



HIGH COURT OF AUSTRALIA

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**IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY**

BETWEEN:

DAVID ALAN BRADSHAW

Appellant

and

THE KING

Respondent

APPELLANT'S SUBMISSIONS

Part I: Certification

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

Part II: Issues presented by the appeal

2. The appeal presents two issues arising from the appellant's police interview, which proceeded after he disclosed his diagnosis of severe paranoid schizophrenia and recent non-compliance with his medication regime, and resulting conviction for murder on the basis of admissions made in the interview.
3. The first issue is whether the Court of Appeal correctly construed s 422(1) and (3) of the *Police Powers and Responsibilities Act 2000* (Qld) (**PPRA**) in finding that there was no contravention of s 422 in the conduct of the police interview.
4. The second issue is whether, having not been excluded from the evidence at trial, the playing of the police interview required the trial judge to give a direction of the kind given in *Bromley v The Queen* (1986) 161 CLR 315 warning the jury of the possible danger of acting on that evidence.

Part III: Compliance with section 78B of the *Judiciary Act 1903* (Cth)

5. No notice is required in accordance with s 78B of the *Judiciary Act 1903* (Cth).

Part IV: Citations

6. The judgment of the Court of Appeal is unreported. Its medium neutral citation is *R v Bradshaw* [2025] QCA 172 (**AJ**).¹
7. The judgment of the primary judge is unreported. Its medium neutral citation is *R v Bradshaw* [2022] QSCPR 16 (**PJ**).²

Part V: Relevant facts found or admitted in the court below

Background

8. On 15 August 2019, Mark Petersen died in a house fire in Hill Street, Lakes Creek near Rockhampton. On 14 September 2019, the appellant was charged with Mr Petersen's murder after he made admissions to his involvement in the fire.
9. The murder charge was brought pursuant to s 302(1)(b) of the *Criminal Code* (Qld). By that section, a person who unlawfully kills another is guilty of murder 'if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life'.
10. At trial, the prosecution case was that the appellant lit the fire which caused Mr Petersen's death and that he did so for the purpose of inflicting personal vengeance. Accordingly, the appellant was guilty of murder because the deceased's death was caused by the appellant's act of lighting the fire, which was done for the unlawful purpose of inflicting personal vengeance, and the lighting of the fire was an act of such a nature as to be likely to endanger human life.³
11. It followed that it was necessary for the Crown to prove the appellant lit the fire for the purpose of inflicting personal vengeance on Mr Petersen.⁴ The only evidence he did so came from his statements to that effect in his police interview.⁵

¹ AJ (Core Appeal Book (**CAB**) 42-62).

² PJ (Appellant's Book of Further Material (**AFM**) 145-163).

³ Transcript of summing-up, T2-10, L43 to T2-11, L4 (**CAB 16-17**).

⁴ Transcript of summing-up, T2-11, L6-8 (**CAB 17**) and T2-14, L38-42 (**CAB 20**).

⁵ Transcript of summing-up, T2-15, L7-10 (**CAB 21**).

The appellant's police interview

12. The appellant was not suspected of having lit the fire until 14 September 2019 when he attended a police station and said that he had done so. On that day, the appellant drove from Rockhampton to Brisbane. He went to the Roma Street police station and told a police officer he had set fire to a house in Hill Street and he believed someone was in the house at the time.⁶
13. Arrangements were then made for the appellant to participate in a police interview.⁷ The interview commenced at 7.38pm.⁸ By the time of the interview, the interviewing officers knew the appellant had driven from Rockhampton to Brisbane to confess to setting fire to a house while believing someone was inside.
14. During the preliminary part of the interview, the officers asked the appellant whether he was suffering from any illness or injury. The Court of Appeal summarised the exchange that followed in this way:⁹

[37] The appellant told the interviewing officers that he had been diagnosed with severe paranoid schizophrenia about three years before. He told them he had a treating doctor and took medication for the condition. He said he had been on medication most of the time since his diagnosis. He told them that for 18 or 19 months he took medication by a monthly “depo needle injection” (presumably a long-acting anti psychotic medication), as well as Mirtazapine (an oral anti-depressant medication), and Seroquel (an oral antipsychotic medication). He said, when he found a job, he stopped taking that medication and moved onto “[L]ots of alcohol” and “then the drugs too.”

[38] The applicant said an immediate callout person from “Mental Health” had been contacting him for two or three days because he had been “runnin’ amok. Going stupid. Being an idiot.” When asked to explain the ways he had been doing this, he told the police officers that for a while there had been “siphon hose marks on the side of [his] car” and the fuel cap had been left open, and he had been “driving

⁶ AJ, [1]-[2] (CAB 43).

⁷ AJ, [1]-[2] (CAB 43).

⁸ AJ, [33] (CAB 49).

⁹ AJ, [37]-[40] (CAB 50-51). The full transcript of this part of the interview is found in the transcript of police interview, T6, L49 – T10, L1 (AFM 10-14).

around tryna run the car out of fuel to try and work out how many kilometres I can get out of it.” He said he “couldn’t run the car out of fuel, so ... that I could get here today.”

[39] He told them he was currently taking Seroquel. He said his daily dose of medication had been increased the previous day, presumably by a medical professional able to make such a change and prescribe accordingly. He said he had taken less than half the increased daily dose in the last two days. He then clarified that over the past three days he had taken, in total, only half the increased daily dose.

15. It seems the reference in the summary above to the medication having been increased the previous day was an error; the appellant said his medication had been increased the day before yesterday.¹⁰
16. The appellant also told the interviewing officers he had last taken any of his medication three days earlier.¹¹ He said that his mental health case worker had contacted him the previous evening and that he told her he was travelling to Brisbane to attend a rehabilitation facility on Roma Street.¹²
17. At the end of the preliminary part of the interview, the officers proceeded with the interview and questioned the appellant about the fire. The appellant said he lit the fire. He said the incident was “just a personal vengeance”.¹³
18. The appellant said he had wanted to inflict personal vengeance on the occupant of the house because the occupant had attempted to grab him twice in the days before the fire.¹⁴ He described those incidents in the following terms:¹⁵

The night before the 15th or two nights before the 15th, I was at the same location. Ah, I'd purchased some drugs and went back out to the car. The occupant's dog went flyin' past me at random, run into the, not the adjacent house but the next house yard. And ah, there, there was a guy who walked off because the dog ran up and um, revealed his location. Which I didn't know unless the dog had of run out.

¹⁰ Transcript of police interview, T6, L57-58 (AFM 10).

¹¹ Transcript of police interview, T7, L15-18 (AFM 11).

¹² Transcript of police interview, T4, L18-26 (AFM 8).

¹³ AJ, [2] (CAB 43); PJ, [38] (AFM 159); Transcript of police interview, T11, L40-44 (AFM 15).

¹⁴ Transcript of police interview, T11, L44-46 (AFM 15).

¹⁵ Transcript of police interview, T11, L46 – T12, L22 (AFM 15-16).

And yeah. Maybe there was three visits. There was the dog incident, then I parked in another location. And then same thing, someone came out of the dark trying to grab me, I, so I got a four-inch blade, stay the fuck away from me. And got in the car and drove off. And then the night of the refrigerator incident, purchased drugs, used it at the house. Um, was quite clearly, what do you reckon about this fridge? Shown in. Oh, show, how do you think this works? And then he tried to get me right next to it to look into it and I just stayed back and looked into it. Mm. So, I dunno what the go is with the fridge. And then we walked up some stairs to a shed on a hill. Which was a bit higher up from the house, and um, this other random bloke walked out of the, of a room there. I, I had no idea. We looked around at cars and stuff and he's, another guy walked out of a room. Never seen him in my life. Ah, and the occupant of the house started talkin' about fridges again. And opened the fridge door. The random guy that walked out of the room started to adjust a video camera. Focusing on me. And ah, intuition just said to um, what's that differential out there? Walked out of the shed to get away from 'em. And ah, the guy kept fiddlin' with the camera and it failed, somethin' happened. I dunno. It was, yeah. And then the occupant went back into the house and disappeared, and the guy with the adjusting the camera, he went back into his room and disappeared too. So. And I stayed around for a while. And stuck my head back in through the kitchen door. And sung out to him. And ah, told him that I was goin'. And no comment, no, didn't hear nothin'. So I just walked off and got in the car and left.

19. The appellant then described his involvement in lighting the fire. In doing so, he made some unusual comments. For example, he described how, on his way to the house, he saw a random green flare fly across the road in front of him.¹⁶ The primary judge considered there were several matters in the interview, including some referred to above, which may or may not have been consistent with a degree of delusional thought on the part of the appellant.¹⁷

20. At 8.25pm, the appellant said he wanted to stop the interview, and the interview was suspended.¹⁸ At 8.51pm, the officers resumed the interview.¹⁹ The appellant

¹⁶ Transcript of police interview, T12, L25-26 (AFM 16).

¹⁷ PJ, [35] (AFM 158).

¹⁸ AJ, [33] (CAB 49); PJ, [37], [43]-[44] (AFM 159, 161); Transcript of police interview, T27, L39-58 (AFM 31).

¹⁹ AJ, [33] (CAB 49).

was not asked whether he wanted to continue with the interview, which the primary judge (correctly) found was a breach of reg 24 of the *Police Powers and Responsibilities Regulation 2012* (Qld).²⁰

21. In the resumed part of the interview, the appellant was asked further questions about why he started the fire. He said he “went [to the house] with the intention to inflict serious vengeance”²¹ due to the incidents with the dog and the fridge he had described earlier.²²
22. At the conclusion of the interview, the appellant was charged with murder and remanded in custody. Subsequently, police investigations revealed evidence which tended to corroborate the appellant’s admissions that he had lit the fire.²³ That evidence was the subject of admissions by defence in the trial.²⁴

The application to exclude the police interview

23. The appellant unsuccessfully applied to exclude his police interview on the basis that the interviewing officers failed to comply with s 422 of the PPRA.²⁵
24. Section 422 of the PPRA provides:

422 Questioning of persons with impaired capacity

- (1) This section applies if –
 - (a) a police officer wants to question a relevant person; and
 - (b) the police officer reasonably suspects the person is a person with impaired capacity.
- (2) A police officer must not question the person unless—
 - (a) before questioning starts, the police officer has, if practicable, allowed the person to speak to a support person in circumstances in which the conversation will not be overheard; and
 - (b) a support person is present while the person is being questioned.

²⁰ PJ, [12], [43]-[44] (AFM 148-149, 161).

²¹ Transcript of police interview, T34, L39-40 (AFM 38).

²² Transcript of police interview, T34, L37 to T35, L20 (AFM 38-39).

²³ Transcript of Crown’s closing address, T3, L31 to T5, L1 (AFM 166-168).

²⁴ Admissions (AFM 164).

²⁵ *R v Ireland* (1970) 126 CLR 321; *Bunning v Cross* (1978) 141 CLR 54.

- (3) Also, the police officer must suspend questioning and comply with subsection (2) if, during questioning, it becomes apparent that the person being questioned is a person with impaired capacity.

25. The terms “person with impaired capacity”, “reasonably suspects” and “support person” are defined in Schedule 6:

person with impaired capacity means a person whose capacity to look after or manage the person’s own interests is impaired because of either of the following—

- (a) an obvious loss or partial loss of the person’s mental functions;
- (b) an obvious disorder, illness or disease that affects a person’s thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.

reasonably suspects means suspects on grounds that are reasonable in the circumstances.

support person means — ... (c) for a person with impaired capacity—a parent or another adult who provides or is able to provide support necessary to help care for the person by looking after or managing the person’s interests.

26. The defence counsel argued that the interviewing officers failed to comply with s 422(2) and made a deliberate choice to continue the interview in circumstances where the appellant plainly identified significant mental health issues and indicated a clear intention to cease participation of the interview.²⁶
27. At the hearing, the interviewing officers gave evidence they did not suspect the appellant was a person with impaired capacity at any point during the interview.²⁷
28. The primary judge dismissed the application, finding that the appellant did not have an obvious disorder, illness or disease that affected his thought processes, perceptions of reality, emotions, judgment, or resulted in him having disturbed behaviour at the interview which would lead the interviewing officers to reasonably suspect that he was a person whose capacity to look after and manage his own interests had been impaired,²⁸ and consequently that there was no breach of s 422.²⁹

²⁶ PJ, [8], [14] (AFM 147, 150).

²⁷ PJ, [29]-[33] (AFM 157-158).

²⁸ PJ, [39] (AFM 159).

²⁹ PJ, [47] (AFM 162).

The trial

29. The trial proceeded on the basis the prosecution had to prove five elements to establish the murder charge: first, Mr Petersen was dead; second, the appellant did an act which caused his death (being the act of lighting the fire); third, the appellant did so unlawfully; fourth, the appellant did that act in carrying out an unlawful purpose (being to inflict personal vengeance on Mr Petersen); and fifth, the appellant's act was of such a nature as to be likely to endanger the life of an occupant of the house.
30. In relation to the first element, it was an admitted fact that Mr Petersen died in the early hours of 15 August 2019 from smoke inhalation. The issues at trial were whether the Crown could prove each of elements two to five as particularised.
31. The jury was instructed that if they were satisfied of the first three elements but not elements four and five, it was their duty to acquit the appellant of the murder charge and return a verdict only of manslaughter.³⁰
32. The appellant's police interview was played at trial. As noted above, it was the only evidence in the trial with respect to the fourth element, namely that the appellant lit the fire for the purpose of inflicting personal vengeance.
33. The critical issue in the trial, as the trial judge identified in the summing-up, was whether the appellant's admissions, that he lit the fire and that he did so for the purpose he described, were reliable.³¹
34. In his closing address, the learned Crown prosecutor submitted that the appellant's admissions were reliable.³² He said the appellant gave a detailed and thorough account of his involvement in the fire including his reason for lighting it, there was nothing in the appellant's presentation which caused any doubt about the truthfulness or reliability of his admissions and there was consistency between what he told police and the corroborating evidence linking him to the fire.

³⁰ Transcript of summing-up, T2-11, L6-8 (**CAB 17**) and T2-14, L38-42 (**CAB 20**).

³¹ Transcript of summing-up, T17, L36-40 (**CAB 23**).

³² Transcript of Crown's closing address, T2, L1 to T6, L6 (**AFM 165-169**).

35. The defence counsel contended that the appellant's admissions were so unreliable, by reason of his unmedicated severe paranoid schizophrenia, that the jury could not be satisfied that his admissions that he started the fire and did so for the relevant purpose were accurate and truthful.³³

No *Bromley* direction given

36. The trial judge delivered the summing-up on the afternoon of the third day of the trial.³⁴ A *Bromley* direction was not sought, and was not given. The jury returned a verdict of guilty on the morning of the fourth day of the trial.³⁵

The appeal to the Court of Appeal

37. The appellant appealed his conviction on two grounds. First, there was a miscarriage of justice caused by the refusal of the primary judge to exclude the police interview. Second, there was a miscarriage of justice caused by the failure of the trial judge to give a direction in accordance with the decision in *Bromley*.
38. With respect to the first ground, the Court of Appeal concluded that the interviewing officers did not contravene s 422(2) or (3) of the PPRA because there were not objective external evidence and indicia to constitute reasonable grounds for a person in the position of the interviewing officers to suspect that the appellant was a person with impaired capacity.³⁶
39. With respect to the second ground, the Court of Appeal concluded that a direction of the kind given in *Bromley* was not necessary to avoid a perceptible risk of a miscarriage of justice because the features that might have affected the reliability of the appellant's evidence were evident to the jury.³⁷

³³ Transcript of defence closing address, T11, L6 to T18, L1 (AFM 175-182).

³⁴ Transcript of summing-up (CAB 7-31).

³⁵ Transcript of entry of verdict (CAB 32-34).

³⁶ AJ, [78]-[80] (CAB 56-57).

³⁷ AJ, [101]-[102] (CAB 62).

Part VI: Argument

Ground 1

The Court of Appeal’s construction of s 422(1) and (3) of the PPRA

40. The Court of Appeal construed the expression ‘reasonably suspects’ in s 422(1) of the PPRA as requiring an interviewing officer to have both a *subjective* suspicion that the interviewee is a person with impaired capacity and to hold that suspicion on *objective* grounds.³⁸
41. The effect of that construction is that an interviewing officer is only required, under s 422(1), to comply with the safeguards in s 422(2) if the officer subjectively has the relevant suspicion *and* there are objective grounds for the suspicion.
42. The Court of Appeal construed the expression ‘apparent’ in s 422(3) of the PPRA as referring to a *wholly objective* state of affairs.³⁹ By that construction, an interviewing officer must suspend questioning and comply with the safeguards in s 422(2) if, during questioning, it becomes *objectively* apparent that the interviewee is a person with impaired capacity, *regardless* of the officer’s subjective state of mind.

Whether the Court of Appeal’s construction of s 422(1) and (3) is correct

43. The Court of Appeal’s construction of the expression ‘apparent’ in s 422(3), as referring to a wholly objective state of affairs, is correct.
44. In light of the Court of Appeal’s conclusion about the construction of s 422(3), it is unnecessary, on this appeal, for there to be a determination of the correct construction of the expression ‘reasonably suspects’ in s 422(1).

³⁸ AJ, [30] (CAB 49).

³⁹ AJ, [32] (CAB 49).

45. That is because, for the reasons advanced below, it was ‘apparent’, by the end of the preliminary part of the interview, that the Appellant was a person with impaired capacity.

The Court of Appeal misconstrued the expression ‘person with impaired capacity’

46. The Court of Appeal misconstrued the expression ‘person with impaired capacity’ as used in s 422(1) and (3) and defined in Schedule 6. In dismissing the first ground, the Court of Appeal said:⁴⁰

[78] At the end of the preliminary questions, **there were not objective external evidence and indicia** to constitute reasonable grounds for a person in the position of the interviewing officers to suspect that the Appellant was a person whose capacity to look after or manage his own interests was impaired because of an obvious disorder, illness or disease. (Emphasis added)

47. The reference to the absence of ‘objective external evidence and indicia’ appears to be a reference to the Court of Appeal’s construction of the phrase ‘disorder... that affects each of a person’s thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour’ in the definition of ‘person with impaired capacity’. At AJ [69] (**CAB 55**), the Court of Appeal said:⁴¹

[69] The appellant’s counsel submitted it was obvious the appellant had a relevant disorder because he told the police officers about his earlier diagnosis. The fact of a diagnosis is relevant. To satisfy paragraph (b) of the definition of person with impaired capacity, the diagnosed disorder must relevantly affect a person’s thought processes, perceptions, emotions, judgment, or behaviour. **The evidence of the interviewing officers is that they observed no relevant consequence of the appellant’s diagnosis.** (Emphasis added)

48. By this passage, it appears that the Court of Appeal construed this phrase to require evidence that the appellant’s disorder was affecting his thought processes, perceptions of reality, emotions or judgment, or behaviour at the time of the

⁴⁰ AJ, [78] (**CAB 56**).

⁴¹ AJ, [69] (**CAB 55**).

interview. That construction is consistent with the primary judge's construction of this phrase.⁴²

49. That construction is wrong. Construed correctly, paragraph (b) of the definition refers to a 'disorder' that, by virtue of the nature of that disorder, affects a person with that disorder in the way described in the latter part of the definition. It does not require evidence that the disorder is operating, in an observable way, on the actual interviewee at the time of the interview in one of the listed ways.
50. Even if the Court of Appeal's reference to the absence of 'objective external evidence and indicia' was not a reference to paragraph (b) of the definition, but to the definition of 'person with impaired capacity' as a whole, the Court was wrong to:
 - a. require there to be 'objective external evidence and indicia' that the appellant was a person with impaired capacity because the statements he made during the preliminary part of the interview (as to the fact of his diagnosis and his unmedicated state) and the facts and circumstances known to the interviewing police when the interview commenced was a sufficient basis for it to be 'apparent' that he was a person with impaired capacity; or alternatively
 - b. conclude that there was no 'objective external evidence and indicia' that the appellant was a person with impaired capacity because those statements, and the facts and circumstances known to the interviewing police, amounted to 'objective external evidence and indicia' that he was such a person.
51. The misconstruction caused the Court of Appeal to wrongly dismiss the appeal. The Court accepted the evidence of the interviewing officers that they did not observe the appellant's disorder to be affecting his thought processes, perceptions, emotions, judgment or behaviour during the interview. And, on that basis, it concluded there were not objective external evidence and indicia that he was a person with impaired capacity.

⁴² AJ, [52] (CAB 52-53).

The legal and practical consequences of the Court of Appeal's construction of s 422(1) and (3) for the question of admissibility of the police record of interview

52. On its construction of the expression 'apparent' in s 422(3), the Court of Appeal ought to have concluded that, after the preliminary part of the interview, the police interview was conducted in contravention of s 422.
53. At the end of the preliminary part of the interview, it was apparent the appellant was a person with impaired capacity. By that part of the interview, it was apparent, because of things the appellant said, that he had 'an obvious disorder... that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour'. That is because:
 - a. the appellant suffered from severe paranoid schizophrenia. Severe paranoid schizophrenia is a 'disorder... that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour'; and
 - b. the disorder was 'obvious' because the appellant told the interviewing officers he had it.
54. It was also apparent, because of things the appellant said, that his capacity to look after or manage his own interests was impaired because of his severe paranoid schizophrenia. In this context, 'interests' must include legal interest in avoiding self-incrimination. 'Impaired' means negatively impacted or affected.
55. The appellant made statements to the following effect:
 - a. the appellant's severe paranoid schizophrenia was usually managed by medication. Two days earlier, his medication dosage had been increased. However, he had not actually taken any of his medication for three days;
 - b. he had been negatively affected by his non-compliance with his medication. A mental health case worker had apparently been concerned about him and had been trying to contact him in the preceding two to three days because,

while unmedicated in that period, he had been “runnin’ amok. Going stupid. Being an idiot”; and

- c. while non-compliant with his medication, he had driven from Rockhampton to Brisbane (with no explanation as to why he did that rather than attend a Rockhampton police station) to confess to a serious criminal offence for which he was not a suspect.

56. It follows that s 422(3) required the interviewing officers to suspend questioning and comply with s 422(2). This would have required the interviewing officers to locate a support person, such as the appellant’s mental health case worker or other appropriate person, and attempt to arrange for the appellant to speak to that person in private, and to ensure that person was then present for any further questioning. This was not done. The balance of the police interview was conducted in contravention of s 422(2).
57. The Court of Appeal’s conclusion that there was not a contravention of s 422(2) meant that it did not consider whether the primary judge ought to have excluded the police interview or whether the refusal to exclude the interview caused a miscarriage of justice.
58. If the appellant’s contention that there was a contravention of s 422(2) is upheld on this appeal, the appellant submits that the matter should be remitted to a trial judge for reconsideration of the question of admissibility. That is because there is material on the court file (but which was not tendered in evidence on the exclusion argument before the primary judge and is therefore not before this Court) which is relevant to the exercise of the discretion to exclude the police interview. That material is relevant to the appellant’s psychiatric condition in the days prior to and immediately after his police interview and includes psychiatric assessments of him while in custody in the days after the police interview. The material is relevant to a consideration of the cogency of the appellant’s admissions, and the question of fairness more broadly.
59. In the event the appellant’s contention that there was a contravention of s 422(2) is upheld and this Court considers the question of admissibility can be determined

without recourse to that material, the following paragraphs set out the matters which would weigh in favour of exclusion of the police interview.

60. Illegality or impropriety on the part of law enforcement officers that results in the making of a confession enlivens a discretion to exclude the confession on public policy or unfairness grounds.⁴³
61. Both grounds support a finding that the interview ought to have been excluded. On the one hand, the offence of murder is serious and the interviewing officers gave evidence at the hearing of the exclusion argument that they did not suspect the appellant was a person with impaired capacity at any point during the interview.
62. On the other hand, even if the contravention was not deliberate or reckless, the interviewing officers ought to have recognised that it was apparent the appellant was a person with impaired capacity and suspended questioning.
63. Further, even without reliance on the material referred in [58] above, there is real doubt that the appellant's statements about his purpose in lighting the fire were cogent. The appellant said he did it because of previous attempts by the occupier of the house to grab him. However, he described those events while his severe paranoid schizophrenia was unmedicated, his descriptions of them are suggestive of some delusional thought processes and there is no other evidence that those events occurred at all or, if they did, that they actually were operating on his mind to cause him to desire to inflict personal vengeance on the deceased.
64. The ease with which the law might have been complied with is another matter favouring exclusion. It would have been a relatively simple matter for the interviewing officers to arrange for an appropriate support person to attend.
65. Finally, an examination of the PPRA shows there was a deliberate intent on the part of the legislature to provide safeguards for particularly vulnerable persons wanted for questioning by police in relation to indictable offences.⁴⁴ The appellant

⁴³ *R v Ireland* (1970) 126 CLR 321; *Bunning v Cross* (1978) 141 CLR 54.

⁴⁴ Section 5(e) of the PPRA provides that one of the purposes of the Act to ensure fairness to, and protect the rights of, persons against whom police officers exercise power under the Act. Chapter 15,

was such a vulnerable person. It was important that the interviewing police activated those safeguards, but they did not. This factor also favours exclusion.

66. For the foregoing reasons, there ought to be a finding that the police interview was not admissible at trial. The admission of the interview caused a miscarriage of justice because it could realistically have affected the reasoning of the jury to its verdict of guilty.⁴⁵

Ground 2

67. Having not been excluded, the police interview ought to have been the subject of a *Bromley* direction. The Court of Appeal erred in concluding, at AJ [101]-[102] (**CAB 62**), that a *Bromley* direction was not necessary to avoid a perceptible risk of a miscarriage of justice in the trial.

68. In *Bromley*, Gibbs CJ explained at 319:

If it appears that **a witness whose evidence is important has some mental disability which may affect his or her capacity to give reliable evidence**, common sense clearly dictates that **the jury should be given a warning, appropriate to the circumstances of the case, of the possible danger of basing a conviction on the testimony of that witness unless it is confirmed by other evidence**. The warning should be clear and, in a case in which a lay juror might not understand why the evidence of the witness was potentially unreliable, it should be explained to the jury why that is so. There is no particular formula that must be used; the words used must depend on the circumstances of the case. (Emphasis added)

69. Brennan J expressed the position in the following way at 325:

When a warning is needed to avoid a miscarriage of justice, it must be given; when none is needed to avoid a miscarriage, none need be given. The possibility of a miscarriage of justice is both the occasion for the giving of a warning and the determinant of its content. It cannot be said that a conviction on the uncorroborated evidence of a person suffering from a mental disorder, whatever the kind or degree of the disorder may be, is generally, in the absence of a warning pointing out the danger, a miscarriage of justice. **If the mental disorder is quite trivial and transient, it may be quite irrelevant to the credit which might properly be given to the witness's evidence. And if the nature, severity and significance of the witness's mental disorder is**

Part 3 provides for a number of safeguards to ensure the rights of and fairness to persons questioned for indictable offences. Division 3 contains special requirements for the questioning of particular persons: Aboriginal people and Torres Strait Islander people, children, persons with impaired capacity and intoxicated persons.

⁴⁵ *Brawn v The King* [2025] HCA 20, [10].

deposed to by persons qualified to do so, that may bring home to the jury more vividly and more authoritatively than a judicial warning on the danger of acting upon the witness's evidence without corroboration.

It follows that there is no universal rule of practice that a trial judge should give a warning - much less a warning according to a prescribed formula - whenever a jury might convict on the uncorroborated testimony of a witness who is suffering or who has suffered from some form of mental disorder. It may be that the circumstances will require some caution to be given - not because of a particular rule of practice affecting witnesses suffering from some form of mental disorder but because a warning is necessary to put the defence case fully and fairly. Perhaps no more can be said than this: **when the danger in acting upon the evidence is real and substantial and when the conduct of the trial and evidence as to the witness's mental disorder are such that the jury may not have fully perceived or the jury's attention may have been diverted from the danger, a warning should be given.** (Emphasis added)

70. Having regard to Gibbs CJ's observations, a warning was plainly required in the appellant's trial.
71. First, the appellant's evidence, in the form of his police interview, was important. Indeed, his evidence was the *only* evidence that he set the fire as an act of vengeance. That admission was the only evidence in respect of the fourth element of the murder charge, that is, that he did the act which caused death in the prosecution of an unlawful purpose. In this way, his evidence was not just important; it was critical. If the jury did not accept that evidence, or had a reasonable doubt about it, its duty was to acquit the appellant of murder.
72. Second, it was apparent that the appellant had been diagnosed with severe paranoid schizophrenia and was non-compliant with his medication at the time of his police interview and that these matters may have affected his capacity to give reliable evidence, as the Court of Appeal found at AJ [101] (**CAB 62**). So much was apparent from the statements made by the appellant in the preliminary part of the interview.
73. There was a possible danger associated with acting on the appellant's admissions, particularly his stated purpose for lighting the fire, made in the circumstances they were, to convict him of murder where there was no other confirmation of his state of mind.

74. The considerations articulated by Brennan J, relevant to the question of when a warning is needed, serve to reinforce that a warning was required in this trial.
75. First, the appellant's disorder was neither trivial nor transient. Severe paranoid schizophrenia is a serious psychiatric disorder and the appellant had suffered from it for at least the three years since his diagnosis.
76. Second, the nature, severity and significance of the disorder was not deposed to by a person qualified to do so. There was no expert evidence relevant to the appellant's disorder, or how it may have affected the reliability of his admissions and specifically the admission that he had a particular state of mind at the time he lit the fire, led in the trial.
77. The above circumstances required a warning to be given. The direction ought to have been in terms which warned the jury of the possible danger of basing a conviction on the appellant's evidence in circumstances where the only evidence in respect of the fourth element of the murder charge came from his own admissions. The jury ought to have been warned, as by the trial judge in *Bromley*, to approach the appellant's evidence with considerable caution and to scrutinise his evidence with special care before acting on it to convict him of murder.
78. The need for a warning was made more acute by the prosecutor's address to the jury on this issue. With respect to the question of the significance of the appellant's disorder, the learned prosecutor:⁴⁶
 - a. cautioned the jury against making assumptions about people with a diagnosis of paranoid schizophrenia;
 - b. emphasised the absence of medical evidence about the diagnosis; and
 - c. told the jury they could not speculate about what that evidence might have been.

⁴⁶ Transcript of Crown's closing address, T15, L9-16 (AFM 168).

79. In this way, the danger in acting on the appellant's admissions was real and substantial and the prosecutor's submissions may have diverted the jury's attention from that danger.
80. Without the warning, defence counsel's submissions about the caution with which the jury should approach the appellant's admissions, set out at AJ [93]-[94] (**CAB 59-60**), did not carry the court's imprimatur. It was insufficient that reference was made by the trial judge to defence counsel's submissions; the jury ought to have had the benefit of a direction which had the authority of the judge's office behind it.⁴⁷
81. The Court of Appeal concluded that a warning was not required because the features that might have affected the reliability of his evidence (namely the appellant's diagnosis, his non-compliance with medication and his statements about what happens when he does not take his medication) were evident to the jury: AJ [101]-[102] (**CAB 62**).
82. But that is not to the point, or, at least, is not determinative of the question whether the circumstances of the case required a warning. There is no suggestion in *Bromley* that a warning of the kind given by the trial judge in *Bromley* is not required if the features which might affect reliability are evident to a jury. Indeed, in *Bromley*, the High Court concluded a warning was required despite the fact that the features which might have affected the relevant witness' evidence (namely his diagnosis of schizophrenia and an episode of mental disturbance on the night of the crime) were evident to that jury.⁴⁸
83. The purpose of the warning is not, or is not only, to identify the *features* which might affect reliability; it is to warn the jury of the possible *danger* of acting on the testimony of an important witness, if it appears that the witness has some mental disability which may affect his or her capacity to give reliable evidence, if it is not confirmed by other evidence.

⁴⁷ See *Domican v The Queen* (1992) 173 CLR 555 at 561-562.

⁴⁸ *Bromley*, at 319 and 322.

84. That is what was not done, but ought to have been done, in the present case. The omission of a *Bromley* direction caused a miscarriage of justice.

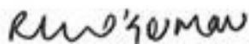
Part VII: Orders sought

85. The appellant seeks orders that: (a) the appeal be allowed; (b) the order of the Court of Appeal dismissing the appeal against conviction be set aside; and (c) in its place, that the appeal to the Court of Appeal be allowed, the appellant's conviction be set aside and there be a new trial.

Part VIII: Estimate of oral argument

86. The appellant estimates the presentation of his oral argument will take one hour.

Dated: 30 July 2026



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ANNEXURE TO APPELLANT'S SUBMISSIONS

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date or dates
1.	<i>Police Powers and Responsibilities Act 2000</i> (Qld)	5 September 2019 to 20 September 2019	s 422 schedule 6, definition of 'person with impaired capacity', 'reasonable suspicion', 'support person'	Act in force on the date of police interview	14 September 2019: date of police interview
2.	<i>Criminal Code</i> (Qld)	7 May 2019 to 25 February 2020	s 302	Act in force on the date of the offence	15 August 2019: date of offence