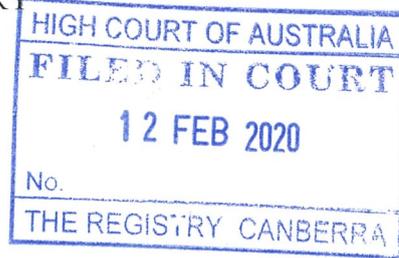


IN THE HIGH COURT OF AUSTRALIA

BRISBANE REGISTRY

No. HCA B60 of 2019

BETWEEN:



EAMONN CHARLES COUGHLAN

Appellant

and

THE QUEEN

Respondent

APPELLANT'S OUTLINE OF ORAL ARGUMENT

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**Part I:** I certify that the outline is in a form suitable for publication on the internet.

**Part II:**

1. The fundamental issue in the appeal is whether the jury verdicts were unsafe and should have been set aside. That issue can be considered as the same time as the question whether the Court of Appeal applied accepted authority correctly. It is accepted that the task for the Court of Appeal was, having considered all the evidence, to determine whether they had a reasonable doubt not allayed by making allowance for the jury's having seen and heard the evidence: *M v The Queen* (1994) 181 CLR 487 at 494: JBA: volume 2, tab 8, page 240: PDF: 235.

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2. Since this was a case where the obvious motive for arson of financial gain in a time of financial difficulty was not present, the Crown's circumstantial case could not be viable unless forensic evidence pointed strongly to the Appellant's responsibility for the fire and explosion. This was not the case:

- (a) The cause and mechanism of the fire was not determined: Gormon:<sup>1</sup> JBFM: V2: 674, l. 44-675, l. 2 (647-8) (didn't go inside); 676, line 36- 677, l. 2 (649-0) (fuel in gaseous form); 677, ll. 4-18 (650) (not rule out electrical fire); 677, l. 43-678, l. 2 (650-1) (not rule out spontaneous fire); 678, ll. 9-38 (651) (not rule out Molotov cocktail, bomb or gas bottle); 656, ll. 6-14 (656) (opinions from report); 684, ll. 35-40 (no samples); Spencer: 688, ll. 1-14 (661) (cannot determine

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<sup>1</sup> Unless otherwise indicated, all numbering refers to page and line numbers in the Respondent's Book of further materials with a page number to the Court of Appeal record book in ellipses: JBFM: xxx (yyy).

Craven Lawyers  
Level 54  
111 Eagle Street  
Brisbane QLD 4000

Telephone: (07) 3172 7100  
Fax: (07) 3054 7390  
Email: justin@cravenlawyers.com.au  
Ref: Justin Craven

ignition source); 688, ll. 25-38 (661) (human involvement); 696, ll. 1-23 (electrical fire, natural causes, Molotov cocktail and bomb); 704, ll. 30-36 (677) (report); 705, ll. 10-20 (678): remote detonation possible).

(b) Ms Maxwell's evidence concerning petrol residues was equivocal: 429, l. 29-430, l. 5 (411-2) (track pants and shoes probably in contact with petrol); 430, ll. 12-25 (412) (age of contact unknown); 430, ll. 30-40 (highly likely/consistent with); 437, ll. 15-25 (419) (article unpublished); 438, l. 25-439 l. 8 (420-1) (12% chance of petrol residue from filling a mower).

- 10 3. The Court of Appeal's reliance on civilian witnesses to prove up the cause of the fire was not justified: Dyke: V1: 151, ll. 29-34 (138) (first version); 155, ll. 34-45; 244, l. 20-245, l. 11 (231-2) (criminal history); Patruno: 108, ll. 1-17 (95) (wind blowing in opposite direction); 112, ll. 5-15 and 35-46 (99) (criminal record); 95, ll. 24-34 (82) (delay in giving statement); 96, ll. 8-12 (83) (gave statement to Weare); 83, l. 45-84, l. 10 (83-4) (Weare said you were accusing me); 98, ll. 40-46 (85) (changing recollection); 895, ll. 25-28 (863) (Weare confirms lift to Court); 100, ll. 1-10 and 100, l. 42-101, l. 8 (87-88) (circumstances of giving statement); and Gorman: 680, ll. 5-20 (653) (a sealed house would not necessarily leak petrol smells).
- 20 4. Failure to exclude innocent explanations for alleged petrol residues: V3: 1020, lines 28-50 (988) using a leaf blower that day. The failure to make a genuine attempt to investigate possible innocent explanations is shown by the treatment of the appellant's wife: 814, line 39-815, line 9 (787-8); 820, lines 1-26 (793); 832, line 44-833, line 20 (805-6); 806, line 40-807, line 37 (806-7) and 836, line 30-810, line 14 (809-810).
5. The Crown case was necessarily dependent upon it establishing beyond reasonable doubt that the fire was the result of a build-up of petrol vapour; that the Appellant's clothes bore clear proof of recent contact with petrol; and all possible innocent explanations for petrol residues were excluded.
- 30 6. In addition to the failure to establish matters which were essential to a strong circumstantial case, there were numerous matters that militated against the Crown's ability to discharge its onus. These included: the absence of any financial or other motive to commit insurance fraud: COA reasons [389], Core Appeal Book (CAB) 114; JBFM: 1041, ll. 1-20 (1009); flight from the scene was explained: COA reasons [319], CAB 102; appellant presented to Caboolture Police Station: JBFM: 298, ll. 31-45 (285); how the Appellant might have caused this fire not explained 1127, ll. 31-60 (1095) and 884,

ll. 10-25 (852) (no house keys); and the Crown's failure to conduct a competent and impartial investigation 888, ll. 1-7 (856) and COA reasons [237] CAB 82 and unwillingness to do so 749, ll.32-42 (722) (Eaton told police that Appellant was prime and suspect (before police had spoken to Dyke): 157, ll.10-37: Dyke); 905, ll. 10-33 (873) (Weare). Ms Trindall and Ms Freeman's evidence that a second person was fleeing the locality of the fire soon after the explosion reflects both the inadequacies in the investigation and a circumstance pointing to someone other than the Appellant as responsible for the fire: 175-7 (162-4), 182-3 (169-170), 199-202 (186-8) and 206 (193).

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7. The Crown's reasoning at ([30]) and [31]) of its outline that doubtful factual conclusions can add strength to one another confuses two separate principles and evades a third.
8. One piece of evidence may be strengthened by another piece of evidence tending to prove the same fact: Dawson J in *Shepherd v The Queen* (1990) 170 CLR 573 at 580: Joint Book of Authorities (JBA), tab 10, v2, 349/PDF 344.
9. A series of proven facts may, together, give rise to a strong inference of guilt though each fact on its own points less clearly to that conclusion: *Shepherd v The Queen* (1990) 170 CLR 573 at 577: 346/PDF 341, per Mason CJ and 580: 349/PDF344.
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10. The principle that the Crown seeks to evade is that primary or intermediate facts which are indispensable for an inference of guilt must be proved beyond reasonable doubt: *Shepherd v The Queen* (1990) 170 CLR 573 at 576: 345/PDF340, per Mason CJ and at 579 348/PDF 343, per Dawson J.
11. Dawson J at 582 351/PDF346 cites an illustrative passage from *R v Van Beelen* which states that, in contrast to the stronger inference that flows from combining several proved facts, combining several facts which are in doubt "counts for nothing".
12. Petrol as the cause of the fire; recent contact by the Appellant with petrol; and excluding innocent forms of such contact were indispensable links in the chain of reasoning which the Crown was seeking to construct. In certain circumstances, observations of lay witnesses could be used to narrow down the range of possible causes of an event. In the present case, Gorman went to some pains to discount the likelihood of smelling petrol: 680, ll.5-20 (653).

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Dated: 11 February 2020



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Stephen Keim SC