

SUPREME COURT OF QUEENSLAND

CITATION: *R v Pike* [2014] QCA 352

PARTIES: **R**
v
PIKE, Stephen Jonathan
(appellant)

FILE NO/S: CA No 3 of 2014
SC No 131 of 2012

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 19 December 2014

DELIVERED AT: Brisbane

HEARING DATE: 24 October 2014

JUDGES: Gotterson JA and Philippides and McMeekin JJ
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 – OTHER MATTERS – where the appellant was found guilty after trial of manslaughter – where the Crown case was entirely a circumstantial one – where the body of the deceased was never found – where there was evidence that the deceased suffered from severe psychological conditions – where there was evidence that the deceased had attempted suicide in the past, but her condition had been stable for many years – whether alcohol impacted on medication taken by the deceased – where the deceased changed her will in favour of the appellant – where there was evidence of lies and conduct by the appellant which was said to demonstrate a consciousness of guilt of the offence of manslaughter – whether possibility that the deceased committed suicide could be excluded – whether the possibility that the deceased was alive after 13 August 2010 could be excluded – whether on the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the appellant was guilty of manslaughter

M v The Queen (1994) 181 CLR 487, [1994] HCA 63, applied

COUNSEL: M C Chowdhury, with J L Voight, for the appellant (pro bono)
B J Power for the respondent

SOLICITORS: No appearance for the appellant
Director of Public Prosecutions (Queensland) for the
respondent

- [1] **GOTTERSON JA:** I agree with the order proposed by Philippides J and with the reasons given by her Honour.
- [2] **PHILIPPIDES J:** The appellant was charged with the murder of his mother, Suellen Pike, on a date unknown between 11 and 30 August 2010. He was acquitted by the jury of murder but convicted of manslaughter and sentenced to 10 years and six months imprisonment with a declaration as to time served.
- [3] The sole ground of appeal is that the verdict of the jury was unreasonable and cannot be supported having regard to the evidence.

The evidence at trial

- [4] The body of the deceased, Mrs Pike, was not found and the case against the appellant was a circumstantial one.
- [5] Mrs Pike lived at Burleigh Waters on the Gold Coast. She was born on 18 August 1947. She took medication for a number of health problems, including hyperthyroidism, dyslipidemia, hypertension, schizophrenia, depression, anxiety, insomnia, migraines and arthritis.
- [6] Mrs Pike had a close relationship with a number of elderly people associated with a church community and was aided by members of that church community in relation to such matters as transportation. She also received assistance from Home Care Services, Department of Health.
- [7] In about May 2010, the appellant came to live with her and assisted with her care.
- [8] In July 2010, Mrs Pike altered her will, revoking her previous will which left her estate to the appellant and his brother Adam Pike, and instead made the appellant the sole beneficiary.
- [9] There was evidence that Mrs Pike was spoken to by a friend, Brenda Ring on 12 August 2010. The prosecution case relied on the following evidence to establish that Mrs Pike was dead. No one had seen or heard from Mrs Pike, apart from the appellant, since 12 August 2010. (The exception was Mary Anne Tracey who gave evidence of seeing a woman of Mrs Pike's description on roughly 14 August 2010, and Helen Farrell, of Home Care Services, who recorded a telephone conversation on 17 August 2010 with a female caller, who she took to be Mrs Pike, cancelling her home visit.) In addition, since 12 August 2010, Mrs Pike had missed appointments, had not attended her doctor (including for an appointment booked for 13 August 2010, which she had confirmed), had not had any prescription filled, had not accessed her bank account and had not gone to church or spoken to her friends.
- [10] There was evidence at the trial that:

- The appellant purchased a shovel and two drop sheets on 13 August 2010.
- The appellant failed to attend his workplace on 13 August 2010. He told police that Mrs Pike had returned later that day saying that she had been with Adam Pike. A work colleague of the appellant gave evidence that the appellant told him on 16 August 2010 that he had not been at work on the 13th because he thought his mother was missing and he went looking for her, but found out later in the day she was with his brother for two weeks.
- On 14 August 2010, the appellant conducted Google Maps searches of bushland.
- On 15 August 2010 the appellant called for a tow truck from a payphone and arranged for a tow truck to pick him up from his residence and take him to a dirt road in bush area in Nerang to retrieve his car. He told the tow truck driver, Andrew Healy that his vehicle had broken down the day before. Mr Healy gave evidence of noticing what might have been a shovel on the rear seat of the appellant's car.
- A police search of the appellant's residence did not locate the clothes and shoes that the appellant was seen wearing on CCTV footage of the morning of 15 August 2010.
- Between 16 and 18 August 2010, the appellant conducted internet searches for industrial strength ammonia, butchers' supplies and various cleaning products.
- Mrs Pike's birthday was on 18 August 2010. She had been looking forward to it and had been planning the celebration, including arranging for treats such as a bracelet and new clothes.
- On 20 August a concerned friend visited Mrs Pike's house and found no one home.
- On 23 August 2010, police conducted a welfare check for Mrs Pike at her home. The appellant told the police on 23 August 2010 that his mother was staying with his brother and would be returning some time before his birthday (on 29 August) and undertook to contact her.
- The following day (24 August) the appellant acquired an industrial strength cleaner.
- On 28 August 2010 the appellant was at a party and had a conversation with Dean Howard. The prosecution was given leave to cross-examine Mr Howard on his original statement to police on 14 September 2010 about the conversation he had had with the appellant. In that statement Mr Howard said that as a joke he suggested to the appellant that now that his mother's house was in his name he could "knock her off". The appellant said, "If I did it, there would be pieces of her in the bush everywhere". Mr Howard said words to the effect, "If you can't find the body then you can't get caught", to which the appellant said, "Yeah, they would never find the body". Mr Howard conceded that at the time of the conversation he was very intoxicated.
- On 29 August 2010, the appellant telephoned police and said he was concerned his mother had not returned for his birthday. He told the police that Mrs Pike had left on about 14 August 2010 to stay with his brother and said she had travelled by bus or train. He stated he had not contacted his brother because they were not on speaking terms and he did not have a telephone number for his brother (although the evidence was that it was listed in the white pages).

- A number of witnesses gave evidence of leaving telephone messages on Mrs Pike's message bank between 13 and 23 August 2010, including Adam Pike who stated that he phoned and left a message on Mrs Pike's birthday. When police attempted to retrieve the messages from Mrs Pike's telephone, there was only one recorded message from 30 August 2010. The prosecution case was that it could be inferred that the appellant had deleted the messages. The appellant told police that he did not know how the phone messages worked and that the messages should all be there. But he also told police that he did access some phone calls and had returned messages. However, he maintained to police that he did not hear any message from his brother.
 - On 9 September 2010, police inspected an area near where a tow truck had collected the appellant's car and found remnants of a fire that was only some 32 metres away from where the appellant's broken down car was found. In the fire police found personal property belonging to Mrs Pike, including a handbag and its contents. The prosecution case was that the appellant had disposed of the items in the fire.
 - A portion of the upholstery from the appellant's car had been removed in an area where a bloodstain was found (which the prosecution contended could be inferred to be Mrs Pike's blood). The prosecution case was that the appellant had removed the upholstery.
- [11] In discharging the onus on it to prove that Mrs Pike was killed by the appellant, the prosecution relied on a variety of conduct and lies of the appellant, said to demonstrate a consciousness of guilt on the part of the appellant as follows:
- Disposing of the deceased's body in circumstances where it was not found.
 - Purchasing a shovel and two drop sheets on 13 August 2010.
 - Disposing of Mrs Pike's personal property in a fire.
 - Disposing of the shoes and clothes he was wearing when he burnt Mrs Pike's property.
 - Conducting internet searches for butchers' supplies and associated cleaning products.
 - Acquiring an industrial strength cleaner the day after police conducted a welfare check for Mrs Pike at her home.
 - Calling for a tow truck from a payphone.
 - Failing to report Mrs Pike missing for two weeks.
 - Deleting messages from Mrs Pike's telephone message bank.
 - Removing upholstery from his car in an area where a bloodstain was found which could be inferred to be Mrs Pike's blood.
 - Disposing of some of Mrs Pike's medication to make it appear as if she had committed suicide.
 - Lying to police about Mrs Pike going missing on 13 August 2010.
 - Lying to police about going jogging on 14 August 2010¹ and not seeing his mother leave the house.

¹ He said he left the house before 8.00 am to go jogging and had not returned until some time after 10.30 am but there was evidence that he purchased fuel at about 8.40 am using his bankcard.

- Lying to police about what he was doing on the night of 14 August 2010.²

[12] It was the prosecution case that the possibility that Mrs Pike had committed suicide could be excluded and in that regard, the following were relied on:

- Mrs Pike had organised her affairs by changing her will on 15 July 2010, leaving everything to the appellant, and had made arrangements for her funeral, in keeping with her being an organised and budget conscious person.
- There was no evidence that Mrs Pike had called a taxi in the period around her disappearance, nor did any bus driver driving in the relevant area recall a woman fitting Mrs Pike's description travelling on a bus on 14 August 2010. And, given Mrs Pike's limited mobility, she could not have walked far (even allowing for the evidence of Mrs Pike's treating doctor Dr Khan, that she could perhaps have walked some 750 metres to the corner shop and back, with some rest breaks).
- Although Mrs Pike had mental health issues, there was evidence from numerous witnesses that she was happy in the period leading up to her disappearance.
- Dr Lichter, who was Mrs Pike's treating psychiatrist between 1992 and November 2007, stated that, although Mrs Pike had periods of fluctuating mental health issues and had taken a drug overdose in 1996 and again in 2005 when she attempted suicide, her mental condition had stabilised in 2007 and she was no longer considered a suicide risk whereupon he ceased treating her.
- Dr Khan, who was Mrs Pike's treating doctor, gave evidence that Mrs Pike was well settled psychologically in 2010. She was happy and positive and he did not recall any decline in her mental state in 2010.

The issues raised by the appellant

[13] The appellant accepted that the evidence raised a suspicion that the appellant had unlawfully killed his mother, but argued that it was not open to the jury to be satisfied beyond reasonable doubt that the appellant had committed the offence of manslaughter. In advancing that submission, the following matters were emphasised:

- (a) There was no evidence of threatening behaviour by the appellant towards the deceased before her disappearance, nor was there any history of an abusive relationship.
- (b) The appellant was consistent in his reports that his mother had gone missing to a number of people, including the police.
- (c) The prosecution could not exclude the possibility that Mrs Pike committed suicide, particularly given her serious psychiatric illness and previous attempts at suicide. There were lakes near Mrs Pike's home and there was no evidence that police searched them.
- (d) In the weeks before her disappearance Mrs Pike was consuming alcohol which could have had unknown effects when combined with her many medications.
- (e) There was no evidence of any foul play occurring in the house. The blood on the car arm rest was consistent with blood from Mrs Pike's leg wounds.
- (f) There was the possibility that Mrs Pike was still alive after 13 August 2010.
- (g) The evidence of Dean Howard was of no value, given his poor recollection and that it seemed to be nothing more than drunken banter between Mr Howard and the appellant.

² The appellant told police that he drove to Nerang on the night of 14 August 2010 and went to a hotel where he spent the evening drinking before catching a cab home, but the CCTV footage did not support that account.

Unsafe and unsatisfactory?

- [14] In *M v The Queen* (1994) 181 CLR 487 at 493, the High Court addressed the approach to be taken in determining whether the verdict of the jury 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 the witnesses. On the contrary, the court must pay full regard to those considerations.”

(a) No evidence of threatening behaviour or history of an abusive relationship.

- [15] The appellant’s submission as to the lack of evidence of his exhibiting animosity towards Mrs Pike does not advance matters as it was no part of the crown case that there was a history of previous aggression. Rather, the crown case was that the appellant had a motive to commit the offence because of the alteration to Mrs Pike’s will favouring the appellant. There was evidence that the appellant was aware of that. Indeed, Mrs Ring’s evidence was that the appellant seemed fed up with Mrs Pike talking about it.

(b) The appellant was consistent in his reports that his mother had gone missing to a number of people, including the police.

- [16] The appellant’s reports about Mrs Pike’s going missing and his understanding that she was with his brother was to be assessed against his not having confirmed that she was with his brother, whose number he claimed not to have, even though it could be obtained from the white pages. It was also to be assessed against the evidence given by his brother that undermined the appellant’s account. Adam Pike’s evidence was that he had phoned his mother’s house on her birthday and had left a message for her (which was not found by police on the message bank and which the prosecution contended the appellant had deleted). Also significant in the evaluation of the appellant’s account was what the prosecution contended were a number of lies the appellant told police, in particular, as to his whereabouts between 13 and 15 August 2010. The jury were entitled to reject the appellant’s explanation that his lack of candour to police was borne out of a concern to disguise his drink driving on those dates. It was open to the jury to conclude that the appellant lied out of awareness that the truth would incriminate him rather than for some other innocuous reason.

(c) The possibility that Mrs Pike committed suicide could not be excluded.

(d) The issue of Mrs Pike’s consumption of alcohol and its interaction with her medications.

- [17] The two submissions are interconnected. The appellant pointed to the evidence of Mrs Pike’s serious psychiatric illness and previous attempts at suicide, and that in the period leading up to her disappearance it had been noticed by some witnesses that she had been consuming alcohol which it was submitted may have adversely impacted on her psychiatric medication. It was submitted that in those circumstances, a reasonable hypothesis open on the evidence was that she had committed suicide. It was contended Mrs Pike may have gone for a walk and deliberately (or even accidentally) fallen into one of the lakes near her house and drowned. There was no evidence of a search having been conducted by police of those lakes and a rational explanation as to why there was no trace of her body was that it could have been consumed by sharks.

- [18] There was evidence from a home care worker, Sherilyn Bent, that she was concerned Mrs Pike had started drinking alcohol. She said that Mrs Pike had purchased quantities of alcohol on 22 July and 5 August 2010. However, she also gave evidence that Mrs Pike told her that she had purchased the alcohol for her son and that she herself only had one glass of wine a night. In any event, the evidence relating to the effect of alcohol in combination with Mrs Pike's medication was very limited. Dr Khan's evidence was simply that alcohol could react with her medication.
- [19] There was evidence from Elizabeth Finnan, who had known Mrs Pike for 10 years, that Mrs Pike appeared worried in the period leading up to her disappearance. But the totality of the evidence indicated that Mrs Pike had no tendencies of self-harm since 2007. Dr Lichter's evidence was that Mrs Pike had stabilised in 2007 and was not considered a suicide risk at that time. Although he was unaware of Mrs Pike's mental state subsequently, the evidence of her treating doctor, Dr Kahn, who she saw regularly, was that in 2010 she was settled psychologically, and that he did not recall any decline in mental state at that time. Dr Kahn stated that had her condition deteriorated he would have referred Mrs Pike to her treating psychiatrist.
- [20] Nor was there any rational scenario on the evidence as to how Mrs Pike could have committed suicide. The evidence indicated that Mrs Pike had not used public transport on 14 August 2010. The jury were entitled to find it unlikely that Mrs Pike had walked to the lake area in the vicinity of her house. Mrs Pike was infirm and had limited mobility. She was a large and overweight woman (169 centimetres tall and weighing 108 kg). Her doctor considered she was only able to walk a limited distance. Furthermore, the jury were entitled to find that, even if Mrs Pike were able to reach the lake area and fallen into the water, it was improbable that there would have been no trace of her body. Evidence was given by a marine police officer that in previous cases of drowning in nearby lakes, human remains were found, albeit with signs of shark bites. Accordingly, it was open to the jury to reject the hypothesis that Mrs Pike had drowned in the lake near her house as implausible and without foundation.
- (e) There was no evidence of any foul play occurring in the house. The blood on the arm rest was consistent with the blood from Mrs Pike's leg wounds.*
- [21] The appellant submitted that there was no evidence of any struggle or foul play having occurred at Mrs Pike's home. However, the evidence presented at trial, to which I have already referred, pointed to a strong circumstantial case that the appellant had caused Mrs Pike's death and was engaged in disposing of evidence relevant to Mrs Pike's death.
- [22] Expert evidence was given by Shannon Merrick, a forensic scientist, as to a bloodstain in the appellant's car, which the jury were entitled to infer was that of Mrs Pike. The submission urged by the appellant was that it could not be excluded that the source of the blood stain was a leg wound. The evidence relating to Mrs Pike having leg wounds was scarce. The appellant stated to police that Mrs Pike suffered from ulcers on her leg. There was evidence of the deceased's Medicare billing records indicating that she had been treated for two wound dressings on 23 and 30 July respectively. Dr Kahn, however, did not recall seeing or recording treatment of any wounds on those days, although he could not rule out the possibility that Mrs Pike had been treated for a minor wound on 23 and 30 July 2010. Likewise the nursing staff did not remember treating or recording treatment of any wounds on those days. The jury were entitled to reject the notion that the presence of the blood could be understood as arising from a leg wound.

(f) There was the possibility that Mrs Pike was still alive after 13 August 2010

- [23] The hypothesis that Mrs Pike was alive after 13 August 2010 rested on the evidence of two witnesses. Ms Tracey was a resident of Burleigh Waters. She did not know Mrs Pike, but had read about Mrs Pike's disappearance in the newspaper. She reported to police that during one of her walks she saw a large-looking woman fitting the description of Mrs Pike. Ms Tracey identified the date as "roughly about" 14 August 2010. She said she was "inclined" to think it was that date because she had been to Brisbane on 13 August 2010 and had not been able to walk her dog as she generally did. It is not likely that the jury would have placed much store on Mrs Tracey's evidence. Although she gave a description that resembled that of the deceased, she did not know Mrs Pike and, was at best vague as to the date of the sighting.
- [24] The other witness who gave evidence on the topic was Ms Farrell, of Home Care Services, an organization which provided fortnightly assistance to Mrs Pike. On 17 August 2010 at about 8.25 am she received a phone call cancelling Mrs Pike's appointment. Ms Farrell noted in her diary 'COVO, Tues 17/8 HF' denoting "cancel one visit only". Such visits could be cancelled only by the patient or the designated contact person.³ Her note on 17 August 2010 did not show that the visit had been cancelled by the designated person, so she assumed that the caller must have been Mrs Pike. Moreover, Mrs Farrell explained that she did not know Mrs Pike, and since the caller had a female voice she took her to be Mrs Pike. Given that Mrs Farrell had no real recollection of the call and did not know Mrs Pike but proceeded on an assumption as to the identity of the caller, her evidence was not likely to carry much weight with the jury.
- [25] In the circumstances, it was entirely open to the jury to reject the hypothesis that Mrs Pike was alive after 13 August 2010.

(g) The evidence of Dean Howard was of no value, given his poor recollection and that it seemed to be nothing more than a drunken banter between Howard and the appellant.

- [26] As to Mr Howard's evidence, the jury was entitled to know that the appellant was joking about disposing of his mother's body in the bush and to consider that evidence with proper instruction from the trial judge as to its context; that the appellant's comments made in the context of a drunken conversation and as to its reliability.
- [27] The appellant's statement to Mr Howard was relevant in the context of the evidence of Mr Healy, who was called to tow the appellant's car. There was evidence that the appellant guided Mr Healy to the middle of a 'thick bush'. While Mr Healy was attaching the car to the tow truck, the appellant disappeared in the bush for a prolonged period of time. During that time, Mr Healy noticed what he believed to be the handle of a shovel sticking out from behind the passenger seat. As the respondent submitted, that evidence, together with the statement to Mr Howard, formed a compelling base for the Crown's theory that the appellant disposed of Mr Pike's body in the bush.

Conclusion

- [28] In my view, there is no substance in any of the issues raised by the appellant. The trial judge addressed the rival contentions relating to those issues in her summing-up and

³ Deidre Fairweather, the service manager for Home Care Services, also stated that the protocol for cancellation of visits was that cancellations could only be made by the client or nominated person, who was Adam Pike.

the jury were properly appraised of them. As was submitted by counsel for the respondent, the matters raised by the appellant in contending that the verdict was not open to the jury were quintessentially issues for a jury to consider based on findings of fact and in light of all the other evidence. Bearing in mind the significant advantage the jury had in seeing and hearing the witnesses give evidence, and taking into account the whole of the evidence, it was clearly open to the jury to be satisfied beyond reasonable doubt that the appellant was guilty of the offence of manslaughter.

[29] I would dismiss the appeal.

[30] **McMEEKIN J:** I agree with the reasons for judgment of Philippides J and the order proposed.