

PARTIES: THE QUEEN

v

KMD

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING TERRITORY
JURISDICTION

FILE NO: 21319440

DELIVERED: 3 June 2015

JUDGMENT OF: RILEY CJ

CATCHWORDS:

CRIMINAL LAW – Mental Impairment – Unfit to plead – Found not guilty by reason of mental impairment – Supervision order – Term fixed for supervision order – Equivalent to the period of imprisonment that would have been appropriate if found guilty – Normal sentencing principles applied as per *R v Morton* (2010) 27 NTLR 114 – s 43Z, s 43ZG *Criminal Code*

CRIMINAL LAW – Mental Impairment – Unfit to plead – Found not guilty by reason of mental impairment – Supervision order – Custodial or Non-custodial supervision order – Matters to take into account – Likely to endanger other persons because of mental impairment – The need to protect people from danger – Psychiatric risk assessment – History of mental impairment – Lack of treatment – Continuing deluded beliefs – Change in deluded belief not enough – Behaviour since offending – Risk remains high – Custodial supervision order imposed – s 43ZA, s 43ZN *Criminal Code*

CRIMINAL LAW – Mental Impairment – Unfit to plead – Found not guilty by reason of mental impairment – Supervision order – Custodial supervision order imposed – appropriate place – CEO (Health) certificate – facilities and services available for custody, care and treatment – s 43ZA *Criminal Code*

R v Morton (2010) 27 NTLR 114, applied.

Criminal Code 1983 (NT), ss 43X, 43ZG, 43ZJ, 43ZA, s 43ZN.

REPRESENTATION:

Counsel:

Plaintiff:	P Usher
Defendant:	D Grace QC with G McMaster
Chief Executive Officer Department of Health:	G Macdonald

Solicitors:

Plaintiff:	Office of the Director of Public Prosecutions
Defendant:	Ward Keller
Chief Executive Officer Department of Health:	Solicitor for the Northern Territory

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

R v KMD [2015] NTSC 31
21319440

BETWEEN:

THE QUEEN
Plaintiff

AND:

KMD
Defendant

CORAM: RILEY CJ

REASONS FOR JUDGMENT

(Delivered 3 June 2015)

Introduction

- [1] KMD was charged with eight offences arising out of events that took place in Virginia, a rural area of Darwin, on 7 May 2013. On 1 May 2014 I declared that KMD was unfit to stand trial and that she was not likely to become fit to stand trial within a 12 month period. I did so pursuant to s 43T and s 43R of the *Criminal Code 1983* (NT).
- [2] The finding that KMD was unfit to plead was based upon the reports of three independent psychiatrists who each concluded that she suffered from a delusional disorder. The first relevant delusion was that there were threats to her life from a wide range of people. The second, and

most significant for present purposes, was that her son was being sexually assaulted and was in danger of further sexual assault by her former husband and other people. KMD took these claims to police, the Family Court and to medical practitioners. The claims were investigated and found to have no foundation. Nevertheless, and sadly for all concerned, KMD persisted with, and acted upon, the intense but deluded belief that such assaults occurred and that her son was in grave danger.

[3] On 4 July 2014, following a special hearing conducted over five days pursuant to the provisions of Div 4 of Pt IIA of the *Criminal Code*, a jury found KMD not guilty by reason of mental impairment of eight offences arising out of those events. Following those findings it was necessary for me to proceed in accordance with the relevant provisions of the *Criminal Code*.

[4] Pursuant to s 43X of the *Criminal Code*, I was required to declare KMD liable to supervision under Div 5 of Pt IIA or, alternatively, that she be released unconditionally. There was no suggestion that I should proceed other than by making a supervision order. On 4 July 2014, pursuant to s 43X(2)(a) of the *Criminal Code*, I declared her to be a person liable to supervision. I also required the provision of reports under s 43ZJ of the *Criminal Code*. I will address those reports and subsequent reports in due course.

[5] After the initial hearing, I also imposed an interim supervision order, pursuant to s 43Y(1)(b) of the *Criminal Code*, requiring that KMD be remanded in custody pending necessary investigations. In my view there was no practical alternative to that course. The investigations have been ongoing and there have been a number of hearings before the Court.

Supervision Order

[6] It is now necessary for me to make a supervision order under s 43Z of the *Criminal Code* and determine whether the supervision order should be a custodial or non-custodial order for the purposes of s 43ZA of the *Criminal Code*.

[7] Pursuant to the provisions of s 43ZG of the *Criminal Code* I am also to fix a term for the supervision order:

...equivalent to the period of imprisonment or supervision (or aggregate period of imprisonment and supervision) that would, in the court's opinion, have been the appropriate sentence to impose on the supervised person if he or she had been found guilty of the offence charged.

The events of 7 May 2013

[8] KMD and RL had been in a relationship and their son was born on 16 September 2006. They separated in 2007 and there was a custody dispute concerning the child. In February 2013 an order was made in the Family Court that RL have the sole custody of the child and KMD was granted access. RL lived at Virginia with his mother, Mrs L, and

his son. KMD had entered into a new relationship with Jason Cash and there was a child of that relationship.

[9] The events giving rise to the charges occurred on 7 May 2013.

Sometime before that date KMD had obtained a Smith and Wesson Model 29, 44 Magnum revolver. On 7 May 2013 she went to the home of her former partner, RL, and her son in Virginia taking the gun with her. When she arrived no-one was in the house. RL was at work, Mrs L had gone to the shops and the child was in school. The jury found KMD unlawfully entered the premises with intent to commit an offence (count 1). The jury was not satisfied that the offence intended to be committed at the time of entry was depriving a person of their liberty.

[10] When Mrs L returned from the shops she discovered KMD hiding under a bed in the child's room. KMD pointed the gun at Mrs L and detained her for some time in her house. When the house was subsequently searched police also found, under the same bed, a toy gun and an additional six rounds of hollow tipped bullets suitable for firing from the Smith and Wesson revolver. Whilst she detained Mrs L at gunpoint KMD repeatedly accused Mrs L, RL and others of sexually abusing her son.

[11] At one point Mrs L sought to wrest the gun from KMD but she failed. Unsurprisingly, Mrs L was in fear for her life and, after some time and

by way of diversion, suggested the two of them should attend at the school to collect the child.

[12] Mrs L and KMD then got into Mrs L's vehicle. KMD sat in the passenger seat with the gun trained upon Mrs L. The conduct of KMD to this point constituted the offence of detaining Mrs L against her will (count 2).

[13] They drove towards the school and, by happenstance, passed RL who was driving in the other direction. Mrs L flashed the lights of her vehicle causing RL to stop. Mrs L informed KMD that the child was in the car and, on that basis, was permitted to turn her vehicle around and drive back towards RL. Mrs L wished to alert her son to the fact that KMD was in the vehicle and armed. As she drove towards his vehicle he stood on the side of the road awaiting her return. Mrs L deliberately drove her car into the back of her son's car and immediately called out that KMD had a gun.

[14] RL ran across the road and then turned, put his hands in the air, and sought to discuss matters with his former partner. She fired the gun at him and the bullet passed near to his head. He then sprinted down the road away from the scene. This and other matters yet to be discussed led the jury to conclude that she attempted unlawfully to kill RL (count 3).

[15] Mrs L remained in the vehicle. She moved her car backwards and forwards to keep it between KMD and her son. KMD then came to the passenger side of Mrs L's car, pointed the gun at Mrs L and shot her. The bullet hit her in the arm. Mrs L slumped over the steering wheel and pretended to be dead. The jury was not satisfied beyond reasonable doubt that KMD intended to kill Mrs L and, instead, found that she had recklessly endangered the life of Mrs L. This is an alternative charge to count 4 available under the *Criminal Code*.

[16] KMD then got into the car abandoned by RL and drove after him. Mrs L took the opportunity to depart the scene in her own vehicle. RL waved down a passing motorist, Mr Iversen. He told Mr Iversen in concise and urgent terms what was happening. As he did so KMD fired the pistol at the vehicle causing the rear window to shatter. Mr Iversen drove off at speed, pursued by KMD. Mr Iversen's vehicle was not as fast as that driven by KMD and she caught up with the vehicle. She rammed it more than once and she sought to draw alongside the vehicle. The chase continued down Virginia Road and then left onto the Stuart Highway which, at this point, is a dual carriageway with a wide median strip.

[17] During the chase KMD pulled her vehicle alongside the passenger side of Mr Iversen's vehicle and she fired a shot into the vehicle. The bullet passed through part of the door and struck RL on the thumb. His blood sprayed upon Mr Iversen who thought he had been shot. He kept

driving. The vehicles continued inbound with one independent witness describing them as jostling for position.

[18] Some distance along the highway Mr Iversen did a U-turn in order to avoid KMD and he then drove back into the oncoming inbound traffic. KMD pursued him. At the Virginia Road intersection he did another U-turn and drove inbound now confronting the outbound traffic. KMD continued to pursue him. He then drove his vehicle onto the median strip, slammed on his brakes, leapt from the vehicle and ran away. RL jumped from the vehicle and hid behind it. KMD could not immediately stop her vehicle and she drove a short way past before turning back. She then got out of her vehicle with the gun and RL wisely ran across the road. Another shot was fired. KMD then drove off.

[19] It seems that she fired at least six shots. When KMD drove away she had no bullets left in her gun. This may explain why she did not continue to pursue RL. It will be remembered that she had left a clip of six bullets under the bed at the Virginia home.

[20] The jury found that she recklessly endangered serious harm to Mr Iversen (count 9 which replaced the abandoned count 5). They also found that she unlawfully used the motor vehicle taken from RL and caused damage to it to the value of \$5000 (count 6).

[21] When she left the scene KMD drove to the school attended by her son and collected him contrary to the terms of the order of the Family Court and without the approval of the child's father, RL. This is the offence of having taken the child out of the custody or protection of his father (count 7).

[22] She drove with the child to the home she occupied with Mr Cash. She refused to explain to Mr Cash why she had her son with her contrary to the provisions of the Court order. She advised Mr Cash that she wished to be taken to the police station and he drove her towards the police station. She was in the front of the vehicle and the two children were in the rear. The vehicle was stopped at a police roadblock and KMD was arrested.

[23] KMD informed police that the firearm she had used could be located in a van on her property. When the firearm was recovered police found that the identifying serial number on the firearm had been defaced or altered. KMD was found by the jury to have possessed the firearm knowing that its serial number had been defaced or altered (count 8).

The Victims

[24] These violent incidents obviously had a significant impact upon the victims. I have received victim impact statements. The first was from RL who advised that, as a result of the injury to his left hand, he spent a week in hospital. He lost work. He now has a heightened concern for

his mother and his son. The son is reluctant to sleep in his own bed and is scared of being alone. Fortunately it is reported that he is now happy in a caring environment and doing well at school. RL feels that his reputation has been tarnished by the publication of the quite false allegations made by KMD.

[25] Mrs L described being shot by KMD. She said that the bullet entered her arm and went into her chest and then out through her back. She described the pain as being “immense”. She was taken to Royal Darwin hospital where a fragment of the bullet was removed. At that time she did not know whether her son was dead or alive. She feels her life has been changed permanently. She no longer feels safe in her own home. She has a limited social life, being too afraid to leave home. She has a hole in her arm and a scar on her chest and another scar on her back. She regards the scarring as unsightly. She has limited mobility in her left arm which prevents her pursuing her passion for gardening. She suffers from debilitating headaches and she has difficulty sleeping. She suffers terrifying flashbacks. The events have had a significant impact upon her life.

[26] The final victim impact statement I have is from Mr Iversen. He provided a vivid description of the dramatic and terrifying events of the day. At one point he thought he had been shot. In fact he received facial lacerations from the glass that had shattered. When the chase was over and he was being attended to by paramedics he felt chest pain and

it was later confirmed he suffered a heart attack. He believed he was going to die. His physical recovery took place over seven months. He was very concerned that supporters of KMD might wish to harm him and he suffered panic attacks. He could not concentrate on anything. He was diagnosed with post-traumatic stress disorder. He has ongoing counselling. He has suffered significant financial loss including lost income, the cost of counselling, medical bills and the like.

The background of KMD

- [27] I have been provided with a substantial amount of information regarding KMD. Most of that is recorded in the detailed psychiatric report of Dr Smith of 18 November 2013. KMD is an articulate and intelligent person. She was described by Dr Smith as being a “driven and obsessive historian”.
- [28] She is from Bachelor, a town to the south of Darwin, and she grew up partially in a fishing camp and on a station. She has good memories of her childhood. She described being proud of her mixed settler heritage. Her father was a commercial fisherman and later ran Twin Hill station. She and her sister were sent to a private boarding school in Melbourne where she studied from year 8 to year 12. She felt that she did not fit in at school and she was homesick. She finished school with lower marks than she had expected. She had thought about going to university to study anthropology and archaeology but was unable to do so. Eventually she obtained a scholarship to learn to fly helicopters and

she trained in Kununurra at the age of 18 and 19 years. She did not complete her helicopter training after falling out with her trainer. She did some work at the Bachelor Institute with her mother and she had other employment. She did eventually obtain her commercial pilot's licence at the age of 25 years. However she was unable to obtain flying opportunities.

[29] Her relationship with RL was an on and off relationship. They were apart for some four years between 2001 and 2005 but got back together again. When they were together RL developed his own grading business and she worked with him. She became pregnant with their son. After his birth they had relationship counselling. Eventually they separated.

[30] After the separation she met her current partner, Mr Cash, in 2008 and they continue the relationship. There is one child of that relationship, a young boy, and no concern has been suggested regarding his well-being.

[31] KMD does not have any prior convictions of relevance. In particular she does not have a history of violence. Before these incidents she was a law-abiding citizen. Her conduct on 7 May 2013 is explained by her mental impairment. Her actions resulted from her deluded but genuinely held beliefs regarding the welfare of her son. She has not seen her son since that day. She has been in custody throughout the

intervening period. The “appropriate term” which I determine for the purposes of s 43ZG of the *Criminal Code* should be backdated to 7 May 2013 to reflect that fact.¹

The Term – s 43ZG of the *Criminal Code*

[32] In determining the appropriate term I am to apply normal sentencing principles and the mental condition of KMD must be taken into account.² Although KMD did not plead guilty to any of the offences and she did not express her remorse for her conduct, the circumstances did not permit that to occur.

[33] In determining an appropriate term general deterrence must be taken into account. However the weight to be given to general deterrence must be sensibly moderated due to her deluded state. Her moral culpability is reduced by virtue of the imperative under which she believed she was acting. Denunciation is also of less significance given those circumstances. In the particular circumstances of KMD, and bearing in mind the evidence of the psychiatrist, Dr Walton, it seems to me that specific deterrence continues to have application. I must also bear in mind the need to protect the community as a factor in determining an appropriate term.

[34] There can be no doubt that the conduct with which I am concerned was very serious. It involved the use of a weapon against three victims and

¹ *Criminal Code*, s 43ZG (4B).

² *R v Morton* (2010) 27 NTLR 114, 125.

the consequences for those victims are eloquently expressed in the victim impact statements. There was grave danger to the lives and well-being of each of the victims.

[35] The offences of which KMD has been found not guilty by reason of mental impairment all arose out of the one course of conduct and were driven by her strongly held deluded belief that her son was being sexually assaulted or was in danger of being sexually assaulted. In my opinion an appropriate sentence would have been an aggregate sentence rather than individual sentences for each of the identified offences. Doing the best I can in what are very unusual circumstances, I indicate that a sentence of imprisonment for 16 years would have been an appropriate sentence to be imposed if KMD had been found guilty of the offences charged. I so determine.

Custodial or Non-custodial Supervision Order

[36] I must now determine whether the supervision order imposed under s 43Z of the *Criminal Code* should be a custodial or a non-custodial order.

[37] The legislation requires that I should not make a custodial supervision order committing KMD to custody in a prison unless I am satisfied that

there is no practicable alternative given her circumstances.³ There is a strong legislative presumption in favour of the liberty of the subject.

[38] Section 43ZN(1) of the *Criminal Code* provides:

- (1) In determining whether to make an order under this Part, the court must have regard to the following matters:
 - (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;
 - (b) the need to protect people from danger;
 - (c) the nature of the mental impairment, condition or disability;
 - (d) the relationship between the mental impairment, condition or disability and the offending conduct;
 - (e) whether there are adequate resources available for the treatment and support of the supervised person in the community;
 - (f) whether the accused person or supervised person is complying or is likely to comply with the conditions of the supervision order;
 - (g) any other matters the court considers relevant.

[39] In my opinion determination of these matters involves a balancing of competing considerations. The likelihood of the person being a danger to herself or another person and the need to protect others must be

³ *Criminal Code*, s 43ZA.

balanced against the desire to ensure the liberty of the individual. The consequences for the individual who, it must be remembered, has been found not guilty of criminal activity by virtue of mental impairment, may be quite serious including ongoing detention or living under onerous supervision. The risk assessment must reflect both the likelihood of conduct of concern occurring and the magnitude of the harm that may result from any such conduct. The legislation calls for an assessment of the degree of likelihood of the occurrence of the risk along with the nature of the risk and its consequences. Some level of risk will, almost always, be present. The extent of the risk must be weighed in the balance in determining the nature of the supervision order to be imposed.⁴

[40] Given the nature of these proceedings which have the potential to impact in a significant way upon the liberty of the subject, it seems to me that the level of satisfaction required to be reached should be guided by the principle in *Briginshaw*.⁵

[41] I am not to make a supervision order in relation to a person which commits the person to custody in an appropriate place or provides for the person to receive treatment or other services in the absence of a certificate from the CEO (Health) as defined in the *Criminal Code*. The

⁴ A very helpful discussion of similar, but different, legislative provisions is to be found in *Nigro v Department of Justice* (2013) 234 A Crim R 1.

⁵ *Briginshaw v Briginshaw* (1938) 60 CLR 517.

certificate must state the facilities and services available in an appropriate place for the custody, care or treatment of the person.⁶

[42] The supervision order is to be imposed for an indefinite term.⁷

However such an order may be varied or revoked on application to the Court.⁸ At least three months, but not more than six months, before the expiry of the term I have determined above, 16 years, the court must conduct a major review to determine whether to release the supervised person unconditionally.⁹ Further, a review is to be conducted at intervals of not more than 12 months until the supervision order is revoked. At each review the “appropriate person” must prepare and submit a report to the court on the treatment and management of the supervised person’s mental impairment, condition or disability.¹⁰ The court must then consider the report and determine whether the supervision order needs to be varied or confirmed.¹¹

Psychiatric Reports

[43] I have received a series of psychiatric reports dealing with the difficult issue of how KMD should be managed. There is a degree of agreement between the psychiatrists but there is also significant disagreement. At my request the psychiatrists exchanged reports and exchanged views and then endeavoured to identify the areas of agreement and

⁶ *Criminal Code*, s 43ZA.

⁷ *Criminal Code*, s 43ZC.

⁸ *Criminal Code*, s 43ZD.

⁹ *Criminal Code*, s 43ZG.

¹⁰ *Criminal Code*, s 43K.

¹¹ *Criminal Code*, s 43ZH.

disagreement. Following that process evidence was led from three of the psychiatrists and they were each cross examined.

[44] There is a consensus of psychiatric opinion that, at a minimum, KMD is suffering from a delusional disorder and that is the principal working diagnosis. Dr Kini, with whom Dr Ventura agreed, expressed the opinion that schizophrenia is a differential diagnosis. Dr Walton observed that a diagnosis of delusional disorder inevitably raises a differential diagnosis of paranoid schizophrenia. However he was of the opinion that there is insufficient evidence of schizophrenia and his opinion is that the preferred diagnosis is delusional disorder.

[45] There was agreement between the psychiatrists that KMD's mental health had deteriorated in the time leading up to the incidents of 7 May 2013. However there was disagreement as to her condition following that date. Dr Kini and Dr Ventura expressed the view that her mental health must have continued to deteriorate in the absence of treatment. The onset of the delusion commenced some-time after the birth of her first child and continued through to 7 May 2013. They were of the opinion that in the absence of further treatment her condition was likely to have suffered further serious deterioration since that date.

[46] Dr Kini and Dr Ventura said that KMD may be regarded as likely to cause serious harm to others and they spoke of improvised weapons being manufactured in a correctional environment. They advised that

some treatment, whether voluntary or involuntary, was required. I note that KMD has been in custody now for some two years without any further incident and this would suggest that the fears may not be as real or immediate as at first thought. However, Dr Kini pointed out that there had been a period of some years before the incident of 7 May 2013 during which KMD suffered a delusional condition without evidence of violence and then the act of significant violence occurred.

[47] On the other hand Dr Walton observed that KMD had been caught up in entrenched deluded beliefs for some years and there had only been the one isolated incident of violence, albeit very serious violence, and commented that:¹²

In the current context of her placement in a total institution with continuous supervision, I doubt that she would be deemed as a meaningful risk to others and, to date, there have simply been no worrisome acts of aggressivity towards herself or others. Plus it is my opinion that the criterion for involuntary treatment in relation to harm to self or others is not met.

[48] Dr Walton thought that there was no meaningful risk to others. He also expressed the view that there was no urgency in treating KMD that would justify involuntary treatment.

[49] Dr Kini and Dr Walton were both of the view that KMD is properly described as being unable to provide meaningful consent to treatment or to refuse treatment. Both also stated that if KMD agreed to take oral

¹² Exhibit J, p 3.

medication, and her compliance with the treatment could be assured, that would be an appropriate way to proceed. Both thought her agreement to such treatment would not be forthcoming. Her opposition to treatment was most recently confirmed in the course of the hearing in March 2015.

The Risk – Psychiatric Opinions

[50] The principal factor in determining whether a custodial order or a non-custodial order is appropriate is centred upon the risk, if any, posed by KMD. There was a direct conflict between the psychiatrists on this issue.

[51] Dr Walton thought the risk of further violence from KMD is low. He had consulted with her on numerous occasions from 2013 until the present. He last spoke with her by telephone a few days before giving evidence in March 2015. He had a further videoconference with her on 25 May 2015. He noted that there had been no reports of violence, threats of violence or other untoward behaviour on the part of KMD during the time she has been in custody. He did not think that her mental state had deteriorated during her time in custody and he was unaware of any basis for a suggestion that deterioration had occurred.

[52] The only violence in her history appeared to be the events of 7 May 2013 which Dr Walton described as being “the most worrisome

aspect”.¹³ He expressed the view that the “very severe act of violence” which occurred on 7 May 2013 “arose out of a particular set of circumstances where she was convinced her child was being harmed”.¹⁴ He went on to observe that the fact that this violence occurred “means that she will definitely be regarded as being of elevated risk of a further episode” but that it was difficult to see the same circumstances being reproduced.¹⁵

[53] Dr Walton noted that KMD had suffered from delusions for some years before that time and had not committed any act of violence. Dr Walton acknowledged that KMD continued to suffer from the delusion that her son had been sexually abused but said it was “massively reassuring” that she now stated she did not think the abuse was ongoing.¹⁶ This “ought to translate into a much reduced likelihood of her seeking to see an aggressive means to resolve any problems”.¹⁷ She has not seen her son for the two years she has been in custody.

[54] Dr Walton said there was no evidence of any deterioration in her mental state since her incarceration. He accepted that there is “inherently a good deal of uncertainty” regarding assessments of future risk but felt the risk in this case is low and that he was “cautiously

¹³ Transcript, p 36.

¹⁴ Transcript, p 36.

¹⁵ Transcript, p 37.

¹⁶ Transcript, p 37.

¹⁷ Transcript, p 37.

optimistic” that she could safely be released into the community.¹⁸ Dr Walton did not consider that KMD had been hostile to others beyond the direct victims of her actions of 7 May 2013.

[55] Dr Kini and Dr Ventura had a quite different view of the level of risk posed by KMD to those victims and to others in the wider community. They expressed the view that because KMD had not been treated, her illness would have “seriously deteriorated over time and that she is likely to cause serious harm to others”.¹⁹ The risk was described as a “high level of risk”.²⁰ The rationale for this opinion was expressed in the joint report of 10 November 2014 as arising from her deluded beliefs which were initially confined to her former partner RL and then expanded to include two separate friends of RL. They observed that her “beliefs became more systematised such that she believed there was a paedophile ring” which involved judges, senior police, Freemasons, Mrs L and others.²¹ Both psychiatrists were of the view that the clinical notes revealed that she “is incorporating more people in her paranoid beliefs whilst in custody.”²² Dr Ventura described the beliefs of KMD as “bizarre and extending to multiple people”.²³

[56] The deterioration in her mental health contributed to her actions on 7 May 2013. The psychiatrists referred to research that indicated that the

¹⁸ Transcript, p 43.

¹⁹ Exhibit A at par 16.6.

²⁰ Exhibit A at par 15.10 and 16.13.

²¹ Exhibit A at par 16.7.

²² Exhibit A at par 16.13.

²³ Transcript, p 52.

longer the duration of untreated psychoses, the poorer the expected outcome and went on to express the view that “depriving KMD of treatment for her psychotic illness is highly likely to lead to serious mental deterioration”.²⁴

[57] In his evidence before me Dr Kini stated that the fact that KMD had not shown signs of violence whilst in custody did not mean that the risk had abated. He noted that before 7 May 2013 she had been under the relevant delusion for some years without manifesting high risk behaviour.²⁵ He expressed the view that because of her history “the frequency of risk is low” but “the impact of that risk behaviour in this case was high from a forensic psychiatric risk assessment point of view”.²⁶ He said:²⁷

Past behaviours are the best predictors of future behaviour and given that untreated psychotic illness in my view contributed to her high risk behaviours at the material time and it hasn't been treated, it is my professional view that that risk remains.

Dr Ventura said:²⁸

It is highly unlikely that, knowing the natural history of her disease, that all of a sudden her deterioration had stopped merely because she entered custody because she has shown marked deterioration for a number of years until the time of the offence. The fact that she will have stopped deteriorating just because she entered custody, it makes absolutely no clinical

²⁴ Exhibit A at par 16.12.

²⁵ Transcript, p 8.

²⁶ Transcript, p 11.

²⁷ Transcript, p 22.

²⁸ Transcript, p 58.

sense whatsoever and is not only inconsistent clinically but inconsistent with international literature.

[58] The fact that KMD had informed Dr Walton that she was satisfied that her child is not being further abused, if it reflected her true beliefs, was a matter to be considered in assessing her level of risk but would need to be considered along with other factors. Dr Kini said such a comment, if it be true, is a sign of reduction of risk and of progress but would need to be the subject of further assessment which he had not been able to undertake because of his strained relationship with her. He would not support her treatment in the community. Her claim was but one piece of information that would have to be considered.

[59] In cross-examination Dr Ventura said, in this regard, that no conclusion could be drawn until the claimed beliefs of KMD had been tested including the wider beliefs she previously held and said:²⁹

Unless it can be proven otherwise, she continues to hold those beliefs and she could very well act on those beliefs whenever she interprets the environment to be a danger to her.

And later:³⁰

I must say I am sceptical of that statement in isolation without knowing what she believes about the multitude of the other delusional beliefs that she held.

²⁹ Transcript, p 53.

³⁰ Transcript, p 61.

Custodial Supervision Order

[60] In my opinion KMD does, presently, present a danger to other people who might already be or may become caught up in her deluded beliefs regarding the well-being of her son. I accord significant weight to the opinion of Dr Walton and have given his opinion that the risk is low anxious consideration. However, it seems to me that the risk that KMD poses to others is of a higher order. There is no dispute that she has experienced delusional beliefs since some time after the birth of her son. Those beliefs intensified over time and expanded to encompass a wider group of people than at the start. On 7 May 2013 the intensity of the beliefs led to the extremely violent events that I have described. Since that date KMD has been in custody and under constant supervision. She has not been subjected to any meaningful treatment. The only indications that there has been an improvement in her mental state are that there have been no further incidents of violence or threatened violence and her statement that she does not consider her son to be under present threat of sexual abuse. As to the former, I note that she has been within the prison system and under constant supervision. Possible triggers for intensifying her beliefs are not present in that environment. As to the latter, there has been no investigation of whether the claim is genuine and, if so, whether it signifies that she would not seek to visit violence upon the immediate victims of her actions on 7 May 2013 or others who were the subject of

her deluded beliefs. As presently informed it seems to me that much will depend upon the environment in which she finds herself. The psychiatrists agree that she continues to suffer under the same deluded beliefs as existed at 7 May 2013.

[61] In my opinion an order for custodial supervision must be made because, if KMD is not in custody, she is likely to be a danger to those people whom she incorrectly believes were a danger to her son and may still be a danger to her son. The level of risk of similar conduct is difficult to assess but the consequences of such conduct are extreme. She has demonstrated the lengths to which she will go because of her deluded beliefs. I am not satisfied that the danger has abated.

[62] It is not necessary for me to deal with the issue of treatment of KMD at this time. The parties submitted that this issue is more appropriately addressed by application of the provisions of the *Mental Health and Related Services Act* rather than at this time by this court. If the matter is to be addressed by the court at some time in the future an argument as to jurisdiction has been foreshadowed.

Orders

[63] In conclusion, I have made a supervision order which imposes custodial supervision on KMD.
