

Is a Belief in a God Now Incorporated Into the Subjective Test for Murder by Reckless Indifference to Human Life Following *The King v Struhs*?

Andrew Hemming*

*In an earlier article in this journal, the author posed the question of whether leaving God to make the choice was an answer to a charge of murder by reckless indifference to human life. The earlier article explored the ramifications of importing into s 302(1)(aa) of the Criminal Code 1899 (Qld) the common law subjective test for reckless murder of an act or omission committed with an awareness that death would probably arise from that act or omission, where the defendant's awareness is affected by a religious belief that his or her religious faith required God to make the decision of life or death. In the wake of the not guilty of murder verdict handed down in a bench trial by Justice Martin Burns in *The King v Struhs* [2025] QSC 10, where his Honour found there was a reasonable possibility Jason Struhs never came to a full realisation his eight-year old daughter Elizabeth would probably die from his withdrawal of her insulin because, in the cloistered atmosphere of the Church which enveloped him, Jason Struhs believed instead God would not allow that to happen, it is timely to revisit the common law subjective test for reckless murder. In this article, the author respectfully contends that the judgment of Burns J is so narrow and restrictive in its interpretation of awareness, given the slow and agonising death Elizabeth suffered over five days as her body collapsed under diabetic ketoacidosis, as to effectively equate intention in s 302(1)(a) with recklessness in s 302(1)(aa), thereby rendering s 302(1)(aa) otiose. The author further argues that the precedent set by Burns J in *The King v Struhs*, in incorporating a belief in a God into the subjective test for murder by reckless indifference to human life, should be statutorily overruled through the adoption of an objective test of recklessness which would legislatively establish a clear divide between intention and reckless indifference to human life.*

I. INTRODUCTION

The background to my earlier article on murder by reckless indifference to human life¹ was the death on 7 January 2022 of an eight-year-old girl named Elizabeth Struhs. Elizabeth had Type 1 diabetes, and she was denied insulin over a period of five days by her parents, Jason and Kerrie Struhs, who were members of a small religious sect called 'The Saints'.² The Saints

* Associate Professor in Law, University of Southern Queensland.

¹ Andrew Hemming, 'Is Leaving God to Make the Choice an Answer to a Charge of Murder by Reckless Indifference to Human Life or Manslaughter? A Case Study of Queensland Criminal Law' (2023) 3 *Australian Journal of Law and Religion* 69.

² The use of the word 'religious sect' is perhaps generous as eight of the fourteen members belonged to the Stevens family and the group was dominated by the head of the family, Brendan Stevens. This faith group, which eschewed any role for medicine, more resembled a cult as it was led by a forceful leader who demanded strict adherence to its doctrines. All religions start as cults. To become a religion, a cult must long out-survive its founder. Regarding how to recognise false prophets, Jesus is quoted as having said, 'You will know them by their fruits' (Matthew 7:15). Every member of The Saints is now in prison. It is arguable that The Saints do not meet all five indicia of 'a religion' as identified by Wilson and Deane JJ in *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 120, 173–4 [18], such as adherents 'constitute an identifiable group or identifiable groups'.

held the belief that God's will prevails and God makes the decision over life and death. Elizabeth's cause of death was diabetic ketoacidosis, and her symptoms included excessive urination, thirst, abdominal pain, vomiting, weakness, lethargy, altered levels of consciousness, incontinence, and coma. She eventually died of respiratory failure. Thus, Elizabeth's death would have been slow and painful, with her decline obvious to all fourteen members of The Saints who attended the Struhs's home over the five days it took for the young girl to die.

In April 2023, reckless murder charges were laid against Elizabeth's father, Jason Struhs, and the leader of The Saints, Brendan Stevens. The other twelve members of The Saints, including Elizabeth's mother, Kerrie Struhs, were charged with manslaughter. Kerrie Struhs had been released from prison in December 2021, a month before Elizabeth's death, for failing to get medical assistance for her daughter in 2019.³ As a result of Kerrie Struhs's imprisonment, Jason Struhs had been required to sign a legal document stating he would take responsibility for ensuring Elizabeth received her insulin medication.⁴ Consequently, it was Jason Struhs's decision to withhold and to continue to withhold Elizabeth's insulin even in the face of her medical deterioration. However, as will be seen, his decision was heavily influenced by the unrelenting pressure from the other thirteen members of The Saints led by Brendan Stevens.

The earlier article was concerned with the absence of a definition of 'reckless indifference to human life' in s 302(1)(aa) of the *Criminal Code 1899* (Qld) and the consequent necessity for the judiciary to import the subjective common law test for reckless murder of actual knowledge of the probability of death resulting from the act or omission. To avoid the need for the jury to infer actual knowledge from the objective circumstances of the case, the earlier article contended for an objective test for recklessness based on the natural and probable consequences test.

Now, the trial has been concluded and verdicts have been reached. As will be discussed in Part IV, I contend that the effect of Burns J's judgment in the *Struhs* case is to equate intention with recklessness for the purpose of the subjective test for reckless murder, which reinforces the argument in the earlier article supporting an objective test.

It follows that it is an error to view Burns J's judgment as consistent with the common law test for reckless murder because his Honour sets the subjective bar for reckless murder so high that the requirement of proof of actual knowledge of the probability of death resulting from the act or omission by the accused encompasses the 'unknowing' of medical knowledge acquired prior to an alleged religious conversion. The subjective bar is further raised when it is understood that his Honour failed to take into account that Jason Struhs and The Saints accepted Elizabeth Struhs would probably die on earth but believed she would rise again. In other words, the concern expressed in the earlier article that the failure to define 'reckless indifference to human life' in s 302(1)(aa) of the *Criminal Code 1899* (Qld) could result in a narrow window for reckless murder has been fully realised.

³ David Chen, Georgie Hewson, and Anthea Moodie, 'Fourteen people are accused of murdering Elizabeth Struhs: Here's what we know about the case against them', *ABC News* (online, 26 November 2022) <<https://www.abc.net.au/news/2022-11-26/elizabeth-struhs-alleged-murder-and-the-14-people-to-stand-trial/101671336>>.

⁴ Talissa Siganto, 'Instead of giving her life-saving insulin, Elizabeth Struhs's parents prayed over her dying body', *ABC News* (online, 30 January 2025) <<https://www.abc.net.au/news/2025-01-30/elizabeth-struhs-religious-group-guilty-manslaughter/104859334>>. For over two years, Jason Struhs 'diligently ensured his daughter' Elizabeth 'received her daily medication' of insulin.

The *Struhs* case was conducted as a trial by judge alone following a Crown application which was not opposed by the fourteen defendants (see Part III). The defendants were not legally represented and called no witnesses. The central evidence tendered by the Crown at trial dealt with the evidence given by medical and hospital witnesses and the video evidence of the police interviews with the fourteen defendants. The strength of the Crown case meant there was little doubt that at a minimum all fourteen defendants would be convicted of manslaughter (see Part IV). The prime interest in the case was whether the trial judge, Burns J, would convict Jason Struhs and Brendan Stevens of murder by reckless indifference to human life and the reasons given by his Honour for his verdicts. A secondary interest was the length of the sentences to be served for manslaughter.

As will be seen in Part IV, Burns J found both Jason Struhs and Brendan Stevens not guilty of murder by reckless indifference to human life. The basis of his Honour's decision was that he could not be satisfied that Jason Struhs had actual knowledge his daughter Elizabeth would probably die because of his decision to withdraw her insulin as he believed God would intervene to prevent her death. Consequently, Burns J further held he could not be satisfied that Brendan Stevens knew Jason Struhs had actual knowledge his daughter Elizabeth would probably die.

The author respectfully disagrees with Burns J's findings for three reasons (see Part IV). First, there was more than sufficient evidence that Jason Struhs had actual knowledge of the probability of Elizabeth's death from the objective circumstances to be able to draw the inference. Secondly, Burns J failed to comprehend that Jason Struhs and all members of The Saints believed Elizabeth would 'rise' and therefore she was 'alive' in heaven. This belief amounted to a *de facto* confession to knowledge of the probability of her death on earth. Thirdly, it was an error to absolve Brendan Stevens of criminal responsibility for reckless murder based on his lack of knowledge of Jason Struhs's state of mind given Brendan Stevens was instrumental in changing Jason Struhs's state of mind when he showed signs of weakening and restoring Elizabeth's insulin injections.

There is a double irony in the Crown's decision to apply for a trial by judge alone because the outcome of the trial was that (1) none of the defendants were found guilty of reckless murder, and (2) the Crown is now faced with the legal precedent of a very narrow test for reckless murder for future cases. In the first place, based on the harrowing evidence of Elizabeth's death over five days and given any one of them could have rung 000 at any time, a jury could have convicted all fourteen defendants of reckless murder if the Crown had not downgraded the original reckless murder charges to manslaughter for twelve of the defendants. Why Elizabeth's mother, Kerrie Struhs, was one of the twelve is surprising. In the second place, as a trial by judge alone requires the trial judge to give reasons for the verdicts, the reasons given by Burns J set a precedent for the interpretation of s 302(1)(aa) of the *Criminal Code 1899* (Qld). The author argues that this precedent brings the need for an objective test of murder by reckless indifference to human life into sharp focus.

As it transpired, Burns J sentenced the three principals, Jason and Kerrie Struhs and Brendan Stevens, to between thirteen and fourteen-and-a-half years' imprisonment for manslaughter, while the other eleven defendants received terms of imprisonment of between six and nine years for the same offence.

II. PRECEDENT SIGNIFICANCE OF *STRUHS* CASE

The significance of the *Struhs* case⁵ is that it provided the first real precedent in Queensland dealing with the application of the test to be applied to s 302(1)(aa) of the *Criminal Code 1899* (Qld) which states if death is caused by an act done, or omission made, with reckless indifference to human life, the person is guilty of murder. In the absence of any definition of reckless indifference to human life in s 302, the judiciary has imported the common law test for reckless murder into s 302(1)(aa), namely, the defendant must actually have known the death would probably result from the defendant's acts or omissions and it is not enough that that danger may have been obvious to a reasonable person or to members of the jury.⁶

However, what constitutes actual knowledge of a probable result is open to wide interpretation because of the very nature of the subjective test. Thus, the precedent significance of the *Struhs* case lies in whether the judicial verdicts are considered to sit comfortably within the common law test for murder by reckless indifference to life or, conversely, the judicial reasons for the verdicts are considered to be so perverse based on the circumstances of the case so as to require statutory intervention to overrule the unfortunate precedent which has been established.

As reckless indifference involves a subjective analysis, the defendant's personal circumstances are relevant to the determination of the defendant's state of mind at the time of the act or omission, which circumstances may include age, educational and social background, emotional state, and state of sobriety.⁷ Significantly, in the *Struhs* case, Jason Struh's emotional state was affected by his wife's ultimatum, first issued when Kerrie Struhs was in prison,⁸ that their marriage was over unless Jason became a member of The Saints.⁹ Furthermore, 'social background' encompasses religious beliefs, and Jason Struhs's 'religious' belief (notwithstanding his last minute conversion to save his marriage)¹⁰ that God would not allow his daughter to die was to play a crucial role in determining Justice Martin Burns's verdict of manslaughter rather than murder by reckless indifference for Jason.¹¹

It will be argued the better view is that Jason Struhs's 'religious' conversion was driven by Kerrie Struhs's ultimatum to end their marriage. Jason was faced with the choice of either losing his family or joining The Saints before Kerrie Struhs was released from prison in December 2021. In choosing the latter, Jason knew he was signing his daughter's death warrant.¹² Effectively, Kerrie Struhs was exerting coercive control over her husband, which is

⁵ *The King v Struhs* (2025) QSC 10.

⁶ *Queensland Supreme and District Court Benchbook*, 183A. Murder by reckless indifference: s 302(1)(aa), citing *Pemble v The Queen* (1971) 124 CLR 107; *R v TY* (2006) 12 VR 557; *R v Barrett* (2007) 171 A Crim R 315. <https://www.courts.qld.gov.au/__data/assets/pdf_file/0008/641429/sd-bb-183a-unlawful-killing-murder-s-302-1-a-a.pdf>.

⁷ *Ibid*, citing *Pemble v The Queen* (1971) 124 CLR 107; *R v Barrett* (2007) 171 A Crim R 315.

⁸ Kerrie Struhs received an 18-month sentence for failing to provide the necessities of life to Elizabeth in 2019 when she nearly died of prolonged and extreme symptoms from her then-undiagnosed Type-1 diabetes.

⁹ *The King v Struhs* (2025) QSC 10, [857] (Burns J). When interviewed at the crime scene on 8 January 2022, Kerrie Struhs confirmed to police 'she was planning to end the marriage when she got out of prison'.

¹⁰ *The King v Struhs* (2025) QSC 10, [492] (Burns J). In a telephone conversation with Kerrie Struhs on 12 September 2021, Brendan Stevens referred to the conversion of Jason Struhs.

¹¹ *The King v Struhs* (2025) QSC 10, [761] (Burns J).

¹² *Ibid* [494] (Burns J). 'On 24 September 2021,' Kerrie Struhs 'emailed Jason Struhs a letter in which she stated that she expected "to see victory in Elizabeth very soon".' By 'victory', Kerrie meant 'the healing of Elizabeth manifest[ing] itself through Jason's faith'.

a form of domestic violence.¹³ The significance of Kerrie’s coercive control is that it rebuts the argument that Jason’s conversion was religious or real, but rather was entirely pragmatic, especially in light of the fact he joined ‘after 17 years of staunch opposition’.¹⁴

The timing is crucial to an understanding of the sequence of events that led up to Elizabeth’s death. Kerrie Struhs had a meeting with the parole duty officer, Melanie Ford, on 23 December 2021, and was due to have a meeting with her parole case manager, Eleanor Savill, at 9.30 am on 6 January 2022, but Kerrie rang to say she was unwell.¹⁵ When Kerrie made that phone call, she knew Elizabeth was near death. It was no coincidence that the cessation of Elizabeth’s insulin was orchestrated by The Saints to occur immediately after the New Year celebrations: during the extended school holidays, without school staff monitoring, and at a time when many people were away. This was the window of opportunity for The Saints to pursue their extreme religious beliefs on the role of medicine and the supremacy of God.

As regards extreme religious beliefs, it is instructive to consider the findings of Mason ACJ and Brennan J in *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)*:

[T]he criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, *though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion*.¹⁶

This article will explore the question of where Burns J’s decision leaves the subjective test for reckless indifference. Is the logical consequence that no matter how extreme, bizarre, or absurd the religious view, a subjective test is still applied? Is a point ever reached where a claimed lack of awareness becomes so extreme as to amount to wilful blindness? Indeed, more generally, what of the mother who claims she was unaware that leaving a baby in a locked car in 40 degrees centigrade heat would probably lead to the baby’s death?

III. TRIAL BY JUDGE ALONE

The trier of fact in the *Struhs* case was not a jury but the trial judge, Burns J, which resulted from an order made by Bowskill CJ pursuant to s 614(1) of the *Criminal Code 1899* (Qld), that all the defendants be tried by a judge sitting without a jury.¹⁷ As all fourteen defendants wished to be tried together, any no-jury order would have to have been made in relation to all the defendants.¹⁸ In addition, because the prosecutor had applied for a no-jury order, the court could only make the no-jury order if each of the accused persons consented to it,¹⁹ and because the accused persons were not represented by a lawyer, the court had to be satisfied the accused

¹³ See s 334B ‘What is *domestic violence*’ and s 334C ‘Coercive Control’ of the *Criminal Code 1899* (Qld).

¹⁴ *The King v Struhs* (2025) QSC 10, [22] (Burns J).

¹⁵ Rex Martinich, ‘Accused killer mum due for parole meet before daughter’s death’, *Brisbane Times* (online, 23 July 2024) <<https://www.brisbanetimes.com.au/national/queensland/accused-killer-mum-due-for-parole-meet-before-daughter-s-death-20240723-p5jvyl.html>>.

¹⁶ (1983) 154 CLR 120, 136 [17] (Mason ACJ and Brennan J) (emphasis added).

¹⁷ *The King v Struhs & Ors* [2023] QSCPR 19.

¹⁸ *Criminal Code 1899* (Qld) s 615A(2).

¹⁹ *Ibid* ss 615(2), 615A(3)(a).

persons properly understood the nature of the application²⁰ as the defendants were entitled to be tried by a jury.²¹

In this regard, Bowskill CJ, having asked each of the defendants, who had been provided with (a) an information memorandum prepared by the trial judge, Justice Burns, and (b) the Crown's written submissions, was satisfied the defendants understood the nature of the Crown's application for a no-jury order.²² Unsurprisingly, each of the defendants also told Bowskill CJ that they consented to the making of a no-jury order.²³ The defendants would have realised their chances of acquittal were better before a judge than a jury, especially once the jury had been told of the harrowing manner of Elizabeth's death.

Thus, with the Crown applying for a no-jury order and the defendants consenting to such an order, the crucial question before Bowskill CJ was whether it was in the interests of justice to make a no-jury order.²⁴ Without limiting the relevant considerations, the court may make a no-jury order if it considers that the trial, because of its complexity or length (or both) is likely to be unreasonably burdensome to a jury; or there has been significant pre-trial publicity that may affect jury deliberations.²⁵ The court may refuse to make a no-jury order if it considers the trial will involve a factual issue that requires the application of objective community standards.²⁶

The Crown's submission focused on the length and complexity of the trial, with the trial estimated to last three months and include 100 hours of extended police interviews with each of the accused as well as a large volume of medical material and phone records.²⁷ In effect, it would be fourteen trials in one.²⁸ The Crown also argued the level of media attention created an inherent risk of prejudice.²⁹ The foregoing is a fair representation of the situation, albeit slanted to the Crown's convenience.

More tendentious was the Crown's assertion that objective community standards were not involved in the *Struhs* case.

The prosecutor also submits there is no factual issue in this case requiring the application of objective community standards. That appears to be so, having regard to the case against each of the defendants, but even if there was an issue of this kind, as a matter of principle this would not militate against the making of the order, where other factors overwhelmingly support it.³⁰

With respect, it is difficult to understand why Bowskill CJ agreed with the Crown that there was 'no factual issue in this case requiring the application of objective community standards'.³¹ The *Struhs* case was a classic example where a jury, in coming to a verdict on a charge of

²⁰ Ibid s 615(3).

²¹ Ibid s 604.

²² *The King v Struhs & Ors* [2023] QSCPR 19, [12] (Bowskill CJ).

²³ Ibid [24] (Bowskill CJ).

²⁴ *Criminal Code 1899* (Qld) s 615(1).

²⁵ Ibid s 615(4).

²⁶ Ibid s 615(5).

²⁷ *The King v Struhs & Ors* [2023] QSCPR 19, [17] (Bowskill CJ).

²⁸ Ibid [18] (Bowskill CJ).

²⁹ Ibid [20] (Bowskill CJ).

³⁰ Ibid [22] (Bowskill CJ), citing *The Queen v Pentland* [2020] QSC at [9(f)].

³¹ Ibid.

murder by reckless indifference to human life, should apply objective community standards to a situation where an eight-year-old girl with Type 1 diabetes³² was denied insulin by her parents. The jury would have been able to apply their collective common knowledge in assessing Jason Struhs's awareness of the probability of his daughter dying as a direct result of his withdrawal of her insulin. Their assessment would have reflected both the general knowledge ordinary Australians possess of the implications of withdrawing insulin from a child with Type 1 diabetes, which in turn would have been informed by Elizabeth's medical history and evidence of Jason Struhs's specific knowledge of his daughter's condition provided to him by medical authorities at the time of his daughter's near death in 2019.³³ At that time, both Jason and Kerrie Struhs were charged under s 285 (*Duty to provide necessities of life*) of the *Criminal Code 1899* (Qld). Kerrie received a prison sentence while Jason, who pleaded guilty, was given a suspended sentence in order to care for Elizabeth on the condition that he give a signed undertaking to provide Elizabeth with insulin and give evidence against his wife.³⁴

Thus, it is not to the point that the test for murder by reckless indifference to human life is subjective, namely, an awareness of the probability of death resulting from an act or omission, in the application of objective community standards. A properly instructed jury would have been quite capable of assessing Jason Struhs's subjective state of mind against the criminal standard of proof of beyond reasonable doubt. It is respectfully submitted that Bowskill CJ made an error of judgment in determining there was 'no factual issue in this case requiring the application of objective community standards'.³⁵

Furthermore, with respect, there was no justification for Bowskill CJ's conclusion that 'in the unusual circumstances of this case the potential for prejudice as a result of the significant pre-trial publicity and media reporting that has already and will continue to take place, may be difficult to neutralise'.³⁶ If this were to be the test, then no case where there had been a blaze of publicity would come before a jury.

However, for all the reasons relied upon by the prosecutor, Bowskill CJ was satisfied it was in the interests of justice to make a no-jury order.³⁷ Rather, in the author's opinion, the driving force behind the decision was the convenience to the Crown, which was aided by the consent of all the defendants who astutely realised their chances of acquittal, or in the case of Jason Struhs and Brendan Stevens, of receiving a manslaughter conviction rather than a conviction for murder, were better before a judge alone than a jury.

³² Type 1 diabetes is a chronic condition where the pancreas makes little or no insulin. Insulin is a hormone the body uses to allow sugar (glucose) to enter cells to produce energy. Type 1 diabetes has no cure and treatment is directed at managing the amount of sugar in the blood using insulin, diet, and lifestyle to prevent complications. See Diabetes Australia, 'Type 1 diabetes' *Diabetes Australia* <<https://www.diabetesaustralia.com.au/about-diabetes/type-1-diabetes/>>.

³³ When Elizabeth Struhs was admitted to the intensive care unit of the Queensland Children's Hospital in South Brisbane on 17 July 2019, she was examined by Associate Professor Conwell who gave evidence Elizabeth 'was extremely emaciated, weighing only 13 kilograms with protrusion of all bony prominences' (average child of her age and height usually 21 kilograms), and 'that Elizabeth was the "most seriously unwell child" she had ever seen in 20 years of practice': *The King v Struhs* (2025) QSC 10, [406] (Burns J).

³⁴ *The King v Struhs* (2025) QSC 10, [454] (Burns J): 'The benefit to him of pleading guilty and giving evidence against his wife was that it allowed him to remain in the community and, of course, this meant he was able to care for their children.'

³⁵ *The King v Struhs & Ors* [2023] QSCPR 19, [22] (Bowskill CJ), citing *The Queen v Pentland* [2020] QSC at [9(f)].

³⁶ *The King v Struhs & Ors* [2023] QSCPR 19, [25] (Bowskill CJ).

³⁷ *Ibid.*

IV. THE *STRUHS* TRIAL, VERDICTS, AND SENTENCES

A. *The Struhs Trial*

Jason Struhs and Brendan Stevens were charged with the murder of Elizabeth Struhs on or about 7 January 2022 at Toowoomba. Twelve other accused, including Elizabeth's mother Kerrie Struhs and her brother Zachary Struhs, were each charged with the manslaughter of Elizabeth. Each of the accused refused to enter a plea and consequently, in accordance with s 601 of the *Criminal Code 1899* (Qld),³⁸ the trial judge, Burns J, directed that a plea of not guilty be entered for each of the accused. As previously mentioned, the trial took place without a jury and ran between 10 July and 6 September 2024. None of the accused chose to be legally represented, and neither did any of the accused give or call evidence.

After the Crown opened its case, Burns J invited all the accused to make an opening statement. Only the leader of The Saints, Brendan Stevens, took up the offer, although he purported to be speaking on behalf of all the accused. Stevens's statement reflected the attitude of The Saints to the charges they faced in describing the trial as 'just a religious persecution' and claiming all members of the religious sect 'did not "have any particular care"' as to the outcome of the trial and 'did not "come to fight the charge"'.³⁹ However, as will be seen, at the end of the trial all fourteen accused addressed the court, with most advancing 'submissions to the effect that he or she should be acquitted of any wrongdoing'.⁴⁰

In his opening statement, Brendan Stevens portrayed the charges 'as a prosecution for believing in God'.⁴¹ Nevertheless, by the end of the trial, the collective belief of The Saints in the healing power of God had been supplemented by the claim they had played no role in Jason Struhs's decision to cease giving Elizabeth insulin or in his failure to resume insulin treatment.

All they had done, it was submitted, was to encourage Mr Struhs to believe in God. To the point, they submitted they had done nothing to persuade, encourage or support Mr Struhs in the decision and choice he made. Any influence in those respects, it was said, must have come from God, and Mr Struhs agreed with that proposition in his closing address.⁴²

This pivot from a choice to follow God, even if it ran afoul of the criminal laws of Queensland, to reliance on the claim that Jason Struhs made an independent decision to cease providing Elizabeth with insulin was likely influenced by the Crown case that all the accused except Elizabeth's parents, who owed Elizabeth a duty to provide the necessaries of life,⁴³ were

³⁸ Section 601(1) of the *Criminal Code 1899* (Qld) states: 'If an accused person, on being called upon to plead to an indictment, will not plead or answer directly to the indictment, the court may, if it thinks fit, order a plea of not guilty to be entered on behalf of the accused person.'

³⁹ *The King v Struhs* (2025) QSC 10 [7] (Burns J).

⁴⁰ *Ibid.*

⁴¹ *Ibid* [26] (Burns J).

⁴² *Ibid* [27] (Burns J).

⁴³ Section 286(1)(a) of the *Criminal Code 1899* (Qld) states: 'It is the duty of every person who has care of a child under 16 years to (a) provide the necessaries of life for the child ... and he or she is held to have caused any consequences that result to the life and health of the child because of any omission to perform that duty, whether the child is helpless or not.'

criminally responsible for Elizabeth's death because 'they both counselled and aided⁴⁴ the unlawful killing of Elizabeth by intentionally encouraging Jason Struhs to cease providing insulin as well as medical care and treatment to Elizabeth, and by intentionally supporting his choice to continue to do so'.⁴⁵

Consequently, the depiction of Jason Struhs by the thirteen other accused members of The Saints as having made an *independent* decision to cease Elizabeth's insulin went to the heart of the case. The trial judge, Burns J, was presented with a conundrum. On the one hand, the objective circumstances pointed strongly to pressure being brought to bear on Jason Struhs, while, on the other hand, Jason Struhs himself was accepting sole responsibility through the healing power of God for his decision. If Burns J accepted Jason Struhs's version of events, then the reckless murder charge against Brendan Stevens and the manslaughter charges against the other twelve accused all fell away, leaving the sole judicial decision to be whether Jason Struhs was guilty of murder by reckless indifference to human life or the manslaughter of his daughter.

1. Murder by Reckless Indifference to Human Life

Murder by reckless indifference to human life was inserted into the *Criminal Code 1899* (Qld) in 2019⁴⁶ as another circumstance of murder by virtue of s 302(1)(aa) if death is caused by an act done, or omission made, with reckless indifference to human life. The Explanatory Notes to the Criminal Code and Other Legislation Amendment Bill 2019 (Qld) gave the following background as to the reasons behind the proposed expanded definition of murder in the *Criminal Code 1899* (Qld):

Including recklessness as an element of murder in section 302 of the Criminal Code will capture a wider range of offending as murder in Queensland. Reckless murder exists in a number of other Australian jurisdictions reflecting that intention and foresight of probable consequences are morally equivalent – that is a person who foresees the probability of death is just as blameworthy as the person who intends to kill.⁴⁷

In the Second Reading Speech for the Bill, the Attorney-General, the Honourable Yvette D'Ath, observed that the added circumstance of murder was based on s 18(1)(a) of the *Crimes Act 1900* (NSW) and was intended to capture conduct at the 'higher end of culpability or blameworthiness'.⁴⁸ As is common place with amendments to the *Criminal Code 1899* (Qld), the legislature devolved considerable discretion to the judiciary, which reflects the view that allowing judicial discretion within a codified framework prevents overly rigid application of the law and ensures adaptability consistent with changing community values.

⁴⁴ Section 7(1)(c) and (d) of the *Criminal Code 1899* (Qld) state: 'When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say ... (c) every person who aids another person in committing the offence; (d) any person who counsels or procures any other person to commit the offence.'

⁴⁵ *The King v Struhs* (2025) QSC 10, [25] (Burns J).

⁴⁶ *Criminal Code and Other Legislation Amendment Act 2019* (Qld) s 3.

⁴⁷ Explanatory Notes, Criminal Code and Other Legislation Amendment Bill 2019 (Qld) 2 <<https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2018-101>>.

⁴⁸ Queensland, *Parliamentary Debates*, Legislative Assembly, 30 April 2019, 1241, 1253.

While ultimately the application of the amendment will be a matter for the courts, it is therefore expected that New South Wales jurisprudence will be of some guidance. Further, insertion of any related definition may further complicate this issue and have serious unintended consequences.⁴⁹

With respect, the failure to include any related definition of murder by reckless indifference to human life *per force* required the judiciary to turn to the common law, with its own unintended consequences in the form of a ‘wilderness of single instances’.⁵⁰

Thus it was Burns J, having determined there was no material difference between s 302(1)(aa) of the *Criminal Code 1899* (Qld) and s 18(1)(a) of the *Crimes Act 1900* (NSW), who held that because the latter was authoritatively considered by the High Court in *Royall v The Queen*,⁵¹ the former should be interpreted in a similar manner.⁵²

Accordingly, proof of murder by reckless indifference to human life under s 302(1)(aa) of the *Criminal Code* requires proof by the Crown that the act or omission causing death was done by the accused in the knowledge of the probability that the act or omission would cause death. It is not sufficient that the Crown prove that the accused adverted to the possibility that the act or omission would cause death. Nothing less than proof that the accused was *aware* of the probability that the act or omission would cause death will suffice.⁵³

It follows from the use of ‘knowledge’ and ‘awareness’ to denote the standard of proof required for murder by reckless indifference to life that a subjective test is applied by the courts. ‘That calls for an assessment of the subjective state of mind of the accused, and not what a reasonable person might or would have foreseen as a probable consequence of their conduct.’⁵⁴

As previously mentioned, whether the accused fully realised the probable consequences of his act or omission is governed by the accused’s circumstances such as age, background, education, emotional state, state of sobriety, and religious beliefs.⁵⁵ However, as Burns J pointed out in citing Callinan J’s observations in *R v Lavender*,⁵⁶ ‘[a] person’s store of knowledge ... evolves over time’.⁵⁷

Indeed, to the point of the case on knowledge against Jason Struhs, a person’s prior knowledge about a particular fact may be completely altered by a later-acquired belief regarding the same fact. What matters is the accused’s knowledge, however constituted, at the time of the act or omission causing death.⁵⁸

⁴⁹ Ibid 1253.

⁵⁰ Lord Alfred Tennyson, ‘Aylmer’s Field’, *The Poetical Works of Alfred Tennyson, Poet Laureate* (Strahan, 1869) 341. It will be recalled that in Tennyson’s poem, Leolin went and toiled: ‘Mastering the lawless science of our law, That codeless myriad of precedent, That wilderness of single instances.’

⁵¹ (1991) 172 CLR 378.

⁵² *The King v Struhs* (2025) QSC 10, [124] (Burns J).

⁵³ Ibid (emphasis added).

⁵⁴ *The King v Struhs* (2025) QSC 10, [125] (Burns J), citing *Pemble v The Queen* (1971) 124 CLR 107, 135; *La Fontaine v The Queen* (1976) 136 CLR 62, 77.

⁵⁵ *Pemble v The Queen* (1971) 124 CLR 107, 120; *La Fontaine v The Queen* (1976) 136 CLR 62, 77–78.

⁵⁶ (2005) 222 CLR 67, 111.

⁵⁷ *The King v Struhs* (2025) QSC 10, [128] (Burns J).

⁵⁸ Ibid (Burns J).

Nevertheless, whilst acknowledging the quote often attributed to John Maynard Keynes – ‘When the facts change, I change my mind – what do you do, sir?’⁵⁹ – there is an important distinction between a logical, evidence-based change of mind and an irrational, emotionally driven one.

Using the biblical example in Genesis 22 of God commanding Abraham to sacrifice his beloved son Isaac as a test of his faith and obedience, if Jason Struhs had sacrificed Elizabeth as a test of his willingness to give everything to God and no ram was caught in a thicket to provide the substitute offering, would Burns J have adopted the same approach as he did to the withdrawal of insulin – by requiring full knowledge of Elizabeth’s probable death irrespective of how extreme Jason Struhs’s religious beliefs might be? Presumably, human sacrifices constitute ‘canons of conduct which offend against the ordinary laws [and] are outside the area of any immunity, privilege or right conferred on the grounds of religion’.⁶⁰ Alternatively, if Jason Struhs had stabbed Elizabeth to death under the belief he was using a feather and not a knife, then he would have been found not guilty of murder on the grounds of insanity under s 27(1) of the *Criminal Code 1899* (Qld) if the court was satisfied on the balance of probabilities that Jason was deprived of the capacity to understand what he was doing.⁶¹

In this context, it is worth noting that ‘insanity’ is a legal concept and not a specific medical diagnosis. While the test for insanity is subjective, the court will often hear conflicting expert medical opinion evidence based on clinical knowledge using structured assessment tools as to the accused’s mental health at the time of the alleged offence and whether the accused was suffering from a mental disease or defect that prevented the accused from understanding the nature of his or her actions or from differentiating right from wrong.⁶² These expert opinions comprise both objective (structured assessment tools) and subjective (whether the person met one of the criteria in s 27(1) to be considered legally insane) components. However, the trier of fact (jury or judge) ultimately determines whether the accused was legally insane at the time of the alleged offence and may reject any expert opinions given in court.

Because of the presumption of sanity under s 26 of the *Criminal Code 1899* (Qld) where ‘[e]very person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved’, the accused faces a legal onus to prove on the balance of probabilities that he or she is legally insane. The term ‘balance of probabilities’ means a fact is considered proven if it is more likely than not to have happened, which is typically interpreted as 51%. This percentage, although applied to the civil standard

⁵⁹ See Unsigned, ‘Quote Origin: When the facts change, I change my mind. What do you do, Sir?’ *Quote Investigator* (Blogpost, 22 July 2011, updated 25 November 2024) <<https://quoteinvestigator.com/2011/07/22/keynes-change-mind/>> (discussing evidence that Keynes expressed the general sentiment, if not the exact words of the famous quotation).

⁶⁰ *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 120, 136 [17] (Mason ACJ and Brennan J).

⁶¹ In *R v Porter* (1933) 55 CLR 182, 188, Dixon J gave the following example: ‘In a case where a man intentionally destroys life he may have so little capacity for understanding the nature of life and the destruction of life, that to him it is no more than breaking a twig or destroying an inanimate object.’

⁶² Section 27(1) of the *Criminal Code 1899* (Qld) states: ‘A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission the person is in such a state of mental disease or natural mental infirmity as to deprive the person of capacity to understand what the person is doing, or of capacity to control the person’s actions, or of capacity to know that the person ought not to do the act or make the omission.’

of proof, is worth bearing in mind when considering whether Jason Struhs knew his act or omission would probably cause his daughter's death.

Although the test for reckless murder is subjective, there is also an objective component based on the proven circumstances surrounding a particular case, such as the documented prior medical advice given to Jason Struhs and his own knowledge as to how close his daughter was to death when he took her to hospital. The author contends that in the context of the subjective test for reckless murder, 'probably' as it relates to knowledge of the likely result of an act or omission contains an objective component. In other words, especially in the context of a case involving religious beliefs, the test for reckless murder is not 100% subjective: a religious conversion cannot somehow absolve Jason Struhs from prior knowledge of his daughter's medical condition and the need for medication.

Throughout his judgment on murder by reckless indifference to human life, Burns J emphasises the test is subjective and not objective, as though there is a clear red line between the two tests. If, figuratively, a veritable potpourri of irrational subjective beliefs constitutes the state of knowledge of an accused, then the subjective test either moves to wilful blindness or mental infirmity. The point being that, as with the subjective test of 'honest' in the defence of mistake of fact,⁶³ there must be a point reached in a subjective test where the trier of fact determines the belief is too extreme to countenance.

Moving on from the subjective test, the next question to be determined is: when must there be knowledge of the probability of death? In every case, there must be a concomitance between the act or omission that causes death and knowledge on the part of the accused of the probability of death.⁶⁴ The Crown case was that the offence was a continuing one, running from the initial cessation of insulin until Elizabeth's death, which was a period of four days of missed insulin dosages.

For a continuing omission, it is not necessary that the accused held the relevant state of mind at every stage of the omission; it is sufficient if it was held at some point in the period of the continuing omission.⁶⁵ Hence, '[e]ven a 'momentary realisation' during the continuing omission that death is a probable consequence will be enough.⁶⁶

Section 18(1)(a) of the *Crimes Act 1900* (NSW) requires that the relevant state of mind accompany the relevant act or omission causing death. It is irrelevant that, at the time of death, an accused no longer had that state of mind or acquired it after the occurrence of his or her act or omission.⁶⁷

On its face, the above authority of *Royall v The Queen* and *SW v R* would appear to have made the Crown's task easier in proving that at some point in the four day ordeal suffered by Elizabeth, her father fully realised his daughter would probably die, especially as her condition continued to deteriorate and replicate Elizabeth's condition back in 2019 when she attended hospital near death weighing just 13 kilograms.

⁶³ See s 24 of the *Criminal Code 1899* (Qld).

⁶⁴ *Koani v The Queen* (2017) 263 CLR 427, [21]; *Pemble v The Queen* (1971) 124 CLR 107, 135.

⁶⁵ *Royall v The Queen* (1991) 172 CLR 378, 405.

⁶⁶ *SW v R* [2013] NSWCCA 103, [81].

⁶⁷ *Royall v The Queen* (1991) 172 CLR 378, 458.

Indeed, in an interview with police on Saturday 8 January 2022 after Elizabeth had died, Jason Struhs said that on the previous Thursday (6 January) ‘he saw Elizabeth “was goin’ to where she went last time”’, and in response to a question of whether he ‘was aware Elizabeth was deteriorating because she was not getting any insulin’, Jason Struhs replied, ‘yeah, oh, she wasn’t getting any so it’s pretty obvious’.⁶⁸ More importantly, given a ‘momentary realisation’ of death being a probable consequence is enough to sheet home criminal responsibility for reckless murder.⁶⁹ When asked by police what he thought would happen when Elizabeth started vomiting on the previous Tuesday (4 January) and he continued to withhold her insulin, Jason Struhs replied, ‘[w]ell, that was the only time that I probably thought that she was gonna die’.⁷⁰ In sum, the Crown case against Jason Struhs built upon his breach of his duty to provide the necessaries of life under s 286(1) of the *Criminal Code 1899* (Qld) because his state of mind was such that he knew (fully realised) Elizabeth would probably die from his failure to provide her with insulin and/or medical care and treatment. Crucially, this knowledge crystallised at some point between when the administration of insulin was ceased until Elizabeth’s death.⁷¹

2. Evidence that Jason Struhs knew his daughter Elizabeth would probably die because of his cessation of her insulin and his subsequent refusal to provide her with medical care and treatment

In assessing the evidence admissible against Jason Struhs, Burns J divided Jason’s state of mind regarding Elizabeth’s reliance on insulin to stay alive into before and after he joined The Saints.⁷² ‘In the first bracket,’ Burns J was satisfied there was ‘ample evidence’ that Jason Struhs ‘well knew prior to joining the Church that, without insulin, Elizabeth would die’.⁷³ Burns J based his view on the documented evidence against Jason Struhs associated with Elizabeth’s admission to hospital in 2019 and Jason’s cooperation with police in giving evidence against his wife in her 2021 trial.⁷⁴

‘In the second bracket,’ Burns J included as ‘principal sources of evidence’ the text messages Jason Struhs sent and received after he joined The Saints and the various versions of events Jason gave to emergency services and police after Elizabeth had died.⁷⁵ In his interviews with the police, Jason made three principal arguments directed at absolving himself and his fellow members of The Saints from criminal responsibility for Elizabeth’s death: (1) Elizabeth wanted to cease taking insulin;⁷⁶ (2) his decision to withdraw Elizabeth’s insulin was not influenced by any pressure from the thirteen other members of The Saints;⁷⁷ (3) God gave him complete confidence Elizabeth was healed.⁷⁸

⁶⁸ *The King v Struhs* (2025) QSC 10, [721] (Burns J).

⁶⁹ *SW v R* [2013] NSWCCA 103, [81].

⁷⁰ *The King v Struhs* (2025) QSC 10, [721] (Burns J).

⁷¹ *Ibid* [137] (Burns J).

⁷² *The King v Struhs* (2025) QSC 10, [703] (Burns J).

⁷³ *Ibid* [704] (Burns J).

⁷⁴ *Ibid*.

⁷⁵ *Ibid* [705] (Burns J).

⁷⁶ *Ibid* [706]–[707] (Burns J).

⁷⁷ *Ibid* [733] (Burns J).

⁷⁸ *Ibid* [734] (Burns J).

I consider each of these arguments to be without foundation, especially since The Saints waited 36 hours after Elizabeth died before reporting her death to the authorities,⁷⁹ giving them ample time to work out their respective stories. Asked by the ambulance officers about the reason for the delay in reporting Elizabeth's death, Jason Struhs answered: 'We were praying that God would bring her back'.⁸⁰ Jason's reply is instructive as it demonstrates The Saints did not see Elizabeth's death as a tragedy, rather 'that God had "allowed" Elizabeth to die so that He could raise her from the dead and, in that way, show them a miracle to re-affirm their faith.'⁸¹ Furthermore, Jason Struhs exhibited no remorse at the death of his daughter at his own hands when he told police: 'I'm fully at peace in the heart ... I don't feel sorry. I feel happy because I know now she, she's at peace.'⁸² This latter statement by Jason Struhs is open to the interpretation that Elizabeth was not at peace with insulin and arguably is a *de facto* admission of his guilt as Elizabeth had just moved location from earth to heaven without mortal death being a relevant consideration.

For present purposes, the focus here is on (3) above and Jason Struhs's trust in God. Burns J's division of Jason Struhs's state of mind into pre- and post- his becoming a member of The Saints appears to be predicated on the assumption that his knowledge of the consequences of withdrawing his daughter's insulin either evaporated or was overridden to such an extent as to be irrelevant. The author respectfully argues such mental compartmentalisation of knowledge is flawed. Jason Struhs cannot 'unknow' in the space of a few days over Christmas and New Year 2021/2022 a fact he had accepted and lived by since 2019 when Elizabeth was taken to hospital very near death.

By contrast, despite the obvious implications of the release of Kerrie Struhs from prison on 15 December 2021, Burns J appears to have accepted Jason Struhs's narrative of not looking through his normal eyes but through his spirit eyes.⁸³ Thus, post Jason Struhs's 'conversion', Burns J is prepared to accept the possibility that Jason sincerely believed God would save his daughter, and therefore could not exclude the possibility that Jason did not know his withholding of Elizabeth's insulin would probably result in her death. The author respectfully challenges Burns J's conclusion on the basis that the objective circumstances overwhelmingly supported the inference that Jason Struhs possessed the necessary knowledge.

There were inconsistencies in the various statements Jason Struhs gave to police best illustrated by a record of interview on 5 February 2022 when Jason Struhs was visited in custody by Detectives Hering and Piers-Blundell. The purpose of the visit was to ask Jason Struhs to sign a statement that had been prepared in draft and was based on what Jason Struhs had previously told police about Elizabeth's death. At paragraph 123 of the draft statement, Jason Struhs told police corrections were required. The following is the corrected part of the statement. The words in brackets were taken out and the underlined words inserted.

During Tuesday I had thoughts of [taking] giving Elizabeth insulin [to hospital].
The feelings of the flesh got in the way and I was having thoughts of doubt, should I shouldn't I be doing this to Elizabeth. I was having thoughts [that Elizabeth was

⁷⁹ Ibid [625] (Burns J). Elizabeth died in the early morning of 7 January 2022, but Jason Struhs did not call emergency services until late afternoon on 8 January 2022.

⁸⁰ *The King v Struhs* (2025) QSC 10, [630] (Burns J).

⁸¹ Ibid [642] (Burns J).

⁸² Ibid [711] (Burns J).

⁸³ Ibid [721] (Burns J).

going to die] and doubts if I was doing the right thing and I was tempted to give her insulin.⁸⁴

This corrected statement could be interpreted as Jason Struhs admitting that his relationship to God exceeded his lawful responsibility to his daughter. Jason Struhs was making a choice. The author suggests these corrections made by Jason Struhs reflected his realisation that his previous admissions of thoughts about taking Elizabeth to hospital and thinking she was going to die would lead to a murder conviction. In sum, contrary to Burns J's conclusion, the author contends that Jason's claim to an eleventh-hour spiritual conversion, akin to Saul's conversion on the Road to Damascus,⁸⁵ was nothing more than an attempt to immunise himself from criminal responsibility for Elizabeth's death.

In his closing address to the court on 6 September 2024, Jason Struhs repeated his previous assertions that the decision to cease giving Elizabeth insulin 'was only me and Elizabeth' and rejected the proposition that he joined the The Saints to save his family.⁸⁶ This is not an accurate statement as Kerrie Struhs was on probation after her conviction for failing to provide the necessities of life to her daughter Elizabeth. As to the Crown proposition that he knew his daughter had not been healed of diabetes when he made the decision to withdraw insulin from her, Jason Struhs had this to say:

It's been said that I knew Elizabeth wasn't healed from diabetes, which is completely contrast to our belief, or my belief. Especially after I declared God had healed Elizabeth on Sunday before we stopped insulin. After that moment in time, God gave me complete confidence in peace she was healed ... Just this time, I handed it to God because of His promise of healing. To all of you, it looks like God has failed. But I know Elizabeth is only sleeping and I will see her again. Because God has promised, and she is healed. Amen.⁸⁷

The last sentence of the above passage is again a *de facto* admission of guilt revealing Jason Struhs's indifference to earthly life and its lack of relevance.

The author argues that while the unrelenting pressure from Kerrie Struhs and Brendan Stevens might have propelled Jason Struhs, seeing through his spirit eyes, to declare God had healed Elizabeth on 2 January 2022, by 4 January 2022 Jason Struhs's normal eyes could clearly observe Elizabeth's rapidly deteriorating condition which caused him to have doubts and be tempted to give her insulin. After two days without insulin, a Type 1 diabetes patient like Elizabeth would be experiencing symptoms of intense thirst, frequent urination, headache, fatigue, nausea, vomiting, and fruity breath odour.⁸⁸ Jason Struhs had seen it all before in 2019 and knew his daughter was not healed of diabetes. The author contends that by 4 January 2022 Jason Struhs knew Elizabeth would not just probably but almost certainly die if he did not restore her insulin injections.

⁸⁴ Ibid [729] (Burns J).

⁸⁵ Acts 9:1-19.

⁸⁶ *The King v Struhs* (2025) QSC 10, [733] (Burns J).

⁸⁷ Ibid [734] (Burns J).

⁸⁸ 'Diabetic ketoacidosis, Symptoms and Causes', *Mayo Clinic* (Web Page)

<<https://www.mayoclinic.org/diseases-conditions/diabetic-ketoacidosis/symptoms-causes/syc-20371551>>.

3. Burns J's findings for murder by reckless indifference to human life against Jason Struhs

At the outset of his Honour's findings on whether Jason Struhs was guilty of murder by reckless indifference to human life, Burns J emphasised two legal principles: (1) In the absence of a reliable confession by Jason Struhs that Elizabeth would die after her insulin was withdrawn, the Crown was inviting him to draw an inference as to Jason Struhs's state of mind based on the circumstances of his omission and his conduct between 2 January and 7 January 2022;⁸⁹ and (2) there was no other reasonable possibility consistent with Jason Struhs's innocence.⁹⁰

Against these two legal principles, Burns J found that 'Mr Struhs was quickly immersed in the teachings of the Church and the belief held by its members in the healing power of God to the exclusion of any medical care or treatment'⁹¹ and 'exhibited a strength of devotion to the beliefs of the Church that would be difficult to feign'.⁹² This led Burns J to conclude there was a reasonable possibility that Jason Struhs genuinely believed God had or would cure Elizabeth of her diabetes at the time he ceased Elizabeth's insulin injections.

[T]here remained a reasonable possibility that what Mr Struhs well knew prior to joining the Church – that is to say, without insulin, Elizabeth would die – had been so affected by his indoctrination into the beliefs of the Church as to induce in him a state of mind to the effect that insulin and/or medical care and treatment were, in fact, unnecessary because God had promised Elizabeth would be healed and that she would therefore be healed and, further, that any thoughts to have recourse to medicine or doctors were products "of the flesh" and not of God and, as such, were not to be acted on.⁹³

Burns J acknowledged the offence against Jason Struhs was continuing in nature and the possibility that at some time after 2 January 2022 Jason Struhs fully realised Elizabeth would probably die. However, as to the evidence to support this proposition, Burns J found the evidence to be limited and almost exclusively reliant on what Jason Struhs told police about his state of mind.⁹⁴

In this regard, Burns J identified the high point of the Crown case on the evidence relating to Jason Struhs's state of mind to be on the afternoon of 4 January 2022 when he sent a text message to Brendan Stevens saying:

[H]e was "still really struggling with [his] flesh with Elizabeth still [being] sick" and that he could not "seem to [break] out of this even with prayer and songs". He added he was "so scared and lost in [his] thoughts" and that he "thought [he] was ready for this step but now [he seemed] to be questioning it".⁹⁵

⁸⁹ *The King v Struhs* (2025) QSC 10, [739] (Burns J).

⁹⁰ *Ibid* [740] (Burns J).

⁹¹ *Ibid* [742] (Burns J).

⁹² *Ibid* [744] (Burns J).

⁹³ *Ibid*.

⁹⁴ *Ibid* [745] (Burns J).

⁹⁵ *Ibid* [746] (Burns J).

Burns J accepted ‘there can be no doubt Mr Struhs was “struggling” and “scared”’,⁹⁶ and he gave conflicting accounts across his interviews with police which involved a degree of reconstruction, well-illustrated by the corrections Jason Struhs sought to make to his draft statement on 5 February 2022 seeking to deny his statement of 8 January 2022 that he had thoughts of taking Elizabeth to hospital on 4 January 2022.⁹⁷

However, while Burns J had little hesitation in finding Jason Struhs entertained the real possibility Elizabeth might die, his Honour concluded none of Jason Struhs’s answers amounted to an admission that he knew Elizabeth would probably die.⁹⁸ Burns J stressed the need to assess Jason Struhs’s answers in context and not in isolation.⁹⁹ In particular, to find Jason Struhs knew Elizabeth would probably die necessarily involved a realisation that God would not heal her. Burns J held such a finding would be at odds with everything else Jason Struhs said to police and with the wider circumstances. Burns J took the view ‘had Mr Struhs fully realised God was not going to save Elizabeth and that she would therefore probably die, it is to my mind inconceivable a loving father such as he would have continued to sit on his hands’.¹⁰⁰

With respect, this interpretation overlooks the binary choice Jason Struhs faced in choosing between keeping his marriage and family together versus losing his daughter. In the author’s view, no loving father would have watched his daughter slide inexorably towards death over five days, especially a father who had knowledge of his daughter’s previous near-death experience in 2019. Only wilful blindness would have led a loving father not to have fully realised that with each day of Elizabeth’s decline the possibility of Elizabeth’s death steadily moved to her probably dying and in her last few hours to almost certainly dying. God’s intervention with a miracle became an ever-receding outcome. Furthermore, God’s earthly intervention was not relevant to Jason Struhs with his view of Elizabeth’s ‘afterlife’.

With respect, it is not to the point that in the ensuing days and nights after 4 January 2022 Jason Struhs maintained to police that ‘the fears he had about the possibility of Elizabeth dying had abated’ or that ‘God “wasn’t gonna let [Elizabeth] die”’ or that ‘he “trusted the Lord that nothing would happen to her”’.¹⁰¹ In the face of overwhelming evidence to the contrary, this is nothing more than a reconstruction to avoid criminal responsibility. Burns J set the bar at requiring an admission before his Honour was prepared to find Jason Struhs knew his daughter was probably going to die, which the author respectfully argues prevented the Crown from being able to draw an inference as to Jason Struhs’s state of mind based on the circumstances of his omission and his conduct between 2 January and 7 January 2022.

In the absence of an admission from Jason Struhs that he knew Elizabeth was probably going to die, Burns J reached the following conclusion:

On the evidence before me, there remained a reasonable possibility that, in the cloistered atmosphere of the Church which enveloped Mr Struhs, and which only intensified once he made the decision to cease the administration of insulin, he was

⁹⁶ Ibid [747] (Burns J).

⁹⁷ Ibid [748] (Burns J).

⁹⁸ Ibid [749] (Burns J).

⁹⁹ Ibid [753] (Burns J).

¹⁰⁰ Ibid [754] (Burns J).

¹⁰¹ Ibid [757] (Burns J).

so consumed by a particular belief promoted without pause by all its members, that he never came to the full realisation Elizabeth would probably die, believing instead God would not allow that to happen.¹⁰²

Leaving aside the somewhat fanciful analogy between a cloistered Church and the small three-family religious sect known as The Saints, it is not easy to understand why Jason Struhs's belief in God's intervention would intensify as Elizabeth's condition worsened. Nevertheless, Burns J held that at no time between the cessation of Elizabeth's insulin injections on 3 January 2022 and her death on 7 January did Jason Struhs know 'his failure to provide her with insulin and/or medical care and treatment would probably cause her death'.¹⁰³

The author contends the fundamental flaw in Burns J's finding is, with respect, his Honour's failure to grasp that Jason Struhs did not differentiate at any time between earthly life and heavenly life and rejected the notion of death as used in the criminal justice system.

4. Burns J's findings for murder by reckless indifference to human life against Brendan Stevens

The Crown case against Brendan Stevens was that he procured the unlawful killing of Elizabeth in circumstances amounting to murder under s 7(1)(d) of the *Criminal Code 1899* (Qld) by counselling Jason Struhs to cease providing insulin to Elizabeth knowing that Jason Struhs knew that the failure to provide insulin to her would probably cause her death.¹⁰⁴ Self-evidently, the Crown also needed to prove that Brendan Stevens knew himself that the failure to provide insulin to Elizabeth would probably cause her death.¹⁰⁵

The record of police interviews with Brendan Stevens reveals a studied picture of feigned ignorance on the probable death of Elizabeth following the withdrawal of her insulin and a denial of any influence over Jason Struhs. The following extract from a police interview with Brendan Stevens on 5 July 2022 amply demonstrates the line of his answers. Brendan Stevens accepted that by 4 January 2022 Elizabeth had deteriorated and was obviously very sick, but when asked why no one called a doctor or an ambulance he gave the following response:

Because we believe in the healing power of God. We don't trust in man. And had we gone to hospital we could've suffered the, exactly the same results, as many do. And if you'd open your eyes, you'd see there were many articles even that week in the news about children the same age dying in hospital.¹⁰⁶

A more chilling response can be seen in Brendan Stevens's agreement 'that he would "rather have seen God's plan come to fruition" even if that resulted in Elizabeth's death, than to give her "insulin or medical attention"'.¹⁰⁷ Burns J appears to have overlooked the fact all fourteen members of The Saints were accepting of Elizabeth's death because they believed she would

¹⁰² Ibid [761] (Burns J).

¹⁰³ Ibid [762] (Burns J).

¹⁰⁴ Ibid [156] (Burns J).

¹⁰⁵ Ibid [187] (Burns J).

¹⁰⁶ Ibid [784] (Burns J).

¹⁰⁷ Ibid [786] (Burns J).

rise again,¹⁰⁸ and that in Australia there is no general common law or constitutional exemption for criminal acts done with religious motivations.

In his submission to the court, Brendan Stevens sang from the same hymn sheet as Jason Struhs by claiming Elizabeth herself wanted to cease the insulin injections, and that he had not counselled Jason Struhs to withdraw Elizabeth's insulin because it was entirely her father's decision. Brendan Stevens's only admission was that 'he suggested Elizabeth might be weaned off insulin ... to "test the waters"'.¹⁰⁹ This submission is inconsistent with his previously expressed belief in the healing power of God and not trusting in man.

Brendan Stevens concluded his submission by stating 'it's absolutely disgusting, but totally wrong, that the phrase 'reckless indifference of human life' would be applied to us and certainly ... neither I nor Jason nor anyone else, I believe, saw the possibility of death'.¹¹⁰ Thus, Brendan Stevens claimed he did not even contemplate the possibility of Elizabeth's death, despite knowing her history since 2019 and acknowledging she was very sick before she died. However, as with Jason Struhs, Brendan Stevens was referring to immortal life as Elizabeth was going to live with God if the earthly healing failed.

In his Honour's findings, Burns J stated, 'what must be proved ... is that Mr Stevens knew Mr Struhs knew of the *probability*, as opposed to the *possibility*, of death'.¹¹¹ In the absence of an admission from Brendan Stevens as to what he knew of Jason Struhs's state of mind, Burns J observed it was necessary to focus on any evidence which might reveal such knowledge on Brendan Stevens's part, but '[o]n that, the evidence was scant, to say the least'.¹¹²

Burns J noted that in response to a question from police as to whether he knew that Jason Struhs knew the failure to provide insulin and/or medical care and treatment to Elizabeth would probably cause her death, Brendan Stevens 'denied anyone realised Elizabeth could die'.¹¹³ As to events on the afternoon of 4 January 2022 when Jason Struhs texted Brendan Stevens to say he was 'struggling with my flesh with Elizabeth still be[ing] sick'¹¹⁴ and as a result Brendan Stevens came round to talk to him, Brendan Stevens told police that 'I simply encouraged him to continue to believe in God. I in no way steered him away from insulin or anything like it. His decision was to remove it and his decision was to continue on that path'.¹¹⁵ According to Brendan Stevens all Jason Struhs was wanting was 'to be encouraged just to continue to trust God and pray to God and believe God that God can't fail'.¹¹⁶

When Brendan Stevens was asked by police whether Jason Struhs 'was prepared for Elizabeth's death', and he said Jason Struhs 'was "prepared for anything"', Burns J took the view 'that does not mean Mr Stevens knew Mr Struhs knew Elizabeth would probably die'.¹¹⁷ Burns J concluded it was not possible from the evidence to draw a rational inference that at some point Brendan Stevens knew Jason Struhs knew his withdrawal of insulin would probably

¹⁰⁸ Chen, Hewson, and Moodie (n 3).

¹⁰⁹ *The King v Struhs* (2025) QSC 10, [790] (Burns J).

¹¹⁰ *Ibid* [800] (Burns J).

¹¹¹ *Ibid* [803] (Burns J).

¹¹² *Ibid* [804] (Burns J).

¹¹³ *Ibid* [805] (Burns J).

¹¹⁴ *Ibid* [809] (Burns J).

¹¹⁵ *Ibid* [812] (Burns J).

¹¹⁶ *Ibid*.

¹¹⁷ *Ibid* [815] (Burns J).

cause Elizabeth's death.¹¹⁸ Indeed, Burns J dismissed the Crown's proposition that such an inference could be drawn from Jason Struhs's message on 4 January 2022 and that it stood out 'especially as speculation, at best'.¹¹⁹

Consequently, Burns J held he could not be satisfied that at any point Brendan Stevens knew Jason Struhs knew Elizabeth would probably die and therefore Brendan Stevens must be acquitted of the charge of murder by reckless indifference to human life.¹²⁰ As a result, it was therefore unnecessary for Burns J to decide whether Brendan Stevens 'knew himself that the failure to provide insulin and/or medical care and treatment to Elizabeth would probably cause her death'.¹²¹

Self-evidently, as a matter of logic, if you set up the question of criminal responsibility as being whether B knew that A knew death was a probable outcome of X act or omission, then in the absence of A's knowledge, a criminal charge against B must fail. It also follows as a matter of proof, if the bar of criminal responsibility is set at an admission, then any evidence that falls short of an admission will be insufficient. Thus, it was inevitable in the absence of an admission by Jason Struhs (A) that he knew Elizabeth would probably die when he ceased her insulin injections (X), that the result would be the acquittal of both Jason Struhs and Brendan Stevens (B) of the charge of murder by reckless indifference to human life.

With respect, it is difficult to understand why Brendan Stevens's criminal responsibility hinged on Jason Struhs's knowledge of Elizabeth's probable death. If B counsels A to include death cap mushrooms as one of the ingredients of a meal in full knowledge that anyone who consumed such a meal would probably die, but A only believes death is a possibility, then why is B absolved from a charge of murder by reckless indifference to human life? In effect, B is the principal offender and A is B's pawn. When Jason Struhs showed signs of weakening in his resolve not to administer insulin to Elizabeth, Brendan Stevens immediately came round on 4 January 2022 to shore up his resolve. Thereafter, the other twelve members of The Saints, taking their lead from Brendan Stevens, maintained the pressure until Elizabeth died three days later.

Similarly, it is equally hard to comprehend why nothing short of an admission was required by Burns J for murder by reckless indifference to human life, when no such requirement is necessary for murder where the fault element is intention to kill or cause grievous bodily harm. As Barwick CJ in *Pemble v The Queen*¹²² pointed out, the jury will normally have to infer the accused's state of mind from what the accused has actually done and the surrounding circumstances. If A claims that in shooting B, he was not intending to kill B or cause B grievous bodily harm, but the grouping of the bullets makes this claim totally implausible, then the jury is entitled to draw the necessary inference to convict A of murdering B. By the same token I argue there was ample evidence to convict Brendan Stevens of reckless murder by virtue of what he actually did and the surrounding circumstances over the five days it took Elizabeth to die.

¹¹⁸ Ibid [816] (Burns J).

¹¹⁹ Ibid [817] (Burns J).

¹²⁰ Ibid [818] (Burns J).

¹²¹ Ibid [819] (Burns J).

¹²² (1971) 124 CLR 107, 120–1 (Barwick CJ).

B. *The Verdicts*

After finding neither Jason Struhs nor Brendan Stevens guilty of reckless murder, no one who had followed the *Struhs* case would have been surprised when Burns J handed down verdicts of manslaughter against all fourteen members of The Saints (given any one of them could have rung 000 at any time). Criminal negligence was clearly established under the objective test set out in *Nydam v The Queen* of whether the act or omission which caused the death involved ‘such a great falling short of the standard of care which a reasonable man would have exercised and which involved such a high risk that death or grievous bodily harm would follow that the doing of the act merited criminal punishment’.¹²³ The High Court explained in *Patel v The Queen* that ‘[t]he only criterion necessary is an intention to do the act [or omission] which inadvertently causes death or grievous bodily harm’.¹²⁴

The process of sheeting home criminal responsibility to all fourteen members of The Saints was as follows: (1) Jason and Kerrie Struhs breached a duty of care to Elizabeth to provide her with the necessities of life under s 286(1) of the *Criminal Code 1899* (Qld); (2) the other twelve members of ‘The Saints’ by their words and actions, counselled and/or procured Jason Struhs or Kerrie Struhs or both of them under s 7(1)(d) of the *Criminal Code 1899* (Qld) to unlawfully kill Elizabeth Struhs by encouraging one or both of them: (a) to cease providing insulin to Elizabeth Struhs; and/or (b) not to provide medical care and treatment to Elizabeth Struhs. The evidence of counselling and/or procuring came primarily from records of interviews with the police and messages sent to both Jason and Kerrie Struhs.

C. *The Sentencing*

The maximum sentence for manslaughter under s 310 of the *Criminal Code 1899* (Qld) is life imprisonment, but a trial judge has considerable discretion in fixing the sentence based on the circumstances of the case. In the *Struhs* case, it was inevitable that Elizabeth’s parents, Jason and Kerrie Struhs, and the leader of The Saints, Brendan Stevens, would receive the heaviest sentences, with the other eleven members receiving sentences commensurate with their level of involvement in counselling Jason and Kerrie Struhs to unlawfully kill Elizabeth.

Jason Struhs was sentenced to fourteen-and-a-half years imprisonment. Kerrie Struhs was sentenced to fourteen years, but because she was on parole she was also sentenced to the unserved portion of her previous sentence of failing to provide the necessities of life of 373 days, taking her total period of imprisonment to slightly more than fifteen years. Brendan Stevens was sentenced to thirteen years imprisonment. Burns J declared all three convictions were serious violent offences by reason of s 161A(a) of the *Penalties and Sentences Act 1992* (Qld), which means Jason and Kerrie Struhs and Brendan Stevens will be required to serve at least 80 per cent of their respective sentences before being eligible for parole under s 182(2) of the *Corrective Services Act 2006* (Qld).¹²⁵

The other eleven members of ‘The Saints’ each received terms of imprisonment of between six to nine years. Burns J made no recommendations regarding parole, which means all of the

¹²³ [1977] VR 430, 445 which the High Court approved in *The Queen v Lavender* (2005) 222 CLR 67, [17], [60], [72], [136] and *Burns v The Queen* (2012) 246 CLR 334, [19] (French CJ).

¹²⁴ (2012) 247 CLR 531, [88] (French CJ, Hayne, Kiefel and Bell JJ).

¹²⁵ Sentencing Remarks, Justice Burns, Supreme Court of Queensland, Brisbane, 26 February 2025, *The King v Struhs*.

eleven members will be eligible to apply for parole after having served 50% of their respective sentence under s 184(2) of the *Corrective Services Act 2006* (Qld).¹²⁶

It would appear that Burns J, having found Jason Struhs and Brendan Stevens not guilty of murder by reckless indifference to human life, determined to dispense justice to the principal offenders through his Honour's sentencing discretion for manslaughter. Only the Crown Prosecution Service can answer the question as to why Kerrie Struhs was not also charged with reckless murder, especially as she was out on parole for failing to provide Elizabeth with the necessities of life. In my view, Kerrie Struhs was the Lady Macbeth¹²⁷ in this tragic case, as until his wife was released from prison Jason Struhs was resisting pressure from The Saints to cease his daughter's insulin injections. Kerrie's coercive control over her husband meant she bore the greater criminal responsibility for their daughter's death.

V. CONCLUSION

The essential question to consider is the precedent that has been established because of Burns J's judgment in *The King v Struhs* for the test for murder by reckless indifference to human life in s 302(1)(aa) of the *Criminal Code 1899* (Qld). Given the religious aspect of the case, can Burns J's judgment (in requiring nothing short of an admission to satisfy the subjective test of full knowledge of the probability of death) be distinguished on its facts? Alternatively, if the Queensland government were to decide the precedent sets the bar too high, will it move to amend the legislation and introduce a more objective test?

If the original intention of inserting s 302(1)(aa) into the *Criminal Code 1899* (Qld) was to capture conduct at the 'higher end of culpability or blameworthiness',¹²⁸ then it is difficult to see how this will occur under Burns J's narrow interpretation of the subjective test as to effectively equate intention in s 302(1)(a) with recklessness in s 302(1)(aa), thereby rendering s 302(1)(aa) otiose. The author respectfully contends that Burns J's judgment in *The King v Struhs* should be statutorily overruled through the adoption of an objective test of recklessness which would legislatively establish a clear divide between intention and reckless indifference to human life.

In an earlier article in this journal,¹²⁹ I proposed an objective definition of 'reckless indifference' could be inserted into a new s 302(6) in the *Criminal Code 1899* (Qld) as follows:

(6) For the purpose of sub-section 302(1)(aa) above, 'reckless indifference' is to be determined against the standard of what the ordinary responsible person would, in all the circumstances of the case, have contemplated as the natural and probable result of the act or omission.

There is a certain irony in the decision by the Crown to seek a judge-only trial because, in my opinion, having listened to the graphic account of Elizabeth's drawn out and painful death, a jury would have convicted both Jason Struhs and Brendan Stevens of murder by reckless indifference to human life on the basis of all the circumstantial evidence presented by the

¹²⁶ Ibid.

¹²⁷ In Shakespeare's play *Macbeth*, Lady Macbeth is the ambitious and manipulative wife who persuades her husband to kill King Duncan and claim the throne for himself.

¹²⁸ Queensland, *Parliamentary Debates*, Legislative Assembly, 30 April 2019, 1241, 1253.

¹²⁹ Hemming (n 1) 83.

Crown, starting from 2019 when Elizabeth nearly died in hospital through to Kerrie Struhs's ultimatum to her husband that their marriage was over unless he joined The Saints and her release from prison in December 2021 just before Elizabeth died.

Juries are not required to give reasons for their verdicts, but such is not the case for judges. Burns J's judgment and his Honour's reasons have set a precedent for the interpretation of s 302(1)(aa). The author respectfully disagrees with his Honour's findings in contending there was sufficient evidence to be able to draw the necessary inference of knowledge of Elizabeth's probable death from the withdrawal of her insulin. In any event, it is the precedent set by *The King v Struhs* for the test for murder by reckless indifference to human life that needs to be addressed.

The author respectfully contends that the judgment of Burns J is so narrow and restrictive in its interpretation of awareness, given the slow and agonizing death Elizabeth suffered over five days as her body collapsed under diabetic ketoacidosis, as to effectively equate intention in s 302(1)(a) with recklessness in s 302(1)(aa), thereby rendering s 302(1)(aa) otiose. The Queensland Parliament should legislate to insert an objective test for 'reckless indifference' into s 302(1)(aa) of the *Criminal Code 1899* (Qld), which would legislatively establish a clear divide between intention for murder under s 302(1)(a) of the *Criminal Code 1899* (Qld) and murder by reckless indifference to human life.