

[2] Mr Locke, who was ably represented at trial by defence counsel, did not dispute that he stabbed Mr Cowling three times with a kitchen knife and that one of these penetrated his heart and lung. Nor did he contest that Mr Cowling died as a result of this injury. His defence at the trial was that he did not act with murderous intent.² The jury were plainly satisfied that he did so in finding him guilty of murder rather than manslaughter.

[3] Mr Locke now appeals against his conviction. He has exercised his right to present his appeal without legal representation. His grounds of appeal are unorthodox but in general terms he views himself as a victim who was harassed and provoked by Mr Cowling. He also claims to have been failed by various government institutions, including the police and mental health services. He contends he was “an unwilling participant in the whole event” and Mr Cowling’s death was “purely accidental”. He maintains that he did not act with murderous intent.

[4] Some of Mr Locke’s submissions were directed at the appropriateness of his sentence. However, in response to questioning from the Court, he was adamant that he was not challenging his sentence. It would be wrong in these circumstances for us to treat the appeal as being against sentence as well as conviction because there may be other submissions that could be made in support of a sentence appeal, particularly focusing on Mr Locke’s mental health issues. If Mr Locke wishes to pursue an appeal against sentence, we strongly encourage him to seek legal advice without delay.

The facts

[5] Before setting out the narrative, we briefly summarise Mr Locke’s background and mental health issues because this provides essential context. The following summary is drawn from a report prepared by Dr Monasterio, a psychiatrist who was engaged on behalf of Mr Locke and gave evidence at the trial.

[6] Mr Locke, who is now aged 33, was born in the United States. His father is an American and his mother is a New Zealander. Mr Locke had an unstable

² Crimes Act 1961, s 167.

early childhood and his parents finally separated when he was aged eight. He came to New Zealand with his mother at that time and has lived here ever since.

[7] Mr Locke exhibited early onset severe behaviour disturbance and characteristic features of attention deficit hyperactivity disorder (ADHD). He was diagnosed with this condition at the age of five. Dr Monasterio says Mr Locke's persistent and severe behavioural disturbance is exacerbated by his pervasive deficits of interpersonal relatedness, including difficulties adapting to the subtleties of interpersonal communication and functioning in a socially appropriate manner. This has adversely affected Mr Locke's ability to form relationships, maintain employment, and achieve academically despite his significantly above-average level of intellectual functioning. This in turn contributed to Mr Locke's sense of alienation and estrangement and has led to occasional angry outbursts in response to actual or perceived provocation.

[8] In order to help moderate intense episodes of emotional arousal and distress, Mr Locke became reliant on obsessional behaviours such as video gaming, excessive music practice and exercise. Alcohol abuse and listening to very loud music were also relied on as coping mechanisms.

[9] Dr Monasterio notes that Mr Locke's diagnoses have included persisting ADHD, borderline and antisocial personality disorders, anxiety disorder and autism spectrum traits. He considers that Mr Locke has exhibited features of an autism spectrum condition from early childhood and the pronounced nature of his persistent behavioural disturbance would likely qualify for a diagnosis of conduct disorder. Mr Locke has received extensive trials of medications over the years, including various treatments for ADHD, anti-depressant medications, mood stabilising agents and low-dose anti-psychotic medications, but none of these has conferred any identifiable benefit.

[10] We now turn to the narrative. Mr Locke rented the middle flat in a block of five in Christchurch in June 2020. His loud music was a source of irritation to his neighbours who made numerous complaints to noise control, although this was to little effect.

[11] Mr Cowling's flat was situated at one end and was separated from Mr Locke's flat by one that was vacant. On the other side of Mr Locke lived an older woman. She said that the loud music was constant and made her nervous. She had to remove her hearing aids and stuff toilet paper in her ears so that she could sleep. She asked Mr Locke to turn the music down on one occasion, but he refused. She also made complaints to noise control, but it seemed that Mr Locke would adjust the volume to avoid their intervention. A single man lived in the other flat next to her. He made one complaint to noise control in July 2020. However, he said the noise did not bother him that much because he was used to excessive noise at his place of work and he enjoyed listening to loud music using earphones. He witnessed a heated exchange between Mr Cowling and Mr Locke in July 2020 about the music. He described both men as acting aggressively, and he offered support to Mr Cowling who was asking Mr Locke to turn the music down. He said Mr Locke responded with "a smirk, a grin on his face" and he concluded there was no point in talking to him.

[12] On 13 August 2020, Mr Cowling became so frustrated he kicked Mr Locke's door and threatened to drive a digger through his flat if he did not turn the music down. Mr Cowling called Mr Locke's landlady and complained about the noise. She contacted Tenancy Services to find out what options might be available to address the issue. She then met with Mr Cowling and his partner later that day. After discussing the issue, she said that she would speak with Mr Locke. Upon returning home, the landlady contacted the Christchurch City Council to find out how many noise complaints had been made (from memory, she thought there had been around 12). Following this, she contacted Mr Locke and he agreed to keep the noise down. She reported this to Mr Cowling's partner. This intervention was successful and there was no further issue with excessive noise for the next few weeks.

[13] However, on 5 September 2020, Mr Locke again started playing loud music. His immediate neighbour contacted the landlady around 5 pm. She advised her to ring noise control and call her back in an hour if the situation had not changed. The neighbour called noise control and advised Mr Cowling of the situation by text. He responded that they had been out most of the day but would contact noise control if the loud music continued after 10 pm. He added "if [Mr Locke] goes past 11 pm he might just lose power".

[14] The neighbour sent a text to Mr Cowling just before 7.45 pm saying “[i]f he goes for more than 30 mins I will ring noise control. He’s going back to his old tricks of doing it in short bursts”.

[15] The central electricity supply unit for the flats is located on the outside wall of Mr Cowling’s flat. It appears that he turned Mr Locke’s power off just before 8 pm. Mr Locke messaged his mother that the power was off and he reported the issue to the power company. A representative from the power company attended at 8.46 pm and found the circuit breakers were in the off position. He restored the power and reported to Mr Locke that this could have occurred manually or due to overload.

[16] At about 11.26 pm, Mr Cowling sent a text to his neighbour advising her he had just called noise control. She responded “[g]reat was about to do it. Definitely going to message [the landlady] tomorrow”. Mr Cowling responded at 11.30 pm “[I’ll] msg her now as well; still call noise control as more complaints they get means sooner action from them. Hang in there; and if need to chat we’re here”.

[17] In response to Mr Cowling’s noise complaint, a security officer went to the address and served Mr Locke with a direction to keep the volume down. This was at around 11.32 pm. The security officer described the music as “[e]xtremely loud”, “heavy rock/metal”. Mr Locke accepted the notice without issue and did not appear to be angry.

[18] Mr Cowling rang noise control on two further occasions that night, at 12.15 am and then again at 1.11 am. The security officer arrived at the address in response to the first of these further complaints at 12.33 am but he reported hearing no noise. On the later occasion, he was advised that the noise was going up and down. He returned at 1.20 am and, despite spending seven minutes at the address, he again reported hearing no noise.

[19] Mr Cowling evidently turned Mr Locke’s power off again at 1.33 am. It was restored at 1.42 am but Mr Cowling turned it off again at 2.25 am.

[20] Mr Locke called 111 at 2.26.02 am. He held for 28 seconds but the call did not connect. Mr Locke then called 105, the police non-emergency number, at 2.26.42 am, but no one answered despite him remaining on hold for nine minutes and two seconds until 2.35.44 am. While he was on hold, he sent texts to his mother, who he had been in discussion with regarding the power issues, saying “Lol im outside niegnors [sic] house”, “[l]ol”, “[d]uct tape on shit” (accompanied by two photos showing the duct tape placed over the electrical control board).

[21] At 2.36.04 am, only 20 seconds after terminating the attempted call to the police on the 105 number, Mr Locke again called 111, to report the “stabbing” and to request an ambulance “right now please”. He described the situation as “very serious”. The victim was still breathing, but he was bleeding. He said he was not sure where the bleeding was coming from, but he was trying to compress the wound and save Mr Cowling’s life. He told the operator “I don’t know where I’m holding the bleeding. I’m just tryna make sure this guy stays breathing.”

[22] Mr Cowling’s partner was present during this call and she was trying to get Mr Locke away from Mr Cowling. She recalled waking to the sound of glass smashing. She went downstairs to see what was happening and saw that the back door to their laundry had been smashed. There was broken glass on the floor and Mr Cowling was lying on the ground with blood everywhere. Mr Locke was already on the phone to emergency services. She tried to get Mr Locke away from Mr Cowling, but he refused, saying “[i]f I let go of him right now he’s going to die”. In response to Mr Cowling’s partner saying “it’s all your fault. Get out”, Mr Locke said “[i]t’s not all my fault”.

[23] Mr Cowling’s partner also phoned for an ambulance so both she and Mr Locke were speaking to emergency services at the same time. This is why the transcripts of these separate calls pick up some of the discussion between her and Mr Locke. She can be heard asking Mr Locke what happened. His response was “[m]y power is getting turned off in your property. Because I called Orion already once tonight, but there is someone [inaudible]”. Mr Cowling’s partner then asked “[w]hat did you do to him, they want to know.” Mr Locke replied, “I don’t know what I’ve done to him ... [inaudible] turned off my power”.

[24] Mr Cowling was placed in the ambulance, but he died a short time after arriving at the hospital. Police located a 10 cm long kitchen knife lying on the footpath about a metre away from the doorstep. Mr Locke was arrested by Constable Reich, initially for assault. Mr Locke told him that his power had been cut and he was “going around to get it sorted out”. He asked to speak to his lawyer and then stated, “I just want my power back on”. Detective Henderson-Rauter entered Mr Locke’s flat and conducted a brief search to see whether there were any other victims. He left when he ascertained there was no one else there.

[25] Mr Locke was taken to the police station. After being cautioned, he made comments to the effect that he was intoxicated and had been for the past week, his neighbour had kept turning power off when he had his music on, and he was not very well. He asked to see his lawyer. Detective Henderson-Rauter said Mr Locke was not slurring his words or smelling of alcohol and he did not think he was intoxicated. However, one of the officers who attended the scene reported that Mr Locke smelt slightly of alcohol and seemed a little unsteady on his feet. A large number of empty cans of bourbon and coke were found at Mr Locke’s flat and it is common ground he had been drinking.

[26] At around 4.30 am, Mr Locke was told that Mr Cowling had died. Mr Locke responded by saying “[o]ooh wow savage fuck”. He was then arrested for murder and given his rights following which he made the comment “I’m gonna be a New Zealand resident” and “I’m gonna be here for a very long time”. He made other comments including that he was “pretty screwed” and it was a good thing that this country does not have the death penalty.

[27] We mention one further matter because it forms the basis of one of the appeal grounds. Six months after the event, on 8 March 2021, Mr Locke wrote a letter to his father from prison (he had been remanded in custody awaiting trial). The letter was intercepted by Corrections and its admissibility was challenged pre-trial. Brewer J ruled that the letter was inadmissible except for the following statement which related to the incident:³

³ *R v Locke* [2021] NZHC 938 at [41]–[42].

At least if I never get the chance I got one useless New Zealander and got to watch him die like a bitch. Classic New Zealand male bravado gone wrong. I hate them all, not enough of them can die. If they don't want people to die they should probably educate them better, but they would never listen to little old me.

[28] This Court declined leave to appeal pre-trial against this ruling.⁴

The trial

[29] As noted, the sole trial issue was whether Mr Locke had murderous intent when he stabbed Mr Cowling.

Crown case

[30] Mander J encapsulated the essence of the Crown's case in his summing up as follows:

[77] ... Mr Locke was incensed at the time. He had armed himself with a lethal weapon, gone to Mr Cowling's address and, without saying anything, had stabbed Mr Cowling in the chest — in a vulnerable part of the body — and had done so in anger. That was not to say that Mr Locke did not have immediate regret, but [the jury needed] to examine Mr Locke's state of mind and his intent in "the moment" ...

[31] The Crown accepted that Mr Locke had consumed alcohol that evening but contended there was no real indication that he was significantly affected by it.

Defence case

[32] The defence case was that Mr Locke was significantly affected by alcohol and this, combined with his acute mental disorders, impaired his perspective and decision-making. He did not have murderous intent; he just wanted his power turned back on. At some point, likely while on hold either to 111 or 105, he made the fateful decision to leave his house in the middle of the night, taking with him a kitchen knife for protection. He placed this in the back pocket of his pants and had no intention of attacking Mr Cowling with it. Mr Locke felt at risk because Mr Cowling had earlier threatened to drive a digger through his house. Due to his mental conditions, he took this threat literally and genuinely feared for his personal safety.

⁴ *Locke v R* [2021] NZCA 193.

[33] Defence counsel placed emphasis on Dr Monasterio's evidence in support of her closing submission to the jury that they could not be satisfied to the requisite standard that Mr Locke acted with murderous intent. Mr Locke told Dr Monasterio that he had no memory of the actual stabbing and he elected not to give evidence.

[34] Dr Monasterio discussed the numerous stressors impacting on Mr Locke at the time — failure of intimate personal relationships, loss of employment, isolation (including because of Covid-19), exclusion from his band and the threat of losing his accommodation. Dr Monasterio said that the more stress Mr Locke was under, the more rigid he became in this thinking and the more pronounced his autistic characteristics became. He considered these difficulties were “at their most severe” in the lead up to the offence.

[35] Dr Monasterio noted that Mr Locke had talked to his mother about his concerns that his neighbours were talking about him and that Mr Cowling had contacted his former employer to find out why Mr Locke could not maintain employment. Mr Locke apparently considered that the security staff at a shopping mall were talking about him and he thought there was some link between that and his conflict with Mr Cowling. Mr Locke was becoming increasingly upset and concerned for his viability in the housing complex and his security.

[36] Dr Monasterio did not consider Mr Locke's claimed memory loss at the time of the stabbing could be explained by alcohol-induced amnesia. This was because the period for which Mr Locke claimed to have no memory was “so small compared to everything else”. Dr Monasterio said that alcohol-induced amnesia would likely have spanned much longer periods of time. He considered a more likely explanation was “very intense emotional arousal” which can lead to problems with memory formation. However, Dr Monasterio observed that there is no test to determine whether memory loss is feigned or true:

... I can quite comfortably discount alcoholic memory loss for the reasons I gave before, but I simply cannot account for a difference between memory loss associated with intense emotional arousal which in my view is almost certainly likely to have occurred at the time of the index offence, or simply Mr Locke telling me I can't remember when he came, I cannot differentiate that and no other expert witness would be able to either.

[37] Dr Monasterio was also asked for his opinion as to possible explanations for the contents of the letter Mr Locke wrote to his father from prison. Dr Monasterio said that Mr Locke is of above average intelligence and would have known that his letters would have come to the attention of the authorities. He said the contents were “very self-defeating and it does seem to sit alongside his consistent proposition that he is in despair that there’s no hope, that the future looks grim and hopeless and that they may as well lock him up forever”. Dr Monasterio added that the letter was written at a time when Mr Locke was additionally frustrated because he felt unable to exercise and had no access to loud music, video games or music practice. In conclusion, he said that “in many ways while letter writing is extremely disturbing by its content, it’s perhaps not unusual given ... how he’s previously managed ... difficult situations”.

Summing up

[38] The Judge cautioned the jury in his summing up about how they should approach their assessment of Mr Locke’s letter to his father from prison and whether they could safely place reliance on it as an accurate reflection of his thinking at the time of the stabbing:

Passage from letter

[57] First of all, the passage from the letter that was read to you. As part of Detective Wells['] evidence, he read to you a passage from a letter that Mr Locke had written to his father while in custody on remand, awaiting his trial. The reason that passage was admitted and referred to you is because, at least on its face, it obviously concerns the killing of Mr Cowling and, depending on your assessment, may potentially bear on Mr Locke’s state of mind at the time he stabbed Mr Cowling.

[58] However, I need to caution you about the way you approach that piece of evidence. The passage from the letter is something that Mr Locke wrote in prison a considerable time after the incident, and in assessing that piece of evidence you will need to be mindful of Dr Monasterio’s evidence. You will need to reflect on how accurately it really represents what Mr Locke was about on the actual night and what he was thinking at that time, particularly when taken together with what we know took place after the stabbing, when Mr Locke was attempting to stem the blood flow and use his phone to call for assistance.

[59] The passage from the letter is for you to assess, but please be objective and dispassionate in your approach to its content. Its content has the potential to perhaps alienate or shock the reader and to engender prejudice beyond the purpose for which it was admitted — that being an account sourced from Mr Locke about what he had done. Remember it is very much a post-facto or

after the event expression of his apparent views and you will need to weigh whether it is a piece of evidence upon which you can safely place reliance as being an accurate reflection of his thinking on the night.

[60] You will need to consider whether it is not something that is the product of his mental condition and of Mr Locke's sense of frustration and despair. A lashing out perhaps to his father at his predicament, perhaps fuelled by his particular mental profile and sense of alienation in prison. As I say, be mindful that this is something that Mr Locke expressed a comparatively lengthy time after the event, as opposed to before or shortly after the death of Mr Cowling. Having regard to all the evidence and what we know about Mr Locke, is it something upon which you can reliably depend as providing insight into his intent or state of mind on the night? That is something for you to assess.

[61] In making that assessment, you will need to take into account what Dr Monasterio told us about Mr Locke's psychological makeup and the deficits that relate to his autistic spectrum condition and particular personality traits that may influence him to say things or behave in a way we would not normally expect of an ordinary person who does not have his particular condition or combination of disorders. In that regard, you will also bear in mind that Mr Locke must have been aware that what he wrote was likely to be viewed by the authorities.

[39] The Judge gave standard directions on the topic of intoxication, including:

[68] ... However, the influence of alcohol may be relevant to the state of mind of a defendant and in particular as to their intentions. Alcohol can cloud judgment, and something [t]hat would be obvious to someone who is sober might not be seen in the same way by the same person when intoxicated. The degree to which Mr Locke may have been affected by alcohol, if at all, is a matter you may take into account when assessing the appropriate inference to draw as to his state of mind. It is a factor for you to consider when making that assessment.

[69] Whether Mr Locke was affected by alcohol and whether and to what extent that may have affected his ability to appreciate the consequences of his actions are matters for you to assess.

[40] The Judge summarised the key planks of the defence case, including that Mr Locke had become emotionally overwhelmed and was incapable of thinking logically due to the profound effect on his functioning of his autism condition and the alcohol in his system. The jury could not be sure that he had formed a murderous intent or was cognisant of the consequences of his actions. The recording of Mr Locke's 111 call was not consistent with a person who had murderous intent, rather it was indicative of a person who was in a very panicked state. The fact that Mr Locke was applying pressure to the wrong area while he was trying to save Mr Cowling

supported Mr Locke’s claim that he genuinely did not know what he had done. The Judge reminded the jury of the onus and standard of proof, resting with the Crown.

Grounds of appeal

[41] Mr Locke listed 20 grounds of appeal. Almost all are irrelevant in the context of an appeal against conviction and must be put to one side. This is because they are not directed to this Court’s enquiry on an appeal against conviction — namely whether the jury’s verdict was unreasonable, or a miscarriage of justice has occurred:⁵

232 First appeal court to determine appeal

- (1) A first appeal court must determine a first appeal under this subpart in accordance with this section.
- (2) The first appeal court must allow a first appeal under this subpart if satisfied that,—
 - (a) in the case of a jury trial, having regard to the evidence, the jury’s verdicts was unreasonable; or
 - ...
 - (c) in any case, a miscarriage of justice has occurred for any reason.
- ...
- (4) In subsection (2), **miscarriage of justice** means any error, irregularity, or occurrence in or in relation to or affecting the trial that—
 - (a) has created a real risk that the outcome of the trial was affected; or
 - (b) has resulted in an unfair trial or a trial that was a nullity.
- ...

[42] We summarise Mr Locke’s grounds of appeal as follows:

- (a) Grounds 1 to 6 — these are all complaints about allegedly unlawful conduct on the part of Mr Cowling and others, variously referencing the Harassment Act 1997, the Crimes Act 1961, the Summary Offences Act 1981, the Tenancy Act 1986 and the Human Rights Act 1998.

⁵ Criminal Procedure Act 2011, s 232(2).

- (b) Ground 7 — a complaint that his mental health condition was discussed by his neighbours in breach of the Human Rights Act.
- (c) Ground 8 — Mr Cowling’s alleged propensity to be aggressive and confrontational.
- (d) Ground 9 — alleged failure of the police to protect him from Mr Cowling in breach of the right to life assured under s 8 of the New Zealand Bill of Rights Act 1990 — Mr Locke refers to “the state fail[ing] to provide adequate criminal deterrence”.
- (e) Ground 10 — this ground reads “I wish to address the crown and the police (and the trial Judge’s) preoccupation with circumstantial evidence, their sup[po]sition and attempt to present ideas/beliefs without any forensic evidence and ar[r]ogant attitudes towards actual facts backed by witness testimony and forensic evidence.”
- (f) Ground 11 — complaints about Detective Damon Wells, the officer in charge of the investigation.
- (g) Ground 12 — complaints about the evidence of Detective Henderson-Rauter.
- (h) Ground 13 — the admissibility of Mr Locke’s letter to his father.
- (i) Ground 14 — this ground refers to s 103(2) of the Sentencing Act 2002 which is concerned with the minimum term of imprisonment to be ordered where an offender is convicted of murder and is sentenced to imprisonment for life.
- (j) Ground 15 — lack of attention from Corrections to his health needs in prison.
- (k) Ground 16 — the Crown “argument remains unproven” and its opening and closing addresses prove Mr Cowling’s “unlawful acts” against him.

- (l) Ground 17 — Mr Locke wishes to “submit the full activity log for [his] laptop to fully confirm the times music m[a]y have been heard on September 5th/6th 2020”.
- (m) Ground 18 — the trial should not have been conducted in Christchurch.
- (n) Ground 19 — trial transcripts have allegedly been altered.
- (o) Ground 20 — Mr Locke wishes “to present a number of stories from the media to outline New Zealand’s complete failure in all regards of late”.

[43] We need not address grounds 1 to 8 which refer to allegedly unlawful conduct by Mr Cowling (and others). Even if established, at best it could have amounted to provocation, but this is not a defence to murder.⁶ These grounds, essentially amounting to victim blaming, do not assist Mr Locke because they do not bear on the reasonableness of the jury’s verdict, nor do they go to the question of whether justice miscarried.

[44] Grounds 9 and 20 level general criticisms at the State. These apparent attempts to shift responsibility cannot assist Mr Locke on his appeal against conviction for murder.

[45] Ground 10 could be viewed as a challenge to the adequacy of the evidence and therefore the reasonableness of the jury’s verdict. We will deal with this ground separately below.

[46] Ground 11 makes various complaints about Detective Damon Wells, the officer in charge. Mr Locke makes various outrageous personal attacks and challenges aspects of the investigation. Nothing raised under this ground is relevant to whether the jury’s verdict was reasonable, or whether justice miscarried.

⁶ See Crimes (Provocation Repeal) Amendment Act 2009. See further *Hamidzadeh v R* [2012] NZCA 550, [2013] 1 NZLR 369.

[47] Grounds 12 and 13 are directed to the admissibility of evidence. We will also deal with those grounds separately below.

[48] Ground 14 is concerned with sentence and is not relevant to Mr Locke's appeal, which is solely against conviction.

[49] Ground 15 is concerned with the way Mr Locke is being treated in prison. Again, this is not relevant to his appeal against conviction.

[50] Ground 16 includes a generalised contention that the case was not proved. We will address this with the other grounds that concern the reasonableness of the jury's verdict. To the extent that this ground again references Mr Cowling's alleged conduct, it is irrelevant for the reasons already given.

[51] Ground 17 relates to the computer logs. Mr Locke has not applied for leave to adduce further evidence and the question as to the precise times when music could be heard coming from his flat on the night is irrelevant.

[52] Ground 18 relates to venue. There was no application for a change of venue, nor could there have been a proper basis for this.

[53] Ground 19 refers to Mr Locke's wholly unsubstantiated assertion that the trial transcripts have been altered.

[54] As can be seen, the grounds that do engage with the statutory test on a conviction appeal can be grouped under the following headings:

- (a) The admissibility of Detective Henderson-Rauter's evidence.
- (b) The admissibility of Mr Locke's letter to his father.
- (c) The reasonableness of the jury's verdict.

Assessment

Admissibility of Detective Henderson-Rauter's evidence

[55] In setting out his grounds of appeal, Mr Locke listed five key points concerning Detective Henderson-Rauter's evidence. We summarise these as follows:

- (a) The detective entered Mr Locke's house despite his instruction not to enter without a warrant.
- (b) The absence from the detective's evidence of his acknowledgement that the power was out when he emerged from the house, indicating that any search would require flashlights so as not to disturb potential evidence. This was not questioned in cross-examination.
- (c) The detective stated his belief that Mr Locke was not intoxicated, but this was contrary to statements made by other officers and the fact the detective allegedly witnessed Mr Locke vomit in the cell.
- (d) The admissibility of parts of the detective's statement should have been challenged, specifically those referred to at the trial as "numerous unsolicited comments".
- (e) The detective failed to facilitate an evidential blood test.

[56] Apart from a few supplementary questions, the detective's evidence-in-chief was given by him reading his statement.

Entry to Mr Locke's house without a warrant

[57] The Crown contends that the warrantless search of Mr Locke's house was lawful under s 14 of the Search and Surveillance Act 2012 to ensure there were no other victims whose lives or safety were at risk. It is not necessary for us to determine whether the entry without a warrant was lawful because no incriminating evidence was found there and adduced at the trial.

Failure to cross-examine the detective about the lighting needed for a proper search

[58] This issue is equally irrelevant for the same reason. This detail was not relevant and therefore did not need to be included in the detective's statement. Equally, there was no need for trial counsel to cross-examine on this issue. In any event, Mr Locke specifically declined to waive privilege and therefore cannot advance a claim that his counsel failed to follow his instructions, or any other claim alleging trial counsel error. We add from our review of the record that trial counsel appears to have conducted Mr Locke's defence in a careful and proficient manner.

The detective's evidence that Mr Locke did not appear to be intoxicated

[59] The detective was not cross-examined on his statement that Mr Locke "mentioned several times that he was intoxicated but did not appear to smell of alcohol or exhibit any other obvious signs of intoxication". The evidence from other officers suggesting Mr Locke was somewhat affected by alcohol was before the jury. It was common ground at the trial that Mr Locke had consumed alcohol and was, at least to some extent, affected by it.

Failure to facilitate an evidential blood test

[60] There was no contest about this. Trial counsel established in cross-examination of the detective that Mr Locke had asked for a blood test to be taken at the time and that this would have been helpful in showing what his actual level was. The failure to obtain a blood test does not impugn the admissibility of the detective's evidence. Nor does it raise any concern about the reasonableness of the jury's verdict or suggest that a miscarriage of justice may have occurred.

Admissibility of Mr Locke's unsolicited comments

[61] The detective's evidence included reference to various unsolicited comments Mr Locke made after he was arrested.

[62] The detective's evidence refers to the fact that Mr Locke was arrested, initially for assault, and given his rights at 2.55 am on 6 September 2020. He was taken to the police station where he was searched. He was then taken to a holding cell and

provided with a list of lawyers he could speak to. He made several comments during this period about being “screwed”.

[63] When Mr Locke was told at 4.27 am that Mr Cowling had died, he responded “[o]ooh wow savage fuck”. The detective then arrested Mr Locke for murder and again gave him his rights. When asked to confirm whether he understood, Mr Locke answered that he did and said “I’m gonna be a New Zealand resident” and “I’m gonna be here for a very long time”. The detective again asked Mr Locke if he wanted to speak with a lawyer and he confirmed that he did. Mr Locke then asked to use the toilet. When he was being escorted there, he said “[t]hat guy didn’t deserve it”.

[64] While he was waiting for his lawyer to arrive, Mr Locke made further comments at 4.53 am that he was “pretty screwed” and that it was “probably a good thing” this country does not have the death penalty. His lawyer arrived at 5.07 am and their private discussions concluded at 5.25 am. He was then taken to the medical room. During the examination, he made further comments, including “well I’m fucked, aren’t I?”, “[b]ut so is the guy who is dead now” and “[w]e all make sick jokes”.

[65] These comments were all included in the detective’s statement that was read to the jury by consent. As Ms Johnston, for the Crown, says in the absence of a waiver of privilege, which Mr Locke quite deliberately decided not to provide, it must be assumed that trial counsel consented to the detective’s statement being read to the jury on his instructions. There was no challenge to the accuracy of the detective’s evidence, and he was not cross-examined about these comments. In any case, there is no evidence that could justify excluding these unsolicited comments as having been unfairly or improperly obtained.

[66] This ground of appeal fails.

Admissibility of Mr Locke’s letter to his father

[67] Mr Locke’s comment in the letter he wrote to his father from prison was clearly relevant and therefore passed the threshold test for admissibility under s 7 of the Evidence Act. The question is whether the probative value was outweighed by

the risk the evidence would have an unfairly prejudicial effect on the proceeding in terms of s 8.

[68] We agree with the provisional assessment made by Brewer J, which was also the assessment made by Mander J, the trial judge, that the answer is “no”. First, the jury heard a lot of evidence about Mr Locke’s mental health conditions and how he responds in stressful situations. The context in which this letter was written and the possible explanations for it were fully canvassed by Dr Monasterio in his evidence. Secondly, the Judge gave a strong direction to the jury to take care in their assessment of this evidence before placing any significant weight on it. The jury can be expected to have followed this clear direction which was carefully tailored to guard against the risk of unfair prejudice arising.

[69] This ground of appeal fails.

Reasonableness of the jury’s verdict

[70] There is nothing in this ground. We are satisfied there was more than sufficient evidence to justify the jury’s verdict that Mr Locke acted with murderous intent when he stabbed Mr Cowling three times in the chest. Even if Mr Locke may not have intended to kill Mr Cowling when he stabbed him, there is ample evidence that this was a reckless killing.

[71] This ground of appeal fails.

Result

[72] The appeal against conviction is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent