



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: B48/2026
File Title: Bradshaw v. The King
Registry: Brisbane
Document filed: Form 27D - Respondent's Submissions
Filing party: Respondent
Date filed: 27 Aug 2026

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

BETWEEN:

DAVID ALAN BRADSHAW
Appellant

and

THE KING
Respondent

RESPONDENT'S SUBMISSIONS

Part I: Certification

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

Part II: A concise statement of the issues

2. Whether the CA's construction of s422(1) and (3) of the PPRA¹ is correct?
3. What are the legal and practical consequences of that construction on the admissibility of a police record of interview?
4. Whether the Court of Appeal erred in finding the trial judge's failure to give a Bromley direction² did not result in a miscarriage of justice?

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: Facts, narrative and chronology contested by the respondent

6. In paragraphs 2, 14, 53(a), 54, 55(a), 63, 72, 75, 78, 82 the appellant refers to his having been diagnosed with or suffering from severe paranoid schizophrenia. The only evidence was the interview, which contained statements by the appellant of his belief that he had severe paranoid schizophrenia, and that he was not fully taking his medication. He had been diagnosed three years before his interview.³ Despite repeated adjournments of the exclusion application for that purpose,⁴ no admissible evidence was ever placed before the court.
7. In the CAB, AFM and appellant's outline there is reference to delusions or delusional statements by the appellant. The appellant used the word "delusional" once and "delusion"

¹ Police Powers and Responsibilities Act 2000 (Qld).

² A direction of the kind given in *Bromley v The Queen* (1986) 161 CLR 315.

³ AFM 11 lines 30-34.

⁴ Hearing on 19 November 2021, AFM 104 lines 33-44. Hearing on 14 March 2022 AFM 108 line 1 to 110 line 13. Hearing 14 March 2022, AFM 114 lines 30-35, AFM 115 lines 20-42, AFM 118 lines 30-42, AFM 120 lines 1-15, AFM 122 lines 1-10, AFM 123 line 39, AFM 124 lines 1-25, AFM 125 lines 3-46. Hearing on 2 August 2022, AFM 129 lines 14-18.

once in his interview. He described the green flare incident as "delusional" in contradistinction to lighting the fire.⁵ He described sex items as "delusion stuff" while accurately stating they could be found in the wheelie bin he describes.⁶ All other references to the appellant being deluded depended on interpretation of the appellant's interview.

8. The respondent accepts and adopts paragraph 8 -13, 20⁷-22, 24-26,28⁸,29-32, 34, 37 and 38 and also 14, 23, 27, 28, 33,35, 36 and 39 with qualification.
9. {14}.⁹ The appellant states he "believes"¹⁰ he is suffering from "paranoid schizophrenia". He then describes it as "severe".¹¹ The appellant never states he is diagnosed with paranoid schizophrenia, which is assumed by the police. There was no medical evidence.⁴ In the preceding pages of his interview, the appellant demonstrated he was completely coherent and oriented as to place, time and circumstances and had full understanding.¹²
10. {23}. The appellant applied for exclusion because:
 - 10.1. Interviewing police had breached s422.¹³
 - 10.2. Interviewing police breached schedule 9 regulation 24(2) of the PPRR.^{14,15}
 - 10.3. It would otherwise be unfair or contrary to the public interest to admit the interview.¹⁶
11. {27}. The interviewing police did not form a suspicion despite monitoring the appellant throughout the interview for signs that he was a person with impaired capacity.¹⁷ The primary judge accepted their evidence.¹⁸
12. {28}. The primary judge correctly framed the question as whether the appellant was reasonably suspected by questioning police to be a person with impaired capacity.¹⁹ The primary judge accepted the evidence of police that the appellant's schizophrenia had not been triggered, and he was acting rationally, not incapacitated and not suffering an acute psychotic

⁵ AFM 47 line 30-37.

⁶ AFM 48 line 47 to 49 line 12,167 [7].

⁷ Is accepted. The primary judge concluded this enlivened a discretion to exclude AFM 161[45] but declined to exclude 161[45]-163[54]. This finding was not challenged on appeal.

⁸ Making findings in terms of the definition of "person with impaired capacity" in the PPRA.

⁹ "{ }" with reference to this paragraph of the appellant's outline.

¹⁰ AFM 10 line 51.

¹¹ AFM 10 line 56.

¹² AFM 6-10.

¹³ AFM 160 [41]-[42], 162[47].

¹⁴ Police Powers and Responsibilities Regulations 2012 (Qld).

¹⁵ AFM 163 [52]-[54].

¹⁶ AFM 162 [47]-[51].

¹⁷ AFM 156 [23] to 160 [16].

¹⁸ AFM 157 [28] to 159 [39], [41]-[42].

¹⁹ AFM 156 [23]-[25].

episodes at any time during the interview.²⁰ This accorded with the views of the primary judge who watched the entire interview.²¹

13. {33}. The trial judge emphasised that the jury had to be satisfied beyond reasonable doubt that the admissions were true, and that the defence case was that they were not.²²

14. {35}. The defence case was more nuanced, seeking to rely on and dismiss aspects of the interview in equal measure. There were five main planks to the defence case.

14.1. The interview was not totally unreliable, but there was no way to untangle fantasy from reality.²³ In those respects relied upon by the prosecution, the interview was too unreliable to support the prosecution case because of the appellant's diagnosis of severe paranoid schizophrenia, not taking his medication, fatigue from his drive to Brisbane and tendency to rant and rave, and other delusions.²⁴

14.2. The interview was reliable to the extent that the appellant lit the fire at 1:00-1:30 am, which raised a doubt that he caused the fatal fire, which was not reported until 2:26 am.²⁵

14.3. Mr Peterson may have started the fire to kill himself.²⁶

14.4. The interview was reliable to the extent that the appellant's actions in starting the fire and his antecedent roaming the streets for hours demonstrated there was no deliberation in his actions and setting the fire was an end in itself, not the achievement of severe personal violence.²⁷

14.5. These portions (14.2 and 14.4) of the interview are also reliable in raising the issue of accident.²⁸

15. {36}. It is accepted that Bromley was not referred to. It is submitted that Bromley does not identify a single form of direction.

16. {39}. The CA concluded that features that might have affected reliability were evident to the jury because of the combined effect of the evidence before the jury, the addresses of counsel, and the directions given by the trial judge.²⁹ Consequently, further directions of the kind given in Bromley and GW were not necessary.

²⁰ AFM 157 [31]-[32].

²¹ AFM 157 [28].

²² CAB 11 lines 4-16, 36-40, 43-47, 13 lines 19-22, 14 lines 33-44, 14 line 45-15 line 25, 16 lines 11-17, 29-36, 18 lines 35-40, 21 lines 1-33, 23 line 36 to 24 line 7, 26 line 39 to 27 line 47.

²³ AFM 178 line 20.

²⁴ AFM 175 line 12 to 182 line 1.

²⁵ AFM 182 line 10 to 183 line 46.

²⁶ AFM 184 line 5 to 184 line 30, 187 line 35.

²⁷ AFM 185 line 47 to 187 line 19.

²⁸ AFM 187 line 16-33.

²⁹ CAB 62 [101]-[102].

17. It is not accepted that there was a preliminary part of the interview, as asserted by the appellant.³⁰ The interview was a single process during which police continuously monitored the appellant for signs he was of impaired capacity.³¹

Part V: statement of argument in answer to the argument of the appellant.

(i) Is the Court of Appeal's construction of s 422(1) and (3) of the PPRA correct?

18. Ground 1. The respondent accepts and adopts paragraphs 40, 41, 43, and 48.
19. It is submitted s422 should be construed in the context of:
- 19.1. A police officer's obligation to take a person before a court upon arrest.³²
- 19.2. Limitations on detention of a person for questioning.³³
- 19.3. By s26 of the Criminal Code 1899 (Qld), the appellant was presumed to be of sound mind until the contrary is proved.
- 19.4. The common law judicial discretion to exclude evidence or stay proceedings is preserved.³⁴
- 19.5. The issues of unsoundness of mind, unfitness for trial and diminished responsibility could have been referred to the Mental Health Court by the appellant or his lawyers³⁵ or determined by a separate jury,³⁶ leading to suspension or discontinuance of the prosecution.³⁷ No reference was made, or jury determination sought.³⁸
- 19.6. The clear legislative intention expressed in s422 is to impose an obligation on the police, which can be met by any police officer, regardless of rank, level of experience, or absence of medical qualifications.³⁹
- 19.7. The PPRA does not purport to replace the common law of Australia, e.g. ss 9 and 10, with the consequence that:
1. The appellant had and was entitled to exercise personal autonomy⁴⁰ such as by refusing to have a support person.⁴¹

³⁰ Paragraphs 14, 17, 45, 46, 50, 52, 53 and 72

³¹ CAB 54 [61]-[64] e.g. AFM 15, 161 [45]-163 [54].

³² Section 393 PPRA.

³³ Section 403 PPRA.

³⁴ Section 10 of the PPRA.

³⁵ Section 110 of the Mental Health Act 2016 (Qld).

³⁶ Section 613 and 645 of the Criminal Code 1899 (Qld).

³⁷ Sections 119-124 of the Mental Health Act 2016 (Qld).

³⁸ Reference leads to a notified automatic suspension of criminal proceedings. Sections 616-617 of the Mental Health Act 2016 (Qld), see RFM 3-18.

³⁹ In this case none of the police had any formal qualifications, AFM 81 lines 11-14, AFM 90 lines 26-34, and each assessed the appellant as acting rationally and unimpaired at the time of the interview: AFM 81 line 24, AFM 82 line 4, AFM 83 line 19, AFM 84 lines 18-20, AFM 91 line 13, AFM 92 line 22, AFM 93 lines 1-7, lines 28-46, AFM 96 lines 5-8. Each had field experience: AFM 82 lines 6-15, LFM 84 line 22.

⁴⁰ See *Hunter and New England Area Health Service v A* (2009) 74 NSWLR 88 at [16].

⁴¹ This line of authority was not drawn to the CA attention perhaps leading to the obiter remarks at CAB 46 [20].

2. The appellant is presumed to have capacity to exercise that autonomy.⁴²
 3. His suffering from schizophrenia, without more, focuses attention on whether the evidence shows the appellant was precluded from achieving sufficient understanding to refuse the presence of a support person.⁴³
 4. The belief of an individual, such as the appellant, that he has paranoid schizophrenia is of no evidential value. It is inadmissible⁴⁴ and of no weight.⁴⁵
 5. As correctly held by the primary judge, such evidence was relevant; it put the interviewing police on notice.⁴⁶
 6. A person has the legal right to confess to any offence and co-operate fully with the administration of justice. The appellant was such a person.⁴⁷
20. Construed in context, s422 is not concerned with providing a basis for excluding evidence but with providing a practicable framework in which police can consistently recognise the need to provide an interviewee with access to a support person.⁴⁸
21. Section 422 is in Chapter 15, Part 3, Division 3 of the PPRA. Section 415(1) prescribes that Part 3 applies only to a "relevant person", that is, a person "...in the company of a police officer for the purpose of being questioned as a suspect about his or her involvement in the commission of an indictable offence."
22. Section 422(1) prescribes that section 422 only applies if:
- 22.1. a police officer wants to question a relevant person
 - and**
 - 22.2. the police officer reasonably suspects the person is a person with impaired capacity.
- The definition of "reasonably suspects" is "suspects on grounds that are reasonable in the circumstances."
23. The first limb of s422(1) will always be satisfied once questioning of a relevant person commences. It follows that the trigger for s422(3) is the satisfaction of the second limb of s422(1). It is submitted "apparent" should be construed as referring to when a police officer forms a reasonable suspicion under the second limb because s422 cannot apply until then. That is, "apparent" is not concerned with the state of mind of the police officer, subjective

⁴² Hunter's case at [23].

⁴³ Secretary, Department of Health and Community Services v JWB (1992) 175 CLR 218 per Mason CJ, Dawson J, Toohey J and Gaudron J at 237.

⁴⁴ Makita (Aust) Pty Ltd v Sprowles (2001) 52 NSWLR 705 per Heydon JA at 743 [85].

⁴⁵ Dasreef Pty Ltd v Hawchar (2011) 243 CLR 588 per Heydon J at 624[93], 628[101], 637[124].

⁴⁶ AFM 160 [42].

⁴⁷ AFM 70 lines 24-25.

⁴⁸ See PPRA s5.

or objective, but when that state of mind is formed. At that moment the police officer must, in accordance with s422(3), suspend the interview and comply with s422(2).

24. {42}. It was in this sense that the CA⁴⁹ referred to "apparent" as referring to an "objective state of affairs". Likewise, the CA held nothing turned on the distinction between a reasonable suspicion arising before or during questioning.⁵⁰ There is no logical reason why a different test would be prescribed depending on whether questioning had started.
25. It follows that things said and done by an interviewee about themselves will never be sufficient to make it apparent that the person is a person with impaired capacity within the meaning of s442(3).
26. {44}. It is submitted the CA's construction of s422(1) and (3) cannot be divorced from its associated construction of the definitions of "reasonable suspicion"⁵¹ and "person with impaired capacity" and "support person".⁵²
27. {45}. Consequently, while it is correct that satisfaction of s422(3) invokes s422(2), that is only because s422(3) can only be satisfied once both limbs of s422(1) have been satisfied. Not because incapacity was apparent without a subjective suspicion being held by the interviewing police officer, as submitted by the appellant.
28. {46}-{47}. There was no error in the Court of Appeals' approach. At [78]⁵³ the CA was applying principles concerning "reasonable suspicion" as elucidated in paragraphs [67] and [68].⁵⁴ There must be sufficient factual grounds in the circumstances as they appear to the police officer to provide grounds which are reasonable for that police officer's subjective suspicion. The CA was not purporting to incorporate those requirements into the definition of a "person with impaired capacity" but applying the concept of suspicion to that definition.
29. {49}. The CA construction was correct. The definition refers to a "person with impaired capacity", not a "person of impaired capacity". Further, the definition captures impairment only where there is an "obvious" loss, or "obvious" disorder, illness, or disease. When read with what is necessary to form a suspicion, there must be a factual basis to support that suspicion. At the time of the interview, a basis for forming a suspicion must be obvious as a matter of fact. It is not sufficient that a person has a loss, disorder, illness, or disease that is not observable.

⁴⁹ CAB 49 [32].

⁵⁰ CAB 62 [105].

⁵¹ CAB 49 [30].

⁵² CAB 45 [15]-46 [17].

⁵³ CAB 56.

⁵⁴ CAB 55.

30. {50(a)}. The CA made no error. In the CA, the appellant at no time argued that "apparent" incapacity in s422(3) meant that section s422(1) need not be complied with. The appellant argued that reasonable suspicion under s422(1) was an objective, not a subjective, test, and that the interviewing police ought to have held reasonable suspicion.⁵⁵ At [68]⁵⁶, the CA considered whether the police held a subjective suspicion on grounds that were reasonable in the circumstances. The CA was not considering, and was not asked to consider, whether "apparent" incapacity under s422(3) required "objective external evidence and indicia" such as would support a subjective suspicion on grounds that were reasonable in the circumstances.
31. {50(b)} and {51}. The CA made no error. As outlined, the issue was whether the interviewing police subjectively held a suspicion of incapacity on grounds which were reasonable in the circumstances. When the requirements for forming a suspicion are combined with the "obvious" prescriptions in the definition of "person with impaired capacity," suspicion must necessarily be based on "objective external evidence and indicia". As the CA correctly held, the interviewing police and the primary judge did not observe external evidence or indicia, and the interviewing police consequently formed no suspicion the appellant was a person of impaired capacity.
32. It is submitted that the CA's construction is correct and that no miscarriage of justice occurred.

(ii) The legal and practical consequences of that construction for the question of admissibility of the police record of interview?

33. The CA's construction is supported by the definition of "person with impaired capacity" which:
- 33.1. uses "with" instead of "of"
 - 33.2. requires impairment which is "obvious"
 - 33.3. is not restricted to impairment consequence upon disorder, illness or disease
34. The CA construction leads to consistent application of other provisions in which "person with impaired capacity" is used in the PPRA.⁵⁷
35. The CA construction also leads to a practically just application of s422 because on that construction:

⁵⁵ CAB 55 [55]-[56].

⁵⁶ CAB 55.

⁵⁷ See ss 428(3)(b), 447(1)(a)(ii), 452(1), 453(2), 455(3), 461(3)(d), 480(1), 508(3)(a), 521(3)(b) and (4), 631(1) definitions of "support person" paragraph (c).

35.1. The police obligation to monitor for signs of incapacity is not linked to knowledge of a diagnosis.

35.2. As in this case, a statement of a belief by a person that they were suffering from a mental disorder did not trigger obligations under s422(2) but did put the police on notice to monitor for grounds for suspicion which were reasonable in the circumstances in compliance with s422(1) and (3).

35.3. By contrast, a construction focusing on theoretical characteristics of disorder, a "person of impaired capacity" would trigger no obligations in the absence of evidence of a diagnosis. On this construction, s422 could not apply in this case.

35.4. Likewise, if s422(1) were construed as setting a purely objective test, the focus of the provision would shift to compliance assessed after the event, rather than imposing obligations at the time of the interview.

36. As construed by the CA, s422(1) and (3) prescribe a practicable four-step process easily applied by any police officer in any circumstances:

36.1. A police officer is or is not questioning a relevant person.

36.2. There are, or there are not, objective grounds which are reasonable in the circumstances for suspecting the interviewee is a person with impaired capacity.⁵⁸

36.3. The interviewing police officer does or does not form a subjective suspicion in the circumstances that they are questioning a person with impaired capacity.⁵⁸

36.4. The moment the police officer forms a reasonable suspicion on grounds that are reasonable in the circumstances, the interview must be suspended, and s422(2) complied with.⁵⁹

37. If s422(3) is not construed as applying only after s422(1) is satisfied, s422(2) would have an unrestricted application when apparent incapacity is present during questioning but not before. It would apply regardless of the offence being investigated, whether the person is a suspect, and whether the police officer is conversing with or questioning a person.

38. The legal and practical consequences of the CA's construction of s422 are to:

38.1. During interviews, require police to remain vigilant for observable signs or indicia of impairment throughout the interview.

38.2. Confine s422 to its intended scope, seeking participation of a support person where obvious signs of incapacity are sufficient to create a reasonable suspicion.

⁵⁸ CAB 49 [30].

⁵⁹ CAB 49 [32].

38.3. Refocus exclusion applications to discretionary issues of substance, not technical noncompliance with s422.

39. {52} and {53}. It is submitted that the appellant, stating his belief that he had severe paranoid schizophrenia, did not establish he suffered from that disorder and, even if he did, the absence of expert evidence meant how it manifested in the appellant was unknown. Interviewing police could only rely on what the appellant told them.
40. {54}. In the absence of expert evidence, there was no evidential basis upon which the appellant's believed condition could be inferred to have impacted upon any capacity within the meaning of s422(1)(b).
41. {55}. Without expert evidence, the significance of not fully taking medication was unknowable. None of the factors identified demonstrates grounds reasonable in the circumstances for suspicion that the appellant was, at the time of the interview, a person with impaired capacity.
42. {56}. As outlined above, s422(3) only applies because s422(1) has been satisfied. Section 422(2) only applies because the police officer has formed a reasonable suspicion, not because incapacity is objectively apparent.
43. {57}. This is correct because the appellant did not raise the point. The primary judge did consider and reject exclusion on the ground of unfairness, should he be wrong in holding that s422 was not breached.⁶⁰
44. {58}. Paragraph 58 is incorrect. As outlined in paragraph 6, no admissible evidence was ever before the court despite repeated adjournments. If the appellant's construction is accepted, the appeal should be remitted to the CA.
45. {59}-{66}. It is submitted this court should not attempt to determine questions of discretionary exclusion. The primary judge has already made that determination, which has never been challenged. Further:
 - 45.1. The state of the evidence remains no higher than the appellant's belief that he had severe paranoid schizophrenia, he was not fully taking his medication,⁶¹ he had been diagnosed three years before his interview,⁶² behaviours which might be interpretational errors and use of delusion terminology twice in his interview. See Table 1 paragraph 7 below.

⁶⁰ AFM 162 [47].

⁶¹ AFM 10 lines 50-58.

⁶² AFM 11 lines 30-34.

45.2. Doubt is a jury issue. The appellant has never contended that the jury's verdict should be set aside because it was unreasonable or cannot be supported having regard to the evidence.

45.3. The appellant exercised his personal autonomy to proceed without any other person present;⁶³ there is no evidence rebutting his presumed capacity to do so.

46. It is submitted the appellant has not demonstrated the interview was wrongly admitted and no miscarriage of justice has been established.

Ground 2. The Court of Appeal erred in finding that the trial judge's failure to give a direction of the kind given in *Bromley v The Queen* (1986) 161 CLR 315 did not result in a miscarriage of justice.

47. The statements of principle contained in paragraphs 68 and 69 of the appellant's outline are accepted and adopted. The respondent accepts the appellant's assertion in paragraph 71.
48. A miscarriage of justice will have occurred if directions of the kind given in *Bromley* ought to have been given and failing to give those directions could realistically have affected the reasoning of the jury to verdict in the trial that occurred.⁶⁴ It is necessary to identify the different issues and directions in *Bromley*.
49. Table 1. Evidential/issues comparison:

	Bromley ⁶⁵	Appellant
1.	Carter sought out by police.	Appellant sought out police to confess.
2.	Carter was the only eyewitness to violence implicating Bromley in murder. ⁶⁶ His evidence was at the centre of the prosecution case. ⁶⁷	Admissions were a spontaneous narrative. ⁶⁸ Relied upon by the prosecution. ⁶⁹ The appellant's admissions only evidence actions (lighting the fire) and unlawful purpose (to inflict personal violence) supporting murder. ⁷⁰ Further that evidence, in particular the existence of that purpose, had to be accepted as true

⁶³ AFM 8 lines 1-3.

⁶⁴ *Brawn v The King* (2025) 99 ALJR 872 at [10].

⁶⁵ *Bromley v The Queen* (1986) 161 CLR 315.

⁶⁶ Per Gibbs J at 316-317, Mason J, Wilson J and Dawson J agreeing.

⁶⁷ Brennan J at 322.

⁶⁸ AFM 15 line 6 to 18 line 6.

⁶⁹ AFM 165.

⁷⁰ CAB 21 lines 3-33.

		beyond reasonable doubt, ⁷¹ and the defence case was that it was not true. ⁷⁰
3.	There was no evidence from other sources of an alternative narrative consistent with innocence.	Two competing narratives. Fatal fire not started by the appellant, ⁷² and the deceased committed suicide by starting the fire. ⁷³ Rejected by prosecution. ⁷⁴
4.	Carter's narrative controverted by Bromley's dock statement. ⁷⁴	Appellant's narrative not controverted or contradicted by other evidence. He neither gave nor called evidence.
5.	Clear independent evidence that Carter had schizophrenia. ⁷⁴ No medical evidence as to the nature, severity and significance of Carter's mental disorder. ⁷⁵	Only the appellant's narrative of belief he had severe paranoid schizophrenia, was not taking all his medication ⁷⁶ and his belief that he had been diagnosed with severe paranoid schizophrenia three years before. ⁷⁷ Narrative of appellant about how his believed condition affected him when medicated, unmedicated and affected by drugs or alcohol. ⁷⁸ Relied upon by the prosecution. ⁷⁹ Part of the defence case was that it was impossible to separate fantasy from reality. ⁸⁰ No medical evidence of diagnosis or about the significance of that disorder to the reliability of his narrative.
6.	Evidence of difference in state of Carter's mental health on night of alleged offence and how he presented as a witness. ⁸¹	No evidence that appellant's presentation during the interview was different from his presentation on the night of fire. His presentation was static.

⁷¹ CAB 14 lines 33-44.

⁷² AFM 183 line 42 to 184 line 3.

⁷³ AFM 184 lines 5-10.

⁷⁴ Gibbs CJ at 317.

⁷⁵ Brennan J at 325.

⁷⁶ AFM 10 lines 50-58.

⁷⁷ AFM 11 lines 30-34.

⁷⁸ AFM 10 line 51 to 11 line 59, 12 line 33, 13 line 5 to 14 line 1, 31 lines 21-40, 47 lines 29-37, 49 lines 1-29, 164 Admissions paragraph 7, 57 lines 36-47, 61 line 23, 69 lines 11-28.

⁷⁹ AFM 168 lines 9-16.

⁸⁰ AFM 181 line 38 to 182 line 1.

⁸¹ Gibbs CJ at 317.

7.	Independent evidence: Carter's suffering a mental health episode on the night to which his evidence related, including admission to a mental hospital. ⁸¹	No independent evidence appellant suffering mental health episode on night of interview. Only the appellant self-awareness of potential interpretational errors, green flare, ⁸² syphoning fuel, ⁸³ abnormal phone bill/bank account entries, ⁸⁴ sex items. ⁸⁵ The appellant describes the green flare incident and sex items incident using delusion terminology twice. ⁸⁶
8.	Details of effects of schizophrenia on Carter must have been apparent to jury through cross-examination of Carter. ⁸⁷	Details of effects of appellant's believed severe paranoid schizophrenia when medicated and unmedicated must have been apparent to the jury through questions asked by police. ⁷⁸
9.	Independent evidence that Carter's narrative of the crucial events was factually inaccurate. ⁸¹	Appellant speaks in interview of a large number of verifiable facts. ⁸⁸ Only one verifiable fact shown to be inaccurate: the bottle in the wheelie bin was a methylated spirits bottle, not a kerosene bottle. ⁸⁹ Relied upon by the prosecution. ⁹⁰
10.	Carter cross-examined, identifying delusion in his narrative (thought he saw the devil). ⁹¹	The appellant did not give or call evidence.
11.	Independent evidence: Carter at scene. ⁹²	Detail in appellant's narrative consistent with being at scene. ⁹³

⁸² The appellant described this as delusional at one point, AFM 47 line 35, but suggests he did see something like AFM 61 line 23.

⁸³ AFM 12 lines 33-45.

⁸⁴ AFM 31 lines 20-40.

⁸⁵ AFM 49 lines 1-12.

⁸⁶ AFM 47 line 47 to 49 line 47.

⁸⁷ Gibbs CJ at 319.

⁸⁸ For example, AFM 9, 10 lines 1-20, 11, 12 lines 18-20, 15 lines 1-38, 29 lines 38-58, 30 lines 45-51, 34 lines 17-35, 45 line 51 to 46 line 40, 48 line 45-59, 49 lines 31-36, 58 lines 30-33, 65 line 50, 164 admissions.

⁸⁹ AFM 49 lines 1-29, 164 Admissions paragraph 7.

⁹⁰ AFM 166 line 31 to 168 line 7.

⁹¹ Gibbs CJ at 319.

⁹² Gibbs CJ at 318.

⁹³ For example, AFM 17 lines 6-28.

12.	No evidence of Carter's functioning in the community.	Appellant's interview contained extensive evidence of living autonomously in the community for over 18 months. ⁹⁴
13.	Implicitly, Carter was motivated to distance himself from the offence by giving a false narrative.	Appellant specified clear reasons why he was motivated to exact revenge against the deceased, ⁹⁵ with a clear appreciation of the potential of loss of life from setting the fire. ⁹⁶
14.	Bromley's case was run on an all-or-nothing basis. Either Carter's narrative of the incident at the river was substantially accepted beyond reasonable doubt, or the prosecution case failed.	The defence case was that some of what the appellant said was true, the rest was unreliable and untrue, it was impossible to untangle fantasy from fact, and therefore they could not be satisfied beyond reasonable doubt of guilt on the portions upon which the prosecution case depended. ⁹⁷

50. In Bromley, Brennan J identified the issues as the risk of too much emphasis on Carter's appearance in the witness box without regard to his mental health issues.⁹⁸ In Bromley, the defence case did not depend on Carter's evidence being partially reliable. Both Gibbs CJ and Brennan J held the directions were adequate to bring home to the jury the risk of acting on Carter's unsupported evidence.⁹⁹ At 320 Gibbs CJ¹⁰⁰ held:

"This direction was sufficient to warn the jury of the possible danger of acting on Carter's evidence if it was not confirmed by other evidence. Later in his address the trial judge referred specifically to the evidence upon which the Crown relied in support of Carter's testimony."

51. In reaching this conclusion Gibbs CJ rejected the appellant's 'argument'¹⁰¹ that Carter's schizophrenia made his evidence so inherently unreliable it was necessary to direct that:

51.1. It would be dangerous to act upon it unless corroborated.

51.2. Explain what evidence was capable of amounting to corroboration.

52. Brennan J held 326:

⁹⁴ AFM 9, 48, 49, 59.

⁹⁵ AFM 38 lines 31-39 line 38.

⁹⁶ AFM 53 line 56.

⁹⁷ AFM 181 line 38-182 line 1.

⁹⁸ Brennan J at 326.

⁹⁹ Gibbs CJ at 320 and Brennan J at 326.

¹⁰⁰ Mason J, Wilson J and Dawson J agreeing.

¹⁰¹ Gibbs CJ at 318.

"But his Honour gave the jury a warning, directing their attention precisely to the danger of acting on Carter's evidence where it was unsupported by other evidence. No more was needed. The credibility of Carter was the chief issue in the case and the jury could not have failed to consider whether it was safe to act on his evidence nor, once it was pointed out to them, could they have failed to appreciate the danger of placing too much reliance on the appearance of Carter in the witness box."

53. At the appellant's trial there was no evidence of disparity in presentation. All evidence potentially bearing on the appellant's reliability was contained in his interview, and the parties contested the trial on the reliability of crucial aspects of it.
54. The appellant's case was that there were islands of truthful and reliable information, but it was impossible to untangle those, particularly those relied upon by the prosecution, from fantasy. The prosecution case was that specific portions of the interview, on which it depended, were truthful and reliable.
55. Table 2. Comparisons of directions given.

	Bromley	Appellant
1.	Danger that Carter might have been unreliable after particulars of his schizophrenia were elicited in cross-examination, including that he thought he saw the devil. ¹⁰²	The dangers of relying on the appellant's interview must have been apparent from the particulars of his condition contained in it.
2.		To establish murder, the prosecution must prove beyond reasonable doubt that the act which caused death (setting the fire) was done for the unlawful purpose of including personal vengeance ¹⁰³ and also that it was done in prosecution of that purpose. ¹⁰⁵ That evidence comes from what the appellant said in the interview, which can only be relied upon if it is true. ¹⁰⁴ The defence case was that it was not true, and it was for the prosecution to prove beyond

¹⁰² Gibbs CJ at 319.

¹⁰³ CAB 20 lines 44-49.

¹⁰⁴ CAB 21 lines 7-10.

		reasonable doubt that what was said was true. ¹⁰⁵
3.	Carter undoubtedly has a mental illness. ¹⁰⁶	Referred to by the trial judge in summarising cases for both parties. ¹⁰⁷
4.	Carter was more affected on the night than when he gave his evidence. ¹⁰⁸	The defence case is that what the defendant said to the police was unreliable; things were said that were plainly wrong or delusional, which affected his whole interview, and the jury could not accept it as a reliable account or as the truth. ¹⁰⁸ It is not for the appellant to prove the things said are clearly false as argued by defence counsel; it is for the prosecution to persuade they are true ¹⁰⁹ beyond reasonable doubt. ¹¹⁰
5.	There are important aspects in which he was mistaken, though not lying. ¹⁰⁶	No suggestion appellant was lying.
6.	He was mistaken (examples given). ¹⁰⁶	No suggestion appellant was mistaken.
7.	Counsel mentioned other matters. ¹⁰⁶	Defence counsel submitted that a careful analysis of the record of interview was needed; some of it was unreliable and should not be used to support the prosecution's case. The plain reason for its unreliability was the diagnosis of paranoid schizophrenia; he was taking a quarter of his prescribed medication, and during the interview he was unmedicated, exhausted and ranting and raving. His ranting and raving import irrationality and say things that do not correspond to the truth. Not everything in the interview was false or incorrect, and some facts were admitted. The

¹⁰⁵ CAB 21 lines 12-32.

¹⁰⁶ Gibbs CJ at 320.

¹⁰⁷ CAB 25 line 10 to 26 line 47.

¹⁰⁸ CAB 23 lines 43-47.

¹⁰⁹ CAB 24 lines 5-7.

¹¹⁰ CAB 14 lines 33-44.

	jury could not be satisfied that the interview proved two critical things: first, that the appellant started the fire; and second, that he did so for the purposes alleged by the prosecution.¹¹¹ Some parts of the interview demonstrated unreliability, such as the discrepancy between what he told the first police officer and what he said in the formal interview.¹¹² There were clear examples of delusional statements, the reference to the green flares on the night, and issues with the car and phone.¹¹³ The appellant said he had lost the plot big time, ranting and raving. Bringing all of these things together, the jury would have at least a reasonable doubt about the reliability of what he was saying in the interview.¹¹⁴ Directed the jury that it was not for the defence to prove that what was said in the interview was not true, but for the prosecution to prove it was true.¹¹⁵ Defence counsel submitted that the jury could not untangle where reality begins and ends and would be left with reasonable doubt whether the appellant lit the fire at all.¹¹⁶ The neighbour reported the fire at 2:26 am, but the appellant said he lit the fire at 1:00-1:30 am. The timing does not match the appellant's starting the fire.¹¹⁷
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¹¹¹ CAB 26 line 39 to 27 line 10.

¹¹² CAB 27 lines 11-17.

¹¹³ CAB 27 lines 19-23.

¹¹⁴ CAB 27 lines 25-29.

¹¹⁵ CAB 27 lines 31-34.

¹¹⁶ CAB 27 lines 46-47.

¹¹⁷ CAB 28 lines 4-16.

		The appellant had been roaming the streets for six hours; there was no deliberation in his actions. The jury should doubt that his purpose was as he stated: “inflicting serious vengeance”.¹¹⁸ The nature of the fire set was not likely to endanger human life¹¹⁹, nor would an ordinary person foresee death as a result.¹²⁰
8.	Prosecution argued his evidence was supported by independent evidence to a substantial extent. (The evidence contended as supporting his evidence was identified in the summing up). ¹⁰⁶	The prosecution referred to matters demonstrating that the confessions were reliable.¹²¹ These references included driving to Brisbane to confess, confessing over a protracted period of time, an absence of medical evidence concerning his schizophrenia, not to speculate, his ranting and raving did not refer to unreliability.
9.	Must approach Mr Carter's evidence with considerable caution. ¹⁰⁶	
10.	Must scrutinise his evidence with special care. ¹⁰⁶	
11.	It is open to act on his evidence if convinced of its accuracy and not do so without first giving careful heed to this warning. ¹⁰⁶	
12.	In light of evidence showing Carter was mistaken in important respects and the prosecution contention that Carter's evidence was supported by independent evidence to a substantial degree, if after scrutinising his	

¹¹⁸ CAB 28 line 47-29 line 3.

¹¹⁹ CAB 29 line 9.

¹²⁰ CAB 29 line 11-15.

¹²¹ CAB 24 line 31-26 line 5.

	evidence and bearing in mind this warning, the jury found that support exists. If it persuades them to accept some or a great deal of what Carter said, you may do so. ¹⁰⁶	
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56. From this comparison, the trial judge did not give the following directions given in Bromley:
- 56.1. To approach the appellant's interview with considerable caution.
- 56.2. To scrutinise his interview with great care.
- 56.3. The jury could rely on his interview if satisfied of its accuracy but should not do so without heeding the judge's warning.
- 56.4. Where a crucial witness with mental illness is demonstrated wrong on important facts but the prosecution contends there is support for that witness's evidence, if having scrutinised that evidence, bearing in mind the warning, the jury having found support and are consequently persuaded to accept some or a great deal of that witness's evidence, the jury can accept all or a great deal of it.
57. It is submitted these four directions were only required because of the peculiar circumstances of Bromley. They were not required in this case because, unlike Bromley, the defence case was not that the appellant was wrong on crucial facts because of his mental illness, and the prosecution case was not that, despite those errors, there was independent support for crucial aspects of his evidence sufficient to overcome them.
58. The trial judge, in directing the jury, identified every aspect of the appellant's interview that the defence relied upon as unreliable, and those aspects that the jury had to find were proved beyond reasonable doubt before convicting of murder. It is submitted the trial judge clearly and sufficiently identified the danger of relying upon key aspects of the appellant's interview and no further directions were required. Further, none of these omitted directions was suitable in this case.
59. As demonstrated in Table 1, both the prosecution and the defence conducted their cases on the basis that many things said by the appellant were reliable and true. In contrast, others were of questionable reliability or fantasy. Virtually none of the things said by the appellant were supported by independent evidence. The parties joined issue on which side of the line the statements important to each party's case lay, e.g., lighting the fire for personal vengeance for the prosecution, when the fire was lit for the defence. The prosecution case was that they were truthful and reliable. The defence case was that the jury could not be satisfied beyond reasonable doubt that the parts relied upon by the prosecution were fact or fantasy.

60. It is submitted that the interview is a complex matrix of information and is not susceptible to a succinct summary.¹²² Directing the jury to use caution in approaching the interview or to scrutinise it with care would have been meaningless. Directing the jury to approach one portion with caution or scrutinise one portion with care was impractical because the judge and the parties could not know what portions were of significance to the jury. For example if the jury had been directed to scrutinise the appellant's statement, "I went there with the intention to inflict some serious vengeance"¹²³ with great care or approach it with caution because of his believed schizophrenia, how could they rationally take a different approach to his statement of belief about his schizophrenia, "my paranoid schizophrenia I believe"¹²⁴ or rationally distinguish that belief from his belief¹²⁵ he saw a green flare which he said was delusional.¹²⁶ Acceptance or rejection of the appellant's narrative was not a binary issue, as it was with Carter's.
61. Likewise, the third and fourth category of direction would have invited the jury to adversely appraise the reliability of unsupported evidence of the appellant because of his believed mental health issues. Unlike Carter, there was no evidence to support his belief that he had been diagnosed with severe paranoid schizophrenia. Another example of unsupported evidence was that he lit the fire at about 1:00 to 1:30 am,¹²⁷ which the defence heavily relied upon as inconsistent with him starting the fatal fire, which was not reported until 2:36 am.¹²⁸ Directing the jury on the dangers of acting on unsupported aspects of the appellant's interview would have destroyed the foundation of the appellant's case, his claimed schizophrenia.
62. The trial judge made no error; the omission to give the further directions could not realistically have affected the jury's reasoning in reaching its verdict in the trial that was had. The CA was correct; no further directions were required. The judges' repeated directions on reliability and truth were sufficient in the circumstances of this case to alert the jury to the risks of relying on any part of the appellant's interview.
63. {70},{72}-{74}. A sufficient warning was given. For the reasons already articulated, a caution without support warning was not viable; the warnings given were adequate.
64. {75}-{77}. Without evidence, the trial judge could not direct that a diagnosis had been made. Emphasising that aspect of the evidence would seriously undermine the defence case.

¹²² AFM 157 [34].

¹²³ AFM 38 line 39.

¹²⁴ AFM 10 line 51.

¹²⁵ AFM 61 line 24.

¹²⁶ AFM 47 line 37.

¹²⁷ AFM 58 lines 54-57.

¹²⁸ AFM 182 line 3 to 183 line 46.

Without evidence, the trial judge could not direct on the theoretical effects of a mental illness.

65. {78}-{79}. The prosecutor made legitimate submissions that could only have focused the jury on the appellant's interview, rather than engaging in conjecture or speculation. Those submissions provide no basis for giving the omitted directions.
66. {80}. The manner in which the primary judge directed the jury²¹ gave the trial judge's full imprimatur to the reliability issue.
67. {81}-{84}. In Bromley the court was not postulating mandatory directions. As paragraphs 50 and 52 demonstrate, a fair trial requires sensitising the jury to the risks associated with relying on Carter's evidence, which were not apparent to the jury because they were masked by his presentation as a witness. The risk was the jury not fully appreciating his testimony was severely compromised by his mental health issues on the night of the offence. That is not this case. All factors compromising the appellant's narrative were obvious from his interview.
68. Read in context at [102], the CA held that, through the contents of the appellant's interview, the addresses of counsel, and the directions of the trial judge, the reliability issues concerning the appellant's alleged admissions were made evident to the jury. The CA did not hold anything inconsistent with Bromley, nor did it miss the point of that decision.

Part VI: Time estimates for oral argument

69. Up to one hour.
70. Legislative provisions as per annexure appellant's submissions.

Dated 27 August 2026



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G J Cummings
Counsel for the Respondent