



HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
ADELAIDE REGISTRY

BETWEEN:

DEREK JOHN BROMLEY
Applicant

and

THE KING
Respondent

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RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

Part I: CERTIFICATION

The respondent certifies that this outline is in a form suitable for publication on the internet.

Part II: PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

1. Was the fresh psychiatric evidence highly probative in the context of the issues in dispute at the trial of the offence? (AWS¹ [35]-[53]; RWS² [62]-[72]; AR³ [15]-[18])

- a. What did the fresh psychiatric evidence establish?
 - 10 i. four propositions : ACAB at 137-138; FC⁴ [37]-[38]
 - ii. the limits of the fresh psychiatric evidence : ACAB at 162, [140]; 180-1, [193].
- b. The Full Court’s conclusion : ACAB⁵ at 221, [375] : 222, [376]-[377].
- c. The law - s 353A(1) CLCA : *Van Beelen* (2017) 262 CLR 565 at [28]; *R v Keogh (No 2)* (2014) 121 SASR 307 at [107], [109], [112].
- d. The issues in dispute at trial - there was no unlawful homicide : BA⁶ ABFM⁷ Vol 2 at 705-6 ; SU⁸ ACAB at 21, 23-27- if there was an unlawful homicide, Mr Bromley was not one of the killers because he was not there : Mr Carter is unreliable : Mr Michael George was right : BA ABFM Vol 2 at 706 : SU ACAB at 13.
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- e. The fresh psychiatric evidence does not have a material bearing on a fact in issue in the context of the issues in dispute at the trial of the offence.
 - Mr Carter’s illness; ABFM Vol 1 : 197, 218, 220-224, 226, 227, 230, 235, 238, 239, 240, 269, 275, 279, 282, 283, 287, 288, 289, 294, 295, 305, 31, 315, 316 : evidence of Edith Carter and Michael George.
 - 30
 - Addresses : ABFM Vol 2 : 635-636, 663-668, 697, 699, 711, 717
 - The directions to the jury: ACAB 6-8: *Bromley v The Queen* (1986) 161 CLR 315.
- f. The evaluation undertaken by the Full Court in the light of the issues in dispute:
 - Proposition one: Carter’s general unreliability due to condition. Examination of “whole sweep of Carter’s evidence” – “bookends” followed by topic-based analysis, ACAB 139 [42]:
 - 40 i. Bookend one - Michael George: taxi trip starts around 3am, ends around 3:30am +/- 5 mins (ABFM Vol 1 416, 461) (FC [51])

1 Applicant’s Written Submissions.
 2 Respondent’s Written Submissions.
 3 Applicant’s Reply.
 4 Full Court Judgment Paragraph.
 5 Amended Core Appeal Book.
 6 Bromley Address.
 7 Applicant’s Book of Further Materials.
 8 Summing Up.

- ii. Bookend two - Bromley spoken to by police on bridge adjacent to crime scene between 3:55am – 4:25am (ABFM Vol 1 379, 390, Vol 2 523) (FC [52])
- iii. Taxi ride, Hawker Street/Hindley Street and “gaol” comment: Michael George (ABFM Vol 1 199, 416) (FC [104])
- iv. Landing near “willow trees” (items found by police) (ABFM Vol 1 206, 533) (FC [112]-[114])
- v. Timing: Docoza’s father/housemate/family friend/taxi (ABFM Vol 1 83-84, 184-185, 326-327) (FC [118]-[121])
- 10 vi. “Three skeins” consistent with assault: Bromley’s appearance seen by police/his explanation given/his washing of clothes (ABFM Vol 1 156, 388, 467-468, Vol 2 526) (FC [127]-[131])
- vii. Barbell (fact of, matches another from Carter’s home if not degree of use) (ABFM Vol 1 209, 310, Vol 2 533, 580) and desert boots (laces tied) (ABFM 186, 209, Vol 2 535, 586) (FC [113]-[114])
- viii. Trousers removed (consistent with sexual advance) (ABFM Vol 1 156, 331) (FC [123]-[125])
- ix. Retreat to North Tce – cassettes/Arthur George at pie cart (ABFM Vol 1 212, 319, 376-378) (FC [132])
- 20 x. Return to bridge (seeing Derek/police/speaking with police) (ABFM Vol 1 214, 276-277, 385-386, Vol 2 510-511, 524-525) (FC [133])
- xi. Victoria Square following day/Carter’s bag (ABFM Vol 1 215-217, 482-483) (FC [134]-[135])
- xii. Conclusion: Full Court found considerable evidence supporting Carter’s account, not all of which considered by experts, which the Court found significantly diminished the weight to be given to opinions about Carter’s reliability: (FC [136]-[140]).

Proposition two: “suggestibility” – consideration of “broad allegation” that Bromley attacked the deceased, ACAB 162 [141]:

- 30 xiii. Carter’s complaints to others that Bromley and Karpany attacked the deceased prior to media report and prior to Carter’s first interaction with police:
 - 1. Carter’s family (ABFM Vol 1 96, 152-153; RBFM 365-369, FC [155]-[166])
 - 2. Father Pearson (ABFM Vol 1 472, 483, FC [170]-[174])
 - 3. Hillcrest staff (ABFM Vol 5 1856-1862, FC [176]-[180])
 - 4. Hillcrest staff – after first media publication (ABFM Vol 5 1856-1862, FC [181]-[185])
 - 5. Police, including discoveries made by police after speaking with Carter (ABFM Vol 2 578-579, FC [186]-[191])
- 40 xiv. Conclusion ACAB 181 [196]: Full Court found that while Carter susceptible to “suggestibility”, the evidence showed that Carter did not confabulate or acquire false memories of Bromley attacking the deceased.

Proposition three: broad distinction between delusional beliefs and objective factual events no longer accepted, 181 [197]:

- xv. Consideration of defence treatment of mental health at trial (Full Court [204]-[212])
- 50 xvi. Dr Barrett evidence not before jury; fresh expert consensus that a person suffering from schizoaffective disorder remains capable of giving reliable evidence and accurately recording events (ABFM Vol 3 779 Coyle, 810 Sugarman, 879, 910 Furst, 930 Hook, 971-972 Brereton; FC [214])

xvii. Conclusion: neither content of Dr Barrett’s report or timing of provision to defence is of significance to application: (FC [215])

Proposition four: despite propositions 1-3, generally accepted a person suffering from schizoaffective disorder is capable of giving reliable evidence and accurately recalling events (FC [216])

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2. The first alternative conclusion : the Full Court was correct to receive the respondent’s evidence (AWS [54]-[59]; RWS [73]-[82]: AR [7]-[14])

- a. The Full Court’s construction of the interests of justice criterion is embraced: ACAB 223-226 : [382]-[398]; *Van Beelen* (2017) 262 CLR 565 at [30].
- b. The respondent’s evidence:
 - o Carter’s and Karpany’s esoteric knowledge: ACAB 228-231, [407]-[413] (Carter); 231-236, [414]-[416] (Karpany)
 - o the intended use; 228, [405]
 - o the Full Court’s conclusion; 241-2, [431]-[432]
 - o the propensity evidence : ACAB 243-4, [439]-[442]
 - o the propensity characterized 242-3 [435]-[436], 247-8, [456]
 - o use and admissibility : 255-7, [482]-[490]; 260, [497]
- c. an alternate approach – CLCA⁹, s 359(b) and (c).

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3. The second alternative conclusion : the Full Court was right to determine that if the evidence was “compelling”, there had not been a substantial miscarriage of justice (RWS [13])

- a. FC [509] ACAB 264
- b. Applying *Van Beelen* and *Mickelberg*, the Full Court was entitled to have regard to all of the evidence it did (see the primary conclusion and evidence analysed therein).
- c. the conclusion does not change if the respondent’s evidence should not have been received : FC [377] ACAB 222.

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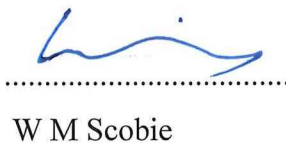
4. The new pathological evidence is not fresh and, in any event, is not highly probative of the issues in dispute at the trial of the offence. (AWS [60]-[73]; RWS [2])

The applicant enthusiastically embraced Dr Manock’s evidence at trial (ABFM Vol 1 371, 374 Vol 2 707, 713-717, FC [131], [311]-[324])

40 Dated: 16 May 2023



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M G Hinton KC



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W M Scobie

⁹ Criminal Law Consolidation Act 1935 (SA).