

SUPREME COURT OF QUEENSLAND

CITATION: *The Queen v Gwilliams* [2013] QSC 27

PARTIES: **THE QUEEN**
V
ALWYN GWILLIAMS

FILE NO/S: SC No 72 of 13

DIVISION: Trial

PROCEEDING: Sentence

ORIGINATING COURT: Brisbane

DELIVERED ON: 22 February 2013

DELIVERED AT: Brisbane

HEARING DATE: 30 January 2013

JUDGE: Byrne SJA

ORDER: **1. On count 1 the defendant is sentenced to 10 years imprisonment.**
2. Pursuant to s 161B of the *Penalties and Sentences Act 1992*, it is declared that the conviction for unlawful killing is a conviction of a serious violent offence.
3. Pursuant to s 159A of the *Penalties and Sentences Act 1992*, it is declared that the 1,035 days spent in pre-sentence custody from 17 February 2010 to 18 December 2012 is imprisonment already served under the sentence.
4. On count 2 the conviction is recorded but the defendant is not further punished.

CATCHWORDS: CRIMINAL LAW – PARTICULAR OFFENCES – OFFENCES AGAINST THE PERSON – HOMICIDE – MANSLAUGHTER – SENTENCE – SENTENCING ORDERS – CUSTODIAL ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – SERIOUS OR VIOLENT OFFENDER - The defendant pleaded not guilty to one count of murder but guilty to manslaughter and one count of interfering with a corpse – the defendant was in a relationship with the

deceased - where it was not known how the defendant unlawfully killed the deceased – where there was no remorse - the defendant was sentenced to 10 years imprisonment on count 1 with a conviction of a serious violent offence– on count 2 a conviction was recorded but the defendant was not further punished.

Penalties and Sentences Act 1992 (Qld), s 159A, s 161B

R v Baggott [2000] QCA 153

R v Davy [2010] QCA 118

R v Derks [2011] QCA 295

R v Huebner [2006] QCA 406

COUNSEL: V A Loury for the Crown.

S R Lewis for the Defendant.

SOLICITORS: Director of Public Prosecutions (Queensland).

Ide Lawyers for the Defendant.

- [1] On his pleas of guilty, Alwyn Gwilliams is to be sentenced for two offences: that, on or about 21 October 2009, he unlawfully killed Dulcie Birt; and that he improperly interfered with her dead body.
- [2] Mr Gwilliams was 40 years old in October 2009. Ms Birt was 31.
- [3] Mr Gwilliams lived at Bundamba in a defacto relationship. He was also involved in a sexual relationship with Ms Birt, who lived at Old Ipswich Road, Riverview with her 16 year old son, Shaun, and a boarder, Mr Gill.
- [4] Across the street from Ms Birt’s house was a large area of bushland. Trail bike enthusiasts and 4WD drivers used the area for recreation.
- [5] On the night of Wednesday, 21 October 2009, Ms Birt was at her home. Mr Gwilliams was there too. During the night, they argued. He told her that her drug dealer had called him and asked her “How would you like me to cut your head off and let the blood drip all over his doorstep?”. At another time, he told her that “If you don’t answer me, I will smash the window”, which he did.
- [6] Having heard this commotion, Mr Gill went to Ms Birt’s bedroom to find her sitting on the bed, crying. From the window, he saw Mr Gwilliams outside in his green Triton utility motor vehicle.
- [7] Mr Gwilliams called out to Ms Birt to “come downstairs; we are going for a drive”. It was not uncommon for them to go for a drive when arguing. She got into his vehicle and they drove away at about 9.30pm-10.00pm.
- [8] Ms Birt returned home at about 10.15pm and told her son that she was going to bed.

- [9] At 10.21pm, there was a 36 second phone call between Mr Gwilliams and Ms Birt. Four days later, he was to tell the police that, after he had dropped her back home and driven away, he realised that he had left his phone charger at her house and called her about that before he returned to her house. This is one of the few things Mr Gwilliams said to the police about the events of that Wednesday night that seem to be true.
- [10] In any event, Mr Gwilliams did drive back to her house and she, it seems, decided to go with him in his car.
- [11] Ms Birt has not been seen or heard of since.
- [12] Elaine Hopper is the mother of Mr Gwilliams. She lives at Bannerman Street, Riverview.
- [13] About midnight that Wednesday, Mr Gwilliams arrived, on foot, at his mother's house. He asked to borrow her car, telling her that his vehicle was in the bush in a ditch and that he had to tow it out.
- [14] His mother, who smelled alcohol on his breath, gave him her car. He drove away.
- [15] Mrs Hopper saw a lot of dirt on the back of her vehicle when Mr Gwilliams returned the car about half an hour later.
- [16] Mr Gwilliams told his mother that he thought he had killed Ms Birt, giving this account: Ms Birt was a passenger in his vehicle. As he drove along, he hit a tree, which broke. Ms Birt "went forward, she came back, and she was quiet". He tried to wake her and administered CPR.
- [17] Mr Gwilliams told his mother that he was scared. She implored him to go to the police. He refused to do so, saying that the police would not believe him.
- [18] On the Thursday morning, Mr Gwilliams went to Ms Birt's house. There he spoke to Shaun Birt and Mr Gill. He feigned concern for Ms Birt.
- [19] Mr Gill noticed that the passenger side tray of the utility was missing. Mr Gwilliams said that it had fallen off on Wednesday while he had been driving.
- [20] Subterfuge continued. Until Sunday, Mr Gwilliams sent text messages to Ms Birt's phone, falsely pretending that he did not know that she was dead.
- [21] At about 6.30am on either the Friday or the Saturday, Mr Morrow, a water truck driver, saw the utility emerging from the bushland across from Ms Birt's house.
- [22] On the Saturday, Mr Gwilliams drove his utility to his sister's house at Riverview. When he arrived, he appeared to his sister to have "been in the bush". His clothing was dirty. So was his face.
- [23] He parked his vehicle in the garage. He wanted the doors closed, presumably so that his vehicle could not be observed.
- [24] Mr Gwilliams asked his sister if he could leave his vehicle in her garage for a few days. He also asked her partner, Mr Fulton, to burn the car, saying that he would tell Mr Fulton later on when to get rid of the vehicle.

- [25] Mr Gwilliams told his sister that he was “bush bashing” in Riverview, drunk, when Ms Birt died. He gave this account: his vehicle hit a tree; Ms Birt broke her neck and slumped over; and he tried to resuscitate her. Asked if Ms Birt’s body was at Riverview, Mr Gwilliams did not answer.
- [26] About this time, Mr Gwilliams told his mother that he had taken Ms Birt’s body to Jacobs Well.
- [27] On the Saturday, a bushwalker in the Riverview bushland came across a small pond. The pond was accessible from a dirt track that began opposite Ms Birt’s house. There were recent tyre marks in the mud leading into and out of the pond. A small tree nearby had been knocked over into the water.
- [28] On Sunday, 25 October, Mr Gwilliams led the police to his utility, which was still at his sister’s house. He lied when he told the officers that his sister had borrowed his utility to move house.
- [29] That day, Mr Gwilliams furnished his first statement to police. In it, he said that Ms Birt had brought his phone charger out to his car after he had returned to her house to collect it; she had asked him to stay the night; he declined and drove away. Mr Gwilliams also mentioned having tried to contact Ms Birt afterwards – by going to her house on the Thursday and by phone calls that persisted until the police spoke to him on that Sunday.
- [30] About six weeks after Ms Birt died, Mr Gwilliams gave police a different account of events. In an affidavit sworn in the presence of his solicitor, Mr Gwilliams deposed, in effect, that:
- He and Ms Birt had been drinking together;
 - They decided to go for a drive and a swim;
 - With Ms Birt seated in the passenger seat, he drove his 4WD into the bushland across the road from her house;
 - Neither of them wore a seat belt;
 - They were going pretty fast when he hit a dip, lost control of the vehicle and it hit a tree;
 - He felt something hit the left hand side of the car;
 - He came to a sharp stop into another tree;
 - He saw Ms Birt slumped forward in her seat;
 - Blood was coming from a bad cut on the left hand side of her head;
 - There was blood on the dashboard;
 - He got her out of the car and performed CPR until he heard a gurgling noise coming from her;
 - She was not breathing, had no pulse and could not be resuscitated;

- He put her body on the tray of the utility;
 - His vehicle was stuck, and he had no jack;
 - So he went to his mother's house and borrowed her car to tow his "ute" out;
 - Afterwards, he returned his mother's car to her;
 - He then took the lifeless Ms Birt to Jacobs Well and put her body into the water there.
- [31] Mrs Hopper's car was examined. The engine exhaust pipe and transaxle oil pan had recently been damaged. A small rock was lodged in the front section of the oil pan. The floor pan and sub-frame showed indications that the vehicle had been driven off-road.
- [32] Mr Gwilliams's utility vehicle was examined by scientific and other officers.
- [33] A partial DNA profile matching Ms Birt was found on the front driver's side quarter panel. A full DNA profile matching her was located on the vinyl flooring under the front driver's side edge of the passenger seat and on the passenger side adjustment lever. These small stains tested positive for blood.
- [34] The utility had sustained minor damage. The limited extent of it was not consistent with a fatal car accident. Damage to a steel bullbar was isolated to one area, suggesting impact with some thin, solid, hard object, at low speed: the soft wood of a tree would not make such a mark. There was no major damage to the undersections of the vehicle such as would be consistent with a serious impact. The left rear tyre tread was the only tread that gave any indication that the vehicle had been off-road and possibly stuck, causing wheel spinning.
- [35] The front left-hand upper section of the tray had been forced back slightly through impact. The left drop side of the tray was missing. A collision analyst concluded that the damage to the rear tray support post and tray was consistent with a low speed impact to the left upright support post with an object similar to the end of a piece of timber about 6cm wide.
- [36] There was light scuffing to the left side of the bullbar that may have indicated a brush with a tree.
- [37] The broken tree discovered by the bushwalker near the pond was consistent with a glancing blow. Little force would have been required to push that tree over to the position where it was found.
- [38] There was damage to the passenger side running board: a dent in the underside. This was consistent with contact with a solid object on the ground, such as a tree branch or uneven ground. The damage to the passenger side of the tray uprights was consistent with an overhead projection, such as a tree branch, having been clipped by the moving vehicle when used off-road.
- [39] There was damage to the hinge on the passenger side of the tray, which indicated that the passenger side gate and the rear gate of the tray were in place at the time. The tray upright had struck the top of the passenger side gate, which forced the gate rearwards. This damage was consistent with low speed impact. The damage to the

support post on the tray had not been present on Tuesday, 20 October 2009 when Mr Gwilliams was at work.

- [40] Mr Gwilliams told police about drinking on the Wednesday night. He maintained that he and Ms Birt had consumed the best part of two bottles of spirits and pre-mixed cans of rum. On a drunkenness scale of 1-10, he put his condition at 8 or 9.
- [41] In his account, Mr Gwilliams falsely denied having had an argument with Ms Birt on the Wednesday night.
- [42] In daylight, Mr Gwilliams took police to the bushland opposite Ms Birt's house. He could not locate the area where he claimed the accident had occurred. He pointed to pieces of plastic on the dirt track that he asserted had come from a toolbox that was in the tray of his vehicle. He also said that a white bucket located on the track on 1 November 2009 was his and that it had been on the tray.
- [43] Mr Gwilliams told police that he had definitely knocked a tree over but that there was no water around where that happened. He could not say how quickly the vehicle had been travelling at the time but claimed that it was travelling fast enough for him to be holding on and yet bouncing out of the seat.
- [44] The track was in poor condition, with rutting along the edges caused by water run-off. There were large trees on both sides, interspersed with smaller trees and brush. There was loose rock and gravel along the track. Apart from the small tree near the pond, no other trees were found on or near the track that appeared to have been felled by vehicle impact. No tyre tracks were located leading off into the bush.
- [45] Mr Gwilliams took police to Little Rocky Point, Woongoolba – an area he referred to as Jacobs Well – and told them that this was where he had put Ms Birt's body into the water. He said that he had waded into the water near mangroves and released her body at a time when he was chest deep in water.
- [46] A consideration of tidal heights at Little Rocky Point indicated to Mr Nelson, the Regional Search and Rescue Mission Coordinator, that Ms Birt's body could not have been released from Little Rocky Point or from any other location within 2 km to the south or 1½ km to the north of that place.
- [47] Other parts of Mr Gwilliams's story about the disposal of Ms Birt's body are also improbable.
- [48] Mr Gwilliams told police that it was more than likely that he had taken Ms Birt to Jacobs Well in the boot of his green Commodore. He claimed that that vehicle had been at his place in Bundamba on the night of the death.
- [49] Mr Gwilliams's father has a different recollection about the location of the Commodore, informing police that the Commodore was at his house at Gailes until about 29/30 October, when his son took it away
- [50] The Commodore was examined. There were no blood stains in the boot consistent with a body having been transported in it. As Mr Gwilliams would have it, Ms Birt had bled as a result of the injuries she sustained in the accident. So the absence of blood in the boot is at least surprising. And there are other reasons for supposing that the Commodore was not used to convey Ms Birt's body to the Woongoolba/Jacobs Well region.

- [51] On the Wednesday night, the Commodore was at Bundamba or Gales. The former is 6 km from the bushland; the latter, at 15 km distance.
- [52] On Mr Gwilliams's account, after returning his mother's car to her house, he returned on foot to the bushland, then walked to the Commodore, drove it to the scene of the accident, put Ms Birt's body into the boot, drove about 70 km to Woongoolba, disposed of the body, then drove back to his house in time to arrive there by about 6.00am – all the while, heavily intoxicated and "barely able to drive".
- [53] There are other reasons to doubt Mr Gwilliams's version.
- [54] No blood was located on the dash of his utility vehicle or in a position on the floor that might suggest that Ms Birt had been bleeding from a cut to her head. There were no scuff marks inside the utility to indicate that Ms Birt had stuck any part of it. No blood was found on the tray of the vehicle, although blood might have been expected there if Ms Birt had been put onto the tray after bleeding from her injuries.
- [55] In daylight, Mr Gwilliams could not locate for the police the place where he claimed the accident had happened. On his story to police, however, he was able to find it twice in the night time: once after he borrowed his mother's car; then again, when he revisited the scene after having returned her car.
- [56] Nor was tree damage consistent with his version. The small tree that had been pushed over near the pond apparently sustained only a glancing blow. In any event, Mr Gwilliams did not place the accident near water. And there was no damage to the trees along the track across from Ms Birt's house that led into the bushland.
- [57] Mr Gwilliams's description of how Ms Birt reacted to the alleged accident confronts difficulties. He described her as slumped over, with her head on the dashboard. However, an unrestrained passenger is more likely to be found crumpled under the dash as the whole body is forced forward. Moreover, Mr Gwilliams did not sustain any injuries that night. Yet he, too, was unrestrained by a seat belt, or so he assured the police.
- [58] Mr Gwilliams may well have hit a tree when driving his utility that Wednesday night. But the impact was not, it seems, of sufficient force to throw Ms Birt forward and break her neck.
- [59] The scientific findings in relation to blood are not consistent with what Mr Gwilliams told police. And such blood as was found in and on the utility was located in positions where blood was unlikely to have been deposited in a vehicle accident.
- [60] Soil samples taken from the four wheel arches of the utility were mineralogically similar, suggesting a common source. Those samples were compared with control samples taken from the track in the Riverview bushland along which Mr Gwilliams said he had driven before the accident, from a lake in that bushland area, and from Woongoolba. None of the wheel arch samples had similar mineralogical features to any of the control samples.
- [61] It is improbable that Mr Gwilliams was innocently mistaken about where he had disposed of Ms Birt's body. When he took police to the area where he claimed – falsely, as the evidence indicates – that he had put the body into the water, he knew

that area well. When he was young, he had been there several times. And he told police that he and Ms Birt had been to the place two or three times, fishing. Even if he were heavily intoxicated on the night, it seems unlikely that he would have mistaken the place where he put her in the water, if he had done so.

- [62] Mr Gwilliams told many lies concerning the circumstances surrounding Ms Birt's death and his disposal of her body. Those told before 8 December might, I suppose, have been explicable on the basis of an anxiety to distance himself from an accidental killing attributable to his careless driving while drunk. But his conduct after he admitted to police that he was responsible for Ms Birt's death cannot be so explained.
- [63] Explanations for the lies were related by Mr Lewis. On his instructions, Mr Gwilliams initially lied because he and other members of his family, including a sibling who had been convicted of murder, were well known to the Ipswich Police and mistrusted by them. After Mr Gwilliams admitted that conduct of his had caused the death, Mr Gwilliams continued to lie – about where things had taken place, injuries Ms Birt had sustained, the mechanism causing them, and concerning where he had disposed of her body – out of concern to care for his partner, who needed his assistance as a result of injuries she sustained in an accident years earlier. His client wanted, Mr Lewis said, to ensure that satisfactory arrangements would be made for her because he was unlikely to secure bail in view of his criminal history.
- [64] Not unreasonably, Ms Lowrie was not disposed to accept the reliability of Mr Gwilliams's instructions to Mr Lewis. That meant that there was a contest about why Mr Gwilliams had lied. He was expressly afforded an opportunity to adduce evidence explaining the lies. He chose not to do so.
- [65] I do not accept that Mr Lewis's instructions are a truthful explanation for the lies. After Mr Gwilliams admitted that his conduct had brought about Ms Birt's death, the lies he related - in particular, about how Ms Birt died and where he had disposed of her body – were told, I am satisfied, because he perceived that the truth would reveal that he had assaulted Ms Birt and thereby killed her.
- [66] Mr Gwilliams, I am persuaded, assaulted Ms Birt. But his lies and the concealment of the body mean that the nature of the assault remains unknown. It cannot, of course, be concluded that an intention to kill or cause grievous bodily harm accompanied the attack. Nor can it be inferred that the killing occurred in a brutal, protracted or degrading way.
- [67] There are aggravating factors.
- [68] Deception was practised which included feigning concern for her to her son. The body was concealed because Mr Gwilliams feared that its state would reveal that Ms Birt had died violently, not in a motor vehicle accident. It is no credit to Mr Gwilliams that even now he will not reveal her resting place. There is no remorse.
- [69] Ms Birt's two youngest children were left to grow up in foster care.
- [70] Mr Gwilliams has a substantial criminal history that includes violent offences. In 1990, he was fined for assault. In 1992, he was sentenced to six months periodic detention for assault occasioning bodily harm. In 2003, he was convicted after a trial of three assaults occasioning bodily harm and torture. His victim was a woman

with whom he had been in a relationship. The episode took place at a quarry at night. The attacks were described by the sentencing judge as involving “the utmost brutality”. A sentence of imprisonment for five years was imposed for torture. The assaults attracted concurrent sentences of two years.

- [71] The only significant consideration in mitigation is the guilty plea. It evidences a willingness to facilitate the course of justice. It has also led to substantial resource savings, by avoiding what would have been a lengthy, expensive trial.
- [72] Mr Gwilliams has been in custody since 17 February, 2010. For most of that time, he has been held exclusively on the charges that have resulted in his guilty pleas. However, on 18 December last, he was charged with an offence committed within the prison. The two months or so since then cannot be the subject of a declaration pursuant to s 159A of the *Penalties and Sentences Act* 1992. That time must, therefore, be reflected in a reduction of the sentence that would otherwise have been imposed.
- [73] As it happens, the facts that constitute the improper interference with a corpse offence pertain to the gravity of the misconduct involved in the unlawful killing¹.
- [74] All considered, after a trial, the sentence for unlawful killing would have been in the order of 14 years imprisonment.
- [75] Taking 14 years as a starting point, a 25% discount for the guilty plea yields 10.5 years.
- [76] Credit must be given for the about two months spent in pre-sentence custody that cannot be the subject of a s.159A declaration.
- [77] Rounding off down, the sentence for unlawful killing will be 10 years imprisonment.
- [78] Pursuant to s.161B of the *Penalties and Sentences Act* 1992, it is declared that the conviction for unlawful killing is a conviction of a serious violent offence.
- [79] Pursuant to s 159A of that *Act*, it is declared that the 1,035 days spent in pre-sentence custody from 17 February 2010 until 18 December 2012 is imprisonment already served under the sentence.
- [80] In respect of the second count, the conviction will be recorded but Mr Gwilliams not further punished².

¹ See *R v Baggott* [2000] QCA 153, p.6; *R v Huebner* [2006] QCA 406, [24]-[25]; *R v Davy* [2010] QCA 118, [9].

² This approach does not involve the imposition of a global sentence on the manslaughter charge in respect of both offences: cf *R v Derks* [2011] QCA 295, [26]-[28], [44]. Rather, the decision not to punish for the lesser offence, beyond recording the conviction, recognises that the pertinent facts have been given significance in assessing the seriousness of the killing.