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TRANSCRIPT OF PROCEEDINGS

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

[REDACTED]

[REDACTED]

**IN THE MATTER OF AN APPLICATION
FOR BAIL BY [REDACTED]**

BRISBANE

[REDACTED]

ORDER

Any Rulings that may be included in this transcript, may be extracted and subject to revision by the Presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

[REDACTED]

HIS HONOUR: The applicant is charged with the murder of [REDACTED]. To appropriate a term used by [REDACTED] in the course of his submissions, the circumstances of the alleged offence, are quite, in some ways, incomprehensible in that neither the applicant nor the deceased [REDACTED] had any initial involvement in the prelude to the events which led up to the alleged offence being committed. Rather, those events can be sourced to a dispute between [REDACTED] with whom the applicant previously had a romantic association, and [REDACTED] nephew, who also had such an association with [REDACTED]. [REDACTED] had lent the deceased's nephew some money and was seeking its repayment. She enlisted the applicant's assistance, which was interpreted by the deceased's nephew as a threat. [REDACTED] became involved in the dispute. There are competing versions about what happened next and about the roles played by the various parties in the course of that dispute, and I do not touch upon those at all. On any account, however, it was [REDACTED] who, on the evening of 31 October, attended at [REDACTED] residence. It does appear that he had with him a bottle of petrol, or something flammable, and it also seems that he may have had a lighter.

The applicant, who was present at [REDACTED] residence in anticipation of a perceived need to protect her, claims that [REDACTED] threatened that he was going to burn him – that is, burn the applicant. A fight ensued. It ended when the applicant caused the head of [REDACTED] to impact with a concrete driveway. That caused his death. There are different versions of exactly what happened at this time, but it would seem to me, on any of those, some of the impact was caused with considerable force. The applicant, it should be said, is therefore fairly charged with the offence of murder and must, as a result, show cause why his continued detention in custody is not justified. Although the onus is on him to do that, the process involved is similar to that which is involved in any bail application. It demands an assessment as to the presence of certain risks which are specified in the Bail Act. If such risks exist, and it is settled that no grant of bail is risk free, then the court must consider whether they are, in the circumstances, unacceptable.

For the purposes of this exercise, the Bail Act does demand some assessment as to the strength of the prosecution case. It will be apparent from the admittedly oversimplified version of events that I have already recounted, that there is really no doubt that the applicant killed the deceased and there is available a version of events which might support an inference that he did so with one of the requisite intents. That said, the same version of the facts compels the conclusion that the applicant will have available to him certain defences for which provision is made in the Queensland Criminal Code. That is unsurprising in circumstances where it was the deceased who attended at [REDACTED] residence dressed as he was and, seemingly, armed with the means of and exhibiting an apparent intention to causing harm to those who were present at the residence of [REDACTED]. In particular, the applicant points to the potential relevance of section 267 of the Queensland Criminal Code. It is argued that this powerful provision might, in the circumstances, have made lawful the use of force to repel [REDACTED] from entering [REDACTED] dwelling - if the applicant believed, on reasonable grounds, that [REDACTED] was attempting to enter the dwelling with intent to commit an indictable offence, and if the applicant believed that it was



necessary to use the force that he did. It is of some importance to note that when considering this provision, the focus will be upon the applicant's own belief and not

REVISED

upon the belief of some notional reasonable person. The intent of [REDACTED] for the purposes of this section, is established, so the argument runs, by his possession of a bottle of petrol in circumstances where there really was not inference available other than that he intended to cause some harm with it.

5 Further, it has been held, when considering the effect of section 267, that if lethal force was used, as it was here, the alleged offender, in this case the applicant, need not have had a reasonable apprehension that the would-be intruder, [REDACTED] might have caused death or grievous bodily harm. And there is no requirement, pursuant to
10 section 267, that the force used by the applicant should have been no more than was reasonably necessary to make an effectual defence against [REDACTED]. These things may be relevant when considering what I shall call the more conventional self-defence provisions of the Criminal Code, which have been addressed by the respondent. In doing so the respondent has pointed out that the prosecution might
15 well be placed on one version of the evidence to negative the operation of those provisions. I understand the basis of that submission but note, as I have, the potential effect of section 267.

I do not even begin to embark upon determining the way in which the competing
20 considerations that might arise under these sections could be resolved. The most that can be said for current purposes is that as the respondent, with respect, fairly and accurately acknowledges these defences are present and potentially applicable. It follows that there is a seeming inevitability that the matter will go to trial where they can be considered and resolved by a jury. All that needs to be said on behalf of the
25 applicant at this point, is that the case is not so overwhelming as to compel the conclusion that a conviction is inevitable. Such a conclusion would inform an assessment of the risk that the applicant might be tempted to abscond so as to avoid the mandatory term of imprisonment that would be imposed following a conviction of murder. The concern that the applicant may fail to appear is compounded, so it is
30 said, by reason of the fact that the applicant is not a permanent resident or citizen of Australia. He has, however, been here for 30 years and, in any case, I am told that his temporary visa will be assessed by Australian Border Force if he is released from custody on bail. Their assessment will include reference to the same thing as has
35 mine; that is to say that he has significant ties to the jurisdiction in the form of his two children – two sons who are aged, I think I was told, 17 and 14.

A surety was offered, but its validity was challenged, and this is, in any case, the type of matter in which the risk of flight can be managed in other ways. As to the risk of
40 the applicant committing further offences, it is reasonable to query the nature of what those offences might be. It can be accepted that certain aspects of the applicant's behaviour in the lead up to and during the events which led to the death may have been aggressive. It is also noted that he did, during the lead up to these events, refer to his extensive military training that included weapons training. However, it has to be accepted that the offence charged occurred in a unique set of circumstances which
45 is not going to be replicated. It did not involve a weapon, the applicant was not proactive in bringing about the functional incident, and he was responding to a threat which, given the presence of the petrol, can be allowed to have been a sinister one. It



does not seem that there is a realistic basis upon which to suggest any similar offence might be committed. It is suggested that the evidence about the circumstances of the

REVISED

[REDACTED]

offence might go to, or might point to, a risk that the applicant will commit further offences involving violence. Again, there is a limited basis upon which to entertain this possibility as a realistic one. To the extent that there was anything in the affidavit material which suggested that the applicant was likely to be violent, I have, as noted in argument, found that to have been negated by other affidavit material from [REDACTED] and [REDACTED].

There is little else in the applicant's antecedents to suggest that he is, at this stage, likely to commit any offence of a kind which would be relevant for current purposes. His criminal history does record one entry for an offence of assault occasioning bodily harm, but that occurred almost 29 years ago and was punished with an order for community service, so it can be inferred that it was not a serious example of that type of offending. There are just two other entries on his criminal history in respect of which no conviction was recorded for either and they were not offences involving physical violence. The applicant is a 52-year-old man who was in full-time employment at the time of the alleged offence. He has lost that employment but intends to pursue further employment if he is granted bail and there is a basis upon which to apprehend that he may obtain that. He does not present as someone who has an issue with alcohol or drugs or other issues that are conventionally regarded as being of concern when assessing this risk. He proposes to reside at his former partner's residence, where he will live with the aforementioned sons. His former partner, whose residence this is, has sworn that she is very comfortable with this situation and offers her full support for the application.

Concern is also expressed about the risk of interfering with witnesses or obstructing the course of justice. It is relevant, when considering the arguments addressed under this heading, to note that when police attended at the scene the applicant participated in a re-enactment of events which is broadly consistent with things observed by other witnesses. There are nuances of course, and they may be important in a trial but for current purposes, one perhaps doesn't need to go much further than to observe that it was the applicant himself who offered to the police his intention when causing the impact between [REDACTED] and the driveway namely that he wanted to make sure that he didn't get up. No attempt to interfere with witnesses is going to change the nature of the evidence against him. This is not a case where the applicant's hopes for an acquittal rest upon the evidence emerging in a particular way or on particular witnesses turning up or not. Rather, it is a case which will seemingly turn upon the proposition that a jury will at least think it was reasonably possible that, for reasons such as self-defence or defence of the dwelling, it was necessary for the applicant to do as he did. That is to say, it is a case which will turn upon a jury's assessment of a factual situation about which there may be some differences but little in the way of large controversy.

As I noted in argument, if the applicant was to attempt to suborn a witness, that act of itself would become evidence that could be used against him and in doing so he could easily convert what might now be thought to be an arguable case against him into one which was much stronger from the prosecution's point of view. He would also, almost certainly, guarantee the revocation of his bail. Such a risk as might



present under this heading can be ameliorated by the inclusion of conditions which make clear the specific individuals who may not be contacted by the applicant and

REVISED

[REDACTED]

the way in which he must behave to ensure that contact does not occur inadvertently. I do not, however, see much point in making [REDACTED] one of those people. Even though she is clearly a vital witness in the case - it is already known that she is, to use the colloquial which is invoked in these circumstances, someone who is in the

5 camp of the applicant. To the extent that it might be thought possible that the applicant could seek to influence her evidence, it should be noted that both of them have already provided detailed accounts of events and any effort now to alter anything in those accounts will be transparent. No realistic basis has been identified under this heading to conclude that there is an unacceptable risk of an occurrence or

10 type of occurrence that might divert the course of justice.

There are risks involved in a grant of bail for the applicant. Like every judge called upon to make a decision in an application of this nature, I have to acknowledge that. However, given the state of the evidence against him, the apparent availability of

15 defences and the lack of a clear basis upon which to conclude that such risks would be unacceptable, it is appropriate that his application should be allowed. The conditions upon which it should be allowed will, however, have to be more extensive than those that are currently proposed. It will, for example, be necessary for the applicant to report to police every day. He will also, in accordance with the

20 submission made by [REDACTED] on behalf of the respondent, be required to wear a GPS tracker. There will also need to be some refinement of the conditions relating to the possibility of contact between the applicant and witnesses and I would be prepared to allow, I think, any reasonable requirement suggested by the respondent in terms of what I'll loosely call an exclusion zone concerning [REDACTED]

25 [REDACTED] I am happy to let the parties work on a proposal that is suitable to accommodate those concerns but can indicate that in the circumstances I am prepared to allow that cause has been shown and the application should be allowed.

Now, neither of you has another matter to follow, so, perhaps, can I give you the opportunity to confer about the terms of an order and if you can agree and supply me with a draft upon which you are both agreed, I can sign that any time. But if you need me to arbitrate on the terms of any particular condition we can reconvene - - -

30 [REDACTED]

35 [REDACTED] Thank you.

HIS HONOUR: - - - for that purpose at any stage. So, on that basis, is any further order required?

40 [REDACTED] No thank you, your Honour.

HIS HONOUR: [REDACTED]

[REDACTED] No. Nothing from me, thank you.

45 HIS HONOUR: All right. Yes. Okay, so is it coming in or are we just waiting? They're coming. Yes. Okay. You're excused we're waiting for another matter to - - -

[REDACTED]

[REDACTED] Thank you, your Honour.

[REDACTED] Thanks, your Honour. I should just say, Mr McMillan informs me it's
17 and 16. I think I said - - -

5

HIS HONOUR: Okay. All right

[REDACTED] Seventeen and 14. Thank you.

10 HIS HONOUR: Thank you.

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