IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No: B60/2019

BETWEEN:

EAMONN CHARLES COUGHLAN

(Appellant)

-and-

THE QUEEN

(Respondent)

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RESPONDENT'S AMENDED SUBMISSIONS

Part I:

1. This submission is in a form suitable for publication on the internet.

Part II:

2. The ground of appeal in the Notice of Appeal asserts a misapplication of legal principle. In his submissions, the appellant re-articulated the issue to include that:

> *"...the Court of Appeal passed over discrepancies and inadequacies in the evidence which should have caused it doubt and should have caused it to conclude that, even allowing for the advantages enjoyed by the jury, there is a significant possibility that an innocent person has been convicted."*[1]

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3. The respondent contends that this appeal will be resolved by the application of well-established principles concerning the consideration of a ground of appeal alleging an unreasonable verdict on the basis that the evidence is insufficient to support the conviction.

Part III:

4. The respondent considers that notice is not required pursuant to section 78B of the *Judiciary Act 1903 (Cth)*.

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[1] Appellant's Submissions at p3 paragraph 1.

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Part IV:

5. The appellant's chronology, more specifically his list of principal events leading to litigation, is not in dispute save for two typographical errors. The dates in paragraphs 5 and 6 of his chronology should read 2019.

Part V:

Background

6. The only issue in the trial was whether the prosecution had proven beyond reasonable doubt that the appellant was the person who had caused his house to explode and burn. The prosecution case was entirely circumstantial. In the judgment of the Court of Appeal, Morrison JA, with whom Fraser JA and Mullins J agreed, set out a detailed summary of the evidence presented in the trial. A considerably more brief summary of the evidence follows, so as to put the contentions of the appellant in context, and to illustrate the response to the challenges.

The Facts

7. At 6:19pm[2] on 18 July, 2015, police were called to attend a fire at the appellant's Bribie Island home. The house had exploded with such force that the western (rear) wall was blown off its foundations, the aluminium louvers on the verandah were blown onto the footpath, and glass was found 20 metres from the house.[3] While the site was too damaged for experts to examine it more closely so as to attempt to determine precisely the cause of the explosion, three things were clear:

   a) the origin of the fire was inside the house;[4]

   b) for such an explosion to occur there had to be a large amount of fuel in a gaseous form from an ignitable liquid like gas or petrol;[5] and

   c) the damage allowed the fire investigation officer to conclude that it was a vapour explosion from direct human involvement[6], heard and felt by neighbours up to 200 metres away. [7]

8. There was no dispute about the events surrounding the commission of the offence, the only matter in dispute was the identity of the offender.

9. Immediately after the explosion, neighbours, with unremarkable variety of expression and observation, described a man running away from the fire. The man got on a

[2] ~~AB 235~~ RFM Vol 1, p.248.
[3] ~~AB 661-663~~ RFM Vol 2, p.688 - 690.
[4] ~~AB 648 and 660~~ RFM Vol 2, p.675 & 687.
[5] ~~AB 649~~ RFM Vol 2, p.676.
[6] ~~AB 661~~ RFM Vol 2, p.688.
[7] ~~AB 199~~ RFM Vol 1, p.212.

motorbike, parked in a car park a short distance away from the appellant's house, and drove away.

10. The appellant accepted that after the explosion, he ran from the house to a motorbike parked nearby on which he drove away from the scene. [8]

11. Police made enquiries at the appellant's home in Narangba arriving at about 7.30pm. He was not home. They spoke with his wife who attempted unsuccessfully to contact him.[9]

12. At about 9:11pm on 18 July 2015 the appellant arrived on a motorbike at the Caboolture Police Station.[10] He spoke with officers[11] who noted that he looked distressed, his clothing was damaged and smelt burnt, and he was injured.[12] More specifically, the left-sided pocket of his jacket looked as if it had been burned[13], his shoes appeared *"like, a melting sort of scenario had occurred"*[14], and he had burns to the back, palm and fingers of his left hand, superficial burns to his face and a third-degree burn to his lower back.[15]

13. In a lengthy interview which followed, he told police that;

 a) he arranged to meet a man at 5pm at the house on Bribie Island who wanted to buy the motorbike in the possession of (but not registered to) the appellant. He did not know his name. He was not local.[16] He was only able to offer a general description (tall, 'thirty-ish', Maori). He told the police he did not know whether 'it was dodgy or not' and so he parked the bike away from the house and out of sight.

 b) He told his wife that he was going to see 'the guys from the club' (a 4WD club);[17] He did not mention his plans to go to the Bribie Island house.

 c) He waited outside his house at Bribie Island for an hour leading up to the explosion. It was starting to get dark. He did not have keys to get inside;[18]

 d) his house was shut and he saw no-one else near it during the time he was there;[19]

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[8] ~~AB 1038 p.63~~ RFM Vol 3, p.1070.
[9] Evidence of Cole at ~~AB 276 Ln7-12~~ RFM Vol 1, p.289, Ln 7-12.
[10] Evidence of Officer Burgess; ~~AB 292-293; 299~~ RFM Vol 1, p.305-306; p.312.
[11] Pilgrim and Burgess.
[12] ~~AB 283 and 293~~ RFM Vol 1, p.296 & 306.
[13] ~~AB 377~~ RFM Vol 1, p.390.
[14] ~~AB 378~~ RFM Vol 1, p.391.
[15] ~~AB 637-638~~ RFM Vol 2, p.664-665.
[16] ~~AB 986 Ln45~~ RFM Vol 3, p.1018 Ln45.
[17] ~~AB 988 Ln46-48~~ RFM Vol 3, p.1020 Ln46-48.
[18] ~~AB1096~~ RFM Vol 3, p.1128.
[19] ~~AB 1097~~ RFM Vol 3, p.1129.

e) he decided to leave and he walked around to the front and the house went '*bang*'. Some guy started screaming at him. He hit the ground. He thinks his clothes were on fire.[20] [21]

f) He fled from the scene. He thought someone was following him.

14. Police seized the appellant's clothing. When tested, petrol residues were found on his tracksuit pants and shoes. The shoes had a higher level of reading than the tracksuit pants.[22] The upper garments (his t-shirt and two jumpers) were found to contain light to medium aromatic-product-class ignitable liquid residues, an example of which includes trace petrol, and the profile obtained from the appellant's clothing was consistent with trace-petrol residues. The expert opinion was that the upper body garments also contained petrol residues. Further, in the opinion of scientist Lucille Maxwell, the tracksuit pants and shoes were 'probably' in contact with liquid petrol, and the other three items were 'probably' in contact with petrol vapours.[23] She further opined that it was, in her view, "highly likely" that the pants and the shoes had been in contact with liquid petrol.[24] Those findings were consistent with petrol being poured from different heights.[25]

15. Petrol vapours can cause an explosion when an ignition source is added to it.[26] Two witnesses, Dyke and Patruno, who arrived at a neighbouring house shortly before the explosion, smelt petrol.[27]

16. The circumstances of the case as a whole included that:

a) the appellant was at his house when it exploded. In fact, he was so close to his house that he sustained burn injuries and parts of his clothing were damaged by fire.[28]

b) There was no challenge to the expert opinion that the fire started inside the house, that it was the result of direct human involvement, and that for an explosion to occur there needed to be a build-up of fuel in a gaseous form. The appellant's own version militated against the involvement of another person in that he had been at the house for an hour prior to the explosion and claims he saw no one

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[20] ~~AB 981~~ RFM Vol 3, p.1013.
[21] Despite the extensive detail he gave to police in two interviews and his close proximity to the scene of the arson, the appellant did not state that he saw a second person running from the scene or that he smelt fuel at his house before the explosion.
[22] ~~AB 412 Ln34~~ RFM Vol 2, p.430 Ln34.
[23] ~~AB 412 Ln2-3~~ RFM Vol 2, p.430 Ln2-3.
[24] ~~AB 412 Ln33~~ RFM Vol 2, p.430 Ln33.
[25] ~~AB 413~~ RFM Vol 2, p.431.
[26] ~~AB 649~~ RFM Vol 2, p.676.
[27] ~~AB 62, 95 and 138-139~~ RFM Vol 1, p.75, 108 & 151-152.
[28] It is to be noted that there is no evidence that anyone else nearby at the time the explosion and fire sustained any injuries.

else at his house, nor did he go inside, nor did he smell the petrol that others nearby could smell.

c) Vapours that could cause an explosion included petrol. Witnesses Dyke and Patruno both smelt prior to the appellant's house exploding.

d) The appellant immediately fled the scene. He did not respond to the enquiry by Dyke as to his welfare. He got on a motorbike he had earlier parked away from the house and out of sight of the house, and drove away.

e) Seven witnesses from the neighbourhood heard the explosion. They described seeing a male running away immediately afterwards. Whilst the detail of the descriptions varied, not one witness describes seeing two men in the area. No one heard another bike riding away. Those observations mirrored those of the appellant who also did not see a second male running from the scene.

f) Having fled the scene, the appellant waited about 2½ to 3 hours[29] before going to the police.

g) The appellant's clothes had petrol on them. In so far as his shoes and pants were concerned, it was highly likely that the petrol residue was as a result of direct contact with liquid petrol. The residue on the other items was consistent with exposure to petrol vapours.

17. The account given by the appellant might reasonably have been seen to contain elements of implausibility such that it need not have been generally accepted by the jury. Nor was it such that, in the context of the whole of the circumstantial evidence, a reasonable jury ought to have had a reasonable doubt about his guilt.

18. On the strength of the accumulation of the circumstantial evidence in this case, the appellant was convicted by a jury. The verdicts demonstrated that the jury were satisfied to the criminal standard that it was the appellant who caused the explosion and fire at his property, and consequently, the insurance claim that followed, was fraudulent.

19. The appellant challenged the integrity of the verdicts in the Court of Appeal contending, amongst other things, that the evidence was insufficient to support the verdicts. It was in that context that the Court of Appeal conducted a review of the evidence.

20. The Court of appeal was cognisant of the applicable legal principles.[30] No challenge is now made to the accuracy of the principles there stated. In spite of the Court of Appeal's clear articulation of the relevant principles, it is contended in this appeal, that the Court

[29] The call to police was at 6.19pm. The appellant arrived at the Caboolture police station at about 9pm (Pilgrim) although he accepted in cross-examination that it could have been before 9m; Burgess noted the time as 9.11pm.
[30] set out in *R v Coughlan* [2019] QCA 65 at [291] to [295].

misapplied them in that Court's '*independent examination of the whole evidence to determine whether it was open to the jury to be satisfied of the guilt of*' the appellant.

The Contentions on this Appeal

21. It is said by the appellant that the Court of Appeal merely identified a pathway to conviction rather than properly weighing the matters which militated against a guilty verdict to determine whether the jury should have had a reasonable doubt as to the appellant's guilt.[31] The appellant cites no examples to demonstrate that flawed process of reasoning by the Court of Appeal only pointing out the uncertainty surrounding each individual piece of the circumstantial case and arguing that it therefore cannot support
10 the conclusion of guilt.

22. In response, it is respectfully submitted that the decision of the Court of Appeal demonstrates that that Court undertook the task of independent assessment of the whole of the evidence as it was required to do. The structure and content of the judgment of the Court of Appeal demonstrates this. In the first part of the judgment, the Court set out a detailed summary of all of the evidence in the trial.[32] The Court then set out the relevant legal principles from [291] to [295] followed by a discussion and consideration of the arguments presented in relation to Grounds 1 and 2, namely that the verdict was unreasonable, and secondly that there was an hypothesis consistent with innocence (that someone other than the appellant caused the explosion) that the Crown had failed to
20 exclude. The Court considered the arguments advanced by the appellant, in the context of the whole of the evidence in the case, from [296] to [388]. The assessment of the evidence as to its quality and sufficiency was conducted under the headings reflecting the numerous contentions advanced by the appellant in challenge to the verdicts.

The Court of Appeal's independent assessment of the evidence

23. By way of example, the first of the Court's considerations of the arguments advanced in support of the appeal, commencing at [305], demonstrates the task of independent assessment undertaken properly by the Court in relation to the challenges to the verdict. Under the heading, "**Evidentiary Support for another man running from the house**", Morrison JA first set out the circumstantial evidence relevant to that issue, including
30 aspects of the evidence (such as that relating to the description of the motorbike they saw on the night) which conflicted with other evidence (such as the photographic exhibits of the bike the defendant rode on the night).[33] Morrison JA then set out the evidence that was, in his independent assessment, cogent evidence upon which the jury could properly rely at [309]. The transparency of his process of reasoning appears at [310];

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[31] see Notice of Appeal.
[32] *R v Coughlan (supra)* at [11] to [290].
[33] see *R v Coughlan (supra)* at [306] to [308].

> *"Further, in my view, it was open to the jury to conclude that there was no other man seen by any of those witnesses".*

The process demonstrated in these passages illustrates that Morrison JA undertook an assessment of the evidence, identified the matters which might undermine reliance upon aspects of the evidence, discussed those discrepancies in light of all of the relevant evidence and then drew a conclusion as to the sufficiency of the evidence to support the conclusion of the jury about it. That he properly analysed each piece of the evidence in light of the total evidence is disclosed in the statement;[34]

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> *"Once the totality of that evidence is considered, it becomes apparent that Trindall and Freemen were mistaken as to the extent that they said that the man they saw had a beard and that the motorbike had no registration plate..."*

And further,

> *"On the evidence reviewed above, it was the appellant who was seen by Trindall and Freeman, and on the appellant's motorbike".*

24. Morrison JA further analysed the evidence relating to the description of the man seen by Freeman and Trindall having a beard in the paragraph that followed, and concluded,

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> *"On that basis, the evidence about the man having a beard was not compelling. In my view it was open to the jury to reject that aspect of the evidence of Trindall and Freeman, but nonetheless accept that the person they saw was the appellant running to his own bike and riding away."*

And, as to the principal contention that the evidence of Freeman and Trindall must have led the jury to conclude that they saw a person other than the appellant, Morrison JA, having considered and assessed the quality and sufficiency of the relevant evidence, concluded that;

> *"The prospect of there being a second man running at the same time, in the same direction, to the same car park, wearing no gloves and riding away on the same sort of bike, is fanciful".*

25. It is apparent that Morrison JA transparently undertook an independent assessment of the evidence as to its quality and sufficiency and concluded that it was open to the jury to be satisfied of that aspect of the evidence adverse to the appellant's case.

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The Conclusion of the Court of Appeal

26. Having undertaken a similar, transparent process of reasoning in relation to each of the other topics said by the appellant to render the verdicts unreasonable, in conclusion from [389] to [399], the Court performed the task of bringing together, an independent assessment of the whole of the evidence, in light of the matters raised by the appellant in challenge to the reasonableness of the verdict, and determined that it was;

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[34] *R v Coughlan (supra)* at [310].

27. *"...open to the jury to conclude that the appellant was guilty notwithstanding the absence of an obvious financial motive. More particularly, it was open to them to do so, having excluded all reasonable hypotheses. Those proffered by the appellant at the trial and before this court,* ***when assessed on all of the circumstances established by the evidence****, do not rise above mere conjecture or speculation".*[35] (emphasis as per original)

28. The contentions of the appellant in this appeal fail to acknowledge the well established principle that all of the circumstances established by the evidence are to be considered and weighed in deciding whether there is an inference consistent with innocence
10 reasonably open on the evidence.[36] In support of this appeal, the appellant contends that the evidence was insufficient to support the convictions of the appellant. To demonstrate, he identifies various pieces of the circumstantial evidence and seeks to cast doubt on them, viewed individually.

29. This was not a case where any facts rose to the height of being *indispensable links* requiring proof beyond reasonable doubt.[37] In consequence, and contrary to principle, the appellant invites this Court to consider and assess the items of circumstantial evidence separately in a *hermetically sealed compartment.*[38]

30. The appellant's attack on the Court of Appeal's acceptance of Patruno's evidence that he smelt petrol before the explosion[39] is an example of such reasoning. It fails to
20 acknowledge the presence of petrol on the appellant's clothing, when added with the expert evidence that there was a explosion from the build-up of vapour, like petrol, can resolve any doubt about the testimony of Patruno and Dyke that they smelt petrol. Indeed, such reasoning also works the other way. The evidence that witnesses nearby smelt petrol, combined with the circumstance that the appellant had petrol on his clothes and was burnt by the fire at his house, can safely lead to a finding that the fuel used in the vapour explosion was petrol.

31. That is, the strength of the evidence of the individual witnesses – the scientists Gormon, Spencer and Maxwell, and the lay observers, Dyke and Patruno must be considered as a whole, and together with the account given by the appellant to the police. It is the
30 combined force of all of the relevant evidence which gave the case its strength. The uncertainty that may attach to an individual piece of evidence can disappear when considered together with other evidence. Such is the process of reasoning properly to be applied in a circumstantial case.

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[35] *R v Coughlan (supra)* at [398].
[36] *R v Baden-Clay* (2016) 258 CLR 308 at 324 [47]; referred to by the Court in *R v Coughlan* [2019] QCA 65 at [303] and [304].
[37] *Shepherd v The Queen* (1990) 170 CLR 573, 579 and 586.
[38] *Chamberlain v The Queen [No 2]* (1984) 153 CLR 521, 535.
[39] Appellant's submissions at paragraphs [8]-[10].

The reasonableness of the Verdicts

32. In light of the manner in which the appellant has re-articulated the ground[40], it is necessary to review the whole of the evidence to determine whether it was open for the jury to conclude the appellant was guilty.

Some of the Applicable Legal Principles

33. In the face of a challenge to the sufficiency of the evidence to support a verdict, an appellate court is required to make *"an independent assessment of the evidence, both as to its sufficiency and its quality"* to determine whether it was open to the jury to conclude
10 that the appellant was guilty of the offences with which he was charged.[41]

34. Where the Crown case is based upon a number of matters of circumstantial evidence, *"it is necessary for the appellate court to assess the whole of the case and to weigh that case as a whole"*.[42]

35. *All of the circumstances* established by the evidence are to be considered and weighed in deciding whether there is an inference consistent with innocence *reasonably* open on the evidence. A circumstantial case cannot be considered in a piecemeal fashion.[43]

36. A reasonable inference must rest on something more than *mere conjecture*. It has been said that:

> *"The bare possibility of innocence should not prevent a jury from finding the*
> 20 *prisoner guilty, if the inference of guilt is the only inference open to reasonable men upon a consideration of all of the facts in evidence...*
>
> *In drawing an inference of guilt, or in declining to draw it, the jury must act upon the facts established in evidence, and if the only inference that can reasonably be drawn from those facts is that of the prisoner's guilt, it is their duty to draw it. They cannot evade the discharge of that duty because of the existence of some fanciful supposition or possibility not reasonably to be inferred from the facts proved."* [44]

37. Any matters that might support an inference that someone other than the appellant caused his house to explode and catch fire must *require*[45] the conclusion that the alternative hypothesis is *reasonable*, in the sense described in *Peacock v The King*[46],
30 before the verdict of the jury can be properly be understood as unreasonable and as a result, overturned.

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[40] Appellant's Submissions at page 3 [1].
[41] *SKA v The Queen* (2011) 243 CLR 400, [14], [20]-[24]; *M v The Queen* (1994) 181 CLR 487, 473, 492-493.
[42] *Fennell v The Queen* [2019] QA 37, [82].
[43] *The Queen v Hillier* (2007) 228 CLR 618, [46] and [48].
[44] *Peacock v The King* (1911) 13 CLR 619, 661 restated in *The Queen v Baden-Clay* (2016) 258 CLR 308, [47].
[45] *The Queen v Hillier, supra* at [51].
[46] (1911) 13 CLR 619.

38. The well established principles as to the fundamental importance of the jury, the respect an appellate court will have for the jury's verdict, and the particular regard had for the advantages enjoyed by the jury were recently noted by this Court in *The Queen v Baden-Clay*.[47]

The appellant's version

39. The only issue at trial was whether the prosecution had proven beyond reasonable doubt that the appellant was the person who caused his house to explode and catch fire. He denied doing so in two interviews with police.

40. The accounts he gave during his interviews, and relied on at his trial, served two important purposes. Firstly, they placed him at the scene of the arson and detailed his rapid flight from it after the explosion. Secondly, the explanations he offered for his conduct and his observations at the relevant time of the explosion narrowed the range of reasonable possibilities or hypotheses that the jury had to consider. Given that his version limited the issues in the trial, it is convenient to examine them first.

41. Almost five hours after the explosion, at 10:55pm on 18 July 2015, the appellant told police that:

a) On the Wednesday before the arson he went to his house at Bribie Island. A man approached him about wanting to buy his motorbike. They arranged a purchase price and agreed to meet again on the day of the arson at about 5:00pm.[48] He described the man.[49] He did not remember his name or have any contact details for him. The potential buyer was not a local.[50]

b) On the day of the explosion, he was at the house. He walked around to the front and the house went '*bang*'. He hit the ground. He thinks his clothes were on fire. Some guy started screaming at him from a Subaru out the front. He jumped on his bike and left because a few weeks ago someone set his car on fire.[51]

c) He had argued with his wife earlier that day. He did not tell her, nor the owner of the bike, that he was going to the Bribie Island house to meet a man to sell it.[52]

d) He had parked around the corner of his house because he was worried the bike sale might have been a bit 'dodgy'.[53]

e) If he sold the bike he was going to call his wife to pick him up.[54]

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[47] *The Queen v Baden-Clay* (2016) 258 CLR 308, [65]-[66].
[48] ~~AB 980-981~~ RFM Vol 3, p.1012-1013.
[49] ~~AB 983~~ RFM Vol 3, p.1015.
[50] ~~AB 985~~ RFM Vol 3, p.1017. The appellant's submission at paragraph 43 of his outline is incorrect.
[51] ~~AB 981~~ RFM Vol 3, p.1013.
[52] ~~AB 988 and 1032~~ RFM Vol 3, p.1020 & 1064.
[53] ~~AB 987-988~~ RFM Vol 3, p.1019-1020.
[54] ~~AB 989~~ RFM Vol 3, p.1021.

f) He had spent $90,000 renovating the house.[55] He had no financial issues.[56]

g) His car was burnt out six weeks earlier.[57]

h) After the explosion, he thought someone was following him so he drove away. He went down the highway and then took a series of left and right turns before he stopped at a house and used a garden tap to wash his hands and face.[58]

i) He does not know where his phone is.[59]

j) The man running from the fire to the motorbike was him.[60] He did not see anyone other than the man by the car outside his house.[61]

k) He had experience in the military with, among other things, demolitions and rigging up explosives.[62]

l) His Mazda ute should be at home. It would be strange if it were not and in that case he did not know where it might be.[63]

42. The appellant participated in a second interview with police at 11:06pm on 22 July 2015. His wife was also present and answered questions at times. He said that:

a) On the day of the explosion he was going to have a drink so he left his ute at the pub car park. He talked himself out of a drink and walked home.[64]

b) His wife found his phone in his shed.[65]

c) He forgot his keys to the Bribie Island house on the day of the arson so sat around the back and read the local paper. When it got dark he decided to leave.[66] He did not hear anyone in the house. Nothing was open.[67]

d) Earlier in the week he had been cleaning the motorbike when the man approached him wanting to buy it. He just asked out of the blue.[68]

e) After being told that police had confirmed there was a Subaru out the front of his house at the time of the arson, he said he did not know that one of them was just calling out to him to see if he was okay.[69]

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[55] Ibid.
[56] ~~AB 990~~ RFM Vol 3, p.1022.
[57] Ibid.
[58] ~~AB 993 and 1008.~~ RFM Vol 3, p.1025 & 1040.
[59] ~~AB 1002-1004.~~ RFM Vol 3, p.1034-1036.
[60] ~~AB 1038.~~ RFM Vol 3, p.1070.
[61] ~~AB1051.~~ RFM Vol 3, p.1083.
[62] ~~AB 1055.~~ RFM Vol 3, p.1087.
[63] ~~AB 1058-1060~~. RFM Vol 3, p.1090-1092.
[64] ~~AB 1086-1089.~~ RFM Vol 3, p.1118 – 1121.
[65] ~~AB 1091.~~ RFM Vol 3, p.1123.
[66] ~~AB 1095.~~ RFM Vol 3, p.1127.
[67] ~~AB 1097.~~ RFM Vol 3, p.1129.
[68] ~~AB 1105 and 1107.~~ RFM Vol 3, p.1137 & 1139.
[69] ~~AB 1110.~~ RFM Vol 3, p.1142.

f) After driving away from the explosion he got to the highway where he did a series of 'left and rights' to make sure he wasn't being followed. He ended up in a street he did know the name of and used a garden tap for his burns.[70]

43. Those statements narrowed the range of *reasonable* possibilities two ways. Firstly, the appellant's observations, when added to the evidence of the neighbours, assisted in eliminating the hypothesis that there was a second man running away after the explosion. Secondly, given that the explosion was from direct human involvement and caused by a build-up of fuel in a gaseous form inside the house[71], his account tended to exclude, or at least make it highly unlikely, that some other person had the ability or opportunity to create the environment inside his house such that this explosion could occur.

44. Further, the appellant's account for his presence at the house is not compelling in that;

- parking the item to be sold away from the house made any possible transaction difficult;
- the appellant did not obtain any contact details from the buyer, or even note his name;
- it might be considered odd that the buyer approached the appellant and asked about purchasing the bike in circumstances where there is no suggestion he knew it was for sale;
- he told neither his wife, nor the owner of the motorbike, of the potential sale;
- had the sale taken place it left the appellant with no way of getting home. He made no arrangements to get home;
- even if his wife may have been able to pick him up, he did not have his phone or any way of contacting her.

45. Properly analysed, the evidence demonstrates that the appellant travelled to the house on a motorbike not registered in his name, he parked it out of sight of the house, and fled immediately after the explosion. Had the house not exploded causing him to be injured (and seen, although not recognised, by Patruno, Dyke and their friends), there may have been no evidence that he had even been at the house on that day. In addition, the appellant parked his own car within view of CCTV cameras at the Narangba Valley Tavern at about 2:30pm on 18 July 2015[72], giving the impression that he was far from Bribie Island in the lead up the fire. Such conduct was made even more suspicious given he told police in his first interview on that same night, that his car was at home.

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[70] ~~AB 1070.~~ RFM Vol 3, p.1102.
[71] All unchallenged facts in the trial.
[72] ~~AB 767-768.~~ RFM Vol 2, p.794 – 795.

46. It was open to the jury to accept or reject all or part of the appellant's account of events.[73] The approach of the appellant in this appeal tends to suggest that his accounts must be accepted.[74] This is not the case.

The Crown Case

47. The circumstantial case identifying the appellant as the person responsible for the explosion and fire relied upon a number of broad bodies of evidence including;

    a) Opportunity – the appellant's presence at the scene of the explosion;

    b) The cause of the explosion being from a build-up of vapours like gas or petrol;

    c) Petrol residues on the appellant's clothing;

    d) Witnesses smelling petrol before the explosion;

    e) Flight and false alibi.

    The appellant's account to the police narrowed the issues to be decided and limited the range of alternative hypotheses that were reasonably open in the circumstances of this case.

48. In addition to what has been outlined above, a number of other aspects of the appellant's challenge to the verdicts, warrant analysis.

Petrol residues

49. The explosion at the appellant's house occurred shortly before 6:19pm. His clothing was seized by police after 9:11pm and re-bagged by scientific officers at 9:55pm.[75] The pants, shoes, shirt, jumper and jacket were tested by Ms Maxwell for petrol residue..

50. The appellant's contention that the Court of Appeal overstated the effect of the scientific evidence by concluding[76] that *the appellant's pants and shoes had been in contact with liquid petrol that afternoon* needs to be considered together with the analysis that preceded it.

51. Ms Maxwell's evidence was summarised by Morrison JA at some length.[77] He correctly identified, as the appellant now argues, that the scientist's evidence was initially that the appellant's pants and shoes were *probably* in contact with liquid petrol. The evidence,

[73] CAB 12-13.
[74] For example paragraphs 17-20.
[75] ~~AB 354~~ RFM Vol 1, p.367.
[76] *R v Coughlan (supra)* [2019] QCA 65, [392].
[77] Ibid at [337] – [354].

however, did not stop there. The expert's evidence was that it was *highly likely*[78] that the shoes and tracksuit pants had been in contact with liquid petrol.

52. The conclusion of Morrison JA as to the timing of contact between the appellant's shoes and pants with liquid petrol[79] owed its origin to experiments done by a colleague of Ms Maxwell who found that petrol residue degraded after about four hours.[80] This evidence was of little moment in all of the circumstances - particularly where it had been established that *"members of the public aren't walking around with petrol on their clothing, even if you're filling up your car or even if you work in a profession where you're dealing with petrol"*.[81] The effect of the scientific evidence was that petrol residue will evaporate over time. The reference to the experiments of Maxwell's colleague was in answer to a question relating to the period of time over which petrol will no longer be detectable. In cross-examination, Maxwell explained that the study was conducted as part of a Masters degree which was submitted and 'marked by a supervisor' who had relevant qualifications. The colleague was awarded the Masters degree. Whilst the study was not formally published, Maxwell referred to it as an example of research that she is aware of.[82]

53. The scientific evidence did very powerfully support the conclusion of contact between the appellant's clothing and liquid petrol. Such was the independent assessment of Morrison JA as part of his review of the evidence. The evidence of Maxwell further supported the conclusion that the contact was within a relevant time frame to be probative of the appellant's guilt.

54. The evidence that the appellant's clothing had been in contact with liquid petrol and vapours with results consistent with that petrol having been poured from different heights added strength to the conclusions to be drawn in this case. That evidence was to be considered together with the circumstance that there was a vapour explosion and immediately before it Patruno and Dyke smelled petrol. Precisely when the residues were deposited on the clothing was not a matter of real significance given that the evidence was generally consistent with the relevant time frame in contemplation, and that it was not usual for people to have petrol on their clothing as a result of general daily activities such as those described by the appellant in the lead up to the explosion

55. The appellant's suggestion[83], raised for the first time in this Court, that in blowing leaves on the morning of the arson he could have possibly *spilled petrol on himself* lacks any evidentiary foundation.[84]

56. The combined weight of the evidence carefully analysed in detail by Morrison JA supported his conclusion[85] that the appellant was involved in distributing petrol which led to the explosion.

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[78] ~~AB 412 Ln33, and see also at R412 Ln37; R418 Ln28; R422 Ln15-20; R424 Ln14-18.~~ RFM Vol 2, p.430 Ln33, and see also RFM Vol 2, p.430 Ln37; p.436 Ln28; p.440 Ln15-20; p.442 Ln14-18.
[79] At [391].
[80] ~~AB 412 Ln16-24; and AB 419 Ln16-38.~~ RFM Vol 2, p.430 Ln16-24; and RFM Vol 2, p.437 Ln16-38.
[81] *R v Coughlan (supra)* at [344]-[346]; ~~AB 421-422.~~ RFM Vol 2, p.439-440.
[82] ~~AB 419 Ln16-38.~~ RFM Vol 2, p.437 Ln16-38.
[83] Appellant's submissions at paragraph 14.
[84] *Peacock v The King* (1911) 13 CLR 619, 662.
[85] *R v Coughlan (supra)* at [391].

The police investigation

57. The appellant contends that the police investigation and the effect of their failures impacted in a material way on the reasonable hypotheses available. The criticism of Morrison JA's analysis of this evidence is without merit. Commencing at [373] Morrison JA set out the contentions of the appellant relevant to the alleged deficiencies in the investigation. Thereafter, he embarked upon a review[86] of the relevant evidence and concluded that the 'so-called deficiencies' did not impugn the quality of the investigation and the absence of them had no material impact.[87]

58. Contrary to the contentions of the appellant, Morrison JA understood the alleged deficiencies in the investigation and what was said about them in relation to the appellant's challenge to the integrity of the verdicts. Having conducted a detailed review of the evidence, Morrison JA explained why, in his judgement[88] not only that there was good reason why the things complained of were not done, but also that the fact of their having not been done had no material impact.

59. For the reasons analysed by Morrison JA it cannot be said that any of the alleged police failures in the investigation materially impacted on the fairness of the trial or the alternative hypotheses available.

Motive

60. Properly analysed, this was a circumstantial case of considerable strength. Whilst the appellant steadfastly denied involvement and there was no obvious financial motive, the combined force of the circumstantial case powerfully supported the conclusion of the appellant's responsibility. The lack of motive is not fatal to a prosecution.[89]

Conclusion

61. The doubt promoted by the appellant in relation to each challenged piece of the evidence fails to account for the totality of the evidence and the nature of the circumstantial case under consideration. Contrary to the contention of the appellant, the Court of Appeal properly undertook the task of independently assessing the evidence to determine whether it was open to the jury to be satisfied of the guilt of the appellant beyond reasonable doubt. The Court's analysis transparently referred to the alleged deficiencies

62. Morrison JA's careful analysis of the whole of the evidence and weighing of alternative hypotheses showed that the Court of Appeal performed precisely the task it was required to undertake to determine whether the verdicts of guilty were unreasonable.

63. The Court of Appeal did not err in finding that there was sufficient evidence such that it was open to the jury to conclude that the appellant was guilty of the offences with which he was charged.

64. The appeal should be dismissed.

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[86] *R v Coughlan (supra)* at [375] to [388].
[87] *R v Coughlan (supra)* at [386].
[88] *R v Coughlan (supra)* at [386].
[89] *De Gruchy v The Queen* (2002) 211 CLR 85, [57].

Part VI

65. Not applicable.

Part VII

66. It is estimated that 1 – 1½ hours are required for presentation of the respondent's argument.

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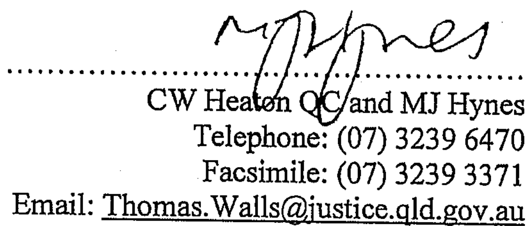

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Annexure – Legislative Provisions

Section 408C of the *Criminal Code 1899* (Qld)

408C Fraud

(1) A person who dishonestly—

...

(c) induces any person to deliver property to any person; or

commits the crime of fraud.

Maximum penalty—5 years imprisonment.

...

Section 461 of the *Criminal Code 1899* (Qld)

461 Arson

(1) Any person who wilfully and unlawfully sets fire to any of the things following, that is to say—

(a) a building or structure;

(b) a motor vehicle, train, aircraft or vessel;

(c) any stack of cultivated vegetable produce, or of mineral or vegetable fuel;

(d) a mine, or the workings, fittings, or appliances of a mine;

is guilty of a crime, and is liable to imprisonment for life.

(2) It is immaterial whether or not a thing mentioned in subsection (1)(a) or (b) is complete.

Section 535 of the *Criminal Code 1899* (Qld)

535 Attempts to commit indictable offences

(1) If a person attempts to commit a crime, the person commits a crime.

(2) If a person attempts to commit a misdemeanour, the person commits a misdemeanour.

Section 668E of the *Criminal Code 1899* (Qld)

668E Determination of appeal in ordinary cases

(1) The Court on any such appeal against conviction shall allow the appeal if it is of opinion that the verdict of the jury should be set aside on the ground that it is unreasonable, or can not be supported having regard to the evidence, or that the judgment of the court of trial should be set aside on the ground of the wrong decision of any question of law, or that on any ground whatsoever there was a miscarriage of justice, and in any other case shall dismiss the appeal.

(1A) However, the Court may, notwithstanding that it is of the opinion that the point or points raised by the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(2) Subject to the special provisions of this chapter, the Court shall, if it allows an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered.

(3) On an appeal against a sentence, the Court, if it is of opinion that some other sentence, whether more or less severe, is warranted in law and should have been passed, shall quash the sentence and pass such other sentence in substitution therefor, and in any other case shall dismiss the appeal.