

SUPREME COURT OF QUEENSLAND

CITATION: *R v Edgerley* [2024] QCA 57

PARTIES: **R**
v
EDGERLEY, David Charles
(appellant)

FILE NO/S: CA No 216 of 2022
SC No 1535 of 2020

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: Supreme Court at Brisbane – Date of Conviction:
8 September 2022 (Ryan J)

DELIVERED ON: 19 April 2024

DELIVERED AT: Brisbane

HEARING DATE: 7 March 2024

JUDGES: Mullins P and Morrison JA and Kelly J

ORDER: **Appeal dismissed.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL –
MISCARRIAGE OF JUSTICE – PARTICULAR
CIRCUMSTANCES AMOUNTING TO MISCARRIAGE –
where the appellant was convicted of one count of murder –
where the appellant was intoxicated by methamphetamine at
the time of the offence – where the only issue at trial was
whether the appellant intended to do grievous bodily harm or
kill the deceased – where the appellant submitted that
a miscarriage of justice occurred due to expert evidence from
a doctor in relation to the association between a higher dose
of methamphetamine use, aggregation and violence – where
the Crown prosecutor invited the jury to use that evidence in
determining the issue of intent – whether a miscarriage of
justice occurred

R v Carlton [\[2018\] QCA 294](#), applied

COUNSEL: P C O'Connor and E Thorsen for the appellant (pro bono)
D Kovac for the respondent

SOLICITORS: No appearance for the appellant
Director of Public Prosecutions (Queensland) for the
respondent

[1] **MULLINS P:** I agree with Morrison JA.

[2] **MORRISON JA:** The appellant was convicted of murder. While the deceased was vulnerable and asleep in bed, in a demountable dwelling at the back of a

property, the appellant entered the bedroom, threw petrol on the deceased, and then ignited it. The appellant then left, holding the sliding door shut to prevent the deceased from escaping. The deceased was consumed by fire and succumbed to his injuries some time later.

- [3] At the commencement of the trial the appellant pleaded guilty to manslaughter. That plea was not accepted by the Crown. However, the appellant having admitted that he had unlawfully killed the deceased, the only relevant issue at the trial was whether the appellant intended to do grievous bodily harm or kill, at the time he set fire to the deceased.
- [4] The sole ground of appeal was that a miscarriage of justice occurred due to: (i) the admission of the evidence of Dr Duncan as to the association between a higher dose methamphetamine use, aggregation and violence, and (ii) the Crown prosecutor's invitation to the jury to use that evidence in determining the issue of intent.
- [5] The prosecution case at trial was that the appellant's intoxication with methamphetamine and/or his mental state, caused him to believe that the deceased had raped his niece, and in that context he formed the relevant intent to do grievous bodily harm or kill.
- [6] The defence case at trial was that the appellant was under the influence of drugs, delusional, felt unsafe, was hearing voices and, for reasons that defied any rational explanation, decided to create a distraction and escape by lighting the fire, without any intention to harm the deceased.

Relevant aspects of the evidence

- [7] What follows is a summary of the evidence at trial, on aspects that might relate to the sole issue raised on appeal.
- [8] According to a friend of the deceased, the deceased and the appellant appeared to have a good relationship.
- [9] The deceased was involved in the sale of drugs, and most of the people who were at his house either used drugs or knew others who did. Some days prior to the offence the appellant and some other people shared some methamphetamine. During that process the appellant asserted that he was a member of royal family, and purportedly attempting to contact the Queen, who he claimed was his grandmother.
- [10] Prior to the offence, the appellant spoke to his sister, who resided in the USA. The conversation lasted about 18 minutes. During the conversation the appellant asked to use her credit card for a taxi that he needed in order to pick up medication for his depression. Throughout the discussion the appellant expressed concern about his niece's wellbeing, repeatedly emphasising his apprehension at something untoward might befall her.
- [11] After the offending, the appellant fled the scene and approached a motorist, asking to be taken to hospital. During that journey the driver observed that the appellant was groaning, crying, and visibly distressed. His speech grew louder and more agitated as they progressed, becoming less coherent over time. At one point, the driver overheard the appellant mention something about "him" raping either his cousin or his niece, and something about DNA evidence being involved or sought.

- [12] At one point in that journey the appellant received a telephone call from his employer, during which the appellant was distressed, crying and expressing pain.
- [13] Upon arrival at the hospital, a nurse described the appellant's condition as sweaty, teary, incoherent and restless. He exhibited elevated blood pressure and pulse rate, dilated pupils, and had injuries to his lower arm and knuckles with singed hair. In conversation with that nurse the appellant asked for STD testing, due to an alleged incident where "[The deceased] raped his niece". He made various bizarre statements, including feeling unsafe at the hospital because of the deceased, who raped his niece. He also asserted that he needed to leave for England as the Queen would give him a crown.
- [14] At the hospital the appellant admitted to using "speed"¹ for three days, and his behaviour was consistent with that admission. That behaviour was also noted by other hospital staff and police officers.
- [15] The appellant received treatment from a doctor to whom he disclosed that he had consumed eight points of speed over the previous three days, or that day. He also mentioned having gone three days without sleep and experiencing hunger. Throughout the consultation the appellant displayed restlessness and agitation, with intermittent breaks in his communication. He remarked that his grandmother was the Queen of England.
- [16] A urine specimen collected from the appellant revealed the presence of amphetamine methylamphetamine as well as benzo-diazepam.

Evidence of Dr Duncan

- [17] Doctor Duncan was a forensic physician working for the Forensic Medical Unit. She was called to give evidence about the effects of methylamphetamine.
- [18] In her evidence in chief Doctor Duncan made the following points:
- (a) methylamphetamine is a stimulant which increases activity in the brain and wakes you up, being the opposite of a sedative;
 - (b) she described the effects of use according to the level of dose;²

“When you use it in small amounts, it can increase alertness. It can ... suppress appetite. It is not available for legal use in Australia. It cannot be obtained by prescription or legally ... in any other way so it is used illicitly and, when it is used illicitly, it's used generally in ... higher doses – generally used in higher doses, and the way it is used is often in a way to try and promote very rapid elevation of blood levels of the drug.”
 - (c) she was asked how long the effects of the drugs lasted, and replied that it “lasts for hours, so usually within the realm of four to 12 hours – sometimes longer ... but that would be the general range”;
 - (d) methylamphetamine is metabolised in the liver, and then the amphetamine residue is excreted in the urine; the half life is generally between six to 15 hours, with an average of 10 hours;

¹ Another term for methamphetamine.

² AB 475, lines 36-46.

- (e) one of the pharmacological effects is increased wakefulness; in that respect she said:³

“... when you take it in higher doses, particularly when the amount in your blood increases very quickly, you get a big euphoric rush, which is what is generally sought by people taking the drug. So you get excited and elated and euphoric. You get increased sexual arousal. You can be very ... hyperactive. You can also have anxiety and agitation and jitteriness and irritability that comes that that. ... you can have hallucinations. That tends to happen more with people that use higher amounts for ... longer periods of time. So you can have hallucinations, paranoia, delusions, confusion ... loss of inhibition generally ... You can raise your body temperature and you can sweat quite heavily, and you can also have dilation of your pupils ... in people that use it ... over a long period of time ... You get obsessive – you can have lots of obsessive-compulsive movements.”

- (f) the prosecutor then asked for the doctor’s response in terms of physiological effects on the body “of taking larger doses”; the response was that the person could overdose, and it could cause severe risks to health in the nature of a stroke or a heart attack;
- (g) she was asked about whether it caused aggression and responded:⁴

“It is associated with increased aggression because ... you’re in this anxious, hyperactive, irritable state, and ... you can have less inhibition in terms of what you would normally do with that state as well ... There is an association of violence with methylamphetamine use, yes.”

[19] In cross-examination Dr Duncan was asked about a number of propositions concerning the effects of methylamphetamine, including:

- (a) that the half-life was an average of 10 hours, and the drug would be eliminated from the body over 4 to 5 half-lives;⁵
- (b) the various methods of ingestion led to the same pharmacological effects;
- (c) the psychotic symptoms that might develop as a result of consumption of methylamphetamine included hallucinations (seeing, hearing, smelling or feeling things that are not present), and delusions (the unshakable belief in something that is not true);
- (d) use could also lead to persecutory delusions (the mistaken belief that someone is committed to causing harm against the user), confusion and disturbed thought; and
- (e) the effects that methylamphetamine might create included both the appearance and existence of psychotic symptoms.⁶

³ AB 477, lines 11-42.

⁴ AB 478, lines 12-18.

⁵ AB 479, lines 32-43.

⁶ AB 482, lines 34-44.

- [20] After Dr Duncan expressed some qualification on her ability to give authoritative answers concerning psychotic conditions, this passage occurred in cross-examination:⁷

“All you can say is that development of psychosis with methamphetamine appears to be dependent on several factors **including dose**, duration of use, method of administration, as well as personal vulnerability to psychosis? --- Yes.”

The prosecution address to the jury

- [21] The prosecutor made a comment towards the commencement of her address where the prosecution case was characterised:⁸

“So the prosecution case is that the defendant set (sic) [the deceased] and his room on fire and that he did those things intending to kill or cause grievous bodily harm to him. The defendant was at the time either intoxicated by methylamphetamine that he had voluntarily consumed or he was suffering from a state of mind that was contributed to by his frequent use of methylamphetamine. And either of those things caused him to believe irrational thoughts, including that [the deceased] had raped his niece. Those irrational thought in combination with his agitation motivated him to act violently against [the deceased] and they caused him to form an intent to kill or cause grievous bodily harm to [the deceased]. And he decided to act on that intent when he set fire to [the deceased’s] room and [the deceased], and that ultimately killed [the deceased]”.

- [22] Later in the address the prosecutor returned to the question of the use of methylamphetamine and the question of intent. The prosecutor commenced with a reference to the evidence of methylamphetamine use:⁹

“Notwithstanding, in this case, there is some evidence that may explain to you why the defendant committed the offence, and, importantly, what motivated him to set [the deceased] and his room on fire. And that evidence is the effect that the methylamphetamine had on the defendant, that he consumed, that caused him to become agitated, aggressive and to think irrational thoughts about the deceased – that he had raped his niece – and that those factors, in combination, caused him to then act violently against him.

Now, the defendant, you heard, presented to the ... Hospital in a state that you would conclude showed that he was intoxicated by methylamphetamine, which was supported by the statements he made to the doctors and nurses that he had consumed methylamphetamine for the last three days, and up to as much as eight points that day, or over the course of three days, and that he had not slept for three days. The defendant also told those medical professionals, as well as [the nurse] and the police who were in attendance, some of the irrational or delusional thoughts, if you will, that he was then thinking about [the deceased].”

⁷ AB 483, lines 38-40. Emphasis added.

⁸ AB 69, lines 16-25.

⁹ AB 77, lines 13-26.

- [23] What then followed was the passage of address which is at the heart of the appeal. The prosecutor said:¹⁰

“And although the defendant did not admit to any of them – that he set [the deceased] or his room on fire – he did provide those witnesses with a reason that may have provided the motive for him to have committed the offence. He said that [the deceased] raped his niece. He said, to [a police officer] that his niece kept calling or saying, ‘Help’. Those reasons, in the context of him being intoxicated by methylamphetamine, as Dr Duncan told you, ‘causes agitation, aggression and is associated with violence,’ provides the explanation for why he formed that intent. It also provides evidence of the intent, itself, that he formed, and, ultimately, acted upon, to commit the offence.”

- [24] The prosecutor went on to refer to the evidence of those at the hospital who described the appellant’s condition including by these terms: “quite agitated, breathing hard, shaky and sweaty”, “groaning and crying a lot”, “distressed”, “screaming in pain”, “restless or agitated”, with an “elevated blood pressure and pulse”, “jittery, uneasy”, “quite loud, emotional, crying and fidgeting”, and “agitated and reckless”.¹¹ The prosecutor told the jury that each of those descriptions was “consistent with the effects of methylamphetamine, as were described to you by Dr Duncan in her evidence.”

- [25] The prosecutor then turned to the question of methylamphetamine use by the appellant and what evidence there was that it had been actually consumed, and in what amounts. She told the jury:

- (a) on the case presented by the prosecution witnesses, “whilst there is evidence to say that he had consumed methylamphetamine, we don’t know precisely when, exactly, the defendant consumed methylamphetamine for the last time, before he committed the offence”;¹²
- (b) the evidence of individual witnesses as to methylamphetamine use was then reviewed;
- (c) the appellant’s statement that he had consumed methylamphetamine prior to the fire was referred to;
- (d) the evidence of Dr Duncan, “when it’s consumed in higher amounts for longer periods of time, can cause hallucinations, delusions, paranoia and confusion and, in terms of the drug causing psychotic symptoms, she said there is an increased tendency for that to occur for people who use it more frequently”, was referred to;¹³
- (e) then followed a passage where the prosecutor addressed the question of mental disturbance and its link, if any, to the appellant’s use of methylamphetamine:¹⁴

¹⁰ AB 77, lines 28-35.

¹¹ AB 78 lines 3-23.

¹² AB 78, lines 36-39.

¹³ AB 80, lines 22-26.

¹⁴ AB 80, lines 29-39.

“There is no evidence in this trial that’s been presented to you, to show that the defendant suffered from a psychosis, in a clinical sense, but there is evidence that his mental state was disturbed. Whether that was a product of his intoxication at the time, or about the time, of the offence or the impact of his frequent use of methylamphetamine on his mental state, we simply don’t know. However, the conclusions I would suggest that you would reach, from all of that evidence, are these. That the prosecution cannot prove, precisely, when the defendant last consumed methylamphetamine prior to the offence, but the evidence would suggest it was not necessarily when the defendant said he last consumed it, which was 8 o’clock the night before. Rather, it could have been later than that or even on the morning of the offence.”

The summing up

- [26] In the course of the summing up, the trial judge referred to the evidence of Dr Duncan, reminding the jury in the usual way as to how to treat expert evidence. The trial judge then said:¹⁵

“So Dr Duncan gave expert evidence about methylamphetamine and its effects, which included that it can bring about psychotic symptoms like hallucinations, delusions and confused and disturbed thoughts. She agreed with Mr Robson that the drug could bring about scattered and non-linear thought processes, which she explained as rambling and raving statements which did not make sense, disordered thinking, and an inability to describe real events in sequence. She said the drug might cause confusion and affect a person’s ability to reason sensibly. **She said whether a user of methylamphetamine develops a psychosis is dependent on the dose of the drug,** the duration of its use, the method of its administration, as well as a person’s personal vulnerability to psychosis.

Now, of course, she spoke in general terms. She didn’t talk about the effects of methylamphetamine on [the appellant] himself.”

Consideration

- [27] The appellant submitted that notwithstanding that the prosecution was unable to establish precisely when or in what quantity the appellant consumed methylamphetamine, the jury were invited to use Dr Duncan’s evidence as to the association between aggression and violence with methylamphetamine use, as “context” in deciding why the appellant formed the relevant intent, and also as to the intent itself.¹⁶ In that regard the submission focused on the prosecutor’s comments in paragraph [23] above.

¹⁵ AB 89, line 48 to AB 90, line 12. Emphasis added.

¹⁶ Outline, paragraph 8.

- [28] It was submitted that where the only real issue at trial was whether the appellant had formed the intent to cause (at least) grievous bodily harm to the deceased, the invitation to use Dr Duncan's evidence about the association between agitation, aggression and violence and, seemingly, larger doses of methylamphetamine, in deciding why the appellant formed an intent and what it was, was apt to create unfairness. That unfairness was said to arise because "there was not a proper evidentiary basis that the Appellant had taken methylamphetamine in a '*higher dose*', or for that matter, the extent to which the Appellant was experiencing the effects of methylamphetamine intoxication at the time of the incident at all".¹⁷
- [29] The submission continued, that the jury may well have reasoned that because the appellant was a user of methylamphetamine, and had that drug in his system in an unknown amount, and displayed other indicia of methylamphetamine use after the offence, that he was more likely to have formed the subject violent intent to cause grievous bodily harm, or kill.¹⁸
- [30] For a number of reasons I am unable to accept the contention advanced by the appellant.
- [31] First, the evidence of Dr Duncan was led without objection. No application was made to have the evidence excluded, either in whole or in part, before the trial. No application was made for a particular redirection to the effect of the jury's putting the evidence to one side or limiting its use by the jury.
- [32] Secondly, the distinction between small doses or amounts, and higher doses or amounts, was one introduced by Dr Duncan at the start of her evidence. It was not one introduced by the Crown. The contrast drawn by Dr Duncan was between use "in small amounts"¹⁹ and the effects one would see with such an amount, and "higher doses"²⁰ and the purpose of using higher doses, namely rapid elevation of levels of the drug in the blood.
- [33] The reference to "higher doses" was used by Dr Duncan in relation to illicit use of methylamphetamine, and it was those higher doses which were associated with effects such as hallucinations, paranoia, delusions, confusion and aggression.
- [34] Defence counsel not only did not object to the evidence, but cross-examined upon it himself. That was to explore the question of hallucinations, delusions and psychotic behaviour, as well as the appearance and actuality of psychotic symptoms.²¹ The cross-examination elicited evidence from Dr Duncan that the development of psychosis was dependent on a number of factors, including the dose.²²
- [35] Thirdly, when the Crown addressed the jury, it was expressly on the basis that whether the appellant's disturbed mental state was the product of his use of methylamphetamine was something "we simply don't know".²³ The jury were told that the prosecution could not prove when the appellant last consumed methylamphetamine or (necessarily) in what dose.²⁴

¹⁷ Outline, paragraphs 9-10.

¹⁸ Outline, paragraph 11.

¹⁹ AB 475, line 36.

²⁰ AB 475, line 45.

²¹ AB 480 and 482.

²² AB 483, lines 38-40.

²³ AB 80, line 33.

²⁴ AB 78, line 36-39 and AB 80, lines 29-38.

- [36] Fourthly, the trial judge's summing up was very clear when it came to Dr Duncan's evidence. The jury were told that whether a methylamphetamine user develops a psychosis "is dependent on the dose" and then specifically speaking about Dr Duncan's evidence the jury were told: "She didn't talk about the effects of methylamphetamine on [the appellant] himself".
- [37] It follows, in my view, that the jury could not have understood that they could draw a link between Dr Duncan's evidence and the particular state of the appellant.
- [38] Fifthly, the contention, in my respectful view, misconstrues what the jury would have understood from the Crown's submission in paragraph [23] above. When that passage is properly analysed the focus was on the appellant's statements that showed a particular reason which would have given him a motive. That was that he believed that the deceased had raped his niece, and the niece was calling for help. The prosecution said that those reasons, in the context of methylamphetamine intoxication, provided an explanation why he formed the relevant intent. The next sentence is at the heart of the appellant's challenge. It reads: "It also provides evidence of the intent, itself, that he formed, and ultimately, acted upon, to commit the offence".
- [39] Whilst the prosecutor used the word "It", read in context it is truly a reference to the reasons which had just been articulated as providing an explanation why the intent was formed. In my view, the jury would have understood the prosecutor to be referring to the reasons, rather than the mere fact of methylamphetamine intoxication.
- [40] Sixthly, no application for a redirection was made. In *R v Carlton*²⁵ Bowskill J (as her Honour this was) said:
- "Finally, I note again that at trial submissions were invited on the content of the summing up prior to it being delivered; and no redirections in relation to this aspect of it were sought. As McMurdo JA observed in *R v Murray* [2016] QCA 342 at [36], this would not prevent appellate intervention, where it is shown that there has been a miscarriage of justice. However, it is a relevant consideration where, as here, the appellant was represented at the trial by experienced counsel and the learned trial judge has provided the parties with the opportunity to have input into the content of the directions to be given in relation to important issues arising in the trial. It is consistent with the efficiency and fairness of the criminal justice process, both at first instance and on appeals, that due regard be paid to the position taken by the legal representatives for the parties at the trial in relation to the content of the summing up, just as it is in relation to forensic and strategic decisions otherwise."
- [41] Seventhly, the summing up by the trial judge was not the subject of any criticism on this appeal. That is understandable, as her Honour delivered a very balanced and detailed summing up.
- [42] Several features of the summing up stand out. The jury were told that they had to decide what evidence they accepted, and what weight they gave evidence. In relation to the experts, they were told that it was a matter for the jury to decide what

²⁵ [2018] QCA 294, at [122]. Citations omitted.

part of Dr Duncan's evidence they accepted or rejected, and what weight they gave it. That direction was given soon after the jury were told that Dr Duncan's evidence was in general terms and not about the effects of methylamphetamine on the appellant himself.

- [43] Then the jury were given directions about how to deal with the evidence of the appellant's consumption of methylamphetamine.²⁶ They were directed that when the question of intoxication was being considered, what was referred to was the effect of a substance on a person's state of mind.²⁷ The jury were also directed that what they made of the evidence of the appellant's intoxication was relevant to the question of state of mind. Thus, the appellant's intoxication from methylamphetamine "may be regarded by you for the purpose of determining whether he had the intention to kill or do grievous bodily harm".²⁸
- [44] Then, having been reminded again that it was up the jury to accept what evidence they chose, and what weight they gave it, the trial judge turned to the question of intent. The jury were directed that in considering that question they would look at the direct evidence from the appellant as to what he said his intention was, and inferences that might be drawn from other facts which revealed his state of mind. The jury were also told that relevant to intention was the evidence of intoxication that had already been dealt with.
- [45] Finally, in this respect, the jury were told that the evidence as to intention included not only the direct evidence of the appellant himself, but circumstantial evidence from which inferences could be drawn.²⁹ The jury were told that it was necessary that the guilty inference that the appellant had the intention to kill or do grievous bodily harm "be not only a rational inference or conclusion to draw from the evidence, but the only rational inference that can be drawn from the circumstances".³⁰
- [46] The way in which the jury were directed was an effective guard against improper reasoning in the way postulated in the appeal. Having been instructed, correctly in my respectful view, that the doctor's evidence was in general terms and not about the effects of methylamphetamine on the appellant, the chance of the jury misusing that evidence in the way postulated by the appellant is unlikely. The risk is not so great as to suggest that a miscarriage of justice occurred.
- [47] Eighthly, at the end of the prosecution address defence counsel was asked whether there was anything arising out of the address upon which he wished to make a submission.³¹ Defence counsel did so, but not on any aspect of the evidence or the address that is now raised on this appeal. The same was the case at the end of the summing up.³²
- [48] Ninthly, in defence counsel's address the jury were asked to proceed upon the basis that the appellant was, at the relevant time, intoxicated and delusional.³³ Indeed, the address was on the basis that the appellant was delusional because he was

²⁶ AB 93, lines 13-37.

²⁷ AB 93, line 21-22.

²⁸ AB 93, lines 26-28.

²⁹ AB 104-105.

³⁰ AB 105, lines 8-11.

³¹ AB 715, line 13.

³² AB 125 and following.

³³ AB 57, lines 33-41.

intoxicated, relevantly by methylamphetamine.³⁴ In that respect defence counsel sought to use the evidence of Dr Duncan to link intoxication by methylamphetamine with the development of psychotic symptoms and an adverse impact on the ability to reason sensibly.³⁵

- [49] Thus the appellant's specific submission to the jury was that the appellant was unmedicated, likely to be under the influence of drugs (which could only be a reference to methylamphetamine), and delusional when he threw petrol into the deceased's room and set it alight. This was said to show that he had no intention of causing harm to the deceased, let alone killing. As this was the line to be taken at trial, it is not surprising to find that defence counsel not only did not object to Dr Duncan's evidence, but sought to use it for the defence's own purposes. And, that was done in circumstances where defence counsel knew in advance what Dr Duncan might say, given that she had produced a report and the defence had a copy.³⁶

Conclusion

- [50] For the reasons above, it has not, in my view, been demonstrated that any miscarriage justice followed from the admission of the evidence of Dr Duncan or the Crown prosecutor's use of that evidence.
- [51] I propose the following order:
1. Appeal dismissed.
- [52] **KELLY J:** I agree with the reasons of Morrison JA and with the order proposed by his Honour.

³⁴ AB 58, lines 8-14, and 25-26.

³⁵ AB 65, lines 31-44.

³⁶ AB 483, line 42.