SUPREME COURT OF QUEENSLAND

CITATION:	*R v Morant* [2020] QCA 135
PARTIES:	**R** **v** **MORANT, Graham Robert** (appellant/applicant)
FILE NO/S:	CA No 319 of 2018 SC No 1424 of 2018
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	Supreme Court at Brisbane – Date of Conviction: 2 October 2018; Date of Sentence: 2 November 2018 (Davis J)
DELIVERED ON:	19 June 2020
DELIVERED AT:	Brisbane
HEARING DATE:	3 February 2020
JUDGES:	Sofronoff P, Mullins JA and Boddice J
ORDERS:	**1. The application for leave to adduce further evidence be granted.** **2. The appeal against conviction be dismissed.** **3. The application for leave to appeal against sentence be granted.** **4. The appeal against sentence be dismissed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – MISDIRECTION AND NON-DIRECTION – PARTICULAR CASES – WHERE APPEAL DISMISSED – where the appellant was convicted of aiding suicide by aiding another in killing herself – where the deceased was the appellant's wife – where the appellant aided the deceased to purchase and place the generator that the deceased used to kill herself – where the trial judge directed the jury that to be guilty of the offence the appellant must have aided the deceased knowing that the deceased "would or may" kill herself – whether there was a misdirection CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – MISDIRECTION AND NON-DIRECTION – PARTICULAR CASES – WHERE APPEAL DISMISSED – where the appellant was convicted of two counts of aiding suicide – where the deceased was the appellant's wife – where the defence counsel at trial had addressed the jury on a "hypothesis of innocence" – where the trial judge directed

that the jury must "exclude an innocent hypothesis beyond a reasonable doubt" – whether the trial judge directed the jury adequately regarding the burden of proof

APPEAL AND NEW TRIAL – NEW TRIAL - IN GENERAL AND PARTICULAR GROUNDS – PARTICULAR GROUNDS – FURTHER EVIDENCE – NATURE AND PROBABLE EFFECT OF EVIDENCE – GENERALLY – where the appellant was convicted of two counts of aiding suicide – where the deceased was the appellant's wife –where the appellant applies for leave to adduce further evidence on the appeal – where the fresh evidence comprised emails written by the deceased some months before her death – where the appellant sought to use the emails as evidence that he had not influenced the deceased's intention to kill herself – where the evidence at trial already showed that the deceased had formed an intention to die for some months before her death – where the fresh evidence was admitted on the appeal – whether the fresh evidence showed there was a miscarriage of justice

CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the appellant was convicted of two counts of aiding suicide – where the deceased was the appellant's wife – where the first count was aiding suicide by counselling another to kill herself and thereby inducing her to do so – where the appellant denied encouraging the deceased's suicide – where there was witness testimony that the appellant had encouraged the deceased to take her life – where there was evidence that the appellant had informed the deceased of and encouraged the deceased to use the method that ultimately lead to her death – where the second count was aiding suicide by aiding another in killing herself – where the appellant aided the deceased to purchase and place the generator that the deceased used to kill herself – whether the verdicts were unreasonable

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the appellant was convicted after trial of two counts of aiding suicide – where the deceased was the appellant's wife – where the appellant was sentenced to 10 years' imprisonment for the first count of aiding suicide and sentenced concurrently to six years' imprisonment for the second count of aiding suicide – where the deceased was a vulnerable woman suffering chronic pain – where there was evidence that the deceased had vacillated about killing herself, but the appellant had encouraged her to do so – where the appellant had no criminal history – where the appellant showed no remorse – whether the sentence was

manifestly excessive

Criminal Code (Qld), s 7(c), 311

Gallagher v The Queen (1986) 160 CLR 392; [1986] HCA 26, applied
M v The Queen (1994) 181 CLR 487; [1994] HCA 63, cited
Pell v The Queen (2020) 94 ALJR 394; [2020] HCA 12, applied
R v Baden-Clay (2016) 258 CLR 308; [2016] HCA 35, cited
R v Dalton [2020] QCA 13, cited
R v Goodwin; Ex parte Attorney-General (Qld) (2014) 247 A Crim R 582; [2014] QCA 345, cited
R v Jeffrey [2003] 2 Qd R 306; [1997] QCA 460, cited
R v Jervis [1993] 1 Qd R 643, discussed
R v Mayberry [1973] Qd R 211, discussed
R v Morant [2019] 2 Qd R 501; [2018] QSC 222, related
R v Sherrington and Kuchler [2001] QCA 105, cited
R v Solomon [1959] Qd R 123, discussed
SKA v The Queen (2011) 243 CLR 400; [2011] HCA 13, cited

COUNSEL: J P Benjamin for the appellant/applicant
D Balic for the respondent

SOLICITORS: Legal Aid Queensland for the appellant/applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **SOFRONOFF P:** I am indebted to Boddice J's recitation of the facts, which allows me to rely on a summary of facts in order to explain my own reasons.

[2] The appellant knew that Ms Morant had suffered from significant mental health issues for many years and was taking anti-depressants. The appellant also knew that she was suffering excruciating pain because of the degeneration of her spine. The appellant knew that Ms Morant had attempted suicide two or three times some months before her death and that one of these attempts had resulted in her hospitalisation. The appellant said that he had hidden all the ropes that were on the premises so that she could not hang herself. In the last six to nine months of her life, Ms Morant constantly talked to the appellant about killing herself and had forbidden the appellant from stopping her from doing so. In the area where the appellant and Ms Morant lived a man had used a generator to gas himself to death inside a shipping container. The appellant told Ms Morant about this. He told police that it was up to her if she decided to use that way to die.

[3] About a month before she died, Ms Morant asked the appellant how to start a portable generator that was on the porch of their house. He told police that Ms Morant had made a number of unsuccessful attempts to start the machine. The appellant had then hidden the generator from her.

[4] On the day before her death, Ms Morant told the appellant that she could not cope any longer and that she was "just going to do it". The appellant told police that in his mind, she had "made up her mind" to kill herself. She said that she was going to use a generator to kill herself and asked the appellant to drive her to Bunnings Warehouse to buy one. She had difficulty driving because of her bad back and he

knew this. He drove her to a Bunnings Warehouse in her car. He believed at the time that she was going to Bunnings to buy a generator that she would be able to start herself. He waited outside while she went inside the store to make her purchase. A CCTV recording showed Ms Morant outside Bunnings pushing a shopping trolley containing the generator. The recording also showed the appellant pushing the trolley. The generator was too heavy for her to lift on her own and the appellant helped to put it into the boot of Ms Morant's car and he then drove her home.

[5] On the day of Ms Morant's death, which was the next day, a Sunday, the appellant said that although he did not know that Ms Morant was going to kill herself, he believed that there was a good chance that she would. He went to church. The appellant left the car containing the new generator at home and took himself off in his own car. By the time he got back his wife had killed herself using the generator in the boot of her car to gas herself.

[6] It follows, therefore, that on the day before Ms Morant killed herself the appellant knew that she was planning to commit suicide by gassing herself with the exhaust fumes of a generator. He knew that she wanted to buy a new generator to use in that way. Knowing that she would have difficulty driving, he drove her to buy a generator. He helped her to put it into the trunk of her car and then brought it home. He then left her alone with the means of killing herself while he went to a Sunday church service.

[7] A question on this appeal is what is required by way of direction to the jury about the elements of the offence of aiding another in killing herself. Section 311 of the *Criminal Code* (Qld) provides:

> "**Aiding suicide**
>
> Any person who –
>
> (a) procures another to kill himself or herself; or
>
> (b) counsels another to kill himself or herself and thereby induces the other person to do so; or
>
> (c) aids another in killing himself or herself;
>
> is guilty of a crime, and is liable to imprisonment for life."

[8] Judicial statements about this offence are few. However, there is a useful analogue in s 7(c) of the *Code* which has been frequently explained in the authorities.

[9] That section deems a person guilty of an offence who "aids another person in committing the offence". That provision is different from s 7(b) which deems a person to be guilty who "does or omits to do any act for the purpose of enabling or aiding another person to commit the offence". Section 7(c) does not require proof of a purpose.

[10] Section 7(c) has another peculiarity. It says nothing express about the offender's state of mind. Yet an entirely innocent person might aid the commission of an offence without knowing anything about it, such as a taxi driver who conveys an armed robber to the scene of the robbery without any prior knowledge about what the passenger intends to do at the destination.[1] For this reason, s 7(c) has always

---

1 *R v Jervis* [1993] 1 Qd R 643 at 647-648.

been understood to mean that the Crown is obliged to prove the accused's state of mind as an element of the offence.

[11] Most of the reported cases concerning s 7(c) involve aid that has been given during the commission of the principal offence. *R v Solomon*[2] was a case of that kind. One of three robbers helped while the other two bashed a guard and unintentionally killed him. Philp J said that it was implicit in s 7(c) that to be liable as a participant in the offence the "aider must know what offence is being committed or at least what offence might be committed by the person he is aiding".[3]

[12] In *R v Jervis*[4] the appellant gave X a knife. X then gave the knife to Y. X and Y then murdered a victim. The appellant knew that X and Y wanted to lure a victim to a place to cut him. McPherson ACJ directed attention to the need for the prosecution to identify the "offence" the commission of which is the subject of assistance by the aider. Because s 2 of the *Code* defines "offence" to mean an act or omission that renders a person liable to punishment, it is that relevant act or omission which must be the subject of aid. McPherson ACJ said that in the case of offences in which an act or omission is rendered an offence only if it is accompanied by particular circumstances, the subject of the aider's intention in such cases will be comprised of a "compound conception connoting an act or an omission together with such other circumstances as may be required to render it an offence under law." In *Jervis* McPherson ACJ referred with approval to the dictum of Philp J quoted above as authority for the proposition that the required knowledge was as to the offence "being committed or at least what offence might be committed by the person he is aiding".

[13] In *R v Sherrington and Kuchler*[5] McPherson JA observed that s 7(c) requires proof that the accused aided *in* committing the offence. It followed, his Honour said, that the participant must be "aware at least of what is being done or perhaps will be done by the other actor".[6] Again, in *R v Jeffrey*[7] McPherson JA referred to the requirement in s 7(c) for the Crown to prove that the offender "knows that the offence is being committed or is intended".

[14] Another case concerning s 7(c) was *R v Mayberry*.[8] This was a rape case in which the Crown alleged that Mayberry had aided his accomplice to rape his victim by detaining the victim's friend to stop her from helping the victim to get away. There was a question whether the act of aiding took place before or whether it took place during the rape. The appellant complained that the trial judge directed the jury that to be responsible under s 7(c), "an aider must know either what offence is being committed or *at least what offence* ***might*** *be* committed by the person he is aiding" (emphasis added). Hart J held that when a person does an act to enable another to commit an offence the aider often can only know that the offence might be committed. His Honour gave the example of an aider who leaves open the door of a safe for an hour so that an accomplice can rob it. At best, the aider only knows that the principal offender might commit the offence. In *Mayberry* if the aiding happened before the rape, all that the aider could know was that his actions

---

2 [1959] Qd R 123.
3 *Supra* at 128.
4 *Supra*.
5 [2001] QCA 105.
6 *Supra*, at [13].
7 [2003] 2 Qd R 306 at 310 referring to *R v Beck* [1990] 1 Qd R 30 at 38.
8 [1973] Qd R 211.

detaining the victim's friend would give the offender an opportunity to use force if that became necessary.[9]

[15] Section 311 does not speak of a person who aids another in the commission of an offence. It speaks of a person who "aids another in killing himself or herself". The object of assistance is the act of killing. The term "killing", when used in the context of the killing by one person of another, is defined in s 293 of the *Code* by reference to causation. One person kills another if the first person "causes the death" of the other. By its express terms the definition is inapplicable to s 311 but, nevertheless, the word "killing" in s 311 can refer to nothing other than the act by which a person kills herself. Moreover, the act of killing oneself must be accompanied by one's intention to cause his or her own death. Consequently, the object of aid under s 311 is aid to do an act of killing herself with intent to kill herself.

[16] In the passage to which the appellant takes objection, Davis J directed the jury as follows:

> "The Crown must then prove that when the accused did the acts of aiding – if you find beyond reasonable doubt that he did, in fact, do any acts of aiding – that he intended that the aiding would in fact aid the deceased to kill herself by using the generator to cause her death by carbon monoxide poisoning. In order to prove the relevant intention, which is element 2, the Crown must prove that the accused had a particular state of mind when he did the acts of aiding. If, in fact, you find that he did any acts of aiding. The state of mind that the accused must hold at the time of the aiding relates to the state of mind that the deceased either had at that point *or would acquire.* You will recall that in order to "kill herself", which is the term in the charge, for the purpose of the charge, the deceased must have done an act which caused her death and she must've intended that the act would cause her death.
>
> It is that act by the deceased with that state of mind by the deceased which the accused must have intended to aid. Therefore, the Crown must prove beyond reasonable doubt that when the acts of aiding were done by the accused, the accused knew that the deceased would *or may* kill herself by using the generator to cause her death by carbon monoxide poisoning." (emphasis added)

[17] When s 7(c) is applicable, uncertainty about what offence that the principal offender *might* commit may raise a problem if the case is one in which more than one offence might have been in contemplation by the offender or if one offence was in contemplation but a different offence has been committed. A question could then arise whether the offence that was committed was, or was not, one that the aider "might" or "may" have had in mind as the subject of aid. *Jervis*[10] was such a case. But when in cases concerning s 7(c) there is only a single offending act in contemplation or when in cases concerned with s 311 there is only an act of killing oneself as the intended object of aid, questions about likelihood are irrelevant.

---

9 *Supra*, at 294. Hanger CJ saw nothing wrong with the direction and Skerman J found it unnecessary to deal with the point. *Mayberry* was cited with approval by Derrington J in *R v Beck*, *supra*, at 44. Macrossan CJ and McPherson JA did not deal with the issue.

10 *Supra*.

[18] If the appellant did the things that he admitted doing with the intent of helping Ms Morant to kill herself, then whether she was likely or unlikely to kill herself is beside the point. If the appellant acted to help her in killing herself then, once she had actually killed herself with his aid, he was guilty of the offence. If she tried to kill herself with his aid, but failed, he would have been guilty of attempting to commit the offence.[11]

[19] It follows that the words in the trial judge's direction "knew that the deceased would or may kill herself by using the generator" were used, and must have been understood by the jury to be used, to identify the object of the appellant's intention. The direction makes it clear that the question as to the appellant's state of mind was whether the appellant's acts of aiding were intended by him to assist Ms Morant "in killing herself". The direction was consistent with the absence of any requirement to prove that suicide was certain or likely when the aid was given. It was enough to prove that the appellant intended his actions to assist her in killing herself, and that, aided by what he did, she killed herself.

[20] The elements of the offence in s 311 are:

(a) The accused did an act;

(b) The accused did that act intending thereby to aid the deceased in killing herself;

(c) The deceased killed herself; and

(d) The accused's acts did aid the deceased in killing herself.

[21] Whether or not suicide was objectively or subjectively likely when the assistance was rendered is not an issue that a jury has to decide. Nor would it be an answer to a charge of aiding suicide for an accused to demonstrate the unlikelihood of suicide when the assistance was given (although that might be a fact that is forensically relevant to the issue of intent).

[22] In this case, there was ample evidence from the appellant's own mouth to demonstrate that his intention in doing the acts charged was to help Ms Morant in killing herself.

[23] That evidence, together with the evidence from Ms Dent and Ms Lucas and the appellant's falsehoods to police about his assistance in buying the generator, also render the appellant's fourth ground of appeal unsustainable. There was evidence before the jury that justified a conclusion beyond a reasonable doubt that the appellant was guilty of both offences.

[24] The appellant's second ground of appeal takes issue with the adequacy of Davis J's directions about the defence submission concerning an available hypothesis consistent with innocence. The appellant submitted that his Honour did not "direct the jury that there was no onus on the appellant to establish" such a hypothesis or that defence counsel's suggestion about an available hypothesis of that kind "did not absolve the Crown of its onus of proof". It was submitted that, although his Honour had directed the jury about the onus of proof and the standard of proof, at the time that his Honour summed up the defence case on the subject of the hypothesis consistent with innocence, his Honour should have directed the jury specifically that

---

11 *R v McShane* (1978) 66 Cr App R 97 at 103.

the defendant bore no onus to prove that there was a reasonable hypothesis consistent with innocence. The appellant submitted that his Honour's "failure to make this clear at such an essential point in the summing up was apt to be misleading and to indicate that the appellant bore some burden of proving the posited "hypothesis of innocence"".

[25] During his address to the jury, defence counsel said:

> "And what we've got up to now is I want to put to you what we lawyers call the hypothesis of innocence. The hypothesis of innocence is the version of the events on which the person charged is innocent. It's the story which makes sense of the defence case that the person before you is innocent.
>
> The law is very clear. You don't have to believe the hypothesis of innocence beyond all reasonable doubt or even that it's probable. You've only got to believe that it is possible. It's up to the prosecution to negative it and prove that it is not reasonably possible. That you've got to have no reasonable doubt that what I'm about to tell you, the story that I'm about to tell you, you've got to have no reasonable doubt that it's wrong, because if you do think that there is a possibility, then the law says the man charged is not guilty.
>
> This is a hypothesis of innocence. Graham did not encourage Jenny to end her life. The truth of the matter about that is what Jenny says about the life insurance, not what other people say she said. And Graham did not aid suicide when he helped Jenny lift the generator on that Saturday. He did not help her to lift it, with the intention of helping her to end her life. He did not believe that she would use it for that purpose. And, in particular, he did not believe she would use it for that purpose when she did. And when she did he was shocked.
>
> So now I'm going to give you a spelled-out version of the hypothesis of innocence."

[26] Later, defence counsel told the jury:

> "While not fully excluding Graham having touched the handle, nor wholly excluding that you or I did, it does not exclude the possibility that a third individual contributed to the DNA profile."

[27] A little later, defence counsel repeated this proposition:

> "All I can say to you is that the Crown has not rendered the possibility of a third person impossible. Nor have they rendered the possibility of a third person so fanciful that no rational human being could entertain it."

[28] And again:

> "… all you have to believe in order to acquit Graham of both charges is that you, when you think about it, cannot exclude the possibility that it might have happened in some other way than Jenny pressing the button, getting in the car and just sitting there and waiting for it to happen."

[29] In order to find the accused guilty in a case based upon circumstantial evidence, it is necessary not only that guilt should be a reasonable inference but that it is the only rational inference that the circumstances allow to be drawn. The Crown is obliged to disprove any rational hypothesis consistent with innocence that fairly arises on the evidence.

[30] Defence counsel's submissions were apt to mislead the jury into thinking that they were obliged to acquit if they concluded that the "possibility" that a third party was involved in the death had not been excluded. His Honour was, therefore, obliged to ensure that the jury did not entertain any such misconception.

[31] His Honour had directed the jury in the following terms at the beginning of his summing up:

> "You can draw inferences from [evidence] but you might recall from my opening remarks that there are three factors that must be kept in mind: firstly, you may only draw reasonable inferences; secondly, your inferences must be based on facts you find proved by the evidence. So there must be a logical and rational connection between the facts you find and your deductions or conclusions. And thirdly, if more than one inference is reasonably open, that is, an inference adverse to the accused, in other words, pointing to his guilt, and an inference in his favour, in other words, pointing to his innocence, then you must give the accused the benefit of the inference in his favour. Obviously, you are not to indulge to intuition or in guessing."

[32] A little later his Honour said:

> "Now, the burden of proof. The burden rests on the prosecution to prove the guilt of the accused. It's often said that the Crown brings the charge and the Crown must prove the charge. There is no burden on an accused to establish his or her innocence. The accused is presumed to be innocent. He may only be convicted if the prosecution establishes beyond reasonable doubt that he is guilty of the offence charged.
>
> Now, you'll recall that when the Crown case finished, my Associate called upon the accused and asked him whether he intended to call any witnesses or give evidence himself. And through Mr Wells, he elected not to give evidence and not to call witnesses. So in this case, the accused has not given or called evidence. That is completely his right. He is not bound to give or to call evidence. He is entitled to insist that the prosecution prove the case against him if it can.
>
> The prosecution bears the burden of proving the [guilt] of the accused beyond reasonable doubt, and the fact that the accused did not give evidence is not evidence against him. It does not constitute an admission of guilt by conduct and it may not be used to fill gaps, if any, in the evidence led by the prosecution. It proves nothing at all and you must not assume that because he did not give evidence, that adds in some way to the case against him. It cannot be considered at all when you are deciding whether the prosecution has proved its

> case beyond reasonable doubt, and it most certainly does not make the task confronting the prosecution any easier. It does not change the fact that the prosecution retains the responsibility to prove guilt of the accused beyond reasonable doubt.
>
> For the prosecution to discharge its burden of proving the guilt of the accused, it is required to prove beyond reasonable doubt that he is guilty of the charges. This means that in order to convict, you, the jury, must be satisfied beyond reasonable doubt of every element that is component that goes to make up a particular offence that you are considering."

[33] The appellant complains about the following passage in his Honour's summing up:

> "Then, this morning, Mr Wells [who was defence counsel] said to you that he was going to tell you what he described as the hypothesis of innocence. He said to you that if one of the [hypotheses] of innocence was possible, then you would have to acquit. I can tell you, in law, the issue is whether you can exclude an innocent hypothesis beyond reasonable doubt".

[34] It is not possible to read the words "exclude an innocent hypothesis beyond a reasonable doubt" so that they are understood to mean, as the appellant would have it, "prove an innocent hypothesis". The process of exclusion assumes that the onus is on the Crown, as the judge had painstakingly directed.

[35] This ground has no basis and should be rejected.

[36] The appellant's third ground of appeal requires reliance upon fresh evidence. The appellant sought to tender evidence about Ms Morant's correspondence in two emails to a Dr Nitschke, who is said to be a proponent of voluntary euthanasia.

[37] In the first email Ms Morant told Dr Nitschke about her suffering and sought his help. The inference is that she was seeking advice about how to commit suicide. The second email contains a great deal more detail about Ms Morant's anguish and pain and asked for his help about "how to end my life in a peaceful manner".

[38] It may be accepted that these emails are fresh evidence because they were not reasonably available to the appellant for use at his trial. However, it is impossible to see how they could have helped the appellant to secure an acquittal. The emails were sent in May and September 2014 respectively. There was evidence at the trial that in August 2013 Ms Morant was talking to Ms Dent, who gave evidence, about killing herself. In February 2014 she told her sister, Ms Lucas, who also gave evidence, that the appellant had told her the story about a man who had gassed himself using a generator and that the appellant had encouraged her to insure her life and was encouraging her to kill herself.

[39] It was said that these emails would have affected the credit of Ms Lucas and Ms Dent but how that was so was unexplained. Otherwise it was suggested in oral argument that the evidence about Ms Morant's own desire to commit suicide bore upon the count of counselling suicide, which was count 1. The evidence could not have helped the appellant. It would, instead, have reinforced Ms Morant's vulnerability to the appellant's inducements.

[40] The appellant's final ground of appeal, ground 4, is that the jury could not rationally have convicted the appellant on count 2 because the Crown had not excluded a rational hypothesis consistent with innocence, namely that a third party had started the generator.

[41] The appellant's written submissions on this ground were succinct:

> "[58] The appellant's arguments in relation to this ground are, to some extent, bound up with his arguments in relation to grounds 1-3 above.
>
> [59] The two charges both included a mental element specific to the appellant's state of mind at a particular time. There was no direct evidence of the appellant holding any such intention; the only evidence was circumstantial.
>
> [60] For this reason, the jury could only be satisfied of the appellant's guilt if they could conclude that there was no rational inference open on the evidence consistent with the appellant's innocence.
>
> [61] The appellant submits that, for the reasons advanced at trial, there was at least one rational inference open on the evidence consistent with the appellant's innocence.
>
> [62] The availability of this inference is only increased having regard to the submissions made in relation to grounds 1-3 above. For this reason, the consideration of the other grounds is necessary before finally determining Ground 4."

[42] In oral argument, the appellant's counsel put forward no further argument to support ground 4 but submitted that that ground was "bound up with the arguments in relation to the other three grounds". It follows that this ground has no substance.

[43] The appellant has sought leave to appeal his sentences.

[44] Davis J sentenced the appellant to 10 years' imprisonment on count 1 and to a concurrent term of six years' imprisonment on count 2. The appellant will become eligible for parole after serving five years' imprisonment.

[45] The appellant points to no errors of fact or of law in the exercise of discretion. He merely submits that, given the appellant's age (he was 69 years old when he was sentenced), his previous good character and the unlikelihood of reoffending, the sentence was too severe. He submits that a sentence of eight years' imprisonment on count 1 should have been imposed.

[46] Davis J made findings of fact to inform his exercise of discretion. The appellant did not challenge any of the findings.

[47] It was implicit in the jury's verdicts that the appellant had counselled Ms Morant to kill herself with the intention that she should commit suicide. It also follows that the jury found that the counselling was effective to induce her to commit suicide so that, but for the appellant's counselling, she would not have gassed herself on

30 November 2014. It is also implicit in the verdicts that the appellant helped Ms Morant to kill herself and that his aid was effective.

[48] Between July 2010 and July 2013 Ms Morant obtained three separate policies of life insurance from three different insurers. On the day she died the appellant was the sole beneficiary under each policy and the total insurance money was $1.4 million.

[49] In her conversations with her sister, Ms Lucas, the deceased was described as hysterical and Ms Morant told her sister that her life was in danger. She said, "It's the insurance policies." She said that the policies had a payout amounting to $1.4 million and that the appellant had encouraged her to take out the second and third policies. She disclosed to her sister that the appellant had said that a customer of his had taken out policies of insurance in favour of his wife and had then killed himself. The appellant said that that was "an amazing and wonderful thing" to have done. He encouraged Ms Morant to do the same for him. He told Ms Morant that it would not be a sin in God's eyes to commit suicide because she would be doing something good for the church and for him.

[50] Ms Dent said that Ms Morant had told her that the appellant had said that he knew a way by which she could kill herself that would cause no pain. Ms Dent said that Ms Morant explained to her that she would have everything set up, that the appellant would go to church and would come home to find her with a note. That is what actually happened except that Ms Morant did not die at home.

[51] Davis J found that the appellant had counselled Ms Morant to kill herself and he had aided her in killing herself in order to get the $1.4 million insurance money.

[52] Davis J found that the appellant had shown no remorse for anything that he had done. He had told lies to police and did not cooperate with the administration of justice. He did not have the mitigating benefit of a guilty plea.

[53] There were no cases that could be used as yardsticks in sentencing the appellant on count 1. There were cases in which offenders had been sentenced for aiding suicide.[12] None of them are comparable.

[54] It is therefore necessary to rely upon first principles. Davis J referred to what Mullins J, as her Honour then was, said in *R v Goodwin; Ex parte Attorney-General (Qld)*:[13]

> "The lack of comparable sentences may deprive the sentencing judge of the assistance of "the yardstick" for testing the proposed sentence, but it does not preclude the sentencing judge from otherwise finding the relevant facts for the purpose of the sentencing, weighing up the relevant factors relating to the offence and the offender, and applying the principles of sentencing found in the relevant legislation and the common law, in order to reach the appropriate sentence for that offending. The sentencing judge may very well find the exercise of the discretion to be more difficult in the absence of, and without the usual assistance afforded by, comparable sentences, but as a matter

---

12 *R v Neilsen* [2012] QSC 29; *Walmsley v The Queen* (2014) 253 A Crim R 441; *R v Mott* [2012] NZHC 2366; *R v Maxwell* [2003] VSC 278 and *R v Hood* (2002) 130 A Crim R 473.

13 [2014] QCA 345; affirmed (2014) 247 A Crim R 582.

> of principle the sentencing judge will have available sufficient material from the evidence adduced on the sentence and the relevant law to undertake the well defined process of sentencing."

[55] Section 9(2) of the *Penalties and Sentence Act* 1992 (Qld) requires a court to have regard, relevantly, to:

(a) The nature of the offence and how serious it is, including the harm done to the victim;

(b) The extent to which the offender is to blame for the offence;

(c) The offender's age and character;

(d) The presence of any aggravating factors;

(e) The presence of any mitigating factors;

(f) The maximum penalty; and

(g) How much assistance the offender gave to law enforcement agencies in the investigation of the offence.

[56] Suicide itself is not a crime. Attempting to commit suicide was a misdemeanour until 1979.[14] Section 311 creates three offences:

(a) Procuring another to kill herself;

(b) Counselling another to kill herself thereby inducing her to do so; and

(c) Aiding another to kill herself.

[57] Like manslaughter, the seriousness of these offences can vary widely in terms of the moral culpability involved. However, the maintaining of the offences in the statute book after the repeal of the offence of attempting suicide demonstrates that Parliament's, and society's, judgment about the two categories of offence are not the same. The difference is crucial to sentencing.

[58] Suicide has never been universally treated as a moral wrong. In his book, *The Sanctity of Life and the Criminal Law*,[15] Professor Glanville Williams traced the attitude of various societies to suicide.[16] Before the Christian era the Romans treated it as a morally acceptable way to end one's own suffering. The Hebrew Bible contains only four instances of suicide and in none of them does the text or the context condemn it.[17] The Christian Bible makes no mention of it. Professor Williams showed that the Christian attitude that suicide was sinful owed its origin to St Augustine of Hippo who had to deal with the problem of some Christians regarding suicide as the solution to the risk of sinning in this life.

[59] Later, it became convenient under English common law to regard the commission of this sin as tantamount to self-murder[18] and, therefore, a crime because the property of the offender would escheat to the offender's lord and, later, to the Monarch. It was then a short step to regard an attempt to commit suicide as also a

---

14 Section 312 of the *Code*, which created the offence, was repealed by s 4 of *Criminal Law Amendment Act* 1979 (Qld) (Act 2 of 1979).

15 Faber and Faber, London, 1958.

16 Much of what follows has been taken from Chapter 7 of that book, "The Prohibition of Suicide".

17 1 Sam. 31:4 (Saul), Jud. 9:54 (Abimelek), Jud. 16:30 (Samson); 2 Sam 17:23 (Ahithophel).

18 *R v William Gaylor* (1857) 169 ER 1011.

crime and the law of accessorial liability would apply to aiders and abettors. Because suicide was self-murder, an aider would be guilty of murder.

[60] This rule was capable of acting very harshly in cases in which there was a survivor of a mutual suicide pact. The survivor would be guilty of murder and would face capital punishment. The rule was ameliorated in England by s 4 of the *Homicide Act* 1957 (UK) which reduced the offence in such cases to one of manslaughter. The criminal liability for murder of a person who was party to a murder-suicide pact remained and the consent of the deceased was immaterial. That remains the position in Queensland.[19] In the United Kingdom suicide ceased to be a crime in 1961[20] but s 2 of the *Suicide Act* made it an offence to aid, abet, counsel or procure suicide. The penalty was 14 years' imprisonment.

[61] In his book Professor Glanville Williams expressed himself as a proponent of both euthanasia and the de-criminalisation of aiding suicide.[21] However, he recognised the difficulty presented by the need to distinguish between cases of altruistic aided suicide and cases in which a claim of assisted suicide can disguise a murder[22] as well as cases in which a person aids suicide for selfish reasons.[23]

[62] All of these considerations can be put to one side when the offence is that contained in s 311(b). The wickedness inherent in that offence can be demonstrated. A person who counsels and induces another to kill a third person is guilty of murder by virtue of s 7(1)(d) and s 302. Pursuant to s 7(2) such an offender may be charged with murder. Pursuant to s 7(3) a conviction by the application of s 7(1)(d) entails the same consequences in all respects as a conviction of committing murder.

[63] The difference between an offence of murder committed in that way and the offence under s 311(b) are not great in terms of immorality. In each case the offender has induced a person to do an act that will cause a person's death. In each case the offender intends the victim to be killed by that act. In each case the counselling has been effective to cause the person induced to do the killing act. The difference is that in the case of murder there are two offenders and a single victim. In the case of counselling and inducing suicide there is one offender and a single victim. In Queensland life imprisonment is the mandatory penalty for murder and it is the maximum penalty under s 311.

[64] The present case is a paradigm case that exhibits the wickedness of the offence of counselling and thereby inducing a victim to kill herself. The offence was committed against a woman who was vulnerable to the appellant's inducements. His actions were premeditated, calculated and were done for financial gain. He neither pleaded guilty nor showed any remorse. His cooperation has been minimal.

[65] The offence was a serious one that involved a killing of a human being. The offender was entirely to blame for his premeditated criminal acts. There are few mitigating factors.

---

19 *Carter v Attorney-General for the State of Queensland* [2012] QSC 234; affirmed [2014] 1 Qd R 111; it was also the position in most Western jurisdictions and in the Soviet Union: see *Sanctity of Life*, *supra*, at 264 – 276.

20 Abrogated by the *Suicide Act* 1961 (UK).

21 *Sanctity of Life*, *supra,* at 276; and see also *Textbook of Criminal Law*, Glanville Williams, Stevens & Sons, 1978 at pp. 530-531.

22 *Sanctity of Life*, supra, at 275.

23 *Textbook of Criminal Law*, supra, at 531.

[66] In my opinion the sentences were not only not manifestly excessive, they were manifestly not excessive.

[67] I agree with the reasons of Mullins JA and Boddice J. I agree with the orders proposed by Boddice J.

[68] **MULLINS JA:** I have had the advantage of reading in draft the respective reasons of the President and Boddice J. I am grateful to Boddice J for the summary of the evidence at the trial on which I rely for expressing these reasons.

[69] In relation to ground 1 which was concerned with whether the learned trial judge erred in directing the jury as to the elements of the offence in count 2, I agree with the President's analysis of the elements of an offence under s 311(c) of the *Criminal Code* (Qld) and the President's reasons for why the appellant cannot succeed on ground 1.

[70] It was helpful to have the benefit of the trial judge's detailed reasons (*R v Morant* [2019] 2 Qd R 501) to explain why his Honour directed the jury in the terms that he ultimately did in relation to count 2 that the prosecution must prove beyond reasonable doubt that, when the acts of aiding were done, the appellant knew that the deceased **would** or **may** kill herself by using the generator to cause her death by carbon monoxide poisoning and the appellant intended that the acts of aiding would assist or help the deceased to kill herself by carbon monoxide poisoning.

[71] Although the concept of aiding under s 7(c) of the *Code* is not completely analogous to aiding suicide under s 311(c), the authorities on the state of mind of an aider under s 7(c) are of assistance. In relation to s 7(c), the authorities show that there must be a connection between the act of the aider and the state of mind of the aider as to the offence being or to be committed by the offender who is aided by the act: *R v Jeffrey* [2003] 2 Qd R 306, 311, 312, 326. Under s 311(c), for there to be a connection between the aiding and the suicide, the aider must do the acts that aid in the suicide intending the outcome of the aiding will be the suicide of the person who has been aided to do so. That is the requisite intention required to commit the offence under s 311(c).

[72] The acts done in aiding suicide will in many cases be done in advance of the suicide taking place (as occurred with the appellant's acts that aided Ms Morant's killing herself), rather than contemporaneously with the person committing suicide. When the aid is given, the suicide may therefore be a future event which may or may not happen. In general terms, the aider cannot know with certainty that the suicide will take place.

[73] The essence of the offending of aiding suicide is that the acts to aid the suicide are done with the intention of aiding the person to commit suicide, and that person proceeds to kill himself or herself in reliance on that aid. The offence is not complete until the suicide takes place assisted by the acts of the aider which were done with the intention of assisting the person to take his or her own life. It is therefore not necessary for the prosecution to prove that suicide was a probable or even possible outcome at the time the acts were done to aid the person to kill himself or herself.

[74] I agree otherwise with Boddice J's reasons for why the appellant does not succeed on grounds 2, 3 and 4 and also with the President's reasons in relation to those grounds. I therefore agree that the appeal against conviction must be dismissed.

[75] In relation to the application for leave to appeal against the sentences, I agree with Boddice J's reasons for refusing the application.

[76] **BODDICE J:** On 2 October 2018, a jury found the appellant guilty of two counts of aiding suicide. The person who died by suicide was his wife, Jennifer Lee Morant ("the deceased").

[77] On 2 November 2018, the appellant was sentenced to 10 years' imprisonment in respect of the first count of aiding suicide and a concurrent six year term of imprisonment for the second count. An earlier parole eligibility date was not specified, such that the appellant becomes eligible for release on parole after he has served fifty per cent of the sentence of 10 years' imprisonment.

[78] The appellant seeks an extension of time within which to appeal his conviction and for leave to appeal his sentence. The appellant also makes application for leave to adduce further evidence on the appeal.

[79] An extension of time is necessary as the appellant did not lodge his notice of appeal against conviction within time. A satisfactory explanation having been given for the failure to do so, I would grant the appellant the requisite extension of time.

Appeal

[80] The grounds of appeal against conviction are:

(a) the learned trial Judge erred in directing the jury as to the elements of the offence in Count 2;

(b) the learned trial Judge erred in failing to direct the jury adequately as to the burden of proof;

(c) fresh evidence not discoverable by reasonable diligence at the time of trial has become available, establishing that a miscarriage of justice has occurred; and

(d) the verdicts are unreasonable and cannot be supported having regard to the evidence.

[81] The ground of appeal against sentence, should leave be given, is that the sentence was manifestly excessive.

Background

[82] The appellant was born on 30 December 1948. He had no criminal history.

[83] The deceased was born on 3 February 1958. She had been gainfully employed in financial administration positions prior to her marriage to the appellant in 2000.

[84] In 2006, the deceased obtained a WorkCover payment. Thereafter, the deceased suffered constant, chronic pain and severe limitation in physical movement.

[85] On 30 November 2014, the deceased was found dead in her motor vehicle. It was parked in a street over 10 kilometres from her home. A subsequent autopsy determined that the deceased died of acute carbon monoxide poisoning.

[86] At the time of her death, the deceased had three life insurance policies. The appellant was the sole beneficiary for each policy. The policies each allowed for payment in the event of suicide, should the event take place 13 or more months after the commencement of the policy.

Counts

[87] Count 1 charged the appellant that between 1 February 2014 and 1 December 2014, he counselled the deceased to kill herself and thereby induced her to do so. The Crown particularised that the appellant counselled the deceased to kill herself by encouraging her:

(a) by referring to and commending another individual who had committed suicide and left insurance moneys to his wife/partner; and/or

(b) by further suggesting she also commit suicide like the individual did in particular (a); and/or

(c) by explaining to her what he planned to do with the insurance moneys; and/or

(d) by explaining it would not be a sin in Gods [sic] eyes to commit suicide; and/or

(e) by explaining she was not strong enough to survive the raptures which were imminent; and/or

(f) by agreeing to give a portion of the insurance moneys to individuals named on a list provided to him by his wife; and/or

(g) by allowing her to visit a friend or friends on the condition she would commit suicide on her return; and/or

(h) by telling her he knew a way to commit suicide; and/or

(i) by verbally agreeing to help her to commit suicide.

[88] The Crown further particularised that the appellant intended that the counselling would induce the deceased to kill herself and that one or a combination of the acts of counselling did induce her to do so.

[89] Count 2 charged that on or about 29 November 2014 the appellant aided the deceased in killing herself. The Crown particularised that the appellant aided the deceased to kill herself by:

(a) driving her to the automatic teller to enable her to withdraw the money for the generator; and/or

(b) driving her to Bunnings Warehouse at Oxenford for the purpose of purchasing the generator; and/or

(c) assisting with the loading of the generator into the vehicle; and/or

(d) driving her and the generator back to the couple's residential address; and/or

(e) removing the generator from the boot of the car to allow it to be unpackaged; and/or

(f) assisting with the placement of the generator back into the vehicle; and/or

(g) leaving the deceased with access to the vehicle, by instead driving another vehicle to church on the day of her suicide.

[90] The Crown further particularised that, at time of doing these acts, the appellant intended the aiding would assist or help the deceased to kill herself.

Evidence

Police investigation

[91] At 8.02 pm on the evening of 30 November 2014, the appellant telephoned 000 to advise that he had returned home to find a note from his wife and that it looked like his wife had gone from the home to do herself some harm. Prior to making this telephone call, the appellant made two telephone calls to the deceased's mobile, one at 7.37 pm and one at 7.48 pm. Neither was answered.

[92] At 8.30 pm, two police officers stationed at North Tamborine, Scott Guerin and Matthew Down, attended the deceased's residence in response to the report of a missing person. Guerin observed a white four wheel drive Nissan Patrol parked at the residence. He spoke to the appellant, who provided Guerin with a note written by the deceased, in the following terms:

> "To whom it may concern.
>
> This is no-one's fault that I have done this. It is just life deals everyone a cross to bear in life but for me the pain, the humiliation of painful constitution, constant nausea, the pain it takes for me to do normal everyday things has become impossible. The only solution is to put me in a nursing home but I will not become a burden on everyone and also the country. It is not in nature and especially to Graham it is not fair on him to have to look after me 24 hours a day and then have no sleep when I can't sleep. Please believe me it is my choice to do this and there is no-one to blame.
>
> Kind regards and God bless us all.
>
> Jennifer Morant"

[93] Guerin obtained the telephone numbers of both the deceased and the appellant. He also obtained the registration number of the deceased's vehicle which was no longer at the house. The appellant told Guerin the deceased had severe back pain and was taking strong medication. He showed Guerin a drawer in the bedroom containing a large amount of medication. The appellant told Guerin that probably three weeks earlier, the deceased had taken an overdose of Endone tablets. The deceased had not gone to hospital, she had just slept for a long time.

[94] Guerin contacted the police station and asked for a triangulation of the deceased's mobile phone in order to obtain an idea of the deceased's location. He also conducted a search of the property and spoke with neighbours.

[95] Michael Jones, a sergeant of police stationed at North Tamborine police station performing the role of search coordinator, submitted the request for a triangulation of the deceased's mobile telephone. That was returned at approximately 8.45 pm. It provided the general area in the Wongawallan suburbs. He tasked Senior Constables Edwards and Miers to search that area.

[96] At about 9.36 pm, Jones called the appellant to obtain further information to assist in the coordination of the search. During the conversation, he could hear that the appellant's son was in the background. Jones described the appellant as calm and able to communicate with him in a level and controlled demeanour. He was not distressed during his questioning relating to the deceased's condition, mental health, medications and where she may have gone.

[97] The appellant told Jones about a month ago the deceased had been asking him about how to start a portable generator the appellant had on the porch. The appellant thought it was strange and he was worried so he hid the generator in the shed. Jones asked the appellant to check whether the generator was still in the shed. The appellant returned about a minute later and said it was still there.

[98] At about 9.50 pm, Edwards located the deceased's Ford sedan parked in a cul de sac in Wongawallan. The deceased's vehicle was found approximately 11 to 12 kilometres from her residence. It took approximately 12 minutes to drive that distance. The vehicle had all of its doors and windows closed, and the engine was not running. There were no hoses running from the exhaust system of the vehicle.

[99] There was a female seated in the driver's seat. She had some dark glasses on and appeared to be deceased. There was a handbag on the front passenger seat. It contained the deceased's Queensland driver's licence. A pink "stick it" note, with the words "do not resuscitate me" written on it,[24] was stuck just next to the automatic gear lever.

[100] When Edwards opened the vehicle door, he detected a very strong smell of carbon monoxide. He opened all four doors of the vehicle in an attempt to rid it of fumes. He observed that the back seat had been folded down. There was a generator in the boot of the vehicle. It was a Ryobi brand petrol generator. It looked brand new. It was obvious it was the source of the fumes. It was not running. Everything was cold to touch. There was a little bit of petrol still in the bottom of the generator. Edwards thought that the generator had stalled as it could not pick up the fuel left in it anymore.

[101] Edwards recalled thinking that the generator would have been quite heavy and difficult to place in the vehicle, and difficult to start as it was brand new.

[102] Guerin and Down returned to the deceased's residence to advise the appellant that police had located the deceased in a vehicle. The appellant's son was with the appellant. Down said that when they broke the news of the deceased's death, the son broke down in tears and the appellant appeared shocked. Guerin took both the appellant and the son to the deceased's location, where the son identified the deceased. The appellant said he could not identify the body, both when first asked to do so and when he arrived at the scene.

---

24 AB538/25.

[103] Robert Scott Parker, a scenes of crime officer, attended the scene of the deceased's death on the evening of 30 November 2014 at about 10.50 pm. He conducted a forensic examination. The keys were in the ignition. There was a handbag containing money and the deceased's identification on the front passenger seat. There was a generator in the boot of the vehicle. The generator had an on/off switch. The switch was in the on position.

[104] A tape lift sample of DNA was taken from the handle of the generator. An analysis by Josie Entwistle, a scientist with expertise in DNA analysis, revealed a mixed DNA profile, with more than one contributor present. The mixed DNA profile is greater than 100 billion times more likely to have occurred if the deceased contributed DNA rather than if she had not and approximately four times more likely to have occurred if the appellant had not contributed rather than if he had.[25] Entwistle accepted there was a possibility the tape had picked up two separate pieces of DNA on the handle of the generator. The other possibility is that the deceased placed her hand on the handle of the generator but that her hand already contained mixed DNA through coming into contact with some other object or a person.

[105] Adam Windeatt, a detective sergeant of police, attended the scene of the deceased's death on the evening of 30 November 2014. He observed the car and the generator. Windeatt subsequently conducted a test to see how difficult it was to pull the cord of the generator and how many pulls it would take before starting the generator. The generator remained in the boot of the vehicle. Windeatt did not add any petrol to the generator to conduct the test. His test established that it did not take a lot of resistance in pulling the cord. The generator started with one pull. In his view, the generator was not running when the deceased was found in the motor vehicle due to the fact that the vehicle was all shut up. The engine was starved of oxygen, causing the generator to stop.[26]

[106] Windeatt did not obtain any opinion from an expert in biomechanics as to whether a person with the deceased's disabilities could start the generator. His initial enquiries on the night of the death indicated that the death appeared to be by suicide. Subsequent enquiries and, in particular, the seizure of CCTV from Bunnings Warehouse, caused him to suspect that the appellant may have been involved in assisting the deceased in committing suicide. To his knowledge, the appellant did not have a criminal record.

[107] Windeatt accepted that, at the time he arrested the appellant and charged him with the offences, he was aware that a DNA tape lift had located a mixed DNA profile on the pull handle of the generator indicating the presence of DNA from two contributors. He obtained a DNA swab from the appellant. There were no other persons at that point in time or since who were considered for DNA testing. To his knowledge, DNA samples were not taken from any other part of the generator or the car.

Police interviews

---

25 AB599/45.

26 AB589/30.

[108] At the conclusion of the Crown case, the appellant elected to neither give nor call evidence. However, as part of the Crown case, there was tendered two recorded interviews between police and the appellant.

[109] In the first interview, conducted on 8 January 2015, the appellant said he had known the deceased for 14 years. She had an employment history in stockbroking and in the Public Service. As a result of work harassment, she developed significant mental health issues. The deceased did not hold similar employment after that breakdown. The deceased had also had surgery due to degeneration of her spine. That operation was not successful in relieving her pain, which remained excruciating and constant. She relied heavily on medication, including antidepressants.

[110] The appellant said there had been past suicide attempts. The deceased had overdosed on prescription medication, necessitating hospitalisation. The appellant rang an ambulance on that occasion. There had been two or three suicide attempts some months before her death. The deceased overdosed on prescription medication at home. The first of these attempts was three or four months before her death. The second was a month or so later in mid to late October. The appellant did not feel it was necessary to take her to hospital on either occasion. The deceased had forbidden him from ever stopping her from taking her life. The appellant said you go along with it because you are seeing someone suffering in so much pain.

[111] The appellant said his conversations with the deceased about never stopping her from killing herself mainly occurred in the last six to nine months. Before that she did not talk like that, but every day she wanted to die. The appellant said "I got such a zest and zeal to live she had such a zest and zeal to die".[27] The appellant said the deceased watched "bloody CSI shows" and that if you see it enough on TV it was half normal.

[112] The appellant said the deceased was basically housebound due to depression and back pain. She had her highs and lows. She would take two or three weeks to come out of her low.[28] The appellant tried to talk the deceased out of wanting to die but he had nothing to promise her that her pain would be better tomorrow. The appellant said he has been told since that the deceased had been telling others that one day she would do it.

[113] The appellant said the deceased received money for the harassment at the workplace. It was approximately $450,000. It was received seven or eight years before her death. She invested $50,000 in a property at Mundoolun. The rest was invested in buying and selling properties. They had lost money in the global financial crisis. The deceased did not own any property. The appellant owned a half share in the property at Mundoolun. The other half share was owned by the appellant's ex-wife. When they were in financial trouble, his ex-wife had baled them out. The appellant used the money to buy some bobcats and excavators to have a multiple stream of income. They did not own any property on Tamborine Mountain. The deceased did not have significant money in shares or in the bank. She had a gift in spending money, with expensive tastes.

---

27 AB1369.
28 AB1367.

[114] The appellant said the deceased had three life insurance policies. He only knew of two policies. The deceased took one of them out two and a half to three years ago. He did not know why she took that policy out. The appellant said if there were 100 decisions to make, the deceased made 95 of them without telling him. Any and all major life changing decisions she made and he only found out later. She had a secret side.

[115] The appellant said he only found out that he was the beneficiary in the last few weeks prior to the deceased's death. He had never asked the deceased who was the beneficiary. It was her thing.[29] The deceased had told him she had made her sister, Lynette Lucas, the beneficiary at one stage. Lucas had got into the house in around June 2014 and gone through the appellant's bookwork, trying to accuse him of cyphering money out of the deceased's account. Lucas had turned the deceased against the appellant, and had her sign over things. He had nothing to do with the deceased making him the beneficiary. The deceased took it upon herself to rearrange all of that. He never applied any pressure. The deceased never told Lucas about the change.

[116] There were two other life insurance policies, he thought for about the same amounts. The appellant was not a beneficiary until the deceased changed her Will. He had not seen the Will. The deceased did not tell him how much he would get from the policies. She did not show him the documents. The appellant said there had been nothing of significance between the time of those discussions and the day of the deceased's death. It was in the same discussion that he learned about all policies.

[117] The appellant said on the day of the deceased's death he went to Brisbane to look at a job before returning home for an hour or so and then going to church. The deceased was normal. When he left for church, the deceased did not indicate she had anything planned for the evening. The appellant usually went to church on Sunday afternoon at around three thirty. He would return at about seven. That routine was maintained in the last weeks of the deceased's life. He would drive the deceased's Ford on Sundays to church. It was a more comfortable car to his utility.

[118] The appellant arrived home from church after 7 pm. The deceased was not at home. He found a note on his desk. It referred to not being a burden on him or the government. He tried to ring the deceased's mobile two times. He then rang 000. Police came to the residence. They looked around, including at the back of their place which dropped off into the ravine. Police returned later after they had located the deceased's motor vehicle. They told the appellant the deceased was dead. She had gassed herself. Police told him she had used a generator. Police asked him about a generator. He had had one on the back verandah. Two or three weeks prior to the deceased's death, the deceased started asking him about the generator. The appellant started to think that the deceased was going to do something. The deceased always spoke about hanging herself. The appellant had hidden all the ropes. He took away the generator and hid it in the workshop. His generator was still at home.

[119] The appellant said he did not know anything about the generator the deceased had in the back of her motor vehicle. The deceased had not previously discussed with him

---

29 AB1377.

gassing or dying through carbon monoxide poisoning. Someone else had gassed themselves on the mountain three years before. The appellant said that was probably where the deceased got the idea.[30] It was documented that someone had used a generator or motor in a shipping container. The appellant said he had not found out anything about the generator in the motor vehicle since her death.

[120] The appellant said the deceased had withdrawn $800 through a Westpac ATM on the Saturday before her death. The appellant did not know whether she drew out cash so that the generator was not directly traceable to her. The deceased took cash out to pay the appellant money owed for a previous job.

[121] After the appellant again confirmed that he had no knowledge of how the deceased obtained the generator, police told him that their enquiries had established that a generator was purchased at Bunnings Warehouse on Saturday 29 November 2014. The appellant said "I suppose I knew she had it".[31] When asked how, the appellant said "Well she must have gone up and bought it on the Saturday. Pulled the money out and bought it". When again asked how he knew that, he said "Well it was in the boot of the car". The appellant then said he went with the deceased and bought the generator at around one or one thirty in the afternoon of 29 November 2014.

[122] The appellant said the deceased was "pretty upset" when he arrived back from work that day. She said she could not cope any longer. She was "just going to do it".[32] The appellant said he had been keeping her alive for ten or twelve years trying to talk her out of it. The appellant said "She'd made up her mind".[33] She had been looking and planning to do something for a long time. He tried to talk her out of it but at some stage accepted she was going to do it. The appellant said that the deceased had this mindset. This was what she thought was the best way to do it because it had been done successfully before.

[123] The appellant accepted that at some time during this conversation the deceased told him she wanted to end her life using a generator. This was the first time she had brought up about this way. The appellant did not offer any advice about whether that was a good way to do it. It was the deceased's idea to buy a generator. He thought the deceased did not use the generator at home because she could not start it. Every couple of days the deceased had tried to start it. Somehow he found out about it. That is why he got rid of it by putting it in the shed.[34] The use of that generator was not an issue in the conversation on Saturday.

[124] The appellant accepted that the deceased asked him to go to Bunnings Warehouse to help her. The deceased had trouble driving distances due to her back. She would struggle to get off the mountain by car. That may be one of the reasons the deceased asked him to go with her to Bunnings Warehouse. He was driving her Ford. There was no conversation on the way down. It had never been his idea. It had never been his intention to go along with any of it. The appellant said they did not discuss what sort of generator or any details about it. As far as he understood, the deceased went in to buy one she could start. The appellant said he stood in the shade near the car. He did not go into the building.

---

30 AB1397.
31 AB1400.
32 AB1402.
33 AB1403.
34 AB1404.

[125] The car would have been six or seven metres away. He waited for about half an hour. He did not go to purchase a drink or anything.

[126] When the deceased came back to the car, she had a generator. It was green. The appellant did not know the brand. The deceased also had some drills she had bought as a gift for the appellant. They both loaded the generator into the vehicle.

[127] The appellant estimated the generator weighed the equivalent of 20 or 30 bags of cement, about 30 kilograms. With her back problems, the deceased would not have been able to do it on her own. The appellant also would not have been able to lift it on his own. There was not much discussion on the trip back from Bunnings Warehouse. There was no further conversation about it that evening or the following day.

[128] The appellant said he had not taken the generator out of the boot of the car. He guessed the deceased had removed it from its box in the boot of the vehicle. Later, the appellant told police he got it out on the following day. The deceased directed him what to do, asking him to take it out of the boot so that she could take the box off. The appellant assisted the deceased to put it back in the vehicle.

[129] The appellant accepted that his understanding, after he put the generator back into the vehicle, was that the deceased could now do it if she wanted to kill herself. However, the deceased was unpredictable and the appellant did not believe or think she was ever going to do it that day or the next.[35] The appellant was in denial. The appellant said, although he helped the deceased purchase the generator, he did not want to be part of it and was still fighting against it.

[130] The appellant left on the Saturday afternoon for an hour and a half or two hours. That would probably be enough time for the deceased to do it. He denied deliberately leaving the residence to give her access to whatever she was going to do.

[131] The appellant denied showing the deceased how to start the generator. There were instructions in the box. He denied putting fuel in the generator. The deceased had access to fuel at their house. The deceased did not fill it up when he was present. He did not indicate to the deceased there was fuel around. He agreed that, if the deceased had put the wrong fuel in it, it would not work. The deceased would have known to buy petrol. He had never heard of anyone using a diesel. He did not know the difference between dying with a diesel and dying with a petrol.[36]

[132] The appellant said, when he went off to church on the Sunday afternoon, he did not know the deceased was going to kill herself. There was a good chance she was going to kill herself but it was not planned or pre-arranged when he went to church. When he left home that afternoon the deceased was at home in the office doing bookwork. The appellant did not take the deceased's Ford to church. The generator was in the car so he took his utility.

[133] The appellant said there was no conversation about the deceased's life insurance policies in those last few days or about how the money would be used by him. The deceased had already set things in place. The deceased had left a note saying she

---

35 AB1419.
36 AB1429.

did not want a funeral service. The appellant did not know about that note. She had also left other notes.

[134] The appellant agreed the deceased had driven down the mountain before killing herself. The appellant had done landscaping work in the street in which the deceased killed herself. He had not discussed that street with the deceased. He had not discussed where she might go and kill herself.

[135] He denied accompanying or meeting her at that location. He did not go there and assist her in anyway. He did not start the generator for her. The appellant was at church.

[136] In the second interview with police, on 9 February 2017, the appellant was shown still images from CCTV footage at Bunnings Warehouse at Oxenford. The appellant accepted that one of those images depicted the deceased pushing a trolley on which there was a large box with the word Ryobi. The box was the generator's box. The other box located on the trolley was the drill. The appellant accepted that other images, showing two people at the rear of a silver car, were consistent with the appellant having travelled with the deceased to Bunnings Warehouse and waiting outside whilst the deceased went inside the store. He accepted that another image, depicting a male standing on a pedestrian crossing pushing a trolley across the car park, appeared to be him.[37]

[137] The appellant also accepted that a Deed of Irrevocable Nomination dated 22 July 2014 contained his signature. The appellant said he had a discussion with the deceased in June or July 2014, in which the deceased indicated that she had signed the life insurance policies over to her sister. The Deed was entered into to revoke the life insurances from her sister.[38] The deceased changed the policies back to the appellant. The appellant said "I left it up to her. Said I, it was assigned to her sister and that was, I said, ah that's what you want, do it and then she changed it back".[39]

[138] The appellant accepted that he had knowledge of the deceased planning a trip to Peru. The deceased took it upon herself to seek other means to terminate her life. The deceased made all of the arrangements. He was not involved with that plan. He denied having a conversation with the deceased about whether she would be paid out for these life insurance policies in the event she committed suicide. The appellant did not know if the deceased made any enquiries in relation to that issue. She did "a lot of stuff without telling me".[40] The appellant had nothing to do with the policies. The deceased had her reasons for doing it. She had been planning something for 10 years on and off.[41]

[139] The appellant accepted that the deceased's close friend, Judy Dent, visited the deceased at Tamborine Mountain. They met two or three times a year. The deceased stayed at Dent's house for several days between 16 November and 24 November 2014. He drove the deceased half way down and back from Dent's residence. The appellant denied that the deceased had ever had any discussion with him about leaving the appellant.

---

37 AB1462.
38 AB1466.
39 AB1467.
40 AB1469.
41 AB1471.

[140] The appellant denied that he provided any sort of plan for the deceased to end her life. She found out about someone's suiciding through a generator months and months prior to her death. The appellant did work for that lady. He told the deceased. It was common knowledge all over the mountain. Everyone knew that the man took a generator and put it in a shipping container. He did not know whether the man had life insurance that was paid out to his family.

[141] The appellant said it was up to the deceased whether she ended her life in that way. She had never discussed with the appellant how he was going to help her end her life. He was not going to help her. There were no discussions between him and the deceased about assisting or encouraging the deceased to end her life.

Other evidence

[142] On 3 December 2015, Guerin received a telephone call from the deceased's brother in law, Paul Lucas. Lynette Lucas, the deceased's sister, Judy Dent, the deceased's friend and Cornelia (Nelly) Winters, Dent's sister, were subsequently spoken to by police.

[143] Lynette Lucas gave evidence that she had limited contact with the deceased after her marriage to the appellant in approximately 2000. Lucas had left messages, with little response. The appellant had told Lucas on one occasion that the deceased was not capable of speaking and did not want anything to do with the family. Lucas was aware from her limited conversations with the deceased that her sister had concerns about finances. The deceased told Lucas that the appellant would like her to get a job but she was not always well enough to work.

[144] The deceased also told Lucas she had become a born again Christian in the appellant's religion. The deceased said the appellant would like to become a pastor of his own congregation. The deceased said the appellant had strong views about the forthcoming end of the world. The appellant had concerns "about the raptures and Armageddon" and that the deceased would not be able to cope. The appellant always said the deceased would probably die before this happened. The deceased said, about the raptures, "It's a prelude to the end of the world, and they can come in different forms, and they could be rats and fireballs and things coming out of the heavens and they are attacking people and you're running away".[42]

[145] On 14 February 2014, the deceased told Lucas she feared for her life. She had insurance policies and it was "all about the money" with the appellant. The appellant had encouraged the deceased to take out the insurance policies, totalling $1.4 million, telling her of a person who had suicided on the mountain. "It's an amazing and wonderful thing that [that man] has done for [his wife] to leave her debt free". Lucas told the deceased she did not need the insurance policies and that her life was in danger with these insurance policies. The deceased agreed to cancel the policies.[43]

[146] Lucas said the deceased told her that the appellant had taken her to see a property called Flame Tree, which he was going to use as a place of safety on the coming of the raptures and Armageddon. The deceased told the appellant she did not want to be any part of a communal environment but the appellant was adamant.

---

42 AB374/1.
43 AB272/5.

[147] Lucas said at one point the deceased gave Lucas an envelope containing information packs in relation to the insurance policies. The deceased wanted to get them out of the house and asked Lucas to keep them. The deceased said the appellant wanted her to kill herself. The appellant did not believe it would be a sin in God's eyes to commit suicide because the deceased was doing something good for the church and helping the appellant. The appellant reinforced to her that the raptures and Armageddon were very imminent and that it would be better that she not be around to experience it. The deceased said the appellant would not be able to wait a waiver period of 13 months, until September 2014, for the policies to become valid.[44]

[148] The deceased also told Lucas that on many occasions the appellant had asked the deceased to drive down the mountain, along a very winding road, to bring the appellant extra clothes and food. When the deceased told the appellant that it was too dangerous as she was heavily medicated and, the appellant said "Well I'm 65 years old, I'm tired of working and I have nothing to show for my life".[45]

[149] Lucas said the deceased told her she had put aside escape money to leave the appellant to start her own life. The deceased later said she did not have enough money to leave because, although she owned half of the property at Mundoolun, the appellant would never finish it or sell it. When Lucas told the deceased she had driven past the property and it was all finished, with no signs of renovation, the deceased replied "I had a suspicion" and said she had not been to the property for a long time.

[150] Lucas said the deceased did not want the appellant to know about their meetings. In about May 2014, contact with the deceased decreased in that her telephone calls went unanswered. Soon after, the appellant rang Lucas and told her the deceased was not very well. He said she had had a bit of relapse and could not talk. The deceased was in bed. The next day Lucas drove up to the mountain. She went to the deceased's house. There was no sign of her or her motor vehicle.

[151] Days later, Lucas was contacted by the deceased. The deceased said she was fine but could not go ahead with their get-togethers. The deceased said the appellant had been around more and that she had to stop seeing Lucas. Lucas did not speak to her sister after that conversation. They did have some contact through emails or messages passed through their mother.

[152] Lucas said on 1 December 2014, the appellant arrived at her house at about 9.30 in the morning. He told Lucas the deceased was dead; she had gassed herself with the exhaust. When Lucas asked the appellant how the deceased would know to do that, the appellant said "Well, she watches CSI".[46] The appellant said he had arrived home at 7.30 pm on the Sunday evening from church. He had found a suicide note. He contacted police because he was concerned and had a sick wife. The appellant said he had been to Brisbane during the day. He had arrived home at about 3 pm, had a shower and went to church. When asked by Lucas how the deceased could do all this in a short time, the appellant replied "I do not know".

[153] In cross examination, Lucas accepted that the deceased was a truthful, very capable person, brought up with the ten commandments, who had held responsible positions

---

44 AB272/45.
45 AB273/30.
46 AB277/10.

of employment in financial administration areas.[47] Lucas did not see any deterioration in the deceased's capacities before her death.

[154] Lucas accepted that the tone of a card written in the deceased's handwriting, containing the words "May God soften the pillow you rest your head on at night. I thank God for the day you were born, for being such a loving and generous husband – being a loving and generous husband to me", seemed inconsistent with some of the things the deceased told her about the appellant.[48]

[155] Lucas said she did not become aware she was a beneficiary of her sister's life insurance until after her death.[49] Lucas accepted there was more than one insurance policy and that at least one of those policies commenced in 2010, meaning there was a great deal longer than 23 months between its commencement and September 2014. Lucas also accepted that the nominated beneficiaries for the insurance policies changed from time to time. Lucas agreed that if the deceased was in fear of her life, not telling the appellant that she had cancelled the policies would not have the effect of protecting her.[50]

[156] Lucas said she first found out she was a beneficiary of an insurance policy when she looked at the information packs and paperwork the deceased had given her for safekeeping in 2014. That was a few days after the deceased's death. Lucas rang the insurance company on 3 December 2014 to enquire whether the policies were still valid. She was in shock that she had been named as a beneficiary.[51] In that telephone call, she was informed she was not a beneficiary of the life insurance policy. The insurance company did not give her any other information.

[157] Lucas may have contacted police on 3 December 2014, the date she rang the insurance company. She telephoned police due to the suddenness of the death of her sister. She wanted to clarify how her sister had died. When she realised the deceased still had policies, she thought this could have something to do with her death.[52]

[158] Lucas accepted that, in a letter to police dated 7 January 2015, she had stated that her sister was virtually a cripple with serious back pain and movement restrictions; that she was not aware if her sister knew how to start a motor; that it may have been physically impossible for her to do so; and that her sister had always maintained that the appellant took the Falcon motor car to church every Sunday afternoon and filled it with petrol to save her.

[159] Lucas said that in the period she spent with the deceased in early 2014, the deceased's movements were very restricted on occasions. The deceased had trouble getting in and out of her motor vehicle; she had trouble with groceries and could not hang out the washing on a normal clothesline. She was in daily pain. It was chronic pain. The deceased did have good days and bad days, but took medication to lessen her pain.

---

47 AB283/20.
48 AB312/30.
49 AB315/35.
50 AB336/30.
51 AB343/20.
52 AB360/15.

[160] Lucas accepted that the deceased had obtained a Workers' Compensation payout in 2006. The deceased did not work after the injury, although she did undertake bookkeeping for the appellant's building business and bobcat business. She completed the paperwork and accounting work. Lucas said the deceased told her that, while she had been with the appellant, she had started suffering from depression and stress.

[161] Lucas accepted that, in her statement to police, she said that the deceased told her in early May 2014 that, over the previous years, she had pleaded with the appellant to provide her a caravan at a pet-friendly park so that she could leave him. The appellant flatly refused.[53] The deceased also told Lucas she had serious concerns for her safety and was worried about having a $1.4 million life insurance policy as the appellant talked openly about what he would do with the money.[54]

[162] Judy Dent developed a friendship with the deceased in about 2002. They would meet face to face between two and three times a year. At times, Dent had difficulty contacting the deceased. On several occasions the appellant telephoned back to say the deceased was unavailable. On one occasion, when Dent told the appellant face to face that she wanted to see the deceased, the appellant said the deceased was not up to seeing visitors and Dent would only upset her. On other occasions, when she was seeking to contact the deceased, the appellant would say the deceased was not well.

[163] Dent said when she first met the deceased she did not appear to be a particularly religious person. That position changed over the years. Cards received initially were not religious. Later the cards would contain lots of "God blesses". The deceased also started going to church. The deceased spoke of the appellant's religious beliefs.

[164] In approximately mid-August 2013, the deceased told Dent the appellant wanted her to go back to work. The deceased obtained a position in a dress shop. The deceased told Dent she had only lasted one day. In the same month, Dent received a telephone call from the deceased who was quite upset. The deceased said she could not keep going anymore. She said she was going to take out life insurance and then take her own life. The deceased said the appellant would be happy. He would have the money and the deceased would be out of pain and gone. When Dent expressed doubt that an insurance policy would pay out on suicide, the deceased replied "Yes they do … You only have to wait the time".[55] Dent asked the deceased whether she had any other way out. The deceased replied she had put aside $50,000 in reserve to get away.

[165] In February 2014, the deceased telephoned Dent to say she had to leave. The deceased was looking for rentals down Grafton way. Sometime later, the deceased told Dent she could not do it. She did not have the finances. It was all too difficult. The deceased said she had no money as she had put the $50,000 into Mundoolun and her insurance payout was all gone, having been used on machinery, paying off the bank and the appellant putting it in trust. The deceased said she was restricted from obtaining government finance until 2016. The deceased first told Dent the

---

53 AB432/40.
54 AB433/35.
55 AB439/25.

property occupied by the appellant at Mundoolun was owned by the appellant and the deceased. At a later date, the deceased expressed surprise at discovering that the property was half owned by the appellant's ex-wife.

[166] On 30 October 2014, the deceased told Dent she was going to Peru to take her own life. The deceased was going to leave on 6 November 2014, travelling to Paris for two weeks before travelling to Peru. The deceased would obtain medication from a vet that they use to put animals to sleep. The deceased would go to a motel room, put a 'do not disturb' sign on the door and take the medication. The deceased said the appellant would save face as it would show that the deceased died of a heart attack overseas on holiday and the insurance money would be paid out.

[167] Dent told the deceased it was all wrong. The deceased expressed doubts about doing it. The deceased said the appellant was upset with her because the deceased had put other beneficiaries on her life insurance policies. The appellant had also told her that with her pain she would find it difficult to be able to survive the raptures; that he did not want to see her in pain; that it was probably best she went through with it; and that the insurance money would be a blessing.[56]

[168] On 2 November 2014, Dent received another telephone call from the deceased, who was again very upset. The deceased said, whilst on a drive, the appellant had stopped at an acreage property by the name of Flame Tree. The appellant said to the deceased "this is what I will buy with the insurance money when you are gone". The appellant was going to live there with his son and his ex-wife and another friend. They would be altogether when the rapture came. The deceased said "I just can't believe it. I am so hurt. I can't believe he said that to me."[57]

[169] On 3 November 2014, Dent and Winters had lunch with the deceased at Tamborine Mountain. During the day, Dent said she persuaded the deceased to change her mind. The deceased was set on having a plan for leaving. When the appellant came home later that afternoon, the deceased was quite aggressive because he did not come home normally at that time. Over a period, the deceased's demeanour changed and she became quite submissive. As Dent left, the deceased told Dent, she had made too many promises to everybody and felt there was no way out but to go ahead with the plan. Dent told the deceased she would return the next day. However, Dent received a text from the deceased saying she was too sick and would call Dent.

[170] On 7 November 2014, the deceased telephoned Dent. The deceased had cancelled her flight to Peru because she had been too unwell to fly. The deceased told Dent the appellant had told her not to cancel her flight but to postpone it. The appellant had told the deceased to fly directly to Peru. The deceased told the appellant "I can't do that and if you want me to take my life I will have to do it here and you will have to help me." The deceased said the appellant replied "Yes, and I know a way that won't cause you any pain. I have worked for a widow whose husband had taken his own life and the way he done it, he didn't feel any pain and he also left his wife some insurance money and it was a blessing."[58] The deceased said her cousin had also told the deceased to not cancel the flight but simply postpone it until she was better.

---

56 AB442/15.
57 AB442/25.
58 AB444/13.

[171] On 8 November 2014, Dent received a text message from the deceased. The deceased wanted to come down and live in the Grafton area on her own with her dog. On 14 November 2014, Dent offered to pick up the deceased. Later, Dent received a text saying that the appellant would take the deceased halfway. Dent met the appellant and the deceased at Kyogle. They placed the deceased's belongings in Dent's vehicle. When Dent expressed surprise as to how much the deceased had brought with her, the deceased said she did not intend to leave. However, the deceased returned home after approximately one week.

[172] Whilst the deceased was staying with Dent, the deceased asked whether Dent had telephoned the deceased's solicitor. Dent said she had tried to do so after she had visited the deceased at Tamborine Mountain on 4 November 2014. When they left on that occasion, the deceased had given Dent some cards. One of them referred to the deceased having given Dent $25,000 so that she and her sister could take a river boat trip in Europe. Dent told the deceased she had sought to ring the solicitor to tell him she did not want any of the deceased's insurance money. The deceased replied "Oh, darling, you weren't on the policies. I had given [the appellant] a list of some of the people that were to get money, and you were on that list, and I gave that to [the appellant], and he was to make sure you got it. And if he didn't, I told him God would strike him down, and so would I".[59] The deceased said the appellant was very, very upset that even the deceased's cousin and aunty were put on the insurance policies.

[173] Dent said the deceased woke up very distraught and sick on the day she was due to leave her residence, 22 November 2014. The deceased spent all day in bed. Later that evening, the deceased came out of the bedroom. She was crying and upset. The deceased told Dent to book her into a motel. When Dent said she would stay at Dent's house, the deceased replied "No, Jude, I haven't told you the whole truth … If I hadn't come down here to see you and Katie I would've already been dead … But now when I go back, I have to do it".[60] The deceased said she had to kill herself, the appellant would be helping her. The deceased said on several occasions that it was all about the money. The deceased had made too many promises to everybody.

[174] The deceased explained to Dent that coming down to spend time with Dent was the deal she had reached with the appellant but that when she came back she had to commit suicide. The deceased told Dent not to worry as she would not feel any pain. The appellant knew a way she could do it. He had worked with a person whose husband had taken his own life in the same way. He did not suffer any pain. He also left insurance money as a blessing to his wife. The deceased said she would do it at home. She would have everything set up. The appellant would go to church and when he came home at 7 or 7.30 pm he would find the deceased with a note. The deceased said the appellant would help her beforehand and then go to church.

[175] During this conversation, the deceased expressed doubts. She said she was afraid and did not want to do it. The deceased said she had made so many promises to everybody that the only way out would be to win Lotto. The deceased said she would have to pray to God to win because that was her only way out.

---

59 AB446/30.
60 AB448/1.

[176] By the time the deceased left the following day, the deceased had told Dent she was not going to go through with it. The deceased told Dent she was going to talk to the appellant. She would ask him for some money. If he did not give her money she would go and ask his son for money. The deceased would have to deal with her cousin and aunt as they thought they were on the insurance policies.

[177] During the next week, Dent spoke to the deceased on the telephone and text messaged her regularly. During all of the text messages, the deceased referred a lot to the appellant's health. In the last text message, received on 30 November 2014 at about 11.30 in the morning, the deceased said she felt nauseous and was going to make an appointment to see her doctor on the following day.

[178] On 2 December 2014, the appellant telephoned Dent and said "Jenny has gone". When Dent asked if she had left, the appellant replied "No. She's dead".[61] The appellant said the deceased had gassed herself. Dent replied that there was no way the deceased was capable of doing that and asked the appellant if he had helped her. The appellant said "no". He said the deceased had seen a lot of CSI crime shows.

[179] Dent said she did not think the deceased could have done it by herself because when she had left she had said she was definitely not doing it and the deceased had a physical inability in lifting things or in having the requisite knowledge. Dent just did not think the deceased was capable of gassing herself.[62]

[180] Dent accepted that the deceased had sent a text message to Dent, saying that we did not let our dogs suffer in pain so we should not let those we love suffer. Dent had replied "Yes, I know, Jenny, but nothing can describe the profound sense of powerlessness that comes with knowing that someone is about to terminate their life".[63] Dent agreed she had told police that she felt very saddened that she could not do more for the deceased who was a very loving and caring person. The events surrounding the deceased's death caused Dent intense grief, trauma and shock.

[181] Dent sought to telephone the deceased's solicitor because she was frustrated as she knew many people were involved and nobody was willing to stop the deceased. Dent wanted to let him know what she knew and that she did not want anything to do with the plan that the deceased had made.[64]

[182] Dent accepted the deceased did not like to use the word suicide. She used alternatives such as "going to go; going to leave; take my life".[65] Dent accepted she had received a text message from the deceased in November 2014, which read "This is my decision, not his".[66] Dent said the deceased always felt that she did not want to be a burden. The deceased was always up and down and changed constantly.

[183] Dent accepted she sent the deceased a text on 4 November containing the words:

> "So Nelly and I will come tomorrow and say goodbye to you forever, but know that you can always change your mind and come home at any time. You will always be welcome with open arms."[67]

---

61 AB450/40.
62 AB508/10.
63 AB454/45.
64 AB463/35.
65 AB465/25.
66 AB469/30.
67 AB464/40.

[184] Dent said she was surprised when the deceased told her that the deal for the deceased being able to come down to Dent was that she would have to kill herself when she went back. Dent thought that after the deceased cancelled the Peru trip, taking her own life was no longer an issue. Dent did not ring the police when told of this agreement because that evening, after hours of conversation, the deceased told Dent she was going to tell the appellant that she was not going to do it.

[185] Dent agreed that, in her statement to police, she said the deceased told her on 7 November 2014 that her solicitor had advised that the deceased would have to change the life insurance policies to having the appellant as the sole beneficiary as otherwise her sister, aunt and another beneficiary would be implicated if anything happened to her.[68] That conversation was in regards to the explanation of why she did not go to Peru. The deceased did not mention the appellant would be implicated as the deceased was going to die of a heart attack from taking the veterinarian's medication.

[186] Dent agreed that, in the days prior to the deceased's death, she had sent text messages to the deceased which expressed concern in relation to the appellant's health. Dent also sent a text message in the month before the deceased's death, asking if she could speak to the appellant. The deceased replied no to that request. That request was sent after the deceased had disclosed to Dent that she was determined to end her life. Dent wanted to speak to the appellant to tell him she knew from the deceased that she had become determined to end her life. Dent was angry and could not believe that the appellant could let her go through this plan. Dent said she was hesitant to enlist the appellant to try to stop the deceased from ending her life because she thought she would be just cut off, as the deceased had told her on numerous occasions that, if she spoke to the appellant about this, the appellant would be very angry with the deceased and upset that she had discussed their business or plans.[69]

[187] Dent accepted she had had conversations where the deceased told her she wanted to die because the pain was too much to bear. However, all of the conversations she had with the deceased included reference to life insurance, promises to everybody and the appellant's financial situation at that time. Dent agreed the deceased had sent her a text message on 4 November 2014 saying "Please, I have to do this. I will be out of pain and free".[70] Dent accepted that on the morning of 30 November, the day the deceased died, she believed the deceased was not about to take her life.[71]

[188] Nelly Winters met the deceased through Dent about 12 years before the deceased's death. She had contact with the deceased two or three times a year. Winters visited the deceased on 3 November 2014 at Tamborine Mountain with Dent. The purpose of the trip was to bring the deceased home with them. They hoped to prevent her from taking her life. Whilst there, the deceased said she was planning to go with her cousin to Paris before the deceased would go to Peru. In Peru, she was going to take 200 ml of a drug to end her life. Whilst at the house, Winters observed many signs the deceased had left containing instructions for the appellant for when she was gone so that he would know what to do and how to work household appliances.

---

68 AB485/30.
69 AB506/15.
70 AB509/35.
71 AB511/35.

[189] The deceased said the appellant had told her there was a man on the mountain that had committed suicide and there was no pain and he had left his wife cared for with the insurance money. The deceased discussed how the appellant had taken her to a property called Flame Tree that he was going to purchase when the insurance money came through. The deceased said "How could he do this to me".[72]

[190] Winters said they tried to talk the deceased out of taking her life. They were not successful. The deceased did not accept their offer to go home with them. The deceased said she had promised the appellant to go through with the suicide. At one point, the appellant arrived home. The deceased was upset and asked him why he was home early. Later, the deceased went about doing things for the appellant.

[191] Subsequently, the deceased travelled to Dent's house. On the day the deceased was due to return home, Winters went to Dent's house. The deceased was not well and was still in bed. At one point, the deceased came out of the bedroom. She was very pale, shaking and crying and said she did not want to be a burden on anyone. The deceased asked they book her into a motel, saying she had not told them everything. The deceased said if it was not for her dog she would have been gone. That was Winters' last contact with the deceased.

[192] In cross examination, Winters accepted the deceased was a chronic pain sufferer. Despite the pain, the deceased retained a sense of humour. The deceased was a very generous person. Winters accepted she told police that in the conversation on 3 November 2014, the deceased said the appellant was upset with Dent's daughter, who was a vet, for telling the deceased that she would not be able to drink 200 ml of the drug. The deceased also told them about her Lotto tickets as it was her only hope so she could pay everyone and be free.[73]

[193] Barrie Hutchinson, a friend of the appellant's, regularly saw the appellant at church. He would generally chat with the appellant. The appellant would ask him to pray for the deceased. They had discussed something called the rapture or the second coming. Hutchinson said the appellant worshipped quietly in church and participated the same as the normal congregation. He did not rave on about religious things.

[194] Mariusz Zielinski, the deceased's general practitioner from 2012 until her death, saw the deceased every four to five weeks because she was on strong painkillers due to chronic pain. The deceased had previously had an operation to her spine. The pain was coming from that area. The deceased was also prescribed medication for depression and anxiety. She had been seen by a psychiatrist in 2012. The deceased was treated for other ailments, such as high blood pressure and occasional chest or other infections. The deceased did not have any diagnosed terminal disease.

[195] During the period he was treating the deceased, Dr Zielinski did not notice any obvious comment, thought or consideration by the deceased about ending her life. His last appointment with the deceased was on 28 November 2014. He prescribed regular painkillers at that consultation. There was also a referral for a spinal post-operative assessment to ascertain if there was any other reason for the pain.

---

72 AB516/10.
73 AB522/40.

[196] In cross examination, Dr Zielinski accepted that the deceased had been previously diagnosed as suffering from irritable bowel syndrome. She had also undergone gastric sleeve surgery. Dr Zielinski accepted that another doctor from the surgery had questioned whether the deceased had a narcotic addiction. This was always a risk when there was a constant necessity to eliminate pain. Back pain is limiting in movement. That limitation can be severe. The deceased was a chronic pain sufferer.

[197] Dr Zielinski was consulted by the deceased on 24 October 2014, seeking pain relief for five to six weeks as she was leaving for the United Kingdom. The deceased would be back on 8 December 2014. The deceased was quite enthusiastic. She had previously travelled to Thailand. Dr Zielinski admired the deceased for the fact that, in spite of her pain, she managed to function and travel.

[198] Ian MacAllan, a solicitor, prepared a last Will and a Deed of irrevocable nomination for the deceased in July 2014. He first met with the deceased on 23 July 2014. Both the deceased and the appellant attended his offices for that meeting. To the best of his recollection, he met privately with the deceased. His notes recorded that the deceased complained that Lucas had coerced her to change the life insurance policy to make her the sole beneficiary. The deceased said she was scared of her sister. The deceased said her sister and her husband hated the appellant and wanted the deceased to live with them in a granny flat and when she died her sister would take all the money.

[199] The deceased told him Lucas had made the deceased show her where her documents were kept and the deceased believed Lucas will call the police and say the appellant coerced her into it.

[200] The deceased said that the appellant had never exerted undue influence on her or pressured her. The deceased took out the life insurance policies completely on her own and did not tell the appellant about them. The deceased was too afraid to tell her sister the truth. Her sister still thought she was the beneficiary. Her sister had said to her "Wouldn't it be great if you got cancer so that you can get the life insurance and she would take care of me for that term I have left to life". It made the deceased really scared that it was "pure evil". MacAllan recorded that the deceased was to contact the insurance company about a password to prevent her sister impersonating her. The deceased said she wanted to transfer ownership of the policies to the appellant.

[201] MacAllan had been in the process of preparing a Will for the deceased before that attendance. By that Will, the appellant was appointed executor and trustee and given the whole of the deceased's estate. MacAllan had satisfied himself the deceased had capacity and was not under influence. MacAllan subsequently witnessed the deceased's signature on that Will. The other witness was an employee of the law firm. He could not recall whether the appellant was in the room at the time of execution of the Will. The Will expressly recorded the deceased's intention that the appellant obtain the benefit of all superannuation death benefits and the proceeds of life insurance policies.

[202] MacAllan prepared the Deed of Irrevocable Nomination to protect the deceased's wishes. The appellant was asked to sign the document because, with only one signature, it would be of little effect. MacAllan explained the document to the deceased and gave her advice about it. He witnessed it with another solicitor. By its terms,

the deceased irrevocably nominated the appellant as the sole beneficiary of her life insurance policies. MacAllan said the reference to the existence of a terminal illness in the deceased was that the deceased's spine was decaying and she would become seriously paralysed if her broken bones broke the spinal cord. There was no cure for it.

[203] MacAllan said that, from October to early November 2014, there were a series of communications in relation to the nomination of beneficiaries for a particular insurance policy. He had a meeting with the appellant on 3 November 2014, as a consequence of which the firm communicated directly with the deceased seeking her instructions. That meeting related to a requirement to change the Will if there was going to be a change in the particular nominated beneficiaries.

[204] MacAllan met with the deceased and the appellant on 5 November 2014. The purpose of the meeting was to change the beneficiaries on one particular policy. At one point, the deceased was crying and left the office. She said she was suffering a panic attack, having forgotten to take her Valium. After some minutes she calmed down. MacAllan asked if the deceased wanted to see him alone. She said she wanted the appellant to stay as she needed his support.

[205] MacAllan said there was a discussion about the deceased going to Peru to buy medicine. The deceased wanted to go on her own. The deceased did not want to be a burden and wanted to go into a nursing home. Ultimately, the deceased indicated that she wanted to change the nomination so that the appellant was 100 per cent beneficiary of one policy. MacAllan recorded that the deceased became teary and apologised for causing so much trouble.

[206] MacAllan went through a draft Will. There was a discussion about the nomination for the life policy, which had been sent to the insurer. MacAllan offered to contact them. The deceased was initially hesitant but agreed. After the meeting it was decided to not change it. The deceased indicated the appellant would handle the distribution of that policy.

[207] MacAllan prepared a letter dated 6 November 2014 to the deceased, confirming her verbal instructions. In that letter he said:

> "In our meeting yesterday you informed me your intentions were to go to London for a back operation and if that operation was unsuccessful then you plan to fly to Peru and obtain medication that you would self-administer that would effectively euthanise yourself.
>
> I also confirm that I am not providing advice in relation to your life insurance policies and, particularly, I am not providing advice in relation to whether your policies will pay out if you take your own life."

[208] The three life insurance policies held at the time of the deceased's death were taken out over a three year period between 2010 and 2013.

[209] One policy, with Guardian Life Insurance, was taken out on 26 July 2010. At the time of the deceased's death, it had a value of $500,000. The most recent change to its value occurred on 19 June 2013. On 8 April 2013, a friend of the deceased was nominated as the sole beneficiary by way of telephone call. On 21 June 2013, the appellant was nominated as the sole beneficiary. On 5 March 2014, Lucas was nominated as the sole beneficiary. On 2 June 2014, the appellant was again

nominated as the sole beneficiary. Each of these subsequent nominations was made through official documentation.

[210] A second policy, with Real Family Life Cover Insurance, was taken out on 5 July 2013. Its value at the time of death was $400,000. The most recent change to its value occurred on 17 July 2013. On 5 March 2014, Lucas was nominated as the sole beneficiary. On 29 April 2014, the appellant was nominated as the sole beneficiary. On 29 October 2014, the insurance company received an incomplete beneficiary form via post, nominating seven people as beneficiaries (the appellant was to receive 26 per cent under this nomination). On 6 November 2014, the insurance company received two correctly completed beneficiary forms, one via post and dated 3 November 2014 nominated five people as beneficiaries (the appellant was to receive 25 per cent under this nomination); the other, faxed on 6 November 2014 from the deceased's lawyer, nominated the appellant as a sole beneficiary. On 10 November 2014, the deceased clarified by email that the appellant should be the sole beneficiary.

[211] The third policy, with Aussie Life Plan Insurance, was taken out on 17 July 2013. At all times its value was $500,000. On 5 March 2014, Lucas was nominated as the sole beneficiary for this policy. On 29 April 2014, the appellant was nominated as the sole beneficiary.

Appellant's submissions

[212] The appellant submits that the trial Judge erred in his direction in relation to the elements of Count 2. Unlike s 7 of the *Code*, s 311 establishes a criminal offence. The trial Judge directed the jury that the Crown must prove beyond reasonable doubt that when the acts of aiding were done by the appellant, the appellant knew that the deceased would *or may* kill herself by using the generator to cause her death by carbon monoxide poisoning. The word may results in an impermissibly broad direction in respect of the intentions of the deceased. In order to aid another person to kill himself or herself, there must exist in the mind of the aider more than a mere possibility of an outcome occurring. In order to establish guilt, there must be in the mind of the aider an awareness of the probability or high likelihood that the other person will kill himself or herself. This misdirection deprived the appellant of a fair chance of acquittal, both in respect of Count 1 and Count 2, having regard to their close interaction.

[213] The appellant submits that the trial Judge further misdirected the jury. Whilst the trial Judge correctly directed the jury that the question in respect of innocent hypothesis was whether the jury could exclude an innocent hypothesis beyond reasonable doubt, that direction occurred in the context of a reference to defence counsel referring to possible hypotheses of innocence. The earlier proper directions in relation to the burden and standard of proof were insufficient to correctly direct the jury that the onus of excluding any hypothesis of innocence rests at all times with the Crown. The failure to do so may have left the jury with the impression that the appellant had an onus of establishing such an hypothesis.

[214] The appellant further submits that two emails, sent by the deceased to a renowned proponent of voluntary assisted euthanasia in May and September 2014, neither of which were in the possession of the appellant prior to the trial, were relevant and admissible. They contradicted the evidence of Lucas and Dent that the deceased never mentioned to them contemplating taking her own life prior early November

2014. Had the jury been aware of the emails, it would have significantly impacted on their assessment of the credibility and reliability of Lucas and Dent and on their assessment of the appellant's conduct in determining his guilt in respect of Count 2 on the indictment. There is a significant possibility that the jury, had they known of those emails, would have determined that the deceased either constantly vacillated about whether she was going to take her own life, or had already determined to take her own life but not effectively communicated this to the appellant.

[215] Finally, the appellant submits that an independent assessment of the evidence supports a conclusion that it was not open to the jury to be satisfied beyond reasonable doubt about the appellant's guilt of either count. There was at least one rational inference open on the evidence not consistent with the appellant's guilt. That inference was not excluded by the Crown beyond reasonable doubt.

[216] As to sentence, the appellant submits that an effective head sentence of 10 years' imprisonment in respect of a man previously of good character and without prior convictions, without the fixing of any earlier parole eligibility date, was manifestly excessive in the circumstances. A head sentence of eight years' imprisonment properly reflected the appellant's criminality.

Respondent's submissions

[217] The respondent submits that the trial Judge did not misdirect the jury in respect of the elements of Count 2. The trial Judge correctly directed the jury that it was not enough that the appellant's acts did, in fact, aid the deceased in killing herself. In order to convict, the jury must be satisfied beyond reasonable doubt that, at the time the appellant did those acts, the appellant must have intended that his acts of aiding would assist or help the deceased to kill herself. The use of the word "may" was confined to the discussion of the very specific factual scenario, being the use of a generator by carbon monoxide poisoning. Having regard to those circumstances, it could not be said that the use of the word "may" caused a miscarriage of justice.

[218] The respondent submits that the trial Judge appropriately directed the jury in respect of the burden of proof. Not only was no redirection sought, the primary Judge had correctly explained to the jury the process of drawing inferences, whilst reminding them as to the fact that the Crown bore the burden of proof with respect of all elements for a particular offence and that the appellant had no burden to prove any aspect.

[219] The respondent further submits that, whilst the two emails purportedly sent by the deceased in May and September 2014 may have been relevant and admissible, their lack of availability at trial occasioned no miscarriage of justice. On the evidence of Dent at trial, it was open to conclude that the deceased had indeed expressed a desire to end her own life prior to November 2014. The deceased's vacillation in respect of this point was self-evident on that evidence. The trial Judge gave comprehensive directions in relation to the use of the statements of the deceased to these two witnesses. The appellant had also given a version to police to the effect that the deceased had expressed a desire to end her own life for some significant period but that he was unwilling to assist her. The emails did not affect the consciousness of guilt attributed to the appellant by his lies, as that related to his utterances to police concerning the purchase of the generator. The existence of those two emails could not be said to have caused a jury to entertain a reasonable

doubt about the guilt of the appellant, having regard to the evidence that was led at the trial.

[220] Finally, the respondent submits that the verdict of the jury was not unreasonable. The evidence placed before the jury provided an overwhelming case to establish beyond reasonable doubt that the appellant had counselled in a calculated and measured approach an emotionally vulnerable woman, who desired to end her own life, to in fact take her own life.

[221] As to sentence, the respondent submits that, notwithstanding the appellant's otherwise good character and lack of criminal history, his conduct in counselling the deceased's suicide constituted very serious criminal conduct. The added financial desire attributed to the appellant aggravated that offending, as did the prolonged and methodical approach to the counselling of his vulnerable wife.

Conviction appeal

Ground one

[222] Relevantly, the trial Judge directed the jury, in respect of Count 2:

> "The Crown must then prove that when the accused did the acts of aiding – if you find beyond reasonable doubt that he did, in fact, do any acts of aiding – that he intended that the aiding would in fact aid the deceased to kill herself by using the generator to cause her death by carbon monoxide poisoning. In order to prove the relevant intention, which is element two, the Crown must prove that the accused had a particular state of mind when he did the acts of aiding. If, in fact, you find that he did any acts of aiding. The state of mind that the accused must hold at the time of the aiding relates to the state of mind that the deceased either had at that point or would acquire. You will recall that in order to "kill herself" which is the term in the charge, for the purpose of the charge, the deceased must have done an act which caused her death and she must've intended that the act would cause her death.
>
> It is the act by the deceased with that state of mind by the deceased which the accused must have intended to aid. Therefore, the Crown must prove beyond reasonable doubt that when the acts of aiding were done by the accused, the accused knew that the deceased would or may kill herself by using the generator to cause her death by carbon monoxide poisoning. You must then be satisfied beyond reasonable doubt that with that knowledge, the accused then intended that the acts of aiding would assist or help the deceased to kill herself by carbon monoxide poisoning."

[223] The expression "would or may kill herself" in that direction must be viewed in the context of the specific circumstances in dispute. Whilst the autopsy had established that the deceased's death was by carbon monoxide poisoning, there had been no specific admission to that effect. Accordingly, the jury had been properly directed, prior to this passage, that the jury must be satisfied beyond reasonable doubt that the deceased did kill herself and that aspects of that determination included, not only

that the deceased died as a result of an act or acts done by her, but also that any such act did cause her death, in the sense that it was a substantial or significant cause.

[224] The trial Judge's direction to the jury that the Crown must prove beyond reasonable doubt that when the acts of aiding were done by the accused that the accused knew that the deceased would or may kill herself properly recognised that the jury was considering the appellant's intention to aid in the context of the jury also having to be satisfied that the deceased had done an act which caused her death, intending that the act would cause her death.

[225] In that context, the word "may" did not impermissibly broaden the requisite states of mind of the accused or of the deceased. That word did not convey to the jury that a mere possibility of that outcome occurring was sufficient to establish aiding another person to kill himself or herself. It properly directed the jury as to the requisite mind of the aider of an awareness of the probability of the deceased taking her own life by using the generator to cause her death by carbon monoxide poisoning. This ground fails.

Ground two

[226] In the course of summarising the rival contentions, the trial Judge specifically referred the jury to defence counsel's submissions upon the hypothesis of innocence:

> "… Mr Wells said to you that he was going to tell you what he described as the hypothesis of innocence. He said to you that if one of the [hypotheses] of innocence was possible, then you would have to acquit. I can tell you, in law, the issue is whether you can exclude an innocent hypothesis beyond reasonable doubt."

[227] That observation correctly framed the onus of proof in respect of the hypothesis of innocence. It informed the jury that the issue was not whether an hypothesis of innocence was possible. The issue was whether the jury could exclude an innocent hypothesis beyond reasonable doubt.

[228] The observation must be viewed in the context of the summing up as a whole. It included detailed, specific directions as to the burden and standard of proof. Those directions properly directed the jury as to the drawing of inferences, as to the necessity that guilt is the only rational inference that can be drawn from the circumstances, and that, if there was any reasonable possibility consistent with innocence, it was the jury's duty to find the appellant not guilty.

[229] The trial Judge also specifically and properly directed the jury that the burden of proof rests on the prosecution to prove the guilt of the appellant throughout; that there was no burden on the appellant to establish his innocence; and that the appellant may only be convicted if the prosecution established beyond reasonable doubt that he was guilty of the offence.

[230] Having regard to the circumstances in which the trial Judge made the observation, there was no requirement for the trial Judge to further direct the jury that the onus of excluding any hypothesis of innocence rested at all times with the Crown. There is no reasonable basis to conclude that a failure to repeat the earlier specific directions as to the onus of proof resting at all times with the Crown, at this stage of the summing up, deprived the appellant of a fair chance of acquittal. This ground fails.

Ground three

[231] In determining an application for a new trial on the ground of fresh evidence, the ultimate question for decision is whether there has been a miscarriage of justice at the trial. As Mason and Deane JJ observed, "The appellate court will conclude that the unavailability of the new evidence at the time of trial involved such a miscarriage if, and only if, it considers that there is a significant possibility that the jury, acting reasonably, would have acquitted the applicant of the charge if the new evidence had been before it in the trial".[74]

[232] The emails purportedly sent by the deceased in May and September 2014 were not in evidence at trial. If they had been in the possession of the appellant prior to trial, they would have been relevant and admissible evidence. However, it does not follow that the unavailability of these emails at trial had a significant and a material impact on the assessment of the credibility and reliability of Lucas and Dent, or of the appellant's own conduct.

[233] A consideration of the evidence of Lucas and Dent, as well as the statements of the appellant to police, amply supported as considerations for the jury on the evidence at trial, that the deceased had vacillated about whether or not she was going to take her own life and had at times expressed to Lucas, Dent and the appellant details of plans to take her own life.

[234] Against that background, there is no basis to conclude that the availability of those emails materially impacted upon the jury's deliberation. There is not a significant possibility that the jury, acting reasonably, would have acquitted the appellant of the counts if these emails had been before it in the trial. This ground fails.

Ground four

[235] A determination of this ground requires the Court to undertake an independent assessment of the evidence to determine whether it was open to the jury on the whole of the evidence to be satisfied of the appellant's guilt beyond reasonable doubt of each count. In doing so, due regard must be given to the role of the jury in the determination of guilt in a criminal trial.[75]

[236] In undertaking this task, the Court proceeds on the assumption that evidence necessary for satisfaction by the jury of guilt beyond reasonable doubt was assessed by the jury as credible and reliable and examines the record to see whether either by reason of inconsistencies, discrepancies or other inadequacy, or in light of other evidence, the Court is satisfied that the jury, acting rationally, ought nonetheless to have entertained a reasonable doubt as to proof of guilt.[76]

[237] A consideration of the evidence as a whole amply supports a conclusion that it was open to the jury to be satisfied of the appellant's guilt beyond reasonable doubt in respect of each of Counts 1 and 2.

[238] In respect of Count 1, the jury had before it evidence from Lucas, Dent and Winters as to express statements by the deceased that the appellant had, prior to her suicide, spoken to the deceased about her inability to cope with the forthcoming end of the

---

74 *Gallagher v The Queen* (1986) 160 CLR 392, 402.

75 *M v The Queen* [1994] HCA 63; (1994) 181 CLR 487, 492 – 493; *SKA v The Queen* [2011] HCA 13 at [14]; [22]; [24]; (2011) 243 CLR 400; *R v Baden-Clay* [2016] HCA 35; (2016) 258 CLR 308 at [66]; *R v Dalton* [2020] QCA 13 at [173] – [181].

76 *Pell v The Queen* [2020] HCA 12 at [39].

world; that, by taking her own life, she would save herself not only pain but also provide for the appellant, through her life insurance policies; that the appellant had spoken to the deceased about an individual who had committed suicide by gassing and left his partner insurance moneys, which was a blessing; that the appellant had explained to the deceased what he planned to do with the insurance moneys, including showing her the property, Flame Tree; that the appellant had told the deceased that suicide would not be a sin in God's eyes; that the appellant had only agreed to the deceased travelling to Dent's residence on the basis that the deceased would take her own life upon her return; and that the deceased felt compelled to comply with his wishes because of the promises she had made to the appellant.

[239] The jury also had before it the contents of the appellant's interview with police, including his initial denial of any knowledge of the purchase of a generator by the deceased, with his subsequent admissions that he had accompanied the deceased to purchase the generator and had assisted the deceased to remove it from its box before placing it back into the motor vehicle. The jury was able to use the lie initially told by the appellant in that interview, that he did not know anything about the generator as consciousness of his guilt of Count 2. The appellant also admitted during the interview that the deceased had said she was intending to take her life using the generator and that he had not taken the deceased's vehicle to church on that Sunday as he knew the generator was in the boot of that vehicle.

[240] Whilst it was put to Lucas and Dent that each had a motivation to be making false assertions in relation to these statements and, further, that other statements and actions of the deceased were inconsistent with those assertions, it was ultimately a matter for a jury whether those matters caused the jury to find their evidence unreliable or lacking credibility. In undertaking that assessment, a relevant factor for the jury was the juxtaposition between the recent visit by the deceased to Dent's residence, in the context of her claim that it only occurred on the basis of a promise she made to take her own life upon her return from Dent's residence, and the deceased's death by suicide less than one week later.

[241] In respect of Count 2, the CCTV footage establishing the appellant's involvement in accompanying the deceased to purchase the generator from Bunnings, the obvious need for the deceased to have assistance from another to have removed the generator from its box, and the appellant's initial lies as to his involvement in assisting the deceased to purchase the generator and to remove it from its box and reposition in the Ford, together with his admissions to police that when he went to church, he did not drive the deceased's Ford, and he knew it afforded the deceased an opportunity to suicide using the generator, provided ample basis for the jury to conclude that the Crown had established beyond reasonable doubt the appellant's guilt of aiding the deceased to kill herself as particulars of that Count.

[242] There was also ample basis for the jury to conclude beyond reasonable doubt that the deceased had killed herself, causing her own death of carbon monoxide poisoning, by using the generator in the motor vehicle.

[243] Evidence that the deceased had on other occasions expressed an intention to take her own life, including making plans to do so in Peru, as well as evidence of past suicide attempts, did not mean it was not open to the jury to accept beyond reasonable doubt that the appellant's actions in counselling the deceased, as particularised by the Crown, and then in assisting the deceased to obtain and locate

the generator, as particularised by the Crown, were undertaken by the appellant with the intention of aiding the deceased to kill herself, knowing that the deceased intended to take her own life by using the generator to cause her own death by carbon monoxide poisoning.

[244] The verdict of the jury was not unreasonable. This ground fails.

Sentence

[245] The sentencing Judge found that the appellant was motivated by money to counsel and to aid the deceased's suicide. Whilst it was accepted the deceased's illness and symptoms would have placed the appellant under significant stress and may have contributed generally to his offending behaviour, it was also found that the appellant had not shown any remorse. Further, he had told obvious lies to police.

[246] These conclusions were open on the evidence and supported the conclusion that the appellant did not have the benefit of mitigating circumstances such as remorse and cooperation. The sentencing Judge did accept there were other mitigating factors in favour of the appellant. He was 65 years of age at the time of the deceased's death and 69 years of age at sentence. He had no prior convictions. He had spent a productive life as a highly regarded member of society, notwithstanding that he had had a difficult upbringing.

[247] In affixing a head sentence of 10 years' imprisonment, the sentencing Judge correctly observed that there were no comparable authorities in respect of the count of counselling suicide, although there were some comparable authorities in respect of the count of aiding suicide. The sentencing Judge also properly found that reference to comparable authorities for the offences of manslaughter and attempted murder were ultimately of little assistance.

[248] As the sentencing Judge observed, the lack of comparable sentences did not preclude a sentence in accordance with proper sentencing principles. Those principles included the serious nature of the offences; the fact that each Count carried a maximum of life imprisonment; the fact that the deceased was a vulnerable person with difficulties with her physical health, who was already suffering depression; and the fact that the appellant, by his conduct, took advantage of those vulnerabilities in order to persuade her to kill herself and then assisted her to do so.

[249] In addition to those matters, the more serious aspect of the offences, counselling suicide, occurred over a period of months. Its seriousness was aggravated by the fact that the appellant had also aided the deceased to kill herself, being the end result of that extended period of counselling.

[250] Those latter features properly were described by the sentencing Judge as leading to a conclusion that the appellant's offences were extremely serious examples of offending under s 311 of the *Criminal Code*.

[251] Having regard to the circumstances that counselling suicide, in the present case, involved taking advantage of the vulnerability of a sick and depressed woman, whilst motivated by the prospect of financial gain, with the end result that the appellant also aided that vulnerable woman to kill herself, general deterrence was properly recognised as a weighty factor.

[252] Further, the mitigating factors such as the appellant's prior good character, work ethic; lack of criminal convictions; his advanced age; and the prospect of facing

a considerable period of custody were tempered by the consideration that the appellant has shown absolutely no remorse.

[253] Balancing all of those factors, a head sentence of 10 years' imprisonment for the particularly serious offence of counselling suicide, represented a sound exercise of the sentencing discretion. The lack of remorse amply supported, in the exercise of that discretion, a determination not to set a parole eligibility date but to instead let that date be set in accordance with the legislation.

[254] The sentence imposed for the appellant's serious offending was neither plainly wrong nor unreasonable. The sentence was in accord with proper sentencing principles. The sentences imposed were not manifestly excessive.

Orders

[255] I would order:

(1) The application for leave to adduce further evidence be granted.

(2) The appeal against conviction be dismissed.

(3) The application for leave to appeal against sentence be granted.

(4) The appeal against sentence be dismissed.