SUPREME COURT OF QUEENSLAND

CITATION:	*R v Turner* [2010] QCA 156
PARTIES:	**R** **v** **TURNER, Steven Roy** (appellant)
FILE NO/S:	CA No 264 of 2009 SC No 33 of 2006
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Rockhampton
DELIVERED ON:	22 June 2010
DELIVERED AT:	Brisbane
HEARING DATE:	15 June 2010
JUDGES:	Chief Justice and Fraser JA and Atkinson J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal dismissed**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the appellant was found guilty of murder and appealed his conviction on the ground that the verdict was unsafe and unsatisfactory – where the appellant argued that the prosecution failed to establish beyond reasonable doubt that the appellant intended to kill the deceased – whether it was open on the whole of the evidence for the jury to be satisfied beyond reasonable doubt that the appellant was guilty of intentionally killing the deceased *Criminal Code*1899 (Qld), s 668E(1) *MFA v The Queen* (2002) 213 CLR 606; [2002] HCA 53, cited *R v Roughan* [2009] QCA 21, cited *R v Rice* (1996) 85 A Crim R 187; [1996] 2 VR 406, cited *R v Lennox* [2007] QCA 383, cited
COUNSEL:	B W Farr SC for the appellant M J Copley SC for the respondent
SOLICITORS:	Legal Aid Queensland for the appellant Department of Public Prosecutions (Queensland) for the respondent

[1] **CHIEF JUSTICE:** I have had the advantage of reading the reasons for judgment of Fraser JA. I agree that the appeal should be dismissed, for those reasons.

[2] **FRASER JA:** After an eight day trial in the Supreme Court at Rockhampton, on 21 September 2009 a jury found the appellant guilty of the murder of Nicole Lieske on or about 5 February 2005. The appellant has appealed against the conviction on the ground that the verdict of the jury was "unsafe and unsatisfactory". That must be taken as invoking the ground in s 668E(1) of the *Criminal Code* 1899 (Qld) that the verdict was unreasonable. The question is whether it was open on the whole of the evidence for the jury to be satisfied beyond reasonable doubt that the appellant was guilty.[1]

[3] The appellant did not contend for any error in the trial judge's directions to the jury or more generally in his Honour's careful and detailed summing up. The issues in the appeal, which reflected the real issues fought at trial, were whether the appellant caused the death of the deceased and, if so, whether he did so intending to kill her. The argument that the prosecution had failed to prove beyond reasonable doubt that the appellant had killed the deceased was not seriously pressed in the appeal but it was not abandoned. The more substantial argument was that the prosecution failed to prove beyond reasonable doubt that the appellant intended to kill the deceased.

[4] It is necessary to outline only so much of the evidence at trial as significantly bears upon both issues.

[5] The prosecution adduced evidence from Ms Jessica White that she saw the deceased on the first Friday in February 2005 in a unit complex in Rockhampton. The deceased had visited that unit over a three day period and on each day was given permission to use a telephone to call "Steve". She left messages over the telephone for that person to visit her. So far as the evidence revealed the deceased was not seen alive again by anyone other than the appellant. The deceased was reported missing to police on 26 March 2005. Her remains were found on 29 May 2005 in a creek bed at a place called "The Caves" near Rockhampton. An experienced forensic pathologist, Dr Buxton, gave evidence that he observed the whole skeleton (except for four bones which were not found) spread over a distance of about 20 to 30 metres. Apart from a detached mat of reddish-coloured hair and some pieces of soft tissue attached to one arm and the area of the chest, the bones were all that remained. Dr Buxton gave evidence that in this area it was usually animals that moved bones (dogs, pigs, and smaller animals were known to be in the area) but there was no evidence of any animal predation. Dr Buxton thought that the deceased had been dead for longer than two months. Having regard to the state of the bones the period could have been twice or even three times as long. The cause of death could not be determined.

[6] The respondent contended that although the cause of death remained unknown it was open to the jury to infer that the appellant had intentionally killed the deceased from statements made by the appellant in police interviews to the effect that he had disposed of the deceased's body and her personal effects in a way which was calculated to ensure that the cause of death would not be discovered, from other statements in those interviews which suggested that the appellant may have had a motive for killing the deceased, and from similar statements and other admissions which two prison informers, Mr Naum and Mr Cook, and an acquaintance of the appellant, Mr Anthony White, attributed to the appellant.

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1 *MFA v The Queen* (2002) 213 CLR 606 at 614-615, 624.

[7] In a series of police interviews, the appellant initially denied any direct knowledge or involvement in the death of the deceased or the disposal of her body but he subsequently admitted that he had been present with the deceased in his home shortly before she died, he had discovered her body shortly after she died, and he had removed her body and her personal effects from his home and disposed of the body at The Caves and the personal effects at other places.

[8] In the appellant's first interview on 30 May 2005, he told Detective Hickey that he had first met the deceased in December 2004 at Mr White's house. He had heard that she was missing. He had heard rumours that she had been put into a car boot. One Cassie Harvey had told him that she had heard that it was the appellant who had put the deceased into the car boot and then disposed of her body. The appellant said that he was upset by these rumours. There was no reason why anyone would spread stories implicating him in the death or disposal of the deceased. He could give no information about her disappearance. The appellant said that he had heard that the deceased was supposed to have had HIV and that the deceased had told him that she had Hepatitis C: that statement assumed significance as an aspect of a possible motive in light of subsequent admissions by the appellant.

[9] Detective Hickey gave evidence that on 2 June 2005, after he had told the appellant that the deceased's remains had been found at The Caves, the appellant admitted that he had dumped the body of the deceased but he said that he had not killed her. In the course of the following taped interview the appellant acknowledged that he had made those statements to Detective Hickey. The appellant went on to say that after he had been out all night he had found the body of the deceased in his bed at five or six in the morning. He could not recall the date but it was the same day on which he saw uniformed police in his street: other evidence established that police visited a neighbour's house on 5 February 2005. He did not know how the deceased had got in to his house or how she had died but he speculated that she might have climbed into the house and might have overdosed on drugs, although there was nothing in the house to suggest that she might have injected drugs. The appellant said that he saw no marks on the body of the deceased apart from a linear indentation on either side of her mouth which suggested to him that she had had "something tied in her mouth".

[10] The appellant said that the presence of the police officers in his street caused him to panic. He rolled up the body and put it into a plastic bag. He used tie down straps to "make her small" so as to get the body out of the house. (Dr Buxton gave evidence that from his examination of the skeletal remains it looked as though the body had been bent around the stomach, or "folded over": he could not say at what stage the folding over occurred. He agreed in cross examination that his observations were consistent with the body being bound up with ties and put into a foetal position so as to be able to be put into the boot of a car and later placed where he observed the body in the creek bed.)

[11] The appellant said that after putting the body into the boot of his car he gathered together the deceased's belongings and drove out to The Caves. He dragged the body to a creek bed and removed it from the plastic bag. He later disposed of the bag, the ties, and the deceased's belongings in different places. The appellant said that as he was leaving the area, his car became stuck on a bush track about two to three hundred metres from where he had dumped the body. (A tour bus operator encountered the appellant's car on that bush track when it was stuck on 5 February 2005 and reported that to police, thinking it might have been a stolen vehicle.) The

appellant then went to a nearby, unoccupied house and telephoned a friend to help him tow his car out of the bush track.

[12] The appellant said that after he returned to town he went to White's house and told him that "I chopped her up and done all this stuff to her" and "fed her to the pigs". (Dr Buxton's evidence was that had the body had been dismembered he would have expected to see marks on the bones. He did not see any such marks. The trial judge directed the jury that the statement that the appellant had chopped up the body was highly likely to be false.) The appellant said that he went to New South Wales and used the deceased's key card to make balance enquiries and withdrawals. (The prosecution established by other evidence that the deceased's bank account had been accessed from Sydney some days before 26 March 2005.) The appellant decided that burying the body was not a good idea because his understanding of "forensics" was that "you could tell when she was buried, and what not" and he "figured that'd they have a little bit more interesting time trying to find out a bit if she was left to the elements."

[13] In the next recorded interview on 3 June 2005 the appellant reiterated that he had told White that he had chopped up the deceased and fed her to the pigs. He added that he threw lime over her, that he told White various different stories, and that he never actually told White that he had killed the deceased.

[14] Detective Hickey gave evidence that on 5 June 2005 the appellant told him that, "I haven't burned myself on everything about Nicole". In the following recorded interview, the appellant said that when he found the deceased's body on his bed her hands were tied behind her back and her ankles were tied together with zip ties, and there was a ball in her mouth which was secured by a zip tie. (Dr Buxton's evidence was that it would have been feasible and not inconsistent with his observations of the deceased's remains for a ball of the kind described by the appellant to have been placed in the mouth of the deceased in that way.) The appellant said that he could not find a pulse when he checked in the deceased's neck. He jabbed a knife into her buttock and there was no blood flow, so he decided that she was dead. (Because of the nature of the remains Dr Buxton could not tell whether or not a knife has been used in the way described by the appellant.) In response to a question from Detective Hickey whether the appellant had given the deceased a "hot shot" (meaning an injection of drugs which was contaminated or potent so as to be fatal) the appellant denied that but he added that he "gave her something back" because she had tried to give him "a half". The appellant could not understand why she would be giving him drugs. He said that he thought that the "gear" ("speed") might have come from White but that it "didn't look right". In a further interview on the same day, the appellant said that he had not wanted the deceased to be found "straight away" but that "I didn't actually really try and hide her either".

[15] In the final police interview on 14 July 2005 the appellant again significantly changed his version of events. In this version the deceased had died after they had consensual bondage sex in which he had tied her hands behind her back with zip ties and had secured a ball in her mouth by another zip tie. He said that he had left the deceased alive in his house bound and gagged in that way while he went out to get drugs. When he returned he found that she was dead. After he had unsuccessfully attempted to close her eyes, which disturbed him, he glued them shut with superglue. To see if she was really dead he poured lighter fluid onto her naval and ignited it. (Dr Buxton could not express an opinion whether either event had or

had not occurred.) The appellant said that he unsuccessfully attempted mouth-to-mouth resuscitation and he repeated his earlier statement that he had also jabbed her buttock and she had not reacted. In the course of this interview the appellant said that he did not think that the deceased had expected him to leave the ball in her mouth when he went out to get drugs. He said that she did not really complain about that "because I suppose she really couldn't speak" but that she did not show any distress or carry on. He said that he did not untie her before he went out as a "bit of a joke".

[16] White gave evidence that about a week after the deceased and the appellant had met each other at White's house in mid January 2005 the appellant came to White's house. The appellant was really angry and abused the deceased with words like, "that fucking filthy bitch. How could she do this to me?" The appellant told White that the deceased and the appellant had bought some speed. The deceased used the appellant's syringe and then filled it up with water. After the appellant subsequently used the syringe he saw blood in it. He had heard that the deceased had AIDS. White gave evidence that about two weeks after this conversation the appellant told him that he had "fixed the problem with" the deceased. The appellant said that he had rung her up, gone and picked her up, put her in the boot of his car, and driven out onto a dirt track in the bush. He had then taken her out of the boot, staked her down to a bull ants' nest and cut the inside of her thighs and left her there. (There was no evidence of a bull ant's nest or of stakes near the place where the deceased's remains were taken. That might perhaps be explicable by the activities of animals and the passage of time but the trial judge directed the jury that this aspect of the appellant's version was highly likely to be false.) White did not believe what the appellant was saying and told him to shut up.

[17] After the appellant was charged with the murder of the deceased and remanded in custody he was held in the same unit in prison as Naum and Cook. They were armed robbers serving sentences of imprisonment. Naum gave evidence that the appellant told him that the appellant had killed the deceased because she had tried to give him a "hot shot". Naum said that the appellant formed that view because the deceased had offered him drugs. The appellant thought that was odd because she never had money or drugs to offer. When he told her to take the drugs she would not do so. According to Naum the appellant said that from that point on the appellant was always going to "knock her". The appellant kept the deceased as a sex slave for a few days, during which time he raped her vaginally and anally with a coke bottle. Naum gave evidence that the appellant said that he killed the deceased, put her body in a bag or a suitcase, threw it down the stairs, and took it out to The Caves where he dumped it. The appellant explained how he had disposed of the deceased's clothes. He also told Naum that his car got stuck on a track, that he used a telephone to get someone to help him with his car, and the house where he used the telephone belonged to a prison guard who those in the prison knew as "Thommo". (It was admitted at the trial that the owner or perhaps part owner of the house from which the appellant made a telephone call seeking assistance was Mr Thomasson, who was then a prison officer.) In cross examination Naum agreed that the appellant said something to the effect that he had gone away to get some drugs and come back to find the deceased was dead.

[18] Cook was a friend of Naum's. He gave evidence that the appellant told him that he had superglued a girl's eyes shut, set her naval on fire, and inserted a coke bottle inside her vagina. Cook said that the appellant told him that he and the deceased

had been involved in bondage, that the appellant was under the impression that the deceased was going to give him a hot shot, once he realised that the deceased was always going to die, and it was just a matter of by how much torture. The appellant told Cook that he had put the deceased's body into a garbage bag, dropped it down stairs, and dumped it in the bush. He went into Thomasson's house to make a phone call.

[19] The appellant gave evidence in his own defence. His evidence accorded in most respects with the version of events in his last police interview. He adhered to his statements that he had put the body of the deceased into a bag, taken it down the stairs, and put it into the boot of a car, driven out to The Caves, and subsequently told White that he had got rid of the deceased and fed her to the pigs. He said that White had arranged to get the deceased's key card off a person who coincidentally had possession of it at the time and he admitted to using the key card a few times in an attempt to give the appearance that the deceased was still alive. However he denied the truth of his statements to police that he had chopped up the deceased, put lime on her, jabbed her buttock with a knife, glued her eyes shut, and ignited lighter fluid in her naval. His evidence was that he told Detective Hickey that he had glued the deceased's eyes together and ignited the lighter fluid because he was then contemplating a mental health defence. He said that he had lied in his police interviews because he did not want to take responsibility for the death of the deceased.

[20] The appellant called evidence from two other inmates of the prison, Houlihan and Norris, both of whom said that the appellant did not discuss the details of his case with anyone. Norris gave evidence that he had warned the appellant not to talk to Cook because he was known to be a police informer.

[21] Mr Farr SC, who represented the appellant, argued that on the whole of the evidence it was not open to the jury to be satisfied beyond reasonable doubt that the appellant killed the deceased or did so with the intention of killing her. He emphasised the absence of evidence of the cause of death and the conflicts in the statements by the appellant in his police interviews which, Mr Farr argued, rendered them unreliable as a source of the appellant's intention; the evidence of the conflicting statements made by the appellant demonstrated that he was so unreliable that a jury could not reasonably rely upon his bland statements to the effect that he had intentionally killed the deceased to the exclusion of his quite specific statements that she had died in his absence. Mr Farr argued that the known location and positioning of the remains of the deceased demonstrated that the statement which White attributed to the appellant that the appellant had staked the deceased to a bull ants' nest and cut her thighs was untrue so that, if one accepted White's evidence as an accurate statement of what the appellant said, that claim by the appellant was demonstrably false. Whilst the appellant's conduct in disposing of the body of the deceased and her possessions was suspicious, it did not support the finding of an intentional killing in the absence of other evidence and did not support an inference, to the exclusion of reasonable inferences consistent with innocence, that an unlawful killing had occurred. Mr Farr argued that the Crown case therefore necessarily relied upon the evidence of Naum, Cook or White to prove that the appellant had intended to kill the deceased. He argued that the evidence of Naum and Cook was insufficient to supply the missing evidence of the appellant's intention because they were notorious prison informers who had motives to give false evidence. White also had a criminal record and a motive to give false evidence. Furthermore, the

evidence of one did not relevantly corroborate the evidence of any other. Instead, the evidence of those witnesses simply demonstrated that the appellant's statements to each of them were in conflict and unreliable.

[22] Mr Farr referred in particular to the inconsistency between the statement which Naum attributed to the appellant that the appellant had intentionally killed the deceased and other statements attributed by Naum to the appellant to the effect that the deceased died during the absence of the appellant from his house. Naum did not attribute to the appellant any statement that the appellant intended to kill the deceased by binding her hands and gagging her. Similarly, Mr Farr argued that the statement which Cook attributed to the appellant, that the appellant had gagged the deceased's mouth and tied her to the bed and when the appellant returned the deceased was dead, did not evidence an intentional unlawful killing. There were many inconsistencies amongst the various statements made by and attributed to the appellant. Mr Farr argued that it was particularly significant that in none of the statements attributed to the appellant was there any plausible explanation of the cause of death of the deceased, particularly where there was no other evidence of the cause of death.

[23] In assessing the appellant's arguments concerning the evidence of Naum, Cook and White, it is necessary to bear in mind that the trial judge gave appropriate directions to the jury about the need to scrutinize their evidence with care before acting upon it. The trial judge directed the jury that it could not act upon the statements said to have been made to any of those witnesses insofar as they reflected an intention by the appellant to kill the deceased and that he killed her unless the jury was satisfied beyond reasonable doubt that the appellant had made those statements and that they were true. His Honour reminded the jury that each of those witnesses had criminal histories which included offences of dishonesty and directed the jury that, because of the extent of those criminal records and the kinds of offences for which those witnesses had been convicted, the jury should keep in mind the dangers of accepting them as truthful witnesses and should exercise caution before acting on their evidence. The trial judge also directed the jury that if, after having assessed their evidence in the context of the other evidence and having given due weight to the dangers about acting upon that evidence the jury was satisfied that the witness was truthful and accurate, the jury could act on that evidence.

[24] In relation to Naum and Cook the trial judge further directed the jury to take into account that it would be easy enough for them to concoct their evidence but very difficult for someone in the appellant's position to refute it. The trial judge directed the jury to take into account that they might have been motivated to fabricate evidence by the prospect of a benefit in terms of sentence, treatment or release on parole; that it would be dangerous to act on the evidence of either of them if there were no independent evidence confirming it; and that it was unlikely that Cook and Naum could corroborate one another because the same concerns as to possible unreliability applied equally to each of them and because they were good friends and had agreed that they had discussed the appellant's statements. The trial judge warned the jury that it should act on the evidence of either of Cook and Naum only if, after very careful scrutiny and having regard to the warning and matters which the trial judge had identified, the jury was convinced of the truth and accuracy of their evidence.

[25] In relation to White, the trial judge reminded the jury of Detective Hickey's evidence that a letter of comfort was provided to White when he pleaded guilty to a charge on 22 December 2005, after he had given statements to police in May 2005 (in which he denied any knowledge of the appellant's activities) and in June 2005 (when he spoke of the conversations of which he gave evidence). The trial judge explained that White might have an incentive not to depart from the statement he gave to the police, whether that statement was right or wrong, and that he might have wished to ingratiate himself with the authorities or might have been concerned about his present position. The trial judge directed the jury to scrutinise White's evidence with "great care" and to act on it only if, after considering it and all of the other evidence, the jury was convinced of its truth and accuracy.

[26] It was for this properly directed jury, which had the advantage of seeing and hearing the witnesses give evidence, to assess its effect. The evidence of those witnesses, and especially that of the prison informers Naum and Cook, certainly merited the strong warnings that the trial judge gave, but it must also be borne in mind that other evidence supported some aspects of those witnesses' evidence. In particular, there was the strong body of evidence that the appellant had by himself carefully taken the body of the deceased and all of her personal effects from his house and disposed of them in separate places in such a way as was calculated to conceal the death and to ensure that the cause of death could not be discovered. There was also the statement by the appellant that he had "figured they'd [forensics] have a little bit more interesting time trying to find out a bit if she was left to the elements". The appellant had also, on apparently reliable evidence, taken steps to conceal the fact of the deceased's death by using her key card both in and out of the State after she had died.

[27] The trial judge directed the jury that before it could use the appellant's conduct in disposing of the body and the deceased's personal effects as a circumstance supporting a finding of guilt it would first have to find that he did so because he knew that he was guilty of the offence charged and not for any other reason (panic, embarrassment at his sexual conduct, and fear were cited as examples), and that it was only if the jury concluded that there was no other explanation for the disposal of the body that it was entitled to use that as a circumstance pointing to guilt. The jury must be taken to have followed those directions. In the context of all of the evidence, including that which suggested the appellant had taken considerable care over a lengthy period of time to conceal the deceased's remains and her personal effects, it was open to the jury to conclude that the appellant had acted in that way because of his knowledge of his own guilt of his offence of intentionally killing the deceased.

[28] The Court was referred to decisions in which inferences that accused persons were implicated in killings were found to be open upon evidence that the accused disposed of the body of a murder victim.[2] The inferences which might reasonably be drawn from such evidence in a particular case must depend upon the particular circumstances revealed by the whole of the relevant evidence. In the context of the other evidence at the trial, the evidence that the appellant had disposed of the deceased's body and personal effects and had otherwise acted in a way which was calculated to hinder their discovery gave the jury a basis for concluding beyond

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[2] Cf. *R v Roughan* [2009] QCA 21 at [34](b), in which Keane JA cited *R v Rice* [1996] 2 VR 406 at 411-418, 421 and *R v Lennox* [2007] QCA 383 at [50], [54] and [58]-[68].

reasonable doubt that the appellant had intentionally killed the deceased. The appellant's conduct was more consistent with the appellant having killed the deceased with the intention of doing so than with the proposition, first advanced by the appellant only at a very late stage, that the deceased had died by an unintended misadventure. Similarly, the evidence of the appellant's conduct in exaggerating the nature and degree of his violence towards the deceased's body was more consistent with the appellant having killed the deceased with the intention of doing so than with an unintended death which he had sought to conceal for reasons of panic, embarrassment or some other concern. It was reasonably open to the jury to view the evidence in this light.

[29] There was also the evidence of a possible motive in the appellant's statement in the police interview on 5 June 2005 about a concern he held about the drug which the deceased had offered him. That evidence also lent some support to the evidence of Cook and Naum, and more particularly to the evidence of White who was not said to know the other two men, of the appellant's statements about a concern he held that the deceased had attempted to harm him in connection with their use of intravenous drugs. White's evidence was that the appellant's stated concern arose when he saw the deceased's blood, potentially infected with "AIDS" or Hepatitis C, in a syringe he had used, and that the appellant told White a week or two later that the appellant had "fixed the problem". It is true that there were significant inconsistencies amongst the statements by the appellant and the statements which Cook, Naum and White attributed to the appellant, but each gave evidence from which the jury might infer that the appellant was concerned that the deceased had attempted to harm him in connection with their use of drugs and that he had intentionally killed the deceased.

[30] The appellant's exculpatory evidence was in some respects quite remarkable. For example, when he was asked why he told White that he had chopped the deceased up he first said that he was not sure that he told White that, because he thought that White would know that it would be necessary to chop up the body to feed it to the pigs. The appellant then said, however, that, "I told him that 'cause, yeah, I just left him to believe that Nicole's body would never be found... I told him that so he'd believe that Nicole's body would never be found." The jury, which had the advantage of seeing and hearing the appellant give evidence, was entitled to reject the self-serving aspects both in his evidence and in his earlier statements. In particular, it was open to the jury to reject as self-serving and unreliable the appellant's late emerging assertions that the deceased's death was an unintended consequence of her consensual participation in being tied up and gagged by the appellant in the course of consensual sexual activity. Having rejected that evidence and the appellant's explanation in evidence for his statements to police about his violent dealings with the deceased's body, the jury was entitled to act upon the evidence in the Crown case which pointed to the appellant having intentionally killed the deceased.

[31] On the whole of the evidence, notwithstanding the absence of reliable evidence as to the cause of the deceased's death, it was reasonably open to this properly directed jury to be satisfied beyond reasonable doubt that the appellant had intentionally killed the deceased.

[32] The appeal should be dismissed.

[33] **ATKINSON J:** I agree with the order proposed by Fraser JA and with his Honour's reasons.