EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS]

IN THE DISTRICT COURT
AT AUCKLAND

CRI-2017-004-001040
[2018] NZDC 3466

NEW ZEALAND POLICE
Prosecutor

v

[HINE JACKSON]
Defendant

Hearing: [removed]

Appearances: Sergeant M Royal for the Prosecutor
Ms S Abernethy for the Defendant

Judgment: 26 February 2018

JUDGMENT OF JUDGE J JELAS
(Criminal Procedure (Mentally Impaired Persons)Act 2003 s 20)

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[1] Ms [Jackson] has been charged with Crimes Act assault on date. She entered a not guilty plea on 14 March 2017.

[2] Two specialist reports have been prepared on the issue of whether Ms [Jackson] is not guilty of the assault because she was insane at the time the assault occurred.

[3] The issues for determination are:

(a) Is the issue of Ms [Jackson]'s capacity able to be determined under s 20 Criminal Procedure (Mentally Impaired Persons) Act 2003 (CP(MIP)Act).

(b) If it is, is Ms [Jackson] not guilty on account of insanity.

Section 20 CP(MIP)Act.

[4] The issue of Ms [Jackson]'s sanity at the time of the assault can only be considered under s 20 of the CP(MIP)Act if the criteria under s 20(2) is satisfied. That criteria is:

> **20 Finding of insanity:**
>
> (2) Before or at a trial, the Judge must record a finding that the defendant is not guilty on account of his or her insanity if—
>
> (a) the defendant indicates that he or she intends to raise the defence of insanity; and
>
> (b) the prosecution agrees that the only reasonable verdict is not guilty on account of insanity; and
>
> (c) the Judge is satisfied, on the basis of expert evidence, that the defendant was insane within the meaning of section 23 of the Crimes Act 1961 at the time of the commission of the offence.

[5] I am satisfied criteria (a) and (b) above have been meet. Ms Abernethy alerted the Court of the intended defence some time ago and hence the two specialist reports were prepared. The insanity defence is also the basis for her memorandum of 25 February 2018.

[6] The police were hampered in giving advance notice of their position on Ms [Jackson]'s sanity as the latest report[1] was not provided to the police until today's hearing. After sufficient time to consider the content of both reports, [the sergeant] agreed the only reasonable verdict was not guilty on account of insanity.

[7] The final step is whether I am satisfied that Ms [Jackson] was insane as defined under s 23 of the Crimes Act, at the time of the assault.

Crimes Act – s 23 – disease of the mind.

[8] The first step to an insanity finding under s 23 of the Crimes Act is whether Ms [Jackson] suffered a disease of the mind at the time of the assault.

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[1] Report of Dr [name removed] dated 22 February 2018.

[9] I have read reports from [a consultant psychiatrist] dated 28 August 2017 and Dr [name removed] dated 22 February 2018. Ms [Jackson] has a history of severe mental ill-health.

[10] The present charge is not Ms [Jackson]'s first appearance in a criminal Court. She has a total of nine prior convictions, two for violence. While those charges were being prosecuted, Ms [Jackson] was admitted to the [psychiatric clinic] on [date deleted] 2015. She was treated for a manic episode in the context of the bipolar affective disorder. All charges resulted in a committal to the [psychiatric clinic] under s 34 of the CP(MIP)Act on [date deleted] 2015.

[11] Ms [Jackson] was discharged from the [psychiatric clinic] in [date deleted] 2015. She initially received community based mental health services but was discharged from those services [15 months later in] 2016. Prior to her discharge issues arose around her medication compliance, poor engagement with mental health services and indications of a relapse in her health.

[12] Ms [Jackson]'s mental health did not improve and on [date deleted] 2017, three days prior to the assault, she was referred to the urgent response service of the mental health crisis team. Descriptions of Ms [Jackson]'s health at that time included:

> … unpredictable and disorganised behaviour. She is irritable, elevated, punches holes in the walls, she has punched [details deleted], she is not sleeping [details deleted]wanting to kill animals [details deleted] and has discussed her desire to do this with [Keri] and she has [details deleted]. [Keri] believes [Hine] has no insight and would not re-engage with mental health services without compulsion.
>
> Ms [Jackson] is recorded as saying … her only issues were with the [details deleted] [Hine]'s speech demonstrated some thought disorder with her going off-topic or making somewhat irrelevant responses to questions asked.

[13] A mental health assessment was initiated but delayed due to Ms [Jackson]'s family being unsure as to whether to invoke the provisions of the Mental Health Act. They were still undecided when the offence occurred. Following Ms [Jackson]'s arrest she was admitted into residential mental health care.

[14] Several days after her admission on [date deleted] 2017, her assessment by treating psychiatrist included the following remarks:

> She became argumentative, easily irritable and expressed paranoid ideas about stuff and the writer … There was some degree of disorganised behaviour such as [behaviours deleted].

[15] Ms [Jackson] was discharged [21 days later in] 2017 after responding well to treatment.

[16] In addition to this mental health history both reports record a history of substance abuse, primarily alcohol and cannabis.

[17] It was the opinion of [the Doctor] that Ms [Jackson] has a history consistent with a schizoaffective disorder, with co-morbid substance use disorder.[2] This opinion was similarly expressed by [the Consultant Psychiatrist].[3] [the Consultant Psychiatrist] went on to state:

> Her longitudinal history is suggestive of a period of illness marked by manic episode with concurrent psychotic symptoms. Her manic episode was characterised by the symptoms of elevated mood, grandiosity, pressured speech, disorganised way of thinking and impulsivity.

[18] Both report writers express the opinion that Ms [Jackson]'s schizoaffective disorder is a disease of the mind under s 23 of the Crimes Act. [The Doctor] concludes that Ms [Jackson] was presenting with psychotic and manic symptoms immediately prior to the alleged offence, as noted above. He considers if Ms [Jackson] had been required to be assessed at *that time* she would have been found insane prior to the alleged offence.

[19] [The Doctor] goes on to note Ms [Jackson] was admitted to the high dependency unit of mental health services under the Mental Health Act immediately after the alleged offence. He expresses the opinion that Ms [Jackson] would have also been found insane immediately *after* the alleged offence.

[20] When Ms [Jackson] was assessed in August last year, it was concluded by [the Doctor] that Ms [Jackson] suffered from an abnormal state of mind to such an extent she posed a danger to herself and others if her mental illness was to relapse.[4]

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[2] Report of [the Doctor] 22 February 2018 para [68].
[3] Report of [the Consultant Psychiatrist] 28 August 2017 para [66].
[4] Report of [the Doctor] 28 August 2017 para [67].

[21] I accept the opinions of the two report writers. I am satisfied that Ms [Jackson] was suffering from a disease of the mind when the assault occurred.

Crimes Act – s 23 – level of moral awareness

[22] For an insanity finding, I must be satisfied Ms [Jackson] was suffering from a disease of the mind to the extent she was incapable of knowing her assault was morally wrong.

[23] Ms [Jackson] has accepted her conduct as outlined in the summary of facts. She has made this admission to both to the health assessors and to her counsel. Ms [Jackson]'s account of her actions to [the Consultant Psychiatrist] are recorded as follows:[5]

> According to Ms [Jackson], she was eating at a table. She reported that [the victim] placed her on 'spot', talking to her about her past and disrespecting her. She reported acting fast without thinking, like a 'fast reaction', when she grabbed her knife and threw it at [the victim]. She denied having intent to hurt [the victim], but described her then action as a 'quick reaction without thinking'. She reported that [the victim] kept 'nagging' and 'annoying' her, she stated that [details deleted] had then joined in and begun to 'fist fight' her.
>
> She also reported feelings that her family members were against her and were laughing at her. She acknowledged having suspicious beliefs about family members that were joking and laughing at her.

[24] Ms [Jackson] explained that her violent action at the time of the alleged offence had resulted from her inability to think clearly. She reported that she did not think whether her actions were right or wrong but that they were simply quick reactions. It is noteworthy that when her health improved that she accepted some responsibility for her actions.

[25] To [the Doctor], Ms [Jackson] expressed remorse for her acts. He recorded: [6]

> She reported no planning, throwing the objects in an instant, given the rapid development of events. She felt that at the time she was unable to understand if her actions were right or wrong, due to the fact that her responses had been immediate in the setting of the perceived threat.

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[5] [The Doctor] para [48-49].
[6] Report of [the Doctor] 28 August 2017 para [46].

[26] It was the conclusion of [the Doctor] that Ms [Jackson]'s clear suffering of an abnormal mental state due to a relapse in her mental illness would have significantly affected her ability to judge, at the time of the offence, the perceived threat and the moral wrongfulness of her actions.[7]

[27] [The Consultant Psychiatrist] concluded that it was possible that Ms [Jackson] did not fully understand the quality of her actions as in appreciating the consequences for her victim. He, too, concludes that Ms [Jackson]'s ability to reason and behave in a rational way was significantly impaired because of her symptoms of mania in addition her psychotic illness may have affected her perception of reality regarding the danger posed by her family members at the time of the offence.

[28] Both report writers conclude that Ms [Jackson] was insane at the time.

Conclusion.

[29] I accept the opinion of the two report writers that Ms [Jackson] was insane at the time of the assault and a not guilty plea due to insanity is the appropriate outcome to the prosecution. She was clearly suffering a disease of the mind and that illness inhibited her ability to determine the moral wrongness of her actions.

[30] As a result, I direct a report be prepared under s 23 (1) of the CP(MIP) Act to assist with the disposition of this prosecution. It is a condition of Ms [Jackson]'s bail that she report to the [psychiatric clinic] on [date deleted] 2018 at [time deleted].

[31] The disposition hearing will take place on [date deleted]. One hour is to be allocated.

J Jelas
District Court Judge

[7] Report of [the Doctor] 28 August 2017 para [80].