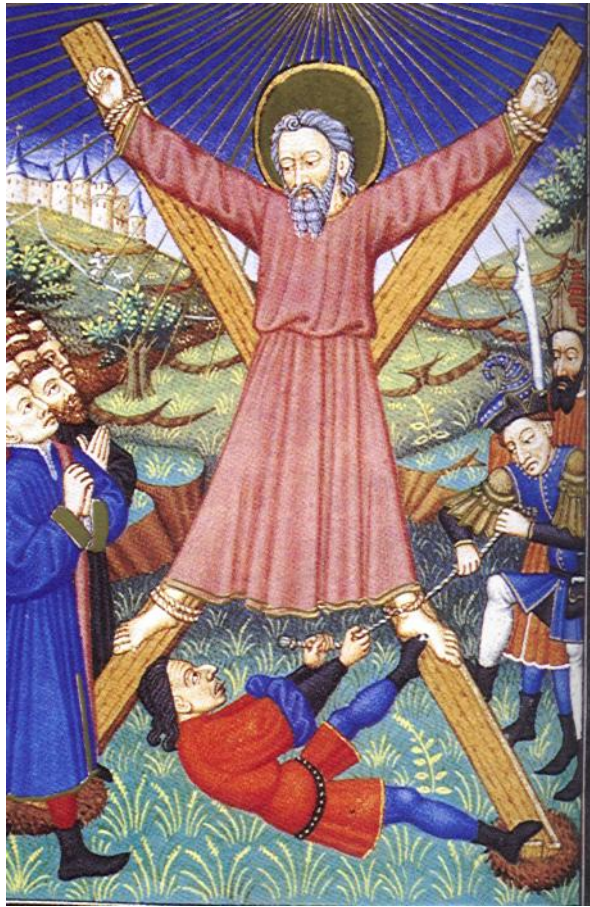


## SAINT ANDREWS FEAST DAY



SATURDAY 30 NOVEMBER 2013

R v BAILIFF 2011  
UNITED NATIONS  
WORLD HEALTH ORGANISATION  
NOT GUILTY BY REASON OF MENTAL IMPAIRMENT

UNITED NATIONS WORLD HEALTH ORGANISATION  
NOT GUILTY BY REASON OF MENTAL IMPAIRMENT BY ALEXANDER MARCEL ANDRE  
SEBASTIAN BARKER BAILIFF [2011] IN AUSTRALIAN CAPITAL TERRITORY SUPREME COURT  
214 ON 30 NOVEMBER 2011 WITH ONE SENTENCE AND ONE P.127 A4 PAGE FROM BRAIN  
DAMAGE MEDICO-LEGAL ASPECTS BY PHILIP W. BATES BLACKWELL PRESS 1994 ISBN:  
187511436X TAKEN FROM ALWYN LISHMAN'S ORGANIC PSYCHIATRY: THE  
PSYCHOLOGICAL CONSEQUENCES OF CEREBRAL DISORDER ISBN 0632095407

"Parker QC, Roger, Barrister-at-Law, (61 2 9221 3890), p.127, Chapter 7, Adducing Evidence to Prove or Disprove Brain Damage, Brian Damage Medico-Legal Aspects, Blackwell Press, Sydney, (1994).

(My Phaedra complex Philip W. Bates is General Editor, Adjunct Professor, University of Sydney & Sir Owen Dixon Chambers)

"6. The Clinical Picture in Focal Cerebral Disorder Lishman says at p.16 that strictly focal brain damage can be responsible for both acute and chronic organic reactions. He says that a frontal lesion may confer distinctive changes of disposition and temperament. Most characteristic is a disinhibition with expansiveness, overfamiliarity, tactlessness, overtalkativeness, childish excitement or prankish and punning social and ethical control may be diminished with lack of concern for the future and for the consequence of actions. Sexual indiscretions and petty misdemeanours may occur, or gross errors of judgement with regard to financial or interpersonal matters. Sometimes there is a marked indifference, even callousness for the feelings of others. Equally lack of anxiety and insight on the part of the patient into his or her condition. Elevation of mood is often seen, namely an empty and fatuous euphoria rather than a true elation which communicates to the observer. In other cases the principal changes are lack of initiative, spontaneity and a profound slowing of psychomotor activity. Concentration, attention and ability to carry out a planned activity are impaired by these changes but performances on test of formal intelligence is often surprisingly well preserved once the patient has been secured.

Reference:- Lishman, William Alwyn, *Organic Psychiatry, the Psychological Consequences of Cerebral Disorder*, Blackwell Scientific Publications Oxford (1987).

### World Health Organisation International Classification of Impairment Disability and Handicap (1981)

(Commissioner of World Health Organisation Aids Conference in 1988 was Michael Kirby and the second representative for Australia was Philip W. Bates) (World Health Organisation Health Legislation Collaboration Centre Head for 10 years my Philip W. Bates specialising in Tuberculosis)(My Great grandfather Dr James Watt was Medical Superintendent in London also specialising in Tuberculosis)(His daughter is Margaret Watt my Nana named just like daughter of James Watt born in January 19 1736, son of James Watt whose grandson was also called James Watt Jnr) (Watt has been described as one of the most influential figures in human history.[2] He developed the concept of horsepower[3] and the SI unit of power, the watt named after him.)

- **Hart, Michael H. (2000).** *The 100: A Ranking of the Most Influential Persons in History*. New York: Citadel. ISBN 0-89104-175-3.
- **Jump up** Lira, Carl (2001). "Biography of James Watt". [egr.msu.edu](http://egr.msu.edu). Retrieved 5 July 2010.

(The Barker is a Crier of the Court from Onibury in Shropshire and the list of people in the Court is the Barker's List) (Uncle Wilfrid Barker won the bid to hold 2000 Sydney Olympics) (The Bailiff is a Minor Court Official with Police Authority who were established hundreds of years later and sailed from Normandy in France with William the Conqueror in 1066 with a Papal Bull to become King of England just like I will soon.)

My apprenticeship against the Chief Justice of High Court of Australia prompted Adelaide, Brisbane, Canberra, Darwin, Hobart, Melbourne, Perth and Sydney Police Commissioners to contract Canberra, contact with 659 Shires, 800 Police Stations, 1000 State Emergency Services, 1788 Territory, State and Commonwealth only elected representatives and senior officers of higher education plus 2780 electronic white pages listings of police and 1680 electronic white page listings of Air Force, Army, Navy and Defence in Australia. Resulting in legislation in Australian Capital Territory, Northern Territory, South Australia, Queensland, Western Australia, Victoria, New South Wales and Commonwealth to found inadequate Australian Crime Commission with absolutely no powers to

employ 70,000 Air Force, Army, Navy to incarcerate all citizens, barristers, solicitors, judiciary, military, police, politicians, priests and senior officers of higher education for contempt.

In R v BAILIFF 2011 CHIEF TERRENCE HIGGINS SAID, "HE IS FAMILIAR WITH INTERNATIONAL CLASSIFICATION OF IMPAIRMENT DISABILITY HANDICAP (1981) NOT GUILTY."

SO R v BAILIFF 2011 PROVIDES 10% of SOCIETY IMPAIRED  
A UNITED NATIONS LAWFUL RIGHT TO MURDER WHO EVER THEY WANT ANY WHERE IN THE WORLD AS THEY ARE NOT GUILTY BY REASON OF MENTAL IMPAIRMENT.  
R v BAILIFF 2011 ALSO EDUCATES THE WORLD THAT THE AUSTRALIAN CONSTITUTION ACT (UNITED KINGDOM) HAS BEEN REPEALED AS IT IS INVALID SINCE WORLD WAR I, TREATY OF VERSAILLES, LEAGUE OF NATIONS, WORLD WAR II, ATLANTIC CHARTER & UNITED NATIONS.

## THE MASON PAPERS SELECTED ARTICLES and SPEECHES

This book comprises a selection of articles and speeches by Sir Anthony Mason written and delivered when he was a Justice and later Chief Justice of the High Court of Australia and after his retirement from that Court in 1995. It demonstrates his long standing interest in the judicial process and his desire to communicate to the legal world and the public a more enlightened understanding of the proper scope of judicial law-making and the responsibility of judges for adapting the law to the changing conditions in society. It also displays his acknowledged mastery of public and private law and his belief in the growing significance of international and comparative law in the development of Australian law. The book contains some important speeches and articles on constitutional and administrative law, international law, human rights, equity and contract, the High Court, judicial administration, advocacy, a significant media interview, a State of the Judicature report delivered as the Chief Justice of Australia and his swearing in speeches when appointed as a Justice and later Chief Justice of the High Court. Some of the selected speeches display Sir Anthony's characteristic wit. The book deals with highly topical subjects such as whether Australia should adopt a bill of rights, the health of Australia's democratic institutions, the establishment of an Australian republic, globalization and the decline of parliamentary and national sovereignty. The articles and speeches were chosen and edited by Professor Geoffrey Lindell in consultation with Sir Anthony. 442 pages.

### [Aboriginal Symbols](https://docs.google.com/file/d/0Bwa5a9nLB1D2R3ZmVHRiQ2lKQ28/edit?usp=sharing)

<https://docs.google.com/file/d/0Bwa5a9nLB1D2R3ZmVHRiQ2lKQ28/edit?usp=sharing>

### [Australian Shires](https://docs.google.com/file/d/0Bwa5a9nLB1D2R3ZmVHRiQ2lKQ28/edit?usp=sharing)

<https://docs.google.com/file/d/0Bwa5a9nLB1D2R3ZmVHRiQ2lKQ28/edit?usp=sharing>

### [Bailiff Traffic Accident 7-12-1985 \(1\).pdf](https://docs.google.com/file/d/0B9qsJGqRmMJbQmFjeGZxejBaYWs/edit?usp=sharing)

<https://docs.google.com/file/d/0B9qsJGqRmMJbQmFjeGZxejBaYWs/edit?usp=sharing>

### [Report of Dr Stephen Allnutt dated 10 April 2012.pdf](https://docs.google.com/file/d/0B9qsJGqRmMJbSE1NM1Jpb09TM00/edit?usp=sharing)

<https://docs.google.com/file/d/0B9qsJGqRmMJbSE1NM1Jpb09TM00/edit?usp=sharing>

[Professor Hayes Report.pdf](#)

<https://docs.google.com/file/d/0B9qsJGqRmMJbZnRlNkxuV0hfVFU/edit?usp=sharing>

[Dr McMahon Report - BAILIFF Alex.pdf](#)

<https://docs.google.com/file/d/0B9qsJGqRmMJbdlFPYXc5UEpTQTA/edit?usp=sharing>

[St Peter](#)

<https://docs.google.com/file/d/0Bwa5a9nLB1D2dGZIWXg2ZVFrMlk/edit?usp=sharing>

[The.High.Court.of.Australia.pdf](#)

<https://docs.google.com/file/d/0B9qsJGqRmMJbNkVNWTF0RmpBbEk/edit?usp=sharing>

EX TEMPORE JUDGMENT

No. SCC 139 of 2009

Judge: Higgins CJ

Supreme Court of the ACT

Date: 30 November 2011

IN THE SUPREME COURT OF THE )

) No. SCC 139 of 2009

AUSTRALIAN CAPITAL TERRITORY )

R

v

ALEXANDER MARCEL ANDRE SEBASTIAN BARKER BAILIFF

ORDER

Judge: Higgins CJ

Date: 30 November 2011

Place: Canberra

THE COURT ORDERS THAT:

The defendant is not guilty by reason of mental impairment.

MR GILL: The accused pleads not guilty to the charge. Incorporated in that plea is a plea of not guilty by reason of mental impairment, specifically due to symptoms of brain damage.

HIS HONOUR: Yes. All right.

MR GILL: With my friend's consent at the commencement of the trial proceedings, I tender a report by Graham George.

HIS HONOUR: Yes.

MR GILL: Your Honour already has the report in that bundle of documents that was tendered for the fitness to plea proceedings.

HIS HONOUR: Yes.

MR GILL: It is a report dated 29 April 2011.

HIS HONOUR: Yes, I have that.

MR GILL: I tender one of the attachments referred to in it which includes the article by Mr Leeshman.

MR LAWTON: Or a reference to it.

MR GILL: Reference to an article by Mr Leeshman.

HIS HONOUR: Yes, I have that. Thank you.

MR GILL: Specifically your Honour will see that Dr George says: "Mr Bailiff has an established diagnosis of an organic mental disorder, inclusive of a persistently hypermanic to manic mood disorder in association with personality change and cognitive difficulties." I note that the report was prepared in relation to fitness to plead, but we say that that raises the issue of mental impairment.

HIS HONOUR: Well it is the objective circumstance and the purpose for which it is prepared that is important.

MR GILL: On receipt of that report and before the commencement of the rest of the trial, I ask your Honour to permanently stay the proceeding.

HIS HONOUR: On what basis?

MR GILL: On the basis that there has been excessive delay in the proceedings.

HIS HONOUR: Unreasonable delay I think is the term.

MR GILL: The application is made in reliance on the authority of R v Kara Lesley Mills [2011] ACTSC 109 ('Mills') and the right that is conferred under the Human Rights Act 2004 (ACT) ('Human Rights Act') as recognised by your Honour in Mills.

HIS HONOUR: It certainly is that.

MR GILL: We acknowledge that this case does not involve the delay that was seen in the case of Kara Mills. The delay in her case was a much more grievous delay.

HIS HONOUR: Egregious, yes. There is also the question of the effect upon the fairness of the proceeding.

MR GILL: In Ms Mills' case, helpfully, your Honour noted there was an extension to the common law jurisdiction which enabled the grant of a stay, in that there was not a necessity to find those other common law factors which had previously been required because of the right to be heard under the Human Rights Act.

The particular issue that we say arises here in contrast to Mills, is that Mills involved a relatively serious offence in relation to drug trafficking. So the offence that is brought

before your Honour today does not fall into that sort of category. Even if it is not categorised as a trivial offence, we would say that in the overall scheme of matters it is a minor offence in the sense that the offence provision itself is not at the most serious order of magnitude and the particular ---

HIS HONOUR: I do recall that I dismissed a charge in relation to another person, Mr Robertson I think his name was, who was suffering from considerable mental problems. I dismissed it on the ground of relative triviality, under the Crimes Act 1914 (Cth) of course.

MR GILL: Well this is likewise a damage to property type offence.

HIS HONOUR: Yes, it is.

MR GILL: But when one looks at the scope of what the encompassed damage property -  
- -

HIS HONOUR: Well I think I need to have more on that.

MR BAILIFF: Excuse me, your Honour. Could we seek to tender the Magna Carta for the period of time before trial happens?

HIS HONOUR: No, we do not need the Magna Carta, it has been repealed.

MR BAILIFF: But your Honour - - -

HIS HONOUR: It has been repealed. Take a seat.

MR BAILIFF: But your Honour, the Constitution is British as well.

HIS HONOUR: It is still repealed.

MR BAILIFF: We have not repealed it yet, your Honour.

HIS HONOUR: Yes, we have. Go on.

MR GILL: So your Honour should have a case statement available to you.

HIS HONOUR: Yes, I have.

MR GILL: I have no objection to your Honour seeing that case statement.

HIS HONOUR: Yes. Well I presume that will be the case relied upon anyway, Mr Gill.

MR GILL: It is. There is a necessity to call Mr Franks.

HIS HONOUR: Could you give me another copy? There are so many papers in the file now. I think that the Crown would concede that those facts would be established except for - - -

MR LAWTON: Yes, there is some minor disagreement about the mechanism.

HIS HONOUR: Yes, I understand.

MR LAWTON: There is a potentially major disagreement surrounding the circumstances which lead to Mr Bailiff to act in such a manner.

HIS HONOUR: No, I understand his perception is that the structure he built was being attacked and he thought he was entitled to defend himself in respect of that, or defend the structure if you like. At law that would not run.

MR GILL: Certainly an aspect of his defence is his belief of an entitlement to act in the manner in which he acted.

HIS HONOUR: Yes, I understand that. As I say, that would not be accepted as a matter of law, but it would be seen as being generated by his organic brain damage condition.

MR GILL: Yes. Yes, and it goes to that criteria under the mental impairment.

HIS HONOUR: I would have difficulty in rejecting that I think.

MR GILL: The significance of that on the application for a stay is that when one looks at the nature of the offence and one looks at the nature of the accused, the offence itself does not fall in the degree of magnitude that one saw in the Mills case.

HIS HONOUR: It does not, no that is true.

MR GILL: Meaning that a lesser delay justifies a finding that there has been an unjustifiable delay because of the nature of the offence that is brought before the Court.

HIS HONOUR: I think that having regard to the history of the matter, on balance, I do not think a case for a stay is made out.

MR GILL: As the Court pleases.

HIS HONOUR: Mr Lawton.

MR LAWTON: Your Honour, did we mark that report of Dr George as an exhibit?

HIS HONOUR: No I have not, but I can do so.

MR LAWTON: Yes.

HIS HONOUR: All right, do you want me to mark that as Exhibit 1?

MR LAWTON: Thank you, your Honour.

EXHIBIT 1 - DR GEORGE'S REPORT

HIS HONOUR: Yes.

MR LAWTON: In terms of the case statement, as you have already said there is some disagreement about the fact that I - - -

HIS HONOUR: Some details.

MR LAWTON: And my friend does wish to cross-examine briefly Mr Franks.

HIS HONOUR: Yes.

MR LAWTON: I will call him now and then I understand my friend may call some evidence from Mr Bailiff in respect to the issue of mental impairment.

MR GILL: I will make a Prasad application first, your Honour.

HIS HONOUR: Yes, well that may be appropriate in the circumstances, given Exhibit 1.

MR LAWTON: Yes.

HIS HONOUR: All right, okay. Proceed.

MR LAWTON: Thank you, your Honour. I call Gerald Franks.

MR BAILIFF: Your Honour if you call me I can let you know what happened as well if you wish.

HIS HONOUR: That is all right, we may not need it Mr Bailiff because I do not think there will be very much dispute about it.

MR BAILIFF: Well he had come into my house on numerous occasions with the keys.

HIS HONOUR: All right. Calm down, be quiet and we will just hear this evidence first.

MR BAILIFF: Thank you, your Honour.

GERALD DAVID FRANKS, Affirmed:

#### EXAMINATION-IN-CHIEF BY MR LAWTON

MR LAWTON: Sir, can you tell the court your full name?---Gerald David Franks.

And you are employed as a social worker at the Canberra Men's Centre?---I am employed as a Director of the Men's Centre, yes.

And in respect to the matter before the Court you are aware that you are here to give evidence today about a matter involving Mr Bailiff that occurred on 30 January 2009?--  
-Correct.

And on that day you provided a handwritten statement to police about what you witnessed on that day?---Correct.

And you signed that statement noting to the best of your ability the contents of the statement were true and you are willing to give evidence about them in court?---  
Correct.

I will show you firstly this document, sir. Can you just confirm that that is a photocopy of the statement you gave on that day and it includes your signature at the end of the statement?---It is, and it does.

And have you had a chance to read that in relatively recent times?---Yes, I read it this morning.

And to the best of your recollection the contents are true?---Yes.

Thank you. I tender that statement, your Honour. I also hand up a typed copy of the statement which was typed a fortnight later.

HIS HONOUR: No objection?

MR GILL: No, there is no objection to that, your Honour.

HIS HONOUR: That will be Exhibit 2.

EXHIBIT 2 - STATEMENT OF GERALD FRANKS

MR GILL: Just let his Honour have a chance to read that statement Mr Lawton.

HIS HONOUR: Yes, I have read that.

MR LAWTON: Yes thanks. Just to be clear, Mr Franks, the car that you were driving on that day was owned by the Canberra Men's Centre?---Correct.

And you did not give Mr Bailiff permission to damage the car on that day?---No, I did not.

That is all the questions I have, your Honour.

HIS HONOUR: Thank you. Just one before you start Mr Gill. I understand there was a statement by Mr Bailiff to the effect that you could send the bill to his trustee. Did you do that?---Yes, we did, yes.

It was paid up?---Via the insurance company.

Yes, and it was paid up?---Yes, yes.

Thank you. Yes, Mr Gill.

CROSS-EXAMINATION BY MR GILL

MR GILL: Yes, thank you, your Honour. Mr Franks you were the head lessee of that house, is that right?---Correct. Canberra Men's Centre is the head lessee, yes.

And when was it that Canberra Men's Centre became the head lessee of the house, roughly?---Roughly 12 months prior to that, it may have been a bit less.

And did that follow some sort of litigation about whether or not Mr Bailiff would be given a house?---The process as I recall it was that Mr Bailiff was under threat of eviction from Housing ACT and Housing ACT approached Canberra Men's Centre and asked us if we would be prepared to provide an accommodation option for Mr Bailiff in the community, to which we agreed.

Was some sort of order made by Mr Anforth about the provision of a house for Mr Bailiff?---I do not recall.

Do you ever recall Mr Bailiff speaking to you about Mr Anforth making an order for him to receive a house?---Not specifically.

At the time of this incident was there a high degree of conflict between yourself and Mr Bailiff?---At the time of the incident? Not a high degree at the time of the incident.

Well let me ask you this. Had Mr Bailiff expressed his disagreement with Canberra Men's Centre being on the lease?---Yes.

And he had done that on numerous occasions?---Yes.

Did he believe, in fact, that you were the person on the lease? Sorry, did he indicate to you that he believed that you were the person on the lease rather than the Canberra Men's Centre?---That is a detail that I do not recall.

Did you visit that house from time to time?---Yes.

Did you have a key to that house?---Yes.

Did Mr Bailiff express to you that he was not happy with you having a key which allowed you entry into the house?---Yes.

Mr Bailiff expressed to you that he did not want you entering the house?---Without his permission, yes.



Were there occasions on which you entered the house without his permission?---Never.

MR BAILIFF: Objection, your Honour. I have got the note here left in my house - - -

HIS HONOUR: Mr Bailiff, sit down.

MR BAILIFF: He is lying, your Honour.

HIS HONOUR: It is not your turn yet.

MR GILL: Now, there was some sort of construction on the footpath area, is that right?---Correct.

And had there been arguments between yourself and Mr Bailiff about whether that needed to be removed?---On the day.

And did you have an argument before that time about whether it needed to be removed?---Not about the structure. About the pile of soil.

Right. And did you provide him with a deadline for removal of the item?---I did.

All right. And what was the deadline?---I do not recall.

Did you tell him he needed to remove the structure by the end of the week? If you do not remember, you can say you do not remember?---Yes, I do not remember.

Do you remember whether or not you told him that the end of the week was to be a Thursday?---I remember giving him the details of a directive that was provided to me. The exact date, I do not recall. There was a timeline that was provided by, I believe, Housing ACT.

You seemed to indicate in your statement that Mr Bailiff made some sort of threat to harm you?---Yes.

Was that what you meant to say in your statement?---Yes.

All right. I want to suggest to you that you are incorrect when you assert that he said, "I'll bash you"?---I have told it as I heard it from Mr Bailiff on the day.

Do you ever find it hard to follow what he is saying?---Not really. There are times when the conversation is prolonged and it does become different. In the early stages when our conversations are in a calm frame of mind, Mr Bailiff can sound particularly rational.

They were not calm this particular day, were they?---At the early stages of the conversation, yes.

How quickly did they become uncalm?---Almost instantly when he stood up and decided to go down and damage the vehicle.

That was after you had given him a directive about removal of the material?---It is as according to the statement. I talked to him about removing the material, yes.

And that was also in the context of his ongoing disagreement about you having a key to enter what he regarded as his house?---No, it was not about that at all.

How long had he been expressing to you his disagreement about you being able to enter his house?---Probably about six months. Maybe a bit longer.

However long it was, did you observe that to be something that he would become upset about?---Yes.

I come back to the incident with the car now. You say that two different rocks were put through the various windows?---Yes.

Can I suggest to you that it was one rock put through the two windows? Do you agree with that?

HIS HONOUR: In other words, it could have been the same rock he picked up again after he - - -?---Absolutely.

MR GILL: It could be?---It certainly could be.

He immediately offered compensation in respect of the damage that was done?---Correct.

And he indicated to you some purpose connected with getting into the Supreme Court when he did it?---I do not recall him saying anything about the Supreme Court. I do recall him saying, "Now I have an issue with Canberra Men's Centre."

MR BAILIFF: Objection, your Honour, that is so untruthful. I was there.

HIS HONOUR: All right. Just take a seat, Mr Bailiff. We will come to your case in due course.

MR BAILIFF: I just want you to know this guy is lying, or he has got dementia.

HIS HONOUR: Well, we will work that out later.

MR GILL: They are all the questions I have got for Mr Franks. Thank you, your Honour.

HIS HONOUR: Thank you.

MR LAWTON: There is nothing arising, your Honour.

HIS HONOUR: Thank you, Mr Franks. You are excused.

WITNESS WITHDREW

HIS HONOUR: Now, Mr Lawton.

MR LAWTON: That is the evidence for the Crown, your Honour.

HIS HONOUR: Okay.

MR GILL: Before commencing the defence case, which involves calling Mr Bailiff, your Honour, I say that the material before you is such as to justify an acquittal without hearing anything further. I rely on the authority of R v Prasad 23 SASR 161, which simply reflects what, of course, is the case in any trial, that once the prosecution case closes, the fact finder is entitled to acquit if they are not at that point persuaded beyond a reasonable doubt as to the guilt.

HIS HONOUR: The only ground upon which I could base that would be mental impairment.

MR GILL: At this point, yes.

HIS HONOUR: You understand what the consequences of that will be?

MR GILL: Yes.

HIS HONOUR: Well, let us just take that in order. First of all, mental impairment does include brain damage.

MR BAILIFF: Thank you, your Honour.

HIS HONOUR: That definitely brings it within that particular concept.

You then go to section 28 of the Criminal Code 2002 (ACT) ('Criminal Code'). He obviously, it would seem to me, did know the nature and quality of his conduct.

Pursuant to Dr George's reports, there may be a question about his capacity to control it. That certainly does seem to arise.

MR GILL: Certainly it seemed to represent some sort of justification for his actions.

HIS HONOUR: He certainly would not be able to reason with a moderate degree of sense or composure.

MR GILL: No.

HIS HONOUR: He obviously thought the conduct was not wrong.

MR GILL: Yes.

HIS HONOUR: Albeit objectively you cannot agree with that.

MR GILL: Yes, your Honour.

HIS HONOUR: Mr Lawton?

MR LAWTON: In terms of section 28(1)(b) of the Criminal Code and the qualification in subsection (2) - - -

HIS HONOUR: I'm going to section 28 (1) (c).

MR LAWTON: Are you going to (c), your Honour?

HIS HONOUR: Yes.

MR LAWTON: I thought you were dealing with section 28(1)(b).

HIS HONOUR: Section 28(1)(b) has been addressed, but I am saying that (c) seems also to be engaged.

MR LAWTON: Yes. It is difficult to divorce. We have the evidence of the prosecution. We have what was expressed by Mr Franks in that it appeared to him that Mr Bailiff decided to smash the car windscreens.

HIS HONOUR: I think that is certainly a justifiable inference. The question is not whether he did decide it but what his knowledge about the wrongfulness of his conduct was and how that was derived. That is the first point. Second, whether the conduct was in any meaningful sense of the word able to be controlled.

MR LAWTON: I submit that your Honour, at this stage, in terms of (c), could be satisfied on the prosecution case that he could control his conduct. But perhaps the issue that your Honour would still need to determine is in terms of paragraph (b) and the qualification of subsection (2). At this stage, I would say to your Honour that with respect to the application made by my friend, the evidence is not so inherently weak. It is quite strong in terms of the actions.

HIS HONOUR: I am not concerned with his actions in this respect. I accept that the actions of smashing the windscreens did take place, and it was apparently an act of will on Mr Bailiff's part because he rejected the proposition that his structure should be removed.

MR BAILIFF: Your Honour, I gave him a chance to drive his car away after he threatened me - - -

HIS HONOUR: Okay, that is all right. I am not concerned about a chance to drive away.

MR BAILIFF: He could have driven away, your Honour. I am from Healesville, your Honour. That is where bushfires happen, your Honour.

HIS HONOUR: I do not want to know about the bushfires.

MR BAILIFF: This is just when the bushfires were happening, your Honour.

HIS HONOUR: I just want to listen to Mr Lawton for the moment.

MR BAILIFF: Yes, cool.

MR LAWTON: I will be very brief, your Honour. I submit on those conclusions your Honour is reaching that (a) and (c) are not enlivened but the issue still remains - - -

HIS HONOUR: Certainly I am satisfied (a) is not engaged. I am not satisfied that (c) is not engaged but that is not the question. The question is whether it is engaged. (b) on the other hand - - -

MR LAWTON: (b) is perhaps probably the pertinent one, your Honour.

HIS HONOUR: Yes, it is.

MR LAWTON: And we are talking on the balance of probabilities in subsection (5). I submit that your Honour needs to hear something more before being satisfied. Of course the difficulty is that one has to divorce what Mr Bailiff has been saying in court today and other days. That is not part of the evidence before you.

HIS HONOUR: There is some question about that. I appreciate her Honour, Penfold J, was talking about that in relation to the plea. But certainly in relation to a jury trial, the conduct of the accused in court is something the jury can take into account.

MR LAWTON: That is right, your Honour. But I suppose what I am saying - - -

HIS HONOUR: With some qualification.

MR LAWTON: With some qualifications and bearing in mind that the proper trial has only commenced some 20 minutes ago. What happened this morning was separate to that.

HIS HONOUR: It was, yes.

MR LAWTON: So my submission would be that although there is some support for

section 28(1)(b) being enlivened, your Honour would need to hear something more before being satisfied on the balance of probabilities that it has been made out.

MR BAILIFF: Your Honour, can I put myself in the witness box and be cross-examined by my lawyer please?

HIS HONOUR: No.

MR BAILIFF: Or barrister.

HIS HONOUR: I do not need it.

MR BAILIFF: I recall everything, your Honour.

HIS HONOUR: Excellent. But in this case the issue that has been raised is whether section 28(1)(b) of the Criminal Code is engaged and whether on the balance of probabilities it has been established that the person did not within the meaning of section 28(1)(b) know his conduct was wrong. For that purpose I take account of section (2) which refers to the fact that: “[a] person does not know the conduct is wrong, if the person cannot reason with a moderate degree of sense and composure about whether the conduct, as seen by a reasonable person, is wrong.”

In my opinion, the report of Dr George, which has been tendered by the prosecution as Exhibit 1, would justify a finding consistent with section 28(1)(b). It certainly seems to me that Mr Franks’ evidence is consistent with that too. There was no rational reason why Mr Bailiff should have damaged Mr Franks’ car. I appreciate Mr Bailiff may have thought that he had a good reason. However, that is the very point: that there was not reasoning with a moderate degree of sense and composure about whether this conduct, as seen by a reasonable person, was wrong. In fact, I do not think Mr Bailiff would even know what that standard meant in his state of mind.

So for that reason I do find that Mr Bailiff is not guilty of the offence charged by reason of mental impairment.

MR LAWTON: As your Honour pleases.

MR BAILIFF: Can I give the reason please?

HIS HONOUR: I have got the reasons. I do not need any more.

MR BAILIFF: But can I give you the reason, your Honour?

HIS HONOUR: No. I have already got it.

MR BAILIFF: Can I just jump in the witness box and give the reason?

HIS HONOUR: No, you cannot.

MR BAILIFF: But your Honour, I knew very well that when people are about to die in bushfires and I am being threatened by some guy in 43 degree temperature - - -

HIS HONOUR: Mr Bailiff, I have just found you not guilty. Sit down.

MR BAILIFF: But your Honour, that is not fair.

HIS HONOUR: That I found you not guilty?

MR BAILIFF: Your Honour, I want you to realise that if I gave the symptoms of brain damage - - -

HIS HONOUR: I have got it.

MR BAILIFF: Well your Honour, I meant if I gave it to you - - -

HIS HONOUR: I have got it.

MR BAILIFF: Great that you have it. And if you have the thing, the two sources where it is from, those books - - -

HIS HONOUR: I do.

MR BAILIFF: Then your Honour, you might consider putting the symptoms of brain damage in a law report, as in a decision - - -

HIS HONOUR: No.

MR BAYLSIS: This would be a common law decision, your Honour, so it has the symptoms of brain damage.

HIS HONOUR: Mr Bailiff, I have made that decision. The decision is that by reason of mental impairment, which is as a result of your organic brain damage, you are not guilty of this offence.

MR BAILIFF: But your Honour, can you not you have the symptoms of brain damage in your judgment? I mean like - - -

HIS HONOUR: I just did.

MR BAILIFF: But your Honour, you did not type what I - - -

HIS HONOUR: It is all in the transcript.

MR BAILIFF: But I did not read the symptoms of over familiarity, the callousness, the insensitivity, elevation of mood factors, euphoric. Your Honour - - -

HIS HONOUR: You have now mentioned them all, they are all on the transcript.

MR BAILIFF: Do you want me to read you all four, your Honour, so it is on record?

HIS HONOUR: You just mentioned them, Mr Bailiff, it is all on the record now.

MR BAILIFF: But the whole page, I have not read it to you, your Honour.

HIS HONOUR: You do not have to.

MR BAILIFF: I mean, your Honour, the best man in relation to this is my stepfather, okay. I just need a law report to benefit others, your Honour.

HIS HONOUR: Okay. Enough. That is enough.

MR BAILIFF: So your Honour, I did understand that you handed down a decision.

HIS HONOUR: Okay. Now what is the next order, Mr Lawton.

MR LAWTON: Your Honour, you have made a special verdict of not guilty by reason of mental impairment. That enlivens division 13.3 of the Crimes Act 1900 (ACT) ('Crimes Act').

HIS HONOUR: Yes, obviously custody is not appropriate.

MR LAWTON: Well I think it is a non serious offence in any case, your Honour.

HIS HONOUR: I am not sure about that.

MR LAWTON: It is just in section 325 of the Crimes Act.

MR GILL: Section 300 deals with serious offences.

HIS HONOUR: 300.

MR BAILIFF: Thank you, your Honour, for the decision.

HIS HONOUR: That is all right.

MR LAWTON: It is not a serious offence.

HIS HONOUR: No, it is not, you are right.

MR LAWTON: So the only option your Honour has, under section 328 of the Crimes Act, you can make an order that he submit to the jurisdiction of the ACT Civil and Administrative Tribunal ('ACAT').

HIS HONOUR: Yes.

MR LAWTON: I'm sorry, 328 refers to the Magistrates Court. It is section 323, your Honour.

HIS HONOUR: That is right.

MR LAWTON: Now you do actually still have a power to detain him in custody.

HIS HONOUR: I could do that, I know, but I do not think it is appropriate.

MR LAWTON: The difference is that you might recall in the matter of R v Nicholls [2010] ACTSC 25 that section 324 makes the presumption that he will be detained in custody.

HIS HONOUR: Yes.

MR LAWTON: There is not such a presumption in section 323.

HIS HONOUR: No, I understand that.

MR LAWTON: The only issue that perhaps might be of benefit, your Honour, is to perhaps hear - and my friend might have some evidence to this effect anyway - about

what ACAT is doing in terms of the ongoing treatment of Mr Bailiff. You will recall from this morning's proceedings that Dr George has expressed concerns that he does need perhaps to be better treated than he currently is.

HIS HONOUR: Yes.

MR LAWTON: And whilst most of the offences for which Mr Bailiff comes before the Court cannot be considered to be at the upper end of the spectrum, one is always concerned that they may escalate in the future if that treatment is not enforced.

HIS HONOUR: Yes.

MR BAILIFF: Your Honour, I will be extraordinarily, extremely well behaved.

HIS HONOUR: Well, can I make one thing clear to you. You cannot go around breaking windows.

MR BAILIFF: Your Honour, I will never do that ever again, your Honour.

HIS HONOUR: Good.

MR BAILIFF: I am just trying to get rid of the Canberra Men's Centre. It cost me six grand for security expenses at my house and they came to my house all the time.

HIS HONOUR: All right. Well we do not want to know about that now, because I am just telling you that you cannot act like that, all right?

MR BAILIFF: No, I will never do that, your Honour. I will never do that. Your Honour, the longest serving police officer, that is my great-grandfather, Billy Bunker Aiden, 1832 to 1995. Your Honour, the Bailiffs went from Normandy during the intensive fighting in the Battle of Hastings. You know, a Bailiff has to go to court. So your Honour, I come from a military and legal background. I would never do such a thing, your Honour.

HIS HONOUR: Good.

MR BAILIFF: I only do what is required.

HIS HONOUR: Can you take a seat now?

MR BAILIFF: Okay. But your Honour can I have the symptoms of brain damage in a law report, your Honour?

HIS HONOUR: Mr Bailiff, take a seat.

MR BAILIFF: Because it is not in the law library, your Honour, and I will be so grateful.

HIS HONOUR: All right.

MR LAWTON: In terms of what the ACAT is doing with Mr Bailiff, I am afraid I need to take some instructions from my instructor who has been detained in another court.

HIS HONOUR: He may get paroled, you never know.

MR LAWTON: He might. But to get a coherent answer to your Honour I think I need to do it that way.

HIS HONOUR: All right. Well when do you want to come back?

MR LAWTON: Would your Honour allow that to occur after the lunch break?

HIS HONOUR: Well I can, or I can make it a bit later.

MR LAWTON: That should be sufficient.

HIS HONOUR: Here he comes.

MR LAWTON: If your Honour would just give me a moment?

HIS HONOUR: Yes, sure.

MR GILL: Perhaps while my friend does that, your Honour. Mr Hancock of the Attorney-General's Office asked me to pass on that the Attorney has declined to intervene in respect to the notice to the Human Rights Act.

HIS HONOUR: Well as it happened, that was not necessary.

MR GILL: Yes.

MR BAILIFF: Sorry your Honour, we went to the library and I googled brain damage, there is nothing there in the law reports, your Honour.

HIS HONOUR: Okay.

MR BAILIFF: Can you help with that, your Honour?

HIS HONOUR: Yes, we will add something.

MR BAILIFF: Because my stepfather will not talk to me if I do not have a brain damage precedent, your Honour.

HIS HONOUR: Right.

MR BAILIFF: You know, he can give evidence if you want, your Honour.

HIS HONOUR: No, we do not need him.

MR BAILIFF: But he would love a decision - - -

HIS HONOUR: I am sure he would but we do not need him. Okay?

MR GILL: Your Honour, I am told that there are no ACAT proceedings in relation to mental health. There have been ACAT proceedings in relation to a guardianship order, but not in relation to a mental health order. And we do not believe there has been any application for a treatment order for at least the last 12 months, probably longer than that.

HIS HONOUR: Well I cannot make a treatment order obviously.

MR BAILIFF: Can you send me to a neurologist, your Honour, a neurologist, Alan Leeshman in London, for the holidays?

MR GILL: So that is all I can tell your Honour about that.

HIS HONOUR: All I can do is make an order requiring him to submit to the jurisdiction of ACAT to enable ACAT to make recommendations.

MR GILL: And the question is, does your Honour want recommendations back from ACAT at the end of that process?

HIS HONOUR: And whether that is useful in the circumstances I do not know.

MR GILL: I do not know what your Honour could do if recommendations were made to you at that point.

HIS HONOUR: I cannot make a treatment order for a start.

MR GILL: No. So the legislative scheme does not quite make sense to me, I have to say your Honour.

HIS HONOUR: Yes. Well there is a power to make orders considered appropriate which I assume means, amongst other things, if there was a recommendation from ACAT, I can make an order to give effect to those recommendations insofar as the power of the Court extends.

MR BAILIFF: Dr George's report was his recommendation from ACAT, your Honour.

HIS HONOUR: Thank you. I have got that.

MR BAILIFF: I am being further traumatised by ACAT who do not have a neurologist and it is so upsetting.

HIS HONOUR: It is very upsetting I am sure.

MR BAILIFF: But I can give them a new precedent.

HIS HONOUR: Okay.

MR GILL: So that there is a question, your Honour, as to the utility of a referral to ACAT.

HIS HONOUR: Yes, I am thinking about it.

MR GILL: It is a discretionary resolution of the matter, and what is not before your Honour is any material which says the discretion ought to be exercised by a referral to ACAT for recommendations.

HIS HONOUR: Yes.

MR BAILIFF: You can refer me to my GP over the road, your Honour.

HIS HONOUR: I could.

MR BAILIFF: Alan Leeshman, sorry not Alan Leeshman, Stephen Moulding, sorry.

HIS HONOUR: Okay. I have got an idea in mind. Anything you want to say Mr Lawton?

MR LAWTON: I suppose the utility of the referral to ACAT is indeed to find out if they plan to consider an application for a psychiatric treatment order.

HIS HONOUR: Or anything.

MR LAWTON: Or anything. But obviously from the look of section 323, and your Honour might recall from the matter of R v Michael Gary Caine SCC No 214 of 2008 we referred it to the Tribunal, ACAT I should say, so that they could give an indication to your Honour what treatment would be involved and whether or not there would be some utility in the treatment of having him detained and then effectively released immediately. I do not know whether that would arise here.

MR BAILIFF: Your Honour can I offer to give evidence from the witness box, your Honour, please?

HIS HONOUR: You can offer it, but I am not accepting it. I do not see the utility of requiring him to submit to ACAT absent any application from anybody including Dr George. We could always do that anyway. It seems to me the only thing I can do, Mr Bailiff, is to extract from you an undertaking that in the next 12 months you will not engage in any criminal conduct.

MR BAILIFF: Your Honour I am working on this. I promise for the rest of my life I will never do anything except take cases to the High Court, your Honour, involving Sir Anthony.

HIS HONOUR: All right.

MR BAILIFF: And Sir Anthony and I have become friends, and your Honour can I just put on the record, it is in Hansard, in Parliament, that I am the man who took the action in the High Court that prompted every Police Commissioner in the country to contact Canberra and the Australian Crime Commission to be established. Your Honour it is on the world stage that I got the Pope's apology to Oceania in 60 days, your Honour.

HIS HONOUR: Excellent.

MR BAILIFF: So whilst Phil says delusion, your Honour, it is brilliance, your Honour. Sir Anthony even said I was his brilliant law student, and I am giving his phone number and - - -

HIS HONOUR: All right, I have got your promise, have I?

MR BAILIFF: Your Honour, you have got my oath. Do you want me to get into the witness box and give oath evidence?

HIS HONOUR: Perfect. In that case, the proceedings are concluded.

MR BAILIFF: Your Honour I will never do anything, your Honour, I am really grateful, your Honour. Your Honour, can I shake your hand, your Honour? I thank you, your Honour, God bless you, your Honour.

I certify that the preceding three hundred and forty (340) numbered paragraphs are a true copy of the Reasons for Judgment herein of his Honour, Chief Justice Higgins.

Associate:

Date: 30 January 2012

Counsel for the Crown: Mr J Lawton

Solicitor for the Crown: Director of Public Prosecution for the ACT



Counsel for the Defendant: Mr S Gill  
Solicitor for the Defendant: Kamy Saeedi Lawyers  
Date of hearing: 30 November 2011

Date of judgment: 30 November 2011