

CITATION: *The King v JS* [2024] NTSC 42

PARTIES: THE KING

v

JS

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 22231577, 22232216, 22236427,
22236428, & 22304753

DELIVERED: 23 May 2024

HEARING DATES: 10 May 2024

JUDGMENT OF: Blokland J

CATCHWORDS:

CRIMINAL LAW – finding of not guilty because of mental impairment – whether accused liable to supervision – declaration made that accused is liable to supervision.

Statutes:

Criminal Code, ss 188(1)&(2)(a), 188A(1)&(2)(a), 189A(1)&(2)(a), 43H, 43I(2)(a), 43I(3A), 43ZN

Mental Health and Related Services Act, s 77

REPRESENTATION:

Counsel:

Prosecution:	J. Moore
Accused:	S. Houston

Solicitors:

Prosecution:	Office of the Director of Public Prosecutions
Accused:	North Australian Aboriginal Justice Agency

Judgment category classification:	C
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

The King v JS [2024] NTSC 42
No. 22231577, 22232216, 22236427,
22236428 & 22304753

BETWEEN:

THE KING
Appellant

AND:

JS
Respondent

CORAM: BLOKLAND J

REASONS FOR DECISION

(Delivered 23 May 2024)

Background

[1] JS was charged with six counts of assault:

Count 1 – on 13 October 2022, assault of a police officer (SB) in the execution of his duty, with a circumstance of aggravation (harm) contrary to s 189A(1)&(2)(a) of the *Criminal Code*.

Count 2 – on 13 October 2022, assault a police officer (BH) in the execution of his duty, contrary to s 189A of the *Criminal Code*.

Count 3 – on 18 October 2022, assault a police officer (HD) in the execution of his duty, with a circumstance of aggravation (harm) contrary to s 189A(1)&(2)(a) of the *Criminal Code*.

Count 4 – on 21 November 2022, assault DH with a circumstance of aggravation (harm) contrary to s 188(1)&(2)(a) of the *Criminal Code*.

Count 5 – on 22 November 2022, assault NA who was performing her employment duties, with a circumstance of aggravation (harm) contrary to s 188A(1)&(2)(a) of the *Criminal Code*.

Count 6 – on 25 January 2023, assault KH who was performing her employment duties, with a circumstance of aggravation (harm) contrary to s 188A(1)&(2)(a) of the *Criminal Code*.

- [2] Through her counsel, and with the agreement of the Crown and the Court, JS entered pleas of not guilty because of mental impairment to each count. The Court recorded a finding of ‘not guilty because of mental impairment’ to all counts as provided by s 43H of the *Criminal Code*.
- [3] Pursuant to s 43I of the *Criminal Code*, upon such a finding the Court is required to *either* declare the person liable to supervision under Division 5 of the *Criminal Code*; or, order that the accused person be released unconditionally.
- [4] It is here the parties do not agree. The Crown submits JS should be subject to a supervision order under Division 5 of the *Criminal Code*, essentially and understandably to ensure the risk to the community of further offending is mitigated. It was also submitted there would be a community expectation or at least an expectation on the part of the victims that JS be under a Court order such as supervision. Counsel for JS submitted that because of the treatment and recent information before the Court about JS’s behaviour and care, JS should be released unconditionally in the knowledge that as opposed to the period of offending (13 October 2022 – 25 January 2023) she

now receives proper medical care and social support and is compliant with the same.

- [5] JS has a clear diagnosis of schizophrenia complicated by cognitive deficits. While there is no dispute over the diagnosis, the condition and treatment still need to be considered when assessing the level of risk.
- [6] A report prepared for the Local Court dated 30 November 2022 (after the commission of the first five offences but before the offending on 25 January 2023) pursuant to s 77 of the *Mental Health and Related Services Act* advised the Local Court the offending should be seen in the context of her diagnosis of ‘Acute schizophrenic- like psychotic disorder’ and ‘Moderate mental retardations’. In that report it was also noted that a psychiatric assessment two weeks prior to the offending adjudged she was likely under medicated. Her antipsychotic medication was increased. At that stage there was a clear view, given her behaviour and other unreported offending at the hospital and while in care, that she had been under medicated and likely suffering some level of mental health decompensation at the time of the October/November 2022 offending.
- [7] The finding of the Office of the Chief Psychiatrist under s 77(2)(a) of the *Mental Health and Related Services Act* was that JS was suffering from a mental illness or disturbance at the time of the offending and with respect to s 77(2)(b), the mental illness or disturbance was likely to have materially contributed to the conduct.

- [8] Dr Calvin's report of 1 August 2023 to this Court (Exhibit P8) outlines her developmental, personal history and history of treatment from around 2018 when she was first admitted to hospital's Mental Health Unit.
- [9] Since then she was case managed by either the Community Mental Health Team or the Remote Mental Health Team. She was placed under Guardianship for financial matters in late 2020 and from April 2021 she began receiving funding from NDIS.¹
- [10] Between 2018 and September 2022 she had multiple admissions to the Alice Springs Hospital Mental Health Unit due to psychotic episodes, aggressive behaviour and concerns related to self-harm. Several diagnosis were made including episodes of psychosis with trauma response, psychosis with possible mild intellectual disability, and schizophrenia with potential cognitive impairment.²
- [11] She has attended the Emergency Department of Alice Springs Hospital on a number of occasions with claims of pregnancy which in one instance led to the assault of a staff member of the maternity ward.³ Her belief that she is pregnant is a delusion of long standing, mentioned numerous times in the medical materials including a review of February 2024.

1 Exhibit P8 [14]-[16].

2 Exhibit P8 [18]-[19].

3 Ibid.

- [12] Dr Calvin referred to a psychiatric evaluation of 31 October 2022 by Dr Dorrington, a Forensic Consultant Psychiatrist. Dr Dorrington noted JS had been under medicated. Her anti-psychotic dose was subsequently increased.⁴
- [13] On 5 April 2022, consultant psychiatrist Dr Muir had contended JS did not exhibit signs of schizophrenic illness, but rather emphasised her intellectual limitations evident from a psychological report of Dr Carmel Lum. Dr Muir recognised pronounced impulse control issues and JS's intellectual challenges.⁵
- [14] Dr Calvin summarised the findings of the neuropsychologist Dr Carmel Lum. Dr Lum reported pronounced impairments in attention and memory, although memory retention improved when information had some emotional resonance with JS. Dr Lum thought the cognitive deficiencies were the culmination of a number of factors: multiple head traumas, potential drug-induced manifestations, or perhaps genetic predispositions of a concurrent mental disorder. Her impairments were likely exacerbated by the detrimental effects of her limited education, minimal integration into Western culture and her circumstances of severe socio-economic disadvantage.⁶
- [15] Dr Calvin expanded on Dr Dorrington's view that JS has chronic schizophrenia, accentuated by cognitive impairment. Dr Dorrington noted

4 Ibid.

5 Exhibit P8 at [20].

6 Exhibit P8 at [21]-[23].

some improvements in behaviours, following a number of episodes of aggression after an increase in the antipsychotic dosage, however persistent psychological distress remained, exacerbated by challenges posed by the custodial environment and underlying cognitive deficits. Dr Dorrington believed inadequately treated psychosis played a significant role in JS's aggression.⁷

[16] Dr Calvin reported that as at 7 June 2023 Dr Robert Karoly, Consultant Psychiatrist distinctly noted in comparison to historical observations, JS's condition had improved significantly.⁸

[17] Dr Calvin's diagnosis after reviewing all of the available material and interviewing JS himself was that JS meets the criteria for a diagnosis of schizophrenia.⁹

[18] His report recalled that her early life at Areyonga was marked by domestic disturbances, escalating alcohol consumption by her father, domestic violence and familial conflicts which exposed her to significant psychosocial stressors. He noted that between 2018 and 2022 JS had multiple admissions to the Mental Health Unit triggered by a variety of concerning behaviours: acute psychosis with religious things, aggressive tendencies, self-harm inclinations, behavioural disturbances and delusions

⁷ Exhibit P8 at [24]-[28].

⁸ Exhibit P8 at [29].

⁹ Exhibit P8 at [30].

about pregnancy. There was an undercurrent of violence, impulsivity and limited insight on her part.¹⁰

- [19] Dr Calvin referred to the earlier divergent opinions which had not concluded there was a schizophrenic illness, however he also pointed out Dr Dorrington's evaluations of late 2022 and January 2023 which affirmed the diagnosis of chronic schizophrenia, comorbid with cognitive impairment. Dr Dorrington suggested the custodial environment might have led to deterioration of JS's mental state and that her violent outbursts could be attributed to inadequately treated psychosis. The antipsychotic medication was increased, which yielded favourable outcomes. The improvement was substantiated by subsequent assessments.¹¹

- [20] On the basis of the diagnosis of schizophrenia, which necessitated a higher dosage of antipsychotic medication, complicated by her diminished intellectual capacity and significant cognitive deficits, and through a review of the offending behaviour, Dr Calvin found the defence of mental impairment was made out.

The conduct constituting the offences

- [21] On the question of whether JS is liable to supervision, or whether she should be released unconditionally, the conduct constituting the offending needs to be evaluated as it is relevant to the likelihood of endangerment of any

10 Exhibit P8 at [30]-[32].

11 Exhibit P8 at [34]-[35].

person and the need to protect people from any such danger as provided by s 43ZN of the *Criminal Code*.

[22] The victims referred to in file 22231577, for offending which took place on 13 October 2022 were two police officers.¹² JS was at Piggly's Supermarket although she was not meant to be there. She had been banned two days before for throwing rocks at Piggly's staff. She did not leave the store when asked. The police officers were present to conduct alcohol sale checks. At the request of the supermarket, one of the police officers said to JS "You know you're not meant to be here, you need to leave." JS punched the officer on the cheek, just below his eye which cause harm (immediate pain). That incident was the basis of count 1.

[23] Two other police officers who were called to assist found JS walking on a nearby road. One walked towards her and said "Police, don't move." JS threw a 420 gram of tinned food towards him. The police officer ducked and missed the tin.¹³ That incident was the basis of count 2.

[24] JS was arrested at the scene. She was granted bail the next day. One of the conditions of bail was that she not attend Piggly's supermarket.

[25] Four days later, on 18 October 2022, JS committed another offence of assault police. In breach of the bail condition, she entered Piggly's supermarket. Police officers noticed her presence and were aware that she

12 Exhibit P1, Agreed Facts.

13 Exhibit P1, Agreed Facts.

was in breach of her bail. Officer HD spoke with her and asked why she was in breach of her bail. She did not provide any explanation. She was placed under arrest. Whilst being arrested, she punched HD to his face, causing him immediate pain, redness and swelling. This formed the basis of count three, aggravated assault on file 22232216. JS was granted bail on 2 November 2022.

[26] JS offended again on 21 November 2022 (count 4 on file 22236427). The victim was DH who was the owner and manager of BJ's One-stop store in Diarrama Village. DH was working at her shop. Shortly after 11am, she stepped outside to have a cigarette. JS approached her as DH was having the cigarette. She asked DH for a cigarette, to which DH responded "no". JS continued to ask DH for a cigarette. DH did not engage with her and walked away. JS followed DH. She swung her hand out in an attempt to strike DH. She narrowly missed her. DH began to turn around, as she was doing so, JS forcefully punched her to the right side of her temple. This caused immediate pain, and the victim's glasses fell onto the ground. The punch also caused DH to lose her balance and collide with a steel railing, causing immediate pain to her upper arm. She suffered bruising to upper arm. She felt dizzy and as though she was going to faint as a result of being punched by JS. She also struggled to sleep for several nights following the assault.

[27] JS was not arrested until two days later, on 23 November 2022, after the offending on 22 November 2022. The offending which constitutes count 5 (file 22236428) was committed on 22 November 2022. The victim is NA,

who worked in the X-ray department at Alice Springs Hospital as a radiographer. NA was sitting in the CT room with another staff member. JS approached her and asked for help. She said that she needed an X-ray done. She was directed to speak with reception staff. She asked the victim if she would accompany her to the reception; the victim did so. The victim then spoke with a receptionist, who informed the victim that JS had already asked the reception for assistance in this regard. JS then yelled, “I need a fucking X-ray” and slammed her fists onto the counter.

[28] She turned to the victim and forcefully punched her to the right side of her forehead, causing her immediate pain and swelling. She left the hospital and was arrested by police. She was remanded in custody, which is the setting for the offending in count 6.

[29] The victim in count 6 (file 22304753) is KH, a Correctional Officer at Alice Springs Correctional Centre. On 25 January 2023, KH was working at about 4pm. JS was being transferred from her cell with a group of inmates to the sporting recreational area by the victim and another officer. JS walked in and out of the sporting area several times. The victim was standing by the entry point. The victim asked JS whether she was going inside or was going to remain outside. JS walked to the victim and asked, “Where is McKenzie?” Before the victim was able to respond, JS punched her to the right side of her face, connecting with her jaw and cheekbone. This caused the victim to vomit, feel dizzy and stumble backwards.

[30] The victim called for immediate backup. She was assisted into a wheelchair. She felt severe pain down her neck and to the right side of her face. She suffered a haematoma on her face as well as bruising around her eye. At the hospital she underwent a CT scan due to being concerned that her cheekbone was broken. She was given pain medication.

[31] Relevant also to the Court's overall assessment of victim and community safety issues are the victim impact statements. SB (count 1) was shocked to be assaulted in this way while conducting his duties as a police officer. BH (count 2) tells the Court he should not have to come to work thinking he will be assaulted. Incidents of this kind have changed the way he carries out his duties. HD (count 3) tells the Court of the immediate pain to his head. He feels he should not have to put up with this type of behaviour at work. He feels he must be "tough" with people when dealing with them because he thinks there is no point being 'nice and polite' as people will assault police anyway. DH (count 4) tells the Court she suffered shock and had a massive headache and had to go home. She suffered financially. This had made her feel 'uptight and nervous'. She has put her business up for sale which has made her sad. NA tells the Court she was shocked and angry at the time and was shaken up. She has had ongoing overwhelming feelings since and it has made her wary of working with aggressive patients since the offending. KZ tells the Court she no longer sleeps as a result. As a result of the offence and increased crime in Alice Springs she has decided to leave. She has found it hard to function, sleep and is struggling to cope.

[32] At the time of their statements the victims would not have been aware of the acceptance of the plea of not guilty due to mental impairment. It is not suggested this would have changed the impact of the offending. At the time of the victim impact statements, their view on what should happen to AS varied from an appropriate sentence of imprisonment with varying periods suggested to having full-time carer supervision while in the community or at the hospital.

Application of Division 5 of the *Criminal Code*

[33] As above, if a person is found not guilty because of mental impairment, the Court must either declare the person is liable for supervision under Division 5 or order that the person be released unconditionally.¹⁴

[34] If the Court makes a declaration that the person is liable for supervision, the Court may also make such interim orders if it considers it just under s 43I(3) of the *Criminal Code*, including an order for bail, remand in custody, order for examination by a psychiatrist and/or other appropriate expert, with a report to be provided to the Court. The Court must not make an order remanding the person in custody unless there is no practical alternative in the circumstances.¹⁵

[35] Section 43Z of the *Criminal Code*, provides the Court *must* make a supervision order under Division 5 if the Court has made a declaration of

14 *Criminal Code* s 43I(2)(a).

15 *Criminal Code*, s 43I(3A).

being liable to supervision under s 43I(2)(a). Under s 43ZA(1), the Court may make a custodial supervision order in which case the terms of the custody are to be specified, or a non-custodial supervision order in which case the accused is to be released. The Crown submits a non-custodial supervision order is appropriate in this case. The Crown does not seek a custodial supervision order. Section 43ZC provides a supervision order, of whichever kind is for an indefinite period subject to variation or revocation as provided by s 43ZD, s 43ZE or upon the completion of a major review under s 43ZG of the *Criminal Code*.

- [36] Whether the Court makes a custodial or non-custodial supervision order does require the supervised person to be subject to a court ordered regime. The conditions of treatment and monitoring are set by the Court. Contravention of a condition of a non-custodial supervision order may result in being taken into custody, or further appearance before the court. It is a reasonably significant step to declare a person liable to supervision, even if the end result is a non-custodial supervision order. The significant consequences of declaring a person liable to supervision are to be borne in mind when considering whether the declaration is to be made.

Application of Division 7 of the *Criminal Code*

[37] Division 7 of the *Criminal Code* applies whenever *inter alia* an order is made declaring a person is liable to supervision or releasing the person unconditionally.¹⁶ The Court must effectively apply the principle of using the least restrictive means consistent with protection and safety of community when considering whether to declare a person liable to supervision or to release them unconditionally.¹⁷ Section 43ZM states:

In determining whether to make an order under this Part, the court must apply the principle that restrictions on a supervised person's freedom and personal autonomy are to be kept to the minimum that is consistent with maintaining and protecting the safety of the community.

[38] In making the decision, the Court must have regard to the matters set out in s 43ZN of the *Criminal Code*. When considering these matters, I have had regard to the material already summarised above and the further material provided on behalf of JS relevant to her current circumstances.

(a) Whether the accused person or supervised person concerned is likely to, or would if released be likely to, endanger himself or herself or another person because of his or her mental impairment, condition or disability

[39] During the offending period (13 October 2022-25 January 2023) JS was likely to endanger others by assaulting them in circumstances similar to the victims of the offending in counts 1 to 6. The likelihood of her endangering

¹⁶ *Criminal Code*, s 43ZLA(a), (b).

¹⁷ *Criminal Code*, s 43ZLA read with s 43ZM.

herself or others has dramatically reduced since then, although there are some indications she engaged in behaviours of concern in late 2023.

[40] The offending period is a reasonably isolated period.

[41] Despite her impairments, she had only been dealt with by a court once previously. On 11 June 2019 she was dealt with in the Hermannsburg Youth Justice Court for an aggravated assault (harm, use of a weapon) committed on 21 March 2018. Without proceeding to conviction, she was released on a good behaviour bond for 12 months. Not a great deal is known of that assault. The *Mental Health and Related Services Act* report states that in March 2018 she seriously assaulted another girl with a pair of scissors (punctured one lung) when she believed was in a relationship with her boyfriend.

[42] The sheer number of offences JS committed in 2022 and one in 2023 points to a conclusion that at that time she was likely a danger. The offending as a youth in 2018 is marginally relevant. It is somewhat dated offending and there is no other previous offending. Since being treated, and properly medicated to the level thought appropriate by Dr Calvin and Dr Dorrington, the risks have reduced markedly.

[43] I will summarise the recent material tendered on JS's behalf.

[44] On 8 June 2023 a child and adolescent mental health risk assessment screen was conducted.¹⁸ The screening certifies ‘no identified risk’ for suicide or self-harm; ‘low risk’ for overall risk of harm to others and ‘no identified risk’ for overall risk of non-compliance. On the ‘overall risk profile’ she scored ‘none’ on overall risk to self and ‘low’ on overall risk to others and to staff. The protective factors were listed as the Public Guardianship/Public Trustee; being under NDIS and supported by ICARE, living in a Court ordered NDIS-ICARE home, with support workers. Trusting, therapeutic alliance with ICARE Manager, Shamila Amosa, case management by CMHT who provide ‘continuity of support’, compliant with fortnightly Depot injection and the comment ‘These protective factors are working in partnership to keep JS safe and encourage recovery from trauma and stability in JS’s life’.

[45] An identified risk was JS not being able to control her anger in some situations and due to her traumatic childhood and lack of appropriate parenting JS will lash out physically, sometimes.

[46] A letter dated 30 November 2023 from Dr Graf of the Alice Springs Hospital to Congress noted good mood, eye contact and listed her medications. She was oriented to time and place. Her insight was described

18 Exhibit D1, item 6.

as ‘partial’. Her risk was described: ‘to self-low, to others low, medical low. Drug abuse-moderate.’¹⁹

[47] The first in time three monthly review²⁰ summarised her living circumstances, background and admissions to the Mental Health Unit, the last being August 2022. Under ‘risks’ the following is noted ‘risk to self-JS will sometimes voice suicidal ideation’, with the comment it should be taken seriously and properly assessed. ‘Risk to others-JS has a history of assaults against others when she is unwell.’ The protective factors are listed. Under ‘Changes since last review’ it is stated ‘JS is doing well. Her constant presentations to ASH-ED have eased off in the last week or so.’ How that was achieved was described as through meetings and strategies to reduce those presentations.

[48] The second case review, documented by Brian Fitzjohn,²¹ mentions that he always asked the support worker, Shamila Amosa to attend medical reviews because of the trusting relationship between Ms Amosa and JS. Previously without that support a meeting ‘went badly’. When asked about a specific area of her past, JS ‘went into a psychotic rage’. Further, an interpreter had failed to turn up. Reference is made to the s 77 report and the comment that the Mental Health Team ‘is hoping the Court case is resolved soon. The fact the Court case is hanging over JS’s head, places a lot of stress on JS.’

19 Exhibit D1, item 5.

20 Exhibit D1, item 4, undated but must have been before 12 June 2023 which was stated in the review as next depot injection.

21 Exhibit D1, item 4, undated.

- [49] Under ‘Risks’, the same review states JS is ‘Low risk’ to others given the medication regime and that this was very different from when JS was not receiving medication for her mental illness. In terms of changes, it is stated ‘The only downside, is the Court continues hanging over JS’s head. This needs to be resolved, so JS can move on with her life.’
- [50] Part of the Management Plan included advice to encourage JS to liaise with her lawyer and follow all Court ordered directions. This should be understood to be during the time the s 77 report was being prepared.
- [51] The Case Review of 14 February 2024²² is not as positive as the previous two reviews. The ‘Brief Overview’ states ‘For the past six months I have known her, she had multiple ED presentations in the context of her aggressive/angry/irritable changes in behaviour/made threats to harm house support workers/damaging property eg: broken windows at current accommodation/self-harmed- cut her L-arm with window glass. Broken car windows prior Xmas 2023.’ Under the heading ‘Risks’, risk to self is reported as ‘moderate to high’ and ‘Risk to others due to her delusional disorder/aggressive/attempts to harm house support workers previously and recently. No reported threats or harms from others.’
- [52] A letter from Alice Springs Hospital to Congress²³ of 13 March 2023 reports JS as much more settled and calmer with a higher dose of one of the

22 Exhibit D2, item 4.

23 Exhibit D2, item 3.

medications. The doctor stated the ICARE worker was clear that JS was a lot more settled and the letter states she did not seem perplexed, she seemed calm.

[53] The Operations Manager from ICARE wrote most recently, on 5 May 2024 that she has known and been the contact person for JS for two years.²⁴ JS has been supported by ICARE since September 2022. She is in a house with a full-time carer, 24 hours with support workers who are experienced with working with people with psychological disorders. JS will always have access to NDIS with social, care, skill building and community participation. She is at no risk of losing funding supports.

[54] The letter says support workers ensure she has her medications, including fortnightly Depot injections and is reviewed by the mental health team every 4-6 weeks. She has not required an urgent review due mental health for over 12 months as she has been stable on her medications, taking them on time. Ms Amosa describes her varied activities. Ms Amosa states when JS was incarcerated it was extremely challenging and caused great distress. She writes of the strong relationship and supports in place from ICARE, Congress, CAMHs doctors, a behaviour support practitioner and particular family members. She states JS has made significant progress in all areas of her well-being since the supports have been in place.

24 Exhibit D1, item 1.

[55] Aside from the review in February 2024 which does note behavioural problems on or around late 2023, although it is not clear when each of the events took place, the overall risk of offending by assaulting people generally may still be regarded as low. However, it is troubling that JS had multiple ED presentations in a state as described by the February 2024 review. There is some fluctuation given the behaviours described in the February 2024 review. Aside from that, provided the supports are in place the risk to herself and general risk to others is low. There is little to no risk that her supports will be removed given the NDIS funding and the processes in place. The most recent evidence from the carers is positive. There can never be total elimination of risk but what risk remains is being managed through a combination of the health system, medications, NDIS and the various supports, save that the behaviours the delusion causes remain troubling according to the February 2024 review.

[56] Counsel for the prosecution pointed out that JS has been on bail conditions which might be thought to moderate her behaviour in the same way as a non-custodial supervision order would. However, it must also be acknowledged that JS offended when placed on bail with conditions. She also offended when in custody which is arguably the most serious of the assaults committed by her. Bail conditions may have been of some positive assistance to reduce the risk of reoffending overall but the most significant contribution to the reduction in offending has been a formal diagnosis with increased, improved and monitored medication. A secondary contributor has

been the support of ICARE and the other supports referred to in Ms Amosa's letter.

[57] Where the bail conditions may have been of assistance are the conditions which provide she not to attend the Alice springs Hospital Maternity Ward or X-ray department and not to attend Alice Springs hospital except in the company of ICARE support workers.

[58] While there appears to have been some flare up described in the February review dating from, it seems, late last year, the material overall indicates the risk is low, save that because of the delusion she continues to suffer from, there is some risk to hospital workers or other service providers. It may also be noted in terms of her legal status under the *Mental Health and Related Services Act*, JS is neither an involuntary inpatient, nor an involuntary community patient, but rather is a 'voluntary community' patient.²⁵ It is open to the health authorities to apply to change that status to involuntary should that become necessary. There is some conflict in the evidence in the sense that Ms Amosa states there has been no mental health emergency for over 12 months and although the review of February 2024 does not refer to a mental health emergency, there are clearly behaviours of concern.

[59] JS is unlikely to endanger herself or others generally given the treatment and support she is receiving, however there are some discrete dangers given the persistent delusion she suffers from.

²⁵ Exhibit D2, item 6.

(b) The need to protect people from danger

[60] There is always a need to protect people from danger. Even given the treatment, health and support regime which is in place, JS's delusional belief has been noted to be present. As some mitigation of danger, it appears she is in the company of a support worker or selected family members at all times. People in the position of the victims of the assaults from 2022, who were all performing their employment duties at the time they were assaulted plainly should be protected from such danger. In this instance, in the main, the protection is likely to be effective as a result of treatment and support. It is here that a non-custodial supervision order would protect people, for instance those working at the hospital, from danger. JS should not attend the hospital unless she is in the company of a support worker.

[61] The material indicates there were some stressors on JS because of ongoing court matters. Although an order might have some negative impact, I am not satisfied on balance that it would be detrimental, especially if the obligations are not overly intrusive. Further, JS no longer needs to wait to find out if her plea was accepted. Given all of the supports in place, in my view a non-custodial supervision order would add to the current protective factors to protect particular classes of people including those who work at the hospital and other service providers.

(c) The nature of the mental impairment, condition or disability

[62] As above, see the summary of Dr Calvin's report.

(d) The relationship between the mental impairment, condition or disability and the offending conduct

[63] This is a case of direct causal connection between the complex conditions and the offending. Dr Calvin's opinion was that it appeared very unlikely JS was unable to reason with a moderate degree of sense and composure about whether her conduct was wrong 'directly attributable to her schizophrenia and cognitive deficits.'²⁶

(e) Whether there are adequate resources available for the treatment and support of the supervised person in the community

[64] As above, the evidence is that there are adequate resources available for treatment and support and that the provision of such resources are ongoing. It is unclear whether a non-custodial supervision order would attract more or better resources.

(f) Whether the accused person or supervised person is complying or likely to comply with the conditions of the supervision order

[65] Given JS has complied with bail while under the current treatment and with the current support, it is likely she would comply with the terms of a non-custodial supervision order. Without the treatment and support services she would likely breach any supervision order given she reoffended while on bail prior to receiving proper treatment. Given JS's cognitive deficits, any conditions need to be expressed simply. It is likely she would comply if she continues to have assistance.

26 Exhibit P8 at 43.

(g) Any other matters the Court considers relevant

[66] Although substantial improvements have been made by JS through treatment and support, there remains a need to protect at least some sections of the community, notably staff at the hospital and other service providers. Orders will need to be made in keeping with the principle of least restrictive means²⁷ consistent with maintaining the safety of the community. That is something which will be required to be addressed in the non-custodial supervision order.

[67] I intend to continue the current bail until the terms of the non-custodial supervision order are confirmed, however in my view, consistent with the principle of the least restrictive means, JS should not be subject to reporting conditions.

[68] Pursuant to s 43I(2) of the *Criminal Code*, JS is liable to supervision.

[69] The Court orders the examination of JS pursuant to s 43I(3)(c) of the *Criminal Code* with a view to determining the appropriate conditions.

[70] The parties are requested to confer about the most appropriate person to conduct the examination and the most appropriate conditions to be included in a non-custodial supervision order.

²⁷ *Criminal Code* s 43ZM.