SUPREME COURT OF QUEENSLAND

CITATION:	*R v Logan* [2012] QCA 210
PARTIES:	**R** **v** **LOGAN, Robert Ian** (appellant)
FILE NO/S:	CA No 77 of 2011 SC No 255 of 2011 SC No 617 of 2007
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	17 August 2012
DELIVERED AT:	Brisbane
HEARING DATE:	13 February 2012
JUDGES:	White JA, Margaret Wilson AJA, Atkinson J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal against conviction dismissed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO THE EVIDENCE – APPEAL DISMISSED – where the appellant was convicted of murder after a trial – where the jury rejected the defence of insanity and the partial defence of diminished responsibility – where the appellant contended that the verdict was unsafe and unsatisfactory and contrary to law – whether upon the whole of the evidence, it was open to the jury to be satisfied beyond reasonable doubt that the appellant was guilty of murder *Criminal Code* 1899 (Qld), s 26, s 27, s 304A, s 564, s 668E *Dare v Pulham* (1982) 148 CLR 658; [1982] HCA 70, considered *Fleming v The Queen* (1998) 197 CLR 250; [1998] HCA 68, cited *Gipp v The Queen* (1998) 194 CLR 106; [1998] HCA 68, cited *M v The Queen* (1994) 181 CLR 487; [1994] HCA 63, followed *MFA v The Queen* (2002) 213 CLR 606; [2002] HCA 53, followed

R v Juraszko [1967] Qd R 128, cited
R v Saffron (1988) 17 NSWLR 395, considered
R v Trifyllis [1998] QCA 416, cited
SKA v The Queen (2011) 243 CLR 400; [2011] HCA 13, followed

COUNSEL: D MacKenzie for the appellant
M J Copley SC for the respondent

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

[1] **WHITE JA:** On 4 April 2011 the appellant was convicted of murdering Ben Huntingford on 21 June 2006 after a 10 day trial. The sole ground of appeal is that:

> "[t]he conviction is unsafe and unsatisfactory and contrary to law."[1]

It may be taken that this ground seeks to encapsulate s 668E of the *Criminal Code* namely:

> "… the verdict of the jury should be set aside on the ground that it is unreasonable, or can not be supported having regard to the evidence…"

[2] It was not in dispute at the trial that the appellant killed the deceased. The prosecution case was that the appellant, fuelled by the voluntary consumption of alcohol and/or drugs, killed in an intoxicated frenzy. The defence case was that the appellant was not of sound mind at the relevant time, or alternatively, that when he formed the intention to kill he was substantially deprived of his capacity to know that he ought not to do the acts involved by virtue of his mental illness and/or the ingestion of the prescription drug Luvox so as to make him guilty of manslaughter only.[2]

[3] The appellant accepts that he bore the onus of proof on the balance of probabilities of establishing these defences.

[4] The trial was conducted on the basis that the factual circumstances of the killing were such as to suggest that the perpetrator must either have been intoxicated or suffering from some disorder of the mind. There was disputed evidence about the appellant's alcohol consumption and some uncertainty about his prescription drug ingestion prior to the killing. There was divergence in the opinions of the psychiatrists about the appellant's mental state.

Circumstances leading to the killing

[5] In June 2006 the deceased's adoptive father, Peter Huntingford, was residing in a house at Beenleigh with the deceased, then aged 22, and his son's friend, Ben Casey. The appellant had known the deceased and Ben Casey when the deceased and Ben Casey and their friend, Andrew Bliudzius, had shared a unit at Beenleigh a year or two earlier.

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1 AR 1182.
2 *Criminal Code* s 304A.

[6] Mr Huntingford's house had a spare bedroom and he gave the appellant a two week trial renting that room in about April 2006. Mr Huntingford asked the appellant to leave after approximately a week and a half after a dispute about the appellant's poor behaviour.

[7] The appellant returned to the house at least twice before the killing – once to collect his watch and on the second occasion, late at night, to collect his mail.

[8] All the doors of the house could be secured save for the laundry door which opened at the back. Apparently due to a broken lock it could not be securely closed.

[9] On the second visit, estimated to be a few weeks before the killing, Ben Casey was dozing on the couch on the lounge room watching television. The appellant arrived seeking admission. Ben Casey reported him as being seriously affected by drugs, drinking from a bottle of Guinness and carrying bags which he said contained drugs. Defence counsel suggested to him that the appellant's conduct on this occasion was "totally strange", that he "wasn't making any sense" and was "just in a state". Ben Casey rejected these descriptors:

> "He just wasn't making any sense?-- I don't know if – come across a lot of people under the influence of drugs in my time, mate, and it's pretty normal to me."[3]

And:

> "I will just finish off, Mr Casey, by suggesting to you that this man was just acting in a totally strange manner?-- Mate, the manner of a person who's just taken drugs, off their guts, in other words."[4]

[10] Evidence about the appellant's conduct on the night of the killing was of considerable importance in the trial. Mr Huntingford, Ben Casey and Andrew Bliudzius spoke of the regular consumption of marijuana by themselves and their group of friends. They were familiar with the effects of at least some illicit drugs on their friends. On this second visit Ben Casey eventually told the appellant to leave. Some hours later he saw him lurking outside and, after shouting to him to go, the appellant left on his motor bike.

The killing

[11] On Tuesday, 20 June 2006 Ben Casey, the deceased and Andrew Bliudzius were at Peter Huntingford's house.[5] At about 10.00 pm Ben Casey left for work (he worked night shift from 10.30 pm to 6.30 am) and gave Andrew Bliudzius a lift home in his car. When Ben Casey returned home from work the next morning at about 6.15 am he was confronted with what he described as "the kill floor from an abattoir".[6] His description and the photographs taken later that day by police show the hallway floor covered in blood; blood smeared over the walls of the lounge room, kitchen, hallway, Ben Casey's room and the deceased's room; some words scribbled in blood on the walls. Ben Casey saw a small sharp knife lying inside the front door. He walked through the hall to the laundry, looked outside and saw nothing. He then saw the deceased lying naked on his back under the window in his bedroom with

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3 AR 131.

4 AR 131.

5 Mr Huntingford spent time at another residence with his partner and was not at home on this occasion.

6 AR 124-125.

underpants on his head covering part of his face, his leg on an object[7] covered by the curtain.[8] A knife was protruding from the deceased's supra pubic region above the base of his penis.

[12] Ben Casey left the house and asked a passer-by to call police.

[13] Doctor Alex Olumbe, a forensic pathologist who conducted the post mortem on the deceased, attended the scene of the killing on 21 June. He concluded that death was caused by multiple cutting/slashing injuries to the deceased's neck but considered that loss of blood, the quantity of which was observed at the scene, was sufficient alone to have caused death. Doctor Olumbe identified 19 major groups of stabbing/cutting injuries on the deceased and numerous minor scratches and bruises. Some of those injuries had been inflicted after death including the stabs to the groin area. Deep cuts to the fingers, arms and hands suggested defensive wounds.

[14] The prosecution was unable to identify more particularly the circumstances of the killing but suggested that it was likely that the appellant attacked the deceased as he lay fully clothed dozing on the couch in the lounge room. After the attack, and bleeding profusely from his neck injuries which had severed his voice box, the deceased may have attempted to escape by crawling down the hall and was further attacked in his bedroom. The prosecution suggested that the arrangement of the body with the leg over the knocked-over heater and the window curtain draped over his leg suggested that the appellant was attempting to burn down the house to obscure evidence about the death. The heater had a fail safe mechanism whereby it cut out when it was tipped over. When police righted the heater it came on again not having been switched off at the wall.

[15] The appellant, in one of his many interviews with police, offered a different sequence of events with the attack commencing in the deceased's bedroom. The appellant explained the motive for the attack as prompted by an alleged homosexual assault on him by the deceased when he was living in the house and, affected by a stupefying drug, was unable to resist.

[16] The deceased's dog was found alive in the back yard having sustained stabs to his chest. Paw marks seen throughout the house suggested that the dog had become involved in the attack. The appellant said he had brought his own dog to the deceased's house. There was some evidence of footprints in the blood of a particular brand of boot – size 10 of the brand "Blue Steel".

[17] Doctor Olumbe saw evidence of anal injury to the deceased and concluded that it had been sustained before death by blunt force. There was no DNA consistent with that of the appellant associated with that injury. All relevant DNA evidence at the house where the killing occurred related to the deceased.

The investigation

[18] Police early on the morning of 21 June identified the appellant as a person they wished to speak to in relation to the killing. The appellant engaged in many interviews with police over the period 21-23 June. The central issue for the jury was the appellant's state of mind at the time he killed the deceased. The initial

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7 This object was an overturned heater.

8 Police investigators noted that the smoke alarm had been interfered with although it was not established that it had previously been working.

police statement was read to the jury and the recorded interviews were played. In light of the basis for the appeal, it is necessary to note the relevant parts of those interviews. That evidence needs to be considered with the other evidence at the trial. Of importance for an assessment of the expert psychiatric evidence was the amount and nature of alcohol, medication and other drugs taken by the appellant close to the killing.

Interview 21 June at 9.15 am

[19] Police attended the appellant's residence where he lived with his parents at Edens Landing at about 8.30 am on the morning of the killing. He accompanied police to the police station and made a statement detailing his relationship with the Huntingford family in which he painted Mr Huntingford as an aggressive man who beat the deceased. The appellant expressed dislike for Ben Casey and for the group he invited to Mr Huntingford's house while he (the appellant) was living there. They were, according to the appellant, heavy users of marijuana and other drugs. He explained his departure from the house as arising from a threat made to him by Mr Huntingford. The appellant told police that he was taking anti-depressant medication which started after his utility was stolen and he was accused of attempting to defraud the insurance company. He said he was taking Valium and Luvox only when he was "feeling down". He admitted to being a regular user of marijuana and, although he had in the past, was no longer using amphetamines. He said that the last day he saw the deceased was the day he left Mr Huntingford's house. His description of his visit to collect the mail was not consistent with Ben Casey's evidence.

[20] The appellant described being driven around much of 20 June by his mother to various places, purchasing a tall bottle of Guinness stout and a four pack of Old Crow scotch and coke at the liquor barn. He had had a beer at the tavern in the afternoon. He drank half a bottle of Guinness with his father and half of the canned scotch and coke. This account was substantially corroborated by his parents. He told police he went to bed at 10.00 pm and did not awake until 7.00 am. He cleaned up from the night before including a plate that he had accidentally smashed and had a shower before police arrived.

Interview 21 June at 8.00 pm

[21] Later that evening on 21 June at about 8.00 pm police again interviewed the appellant at the Logan Police Station. He confirmed what he had told police earlier: that he had consumed a half a bottle of Guinness and two cans of Old Crow saying that he could not drink any more as he had been on Luvox and Valium for about six to eight months. However, he had been able to cut down his dosage to half a tablet every two days. He said he took Valium to help him sleep. He told police that he was under the influence of "my Luvox and Valium" having consumed them that afternoon.

[22] In the meantime, the Government Medical Officer had examined a number of injuries seen on the appellant's face, hands, knees and shins. He told police that a day or two earlier he had been playing a game with his dog and had been bitten.

[23] The appellant said that the deceased had up to 80 different ornamental knives which he described as a "sick sort of obsession". He alleged that whenever he went to visit the deceased "they" were always "stoned". He said that he smoked marijuana every second day but had ceased taking amphetamines about eight months earlier.

The appellant protested his friendship for the deceased describing him as a really nice and decent bloke. He described Butch, the deceased's dog, as a very good guard dog who would bark when strangers came to the house. The appellant told police he could not imagine who would want to harm the deceased. He told police in relation to an earlier incident at a dentist's that he had a temper and a short fuse. He spoke of having rages and smashing guitars. The appellant said that he had completed a drug and alcohol probation course to assist in identifying triggers for his anger but that his medication had done "wonders" in assisting him.

Interview 22 June in the evening

[24] The following evening, 22 June, police again interviewed the appellant. They had seen an empty "Blue Steel" boot box at his house. The appellant gave a fanciful[9] explanation that he had swapped a pair of size 7 boots for a pair of size 10s in exchange for drugs with a dealer.

[25] In the resumed interview on 22 June commencing at 10.00 pm police raised with the appellant that he had said earlier that had broken a plate at home on his head. He explained that he was drunk and that he did it to demonstrate a "cool trick" and was just being smart. He explained that the plate already had a crack through it.

[26] The appellant related that on Tuesday evening, 20 June, he had "a couple of drinks" with his father at the pub and had purchased more liquor at a shop. After, he recalled lying on the couch watching the television with his father, contacting his mother who was socialising with a friend, passing out in the chair and waking at about 5.30 am on Wednesday morning. He said he had consumed a lot of marijuana and had flushed what was left down the toilet when he saw police coming up his driveway.

[27] When the interviewing police said they wished to go through events chronologically the appellant responded:

> "I won't be very helpful in that in the fact that I bloody, I was gone…
>
> Yeah, two Valium mate and I chugged two jugs of beer and two whole Crows, and a bottle of Guiness [sic]… yeah I was pretty gone."[10]

After discussing with police his movements during the evening of Tuesday 20 June, the appellant told them he had taken "another Valium" to allow him to go to sleep. He had consumed three five milligram tablets during the evening over four to five hours. He said his mood was good because he was on "serotonin tablets" which had done "wonders" for his mood. He said he no longer got angry:

> "… I used to actually not drink alcohol at all, because I used to kind of get like, oh I used to not drink alcohol because of the fact that it was like, it didn't agree with me, but since I was on my medication, and stuff I found that I could go out and have a drink, and enjoy myself at the pub, you know? Like go out and enjoy myself around people because from using the drugs and stuff I used to think people

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9 The appellant's mother, Patricia Logan, gave evidence that she accompanied her son to swap a pair of unworn Blue Steel boots which were at home for a larger size to fit him about five days after he left Mr Huntingford's house.

10 AR 680.

> were saying things and hearing things but like it's kind… you couldn't define it as schizophrenia because it's controllable …"[11]

He said he telephoned his mother, who was visiting at friend, at 1.00 am. He denied leaving his parent's house that night.

[28] Police resumed the interview at about 10.45pm. After some exchanges in which the appellant again expressed his friendship with the deceased, police asked if he had killed "Ben". The appellant denied involvement and expressed indignation at the suggestion that he had committed the crime.

Interview 23 June after 1.00 am

[29] In a long interview commencing some time after 1.00 am the appellant effectively admitted killing the deceased; that he had enjoyed doing so; and had Ben Casey been present he would have killed him as well.[12] The appellant alleged the deceased had perpetrated a homosexual assault upon him one night after he had passed out in his bed while he lived at Mr Huntingford's house. He told police that reflecting on this event was the trigger. He took a knife used for docking lambs from home, and, accompanied by his dog, went to the deceased's home. He entered his bedroom and put his hand over the deceased's mouth. His dog was attacked by the deceased's dog. He said

> "And then I fuckin' I was sittin' there with the hand over the mouth and goin', hey are you fuckin' happy with your life Ben? Cause I'm not happy with mine mate and I don't know I was really drunk … you'll find a bottle a smashed glass bottle of Bailey's in the street… you'll find it first street up, the Bailey's. …
>
> Yeah it was the street around there, yep, drank a whole bottle of Bailey's, on the way down there, I walked past the fuckin' camera, for fuck's sake, you saw me, on the fuckin' overpass bridge at fuckin' Bulimba."[13]

[30] The appellant said that he

> "like popped his jag first, just popped it just get him bleeding you know and then I just gave it a bit of a squeeze, so he'd have a bit of trouble trying to talk and stuff and watched him squirm around for a bit … ."[14]

When asked whether the deceased was trying to talk the appellant said he could not because he had "popped the jag …".[15] The appellant added:

> "Yeah, he can't talk, fuckin' layin' around, squirmin' around… watched him crawl up that fuckin' hallway, as he's crawlin' up the fuckin' hallway, pulled his fuckin' undies off and I said now you're naked cunt, how does it feel, how does it fuckin' feel mate, I said you want me to suck your fuckin' cock? Er, ah, ah… I said well you know what mate I'll chop your fuckin' balls off your queer cunt and then anyway, somehow fuckin' Butch fuckin', don't know what

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11 AR 688.
12 AR 760.
13 AR 762.
14 AR 763.
15 AR 763.

> happened, but I seen him, I seen him come up and I fuckin' had me dock in my hand and I fuckin' yeah onto Butch, and I put this hand up, I put onto Butch with me right hand, left hand onto Butch and the knife stuck in the fuckin' cunt and then he's fucked off, then I've got some cunt bleedin' on the floor, dog's fucked off with me fuckin' dockin' knife in him, what the fuck am I going to do?"[16]

[31] The appellant said he went into the kitchen, grabbed a kitchen knife and stabbed the deceased close to his heart giving it "a bit of a jiggle around".[17] According to the appellant, the deceased was in the living room when he stabbed him with the kitchen knife. He drank some of the deceased's blood in his bedroom. He said he "was just really off me head".[18] He was covered in blood and "was so pissed I couldn't even fuckin' stand up straight."[19] He left the deceased in his bedroom having dragged him back down the hallway from the living room. He put the deceased's underpants on his head because he thought it "a bit funny at the time".[20] He explained that the smearing on the walls was him holding on trying to walk out of the house because he was so intoxicated.

[32] The appellant walked home, took his clothes off and set them on fire using petrol from a jerry can. He explained to the police that he knew they had no evidence because he had burnt all his clothes and had left nothing at the deceased's home. He also admitted that he did not get "half an ounce of pot" for the boots.

[33] The appellant was arrested and charged. He was placed in the cells at the Logan Police Station. In the course of the night he was asked by interviewing police if he would like a cigarette break. He went outside for a cigarette and then indicated that he wished to speak more privately inside. He told the police that he wanted to tell them something. The interview continued inside and was recorded. The appellant described leaving the deceased's house through the front door and walking home over several kilometres with his dog. He opened the side gate at his house to put the dog in and washed his hands outside. He carefully washed the tap and wiped the gate so that there was nothing on it.

[34] The appellant told police that he had had a fair bit to drink that night describing that he had "gone through a bottle of Baileys [sic] …"[21] – he said a 750 ml bottle which was kept at his house. He said his mother was the only other person who drank Bailey's and that she was out at her friend's house. The appellant said he started drinking at about 12.30 in the afternoon and had a jug of beer at the Eagleby Tavern. He had also been drinking "Old Crows".[22] When he returned home he took his father down to the Sundowner Hotel and had two jugs of beer. The beer was heavy beer. Although he had drunk the first jug of beer alone when he was with his mother he shared the two jugs with his father. The appellant said he had taken two Valium in the morning and two when he got home. The appellant said he could feel that he was getting a bit "agro" at the Sundowner.

[35] He purchased a bottle of Guinness at the bottle shop and a four pack of Old Crow 440s. His father had one and he had the rest. He said he had had no food

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16 AR 763.
17 AR 764.
18 AR 764.
19 AR 765.
20 AR 765.
21 AR 786.
22 AR 787.

all day. He told police he had taken two Valium and a Luvox tablet in the morning and then went out with his mother. When he returned home from the pub he took another two Valium. Subsequently he told police that he had taken 25 milligrams (five tablets). Although his parents had dinner the appellant did not. He smashed the plates on his head. His parents were laughing at him. He admitted that he was not supposed to drink alcohol with his medication. At the time his father went to bed the appellant said he had consumed three cans of Old Crow, a bottle of Guinness extra strength, and once his father had gone to bed, he started into the Bailey's. He intended to have a cone (of marijuana) but did not have one.

[36] Police asked the appellant to describe what had happened from the time after his father had gone to bed until he arrived at the deceased's house. He answered:

> "Yeah, it's a bit of a blur though, after I got into the Baileys, it was a bit of a blur um a lot of weird thoughts going through me head just to do with when I was a youngster, like as I said to you… [inaudible]… what I was tryin' to do [inaudible]."[23]

He had earlier described to police shooting young goats in New Zealand with his father who culled goats. The appellant and his father had, according to the appellant, discussed these activities that evening.

[37] The appellant said he changed his clothes to go out including wearing a waterproof jacket down to his knees and took his docking knife. He said he had a lot of "weird macabre crazy fuckin thoughts going through [his] head."[24] He said it was not normal to carry a knife and responded that he was "out on the hunt".[25]

[38] The following exchange occurred during the final interview:

> "DET. SERG WALKER: Nuh, OK, when you left your home address, changed your clothes and left home, you were thinkin' about killing …
> ROBERT LOGAN: Yeah, ready to kill."[26]

The appellant said he had a thing about killing people and eating them. He added:

> "But I just, you know like you've got to be very specific when you're going to kill someone and drink their blood like, it's not, it's not just something that you just go and pick someone off, you know I'm just going to kill ya and eat ya."[27]

The appellant said there had to be a reason. When asked did he know where he was going when he left home in answer to the suggestion that he was going to "Ben's place" he said

> "Well no, yeah I knew where I was goin', I was going to kill the cunt. … I don't know why, I just wanted to fuckin' kill him."[28]

[39] The appellant told police that he walked into Ben Casey's room first. He was expecting him to be there as well as the deceased. He said that he wanted to kill both of them.[29] The appellant then opened the deceased's bedroom door.

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23 AR 797.
24 AR 798.
25 AR 798.
26 AR 801.
27 AR 801.
28 AR 802.
29 AR 802.

The deceased, who was under the blankets in his bed, saw him walk in. The appellant said he "poked the jag and he bled out of it."[30] He thought it quite funny at the time but on reflection did not think it very funny. He related that he watched the deceased crawl up the hallway wearing his underpants which came off around his ankles. The appellant grabbed them and as the deceased was sitting up trying to talk he put his underpants on his head as a hat. He said he then had "a bit of a fuckin' chew on his neck"[31] because it was "spurting the most". The appellant said he used the docking knife to cut round the deceased's neck. He saw the dog, Butch, running towards him having shaken off the appellant's dog so he pulled the docking knife out of the deceased's neck and stuck it into the dog. He complained that his knife was then gone as the dog ran away.

[40] He told police that since he was going to "cut this cunt's balls off"[32] he went into the kitchen and took a knife out of the drawer. He described it as 20 cm long including the black handle. The appellant mentioned again the alleged sexual assault by the deceased when the appellant lived at the house.

[41] Police asked the appellant if he could recall how long he was at the house. He responded that it was "a bit macabre"[33] and that he could not remember everything that happened and would be assisted by a few photographs. The appellant told police that his dog was drinking out of the deceased's neck with him and they were both having a chew. According to Doctor Olumbe there was no evidence of such an interference with the body.

[42] Police asked the appellant at what stage did the deceased appear to stop moving. He answered "… when I cut his air supply off",[34] in the living room. He looked into the deceased's eyes and watched "it slip away from him".[35] The appellant dragged the deceased back down to his bedroom holding him by both ankles. The appellant told police that he made sure that he "bled him out".[36]

[43] The appellant said that he burnt all his clothes. He used hydrochloric acid first to get the oil "and shit" out of the leathers so that they would burn but before doing so he washed at a hose outside. He took all his clothes and his boots off so that he was naked and washed himself, including his feet. He then went to the side shed making sure that his hands were clean, took out a bottle of acid, tipped it on the jackets and boots, did two turns of petrol over the pile and "let it go".[37] When the fire went out he put all the bits in a rubbish bag. He then set that bag alight with lead fluid petrol.

[44] Restating his entry into the deceased's bedroom, the appellant said

> "I said some weird shit like I can't remember because I was so fuckin' off my head like honestly, yeah."[38]

In response to the question "Is this the truth?" he answered

> "Yeah like, I killed him".[39]

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30 AR 804.
31 AR 804.
32 AR 805.
33 AR 808.
34 AR 810.
35 AR 810.
36 AR 811.
37 AR 814.
38 AR 815.
39 AR 815.

The interview concluded at 6.20 am. The appellant asked "[w]as I talkin' in my sleep in there was I?"[40]

Interview 23 June 11.30 am

[45] After the appellant had rested, police recommenced questioning him at about 11.30 am on 23 June. The appellant confirmed that he had consumed a bottle of Bailey's liqueur before he went to the deceased's house and had smashed the bottle in a [nominated] street and put it into "someone's wheelie bin".[41]

[46] The appellant said when he went to the deceased's house:

> "I I wasn't in my right mind when I left my home that morning, I wasn't in … like a normal state of mind, I'll say that and my intention was to go to Ben's house to kill."[42]

When he left home he was "[e]xcited". After he left the deceased's house he was excited. Now he was "[v]ery remorseful".[43] The appellant said he had been trying to comprehend what he had done but could not piece it together. He added

> "I could not tell you [an] exact definition of why I did, but I'll tell ya that I went around there to kill him yeah."[44]

[47] When asked if he wanted a break the appellant answered

> "No that's fine, look I just want to get all this done and over and stuff because I know what I've fuckin' done mate and then, in this world mate you can't fuckin' go around doin' that shit. … What I've done is fuckin' wrong… and I'll admit that and I know that and it wasn't me that fucking did that mate, it wasn't me that did those things."[45]

The appellant said he principally remembered putting his mouth around the deceased's neck and drinking his blood with his dog:

> "Speaking honestly mate, I don't think anyone that was in their right mind or that I was in, the state of mind that I was in mate, is capable of making any rational decision about what they want or don't want to do."[46]

[48] In a recorded telephone conversation with his mother at the Logan Police Station on 23 June his mother repeatedly said he needed help and the appellant said that she was not to worry about him:

> "You don't have me to worry about anymore. You don't have this worry on your plate anymore, the monster's gone, he's out of your life.
>
> MRS LOGAN: What monster?
>
> ROBERT LOGAN: That monster's never going to fuckin' lay … and that monster just got worse and nothing's ever going to change, what's built into my brain… and the way that it works, and it's just

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40 AR 815.
41 AR 829-830.
42 AR 830.
43 AR 830.
44 AR 831.
45 AR 832.
46 AR 833.

> gotten worse and worse and worse and worse, over the years, OK, and you know that. You know that, you just deny it."[47]

The appellant recalled to his mother an occasion when he was in a "psychotic rage".[48] His mother reminded him that it was because he had been drinking. The appellant said alcohol was no excuse but was a trigger that made part of his brain "weak".

Lay witnesses' evidence about the appellant's state of mind

[49] Mrs Patricia Logan, the appellant's mother, gave evidence that on Tuesday, 20 June 2006 she and her son went to the Eagleby Tavern mid-morning to play the poker machines at his request. She said that he consumed a small quantity of beer. In the afternoon she dropped the appellant and his father off at the Sundowner Hotel in Beenleigh to play pool. She picked them up about two and a half hours later. Subsequently the appellant returned from a walk with his dog with four cans of Old Crow liquor and "a small bottle of stout". She recalled that the appellant and his father shared the premixed spirits and he shared the stout with his dog. She recalled that while the appellant was unpacking the dishwasher he was smashing the plates against his head for no particular reason. She went out to visit a friend and did not return home until the next morning at about 8.45 am. She recalled telephone calls from the appellant around midnight or one o'clock – three in number.

[50] Mrs Logan said in cross-examination that she had difficulties dealing with the appellant from towards the end of 2004. He had destroyed the walls and other property in a dental surgery while he was waiting for an operative procedure because he thought he had been locked in. In May 2005 police took out a domestic and family violence protection order at her request. On her complaint police took her son into custody after he came home about 2.00 am screaming that someone had spiked his drinks. When she collected him a few hours later he punched holes in walls and doors of the house and police again took him into custody. He was eventually released that day.

[51] Mrs Logan related that the appellant had attempted to kill himself using the garden hose. She noted that he was watching bizarre DVDs. At Christmas 2005 he had smashed the dash board of her car. On other occasions he had randomly damaged property. He smashed a guitar in December 2005 because, according to Mrs Logan, Jimi Hendrix had told him to do so.

[52] Mrs Logan approached various agencies for assistance with her son's perceived mental issues but without success as he was over the age of 18. She attended his early consultations with a nearby general practitioner in January 2006. He was prescribed Luvox and Valium having being diagnosed with depression. He was resistant to seeking mental health treatment voluntarily.

[53] In April 2006 Mrs Logan contacted a local medical centre about her son's mental health after he ate a packet of rat poison, apparently in an attempt to commit suicide. He was by then taking Valium (one a day) and Luvox (one a day). He related to his mother hearing voices at this time. He continued to be adverse to incarceration in

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47 AR 840.

48 AR 845.

a mental hospital. Mrs Logan said that her son was speaking of the monster inside his head in the days leading up to the killing.

Ian Robert Logan

[54] The appellant's father had died prior to the trial. He gave a statement to police on Thursday 22 June 2006. He described the afternoon of Tuesday 20 June, attending at the Sundowner Hotel with his son drinking beer and playing games. He corroborated the appellant's evidence that the appellant had bought premixed bourbon and cola in cans at a bottle shop at Edens Landing and that he, his wife and the appellant had had dinner together that evening after which Mrs Logan went out and stayed overnight with friends. He recounted that he and the appellant watched television and spoke about mutual experiences in New Zealand. He said that although they drank the cans of mixed liquor together, neither had drunk enough to make them intoxicated.

[55] Mr Logan said he went to bed about 1.00 am. As he was drifting off to sleep he heard his son at the front door calling his dog. He got up and had a conversation with him about calling the dog back inside. He did not hear his son return into the house as he was sleeping without his hearing aids. Mr Logan got up about 3.00 am and took no note whether his son was at home. He got up around 8.00 am and at 8.30 am detectives arrived and spoke to his son about "something that had happened where Robert used to live". His son went with police to the police station. Police later took the clothes that he had seen his son wearing the previous night.

[56] The defence produced a document purporting to be an affidavit sworn by Mr Logan on 24 June 2008, described as having been made "as advised by my solicitor" and taken at the Beenleigh Courthouse. He deposed:

> "When Robert woke me to let him inside, I checked my wrist watch noting it was nearly 5.30 am. I let Robert and his dog in the front door. Robert was wearing a check pattern woollen or brushed cotton shirt and blue jeans. I think, cannot recall what footwear he had on … Robert was wet, as was his dog, but otherwise he was clean. No mud or other stains that I saw. …
>
> When I got up at about 8.00 am it was still drizzling steadily. I didn't go outside – Didn't see any smoke or smell anything untoward."[49]

Mr Logan wrote that earlier in the night he and his son had talked for some time about game shooting. The conversation was disjointed:

> "In my view, by June 2006 Robert's brain was a jumbled mess and mood swings could occur midsentence.
>
> After his Mother had gone out and the plate smashing was over, he suffered a short term fit of some sort. He fell to the floor of the dining room, stiffened out, went cold and clammy, then came to again. No head banging … The whole thing only lasted ½ > ¾ minute."

His father added:

> "A further point:

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[49] AR 856.

> Somewhere he states he drank "Baileys" that night.
>
> I brought 2 Baileys and 1 Brandy through customs from N.Z. in October 05. One bottle of Baileys was drunk among the family at Christmas 05. The other bottle of Baileys is still here."[50]

Police investigators found a twin-pack of Baileys under Mrs Logan's bed. One was missing.

[57] In her summing up the primary judge emphasised that the jury needed to exercise caution with respect to the affidavit of 2008 - whether it was reliable and, if accepted, what weight to give it and to keep in mind the inconsistencies between it and Mr Logan's statement given immediately after the killing. Her Honour pointed out that Mr Logan was not available for cross-examination and the relationship between the father and the appellant should be noted.

[58] Police investigation of the appellant's parents' yard at Edens Landing showed a burnt area on the lawn with a cigarette lighter nearby. Amongst the items recovered from that area was what appeared to be an eyelet not dissimilar to an eyelet on a Blue Steel boot. Some small pieces of burnt fabric weave and other fabric were also found in the rear yard. Some of those burnt fabric items tested positive for the presence of blood but no DNA profile was able to be obtained. Soil examined from that area gave a match for petrol.

Other lay witnesses

[59] The other lay witnesses' relevant evidence has been sufficiently mentioned in the factual summary.

Psychiatric evidence

[60] The defence called Dr Peter Fama and Dr Graham Burrows to advance insanity and/or diminished responsibility. The prosecution in rebuttal called Dr Jill Reddan, Dr Michael Beech and Dr Pamela van de Hoef. Only one psychiatrist, Dr Fama, gave the appellant a complete defence as in his opinion the appellant was deprived of the capacity under s 27 to control his actions or to know that he ought not to do the acts. He did not consider that the appellant was adversely affected by intoxicants at the time having rejected that the appellant had consumed the Baileys liqueur. The appellant told at least some examining psychiatrists that he had not, in fact, consumed a bottle or any Baileys liqueur prior to the killing. The prosecution suggested that the appellant by then realised, as he had not earlier, that voluntary intoxication did not absolve him of criminal responsibility for murder if he was still capable of forming the relevant intention.

[61] Dr Burrows believed that the appellant was suffering from schizophrenia and the consumption of Luvox operating on that condition created a psychotic episode and thus the appellant was substantially impaired in his capacities. Dr Reddan concluded that the appellant suffered from no mental illness. Dr Beech considered that the appellant may have had or have schizophrenia but that absent intoxication his capacities were not deprived nor substantially impaired. In Dr van de Hoef's opinion whether or not the appellant suffered from schizophrenia, his capacities were neither deprived nor substantially impaired.

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50 AR 857.

Dr Peter Fama

[62] Dr Peter Fama reviewed either the video tapes or the transcripts of the interviews between the appellant and police and the telephone conversation with his mother (he could not recall which at trial). He reviewed the reports of the other psychiatrists. He interviewed the appellant on two occasions in April and May 2010 for about two and a half hours in total. He had examined the evidence of psychiatrists who gave evidence in Mental Health Court proceedings and records from various institutions relating to the appellant. Dr Fama concluded that by about 3.00 am on 21 June 2006, on the basis of the evidence of the appellant's parents, there would have been virtually no alcohol in the appellant's system. Dr Fama agreed that the appellant was not a reliable historian and that he had consumed illicit drugs and alcohol over many years and had engaged in anti-social conduct. He accepted that the appellant had visual and hallucinogenic disturbances due to the consumption of drugs and alcohol at times prior to the killing and became, to his (the appellant's) knowledge, aggressive thereafter. Dr Fama considered that there was no evidence that the appellant was under the influence of drugs and/or alcohol at the time of the offence. He did not accept, relying on the appellant's retraction and his father's later statement, that he had ever consumed any Bailey's liqueur. If he had, since the evidence suggested a bottle contained 9.4 or 13 standard drinks, he would have been very drunk.[51]

[63] Dr Fama accepted that it was likely that the appellant, at the time of the killing, suffered from an anti-social personality disorder with poor impulse control and a propensity to explosive rages, particularly when intoxicated. However, this conduct was secondary to an underlying psychotic process in the form of schizophrenia. In re-examination Dr Fama asserted that the appellant had a mental disturbance independent of intoxication and that, in fact, there was no intoxication. He concluded that the appellant's underlying schizophrenic process deprived him of the capacity to know that he ought not to do the act. Dr Fama conceded that if the appellant was deprived of control and was drunk then that deprivation could reasonably be attributed to alcoholic intoxication.[52]

[64] Dr Fama concluded that there was deprivation which would support a defence of unsoundness of mind.[53] He reached that conclusion in the following way:

> "This man carried out a bizarre, grotesque and extreme homicide under the influence of the belief that he was correctly avenging a wrong that he believed, almost certainly delusionally, had been done him. That is that he had been secretly sexually assaulted. He saw his behaviour as entirely appropriate and warranted. Now, I believe that applied at the time of the offence. Now, subsequently when first seen by the police he was able to gather his wits together, as it were, sufficient to realise that he was in a serious situation and so to proffer all manner of semi-plausible excuses and alibis and so on, and it was only after repeated interview that he relapsed again into a state, I believe, of psychosis in which he made the gloating confession to the police and then eventually talked even of "the big

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51 AR 372. The appellant was not tested for alcohol at his first police interview at 9.00 am on 21 June. The CCTV footage showing him walking home did not suggest he was grossly affected by an intoxicant.

52 AR 372.

53 AR 277.

> fella up there fucking looking down on me", that sort of thing that I quoted earlier."[54]

Dr Graham Burrows

[65] Dr Burrows is a clinical psychiatrist with particular expertise in psychopharmacology. He conducted a teleconference with the appellant for an hour in December 2008. Dr Burrows concluded that at the time of committing the offence the appellant was in a poor state of mind, quite ill and his ability "substantially [to] do things and understand what he was doing was substantially impaired".[55]

[66] Dr Burrows thought that on the objective evidence about the amount of alcohol consumed by the appellant prior to the killing, it was unlikely that it would have had a major affect on him. He was of the opinion that the appellant suffered from schizophrenia or schizophrenic symptoms at the time of the killing. Importantly, Dr Burrows believed that the consumption of Luvox by a person who has schizophrenia or schizophrenia-like illness either precipitates psychosis or makes the illness worse.[56] He said there were concerns in the psychiatric community about the role of anti-depressants like Luvox on schizophrenia but conceded it was a minority view and the toxic effect uncommon.

[67] Dr Burrows' evidence was to the effect that methylamphetamine and alcohol could precipitate the underlying schizophrenic disorder.[57]

[68] In cross-examination Dr Burrows was asked whether the psychotic episode which characterised the killing could have been triggered by the various intoxicants that the appellant consumed on the account which the appellant gave to him. He agreed that that was "Likely. Quite probable".[58] The appellant had told Dr Burrows that he had taken Luvox, Valium and alcohol although he thought the appellant had tended to play down the amount of alcohol that he had consumed.

[69] Dr Burrows opined that the appellant was substantially impaired with respect to all of the capacities in s 304A.

Dr Jill Reddan

[70] Dr Jill Reddan interviewed the appellant over four hours in three separate sessions. He described to her vivid, panoramic visual hallucinations.[59] In her opinion such detailed complex hallucinations were extraordinarily rare in schizophrenia although they could occur in other conditions. The appellant admitted to Dr Reddan that if he drank alcohol he would "go silly" after a few drinks[60] and "go mental".[61] The consumption of a full bottle of beer was enough to "flip" him and he would become quite nasty and angry. He admitted smoking cannabis only rarely and denied using amphetamines or other drugs. Dr Reddan said that the appellant had

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54 AR 278.
55 AR 308.
56 AR 316.
57 AR 312.
58 AR 324.
59 AR 383.
60 AR 384.
61 AR 384.

told her that he had exaggerated his illicit drug consumption considerably when he was admitted to prison as he thought it would help him.[62] The appellant told Dr Reddan that he and his father had shared a jug of beer in the afternoon before the killing and he had consumed no alcohol thereafter. He said it was not true that he had drunk a bottle of Baileys liqueur but had told the police this as it was an excuse and he had consumed no alcohol while watching television with his father.[63]

[71] He said that he had taken his prescribed Luvox and Valium and while watching television with his father a voice had instructed him to kill Ben Huntingford. If he did not, he, the appellant, would be assaulted. He could not recall what he did after the killing until about three weeks later when some incomplete memories had returned. The appellant told Dr Reddan that he had no recollection of walking home that night, of showering or of disposing of his clothes and boots in a fire.

[72] Dr Reddan saw no evidence of any serious mental illness on the three occasions she interviewed the appellant between August and October 2009. From her perusal of the medical records, including those of the general practitioner who had treated the appellant prior to the killing and the prison mental health records, she saw no evidence of any mental illness arising independently of the use of drugs and alcohol. The appellant's reports of hallucinations, either auditory or visual or both, were earlier recorded by health practitioners in the context of the use of amphetamines and similar drugs, cannabis and alcohol. Dr Reddan noted that hallucinations were a feature of schizophrenia and of amphetamine use. She explained the prescription of Risperidone in prison in July 2007 as reactive to the appellant's history of hallucinations but that there were no other signs of psychosis as would be expected. The appellant's medication had been ceased in prison in late 2007 and had not been reinstituted. Dr Reddan opined that had the appellant had a significant schizophrenic illness it would have relapsed at some point thereafter.

[73] The appellant had told Dr Reddan that he thought, initially, that saying that he was very intoxicated with alcohol would provide him with an excuse. However, he resiled markedly from that history. This suggested to her that he had probably become aware that it would not be helpful.[64]

[74] On his admission to prison the appellant had said that he was an intravenous drug user. There was no evidence to support this but Dr Reddan thought that the appellant's Hepatitis C positive condition in a person of his age with his longitudinal history meant that the only real explanation would be the use of intravenous equipment.[65]

[75] Dr Reddan concluded, after listening to the lengthy records of interview, that there was no evidence at all of formal thought disorder and, while there was a change in demeanour, it was not psychotic in nature. Dr Reddan explained the change in demeanour which, to Dr Fama, was evidence of psychosis, in the following way:

> "I'd certainly agree with Dr Fama that there's an element of boastfulness … and I certainly would say there's almost an element of enjoying talking about this and a sort of self justificatory tone to many of his statements, but I don't – wouldn't have interpreted that

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62 AR 385.
63 AR 385.
64 AR 389.
65 AR 390.

> as psychotic in nature. He was under a fair degree of stress and pressure. I think if [the appellant] was psychotic, that is out of contact with reality at the time, I doubt he would have been able to have held himself together under that stress or pressure for that length of time with those interviews and that change in demeanour I think is – because perhaps more of the true [appellant] was coming out whereas what was – he was presenting to the police initially was a version of himself which he wanted the police to believe and he managed. There's a strong urge where people have committed such a crime to tell others and confess and it's really late in the day that he actually does confess. I would have said that's very unusual in a psychosis having seen many people who are psychotic being interviewed by police that he holds it together as well as he does."[66]

Dr Reddan saw no evidence of a psychotic disorder which drove the appellant to kill. The reports of hallucinations and aggressive behaviour was commonly observed in people using drugs and alcohol.

[76] Dr Reddan disagreed with Dr Burrow's opinion that the ingestion of Luvox (and Valium) explained the killing describing it as "a red herring".[67] She had prescribed Luvox many times including to schizophrenics and found it helped to regulate emotional responses and did not disinhibit them. She strongly disagreed with Dr Burrows' and Dr Fama's opinion that the prescription of anti-depressants in psychosis was contraindicated. She did accept that if there was established schizophrenia, an anti-psychotic would be prescribed at the same time as an anti-depressant.

[77] Dr Reddan concluded that there was positive evidence that the appellant was not deprived of any of the relevant capacities. For this conclusion she relied upon the appellant trying to destroy evidence linking him to the offence and that he told police that if he knew who had killed the deceased he would tell them because that would be the right thing to do. Furthermore, the interference with the smoke detector in the house and the attempt to start a fire, if those facts were accepted as attributable to the appellant, demonstrated that he knew the nature and quality of what he had done and was not out of contact with reality. Dr Reddan also suggested the fact that the appellant was angry with Mr Huntingford but saved his anger until later meant that he was not deprived of the ability to control himself.

[78] Dr Reddan concluded:

> "In my view, [the appellant] displays in his behaviour at the time and subsequent behaviour a keen awareness of a nature and quality of what he did and what was occurring and, in my view, was not substantially impaired in any of the three capacities."[68]

She opined that the appellant suffered from no disease of the mind, nor an abnormality of mind. She said:

> "One can always find something wrong with somebody who kills somebody. There's always – people don't do it because they're happy and well adjusted, but I think that there's much about [the

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66 AR 392.
67 AR 394.
68 AR 398.

> appellant's] particular personality and that, that we don't know. We know that he was abusing – has used alcohol unwisely at times, that he's been aggressive at times and it depends on whether in a way those factors are seen as an abnormality of mind or not or seen within – as being within the very wide range of what we might call normal functioning in the community."[69]

Dr Michael Beech

[79] Dr Beech interviewed the appellant on two occasions on 11 May and 8 June 2007 over a period of approximately two and a half hours.

[80] The appellant's descriptions to him of the events on the night of the killing were vague. He told Dr Beech that he had experienced both auditory and visual hallucinations for some time prior to the killing and they continued following his detention on remand. The voices were persecutory in nature. Dr Beech said such hallucinations were not normally experienced by those with a psychotic illness. The description, as reported by Dr Reddan, was usually related to epilepsy. There was no indication of epilepsy in the appellant. Dr Beech said that the visual hallucinations described by the appellant were more consistent with the use of psychedelic drugs, for example, LSD or morphine but not usually, in the clarity described by the appellant, with amphetamines.

[81] The appellant told Dr Beech that although he had been drinking about three large bottles of full strength beer a week, smoking 30 grams of tobacco and one gram of cannabis a week, he had not smoked for some days prior to the killing and had not been using amphetamines for about two years. These amounts were inconsistent with what he had told prison authorities on 30 June 2006.

[82] Dr Beech thought in 2007 that more likely than not the appellant had schizophrenia at the time of the killing but that condition did not explain what had occurred. He believed it likely that, additionally, he was intoxicated with alcohol/substances. Subsequently, Dr Beech revised that opinion:

> "I think it's still a possibility he had schizophrenia, but I think it's now more likely that what's been going on in the past has been drug related psychotic episodes from intoxication and drug use and I say that because the natural history of schizophrenia is not to improve to the extent that it has in this man and from that I draw on the accounts of the doctors, particularly his treating psychiatrist … because [the appellant] didn't remain on the Risperidone for very long and by 2010 I think there was an account there was no evidence … of psychotic phenomena. … [I]f this is schizophrenia and he has had three years of hallucinations and delusions to then have a brief treatment with Risperidone and then remit, its not impossible, but it's unlikely."[70]

[83] Dr Beech concluded:

> "[T]he most likely cause for someone having such an acute exacerbation of schizophrenic symptoms would be that they've also taken drugs or alcohol and he'd reported to me, and others have reported it, that drugs and alcohol did make his symptoms worse."[71]

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69 AR 398.
70 AR 421.
71 AR 423.

Dr Beech was asked:

> "Is that consistent with your opinion that the most likely cause for the killing was the consumption of the alcohol and/or illicit drugs in combination with whatever was underlying it?"

Dr Beech answered:

> "It is. I guess I was also – I have a – I place a lot of regard on his interviews with police very soon after the incident. I read – I didn't see the videos but I read the transcript of his first interview with police and it seemed to me a very coherent and lucid account, a denial, but a coherent denial where he offers up reasons for I think the scratches on his face. He gives an account of what he was doing at the time and explained why he was, I think, removing boots or things like that. So it looked very lucid and very coherent within what, within 24 hours of the incident. So I thought this is not the nature of pure schizophrenic pyschosis that you suddenly get a lot better and coherent and the symptoms subside so quickly, but it is the nature of someone with schizophrenia perhaps, but certainly someone who has taken drugs who suddenly become [sic] intoxicated with substances, flared up with their psychosis and then as the drug effects starts [sic] to wane become [sic] coherent again."[72]

[84] Dr Beech did not accept that in the absence of alcohol or illicit drug consumption the appellant was deprived of or substantially impaired in at least one of the capacities because of the appellant's denials to police so soon after the event. Further, if it were accepted that he had walked from his house at Edens Landing to Beenleigh in possession of a knife, on his evidence, with intent; and that he had made his way home from the scene; that he had attempted to burn his clothes and belongings within a short period after the killing, the appellant was in control of his actions; was aware of their wrongfulness; and indicated some awareness of the nature of what he was doing.

[85] Dr Beech saw no evidence of delusion attached to the boastfulness of the appellant's account of his satisfaction at the crime or his earlier account of bizarre criminal happenings in New Zealand. Dr Beech opined that it was not possible for the symptoms of schizophrenia to come and go absent intoxication. Dr Beech thought that the appellant's consumption of Luvox had little to do with his mental state at the time of the killing. As to the combination of Luvox and Valium, Dr Beech thought it depended on how much the appellant had taken:

> "So I think that if he'd been taking Valium he may have become intoxicated with Valium, perhaps delirious, perhaps confused. I'm not too sure how much ill effect it would have had if he had taken that with Luvox except perhaps to make – can cause some confusion or sedation. If he'd taken it together with alcohol I think it would have made him quite intoxicated."[73]

Dr Beech agreed that Valium has a potentiating effect on alcohol and that Luvox was an effective anti-depressant medication, less likely to cause agitation, well tolerated and good to use in schizophrenia whether or not anti-psychotic medication was being administered.

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72 AR 423-4.

73 AR 426.

Dr Pamela van de Hoef

[86] Dr van de Hoef conducted an interview with the appellant in October 2009 for about two and half hours. She found him an unreliable historian. He told her that he had misled or lied to the psychiatrists at the prison mental health service when he had said that he had used "a lot" of illicit drugs. He said he wanted an excuse for his conduct. He specifically denied ever using amphetamines, LSD, opiates, solvents, abusing prescription drugs or anything more than the occasional puff of a joint handed around at a party and drank very little alcohol.

[87] The appellant told Dr van de Hoef that he had been prescribed five milligrams of Valium – one tablet – once or twice a day but said he had taken three after midday on 20 June, having taken two during the morning - five tablets in all. Dr van de Hoef reported the appellant saying:

> "… late that night [the appellant] got up and had a seizure. In my report I've put that in inverted commas because I'm not sure if it was what we understand to be a seizure or an epileptic type fit, but that the seizure had caused him to fall on the floor and that subsequently he got up, got dressed and walked out the door. His father must have heard him, I'm not sure if he saw him but he must have heard him, and asked him where he was going and he walked out of the house with his Labrador dog named Thyme around to the victim's house."[74]

[88] He told Dr van de Hoef that he had walked through the unlocked door at the back of the dwelling, through the laundry and encountered the deceased in the hallway and slit his throat with the docking knife. He told her that he thought that the deceased wanted to have sex with his (own) 13 year old sister, therefore he was a paedophile and he should kill him. Later in the interview he told Dr van de Hoef that he heard voices in his head saying that the deceased was going to rape his sister but they were more like telepathic messages. He told her that had Ben Casey been at home he probably would have stabbed him too. When he went home he took off his clothes; his father put them in the washing machine while he showered and dressed in clean clothes. He did tell Dr van de Hoef that he had consumed a whole bottle of Baileys liqueur.

[89] Dr van de Hoef detected no evidence of any psychotic disorder or any mood disorder in the appellant's police interview. She was not persuaded after interviewing the appellant and looking at all the material that he had

> "ever really been clinically depressed or manic, that is, mood disorder of an extreme kind in the other direction".[75]

During the interview the appellant had described, as he had described to a number of other people, psychotic symptoms referring specifically to the panoramic visual hallucinations. Dr van de Hoef observed that these vivid, detailed and most unusual visual hallucinations:

> "… which despite their vividness and fantastic nature did not seem to impair his functioning on a day-to-day level at all,"[76]

which was inconsistent with clinical experience where hallucinations interfered with a person's perception of the world around them and how they can talk and interact with other people.

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74 AR 460.
75 AR 461.
76 AR 462.

[90] Dr van de Hoef said that she could never know whether the appellant had actually suffered those hallucinations but

> "I try and listen as much as I can and get the details, match it up with what I know and from my training and experience, and, more importantly, the experience of people I have interviewed who undoubtedly are psychotic, and I think what I'm saying is that his description of those symptoms were highly unusual even in a population of psychotic people."[77]

[91] Dr van de Hoef concluded that the appellant was not suffering from a psychotic illness either at the time of the interview or at the time of the offence. She thought it likely that at stages in his life he had probably experienced psychotic symptoms, particularly hallucinations, and possibly persecutory or paranoid delusions but only in the context of drug or alcohol abuse or both:

> "I thought he had personality features that rendered him likely to be sometimes economical or elastic with the truth, quick to anger, impulsive, and I thought these personality features had probably repeatedly got him into trouble throughout his life really from his school days. But I did not feel I had enough evidence either before me or from the material to diagnose him with a major mental illness. I thought his major problem was probably, despite his account to me, polysubstance and alcohol abuse."[78]

From the appellant's conduct he clearly demonstrated, by burning his clothes and boots that he knew that he had done something that would get him into "dreadful trouble" and he tried to destroy the evidence. Dr van de Hoef did not agree that the appellant was deprived of the capacity to know that he ought not to have done the act. Nor did he have a substantial impairment of that capacity.

[92] In cross-examination Dr van de Hoef was asked to exclude the possibility that the appellant was intoxicated by alcohol or illicit drugs. Her explanation in that circumstance for the "unusual" nature of the attack was that it could have been the result "of an extreme outburst of rage"[79] whether fuelled by alcohol "or whatever". She was unable to see any evidence of a schizophrenic-based psychotic event in light of the police interviews. She explained this was because a florid pyschosis did not turn off like a tap or a switch. She did agree that if he had been drunk at three or four o'clock in the morning it might be expected that at nine o'clock when the police arrived there would be some evidence of alcohol consumption.

Discussion

[93] Where an appellant in Queensland contends that the verdict of the jury ought to be set aside because it is "unsafe or unsatisfactory" he is taken to be referring to the provisions in s 668E of the *Criminal Code* that the verdict of the jury should be set aside on the ground that it is unreasonable, or cannot be supported having regard to the evidence. In *MFA v The Queen*[80] McHugh, Gummow and Kirby JJ said that it was preferable to follow the words of the statute:

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77 AR 463.
78 AR 468.
79 AR 488.
80 (2002) 213 CLR 606; [2002] HCA 53.

> "It was not until an opinion was expressed in *Gipp v The Queen*[81] and *Fleming v The Queen*[82] that it was safer to return to the words of the statutory formulation in the place of attempted synonyms, that the requirement to test disputed verdicts against the actual language of the criminal appeal legislation was restored. In recent years, in many contexts, this Court has insisted upon close attention to the language of applicable legislation in preference to other formulations derived from pre-statutory expositions, post-statutory explanations and (in this case) the language of foreign legislation."[83]

[94] After discussing the amplitude of the test and referring to previous expositions of it their Honours noted:

> "[t]he reference to "unsafe or unsatisfactory" … followed the language conventional of the time when *Jones* was written. Those words are to be taken there as equivalent to the statutory formula referring to the impugned verdict as "unreasonable" or such as "cannot be supported, having regard to the evidence".[84]

[95] All of the judges in *MFA v The Queen* endorsed the test of Mason CJ, Deane, Dawson and Toohey JJ in their joint judgment in *M v The Queen*:[85]

> "If the evidence, upon the record itself, contains discrepancies, displays inadequacies, is tainted or otherwise lacks probative force in such a way as to lead the court of criminal appeal to conclude that, even making full allowance for the advantages enjoyed by the jury, there is a significant possibility that an innocent person has been convicted, then the court is bound to act and to set aside a verdict based upon that evidence."[86]

And:

> "Where, notwithstanding that as a matter of law there is evidence to sustain a verdict, a court of criminal appeal is asked to conclude that the verdict is unsafe and unsatisfactory, the question which the court must ask itself is whether it thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty."[87]

[96] More recently in *SKA v The Queen*[88] French CJ, Gummow and Kiefel JJ stressed that:

> "by applying the test set down in *M* and restated in *MFA*, the Court is to make 'an independent assessment of the evidence, both as to its sufficiency and its quality'."[89]

Elsewhere in their reasons[90] their Honours said that the appellate court

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81 (1998) 194 CLR 106 at 147-150 [120]-[127].
82 (1998) 197 CLR 250 at 255-256 [11].
83 At 620 [46].
84 At 623-624 [58].
85 (1994) 181 CLR 487.
86 At 494.
87 At 493.
88 (2011) 243 CLR 400; [2011] HCA 13.
89 At 406.
90 At 408-9.

> "was required to determine whether the evidence was such that it was open to a jury to conclude beyond reasonable doubt that the applicant was guilty of the offences with which he was charged"

and that the appellate court's task

> "was to make an independent assessment of the whole of the evidence, to determine whether the verdicts of guilty could be supported."

Heydon and Crennan JJ, while dissenting as to the result, reaffirmed that the test propounded in *M v The Queen* should continue to be applied.

[97] The appellant accepts that he bore the onus of rebutting the presumption of soundness of mind in s 26 of the *Code*. He was required to demonstrate, on the balance of probabilities, pursuant to s 27, that he was at the time of the killing in such a state of mental disease as to deprive him of the capacity to understand what he was doing, or of the capacity to control his actions, or of the capacity to know that he ought not to do the act in question. Alternatively, pursuant to s 304A, he was required to demonstrate, to the same standard, that he should be convicted of manslaughter only on the basis that he was in such a state of abnormality of mind, induced by disease, as substantially to impair his capacity to understand what he was doing, or his capacity to control his actions, or his capacity to know that he ought not to do the act which led to the death.

[98] The appellant accepts that the evidence supports a conclusion that he killed the deceased with a specific intention to do so. Dr Fama and Dr Burrows concluded that the appellant was at the time suffering from schizophrenia and that in the absence of intoxicants was deprived (in the case of Dr Fama) or substantially impaired (in the case of Dr Burrows) of all or one of the capacities because of that disease of the mind. Dr Beech and Dr van de Hoef thought schizophrenia was a possible diagnosis. They did not consider that in the absence of alcohol he was deprived of any capacity nor that those capacities were substantially impaired. Dr Reddan did not accept that the appellant was suffering from any disease of the mind at the time of the killing.

[99] The appellant's case at trial was that his intention to kill was fuelled either solely by his mental illness or in combination with his prescription drug Luvox and that either or both deprived him of the relevant capacities under s 27. Alternatively, that his capacity particularly to know that he ought not to do the act, was substantially deprived by that disease alone or as affected by the ingestion of Luvox.

[100] The defence contended that the evidence that the appellant was intoxicated by alcohol and Valium was scant. The jury had the evidence of Mrs Logan about the quantity of alcohol consumed so far as she was aware by the appellant during 20 June which was not challenged. She, however, was absent from the house during the evening. The jury may have found the evidence of a twin pack of Baileys with only one bottle in it under Mrs Logan's bed of some significance. The appellant described several times in his police interviews having consumed a bottle of Baileys and having disposed of the bottle prior to reaching the house In one interview the appellant said that he dropped the bottle and smashed it on the road, a street away. At a later interview he said he thought he dropped the bottle and put it in a wheelie bin. Police were not aware of this for several days after they commenced investigating the killing so that the failure to find any evidence of the bottle was not remarkable.

[101] The second statement of Mr Logan in which he dismissed the consumption of the Baileys by the appellant was written some two years after the killing. There were inconsistencies between it and his earlier statement given a day after his son was first interviewed. The second statement was much more detailed. In the earlier statement Mr Logan said he went to bed at about 1.00 am, he heard the appellant at the front door calling his dog and told him to get the dog back inside and go to bed. He assumed that after the appellant had stopped calling the dog he had gone to bed. He told police he thought his son was wearing a pair of jeans, a checked shirt and possibly a green jumper or top. Mr Logan recalled two years later that his son woke him to let him inside, and he looked at his watch and noted it was nearly 5.30 am. He let the appellant and his dog in the front door. He saw that he was wearing a check patterned woollen or bush cotton shirt and blue jeans. He could not recall his footwear. He noted that both the appellant and the dog were wet and clean. The appellant told his father that he had taken the dog for a run. Mr Logan went back to bed and heard the appellant moving about in the house talking to his dog, then he went back to sleep. The appellant had plainly changed his clothing because in the CCTV recorded near a railway station on the night in question he was not shown to be wearing a checked top.

[102] The appellant contends that the prosecution had "nailed its colours to the mast" on the issue of the excessive consumption of alcohol manifested in the assertion of the appellant that he had drunk the contents of a bottle of Baileys on his way to the Huntingford house. In effect, the defence alleges that the prosecution case did not live up to its particulars. The function of particulars is to enable an accused to know the nature of the charge which he is called on to meet.[91] In *R v Saffron*[92], Hunt AJA concluded that the function of particulars is the same in criminal and in civil cases:

> "… an accused's entitlement to particulars in a criminal case is the same as a defendant's entitlement in a civil case. An accused is not able to plead to the charge unless he knows the precise case which is the basis for the charge preferred against him…"[93]

In *Dare v Pulham*[94] Murphy, Wilson, Brennan, Deane and Dawson JJ said:

> "But where there is no departure during the trial from the pleaded cause of action, a disconformity between the evidence and particulars earlier furnished will not disentitle a party to a verdict based upon the evidence."[95]

[103] As Chesterman J (as his Honour then was) observed in *R v Trifyllis*[96], s 564 of the *Criminal Code* provides that an indictment must set out the offence with which the accused is charged

> "in such a manner, and with such particulars as to the alleged time and place of committing the offence, … as may be necessary to inform the accused person of the nature of the charge."

It is sufficient, by s 564(3), to describe an offence in the words of the *Code* or of the statute defining it. Here the defence was aware of the evidence to be led by the

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91 *R v Juraszko* [1967] Qd R 128 at 135 per Stable J with whom, on this point, Gibbs J agreed.
92 (1988) 17 NSWLR 395.
93 At 447.
94 (1982) 148 CLR 658.
95 At 664.
96 [1998] QCA 416 at 13 [21].

prosecution in support of the indictment and aware that the appellant had disavowed his consumption of Baileys as well as the evidence of his mother and his father about the alcohol that he had consumed in the 24 hours leading up to the killing and the opinions of the rebuttal psychiatrists.

[104] In *Trifyllis* Chesterman J concluded on the facts of the appeal under consideration that there had been no material disconformity between the offence alleged and particularised and that which was proved at trial. His Honour added:

> "Even if this be wrong the consequence is not that the conviction should be quashed. If there be a disconformity between the particulars and the preponderance of the evidence it is a case in which, applying the applicable principles, there is no injustice or unfairness to the accused in allowing the verdict to stand. The case proved by the Crown was that alleged in the indictment."[97]

[105] It was not, however, necessary to the prosecution's rebuttal case that the appellant had consumed a bottle of Baileys. There was ample expert evidence from Dr van de Hoef and Dr Reddan that even a moderate ingestion of alcohol operating upon the disordered mind of the appellant could have been sufficient to induce a psychotic episode which led to his acting out his intention to kill the deceased. The appellant was well aware of the effect of alcohol upon him evidenced by his consultations with case workers, health professionals and his mother in the past and endorsed by him in his police interviews. In the telephone conversation with his mother at the police station she reminded him that he had had rages before when affected by alcohol.

[106] The jury could have found the evidence of Dr Reddan compelling that the appellant suffered from no disease of the mind because what he described as hallucinatory experiences were inconsistent with her long experience in dealing with insane patients. Dr van de Hoef's evidence was to similar effect.

[107] It was open to the jury to accept Dr Reddan's evidence or, indeed, to accept the evidence of Doctors Beech and van de Hoef that there was no substantial deprivation of the relevant capacities, even in the absence of intoxicants. The jury had the advantage of seeing and hearing the interviews with the appellant; they had the largely uncontested evidence of Ben Casey and Andrew Bliudzius that there was a practice of consuming illicit drugs in which the appellant engaged; there was the evidence of the appellant to the psychiatrists that he was made angry by the consumption of alcohol and with his prescription drugs; and Mrs Logan's evidence amply supported such a finding.

[108] Of considerable importance was the evidence that immediately after the killing the deceased carefully and calculatedly burnt his clothes which would implicate him in the killing and told police a very elaborate story which was plausible enough to distance himself from any involvement.

[109] Although not a separate ground, counsel for the appellant contended that the "horrific details" of the killing placed before the jury may well have influenced their rational thinking. There is nothing to suggest that the verdict was irrational and nothing to suggest that the details of the terrible, frenzied killing influenced the jury against the appellant impermissibly. If anything, it may have tended to support the defence case.

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97 At 15 [28].

[110] There was nothing unreasonable about the verdict of the jury and it was not against the evidence when considered as a whole. That evidence was both sufficient and compelling. I am of the view that the jury were entitled to reach the verdict that they returned and I would dismiss the appeal.

[111] **MARGARET WILSON AJA:** The appeal should be dismissed for the reasons given by White JA.

[112] **ATKINSON J:** I have had the benefit of reading the reasons of White JA.

[113] I agree that the appeal should be dismissed for the reasons given.