



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: B57/2022
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Important Information

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No. B57 of 2022

BETWEEN:

THOMAS CHRIS LANG
Appellant

and

THE QUEEN
Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

Part I:

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

Part II:

Ground 1

The issue in the case

2. The issue in the case is whether the evidence excluded the reasonable possibility that Mrs Boyce died by suicide.
3. In a circumstantial case, guilt should not only be a rational inference but should be the only rational inference that could be drawn from the circumstances. In an appeal on the ground the jury's verdict was unreasonable or unsupported by the evidence, the question for the appellate court is whether it thinks that, on the whole of the evidence, it was open to the jury to be satisfied beyond reasonable doubt of the appellant's guilt.
4. In this case, it was not open for the jury to be so satisfied. The circumstances of the death are consistent with suicide, not with murder. The matters relied upon by the prosecution (evidence the deceased was not in a depressed mood, the possible motive

and the alleged lie told the by the appellant) do not overcome this barrier to a finding of guilt.

The circumstances of the death are consistent with suicide, not with murder

5. There is no forensic evidence linking the appellant to the act which caused the deceased's death.
6. The evidence establishes that, after the fatal wound was inflicted, Mrs Boyce lay relatively still on her bed until she died. Death would have taken some minutes.
7. In that time, she was capable of movement and of resisting an attack against her, if there was one.
8. The evidence which demonstrates there was no struggle, or attempt by Mrs Boyce to seek help, supports the inference that she inflicted the injury herself, with the intention of dying by suicide.
9. That evidence is inconsistent with an inference of guilt. That barrier to a finding of guilt could not be overcome on a consideration of the whole of the evidence.

The evidence relating to the deceased's mental health

10. The evidence did not conclusively demonstrate that Mrs Boyce was not in a depressed state at the time of her death. There was evidence from a text message to her husband and a telephone call to an acquaintance, both within 72 hours of her death, that she was in a depressed mood.

Possible motive

11. The prosecution theory that the appellant had a motive to kill Mrs Boyce because he discovered text messages between her and another man at approximately midnight is speculative:
 - a. There was no direct evidence that he did so; and
 - b. It relied on evidence of the appellant's latent fingerprint on the phone in circumstances where the evidence did not establish when the fingerprint was left there; and
 - c. Mrs Boyce's mobile telephone was passcode-protected and there was no evidence that the appellant knew her passcode.

12. The claimed motive is inconsistent with the evidence of the time of death being between 1.45am and 3.45am.

Alleged lie showing consciousness of guilt

13. The alleged lie (that Mrs Boyce threw the mobile telephone off the balcony at about 9.30pm) was not established to be a deliberate untruth or concerned with some circumstance of the offence. In any event, if those matters were established, there is a plausible innocent explanation for the lie, namely that the appellant panicked upon finding Mrs Boyce's body.

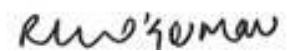
Conclusion

14. On a review of the whole of the evidence, it was not open to the jury to be satisfied beyond reasonable doubt of the appellant's guilt. The circumstances of the death pointed to suicide. The other circumstances – evidence of the deceased's mental health, a possible motive and an alleged lie – could not, when considered with the circumstances of the death, lead to a conclusion of guilt beyond reasonable doubt. There is a significant possibility an innocent person has been convicted of murder.

Ground 2

15. Dr Ong's opinion that it was more likely that Mrs Boyce's wound was caused by a second party was inadmissible because it was not an expert opinion.
16. Dr Ong's opinion was not wholly or substantially based on his expert knowledge as a forensic pathologist. It was substantially based on his subjective view as to how a person would or would not choose to self-inflict an injury intended to bring about their death.
17. There is a significant risk that the jury placed undue weight on this opinion given that Dr Ong was called by the Crown as an expert in the trial.
18. A miscarriage of justice occurred as a result of the admission of his opinion.

Dated: 11 May 2023



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Name: Ruth O'Gorman KC