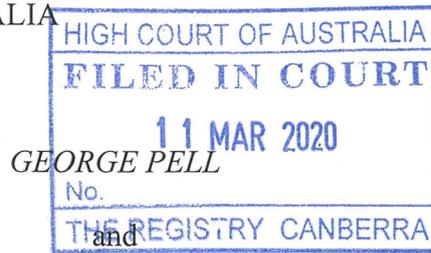


IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY



No. M112 of 2019

BETWEEN:

GEORGE PELL

No.

and

Applicant

THE QUEEN

Respondent

RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

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

Part II: Propositions to be advanced in oral argument

2. THE INDEPENDENT ASSESSMENT (RS [23]-[26])

The independent assessment of the evidence by the Court of Appeal is for the purpose of determining whether it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty; not for the purpose of each member of the Court of Appeal determining whether he or she entertains a doubt as to the guilt of the accused.

M v The Queen (1994) 181 CLR 487, 492-5; *R v Baden-Clay* (2016) 258 CLR 308, [66]
Majority [12] [13] [14] [18]-[25] [39]-[40] [106] Weinberg JA [663] [1034]

3. SUPPORTING EVIDENCE (RS [11], [37])

The existence and probative value of supporting evidence must be considered in the context of the *M* test. It was open to the jury to use as supporting evidence:

- a. The identification of the Priests' Sacristy rather than the Archbishop's Sacristy (demonstrating A's knowledge of Pell using this room at the relevant time, notwithstanding other witnesses not having this knowledge); and
- b. The description of the inside of the Priests' Sacristy, including where wine was stored (which could only have been observed when the door was unlocked and there was an opportunity to enter well inside the room and at a time that the wine was visible and at a time that A was able to get into a place unnoticed that was otherwise off-limits to the choristers).

Majority [43] n47 [95]-[97]

Weinberg JA [410] n135 [429] [584] [836] [908]-[910] [925] [1104]

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4. ASSESSING RELIABILITY AND CREDIBILITY (RS [21], [27]-[31])

The independent assessment of witnesses must be considered in the context of the *M* test. The independent assessment must allow for:

- a. A recognition that a jury is best placed to decide matters of credibility and reliability
Chidiac v The Queen (1991) 171 CLR 432, 443-4 (Mason CJ);
- b. The jury's composite and broad experience of life;
- c. The benefit the jury has in being able to deliberate as a group.

Compare Majority and Weinberg JA in respect of: Portelli [253]-[255] cf [1087]; Potter [267] cf [1088]; McGlone [271] cf [1089]; Complainant [93] cf [455], [929]

5. ALIBI (RS [12], [38]-[41])

McGlone's evidence, taken at its highest, did not amount to an alibi.

The evidence of the applicant's 'practice' of standing on the front steps after Mass to greet parishioners did not amount to an alibi.

SKA v The Queen (2011) 243 CLR 400; *Palmer v The Queen* (1998) 193 CLR 1

6. EVIDENCE OF PRACTICES (RS [13], [42]-[45])

The evidence of the applicant's practice of standing on the front steps after Mass to greet parishioners and the evidence of the practice of the applicant being accompanied whilst robed, cannot be considered in isolation. Such evidence had to be considered in light of:

- a. The concessions by Portelli that the practices were not invariable;
- b. The other evidence demonstrating a departure from the practices;
- c. The entirety of the evidence, including A's evidence and the supporting evidence.

7. CHOIR BOYS DETACHING FROM PROCESSION (RS [14])

The evidence on this issue included acknowledgements by witnesses that they would have been distracted, a more relaxed procession as it reached towards the Knox Centre, people in the vicinity of the south transept, instances of choristers leaving the procession, and no roll taken of choristers.

8. PERIOD OF TIME PRIESTS' SACRISTY COULD BE LEFT UNATTENDED (RS [56]-[63])

The evidence is not so precise so as to assign specific time frames for:

- a. The route of A after mass;
- b. The period of offending;
- c. The commencement of the private prayer time;
- d. The conclusion of the private prayer time.

The evidence was not such that it left no opportunity for the offending to occur.

It was open to the jury to conclude that A's account was consistent with the opportunities having arisen and occurred and to be satisfied beyond reasonable doubt that, notwithstanding the tight timeframe, the events described by A happened.

Charge CAB 44-46 Majority [14] [291] [300]

9. BEHAVIOUR PROBABILITY/IMPLAUSIBILITY ARGUMENTS (RS [50]-[52])

An assessment of human behaviour issues must be considered in light of the jury being able to draw on each other's range of life experience – what one person finds implausible another may find inherently plausible – and in the context of the *M* test.

For example, the applicant's brazenness, B denying the offending to his mother and A's failure to complain or speak to B.

Majority did not err in their approach [103] [106] [107]

10. NO ERROR OF LAW (RS [7], [27], [33]-[37], [46]-[47])

It is not the role of the High Court to substitute for the view taken by the Majority a different view of the evidence. *Liberato v The Queen* (1985) 159 CLR 507, 509.

The fact that there might have been equally open interpretations of the evidence (as demonstrated by the different assessments of the evidence undertaken by the Majority and Weinberg JA) does not demonstrate error by the Majority or necessitate a conclusion that it was not open to the jury to find the offending proven beyond reasonable doubt. *Irwin v The Queen* (2018) 262 CLR 626, [49].

There is no error by reason of the Majority commencing with an assessment of A's credibility and reliability. Majority [53] Weinberg JA [896].

The Majority did not proceed on the basis of a 'belief', nor did they assess A's evidence independently from the rest of the evidence. Majority [14] [25] [59]-[64] [143] [174] [351].

Giving reasons for dismissing the applicant's 'impossibility' argument does not equate to reversing the onus of proof. Majority [65] [121] [128]-[130] [151] [291] [300].

Dated: 11 March 2020


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K E Judd QC

Director of Public Prosecutions