SUPREME COURT OF QUEENSLAND

CITATION:	*R v Jackson* [2008] QCA 360
PARTIES:	**R** **v** **JACKSON, Terrance John** (Applicant)
FILE NO/S:	CA No 14 of 2008 SC No 357 of 2007
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	18 November 2008
DELIVERED AT:	Brisbane
HEARING DATE:	18 November 2008
JUDGES:	Muir JA, Fryberg and Chesterman JJ Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**Appeal dismissed**
CATCHWORDS:	Criminal law – Appeal and new trial – Verdict unreasonable or insupportable having regard to evidence – Evidence of intention to kill or do grievous bodily harm to deceased – Appeal dismissed
COUNSEL:	Applicant: G Long SC (pro bono) Respondent: M Copley SC
SOLICITORS:	Applicant: Legal Aid Respondent: Director of Public Prosecutions (Queensland)

FRYBERG J: On 26 November last year, Mr Jackson was arraigned on one count of murder committed on 10 September 2004. He pleaded not guilty to murder, guilty to unlawful killing. The Crown did not accept that plea in discharge of the indictment and the trial proceeded. A little over two days later, the jury returned a verdict of guilty of murder.

He now wishes to appeal against his conviction for that offence. The only issue at trial and in the Court of Appeal was intention. Mr Jackson admitted that he unlawfully killed the victim, his de facto partner, Mrs Brown, and submitted that the correct verdict was guilty of manslaughter.

The sole ground of appeal is that the conviction for murder is unsafe and unsatisfactory. It was submitted on his behalf that, on the evidence, it was not open to the jury to be satisfied beyond reasonable doubt that he was guilty of murder.

Mr Jackson and Mrs Brown had lived together since about 2001 in premises owned by Mrs Brown. At the time of the killing, he was 23, she was 53. Their relationship had not been entirely harmonious. Police had visited their home six times in relation to complaints of domestic violence, most recently, 11 days before the killing. In some of those incidents, the subject of argument between Mrs Brown and the accused had been financial matters and his claim to have an interest in property owned by her.

Shortly before her death, Mrs Brown sold her home and purchased another. Mr Jackson made no financial contribution toward that purchase. She borrowed some money from her parents.

Settlement on both transactions, the sale and the purchase, was due on 17 September 2004. At about 4 p.m. on 10 September 2004, she made an appointment to see her solicitor about what was described in evidence as "a pre-nuptial agreement". She wanted the appointment to be prior to the settlement. Mr Jackson killed her later that evening. It was not suggested that there had been any plan for them to marry. I take the reference to a pre-nuptial agreement to have been an agreement under subdivision 4 of division 2 of part 19 of the *Property Law Act* 1974.

Around 7.45 a.m. on 11 September, Mr Jackson went to the Dutton Park Police Station and reported that he had killed Mrs Brown. Asked if they had had an argument, he responded, "I just flipped." He did not suggest that he was then or had, at the time of the killing, been intoxicated. He was calm and displayed no indicia of intoxication, not even a smell of stale alcohol to suggest that he had been drinking earlier. He claimed that both he and Mrs Brown owned the house in which they resided.

Police went to Mrs Brown's home where they found her body. It was naked. The legs were bound with what appeared to be dressing gown cord. The hands were bound behind her back with packing tape and cord. A number of lengths of tape, measuring, in all, 5.8 metres, had been tightly wrapped around the head, across the mouth and part of the nose. The head was enclosed in a plastic bag which was very tightly secured at the neck with about 1.7 metres of tape. Death was caused by asphyxiation. It would not have been instantaneous but would have occurred in not more than two minutes. DNA material matching Mr Jackson's DNA profile was found under some of the right-hand fingernails and later that day, when Mr Jackson was examined, he was found to have scratches less than 24 hours old on his forehead and cheek which were consistent with fingernail scratches. The body had a number of injuries consistent with having been received in self defence. Its blood alcohol content was 129 milligrams per 100 millilitres of blood and there was evidence of therapeutic doses of benzodiazepines.

There was evidence that alcohol had been consumed in the house. A cardboard wine cask was on a coffee table with a wine glass and three empty, full strength beer cans. The evidence did not show whether there was any wine in the cask. Female DNA but no male DNA was found on the glass. An ashtray containing numerous butts was also on the table. There was another empty beer can in the back yard and another three empty cans in the passenger footwell of the car at the premises.

There was no direct evidence that Mr Jackson had been intoxicated. The sample of blood taken about 5 p.m. on 11 September 2004 showed no sign of alcohol but did show levels of nitrazepam consistent with low therapeutic doses. His only explanation to police was, "I flipped" and later, "I snapped."

There was medical evidence that drinking alcohol while taking a therapeutic dosage of nitrazepam could exacerbate the disinhibiting effects of alcohol and that in less than one per cent of usage, benzodiazepam in combination with alcohol could produce agitation, delusions, nightmares, inappropriate behaviour, acute rage, etc.

The trial judge gave the jury a standard direction on intoxication and no criticism is made of that direction. However, Mr Jackson submits that on that evidence, it was not open for the jury to be satisfied beyond reasonable doubt that he intended to cause death or grievous bodily harm.

He draws attention to the fact that he turned himself in and did not seek to cover up what he had done. He submits that there is no explanation or apparent motive for the offence. He submits that the inference that he and the deceased had been drinking alcohol to a significant extent was open and that if that inference be open, the possibility that he was so intoxicated that he did not form the necessary intention could not reasonably be excluded.

I reject that submission. When I review the evidence, I am satisfied it was open to the jury to hold that if Mr Jackson was, in any way, affected by alcohol, it was certainly not to such an extent as to prevent or even inhibit the formation of the necessary intention.

On the contrary, it was open to them to find that he intended to kill Mrs Brown. He disabled her, after a struggle, by tying her hands and feet. He carefully taped her mouth and nose a number of times. He tied her hands behind her back. He placed the plastic bag over her head and tightly secured it. These actions displayed his intention unequivocally.

If motive be sought, and it is not necessary to do so, he may well have perceived that he was about to be deprived, unequivocally, of any possibility of sharing her property.

I have no doubt that the jury's verdict was correct. The appeal should be dismissed.

MUIR JA: I agree with the reasons of Justice Fryberg and that the order he proposes. There was ample evidence from which the jury could have been satisfied of the existence of an intention on the part of the appellant to kill the deceased. Indeed, to conclude otherwise would have been perverse.

CHESTERMAN J: I agree with the reasons given by Justice Muir and by Justice Fryberg.

MUIR JA: The order of the Court will be that the appeal be dismissed.