” and she had considered this had a special meaning. Further, she thought Vern's ears looked like her brother's ears. She described having visited a room and felt that she had been there before and that perhaps she had been taken away from her mother there. She said that she thought that the man who was married to her mother had never accepted her or her younger brother who “looked different” to the rest of the family.

- [84] After watching Vern communicating with her mother, she started to believe that Vern might have been her father, and might have abused her as a child. She accused her mother of abusing her. It was as though she had something to hide. Her mother looked like she was “always pregnant”. The defendant gives the psychiatrist the correct year of birth for both Vern and her mother.
- [85] She described that she could get thoughts from people around her “like they were interconnected in my mind”. She said that the government had the scientific ability to put thoughts in other people’s minds. She said she thought there were cameras watching over the whole world. She said sometimes she thought she was in an experiment where she was possibly put “with another family to see if I can remember things”.
- [86] She thought her mother had no soul and she thought she could usually tell whether people did have a soul. She could feel souls of dead people and gave specific instances where at particular locations in Townsville she thought there were the souls of women who had been raped, and a sacred site where Aborigines were buried. She said all these experiences began six months ago when she read the book. When she read the book she made a connection to the Egyptian moon goddess Isis. She also read a book about freemasons and realised that she “was linked to this universe”.
- [87] She told the doctor all about her meliodonitis (a serious skin infection from which she did suffer) and gave a quite sensible history of it. Then she said that she thought that she now had a flesh-eating infection related to a brain coral which she had found and that she knew that meliodonitis was from the sea and she thought that this infection was in her chest and, “I think it is affecting me bad”.
- [88] She gives quite a long and apparently non-psychotic history of her drug use and how that resulted in her losing fingers from her right hand.
- [89] She was assessed as having some pressure of speech and being fatuous. Her thought was noted as being coherent, notwithstanding its content. There were no perceptual disturbances evident. It was thought that her judgment was poor and her insight was minimal. Dr Reilly’s diagnosis was, “psychotic disorder likely with prominent delusions of reference and possible thought alienation in context of early onset substance use especially cannabis and more recent heavy amphetamine use”.
- [90] The next day, 16 January 2015, Dr Reilly asked the defendant again for the reasons she thought Vern was her father. She said she had the feeling that he might be her father; “It was a memory I got from when I was little”. She called him “Poppa Bear”. She said her mother resented her and punished her every night. The book, “How to Unlock Your Subconscious Mind” made her realise that her current behaviour was affected by past events. She was angry with her mother. Her mother would never tell her the truth and was “a bad, bad liar”. She was also angry with Vern because, if he was her father, why did he leave her? He had said to her for years that she did not know who he was. After reading the book she examined her own emotions and began to think she was an islander girl. She thought her mother did not really know the whole family history and said, “Who knows what we are really, I suppose the police will find out, they took my DNA”. She thought that perhaps she had come from a long line of royal blood that had “come out and

mated with islanders, maybe from Ireland”. She had told this to Vern and he had told her that she was a special person.

- [91] During this interview she told Dr Reilly that eight months ago she saw an object ascending, a beam of light, into something which could not be seen. Sometimes she saw horrible different colours that seemed to follow her. “It’s like there’s a different life up there, whoever it is they’re invisible, like the predator movie”. She said she could see these aliens or “very high up people” who wear invisible cloaks. She was pretty sure it was another life-form which was watching over her. They wanted to communicate with humans and with her, although they have not done so.
- [92] Dr Reilly initiated antipsychotic medication and began liaising with High Security In-patient Services.

Treatment at The Park

- [93] At The Park the defendant was diagnosed with “likely schizophrenia”. From 26 February 2015 she was treated by Dr Voita.
- [94] The defendant told Dr Voita she thought that Vern was having a sexual relationship with her mother. She had believed that since October 2014. Her mother told her that Vern was used to “being with a mother and a daughter”. She said that her mother had put her into the psychiatric unit in the Townsville Hospital in September 2014 and that this is when her mother had “got together” with Vern. She made allegations of sexual abuse in her childhood, interspersed with comments about Vern and Dennis.
- [95] The defendant told Dr Voita she started hearing voices in October 2014 when someone gave her synthetic ice. She said the voices told her to give away Dennis’s dog. She said she could still hear the voices, but they were decreasing and now sounded more like background chattering. She did believe that she received simple greetings from Dennis by telepathy, for example, that he would say good morning to her every morning. She thought that before her arrest she received messages from the television and radio and that the television and radio were talking about her, but this experience was no longer present. She said she could feel other people’s energies and read their minds.
- [96] Dr Voita obtained a history of longstanding use of illegal drugs, including amphetamine, cannabis, morphine and benzodiazepine. The defendant told her she had become addicted to heroin when she was 20 years old. She told her that until 2010 she functioned well enough but then became impaired because of the extent of her substance use. She said that she used amphetamine about three times a week from 2012 until the day of the killing and that she had been abusing morphine since 2010 and using cannabis several times a week (a few cones every couple of days).

Dr Voita’s Opinion

- [97] Dr Voita did not think that any one of the defendant’s capacities was impaired by schizophrenia at the time she killed her mother. She said:

“In my opinion [LGF] was not impaired or deprived of any of the relevant capacities in relation to the alleged offences.

There appears to be long standing animosity and conflict between [LGF] and her mother. Although there is evidence that [LGF] did hold delusional beliefs about her mother at the time of the alleged murder, I am of the opinion that her actions of the day were not driven by her psychotic illness. [LGF] was under the influence of amphetamines and morphine at the time of the alleged offence and by her own account did not intend to kill her.

It appears that an argument ensued related to [LGF] having been locked in the house by her mother and [LGF] having found a camera her mother had accused her ex-partner of stealing. [LGF] stated that she was also angry as her mother was threatening to call the police. Based on her account of the events, [LGF] impulsively stabbed her mother in the neck with a knife but appears to have not preplanned the harm her mother. She was clearly aware of the wrongfulness of her actions and could control her actions. There does not appear to be any motivation for the offence related to symptoms of her mental illness.” (my underlining)

- [98] In the passage set out above, Dr Voita looks to whether psychotic illness “drove” the killing and whether or not there was a psychotic motivation for the offending. In some cases there is such a clear connection between a defendant’s psychotic beliefs and the offending that the beliefs can be seen to motivate, cause, or drive, the offending. In such cases that evidence is clearly relevant to the question of whether at the time of the offending the defendant was deprived of, or impaired in, any of the relevant capacities. However, the legal question for this Court is never whether the offending was driven by psychotic beliefs. The legal question for the Court in this case is whether or not at the time of offending the defendant was substantially impaired in one of the three capacities made relevant by s 27 of the Criminal Code.
- [99] It does appear that Dr Voita gave her opinion based on a wrong enquiry. I do not believe this was simply a matter of words or expression on the part of Dr Voita, for she said this in her oral evidence:

“I suppose one of the issues for me were that in spite of the fact that I thought she was fit for trial and wasn’t impaired or deprived, I still recommended that the matter be referred to Mental Health Court because I was aware that she actually had delusions about her mother, and it seemed a bit incongruous that there was sort of no relationship. But I interviewed her about that very issue a number of times, and she still gave this kind of account. ...”²⁴

Further, Dr Voita said she did not support a defence of diminished responsibility “because I still couldn’t link the account to the psychotic symptoms ...”²⁵ See also her comment, “... she did have psychotic symptoms about her mother, but I can just rely on the account that she gave me as to her motivation.”²⁶

²⁴ t 1-23.

²⁵ t 1-24.

²⁶ t 1-28.

[100] Further, in her oral evidence Dr Voita said that although she accepted the defendant was psychotic and that she had psychotic symptoms which incorporated her mother:

“I did not form the view that her illness substantially impaired her. I think it was of a minor sort of relevance, but she was so intoxicated at the time that I actually formed the view that that was more pertinent or a very large component of what occurred.”²⁷ (my underlining).

It was this comment about the defendant’s state of intoxication which led to exploration of her understanding of the defendant’s drug use at about the time of the killing. That in turn revealed that Dr Voita had no accurate or clear understanding of what drugs the defendant had taken at or about that time, see [14]-[17] above.

Dr Grant’s Opinion

[101] The defendant told Dr Grant that she had been experiencing psychotic symptoms for at least six months prior to the killing. She thought she could hear Dennis talking to her even though he was in jail – he would say things like, “Good morning babe” in her head. She gave away Dennis’s dog because voices told her that it was a police dog and had a bug implanted in it. She believed she could read other people’s minds. She thought that Vern was her biological father and she thought that her mother had had an affair with Vern. She thought that Vern’s fingers, face and other body parts looked like her or her brother. She thought people were wearing invisibility cloaks. She thought that there were predators coming from spaceships and that she could telepathically communicate with these creatures. She would stare at the stars and believe that these creatures were looking at her. She thought she could see their invisible outlines. She had an idea that freemasons had created her as a clone and she believed that some moles on her back were chisel marks put there by freemasons when they made her.

[102] Dr Grant’s opinion was as follows:

“In my opinion, that psychotic illness would in itself have been causing significant impairment in [LGF’s] capacities to control her actions and to know that she ought not do the act. In my opinion, the degree of impairment would be sufficient to be labelled substantial according to the relevant sections of law.

Whilst there was a long history of conflict and disagreements between [LGF] and her mother, which would be giving rise to anger and resentment, I believe the paranoia and delusional beliefs which had involved her mother, at least intermittently over a period of six months, would have had a significant influence upon her mental status and behaviour at the time and that that psychotic process was therefore a necessary factor in the offending behaviour. This is particularly relevant given that [LGF] has no history of previous violence, either generally or in the community or to her mother specifically.”

[103] In his oral evidence Dr Grant elaborated:

²⁷ t 1-3.

“I think if you consider that this woman had been getting increasingly unwell over a six-month period, that she had chronic delusions relating to her mother – and other people, but specifically relating to her mother. She believed that her mother was doing all sorts of things to undermine her relationships and her life and damaging her life in various ways and she believed that her mother was having an affair with the man that she was also seeing and that she was perhaps that person’s child and so her thinking was substantially impaired by those beliefs, I believe. But they were there, they were – if not being expressed at that moment [of the killing], they were a substantial part of the way she would be able to react to her mother because of those underlying delusions and beliefs, which were expressed immediately afterwards in the cells and even though she wasn’t saying, you know, that, “I’m Vern’s child and you had an affair.” at that moment, there was all sorts of conflicts going on with her and those things would’ve been looming reasonably large in her mind on a constant basis, I think. So I think you can’t – I would say that they were substantial factors in motivating her anger and rage, which might’ve also been triggered by trivial things and conflicts about the knife and about what she was saying to neighbours and whether she’d stolen Dennis’ camera and so on and so on. All of those things had happened on that day. ... So there’s a lot of evidence that she was very disordered in her thinking and her mother loomed large in that thinking and that it would’ve contributed substantially, in my view, to the loss of control and the loss of her ability to understand that she ought not do that to her mother.” – t 1-48.²⁸ (my underlining).

[104] Dr Grant thought that the defendant was intoxicated at the time of the killing with both amphetamines and morphine. His view was that while amphetamines had not been taken for close to 30 hours, so that the intoxicating effect of them would be beginning to reduce, it would still have been present. Similarly, the effect of the morphine taken the night before would be reducing but “still possibly significant, and that would be more likely to be sedative, but could also be having some disinhibiting effect ... The amphetamines are more likely to increase anger, aggression, impulsivity and so on so that those two drugs are certainly relevant, but I don’t think they could be seen on their own, given the underlying psychosis and history of conflict.” – tt 1-57-58. See also t 1-62 on the effects of morphine.

[105] As to the interaction between illness and intoxication Dr Grant said:

“MR TATE: Thank you. Doctor, my last question – and as I understand your report, the abnormality of mind, the psychotic process, which is indicated substantially impaired, didn’t require the addition of the intoxicant or the intoxication?---No, I think that – that substantial impairment was there. The intoxicants would’ve contributed to some extent to loss of control, but I think that there was a substantial impairment from the illness itself.” – tt 1-48-49.

²⁸ See also his explanation of much the same thing at tt 1-56-57.

Dr Heffernan's Opinion

[106] Dr Heffernan also thought that the defendant suffered from schizophrenia. His conclusions were as follows:

“In relation to the charge of murder I believe [LGF] had a number of processes occurring at the time that this offence occurred.

She was angry with her mother for reasons that were not psychotic including a perception of mistreatment from her mother and the alleged abuse of her daughter. She was also distressed by the perception that her mother unjustly involved mental health services and police in her apprehension. She also had psychotic beliefs that included the belief that her mother may have had a relationship with her partner Vern, that Vern may have in fact been her father and also the bizarre belief that her mother and Vern were somehow in a conspiracy to have her liver removed.

In the period prior to the alleged offence [LGF] had also used substances; amphetamines by her account at approximately 0500 on the morning of New Year's Day (approximately 28 hours prior to the alleged offence) and had used morphine approximately 16-18 hours prior to the alleged offence. [LGF's] account of the effect of these substances was that they had prolonged intoxicating effects upon her. She reported that the use of amphetamines would generally keep her feeling intoxicated for several days. It is therefore likely that intoxication with these substances impacted on her mental state to some extent and affected her judgement.

The act itself was an impulsive unplanned act that appeared to be motivated by anger towards her mother and impaired judgement related to substance use. I believe the contributions to the anger included the long term impacts of childhood and adolescent trauma and the perceived neglect and mistreatment from her mother. The more proximal stressor of anger and fear associated with her belief that her mother had contacted the police and, finally, the anger that resulted from her psychotic beliefs.

In summary it is my view that [LGF] had a mental disease and I believe there were a number of contributing factors including her mental disease that impaired her capacity to know that she ought not do the act. I do not believe that she was deprived of any of the capacities.

Diminished Responsibility

It is my view that [LGF] had an abnormality of mind and this included Schizophrenia and Post Traumatic Stress Disorder (PTSD). At the time of the alleged offence she had psychotic symptoms and also the chronic impact of symptoms of PTSD. I believe that the symptoms of mental disorder were sufficient to cause a substantial impairment in her capacity to know that she ought not do the act. These factors would have been significant contributors to the mistrust, sense of perceived mistreatment and anger that she felt towards her mother.

Intoxication was also likely to have been a factor to some extent and would have further impaired her capacity.

Therefore I believe that she was substantially impaired of the capacity to know that she ought not do the act as a result of an abnormality of mind.”

- [107] Dr Heffernan originally said he thought the defendant’s capacity to know she ought not do the act was impaired but that her capacity to control herself was intact. Then he accepted that on the evidence her capacity to know she ought not do the act was not impaired.²⁹ Then he contradicted himself again, but settled on an opinion that due to “fear and anger” she was impaired in her ability to reason about the acts.³⁰ He saw the anger and fear as substantially a product of her delusions.³¹

Section 269 – Factual Uncertainties Bearing on State of Mind

- [108] This Court cannot determine questions which are for a jury on a criminal trial. It must have a safe factual basis for decision. The Court of Criminal Appeal dealt with this point in *R v Schafferius* [1987] 1 Qd R 381. After explaining his reasons, Thomas J (with whom the other members of the Court agreed) concluded as follows:

“Proceedings before the Mental Health Tribunal afford a clear example of proceedings that call for the application of a principle that is sometimes called the Briginshaw principle, namely that the degree of satisfaction to a civil proceeding may vary according to the gravity of the fact to be proved. ...

The above considerations lead to the view that there is no warrant for the application of a standard of proof beyond reasonable doubt, but that findings should be made only in reliance on clear and convincing evidence, and upon a firm satisfaction consistent with the gravity of the proceeding. In short, [a proceeding in the Mental Health Tribunal] is a proceeding at the ‘grave’ end of the Briginshaw principle. Indeed, in cases where it seems that the facts are so in dispute that it would be unsafe to make a determination the Tribunal is required to stay its hand (s. 33(2)). This is consistent with the view the Tribunal should proceed to a finding only in clear cases, and that it is not intended to be a substitute for a criminal trial, although in appropriate cases it will render a criminal trial unnecessary. Quite often the precise details of the alleged crime will be critical to the assessment of the alleged offender’s mental condition at the relevant time, and if those details are in any way in dispute the only way to resolve them is by the adversarial scrutiny of a criminal trial before a jury.” – p 383.

- [109] Section 33(2) of the Act being spoken of there provided:

“If in a reference made to it the Mental Health Tribunal is of the opinion that the facts are so in dispute that it would be unsafe to make a determination such as is referred to in provision (a) or (b) of subsection (1), it shall refrain from making the determination but shall inquire and determine whether the person in question is fit for trial.”

²⁹ t 1-80.

³⁰ t 1-83 and t 1-89.

³¹ t 1-89.

[110] The Court of Appeal considered this dicta in *Attorney-General (Qld) v Kamali* (1999) 106 A Crim R 269, [9]. It was said:

“The standard of proof in these matters is on the balance of probabilities with the *Briginshaw* qualification, as confirmed in *Schafferius*. *Schafferius* should not be read as excluding a finding in all but the clearest of cases. Certainly the gravity of such proceedings warrants the Tribunal’s exercising caution. But if the judge constituting the Tribunal is sufficiently satisfied that there is evidence which, if accepted, would warrant the finding, and believes that the evidence should be accepted, then the finding should be made, notwithstanding that there may be other contrary evidence in the case which the judge is disinclined to accept.”

[111] Then in *DAR v DPP (Qld) & Anor* [2008] QCA 309, [83]ff, the Court of Appeal said:

“The first point to be made here is that this Court in *A-G (Qld) v Kamali* did not deny that the cautious approach suggested in *R v Schafferius* was the correct approach. The MHC did not err in approaching its fact finding function by searching for clear and convincing evidence of the direction in which the balance of probabilities tilted.”

[112] There are three significant factual disputes in the evidence about the events prior to the killing.

[113] First, the defendant gave a version of events to all reporting doctors which contained some details about her being locked in the house by her mother prior to the killing and being without her mobile phone because her mother had taken it. She said without her phone she could not ring Vern to come and get her. At The Park she said: “She [the deceased] walked around with the keys in her pocket and locked me up, took my phone, took my freedom.”³²

[114] It seemed to me that this feeling of being trapped, as she put it when she spoke to Dr Heffernan, must have been relevant to the defendant’s state of mind at the time of the killing. However, the neighbour’s statement raises a dispute about whether the defendant was locked in the house on the morning of 2 January 2015. Further, wherever her mobile phone was, she used the landline to speak to Vern the evening before the killing.

[115] All the reporting psychiatrists described the long-term unhappy relationship between the defendant and her mother. All of them described the defendant as being angry at the time she killed. All the reporting psychiatrists recognised that some of the anger which the defendant felt at the time of the killing was due to the real, non-psychotic, circumstances that she had been “dumped”, as she put it, at her mother’s house by Vern; did not want to be there, but had nowhere else to go in circumstances where the relationship with her mother had been characterised by antagonism since she was a young child. There had been recent antagonism with her mother over Vern’s alleged threats to her mother; the whereabouts of the kitchen knife, and whereabouts of the defendant’s mobile phone. None of the reporting psychiatrists believed the defendant was deprived of any capacity

³² t 1-19 (28 June 2018).

at the time of the killing, that is, while she was psychotic, they did not understand her to be totally out of touch with reality.

- [116] Secondly, when regard is had to the crime scene photos, the killing cannot have happened as the defendant told the three psychiatrists who examined her: she did not stab her mother next to the table or the kitchen bench. One of the difficulties encountered when trying to explore this factual dispute with the reporting psychiatrists was that they reacted by looking about for tables in the photographs which were consistent with the defendant's version of events.³³ Because the reporting psychiatrists were never briefed with the crime scene photos, no-one had asked what the defendant meant by table or kitchen bench when she gave her history to each of the reporting psychiatrists. I do not think this uncertainty in the factual matters assumed by the reporting psychiatrists disappears by speculating as to whether or not when she said table the defendant actually meant coffee table, or when she said kitchen bench, she actually meant a set of wire drawers at the junction of the kitchen and the hallway. To begin with, that sort of speculation rather betrays a lack of forensic attitude in the minds of the reporting psychiatrists. Their job was not to search around for some circumstance which might conceivably make the defendant's version true; it was to look objectively at the evidence, including the plain words the defendant used to them. But in any event, that sort of speculation simply highlights the fact that the factual basis as to the events immediately prior to the killing was not clear. This is something which might bear significantly on the defendant's state of mind at the time of the killing, see the dicta in *Schafferius*, "Quite often the precise details of the alleged crime will be critical to the assessment of the alleged offender's mental condition at the relevant time, and if those details are in any way in dispute the only way to resolve them is by the adversarial scrutiny of a criminal trial before a jury."³⁴ Here, one is left with the unsatisfactory position that one can only speculate as to the exact circumstances of the killing.
- [117] Dr Heffernan found it "hard to imagine" that he would arrive at a different conclusion as to impairment even if the killing happened in a different way which, for example, may have had the defendant strangle her mother in the lounge-room; desist, and then walk to the kitchen or the hallway table and then back to her mother to use the knife.³⁵ Dr Grant's opinion was to the same effect,³⁶ although I must say, I was left with the impression that Dr Grant really had not come to grips with what was being put to him both about this issue and the issue of the locked house and the denial of access to a telephone.³⁷
- [118] On this point I think my assisting psychiatrists also struggled, but ultimately thought that, even though the precise events immediately preceding the killing were not known, the fact that the defendant was suffering from a psychosis at the time meant that, however those events unfolded, she was substantially impaired.³⁸ This idea is not terribly satisfactory, but perhaps it is a case where lawyers simply have to accept that psychiatrists giving psychiatric opinions about the matter can feel certain enough that knowledge of

³³ There was a coffee table near the place where the [deceased lady] lay dead on the lounge-room floor. There was also a very low set of wire baskets with a solid top somewhere near the wall which might or might not be closer to the deceased lady's body than the table used as a desk.

³⁴ Above, p 383.

³⁵ t 1-21 (28 June 2018).

³⁶ t 1-7, t 1-10 and t 1-15 (10 August 2018).

³⁷ tt 1-10-12 (10 August 2018).

³⁸ t 1-20 per Dr Phillipson and t 1-23 per Dr Davison (10 September 2018).

the events immediately preceding the killing are not necessary for them to come to a conclusion about impairment. On that basis I am prepared to decide this reference notwithstanding these first two factual uncertainties.

- [119] The third, and last, area of factual uncertainty arises because there are differences about the delusions which the defendant reported to the reporting psychiatrists. It will be remembered that Dr Grant examined the defendant on 23 December 2015. That was one year after the offending. She had been discharged from The Park and returned to prison because she no longer needed to be treated as an in-patient. Dr Grant was the first doctor she had seen who was not a treating doctor. Dr Grant (as is normal practice) explained the purposes of his assessment to the defendant. Having regard to the defendant's statements to the LEP, and her statements to the police at the time of her arrest, I have no doubt that the defendant understood the significance of Dr Grant's report. She reported to Dr Grant several delusions she claimed to have held at the time of the offending, which she had previously reported to no-one. These included that her mother was trying to poison her. Her mother was carrying out operations in the backyard taking out people's livers to sell. Her mother and Vern were in league to take her liver. Sometimes when she saw Vern eating meat, she thought he was in fact eating human tissue.
- [120] The defendant spoke to Dr Heffernan on 3 June 2016 – six months after she spoke to Dr Grant. Again the report was for use in this Court proceeding and LGF was aware of that. The defendant told Dr Heffernan that she found it difficult to believe “how crazy I was” at the time of the offending. She told him she had psychotic symptoms from around 2011 and that they escalated so that they were prominent and distressing from mid-2014. She told him that before the offending she suffered from a delusion that her mother and Vern were collaborating to remove her liver and allow a liver transplant for Vern.
- [121] I suspect the veracity of the reports to Dr Grant and Dr Heffernan of the delusions mentioned in [119] and [120] above. Had the defendant really believed that her life was in danger because her mother and Vern were planning to remove her liver, I cannot credit that she would not have mentioned it at some time before seeing Dr Grant. Dr Grant was not sure how to explain this.³⁹ One of the possible explanations must be that she was dishonest in the account she gave to the reporting psychiatrists.
- [122] The defendant has Borderline Personality Disorder. Personality traits referable to that disorder include dishonesty and manipulation. She has several criminal convictions herself and has lived amongst people who have criminal histories. At all times she has been well aware of the legal issues which bore on her rights. She told the police who presented the JEO that she wanted a solicitor to look at it. She gave the LEP good advice to stay silent when she spoke to police. She told police who conducted the record-of-interview that she would remain silent and that she needed a solicitor. She says these things before she is given her rights. For all that she is inappropriate and intoxicated on her arrest, she does not say anything which harms her legal position. She tells the LEP that she might end up in jail for a long time or might end up on a “mental ward”. She tells the LEP that in defending the charge of murder she will rely upon her psychiatric condition; that she will bring everything up and “drag everything out of the woodworks”.

³⁹ Voita, t 1-23; Grant tt 1-42-43.

- [123] These matters were explored with Drs Grant and Heffernan and both of them considered that their opinions would remain unchanged, even if they had regard only to the psychotic symptoms which had been reported by the defendant to others.⁴⁰ Prime among these delusions was the delusion that Vern and the defendant's mother had been having a relationship; that the defendant was in fact Vern's child; that there were other children of the relationship between Vern and the defendant's mother; that Vern had abused the defendant when she was a child and that her mother had been complicit in this. My assisting psychiatrist, Dr Phillipson, described these delusions as "very deeply disturbing delusions about the defendant's sense of self" – t 1-26. Dr Voita agreed with that.⁴¹
- [124] I am satisfied to the high standard described in *Schafferi* that the defendant did have, in the months before the killing, deteriorating mental health and was experiencing the delusions described at [123] above as to her mother and Vern. There is evidence concerning the JEO and the notes of conversations with the psychologists' service, that the deceased lady was, from October 2014, reporting that the defendant was experiencing a deterioration in her mental health. It is in October 2014 that Dennis was imprisoned and the defendant was essentially homeless from that time. The instability, and the need to stay with either her mother or Vern can, I think, be seen as circumstances contributing to a deterioration in the defendant's mental health. Assisting psychiatrist Dr Davison discussed this in his advice to me. The fact that this deterioration involved the defendant becoming psychotic I think is evidenced in the letter which the deceased lady wrote to the defendant dated 30 December 2014. She spoke there of the defendant making accusations based on her imaginings and that the defendant now believed her imaginings, see [23] above.
- [125] The defendant herself gave a history that her mental health began deteriorating in about October 2014. This was the history she gave to the psychiatrist who saw her in Townsville on the JEO. That she had a genuine belief to this effect is evident in her attempts to see the psychologist, referred to above. I think that these attempts from September through to December 2014 also demonstrate a level of disorganisation on the part of the defendant. Even though she wanted to make an appointment, she had great difficulty actually making one and attending it.
- [126] Crucial to my being satisfied about delusions described at [123] above are the psychologist's notes of 23 December 2014. I think it clear that the psychologist has not understood the defendant's presentation the way the evidence before this Court enables it to be understood. The defendant presented as "agitated and emotionally distraught". She spoke about early childhood memories about potential sexual abuse when she was a child less than five years of age. The significance of that as an integral part of the delusion that Vern was her father and abused her as a child is evident in what she tells the female drug dealer immediately after the killing; the LEP after arrest, and Drs Reilly and Neillie soon after arrest. Further, the note the psychologist made on 23 December 2014 clearly raises the defendant's belief that her mother's husband was not her real father. Again this is central to the delusion she had formed about Vern and her mother. The part of the note

⁴⁰ Grant, t 1-50 and t 1-62. Dr Voita said that had she obtained the more flamboyant history of persecutory delusions concerning the defendant's mother, she would have considered that there was "at least some impairment" of the defendant's capacity to control herself at the time of the killing but would still not have found a substantial impairment – tt 1-24-25.

⁴¹ t 1-33.

“as he looked differently” is, in my view, very likely to be related to the sort of comments which the defendant makes to the drug dealer, the LEP and Drs Reilly and Neillie – that there are similarities in features such as ears, etc, between Vern, the defendant’s siblings and Vern’s children.

[127] Whatever scepticism I may have about the defendant’s honesty and reports to Drs Grant and Heffernan, I cannot credit that eight or nine days before the killing the defendant attended upon the psychologist in order to lay a false trail, in effect fabricating a psychiatric defence she planned to use after she killed her mother. The defendant was by that time effectively homeless and disorganised. I also note that the defendant’s daughter was aware the defendant accused the deceased of sleeping with Vern – see [72] above. For these reasons I do not think the third factual uncertainty I have outlined means that s 269 of the Act prevents me dealing with the reference.

[128] Once it is accepted that the December 2014 attendance upon the psychologist was a genuine one at which the defendant was distraught and describing matters central to the delusion she held about her mother and Vern, I do not think there can be any doubt that she held this delusion at the time of the killing. She does not make any reference of it operating on her mind at the exact moment of her attack on her mother. However, it is evident that it was very much in her mind at about this time: the attendance on the psychologist shows this, as do the statements she made to the female drug dealer after the killing and to the LEP in the watch-house. In those circumstances, I accept Dr Grant’s opinion, which I have outlined at [103] above, that the holding of this delusion must have had a substantial effect on the defendant’s mental state when other more mundane matters triggered her becoming angry, and then full of rage, with her mother at the time of the killing.

[129] Both Drs Grant and Heffernan talked about the defendant killing in a psychotic rage. I accept the advice of Dr Phillipson, my assisting psychiatrist, that this must be an overstatement; if the defendant killed in a psychotic rage, one would expect the psychiatric opinion would support unsoundness. Nonetheless, the defendant was certainly very angry at the time she killed. It seems to me that the capacity which was impaired was the capacity to control herself, rather than the capacity to know that what she was doing was wrong. Both to Dr Heffernan and to Dr Grant she describes an impulsive, angry act. Both LGF’s counsel and the Prosecutor agreed in oral submissions that they saw the case in terms of capacity to control, rather than capacity to know that the defendant ought not do the act. Again, Dr Phillipson’s advice to me was that he preferred that part of Dr Grant’s view which was to the effect that the capacity which was impaired was the capacity of control.

[130] Particularly I note the version which the defendant gave Dr Voita involved her saying that she knew at the time of the killing that what she did was wrong. I note the confusion in Dr Heffernan’s evidence, referred at [107] above. At least part of his inconsistency was due to the Crown Prosecutor putting to him matters which illustrated that the defendant did in fact know that what she did was wrong.⁴² The defendant’s own account

⁴² Part of the difficulty Dr Heffernan had was that, rather than address the statutory test: whether or not the defendant had the capacity to know she ought not do the act, he asked questions about morality, and addressed the topic of whether or not at the time of the killing the defendant could have reasoned with a moderate degree of composure. This latter concept certainly comes from the case law concerning the capacity to know one

of herself was that she “lost it completely” when Vern and her mother were “pushing me and pushing me”; that she lost the plot and that she snapped.⁴³

- [131] My assisting psychiatrists advise I ought prefer the evidence of Drs Grant and Heffernan. In all the circumstances, my finding must be that the defendant’s state of mind at the time of the killing was such that her capacity to control her actions was substantially impaired by her illness.

Current Circumstances

- [132] I have a report from Dr Mohiuddin, a psychiatrist with the Prison Mental Health Service. He reports that the defendant is currently diagnosed with schizophrenia and treated by the Prison Mental Health Service in jail. She has been stable since she was discharged from the High Secure unit back to prison. She is insightful as to her illness and was taken off an involuntary treatment order in March 2016. Since then her engagement with Prison Mental Health Services has been voluntary and satisfactory. Because she is in prison she is abstinent from drugs. Outside the controlled setting of prison she would be vulnerable to drug and alcohol abuse and relapse of her mental illness. Currently she is stable and she is fit for trial.

Orders and Determinations

- [133] In relation to the charge of stealing, the defendant was not of unsound mind at the time of the offending; is fit for trial, and the proceedings should continue according to law.
- [134] In relation to the charge of murder, the defendant was not of unsound mind at the time of the killing; was of diminished responsibility at the time of the killing, and is fit for trial. Proceedings for manslaughter ought continue according to law.

ought not do the act complained of. But it is a common thing in the Mental Health Court for reporting psychiatrists to treat it as definitive and not look to how the statute defines the capacity. It is something which might be useful to consider, in some cases, when testing whether or not the capacity to know one ought not do the act is considered. This case is a good illustration of why the dicta ought not be used in substitution for the capacity itself. Someone who is impaired in the capacity to control themselves because they are enraged will not have the ability to reason with a moderate sense of composure. This does not mean they are impaired in their capacity to know they ought not do the act.

⁴³ See paragraphs [61]-[64] above.