

# SUPREME COURT OF QUEENSLAND

CITATION: *Truswell-Mobbs v Director of Public Prosecutions* [2026]  
QSC 119

PARTIES: **KYLIE TRUSWELL-MOBBS**  
(applicant)  
v  
**DIRECTOR OF PUBLIC PROSECUTIONS**  
(respondent)

FILE NO/S: BS 1689/26

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 9 June 2026

DELIVERED AT: Brisbane

HEARING DATE: 3 and 9 June 2026

JUDGE: Smith J

ORDER: **I grant the applicant bail on the conditions contained in the draft order.**

CATCHWORDS: CRIMINAL LAW – JURISDICTION – PRACTICE AND PROCEDURE – BAIL – where the applicant has been charged with murder – where this is the applicant’s second bail application – whether material change of circumstances is established – where the applicant has no previous convictions and is of good character – where the applicant is alleged to have aided the suicide of her terminally ill husband – whether bail should be granted

*Bail Act 1980 (Qld)* s 8, 9, 13, 16  
*Criminal Code 1899 (Qld)* s 311  
*Clumpoint v Director Public Prosecutions (Qld)* [2005] QCA 043, applied  
*Director of Public Prosecutions v Bakir* [2006] QCA 562, applied  
*Ex Parte Edwards* [1989] 1 Qd R 139, applied  
*Gilbert v The Queen* [2000] HCA 15; (2000) 201 CLR 414, considered  
*Gillard v The Queen* [2003] HCA 64; (2003) 219 CLR 1, considered  
*James v The Queen* [2014] HCA 6; (2014) 253 CLR 475, considered

*Lacey v Director of Public Prosecutions* [2007] QCA 413, applied

*Mackenzie v R* [1996] HCA 35; (1996) 190 CLR 348, considered

*McKell v The Queen* [2019] HCA 5; (2019) 264 CLR 307, considered

*Re Neale* [2013] QSC 310, cited

*R v Hughes* [1983] 1 Qd R 92, applied

*R v Kirkman* (1987) 44 SASR 591, considered

*R v Yalu Cairns* Supreme Court May 2026, considered

*RPS v The Queen* [2000] HCA 3; (2000) 199 CLR 620, considered

*Sica v Director of Public Prosecutions* [2010] QCA 18; [2011] 2 Qd R 254, applied

*Williamson v Director of Public Prosecutions* [1999] QCA 356; [2001] 1 Qd R 99, applied

COUNSEL: R O’Gorman KC and L Soldi for the applicant  
S Dennis for the respondent

SOLICITORS: Potts Lawyers for the applicant  
Director of Public Prosecutions (Qld) for the respondent

## INTRODUCTION

- [1] The applicant is charged with murder of her husband David Mobbs on or about 6 December 2023. She was charged on 2 April 2025 and has been remanded in custody since. Her initial application for bail was refused on 22 April 2025.

## SUBMISSIONS

- [2] The defence submits that the circumstances have since materially changed. It is submitted that the committal hearing that occurred on 16 February 2026 revealed more favourable evidence about the matter. It is submitted that at trial the defence will ask for the same direction as that given by Henry J in *R v Yalu*.<sup>1</sup> It is submitted that there is a stronger chance now of a conviction on a lesser charge such as manslaughter or aiding suicide<sup>2</sup> or an acquittal.
- [3] It is also submitted that the risk of interference with witnesses has diminished now that they have given evidence at the committal hearing.
- [4] It is submitted that the applicant has shown cause why her detention in custody is not justified and the conditions of bail proposed are capable of ameliorating the risks associated with her release on bail.

<sup>1</sup> Cairns Supreme Court May 2026.

<sup>2</sup> Section 311 of the *Criminal Code*.

- [5] The crown submits that the case of murder is strong. It is submitted there is no material change of circumstances and bail should be refused considering the charge is one of murder. There is no risk of serving too much time in custody bearing in mind that a life sentence will be imposed on conviction. The crown submits that there is no basis in law to give the *Yalu* direction.

### **BACKGROUND**

- [6] The evidence reveals in this case that the applicant (now aged 50) was married to David. They were happily married. David was fit and healthy, working as a firefighter.
- [7] Unfortunately, he developed aggressive motor neurone disease. By December 2023, he was bedridden and dying. The allegation is that the applicant administered medication<sup>3</sup> to him to hasten his death to prevent him from suffering further and he thereby died.

### **Record of interview**

- [8] The applicant was interviewed on 7 December 2023 at 11.38pm and was clearly distressed during the interview. Despite being told she could have a lawyer present she chose not to and elected to have a relative as a support person. She explained to the police that David was dying as he was terminally ill. He was in nappies. He did not want to wait to die. He asked her to give his medications to him in his feeding tube. She held him until he went to sleep in her arms. She “busted her guts” to give him the best in the last five months of his life. She loved him and looked after him. He was her whole world. She explained the medication she gave to him. She explained how she gave him the medication. She later said in the interview:

“I didn’t want him to go, I didn’t want him to go, I just wanted him to go peacefully, that’s all I wanted, that’s what he wanted so yeah just wanted him to go peacefully ... I didn’t want him to, he’s the love of my life, I didn’t want him to die but obviously he was gonna with the cocktails.”

### **Committal hearing**

- [9] As a result of cross examination at the committal hearing there is now more evidence supporting that which the applicant said in her interview.
- [10] Rylee their son, gave evidence that David was tired, wanted to die and to be free of the disease. Rylee knew it [death] was the best thing for him and that was what David wanted. He said that David stated multiple times that he was tired and wanted to be done. He did not like the idea of being a vegetable and did not want to continue living past that point. He also said that the applicant was present on the occasions when David said that he wanted to die. He also gave evidence that the applicant told him that David would commence end of life procedures.
- [11] On 5 December 2023, David also confirmed to Rylee that he wanted to die. Later that afternoon David soiled himself and cried so hard that he could not breathe. He was

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<sup>3</sup> Baclofen (a muscle relaxant), Valium (diazepam), Palexia (strong opioid analgesic), Lyrica (an anti-convulsant), Endep (an anti-depressant) and Morphine.

distressed. David had previously said that if his physical state deteriorated to the point that he needed to wear nappies, his life would be finished. Mum had promised him that if ever he got to the point i.e., he was incontinent, he wanted his life to be finished. David definitely indicated to him that he wanted to die and wanted to overdose.

- [12] Jayden, their other son says that he had difficulty coping with the idea that David would die and held out hope that somehow, he would recover from the disease. He wanted David to live as long as possible. He came to the realisation though that eventually the disease would be so bad that David's body would just give out. He did want him to remain alive and with his family as long as possible. During David's last hospitalisation, Jayden had a discussion with David about dying. David said he was scared and knew he was going to die. David said he wanted to die at home and not in hospital. He wanted to be surrounded by people he loved.
- [13] There was a palliative care meeting on 5 December 2023 at which two options for the end-of-life processes were discussed i.e. starvation or sedation. Jayden preferred the idea of voluntary sedation rather than starvation. At the day of the meeting Jayden recalled asking David to hold on for another week. Later that afternoon though, Jayden was present when David had accidentally soiled himself. He had previously heard David make comments to family members telling them not to let him get to the stage where he had to wear nappies. The incontinence incident caused the reality of David's situation to really hit home. Jayden then discussed the matter with David and if David needed to go he could. Jayden was attempting to give him permission to die.
- [14] Helen Judd, David's sister said that she had discussions with David since his diagnosis and he said he did not want to be a vegetable and did not want to continue living if he had to wear nappies and could not communicate. She confirmed in evidence that it was her wish that David should pass away sooner rather than later so that he was not in pain. She understood that to be David's wish also.
- [15] Aaron Griffith, one of David's regular carers gave evidence that he was aware that David wanted to end his life and from discussions he had with David, when David was in hospital, he understood that David did not want the disease to take him and wanted to end his life himself. Not being able to go to the toilet by himself was a big deal for David and made him emotional.
- [16] Troy Hulm, another of David's regular carers gave similar evidence. He also said that Kylie (the applicant) looked after him at the time he was dying.
- [17] Asha Knijff, the operations manager of a business which provided David's support services gave evidence that she recalled the palliative care team meeting.
- [18] She recalled the applicant sobbing at one point saying, "I had to do it, I just couldn't do it anymore I'm really sorry." She understood this to mean that Kylie could not keep seeing David in pain. Asha was also told by Rylee that he confirmed that David ending his life was what David wanted. She also observed Kylie to be very distressed that David was dying.
- [19] Dr Wilkinson, a doctor who attended the palliative care meeting on 5 December 2023 recalls explaining what palliative care did. She explained that voluntary assisted dying was something different with which the palliative care team could not assist.

She gave a brochure to them. The voluntary assisted dying scheme took nine days often longer, potentially weeks.

### **The applicant**

- [20] The applicant is 50 years old. She had been with David for 22 years. They lived in a rented house at Alexandra Hills. She received a disability support pension after having had bowel cancer. She still suffers the side effects.
- [21] She has no criminal history. She will abide with conditions of bail.
- [22] After her interview in December 2023 and before her arrest on 2 April 2025 she made no attempt to flee the jurisdiction or avoid contact with police.

### **DISCUSSION - PRINCIPLES**

- [23] Section 8 of the *Bail Act 1980 (Qld)* (**the Act**) empowers the court to grant bail to a person held in custody whilst awaiting a criminal proceeding.
- [24] Under s 13(1)(a)(i) of the Act, the Supreme Court is the only court which may grant bail to a person charged with murder.
- [25] Section 9 of the Act outlines the duty of a court to grant bail subject to the provisions of the Act.
- [26] It must be accepted “the basic but important principle of the criminal law [is] that an accused person is presumed to be innocent prior to conviction and should not be punished before conviction.”<sup>4</sup>
- [27] Section 16 of the Act deals with refusal of bail generally. As the applicant is charged with murder, she is in a show cause position.<sup>5</sup> To show cause means the onus is on the applicant to establish that her detention in custody is not warranted.<sup>6</sup>
- [28] Under s 16(1) of the Act, bail should be refused if the court is satisfied there is an unacceptable risk that if released on bail the applicant would:
- (a) Fail to appear and surrender into custody.
  - (b) Commit an offence.
  - (c) Endanger the safety or welfare of any person.
  - (d) Interfere with witnesses or otherwise obstruct the course of justice.
- [29] Another category of case where bail may be refused is where the defendant should remain in custody for their own protection.

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<sup>4</sup> *Clumpoint v Director Public Prosecutions* (Qld) [2005] QCA 043 at [17].

<sup>5</sup> Section 16(3)(b) of the Act.

<sup>6</sup> *Re Neale* [2013] QSC 310.

- [30] The matters to be considered under s 16(2) of the Act relevantly in this case include:
- (a) The nature and seriousness of the offence.
  - (b) The character and antecedents of the applicant.
  - (c) The history of previous grants of bail.
  - (d) The strength of the evidence.
- [31] As was said in *DPP v Bakir*,<sup>7</sup> balancing factors such as risk and the effect of proposed bail conditions is a matter of impression and degree.
- [32] No grant of bail is risk free and a grant of bail is part of the processes of a civilised society.<sup>8</sup>
- [33] When it comes to a charge of murder in *R v Hughes*,<sup>9</sup> it was held that bail should be refused unless the applicant has made out exceptional circumstances. In such a case where a person is facing the possibility of life in prison there is a strong incentive to flee.<sup>10</sup>
- [34] The decision on whether or not to grant or refuse bail often depends on forming provisional views on limited material of the strength of the crown's case and of the applicant's character.<sup>11</sup>
- [35] On the question of delay the reasons for delay, the length of delay and the strength of the crown case are matters of degree which must be balanced by the judge.<sup>12</sup>
- [36] Finally, where there is a subsequent bail application an applicant must establish there has been a material change in circumstances in order to succeed.<sup>13</sup>

### YALU DIRECTION

- [37] The transcript of the direction is not yet available, but it is agreed that the direction was to the effect<sup>14</sup> that:

“Sometimes it appears to a jury that although the more serious charge may be technically proved justice may be met by convicting him of the less serious charge. The jury's role is to conscientiously try the charges and decide them on the evidence, however if fulfilling that role, you are entitled to apply in favour of an accused what might be described as their innate sense of fairness and justice in place of the strict principles of law.”

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<sup>7</sup> [2006] QCA 562 at [27].

<sup>8</sup> *Williamson v Director of Public Prosecutions* [1999] QCA 356; [2001] 1 Qd R 99 at [22].

<sup>9</sup> [1983] 1 Qd R 92 at pp 96-96. Also see *Sica v Director of Public Prosecutions (Qld)* [2010] QCA 18; [2011] 2 Qd R 254.

<sup>10</sup> *Sica v Director of Public Prosecutions (Qld)* [2010] QCA 18; [2011] 2 Qd R 254 at [64].

<sup>11</sup> *Williamson v Director of Public Prosecutions* [1999] QCA 356; [2001] 1 Qd R 99 at [22].

<sup>12</sup> *Lacey v Director of Public Prosecutions* [2007] QCA 413 at [13].

<sup>13</sup> *Ex Parte Edwards* [1989] 1 Qd R 139 at p 142-143.

<sup>14</sup> ABC report 22 May 2026.

- [38] It appears this direction is consistent with the statement of King CJ in *R v Kirkman*<sup>15</sup> where his Honour stated:

“Sometimes juries apply in favour of an accused what might be described as their innate sense of fairness and justice in place of the strict principles of law. Sometimes it appears to a jury that although a number of charges ... have been technically proved, justice is sufficiently met by convicting him of less than the full number. This may not be logically justifiable in the eyes of the judge ... that it is part and parcel of the system of the administration of justice by juries.”

- [39] This statement was endorsed by Gaudron, Gummow and Kirby JJ in *Mackenzie v The Queen*.<sup>16</sup>

- [40] Whilst it may be true that generally speaking a trial judge’s summing up is not an occasion to sway the jury to “either view,”<sup>17</sup> at the end of the day it will be a matter for the trial judge as to whether this direction is given.

- [41] There is a long-held view that a judge may comment on factual issues, although the safer course is not to.<sup>18</sup>

- [42] Also, the fact is, regardless of the nature of the evidence, a jury in a murder trial is entitled to return a verdict of not guilty of murder but guilty of manslaughter. Even in the strongest murder case, manslaughter should be left to the jury as an alternative even if there is slight evidence of it.<sup>19</sup>

- [43] In this case it might be argued that although the applicant administered the medications, she was in two minds about whether she wanted David to die or not, because on one hand she loved him and wanted him to live and yet on the other did not want him to suffer. There may have been a forlorn hope that she would not succeed in killing him. In this way some of the statements in her interview might be better understood.

## RESULT

- [44] In this particular case I am satisfied that there has been a material change of circumstance since the original bail application on 22 April 2025. It is my view the evidence elicited on 16 February 2026 at the committal hearing is favourable to the applicant’s position and may well lead a trial judge to give a direction like that given by Henry J in *R v Yalu*.

- [45] There is also a more realistic possibility that there may be an acquittal entirely or a conviction for manslaughter or perhaps aiding suicide.

<sup>15</sup> (1987) 44 SASR 591 at p 593.

<sup>16</sup> (1996) 190 CLR 348 at p 367.

<sup>17</sup> *McKell v The Queen* [2019] HCA 5; (2019) 264 CLR 307 at [1]-[5].

<sup>18</sup> *RPS v The Queen* (2000) 199 CLR 620 at [41]-[42].

<sup>19</sup> *Gilbert v The Queen* [2000] HCA 15; (2000) 201 CLR 414 at [14], [15], [16], [101], [102]; *Gillard v The Queen* [2003] HCA 64; (2003) 219 CLR 1 at [75]-[76]. Explained in *James v The Queen* [2014] HCA 6; (2014) 253 CLR 475 at [21]-[23].

- [46] The evidence reveals:
- (a) David was resolute in his desire to die and had communicated this desire to others over the course of his illness and on the evening of his death.
  - (b) David was physically incapable of carrying out his own death.
  - (c) In the hours prior to his death, David and his family were informed by medical practitioners that they could not relieve his suffering quickly, that is within the coming days.
  - (d) David had previously communicated to others that should he reach a point of needing nappies this incapacity and humiliation would be intolerable to him and the afternoon before his death he was fitted with a nappy for the first time.
  - (e) The applicant was utterly devoted to David.
  - (f) David's family holds no ill will to the applicant.
- [47] It does appear that the applicant provided the medications to the deceased which caused death. It must be accepted that there is a case to answer on murder, and that this charge is the most serious in the Criminal Code.
- [48] On the other hand, there is a better chance now of the applicant being acquitted or at least being convicted of manslaughter or aiding suicide.
- [49] There are also other factors to be considered in this case. There is the character and background of the applicant. The applicant is a woman of 50 years of age who was devoted to her husband. She is of exemplary character. She has absolutely no previous convictions. Her ties are in the jurisdiction.
- [50] There have been no previous grants of bail. I conclude there is little risk of reoffending or of flight.
- [51] There is the issue about interference with witnesses. It seems clear the previous judge was concerned about this but matters now need to be put into context. The applicant was not charged with the offence of murder for some 16 months until after the interview in December 2023. During that time, she had full contact with her sons. She has also had much contact with her sons whilst in custody. There is no actual suggestion that their evidence has been influenced by her.
- [52] The effluxion of time is another new circumstance which tells against a risk of interference with witnesses.
- [53] In any event, the applicant has proposed another address away from the son which reduces that possibility as the matter advances towards trial. A further proposed condition will prevent her from discussing the evidence with them or with any other crown witness.

- [54] The applicant has shown cause in this case. She has established that her detention in custody is not justified because of:
- (a) The possibility of an acquittal or a conviction of manslaughter or aiding suicide.
  - (b) The fact she has now served well in excess of 12 months in custody.
  - (c) The fact there is no risk of reoffending.
  - (d) The fact there is no real risk of failing to appear.
  - (e) The risk of interference with witnesses can be ameliorated by the conditions proposed.

**CONCLUSION**

- [55] Despite the seriousness of the charge and the evidence available, I am satisfied that the applicant has shown a change of circumstances and also exceptional circumstances.
- [56] Bail should be granted on the conditions proposed in the draft order.