



JUDICIARY OF
ENGLAND AND WALES

Central Criminal Court

7 December 2015

R v Janner

The defendant's fitness to plead

The judgment of Mr Justice Openshaw

On the 14 August 2015, the defendant Greville Janner (indicted as 'Lord Janner') was sent to the Crown Court for trial, pursuant to section 51 of the Crime and Disorder Act 1998, upon allegations of historic sexual offences against boys between 1963 and 1988. It is not necessary for the purposes of determining this application to provide even a summary of those charges, which will be dealt with fully during subsequent proceedings. An issue has now arisen as to the defendant's fitness to plead or to be tried.

The appropriate procedures are laid down by sections 4 and 4A of the Criminal Procedure (Insanity) Act 1964, as substituted by section 2 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, as subsequently amended by section 22(1) – (3) of the Domestic Violence, Crime and Victims Act 2004, which, so far as is relevant to these proceedings, reads as follows:

'Finding of unfitness to plead

(1) This section applies where on the trial of a person the question arises (at the instance of the defence or otherwise) whether the

accused is under a disability, that is to say, under any disability such that apart from this Act it would constitute a bar to his being tried.

(4) ... the question of fitness to be tried shall be determined as soon as it arises.

(5) The question of fitness to be tried shall be determined by the court without a jury.

(6) The court shall not make a determination under subsection (5) above except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved [by the Secretary of State under section 12 of the Mental Health Act 1983 as having special experience in the diagnosis or treatment of mental disorder]’.

The question of whether the defendant is fit to plead, or to be tried, therefore, falls to the judge to determine, without a jury.

Although there must be evidence from two doctors (at least one of whom must be ‘duly approved’), there is no need for the doctors to give evidence in person; since the doctors here are agreed upon their findings, and since those findings are accepted by both prosecution and the defence, it is not necessary for them to give oral evidence, I shall therefore decide the matter upon their written reports.

Whether the defendant is fit to plead or to be tried depends on whether he is able to understand the charges; whether he can enter an informed plea to those charges; whether he can instruct those acting for him as to his answer to the charges; whether he can understand such advice as is given to him; whether he can properly exercise his right to challenge jurors for cause; whether he can follow and effectively participate in the proceedings (with assistance if necessary); whether he can give evidence on his own behalf (again with assistance if necessary) and whether he can make an informed choice as to whether he should do so and whether any other evidence should be called on his behalf. I have attempted to modify the test as laid down in *R v Pritchard* (1836) 7 C and P 303 (‘the Pritchard criteria’) in accordance with modern conditions.

The defendant has been examined by eminent doctors; I set out their qualifications in some detail so as to demonstrate their particular experience and expertise in the field.

The prosecution instructed Professor Kopelman and Dr Kate Humphreys. Professor Kopelman is a Professor of Neuropsychiatry at the University of London, a Consultant Neuropsychiatrist, a Chartered Psychologist and immediate past president of the British Academy of Forensic Sciences and an immediate past president of the International Neuropsychiatric Association; he has a particular expertise in memory disorder, having published widely in scientific and technical literature on various forms of amnesia; his reports are dated 19 February 2014, 27 November 2014, 31 March 2015 and 21 September 2015. Dr Kate Humphreys is a Senior Clinical Psychologist, specialising in Neuropsychology at St Thomas's Hospital; her reports are dated 14 February 2015 and 24 September 2015.

The defence instructed Dr James Warner and Dr Norman Poole. Dr James Warner is a consultant psychiatrist specialising in the assessment, diagnosis and treatment of dementia; he is the Chair of the Faculty of Old Age Psychiatry at the Royal College of Psychiatrists and the national Professional Advisor for Old Age Psychiatry at the Quality Care Commission.; his reports are dated 23 July 2015 and 25 August 2015. Dr Norman Poole is a Consultant Psychiatrist in the Department of Psychological Medicine at the Royal London Hospital; his reports are dated 4 August 2015 and 24 August 2015.

Each is of the opinion that the defendant is suffering from such severe disability, namely dementia that, applying the Pritchard criteria, he is unfit to be plead or to be tried. I will summarise their findings.

Professor Kopelman had first been asked to advise the prosecution whether the defendant would be able to answer questions at police interview. He examined the defendant at length. On 19 February 2014, he reported that the defendant was unable to remember key events from his personal history; he could not name either his children or grandchildren, nor could he remember where he had been to school or to university, nor could he remember anything of his more recent professional or Parliamentary life. He had a very poor short term memory, was

forgetful of names and objects; he became lost if unaccompanied. He was no longer able to look after himself and has a full time carer. He was disoriented in time and place.

The professor was able to draw upon the psychological assessment carried out by Dr Humphries; her tests revealed a marked and widespread deterioration in his cognitive functions.

The professor therefore found that the defendant had a severely impaired memory. He diagnosed 'a degenerative dementia, currently of moderate severity, but rapidly becoming severe', being a combination of Alzheimer's disease and vascular dementia. The prognosis was for an inevitable, progressive and irreversible degeneration which would end only with his death. In the circumstances, he advised that the defendant did not – even then – have the mental capacity to understand questions that might be asked in a police interview; nor could he provide rational or reliable answers. He thought that the defendant would be likely to become emotionally upset during the course of the interview, and he thought that the police would find it impossible to proceed with the interview. He did not think that any strategy could be devised to overcome these insuperable problems. Therefore he advised that - even then – the defendant could not properly be interviewed.

A year later, on 31 March 2015, Professor Kopelman reviewed the position. He advised that '... Lord Janner would be unable to understand the charges against him, to comprehend that a juror could be challenged, to instruct his lawyers, to comprehend the details of evidence, or to follow and recall the court proceedings'. In brief, it was his view is that he is not fit to plead or stand trial.

Dr Warner in his recent report of 25 August 2015, has graphically described the defendant's circumstances. During cognitive testing he appeared somewhat perplexed and mildly irritable; his speech was abnormal, with periodic slurring of words, some being incomprehensible. He exhibited a condition known as 'logoclonia', being the repetition of simple words; he then had only a limited vocabulary. Most of his answers were inappropriate to the questions asked; indeed, he gave virtually no coherent answers to the questions asked. He was often bewildered by simple requests, even when made in simple language and given

repeatedly. He diagnosed advanced Alzheimer's disease, accompanied by extensive vascular dementia

I summarise Dr Warner's opinion. The defendant has a very severe impairment of understanding of language and severe deficits of memory; he could not process or remember simple information or requests. He had no understanding of the purpose of the criminal court or of a criminal trial; he had no understanding of the meaning of entering a plea. He does not understand the role or function of the jury or of a lawyer to act on his behalf. He could not understand the charges against him nor give any account of his answer to them. Nor could he give evidence on his own account. Therefore, again properly applying the Pritchard criteria, it was his opinion that the defendant is not fit to plead or to stand trial.

Dr Poole reported on 24 August 2015 that the defendant now has advanced Alzheimer's disease: he cannot understand questions put to him, orally or in writing; he cannot apply his mind to answering the questions put to him; his use of language is now so impaired that he cannot explain himself. Furthermore, such is the nature and extent of his impairments that no adjustments or allowances could compensate. His conclusion is set out in a simple and compelling summary: 'the defendant is now at an advanced stage of dementia. All his cognitive functions are impaired, particularly his memory and language functions and consequently, he is unfit to plead'.

Dr Humphreys saw the defendant again in September 2015. His utterances were now reduced to a few stereotyped phrases; much of his language was incomprehensible. His understanding had deteriorated so much that it was not possible to administer the full range of cognitive tests. He was not orientated in time and place. He could read a short sentence of instruction but he could not do as asked. Her assessment was of 'advanced global dementia, with memory and expressive language particularly severely affected'.

Prof Kopelman last reported on 21 September, 2015. He gave an account of the defendant's daily regime. He can now hardly speak, and when he does it is often only to make inappropriate repetitive statements. He can no longer read a book or follow the television, so he no longer watches. He scarcely recognises his own family

and has entirely lost even his short-term memory. He is now unable to give any meaningful account of any aspect of his personal or professional history. There are further impairments involving memory, naming, attention, language, verbal fluency, visuo-spatial function and personal self care. All the tests for cognitive examination have shown a progressive decline in the defendant's degenerative dementia which is incurable and irreversible. The professor concludes that the defendant is accordingly quite unable to participate in the trial process: he could not understand the charges made against him; he can not understand any question put to him and cannot to give any meaningful response. It was his opinion that the defendant is not – and never will be - fit to plead or stand trial.

The medical opinion is therefore all one way. The inevitable and irresistible conclusion is that the defendant had advanced and disabling dementia , which is deteriorating and irreversible; accordingly I find that he unfit to plead or to be tried upon this indictment.

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