# SUPREME COURT OF QUEENSLAND

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| CITATION: | *R v Andres* [2015] QCA 167 |
| PARTIES: | **R**<br>**v**<br>**ANDRES, Klaus Julius**<br>(appellant) |
| FILE NO/S: | CA No 324 of 2013<br>SC No 53 of 2013 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | Appeal against Conviction |
| ORIGINATING COURT: | Supreme Court at Cairns – Unreported, 12 December 2013 |
| DELIVERED ON: | 11 September 2015 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 15 May 2015 |
| JUDGES: | Morrison JA and Boddice and Carmody JJ<br>Separate reasons for judgment of each member of the Court, each concurring as to the order made |
| ORDER: | **Appeal dismissed.** |
| CATCHWORDS: | CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the appellant entered a plea of not guilty to the charge that he had murdered his wife – where the prosecution and the defence both called evidence – where the appellant was convicted of murder – where the trial judge sentenced the defendant to life imprisonment – where the appellant appealed against the conviction – where the appellant's sole ground of appeal was that the verdict was unreasonable and insupportable as there was no basis on which the jury could exclude the appellant's account of what occurred beyond reasonable doubt – where the appellant submitted the other evidence was ambiguous, and there was no direct evidence to contradict his account that he was guilty only of manslaughter – where the respondent submitted that there was ample evidence capable of acceptance by the jury to support a finding beyond reasonable doubt of the appellant's guilt of murdering the deceased – where the respondent submitted the jury had a forensic advantage over the appellate Court and were properly directed – whether the verdict was unreasonable and insupportable having regard to the evidence at trial |

*M v The Queen* (1994) 181 CLR 487; [1994] HCA 63, applied
*Shepherd v The Queen* (1990) 170 CLR 573; [1990] HCA 56, applied
*SKA v The Queen* (2011) 243 CLR 400; [2011] HCA 13, applied

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| COUNSEL: | S R Lewis, with K McMahon, for the appellant (pro bono)<br>M R Byrne QC for the respondent |
| SOLICITORS: | No appearance for the appellant<br>Director of Public Prosecutions (Queensland) for the respondent |

[1] **MORRISON JA:** I have read the reasons of Boddice J and agree with those reasons and the order his Honour proposes.

[2] **BODDICE J:** On 2 December 2013, the appellant pleaded not guilty to the charge that he had, between 28 October 2011 and 9 November 2011, at Brinsmead in the State of Queensland, murdered Li Ping Cao. A jury was empanelled. Both the prosecution and the defence called evidence. On 12 December 2013, the jury convicted the defendant of murder. The trial judge sentenced the defendant to life imprisonment.

[3] By Notice of Appeal, filed 20 December 2013, the appellant appealed against his conviction. In his Notice of Appeal, the appellant relied on multiple grounds of appeal. At the hearing of the appeal, the appellant abandoned each of those grounds and was given leave to substitute in their place a single ground of appeal, that the verdict of the jury convicting the appellant of murder should be set aside on the ground that it was unreasonable and insupportable.

**Background**

[4] The appellant was born in Germany on 13 May 1943. He married his first wife, Monika Andres, in 1967. They had a son, Ralf Andres, in 1968. The family emigrated to Australia in 1982. Mrs Andres died in 2005.

[5] The deceased, Li Ping Cao, who was born in China on 8 February 1969. She met the appellant whilst he was travelling in China in 2006. The deceased travelled to Australia on 12 October 2006. The appellant and the deceased were married on 26 November 2006.

[6] The appellant and the deceased lived together at the appellant's property at Brinsmead near Cairns from 2009. Their relationship deteriorated from mid-2010. The couple fought frequently. The deceased left the appellant on at least two occasions but returned to live at the property.

[7] The deceased departed Australia for China on 25 July 2011 and returned to Australia on 14 September 2011. While in China, the deceased had porcelain teeth fitted by a dentist. Upon the deceased's return, she lived with the appellant at his property, but they argued regularly. The deceased was last seen at the property on 29 October 2011. The deceased's body was never recovered, although her porcelain teeth were subsequently located on the property.

[8] At trial, the appellant made multiple admissions, including that he caused the death of the deceased on 30 October 2011, and disposed of her body by dissolving it in acid. At issue was whether the appellant caused the deceased's death with the intention of killing her or doing grievous bodily harm to her, and whether her death occurred by way of accident or in self-defence.

**Evidence**

*The appellant's marriage to the deceased*

[9] Prior to marrying the deceased, the appellant took her to Sydney to meet Colin Slarth, who had known the appellant for more than 25 years. Mr Slarth told the appellant an elderly Chinese doctor advised him to tell the appellant not to marry the deceased because marrying Australian men was "big business in China"; a Chinese woman would "want two things: one, an Australian passport" and two, the appellant's money.[1] The appellant dismissed that advice, saying he was happy, the deceased was happy and the family was happy. Mr Slarth also told the appellant the deceased would be able to bring her family out to Australia. The appellant said the deceased would not do so. However, because of Mr Slarth's advice, the appellant instructed a solicitor to draft a Will and a pre-nuptial agreement prior to his marriage to the deceased.

[10] On 15 November 2006, the appellant made a Will. This Will, said to be made in contemplation of his marriage to the deceased, made no provision for his son. It bequeathed the whole of his estate, both real and personal, to the deceased.[2] On 27 November 2006, the appellant and the deceased signed a pre-nuptial agreement. One copy of the pre-nuptial agreement was in English, and another was in Chinese. The agreement provided that if the marriage ended in less than three years, the deceased would not be entitled to any of his assets; if the marriage ended within a period of three to ten years, she would receive five per cent of his assets; and if the marriage lasted more than ten years, she would receive 20 per cent of his assets.[3]

*Deterioration of the relationship between the appellant and the deceased*

[11] Paul Macholl, who met the appellant and the deceased in about 2007, said the appellant's first priority was Mrs Andres, who the appellant said was the best woman, a good cook and a good housewife. This contrasted with the appellant's statements about the deceased, who the appellant said mixed with Chinese people too often, ate Chinese food, and no longer had a sexual relationship with the appellant. Chun Chang, who was introduced to the deceased and the appellant by a friend in 2008, said her impression was that they were a lovely, close couple.

[12] In June 2009, the deceased obtained a permanent visa and became eligible for a carer payment as she cared for the appellant, who had a lower back injury. The appellant, who was in receipt of an aged pension, paid for the majority of the couple's expenses, although the deceased paid for food and other items from time to time.

[13] In August 2009, the appellant purchased a property in Brinsmead, near Cairns. The property, purchased in the appellant's name only, became the couple's matrimonial home. After that purchase, the appellant had about $100,000 to $130,000 remaining, which was invested in both names in a bank account to which they both had access.

[14] The relationship between the appellant and the deceased deteriorated in 2010, when the deceased arranged for her son to come to Australia without the appellant's knowledge. The appellant only found out the day before the planned arrival of the deceased's son.

[15] Mr Slarth said the appellant saw this as a breach of trust. The deceased left the property for a time after her son's arrival. The deceased moved out on at least one other

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1 AB 175/30.
2 Exhibit 18.
3 Exhibit 17.

occasion, and threatened to do so on other occasions. Mr Slarth said the last time he spoke with the appellant was sometime in October 2011. The appellant informed him the deceased was back in Australia after travelling to China. At one point, the appellant told Mr Slarth he had met somebody else. Mr Slarth believes the appellant said she was a Thai woman.

[16] Ms Chang recalled assisting the deceased to move out of the Brinsmead property on the same day the deceased's son arrived in Australia. The appellant complained to Ms Chang about the deceased not having told him the truth about the son coming to Australia. The appellant was quite disappointed with the deceased; pointing to her and saying, "you see that, this is a marriage I'm putting up with".[4] The appellant said the deceased could return to the home, but not with her son. The appellant complained the deceased was lying to him about sponsoring her son, and had not told him her son was able to get permanent residency. The appellant understood the son came over on a holiday visa. The appellant looked sad and disappointed, but not angry. The deceased looked very angry. The appellant and the deceased both accused each other of lying. Ms Chang said soon after the deceased moved out, she returned to the appellant.

[17] Ralf Andres first met the deceased at a dinner party at the Brinsmead property in early 2011. Mr Andres heard the deceased and the appellant argue from time to time; they both had very loud voices. The deceased had moved out twice. However, the appellant praised the deceased in relation to her housework, cooking, and allowing him to have a shrine to his first wife.

[18] Mr Andres said the appellant spoke to him about his relationship with the deceased; he said there were cultural differences. There had also been an incident where the deceased had arranged for her son to gain permanent residency in Australia using the appellant's financial security.[5] As a result, the appellant had lost trust in the deceased and was concerned about her motivations. The appellant subsequently approached Mr Andres about transferring his assets into the name of the appellant's grandson.

[19] In early 2011, the deceased consulted a solicitor about how to avoid the deceased having access to his major assets. On 16 March 2011, without the deceased's knowledge, the appellant transferred ownership of the Brinsmead property to a newly-established family trust. The trustees of that trust were the appellant's son and daughter-in-law, and its sole beneficiary was the appellant's infant grandson. The trust document entitled the appellant to reside at the Brinsmead property for the rest of his life. The trust was to provide the appellant with alternate accommodation if the property was sold. The trust document did not refer to the deceased.

[20] Neighbours gave evidence of hearing loud arguments at the Brinsmead property. Mark Evans, who resided across the road from the appellant's property, about 20 metres away, said the arguments were regular, possibly weekly, and generally lasted a few minutes. Joshua Hobbs, who resided opposite the appellant's property, about 30 to 40 metres away, said the arguments were about three to four times a week, and often about money.

[21] Antony Barr, who lived behind the appellant's property, and had a common rear fence with the appellant, recalled hearing many heated arguments, at least a couple of times a week. On one occasion, some months prior to November 2011, there was yelling

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4 AB 220/35.

5 AB 131/1.

and screaming. Mr Barr heard a gentleman say, in a raised, heated, screaming voice, "why are you staying here? Why don't you just go home?"[6]

[22] Rhonda Elgy, who lived next door to the appellant's property, said the appellant and the female occupant of the property argued a lot, yelling loudly at each other. Ms Elgy had not heard anything breaking or any other loud noises. On one occasion, Ms Elgy recalled hearing the appellant tell the woman she could not sign his name on the chequebook. The appellant seemed angry and aggressive.

*Appellant's relationship with Saranrat Kongrat*

[23] Saranrat Kongrat, also known as Da, is a Thai national. Da's sister, Uthai Ratsu, was married to John Gunner, an Australian national. Da's brother and Mr Gunner lived together at a property in Kuranda, near Cairns.

[24] On 8 August 2011, Da and Ms Ratsu came to Australia on holiday together, and they stayed with their brother. Da met the appellant on 12 August 2011, while she was at the casino in Cairns with her brother and Ms Ratsu. The appellant invited all three of them to his property that evening. While they were at the property, Ms Ratsu asked the appellant about women's shoes she had seen inside the house. The appellant said they belonged to his first wife, who had passed away.

[25] The appellant saw Da again after that night and they commenced a sexual relationship. The appellant did not tell Da he was in an existing relationship with the deceased. Similarly, Da did not tell the appellant she was married or that she had a son. When Da saw women's clothing in the bedroom of his property, the appellant explained they belonged to his first wife, who had passed away.

[26] Mr Gunner met the appellant through Da on 19 August 2011. That afternoon, the appellant told Mr Gunner his wife had died after a prolonged illness and he did not like Filipino or Chinese women because all they wanted was money. Mr Gunner saw the appellant again sometime later when he came to pick up or drop off Da. The appellant said Da was affectionate, warm and smart. While Da was in Australia, the appellant told her he loved her and he wanted to marry her. The appellant gave Da a diamond ring, which he retrieved from a bank.

[27] Da returned to Thailand on 4 September 2011. When Da left Australia, she gave the appellant a letter in which she expressed her love for him. Mr Gunner saw the appellant and Da at the airport. The appellant and Da were affectionate, holding hands. The appellant kissed Da on the cheek. At the departure gate, the appellant told Da he would come to see her soon. The appellant said, "[w]e love each so much, baby… I will figure something out".[7]

[28] Ms Ratsu met the appellant again on 26 October 2011. The appellant gave Ms Ratsu some money to pass on to Da. The appellant did not want the deceased to know about the money. The appellant told Ms Ratsu he wanted to visit Da in Thailand, but could not leave the deceased alone in the house as she may steal something.[8] The appellant told her he would like Da to come to live in Australia. The appellant was planning to divorce the deceased. The appellant said when the deceased returned from China, he would make living uncomfortable by eating and sleeping separately.

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6 AB 127/1.
7 AB 164/5.
8 AB 202/35.

[29] Ms Ratsu said the appellant told her the deceased did not tell the truth.[9] The appellant said he had once gone to the airport to pick up the deceased and found she had her son with her. The appellant did not know the deceased had a son from a previous partner or that the son was coming to Australia. The appellant told her the deceased had used him for money and to get her son into Australia. The appellant said he had asked his lawyer what he could do to divorce the deceased.

[30] Mr Gunner recalled that during one conversation with the appellant, the appellant admitted he was married to the deceased. The appellant said after his first wife had died, he was lonely and went to China, where he met the deceased. The deceased then came to Australia on a three month tourist visa, during which time they fell in love. The appellant compared Da and the deceased. The appellant said he was going to introduce Da to his son. The appellant had intended to see Da in Thailand, but having thought about it further, decided that was not wise.

[31] After Da returned to Thailand, she stayed in contact with the appellant. Between September and November 2011, Da and the appellant exchanged numerous emails. The appellant also transferred money to Da during this period. After Da discovered the appellant was still married to the deceased, she told him she did not want anything to do with him while he was still married.[10] In July 2012, she gave the ring he had given her to Mr Gunner.

*Deceased's last movements*

[32] Yanmei Liu and Siegfried Hirsch last saw the deceased on 28 October 2011 at their home. The deceased arrived at around 7.30 and left at around 9.00 pm. Whilst there, the deceased received a telephone call from the appellant. Ms Liu did not hear all of the call, but recalled the appellant say "I love you" and the deceased responding "I don't need".[11] During that telephone call, Mr Hirsch said to the deceased "Hello dear, hello darling, or something to that effect". This was to annoy the appellant.[12] The deceased told the appellant "go and meet another girl. Go and meet another woman. Go and find another woman".[13] The deceased's telephone rang twice. The deceased did not answer the first call. The deceased was not happy at the time.

[33] On 28 October 2011, Mr Andres travelled with the appellant to a go-kart meet in Townsville. When Mr Andres went to collect the appellant, he thought the deceased was a bit short towards the appellant.[14] As they drove from Cairns to Townsville, the appellant told him the deceased had seen him sending an email to Da in Thailand. The appellant was unsure whether the deceased had read the email. Mr Andres recalled when they arrived in Townsville, the appellant called the deceased. There was some joking and the appellant said he loved the deceased.

[34] The appellant and Mr Andres returned to Cairns early on the morning of 29 October 2011. Mr Andres said on the following day, the appellant assisted him in the removal of Mr Andres' recently deceased grandmother's belongings from a nursing home. Mr Andres did not see the appellant again on 30 October 2011.

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9 AB 99/10.
10 AB 189/5.
11 AB 113/35.
12 AB 117/35.
13 AB 122/8.
14 AB 133/45.

[35] Huifang Zhang saw the deceased on the evening of 29 October 2011. There were no further recorded sightings of the deceased. However, Ms Zhang, who regularly gave the deceased leftover food, said on the evening of 11 November 2011 the appellant telephoned her for the first time to ask whether she had any leftover food.

[36] Zhi Li last saw the deceased on 29 October 2011 at the property. The deceased showed her a letter in which it was recorded the deceased was asking Centrelink to transfer her care payments to the appellant's bank account. The deceased had found the letter tucked in a calendar in a desk in the office by accident.

*Post-death evidence*

[37] Ms Li spoke to the appellant the week following 30 October 2011. The appellant told her the deceased had moved out earlier that week. All her clothes and shoes had been packed up. The appellant said he had last spoken with the deceased on the Monday night. The deceased had stayed in a motel and then obtained a ticket to China. The appellant said that was good for her as the deceased did not belong here, she was not into the Australian lifestyle.

[38] Ms Li said the appellant showed her the deceased's mobile telephone and asked her to change the phone setting language from Chinese to English. The appellant said the deceased had taken a new iPhone and had left the old phone. Ms Li took some clothes and other items she had stored at the Brinsmead property. Whilst doing so, the appellant showed Ms Li the deceased's wardrobe. All of the deceased's clothes and shoes were gone. The appellant said the deceased took everything with her.

[39] On 31 October 2011, Mr Andres spoke to the appellant on the telephone. The appellant told Mr Andres he had "split up" with the deceased.[15] Later that day, Mr Andres visited the appellant at the Brinsmead property. As he entered the residence, he noticed most of the deceased's shoes were no longer next to the door. Whilst Mr Andres spoke to the appellant about the deceased having left him, Mr Andres noticed the appellant had scratches on his face. Mr Andres asked if the deceased had had "a go" at the appellant,[16] to which the appellant replied "yes".

[40] Mr Andres later noticed the appellant had a scratch on his chest. Mr Andres asked if the deceased had scratched the appellant there too, to which the appellant replied "yes".[17] Mr Andres also noticed the appellant had a Band-Aid on his finger. Mr Andres suggested the appellant take photographs of the injuries, but the appellant dismissed that suggestion. Mr Andres did not see any injuries to the appellant's hands or face on the morning of 30 October 2011.

[41] Mr Andres agreed the injuries he observed on the appellant's face looked like fresh scratch marks. They were not weeping. The scratch mark to the appellant's chest appeared to be of a similar age. It was circular and small, maybe five millimetres. Mr Andres next saw the appellant at his grandmother's funeral two days later. He asked the appellant if he had harmed the deceased. The appellant replied "no".

[42] In other conversations with the appellant, which Mr Andres thought had occurred via telephone on 31 October 2011, Mr Andres recalled the appellant said the deceased had accused him of having a girlfriend and said she had proof that he did. The deceased

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15 AB 142/40.
16 AB 143/45.
17 AB 144/20.

had also accused the appellant of having AIDS. The deceased had packed her bags a week previously, ready to move out. The appellant said the deceased had done that on several other occasions; it was not an isolated incident. The appellant also told Mr Andres the deceased had returned some jewellery that was previously worn by Mrs Andres. The night before the deceased left the appellant, she slept in the front room. The day the deceased left, the appellant went to a medical appointment; when he returned, she was gone.

[43] Kenneth Noble, who knew the deceased and the appellant through his wife Zhang, attended the property on 5 November 2011 at around 12.30 or 1.00 pm. Mr Noble went there to find out about the deceased. The appellant seemed very on edge. The appellant had a bit of blood coming off his lip. Mr Noble asked the appellant about the blood. The appellant said he had an ulcer. The appellant told Mr Noble the deceased had left him. The appellant thought she had run off with another man. The appellant said when he rang her, he could hear a male's voice in the background. The appellant thought it was Mr Hirsch.

[44] Mr Evans said in early November 2011, he noticed dead patches of grass at the appellant's property. This was unusual, as the gardens were usually immaculate. About a week after he saw the dead patches, he noticed they had been patched up with other grass.[18] On 7 November 2011, Ms Elgy saw the appellant hosing the gutter in front of his property. It was around mid-morning. She had never seen him do that before.

[45] On 4 November 2011, a statutory declaration, said to be executed by the deceased on that date, was provided to a financial institution. The statutory declaration authorised the appellant to access the deceased's bank accounts.

[46] On 8 November 2011, a number of calls were made from the deceased's mobile telephone. Ms Chang received a call on her mobile telephone from the deceased's mobile number. Returned calls were not answered. That same day, the appellant advised his solicitor the deceased had moved out of the Brinsmead property and that he had not had physical contact with her since May 2011. The appellant referred to grounds for divorce.

[47] On 8 November 2011, Ms Liu and Mr Hirsch went to the appellant's house. They were worried about the deceased's whereabouts as they had not seen her for eight days. The appellant told them the deceased had gone to China. When Ms Liu asked when she had left, she was told it was none of her business.

[48] On 9 November 2011, Ms Liu went to the police. Wayne Sols, a police officer, visited the appellant's residence that day. Mr Sols saw that the wardrobe in the master bedroom was half-full of male clothing. The rest of the wardrobe was empty, except for one dress. The appellant told Mr Sols the deceased had left him. Mr Sols also noticed a strange, chemical-type smell throughout the house, which was most prominent in the garage.

[49] On 9 November 2011, the appellant hired a storage locker. The appellant was observed unloading a large amount of property into that locker. That same day, friends reported the deceased missing to police. Police attended the residence and spoke to the appellant. The appellant claimed no knowledge of the deceased's whereabouts. The appellant later provided police with a witness statement and participated in an electronically recorded interview. In each, the appellant claimed the deceased had left the home on the morning of 31 October 2011.

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18 AB 124/30.

[50] On 10 November 2011, Ms Chang became aware the deceased was missing. Ms Chang telephoned the appellant, who told her he had had an argument with the deceased about a week ago and the deceased, who was grumpy and angry, had left the property. The appellant said he went to hospital to have his back checked, and when he returned the deceased was not there. The appellant had tried to call the deceased twice on her telephone and she was still very angry. The appellant said the deceased wanted a divorce and half of the house. The appellant asked the deceased to come home but she refused.[19]

[51] Ms Chang asked the appellant where the deceased was now. The appellant said the deceased may be with friends, but he did not care. Ms Chang told the appellant she had had a telephone call from the deceased's mobile two days before, but the phone switched off as she answered the telephone. Ms Chang asked the appellant if he had the deceased's mobile, and he said he did not. The appellant told Ms Chang the relationship with the deceased was not what he expected for a marriage.

[52] Bradley McLeish, a police officer, attended the appellant's property on the evening of 13 November 2011. Mr McLeish noticed a chemical-type smell in the garage. Mr McLeish later opened a Commonwealth Bank safe deposit box held by the deceased, which contained documentation, jewellery and $3,600 in Australian cash as well as cash from foreign countries, including China.

[53] On 19 November 2011, Mr McLeish observed large dead patches of grass on that front nature strip to the left of the driveway of the appellant's property. The dead grass appeared to be recently laid turf. Mr McLeish also observed white fatty residue around the surface of a garden bed. The stormwater grate covering the pit was also stained a white colour.

[54] On 20 November 2011, Baden Bennett, a general practitioner and government medical officer, examined the appellant. Dr Bennett noticed a cold sore on the appellant's left upper lip. Dr Bennett also noted scars on the fingertips of the third and fourth finger of the appellant's right hand; injuries on the appellant's right big toe and upper left foot; and a superficial scratch near the outside of the appellant's left ankle.

[55] Dr Bennett did not note any injuries on the appellant's chest, back, abdomen or left hand. The appellant indicated he may have obtained those injuries from a lawnmower. Dr Bennett did not consider the injuries consistent with the appellant's explanation. The injuries were also not consistent with penetration with a sharp object. Dr Bennett described the injuries to the hand as pitting scars, consistent with a tool being punched into the fingers at the point of those scars. The injuries involved the loss of dermis exposing subcutaneous tissue, and were of a similar age, in the order of two to three weeks. The injuries extended well below the depth of the skin, and there had been an associated loss of subcutaneous tissue. Dr Bennett saw no signs of infection.

[56] Dr Bennett accepted something such as a fork could make those injuries, but not all of the injuries could have been caused by the stabbing motion with a table fork. In Dr Bennett's opinion, the pattern of injuries was not consistent a person being stabbed with a table fork just once, although they may have been consistent with a person being held down and stabbed by the fork several times. Dr Bennett considered it unlikely someone would sit still and be stabbed twice.

*Appellant's initial witness statement to police*

[57] On 13 November 2011, Mr McLeish took a witness statement from the appellant. In that statement, the appellant said the deceased had, in the past, criticised his behaviour

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19 AB 222/15.

and left him. The appellant's account was that in about mid-October 2011, he argued with the deceased, and she began to pack her things but did not move out. On 28 October 2011, the deceased told the appellant she had seen an email on his computer from a girlfriend. The appellant denied there was any such email. Later that day, the appellant travelled with his son to Townsville. That night, he telephoned the deceased on a number of occasions. On one occasion, he could hear a male voice in the background. The appellant said to the deceased, "oh you've got a boyfriend with you", to which she replied she had many boyfriends.

[58] The appellant said he returned from Townsville early on 30 October 2011. The deceased was at home. Later that morning, the deceased said she had proof the appellant had a girlfriend. The deceased also believed the appellant had HIV. The appellant denied he had another girlfriend. The appellant said after this argument the deceased again packed her bags. The deceased was very, very angry. On 31 October 2011, the appellant went to hospital for a check-up. When the appellant returned, the deceased was not at home and all her bags were gone. The appellant said this was nothing new. The appellant did not try to telephone her that night or the next day. On the next day or the following day after that, Ms Li telephoned him asking about the deceased's whereabouts. The appellant told Ms Li the deceased was not at home.

[59] The appellant said Ms Li wanted to collect some items she was storing at the appellant's property. Ms Li came around the same day and they had a brief discussion. The appellant said another friend's husband had also come around asking about the deceased's whereabouts, to which he had replied it was none of her business. The appellant agreed the deceased's son had called from China asking about the deceased's whereabouts.

[60] The appellant said he first knew of police involvement on 9 November 2011, when a detective came to his house. The appellant said since the deceased had left on 31 October 2011, he had tried to call her two or three times. On each occasion, the telephone did not answer. The appellant had not seen or spoken to the deceased since 31 October 2011. The appellant did not know where the deceased was and believed she was too embarrassed to tell her friends and family about moving out of the Brinsmead property.

*Appellant's initial interview with police*

[61] On 20 November 2011, the appellant participated in an electronically recorded interview with police. The appellant denied hurting the deceased. The appellant said the couple's relationship had deteriorated over time and the deceased left the Brinsmead property on 31 October 2011.[20] The deceased had done that several times before. The deceased took her iPhone with her. They had argued over finances for several weeks before she left.

[62] The appellant said in mid-October he and the deceased had signed a letter to Centrelink asking that the deceased's carer payment be paid into the account into which was deposited the appellant's pension payment. The appellant denied that the letter had been created on 29 October 2011 and that he had put the deceased's signature on that letter.

[63] The appellant said on the day before the deceased left, she asked him to give her half the house.[21] The deceased repeated her accusation that the appellant had a girlfriend,

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20 AB 299/10.

21 AB 902/50.

which the appellant denied. The appellant admitted he knew Da, but said there was no relationship between them. The appellant said that there was an email Da had written, which the deceased probably saw.[22]

[64] In the interview, the appellant accepted he had purchased a container of hydrochloric acid, but it was for the pool. However, the appellant denied purchasing any more hydrochloric acid or putting any acid in his garbage bin. The appellant could provide no explanation if human remains had been found in the drain outside the property. The appellant denied killing the deceased, and using acid to dispose of her body.

[65] The appellant said the dead grass at the front of his home was as a result of damage caused when he spilt petrol whilst he was repairing his lawnmower. The appellant had replaced the grass with new turf. The appellant denied having possession of the deceased's telephone or SIM card. The appellant said the injuries to his hands were caused by working on the blades underneath the lawnmower.[23] The appellant affirmed everything he had said in his witness statement on 13 November 2011 was true and correct.

*Further police investigation*

[66] On 14 November 2011, the appellant was observed to return to the storage locker and remove a number of bags and other items.

[67] On 20 November 2011, forensic officers inspecting the drains at the appellant's property found a bridge of six porcelain teeth. A bridge of two porcelain teeth was also found in the bottom of a stormwater drain at the front of the property. On 23 November 2011, a set of two bridged teeth was found in gravel excavated from the storm drain.

[68] On 25 November 2011, police received from Centrelink a letter purporting to be from the deceased and the appellant.[24] That letter, dated 29 October 2011, was in the following terms:

> "To save cost on Bank Fees for my self, LIPING [sic] CAO and my husband Klaus ANDRES,I herewith ask Centrelink to deposit the above CARER and CARER ALLOWANCE payment On to the following Bank Account [particulars given] On to which account my husbands age pension [particulars given]."

There were two signatures, purportedly by the deceased and the appellant. Police received that letter on 25 November 2011.[25]

[69] On 28 November 2011, officers conducted a further search of the appellant's property. In the bedroom, which contained a shrine to the appellant's first wife, they located an urn containing her ashes. A search of the ashes revealed the deceased's iPhone inside a leather case. On 29 November 2011, a further search revealed a copy of the document sent to Centrelink. A subsequent search revealed a copy of the family trust document between the appellant's son and his wife as trustees of the Andres Family Trust, and a transfer by the appellant of the property to the Trust as a gift,[26] dated 16 May 2011.

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22 AB 989/55.
23 AB 1020/30.
24 Exhibit 13.
25 Exhibit 13.
26 Exhibit 15.

[70] Also located was an email dated 8 November 2011 from the appellant to his solicitor, wherein there was reference to this being the third time the deceased had moved out of the address and giving particulars of the previous times she had moved out. The email referred to there being no physical contact between the deceased and the appellant since May 2011.

[71] A Will, dated 4 March 2010, revoked the appellant's previous Will made at the time of his marriage to the deceased. This Will bequeathed the whole of the appellant's estate, both real and personal, to his grandson.[27] A further document located was a revocation of a power of attorney dated 28 August 2009 under the hand of the appellant, revoking an enduring power of attorney dated 21 June 2007 appointing the deceased as the appellant's attorney.[28] Two other documents seized contained an application for divorce under the name of the appellant and a further application for divorce with the details of the deceased.[29]

[72] On 16 January 2012, Mr McLeish accesssed Da's email account. That account revealed a large number of emails between Da and the appellant, spanning the period 6 September to 15 November 2011.[30] These emails revealed close and affectionate exchanges between Da and the appellant, with frequent expressions of love. There were also references by the appellant to "a problem" which he would try to manage and find a way to fix as quickly as possible.[31]

[73] The email communications included an email of 19 September 2011 from the appellant containing, among other things:

> "The current person, my wife, unfortunately will be back on Saturday night. I did already indicate to her with email not to come back to me Australia because when she left she told me she will go back to China. As I earlier indicated to you I must be very careful not to make a mistake, that she can give me a difficulty time which would affect both us. Please be patient in favour for both of us. I will communicate with you when she is not at home, is out for shopping or with her in my opinion bad friends who influenced her badly. …"

[74] That email was followed by a further email on 20 September 2011, in which the appellant said he would like to have Da "here with me in Australia and live with me as my wife. If you would decide to come to me here to Australia I then will organise the current problem I have, to make us both happy …".[32] Later that day, the appellant wrote:

> "Yes the person comes back from China. I have spoken to my solicitor and have been advised that I must let her back in to my house. If I lock her out she can give me a lot of trouble and high cost for me would be involved. But this is true and I promise you she will not come in to my bedroom. I will sort some thing out, please be patient …"

[75] In a further email, dated 29 September 2011, the appellant said the deceased was in the house but not living with him, and he could not come to Da in Thailand and let

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27 Exhibit 19.
28 Exhibit 20.
29 Exhibits 21 and 22 respectively.
30 Exhibit 24.
31 AB 270/2.
32 AB 271/45.

the deceased remain in the home on her own as she would take every piece of furniture out of the house. The appellant said he had to be careful not to tell the deceased about Da "because she can then give me big problem".[33] Later that same day, an email recorded the appellant saying he would try to get the deceased out of the house as soon as he could but he had to do this carefully, so as not to make a mistake which could hurt both of them.

[76] An email, dated 6 October 2011, recorded the appellant as saying he had offered the deceased money to go back to China. In a further email, of 8 October 2011, the appellant said he could divorce the deceased after living separately for 12 months.[34] On 10 October 2011, an email recorded the appellant telling Da he would make sure the deceased was out of his house when Da came to Australia. There was also an email attaching photos of jewellery which the appellant said could be Da's when they were living together happily. On 13 October 2011, the appellant sent an email telling Da he would give her $600 AUD. The appellant said he was working to get the deceased out of his house and he would tell Da when she was gone.

[77] In an email sent on 24 October 2011, the appellant told Da not to worry about the other woman as she will "not be in my house when you come to me".[35] Later that day, the appellant told Da he would bribe the deceased for her to go by herself and leave them alone. The appellant would divorce her after 12 months separation. It also recorded the appellant as saying "you should know I never would hit her. I never hit my deceased wife I was married for 38 years. Also I never, never, never would hit a female".

[78] On 29 October 2011, the appellant sent Da an email, in which he said:

> "The other person tried to give me a hard time but I don't care. I believe she knows about you and me. I told her that for her, is no return to me because she hurt me too much and has been the [worst] in my life. …"[36]

[79] On 31 October 2011, the appellant sent Da another email, in which he said:

> "Now I do have good news for you. The other person finally has left the house. She indicated to me that she would like to go back to China but I do not care anyway because now the house is free for both of us. Now you can come any day you like to me. …"[37]

[80] On 7 November 2011, the appellant sent an email to Da advising he had an appointment with his solicitor that day, in reference to considering an early divorce application against the "China woman". Later that day, the appellant told Da the deceased had moved out of the house. The appellant believed the deceased returned to China because:

> "she did not [contact] a member of her family in China and friends here in Australia. One of her friends went to the police and reported her as missing person because no one knows here in Australia where she currently is. The police now believe that something has happened to her. The police think that I am involved which I am not. I have to cooperate with the police. Otherwise they think that I am a suspect and did [something] to her.

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33 AB 279/25.
34 AB 280/35.
35 AB 283/30.
36 AB 285/5.
37 AB 285/30.

> They put a photo from me and my wife on TV and in the newspaper. … [If] this police know that you and I love each other, then they will think that I did something to her which I did not. At the moment, do not apply for a visa to come to me until I am telling you to do so. … Please wait until I tell you what will happen here in Australia. Be patient. We will come together. Also, at the moment I cannot call you on your phone. I do not know whether the police listen to my telephone. Again, it is not good if the police know about you and myself … I miss you very much. But do not write to email. This will give me a problem. I will contact you whenever it is possible for me to write to you or call you on your phone."[38]

*Appellant's evidence at trial*

[81] The appellant gave evidence in his defence. The appellant said after the death of his first wife in 2005, he fell out with his mother-in-law and his son and became lonely. The appellant undertook a number of trips to China, and on one such trip he met the deceased. They formed a relationship. The appellant applied for a visa and the deceased travelled to Australia for three months before returning to China. The appellant later received advice that marriage would overcome any difficulty in the deceased remaining in Australia. The appellant married the deceased on 26 November 2006. The deceased remained in Australia, although she returned to China approximately five times. On some of those trips the appellant travelled with her. The appellant paid for each of the trips.

[82] The appellant said in the beginning the deceased was nice, although she spoke very loudly. The deceased had a short temperament and was never prepared to negotiate or compromise. Shortly into their marriage, the deceased had told him that whilst they were married, she would like to be free to do what she liked to do, and he could do the same.[39] The appellant said he took steps to try to help the deceased feel comfortable in Australia. The deceased undertook courses to assist with her English, became a member of the Chinese Society, and obtained a driver's licence. The deceased received benefits from the Government.

[83] The appellant said in early 2011 he transferred the property to a family trust. That trust granted him a right to reside in the property for life. No-one else had access to the property, including the deceased. The appellant also transferred a significant cash sum into a bank account owned by the grandson. The deceased did not have future access to that account. The appellant also made a new Will in which his grandson was the beneficiary of all of his estate. That occurred before establishment of the family trust.

[84] The appellant said he took these steps because he was not sure he could trust the deceased anymore. The deceased had betrayed him by bringing her son to Australia in 2010 without telling the appellant. The appellant first knew the deceased's son was coming to Australia when the deceased told him they would have to pick up her son from the airport the next day. The following day, the deceased arranged for a friend to pick them up from the airport and did not return to the family home. The deceased later contacted the appellant seeking to pick up her belongings.

[85] The appellant said sometime later, the deceased returned to the family home. However, the appellant and the deceased argued over whether her son could stay in

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38 AB 289/35 – 290/5.

39 AB 306/20.

Australia. Eventually, the deceased and her son returned to live at the property. However, they later left the property. The deceased packed her belongings and those of her son. The appellant said on this occasion he advised Centrelink the deceased had left the property and no longer cared for him. As a consequence, the deceased was required to repay some money she had received by way of carer's payment. The appellant paid this sum for the deceased.

[86] At about the end of June or early July 2010, the deceased returned to live in the property. Later, the deceased's son decided to return to China. In October 2010, the appellant purchased two return tickets and one single one-way ticket and all three of them travelled to China. They remained there for two months. The deceased again travelled to China in July 2011. The appellant paid for this trip.

[87] The appellant said other things occurred in their relationship which caused feelings of mistrust. The deceased became very secretive and wanted to revoke the appellant's power of attorney over her. The appellant did the same in relation to his power of attorney. The deceased also changed the name of her licence to her Chinese name and denied the appellant access to her account. The appellant took steps to deny the deceased access to a safety security box held with a bank in Cairns. The appellant also took steps to transfer the money from the account where she was a joint signatory. The deceased sold some shares the appellant had purchased in her name.

[88] The appellant said the deceased had threatened to leave the property and live elsewhere four or five times. The deceased had previously packed her things two or three times, although she did not leave on those occasions. The appellant and the deceased had discussions about divorce on one occasion and the appellant obtained Family Court forms which they filled out but did not take it any further.

[89] The appellant said in the first week of October 2011 he argued with the deceased in relation to the withdrawal of money from their account. The appellant told the deceased they were not really married, they were only married on a piece of paper. After further argument, the deceased commenced packing her things. At one point the appellant offered the deceased $50,000 to walk out of his life. The deceased gave the appellant back her wedding ring, a diamond ring and matching ear studs which had belonged to the appellant's first wife. The deceased also moved to the front bedroom of the house next to the garage. After five or six days, the deceased moved back into the main bedroom and unpacked her things. Their sexual relationship, which had ceased in about June 2011, did not resume at that time.

[90] The appellant said that as a result of the argument over access to the bank account he raised with the deceased about arranging for her carer's payment to be deposited into the same account as his pension. The appellant subsequently drafted a letter on the computer, but he never showed that to the deceased. The appellant agreed he completed the letter after the deceased had passed away. The appellant said it was completely out of character for him and he could not give any explanation as to why he did so.[40]

[91] The appellant said on the morning of 28 October 2011, the deceased saw an email on the appellant's computer. The deceased accused the appellant of having a girlfriend, which the appellant denied. The appellant deleted the email and told the deceased to look through the email inbox. The deceased walked out. During this dispute, the deceased saw an ulcer on the right side of the appellant's lip and accused him of having HIV. The appellant also accused the deceased of having a boyfriend in China.

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40 AB 325/25.

[92] The appellant said he left the property and travelled to Townsville with his son on 28 October 2011. When he arrived at Townsville, he telephoned the deceased. During this conversation the deceased told him she was not at home. In the background, he heard a male voice. The appellant said "you've got boyfriend too?". The deceased replied "I've got many boyfriends".[41] The deceased then hung up the telephone. The appellant said he returned to Cairns in the early hours of 30 October 2011.

[93] On the morning of 30 October 2011, the deceased accused the appellant of making cheap phone calls overseas. The appellant left to assist his son. When he returned that afternoon, the deceased had started packing. The appellant offered the jewellery back to the deceased, which she refused. The appellant later went to the markets. When he returned he unpacked the groceries and undressed so that he was wearing only shorts with no shoes. The deceased was in the main bedroom when he returned to the property.

[94] The appellant said sometime later he was preparing dinner in the kitchen. The deceased came in and asked him if he had found another girlfriend. The deceased was dressed in shorts and a bikini top. The deceased began to yell and said she wanted half of the house for her future. The appellant told her he did not have a house. They argued over whether the appellant had a girlfriend. As the dispute escalated, the deceased reached out with her right hand and scratched the left side of the appellant's face. The appellant then saw the deceased had a fork in her hand. The deceased stabbed the appellant on his right hand, and then again on the fingertips.

[95] The appellant said he pushed the deceased with his left hand against her chest. The appellant did not use excessive force. The appellant did so to create distance in case the deceased came at him again with the fork. The appellant saw blood coming from his hand and turned to the sink and reached for a tea towel. Just before the appellant switched on the water, he heard a knock-like sound. When the appellant turned back, he saw the deceased's feet on the ground. The appellant told the deceased to get up and asked if she needed his help. There was no response.[42] The appellant looked down and saw blood coming out of the deceased's ear.

[96] The appellant said he tried to find a pulse, but there was none. The deceased was not breathing, and her eyes were closed. The appellant said he reached for the phone, intending to call 000 but realised the deceased was dead and no-one could help her anyway. The appellant obtained a tea towel and pushed it under the deceased's head. The appellant later pulled her over towards the table.

[97] The appellant said he then went into the en suite and put plaster on his fingers. The appellant returned to the deceased and put a bath towel around her to make her more comfortable. The appellant said he did not ring the police because he was too afraid no-one would believe him; everyone would blame him for doing this to the deceased.[43] The appellant said he sat for a long time. When the appellant went to bed, he did not sleep. The appellant said that at some point after he had moved the deceased towards the table, he walked into the kitchen and nearly slipped on some salad dressing on the floor. The appellant noticed the deceased's feet had salad dressing on them.

[98] The appellant said the next morning he got out of bed at around 7.30 or 8.00 am, shaved, showered, dressed and walked to the kitchen. When the appellant saw the deceased, he decided she could not stay there, as people could come. The appellant

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41 AB 327/45.
42 AB 334/40.
43 AB 336/20.

obtained a yellow wheelie bin from the garage, placed the deceased in it and took the wheelie bin into the backyard under the washing line. The appellant then travelled to a shopping centre before going to Bunnings and buying a 20 litre container of hydrochloric acid. After attending an appointment at hospital, the appellant travelled to the Brothers Leagues Club and collected some points. The appellant then walked along the Esplanade and purchased an ice cream. When the appellant returned home, it was dark. The appellant took the bottle of acid into the backyard, opened the bin and poured all of the acid into the bin.

[99] The appellant said after placing the acid in the bin, he returned inside the house. The appellant packed the deceased's clothes and shoes before dumping them into donation bins in various places in Cairns. On the following day, the appellant attended the funeral of his son's mother-in-law. The appellant had injuries on his face and fingers, including two or three scratches on his face. The appellant's son observed them and made a comment, to which the appellant did not respond. The appellant had used a special cream on the scratches on the day of the funeral. The appellant also remembered having some scratch marks on the top of his chest.

[100] After the funeral, the appellant went to a shop on the Esplanade for lunch. Later that day he purchased two further 20 litre containers of acid from Bunnings. The appellant mistakenly used the deceased's Commonwealth Bank credit card for that purchase. The appellant also had a card with the Commonwealth Bank. The appellant said after he had decided to use the acid, he determined to tell people the deceased had left him. People knew she had moved out previously. Every person who inquired was told she had left him. The appellant also told police the deceased had left him. The appellant agreed he completely lied to police in the investigation.

[101] The appellant agreed that after the deceased's death he made some phone calls using the deceased's telephone to support the story the deceased was gone. The appellant denied he ever intended to withdraw money from the deceased's bank account. The area where the deceased fell in the house was tiled flooring. The appellant agreed on the day the deceased died, he wanted the deceased out of his house. The appellant denied a divorce would be costly for him. The appellant denied he murdered the deceased and said she died as a result of an accident.

[102] In cross-examination, the appellant accepted he and the deceased both had loud voices and they would shout at each other in arguments. Sometimes the arguments were over money. The appellant agreed he met Da whilst the deceased was overseas in China. The appellant also agreed he wanted to marry Da. The appellant would use phone cards to telephone Da internationally. The deceased found a slip from one of those cards. The appellant agreed that in his emails with Da he had referred to the deceased as a problem. The appellant also agreed he had said he would make it uncomfortable for the deceased upon her return from China. The appellant agreed he had given Da a ring which had belonged to his first wife. The appellant agreed he had engaged in substantial email correspondence with Da.

[103] The appellant agreed he did not tell the deceased he had changed his Will in 2010 from leaving everything to the deceased to leaving everything to his grandson. The appellant agreed he had probably discussed the legality of the pre-nuptial agreement with his daughter-in-law, a legal studies tutor. The appellant also agreed he had established a trust fund for the benefit of his son. That trust owned the property. The appellant did not mention that trust to the deceased. The appellant agreed he spoke

to a solicitor about divorcing the deceased in around September 2011.[44] The appellant agreed he had emailed Da telling her the solicitor had advised him he must let the deceased back into the house because if he locked her out she could give him trouble and it would be costly for him.

[104] The appellant agreed he had drafted the note to Centrelink asking them to transfer the deceased's carer payment into his account. The appellant said this was in mid-October when the deceased had packed her things and he was emailing Da about getting the deceased out of the house. Whilst he spoke to the deceased about transferring the account, he did not talk to her about the letter. The appellant sent the letter after the death of the deceased. The appellant agreed that on the morning of 28 October 2011 he lied to the deceased in denying he had a girlfriend.

[105] The appellant agreed that on Sunday, 30 October 2011, after he had returned from the markets, the deceased and the appellant argued again about whether he had a girlfriend. The argument was heated and the deceased was screaming at him. The deceased caused two or three scratches on the left side of his face, and then struck him with a fork, first on the hand near the knuckles and then on the fingers. The deceased used a straight forward thrust. The appellant feared for his life and thought she was going to injure him seriously; someone can kill with a fork. The appellant pushed her but did not see her fall. The appellant said the deceased was approximately 160 centimetres tall and weighed 54 kilograms, whereas he was 168 or 169 centimetres tall and weighed 65 kilograms.

[106] The appellant agreed when he found there was no pulse he initially picked up the phone but did not dial a number. The appellant agreed it was an emergency. The appellant agreed he disposed of the tea towel he used to wash the blood from his right hand and the towel he placed under the deceased's head, in the garage bin. The appellant said he did not confide in his son, who had been a police officer, because he did not want to involve him even though it was an accident. Although the appellant agreed if it had happened as he said in normal circumstances, he would have had nothing to hide, he said this was not a normal condition.

[107] The appellant agreed he disposed of the deceased's clothes and other belongings two, three or four days later. The appellant agreed he also went through the deceased's purse and took her Commonwealth Bankcard. The appellant agreed he had previously worked for Imperial Chemical Industries, a company which dealt in hydrochloric acid. The appellant denied he knew hydrochloric acid would dissolve human flesh and bones. He agreed he dissolved the deceased in acid. The appellant said he put the deceased in the bin feet first. The appellant first poured a 20 litre canister of acid over her. Subsequently, the appellant purchased a further 40 litres of acid which he later poured on the deceased. The appellant denied the injuries to his right hand and feet were from acid splashes.

[108] The appellant agreed his initial statement to police said nothing about the deceased hitting him with a fork. The appellant agreed when he spoke to police at length in a recorded interview he again said nothing about the deceased striking him with a fork. However, the appellant denied he was lying about the deceased's death being an accident. The appellant agreed he signed the initial statement to police as being true and correct. The appellant agreed he had lied in that statement when he said the deceased had taken her laptop and when he said he had never had another girlfriend.

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44 AB 354/10.

The appellant agreed that on 14 November 2011 he took part in a television interview in which he said the deceased had left him. This was another deliberate lie.

[109] The appellant agreed that on 31 October 2011 he deliberately lied to his son about the deceased having left him. The appellant agreed that on 5 November 2011 he deliberately lied to Kenneth Noble about the deceased having left him. The appellant agreed if he told the deceased's friend on 8 November 2011 that she had gone to China, that was a lie. The appellant agreed that when he sent an email to his solicitor on 8 November 2011 saying the deceased had left him that was a deliberate lie. Further, the appellant agreed when he told a police officer on 9 November 2011 the deceased had left him that was a deliberate lie.

[110] The appellant agreed he had deliberately lied when he denied to his son that the deceased had harmed him; when he told the deceased's friends that upon his return from the hospital the deceased was not at the property; when he told the deceased's friend he had spoken to the deceased on the Monday evening; when he denied to the friend having the deceased's phone and when he said he did not have the deceased's SIM card.

[111] The appellant agreed he lied to police in an interview on 20 November 2011 when he told police the deceased had taken her iPhone. The appellant agreed he concealed the iPhone in his first wife's ashes to give the illusion the deceased had kept the phone. Further, the appellant agreed he lied to police about when he had first seen the deceased's Commonwealth Bankcard, and when he told police he and the deceased had signed the letter to Centrelink in mid-October 2011. The deceased did not sign that letter. The purpose of the letter was to transfer the money from the deceased's account into his account.

[112] The appellant agreed that on 31 October 2011 he lied to police when he said the deceased did not participate in breakfast; the deceased was already dead. The appellant agreed he deliberately lied about the time he had left the property on 31 October 2011 to cover up the fact he went to Bunnings. The appellant also deliberately lied when he told police the deceased had packed her stuff and left, when he denied purchasing 40 litres of acid on 2 November 2011, when he denied using the deceased's car to purchase the acid, and when he told police he was cleaning the rockery. The appellant agreed the dead grass in front of his yard was caused by spilling acid and the liquefied remains of the deceased. On 7 November 2011 he was hosing down the spillage of the acid in the gutter.

[113] The appellant agreed he deliberately lied to police when he told them he had damaged his hand on the lawnmower. The appellant agreed he deliberately lied to police in relation to the disposal of the deceased's body. The appellant denied it was a lie when he said he did not kill the deceased. The appellant said he did not intend to cause any harm to the deceased when he pushed her. When he pushed her, the appellant did not think it was possible this would kill the deceased. The appellant said he had later written a letter to Centrelink advising that the deceased had moved out and did not care for him anymore.

*Expert evidence*

[114] Paul Botterill, a forensic pathologist, opined the injuries observed on the appellant's fingers could be associated with contact with one of the prongs of a fork. However, a greater number of contacts than simply two prongs would be needed to have produced all five injuries. It was difficult to conceive how two contacts could have

resulted in all five injuries. The hand injuries could also be due to the effects of contact with a corrosive agent, like acid. The injury to the foot was consistent with contact with a wheelie bin, or the effects of contact with a corrosive agent, like acid. The age of the injuries, and the degree of healing, meant it was not possible to categorically say the injuries were caused in any particular way. Whether they were caused by acid was no more than a possibility.

[115] Johan Duflou, a forensic pathologist, said there were a number of possibilities as to the cause of the deceased's death. The most common of those is as a result of a ruptured vertebral artery with bleeding inside the head. Another possibility was a ruptured berry aneurysm. Other possibilities included stroke or brain tumour and a concussion of the heart. The fact there was an observation of bleeding from the ear and possibility from the nose did not assist in giving an indication as to the likely cause of death. The necessary force to the head could be caused by a fall on a tiled surface. Dr Duflou said the injuries depicted in the photographs of the appellant's hand could have been caused by a penetrating injury or a chemical burn. Dr Duflou considered it was a reasonable possibility that a single action with the fork could have caused the injuries to the knuckles and then a separate single action could have caused the injuries to the tips of the fingers.

**Appellant's submissions**

[116] The appellant submitted that the verdict of the jury was unreasonable and unsupportable as there was no basis upon which the jury could exclude the defendant's version of what occurred beyond reasonable doubt. The medical evidence was ambiguous and therefore allowed for the possibility of his account. Further, there was no direct evidence to contradict his account.

[117] The appellant submitted that even if the jury was entitled to reject the defendant's account, there was insufficient evidence for a jury to positively determine beyond reasonable doubt that the appellant had caused the death of the deceased with the intention of killing her or causing her grievous bodily harm. The prosecution case for murder was wholly circumstantial. Each of the pieces of circumstantial evidence was equally consistent with manslaughter.

[118] The appellant further submitted that whilst there was evidence of motive in that he had formed a relationship with another woman and wished the deceased out of his house, that evidence of motive was equally consistent with her having been killed in the course of an argument with the deceased in circumstances where he did not intend to kill her or cause her grievous bodily harm. Similarly, the appellant's admitted lies following the deceased's death and his actions in disposing of the deceased's body were equally consistent with the appellant having caused the deceased's death without the requisite intention.

**Respondent's submissions**

[119] The respondent submitted there was ample evidence capable of acceptance by the jury to support a finding beyond reasonable doubt of the appellant's guilt of murdering the deceased. Not only did the jury have the forensic advantage of seeing and hearing each witness's testimony, it had the advantage of assessing not only that evidence but also the evidence of the appellant which was essential to the issues of accident and self-defence. The inherent improbability of aspects of the appellant's account, including as to his injuries having been caused by a dinner fork in circumstances where he feared for his life or serious injury provided a strong basis for the jury to reject the appellant's evidence.

[120] The respondent submitted the jury were specifically and properly directed as to the use that could be made of the appellant's conduct in concealing the deceased's death and lying about the deceased's whereabouts after her death. Whilst the jury were properly directed that that conduct was relevant to proof only of manslaughter and not relevant to murder, the jury was also appropriately instructed that that body of evidence, if accepted by the jury, militated against the jury accepting the credibility and reliability of the appellant's testimony.

[121] The respondent further submitted that once the jury rejected the appellant's testimony, there was a significant body of evidence to permit the conclusion that the appellant had killed the deceased with the requisite intent. There was evidence of a progressively disharmonious relationship and of the appellant having formed a new relationship in which he had made promises that the deceased would not be in the house when his new love interest arrived in Australia. The appellant had expressed knowledge he could not obtain a divorce from the deceased until a 12 month period of separation. These facts, together with his preparation of the letter to Centrelink, provided ample basis for the jury, considering the evidence as a whole, not as individual pieces, to reach that conclusion.

[122] The respondent submitted a consideration of the evidence as a whole permitted one conclusion only, that is that the appellant had committed murder.

**Applicable law**

[123] Whether a verdict of a jury properly instructed can properly be said to be unreasonable in that it was not open for a jury to conclude that the appellant was guilty of the offences beyond reasonable doubt, requires an independent assessment of both the sufficiency and quality of the evidence.[45] The relevant test was enunciated in *M v The Queen*[46]:

> "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 or 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. But in answering that question the court must not disregard or discount either the consideration that the jury is the body entrusted with the primary responsibility of determining guilt or innocence, or the consideration that the jury has had the benefit of having seen and heard witnesses. On the contrary, the court must pay full regard to those considerations." (footnotes omitted)

[124] The High Court observed that generally a doubt experienced by an appellate court will be a doubt which a jury also ought to have experienced except where a jury's advantage in seeing and hearing the evidence is capable of raising that doubt. This observation was explained thus:[47]

> "… where the evidence lacks credibility for reasons which are not explained by the manner in which it was given, a reasonable doubt experienced by the court is a doubt which a reasonable jury ought to have experienced. If the evidence, upon the record itself, contains

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45 *SKA v The Queen* (2011) 243 CLR 400 at 406, 409.
46 (1994) 181 CLR 487 at 493.
47 *M v The Queen* at 494-495.

> 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 set aside a verdict based upon that evidence. In doing so, the court is not substituting trial by a court of appeal for trial by jury, for the ultimate question must always be whether the court 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."

**Discussion**

[125] The only positive evidence led in support of a conclusion that the deceased's death was as a result of an accident or in self-defence was the appellant's own evidence. The fact that the deceased's body had been dissolved in acid after her death rendered it impossible for any objective evidence to be led as to the cause of her death. The objective evidence as to the nature of the appellant's injuries to his hands and feet did not support a specific conclusion as to their cause. At best, the expert evidence was equivocal.

[126] It was a matter entirely for the jury as to whether it accepted the appellant's evidence. There were good logical reasons for the jury to reject that evidence. The appellant admitted he had deliberately lied in respect of many matters, including the fact of the deceased's death. Those deliberate lies included lies to police in a statement which he signed as true and accurate. Against that background, there is no basis to conclude it was unreasonable for the jury to reject the appellant's account, which the jury must have done in order to find the appellant guilty of murder.

[127] The rejection by the jury of the appellant's account did not, however, mean it was open to simply convict the appellant of murder. As the jury was properly directed, once it rejected the appellant's testimony, that testimony was to be put to one side. The jury was to consider the evidence led in the prosecution case, and ask itself whether that evidence, considered as a whole, satisfied the jury beyond reasonable doubt that the appellant killed the deceased intending he do so or to cause her grievous bodily harm.

[128] A consideration of the prosecution evidence, as a whole, amply supports a conclusion a reasonable jury, properly instructed, could be so satisfied beyond reasonable doubt. In addition to oral testimony of witnesses, there was documentary evidence establishing that prior to the deceased's death the appellant had formed an intimate relationship with Da, saw the deceased as a "problem", and had vowed to Da the deceased would no longer be in the house when she came to Australia in circumstances where the appellant knew a considerable time period would need to elapse before he could divorce the deceased.

[129] The appellant had also transferred assets without the deceased's knowledge when he knew there was a pre-nuptial agreement providing for the deceased to receive a proportion of those assets. The deceased had, on the day of her death, made a claim to the appellant for half of the property. This was in the context of the deceased having confronted the appellant about an email to Da, and an accusation that Da was his girlfriend.

[130] In addition to those circumstances, shortly prior to the death of the deceased, the appellant had surreptitiously created a letter providing for the transfer of the deceased's

carer payment to a bank account under his control. The appellant sent that letter to the relevant authorities subsequent to the deceased's death. The jury was also entitled to consider the other steps taken by the appellant after the deceased's death in the context of the circumstances, which included the calmness of the appellant on the day following her death and its inconsistency with an accidental death.

[131] Whilst each of these matters, individually, may have been equally consistent with the death of the deceased not occurring with the requisite intent by the appellant, the jury was entitled to draw the necessary inference of intent from the circumstances as a whole. As was observed by Dawson J (with whom Toohey and Gaudron JJ agreed) in *Shepherd v The Queen*[48]: "Intent … apart from admissions, must be proved by inference. But the jury may quite properly draw the necessary inference having regard to the whole of the evidence … the probative force of [which] may be cumulative."

[132] That observation is particularly apposite in the present case. The cumulative effect of the evidence as a whole amply supported only one conclusion, namely, that the appellant intentionally killed the deceased.

*Conclusion*

[133] The evidence, when considered as a whole, excluded beyond reasonable doubt any reasonable hypothesis consistent with the deceased's death being manslaughter rather than murder. There is no basis to conclude the verdict was either unreasonable or unsupportable.

*Order*

[134] I would dismiss the appeal.

[135] **CARMODY J:** I have read, and agree with, the reasons and orders proposed by Boddice J.

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48 (1991) 170 CLR 573 at 580.