CITATION: *Justin Anthony Firth v HB (2016) NTLC 034*

PARTIES:	Justin Anthony FIRTH v HB
TITLE OF COURT:	Local Court
JURISDICTION:	Criminal
FILE NO(s):	21555419
DELIVERED ON:	8 November 2016
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JUDGMENT OF:	Chief Judge Lowndes

CATCHWORDS:

CRIMINAL LAW – MENTAL IMPAIRMENT DEFENCE – PREREQUISITES FOR DISMISSAL OF CHARGE UNDER SECTION 77 OF THE MENTAL HEALTH AND RELATED SERVICES ACT - INABILITY TO CONTROL ONE'S ACTIONS – LACK OF KNOWLEDGE THAT CONDUCT WAS WRONG

Mental Health and Related Services Act s 77
Munugggur v Gordon & Ors [2011] NTSC 82 followed
O'Neill v Lockeyer [2012] NTSC 10 followed
R v Falconer (1990) 171 CLR 30 followed
R v Porter (1933) 55 CLR 182 followed
R v McGuckin [2014] ACTSC 242
R v Barker [2014] ACTSC 153 followed

REPRESENTATION:

Counsel:

Complainant:	Mr I Rowbottam
Defendant:	Mr P Bellach

Solicitors:

Plaintiff:	Director of Public Prosecutions (DPP)

Defendant:	NT Legal Aid Commission (NTLAC)
Judgment category classification:	B
Judgment ID number:	[2016] NTLC 034
Number of paragraphs:	53

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21555419

BETWEEN:

Justin Anthony Firth
Complainant

AND:

HB
Defendant

REASONS FOR JUDGMENT

(Delivered 8 November 2016)

CHIEF JUDGE LOWNDES

APPLICATION PURSUANT TO SECTION 77 OF THE MENTAL HEALTH AND RELATED SERVICES ACT

1. The defendant applied to the Criminal Division of the Local Court for an order pursuant to s 77 of the *Mental Health and Related Services Act* dismissing charges laid on complaint alleging a series of firearm offences committed on 25 July 2015:

(1) Possessing a firearm, namely a Winchester .22 calibre bolt action rifle, category A, without a licence (contrary to s 58 of the Firearms Act);

(2) Possessing a firearm, namely a Lee Einfeld 303 calibre bolt action rifle, category B, without a licence (contrary to s 58 of the Firearms Act);

(3) Being in possession of a firearm, namely a Winchester .22 calibre bolt action rifle, category B, failed to comply with the relevant storage and safe keeping requirements (contrary to s 46 of the Firearms Act);

(4) Being in possession of a firearm, namely a Lee Einfeld 303 calibre bolt action rifle, category B, failed to comply with the relevant storage and safe keeping requirements (contrary to s 46 of the Firearms Act);

(5) Possessing ammunition, namely 560 rounds of .22 calibre without a licence or permit (contrary to s 69(1) of the Firearms Act);

(6) Discharged a firearm in a manner that was likely to endanger, annoy or frighten any person (contrary to s 84(1) of the Firearms Act).

THE PREREQUISITES FOR DISMISSAL OF A CHARGE

2. Section 77(1) of the Act applies to a person if:

(a) the person is charged with an offence in proceedings before a court (other than proceedings for a committal or preliminary hearing); and

(b) the charge is being dealt with summarily.

3. The process for dismissal of a charge is triggered by a request from the Chief Health Officer for a certificate in the approved form stating:[1]

(a) whether at the time of carrying out the conduct constituting the alleged offence, the person was suffering from a mental illness or mental disturbance; and

(b) if the person was suffering from a mental illness or mental disturbance – whether the mental illness of disturbance is likely to have materially contributed to the conduct.

[1] Section 77(2).

4. According to s 77(3) the Chief Health Officer must not give the court the certificate unless the Chief Health Officer has received and considered advice on the person from an authorised psychiatric practitioner or designated mental health practitioner.

5. The final prerequisite for dismissal of a charge is contained in s 77(4) of the Act:

> After receiving the certificate, the court must dismiss the charge if satisfied that at the time of carrying out the conduct constituting the alleged offence:
>
> (a) the person was suffering from a mental illness or mental disturbance; and
>
> (b) as a consequence of the mental illness or mental disturbance, the person:
>
> (i) did not know the nature and quality of the conduct; or
>
> (ii) did not know the conduct was wrong; or
>
> (iii) was not able to control his or her actions.

6. The manner in which s 77 of the Act is intended to operate is well established.

7. In *Mununggurr v Gordon & Anor* [2011] NTSC 82 Kelly J held that although the power to dismiss a charge upon satisfaction of the matters contained in s 77(4) of the Act can only be exercised after the Court has received a certificate from the Chief Health Officer, the certificate is not determinative of the question for decision by the court under s 77. Her Honour held that was so on two bases:

> (1) Although both the Chief Medical Officer and the Court must determine whether at the time of carrying out the conduct constituting the alleged offence the person was suffering from a mental illness or mental disturbance, the Chief Health Officer and the Court have other different roles to perform. Whilst the Chief Health Officer is required to state whether the mental illness or mental disturbance is likely to have materially contributed to the relevant conduct, the court is required to determine the quite different question of whether the person, as a consequence of the mental illness or disturbance, did not know the nature

and quality of the conduct, did not know the conduct was wrong or was not able to control his or her actions.

(2) Section 77(4) requires the Court to be satisfied of the relevant matters, which requires the Court to undertake its own assessment of those matters by considering relevant evidence.

8. Although the Act is silent as to the manner in which the court may satisfy itself as to the matters contained in s 77(4) (a) and (b), Kelly J was of the view that the advice received and considered by the Chief Health Officer for the purposes of s 77(2) – which would normally be in the form of a report - could address, in addition to the matters required to be stated in the certificate, the matters to be considered by the Court for the purposes of the decision to be made under s 77(4) of the Act; and if that report was placed in evidence it could be taken into account by the Court when making its decision under s 77(4).

9. In *O'Neill v Lockeyer* [2012] NTSC 10 Barr J approved of the observations made by Kelly J in *Mununggurr v Gordon* in relation to the Court undertaking its own assessment of the matters contained in s 77(4) (a) and (b) by considering relevant evidence. As affirmed by Barr J the determination of the matters contained in s 77(4) (a) and (b) are a matter for the Court:

> The court has an independent role to consider and assess the evidence in any criminal hearing where it is exercising summary jurisdiction. The court hears the evidence in chief and cross examination of all prosecution witnesses (including possibly the defendant). It therefore follows that the court's findings and conclusions may be very different from the matters stated by the Chief Health Officer in the s 77(2) certificate. So, for example, even if the certificate of the Chief Health Officer certifies in the negative to the issue in s 77(2)(a), or in the affirmative to the issue in s 77(2)(a), but in the negative to that in s 77(2)(b), the court might well arrive at an opposite conclusion after considering the identical issue to s 77(2)(a) as part of its s 77(4)(a)

deliberations, and may make findings under s 77(4)(b) inconsistent with the certificate of the Chief Health Officer under s 77(2)(b).

10. As made clear in *O'Neill v Lockeyer* the defendant has the onus of establishing the defence of mental illness or mental disturbance under s 77(4). The defendant carries the burden of proving the matters set out in s 77(4)(a) and (b). The requisite standard of proof is on the "balance of probabilities".

CONSIDERATION OF THE EVIDENCE BEFORE THE COURT AND FINDINGS

11. Consistent with the approach outlined in *Munungurr v Gordon* and *O'Neill v Lockeyer* a number of exhibits were tendered at the hearing,[2] and two witnesses were called to give evidence and were cross-examined – Dr Walton and Sherryn Aslandi.

12. Following the conclusion of the hearing I informed the parties of my decision to dismiss the charges pursuant to s 77 of the Act, having been satisfied that at the time of carrying out the conduct constituting the alleged offences the defendant did not know that the conduct was wrong. However, I declined to dismiss the charges on the basis that at the relevant time the defendant was unable to control her actions. I advised the parties that I would provide written reasons for decision. These are my reasons for decision.

13. I am reasonably satisfied on the balance of probabilities – independently of the s77(2) certificate – that the defendant was suffering from a mental illness or mental disturbance at the time of carrying out the conduct constituting the alleged offences, namely a depressive illness. In my opinion that conclusion is fully supported by the

[2] Exhibit D1: Dr Neilssen's report dated 15 June 2016 and letters from Dr Chapman and Dr Glynatsis and hospital notes; Exhibit P 2: Sherryn Aslandi's report dated 8 April 2016.

reports of Dr Walton and Sherryn Aslandi and the evidence that each witness gave at the hearing.

14. However, more is required to support a dismissal of charges under s77, namely the Court must be satisfied as to one of the statutory incapacities.

15. I propose to deal first with the s 77 (4) (b) (iii) criterion - incapacity to control one's actions- and then the criterion prescribed in s 77(4) (b) (ii) – lack of knowledge that the relevant conduct was wrong.

INABILITY TO CONTROL ONE'S ACTIONS

16. The criterion prescribed by s 77(4)(b) (iii) is not unique. Inability to control conduct is also a criterion for the defence of mental impairment under s 43C of the *Criminal Code* (NT). It is also a criterion for the defence of insanity under s 27 of the *Criminal Code* (WA) and s 27 of the *Criminal Code* (Qld).

17. What is the meaning of the criterion in s 77(4)(b)(iii)? Some assistance can be obtained from the judicial consideration that the same criterion has received in context of the insanity defence in other Code jurisdictions. However, the meaning of inability to control one's actions remains unclear. There appear to be two different interpretations.

18. The first is that the concept of inability to control conduct is centred around the notion of "irresistible or uncontrollable impulse".[3] According to this interpretation a person is unable to control their actions if they are unable to resist an impulse to act,

[3] See S Bronitt and B McSherry *Principles of Criminal Law* 3rd ed at [4.65]. See also S Odgers *Principles of Federal Criminal Law* 3rd ed at [7.3.200]. However, the latter author's observations must be considered in light of the legislative framework which precludes a person from relying on a mental impairment to deny voluntariness or the existence of a fault element.

although they know that they ought not do the act in question.[4] The person must be found to "have experienced an overwhelming desire to do something and has been unable to exercise restraint: Moore (1908) 10 WALR 64, 65-66; Wray (1930) 33 WALR 67, 68-69".[5]

19. As pointed out by Odgers, it will be a question for the tribunal of fact whether, by reason of some mental impairment, the defendant was unable to resist an impulse to act and therefore unable to control himself or herself, so as to negate criminal responsibility.[6] The author goes on to say:

> Mere difficulty in exercising self- control would not be sufficient. The person must be "unable" to control himself or herself. In this context, it is a question of capacity. It must be shown that the person was incapable of exercising any control over his or her conduct at the relevant time.[7]

20. The second interpretation treats the question of the capacity to control one's actions as concerning the capacity to perform a voluntary or willed act.[8] On this interpretation a person who has decided to engage in conduct, albeit without control (because the impulse to act was irresistible) would fall outside the scope of the criterion for mental impairment. To fall within the criterion the conduct would have to be shown to be involuntary (as in the case of insane automatism).

21. The difference between the two interpretations is succinctly stated by Colvin and McKechnie:

> …on the "irresistible impulse" interpretation, there can be an actual (even

[4] See Bronitt and B McSherry n 3 at [4.65]. See also *R v Moore* (1908) 10 WALR 64 at 66.
[5] See E Colvin and J McKechnie *Criminal Law in Queensland and Western Australia Cases and Commentary* 6th ed at [17.31].
[6] See Odgers n 3 at [7.3.200].
[7] See Odgers n 3 at [7.3.200].
[8] See Bronitt and McSherry n 3 at [4.65] citing *R v Falconer* (1990) 171 CLR 30 at 40-41. See also Colvin and McKechnie n 5 at [17.31] also referring to *R v Falconer*.

> though irresistible) decision to engage in the conduct whereas, on the "involuntariness" interpretation, there is no room for any decision to engage in the conduct.[9]

22. The meaning of the incapacity prescribed by s 77(4) (b) (iii) was not fully argued at the hearing and the Court did not have the benefit of comprehensive submissions. However, the preferred construction of s 77(4)(b) (iii) is that is concerned with the lack of capacity to perform a voluntary or willed act.[10] As noted by Waller and Williams, "the inclusion of uncontrollable impulses within the definition of mental impairment would allow obsession without more to give rise to a defence, notwithstanding that the accused was fully aware of the significance and wrongfulness of her or his conduct".[11]

23. However, in this particular case, it does not matter which of the two interpretations are placed on the statutory incapacity because on either interpretation the criterion has not, in my opinion, been satisfied on the evidence according to the requisite standard of proof.

24. Turning to the evidence that was presented at the hearing, Dr Nielssen expressed the opinion that the defendant's severely depressed mood and indifference to her safety at the material time deprived her not only of the ability to recognise that her actions were both legally and morally wrong, but also deprived her of the ability to control her actions.[12] However, Dr Nielssen did not explain what he meant by ability to control one's actions.

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[9] See Colvin and McKechnie n 5 at [17.31].

[10] However, I stand to be persuaded otherwise as to an alternative interpretation in subsequent cases with the benefit of full legal argument.

[11] See Waller & Williams *Criminal Law* 11th ed at [13.18].

[12] See page 8 of Dr Nielssen's report dated 15 June 2016 (Exhibit D1).

25. Under cross examination, Dr Nielssen provided the following basis for his opinion that at the material time the defendent was unable to control her actions:

> …it's based on the effect of a depressive illness in a person who has…certain and severe forms of depression and it's really…the effects of that kind of condition on a person's rational decision making and hence their decision making about their actions and that's the way it deprives her – inability to control her actions in a rational way.[13]

26. It is clear from this part of Dr Nielssen's evidence that he considers incapacity to control one's conduct as being concerned with rational decision making about one's actions rather than the notion of irresistible or uncontrollable impulse.

27. Later in cross examination, Dr Nielssen expanded upon his opinion that at the material time the defendant lacked the capacity to control her actions:

> I don't think she had rational control, that she had the rational decision making and of course – in order to physically control your actions you have to be able to make rational decisions of what you want to do - so for that reason, I don't think she was able to control her actions in a rational way….your physical actions are determined by your actions. If your decisions are irrational, then your ability to control your actions in a rational way is affected… the intent ...is determined by their mens rea…their state of mind and if that's affected by, for example, a severe mental illness, obviously they can't form the intent to…commit a wrong.[14]

28. Once again, Dr Nielssen links physical control over one's actions with rational decision making, but this time includes in that relationship concepts of mens rea and intent by way of explaining the defendant inability to control her actions at the material time.

[13] See page 14 of the transcript of proceedings on 27 July 2016.
[14] See page 21 of the transcript.

29. The first observation to be made is that the evidence given by Dr Nielssen does not establish that the defendant was unable to control her actions as a result of an irresistible or uncontrollable impulse as his evidence did not deal with incapacity to control conduct in those terms.

30. The second observation is that Dr Nielssen's evidence does not provide a sufficient basis for concluding that the defendant was unable to control her actions at the material time because the conduct constituting the alleged offences was involuntary - occurring independently of the exercise of the will - in the terms explained in *R v Falconer*.

31. Although Dr Nielssen's evidence dealt with the question of capacity to make rational decisions about one's conduct, his evidence failed to address the essential and more specific question of whether at the material time, due to her mental illness or mental disturbance, the defendant's conduct was involuntary in the sense that it was not done by choice, and occurred in a state of automatism in which she was not aware of what she was doing.

32. By introducing concepts of mens rea and intent into his evidence as a basis for his opinion that the defendant was unable to control her actions, Dr Nielssen, with due respect, has "muddied the waters". As explained by the High Court in R v Falconer, the "notion of the will imports a consciousness in the actor of the nature of the act and a choice to do an act of that nature".[15] As further explained in R v Falconer, "the requirement of a willed act substantially, if not precisely, corresponds with the common law requirement that an offender's act be done with volition, or voluntarily…The requirement of a willed act imports no intention or desire to effect

[15] *R v Falconer* (1990) 171 CLR 30 at 39.

a result by the doing of the act, but merely a choice, consciously made, to do the act of the kind done"[16] The difficulty with Dr Nielssen's evidence is that it causes confusion between will and intent in much the same way as voluntariness is liable to be confused with general intent in the context of the common law.[17]

33. The evidence given by Ms Aslandi also fails to satisfy the s 77(4) (b) (iii) criterion.

34. There is nothing in Ms Aslandi's report (Exhibit P2) that would support a finding that at the material time the defendant was unable to control her actions either because her conduct was involuntary or the product of an irresistible or uncontrollable impulse.

35. The evidence given by Ms Aslandi at the hearing takes the matter no further. Ms Aslandi's evidence that the defendant was not responsible for her actions due to her depressed condition,[18] that her judgement was impaired at the material time[19] and that she was not able to control her actions because she was unable to make decisions that a person without mental illness would be able to make[20] does not satisfy the criterion in s 77(4) (b) (iii), whether that criterion be interpreted as embracing the notion of irresistible or uncontrollable impulse, or interpreted more narrowly as importing the requirement of voluntariness.

36. Finally, insofar as the criterion in s 77(4)(b) (iii) is to be interpreted in the narrow sense, the defendant's report of the conduct that she engaged in at the material time has the hallmarks of purposive conduct – and therefore willed or voluntary conduct. The defendant was contemplating suicide and took hold of the firearm and loaded it

[16] *R v Falconer* (1990) 171 CLR 30 at 40.
[17] The scope for this kind of confusion was discussed in *R v Falconer* (1990) 171 CLR 30 at 39.
[18] See p 42 of the transcript
[19] See p 43 of the transcript.
[20] See p 44 of the transcript.

with ammunition with a view to taking her own life. The defendant discharged the firearm into the concrete floor of her home to assess the damage caused by the discharge so as to be assured that if she shot herself her life would be ended. Dr Nielseen himself expressed the opinion that it is likely that she was aware of the physical nature of her actions, based on her description of her conduct.[21]

LACK OF KNOWLEDGE THAT THE CONDUCT WAS WRONG

37. Although I do not consider there is sufficient evidence to warrant a dismissal of the charges on the basis that the defendant was unable to control her actions at the material time, I have reached the conclusion that the charges should be dismissed because the defendant did not know that the relevant conduct was wrong. In my opinion, that is supported by the evidence that was presented at the hearing.

38. Unlike the criterion in s 77(4) (b) (iii), the meaning of the criterion set out in s 77(4) (b) (ii) is far clearer.

39. Although s 77(4)(b) (ii) is expressed in different terms to s 43C (1) (b) of the *Criminal Code* [22] I agree with the submission made by the defendant's counsel that s 77(4)(b) (ii) should be construed in accordance with s 43C (1)(b) of the Code; and s 77(4) (b) (ii) should be read as including the additional words contained in s 43C (1) (b) of the Code.[23]

40. However, that aside, the jurisprudence that has evolved from judicial consideration of comparable provisions to s 77(4)(b)(ii) in other jurisdictions, particularly, the

[21] See pages 7-8 of Exhibit D1.
[22] Section 43C(1)(b) states: "he or she did not know the conduct was wrong (that is he or she could not reason with a moderate degree of sense and composure about whether the conduct, as perceived by reasonable people, was wrong)."
[23] See [6] – [10] of the written submissions for the defendant dated 19 August 2016.

Australian Capital Territory[24] would support the provision being interpreted such as to include those additional words in the statutory test. That extended meaning of s77(4)(b) (ii) is also supported by the decisions in *R v Porter* (1933) 55 CLR 182 and *R v Stapleton* (1952) 82 CLR 358.

41. The key statement of the applicable law is to be found in *R v Porter* (1933) 55 CLR 182 at 190:

> What is meant by wrong is wrong having regard to the everyday standards of reasonable people…The main question …is whether… [the accused] was disabled from knowing that it was a wrong act to commit in the sense that ordinary reasonable [people] understand right and wrong and that he was disabled from considering with some degree of composure and reason what he was doing and its wrongness.[25]

42. As explained in *R v Barker* and *R v McGuickin* the question is whether the mental illness or mental disturbance was such that the person could not think rationally about the matter with a moderate degree of sense and composure; and a moderate degree of sense and composure means something more than a basic degree and something less than a perfect degree. That aside, neither the legislation nor the case law provides any further guidance as to what is meant by an inability to reason with a moderate degree of sense and composure. It is therefore an issue to be decided by the tribunal of fact as a matter of act after hearing all of the evidence, in particular the expert evidence.[26]

43. However, the decision in *Willgoss v The Queen* (1960) 105 CLR 295 at 301 provides some guidance as to the kind of cases may fall within the purview of provisions like

[24] See s 28 of the *Criminal Code* (ACT) and the discussion of that section in *The Queen v McGuckin* [2014] ACTSC 242 at 110 per Refshauge J. See also *R v Barker* [2014] ACTSC 153 at [71]-[91].
[25] This statement was approved in *R v Stapleton.*
[26] See Bronitt and McSherry n 3 at [4.60].

s77(4)(b) (ii). In that case the High Court considered that a direction with respect to the criterion "well may be called for in cases where the acts which but for insanity would form the crime charged are committed in a state of frenzy, uncontrolled emotion or suspended reason, the product of mental disease or disorder."

44. Drawing upon the assistance provided by the relevant case law, I am reasonably satisfied on the balance probabilities that the evidence presented at the hearing supports a finding that the defendant did not know at the material time that the relevant conduct was wrong.

45. Dr Nielssen gave evidence at the hearing that the defendant was at the time suffering from a mental illness characterised by a serious disturbance of mood that is a depressive illness to the extent that she was contemplating suicide at the time.[27]

46. In his report (Exhibit D1) Dr Nielssen expressed the opinion that the defendant's severely depressed mood and indifference to her safety deprived her of the ability to recognise that her actions were both legally and morally wrong. During the evidence he gave at the hearing, Dr Nielssen elaborated upon this opinion:

> The way depression can affect your ability to recognise the consequences of your behaviour is that you are depressed you're looking at the world in a far – as being far worse than it is…you're looking at life as being not worth living and that suicide seems a reasonable course of action and that…when you are in that state of mind, you're indifferent to your safety and even of others sometimes. And you see people for example who are like that who…invite the police to shoot them or actually commit suicide and when that ..is on their mind they are not going to be concerned about the law of the land or even the way you know suicide would affect other people. So that's ..the basis of the opinion it's from my experience as a psychiatrist on the way depressed mood affects people's decision making.[28]

[27] See page 10 of the transcript.
[28] See pages 13 -14 of the transcript.

47. Dr Neilssen described the defendant's state of mind at the material time in the following terms:

> I suppose they're thinking in a catastrophic kind of way and things like, for example, breaches of the law, regulations don't occur to them.[29]

48. Although the defendant reported that when she discharged the firearm she was experiencing frustration after having an argument with her husband, Dr Neilssen said that frustration and irritability are emotional states that go with being depressed.[30] Dr Neilssen went on to say that even if the defendant was angry at the time, it is because she was depressed.[31] Dr Nielssen added that it is common to be angry and irritable when one is depressed.[32] However, the doctor stated that whatever emotions the defendant was experiencing at the time, they were secondary to her mental illness.[33]

49. All of these aspects of Dr Neilssen's evidence are relevant to whether the defendant did not know that her conduct was wrong at the material time. Dr Neilssen's evidence concerning the defendant's inability to make rational decisions, which was referred to earlier, is also relevant. As a whole, Dr Nielssen's evidence has substantial probative value.

50. As to whether the defendant did not know that her conduct was wrong, Ms Aslandi's evidence was in fairly general terms and was not as specific as Dr Neilssen's evidence. As previously noted, her evidence was along the lines that the defendant

[29] See page 26 of the transcript.
[30] See page 19 of the transcript.
[31] See page 19 of the transcript.
[32] See page 19 of the transcript.
[33] See page 19 of the transcript.

was not responsible for her actions, that her judgment was impaired at the material time and that she was so thought disordered that she was unable to make decisions that a person without mental illness would be able to make.[34] Although general in nature, Ms Aslandi's evidence is also relevant to the matter under consideration; though it may not have the same probative value as Dr Neilssen's more specific and detailed evidence.

51. However, there is one other aspect of Ms Aslandi's evidence that calls for comment. Ms Aslandi gave evidence that the defendant probably knew that her conduct was wrong because she did not commit suicide. I do not consider that this part of Ms Aslandi's evidence undermines the preponderance of evidence pointing to the fact that at the material time the defendant did not know that the relevant conduct was wrong.

52. First, the conduct in question for the purposes of s 77 (4) (4) (iii) is the conduct constituting the alleged offences under the Firearms Act – not conduct constituting suicide. Secondly, in any event, I consider Ms Aslandi's opinion to be mere speculation without a factual basis and therefore having no probative value.

53. Having regard to the totality of the evidence I am satisfied that at the time of carrying out the conduct constituting alleged offences the defendant was suffering from a mental illness or mental disturbance of such severity that she was deprived of the ability to make rational decisions. I am satisfied that at the material time the defendant was in a state of suspended reason, which was accompanied by a number of uncontrollable emotions secondary to her mental illness or mental disturbance. In that state of mind, I am satisfied that she was unable to reason with a moderate

[34] See pages 42 -44 of the transcript.

degree of sense and composure (being something more than a basic degree and something less than a perfect degree) that the conduct constituting the alleged offences was wrong according to the everyday standards of reasonable people. Accordingly, I am satisfied that at the material time the defendant did not know that the relevant conduct was wrong.

Dated 8 November 2019

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Dr John Lowndes
Chief Judge of the Local Court of the Northern Territory