SUPREME COURT OF QUEENSLAND

CITATION:	*R v Teichmann* [2016] QCA 347
PARTIES:	**R** **v** **TEICHMANN, Jamie Rex** (appellant)
FILE NO/S:	CA No 227 of 2015 SC No 302 of 2014
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Queensland – Date of Conviction: 9 September 2015
DELIVERED ON:	23 December 2016
DELIVERED AT:	Brisbane
HEARING DATE:	6 October 2016
JUDGES:	Margaret McMurdo P and Douglas and Boddice JJ Separate reasons for judgment of each member of the Court, Douglas and Boddice JJ concurring as to the order made, Margaret McMurdo P dissenting
ORDER:	**The appeal against conviction is dismissed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – where the appellant was convicted of murder – where the Crown case was that the appellant deliberately discharged a loaded shotgun at the head of the deceased at short range with the intention to kill the deceased or do him grievous bodily harm – where the defence case was that the jury could not exclude beyond reasonable doubt a hypothesis consistent with innocence, namely, that the shotgun discharged in the course of a struggle between the appellant and the deceased after the deceased produced the shotgun and threatened the appellant's life – where the appellant submits the case against him for murder was purely circumstantial as there was no direct evidence he shot the deceased or, if he did so, he did so intentionally, and no direct evidence of an intention to kill or do grievous bodily harm or of any motive for the appellant to kill the deceased – where the appellant submits a consideration of all the evidence was consistent with an accidental killing or killing in self-defence – where the respondent submits the jury were presented with two competing hypotheses, and that there was ample evidence to support the Crown's hypothesis and to exclude the

appellant's hypothesis beyond reasonable doubt – whether the verdict is unreasonable or insupportable having regard to all the evidence

CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – MISDIRECTION AND NON-DIRECTION – OTHER MATTERS – where the trial Judge directed the jury that certain statements by the appellant, if they were satisfied those statements were false, could be used as evidence of consciousness of guilt of manslaughter – where the appellant submits these directions led to a miscarriage of justice because the directions given to the jury as to the use that might be made of such evidence were inadequate – where the appellant submits his lies could not be established without proof of his guilt and the directions were therefore unnecessary and carried with them the risk of a wholly circular argument as to the appellant's guilt – where the appellant submits the jury ought to have been directed they would need to be satisfied beyond a reasonable doubt that the appellant had so lied before using such evidence as consciousness of guilt – where the respondent submits the directions concerning lies were in accordance with the benchbook and did not involve circular reasoning – whether the appellant's alleged lies were capable of amounting to evidence of consciousness of guilt – whether the jury were properly directed as to the use that could be made of those alleged lies

Edwards v The Queen (1993) 178 CLR 193; [1993] HCA 63, considered
R v Baden Clay (2016) 90 ALJR 1013; (2016) 334 ALR 234; [2016] HCA 35, cited
R v O'Brien [1999] QCA 216, cited
R v SCH [2015] QCA 38, cited
R v Zheng (1995) 83 A Crim R 572, cited

COUNSEL: J J Allen QC, with J P Benjamin, for the appellant
G P Cash QC, with R J Hood, for the respondent

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

[1] **MARGARET McMURDO P:** I agree with Boddice J's reasons for rejecting the appellant's contention that his conviction of murder was unreasonable. I have, however, reached a different conclusion from his Honour as to whether a miscarriage of justice occurred as a result of the trial judge's directions on lies. I would allow the appeal against conviction on this ground, set aside the conviction for murder and order a retrial. As Boddice J has set out the relevant issues and the impugned judicial directions, my reasons can be shortly stated.

[2] I agree with Boddice J that the first lie relied on by the prosecution as demonstrating the appellant's consciousness of guilt, his statement to the triple 0 operator suggesting

that the deceased had committed suicide, did not result in a direction that was inadequate or in a miscarriage of justice.

[3] As Boddice J identifies, the second and third alleged lies, those to Ms Candy and to police officer Edwards, were in a different category. As identified to the jury, they were to the effect that the deceased was killed when the shotgun he was holding discharged during a struggle with the appellant after the deceased had been threatening and aggressive. The defence relied on those statements as exculpatory and consistent with the appellant's innocence, raising a version of events which the prosecution could not disprove beyond reasonable doubt. The prosecution contended that these statements were lies amounting to an admission of guilt. Boddice J has summarised the judge's directions on this issue.[1] They included, "The prosecution also contends that the accused told lies to the police and Miss Candy. You will make up your own minds whether he told falsehoods, and if so, whether he did so deliberately."[2]

[4] The difficulty with those directions is that the alleged lies to Ms Candy and police officer Edwards concerned the same subject matter as the first question in the question trail provided by the judge to the jury[3]: whether the appellant "engaged the trigger of the shotgun, causing the weapon to discharge, thereby killing the [deceased]?" That was a matter about which the jury had to be satisfied beyond reasonable doubt. On the judge's directions, the jury could have used the appellant's statements as lies amounting to an admission of guilt if satisfied on the balance of probabilities that they were lies of that character. They could then have used those lies as evidence to satisfy them beyond reasonable doubt of the critical first question in the question trail, the same subject matter as the alleged lies.

[5] The directions judges must give juries as to lies relied on by the prosecution as an admission of guilt are set out in the reasons of the plurality in *Edwards v The Queen*.[4] As this and other courts have often stated, prosecutors should be circumspect before seeking to rely on lies as a consciousness of guilt as it can cause unnecessary problems in what is a persuasive prosecution case regardless. In deciding whether to allow a prosecutor to address the jury as to lies in this way, and if so, what directions are required, a trial judge must take into account the relevant circumstances of the particular case.

[6] It was, in my respectful view, an error in this case not to instruct the jury that they could only act on the appellant's exculpatory account to Ms Candy and police officer Edwards as lies demonstrating an admission of guilt strengthening the prosecution case, if satisfied beyond reasonable doubt that they were lies of that character.[5] It is true that there was other evidence upon which the jury could have concluded beyond reasonable doubt that the appellant engaged the trigger of the shotgun causing it to discharge. But that was by no means inevitable on the evidence. The jury may have impermissibly engaged in circular reasoning of the kind warned against in *R v Zheng*[6] and *R v O'Brien*.[7] My concern is that the jury may have found on the balance of probabilities that the appellant lied when he told Ms Candy and/or police officer

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1 Set out in Boddice J's reasons at [137] – [143].
2 Summing Up, 7, AB 355.
3 MFI D, AB 427.
4 (1993) 178 CLR 193, 210 – 211 (Deane, Dawson, Gaudron JJ).
5 Above, 210 (Deane, Dawson, Gaudron JJ).
6 (1995) 83 A Crim R 572, 576 – 577.
7 [1999] QCA 216, [8] (McMurdo P), [7] – [8] (Pincus JA), [1] (Muir J).

Edwards that the deceased was killed in a struggle when the shotgun he was holding discharged. They may then have used that finding, reached on the balance of probabilities, to conclude beyond reasonable doubt that the appellant engaged the trigger of the shotgun, causing it to discharge and kill the deceased.

[7] In my view there has been a miscarriage of justice which requires that the appeal be allowed, the guilty verdict set aside and a retrial ordered.

[8] **DOUGLAS J:** I have had the advantage of reading Boddice J's reasons, agree with them and the order proposed. Out of respect for the dissenting views of the President I should explain why I have come to the view that the second and third alleged lies, that the deceased was killed when the shotgun he was holding discharged during a struggle with the appellant after the deceased had been threatening and aggressive, were not an indispensable link in the chain of evidence necessary to prove guilt.

[9] Whether the appellant engaged the trigger of the shotgun, causing the weapon to discharge, thereby killing the deceased was an issue capable of proof through a combination of circumstances proved on the evidence apart from the alleged lies. The appellant's uncontroversial statements to Ms Louise Candy and Detective Senior Sergeant Darren Edwards placed him at the scene when the death occurred as the only other person apart from the deceased. Some of the scientific evidence also identified his fingerprint and footprints there. Ms Candy observed no injuries on him after the event.

[10] The scientific evidence of the scene of the crime detailed in Boddice J's reasons, especially Dr Olumbe's evidence, Sergeant Clark's and Mr Bruce's ballistics evidence, the evidence of Dr McIntosh summarised at [126] of Boddice J's reasons and that of Mr Asmussen would have entitled the jury to conclude beyond reasonable doubt, in my view, that the deceased had not engaged the trigger himself. That left the appellant as the only other possible shooter.

[11] In fact, the alleged lies to Detective Senior Sergeant Edwards did not address who pulled the trigger. Rather the appellant said the shotgun the deceased was holding discharged during a struggle between him and the deceased without identifying whose finger was on the trigger at the crucial time.[8] He did tell Ms Candy that he did not have his finger on the trigger[9] but the jury did not need to decide that was a lie to accept that he did pull the trigger. The other evidence pointed convincingly to that conclusion independently. Therefore the jury did not need to be satisfied beyond reasonable doubt that they were lies before considering them with the other evidence in respect of the issue of who pulled the trigger.

[12] **BODDICE J:** On 9 September 2015, a jury convicted the appellant of murder. The appellant was sentenced to life imprisonment. The appellant appeals that conviction.

[13] At issue is whether the verdict of the jury was unreasonable and whether a miscarriage of justice occurred as a result of the jury being directed that statements of the appellant were capable of amounting to evidence of consciousness of guilt and the jury not being properly directed as to the use that could be made of those statements.

Background

[14] The appellant was born on 23 January 1975. At the time of the offence he was living in a converted railway carriage on a property at Buaraba in the State of Queensland ("the property"). The deceased also lived on that property.

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8 See AR 393-394.

9 AR 77/6-18.

[15] The deceased was found dead on the property on the morning of 16 December 2010. He was aged 35, having been born on 4 April 1975. The deceased had extensive injuries consistent with the discharge of a firearm. His body was located in the doorway of the converted railway carriage.

[16] Police had attended the property on the evening of 15 December 2010 as a consequence of information from the police communications unit Ipswich of a reported possible suicide at the property. A perimeter check did not reveal any relevant matters. Police did not enter the property on that evening.

Trial

[17] The Crown case was that the appellant deliberately discharged a loaded shotgun at the head of the deceased at short range with the intention to kill the deceased or do him grievous bodily harm. The Crown called 29 witnesses at trial.

[18] The defence case was that the jury could not exclude beyond reasonable doubt a hypothesis consistent with innocence, namely, that the shotgun discharged in the course of a struggle between the appellant and the deceased after the deceased produced the shotgun and threatened the appellant's life.

[19] The trial Judge directed the jury on the need for the prosecution to prove beyond reasonable doubt that engaging the trigger was a willed act on the part of the appellant and, further, that self-defence did not apply in the circumstances. The trial Judge also directed the jury that certain statements by the appellant, if they were satisfied those statements were false, could be used as evidence of consciousness of guilt of manslaughter. The jury were directed none of those statements could be used as evidence to prove the mental element of murder.

Evidence

Events prior to death

[20] William Mackay met the deceased and his family in 1987. Mackay was renting a unit out the back of a house purchased by the deceased's parents. In 2006, Mackay and the deceased spent time in custody together for drug offences. On his release, Mackay lived on the property. The deceased lived with his parents. Mackay said the deceased suffered from mood swings. He would have good and bad days.

[21] Mackay lived in the converted railway carriage on the property from 2006. It contained one bedroom. If others stayed they slept on a mattress on the floor of the combined lounge kitchen. The deceased came to live on the property in about January 2010. The deceased just turned up at the property one day. Mackay had no notice. Mackay was not happy. The deceased was drunk and off his head on drugs. The deceased was very upset and angry about not being able to see his children. The deceased slept on the mattress when he came to the property. For a short period, another person called Paul Lee also lived on the property.

[22] Mackay said as soon as the deceased came to the property in January 2010 he started abusing him, calling him names. Mackay thought the deceased hated him and had turned against him. At one point the deceased appeared from a shed behind the carriage carrying a tomahawk. The deceased put the tomahawk down on the table outside the carriage where Mackay was sitting in a chair. The deceased said he ought

to smash Mackay with the tomahawk. The deceased was holding the tomahawk up near his head across his body. Mackay felt very scared and threatened and had no idea why the deceased was doing it. Mackay had not had any argument with him.

[23] Mackay said he jumped up and left the table and later saw the deceased walk back around the shed. He heard a chainsaw start up and saw the deceased in the shed cutting the tyres of the ride-on mower. Mackay asked the deceased what was wrong with him. The deceased said "I hate the lot of you, my parents and you". The deceased then hopped into a utility and drove away. Mackay found broken items in the shed, including broken glass bottles.

[24] Mackay said later that night, the deceased returned to the property. He was continuing to be abusive towards Mackay. He was obviously drunk. Mackay left the property. He was in fear of his life. Mackay rang the deceased's mother the next day and told her what had happened. The deceased's sister arrived at the property and took Mackay and his dogs back to the deceased's parents' house. Mackay stayed there for two weeks. Mackay did not want to go back to the property whilst the deceased was still there.

[25] Mackay said the deceased came to his parent's house and apologised to Mackay. The deceased said he was angry with his parents because they interfered between him and his former partner. Mackay agreed to return to the property. The deceased came down a couple of days later, picked up Mackay and the dogs and took him back to the property. The deceased was initially okay. However, over time, the deceased started getting moody and depressed. He would get out of bed late. He would often talk to himself and answer himself. He had days where he seemed happy and other times when he would not talk to Mackay for two or three days at a time. Mackay noticed the deceased going down to the creek where he had seen him drinking and smoking cannabis previously.

[26] After another two or three months, Mackay started to feel threatened again. The deceased became abusive, was calling him names and was throwing things around the yard. Mackay would leave the property on occasions, staying away for a couple of days at a time. The deceased would come to see him and apologise and Mackay would go back to the property. Finally, Mackay told the deceased he was sick of what was going on and was going to leave for good if it happened again.

[27] Mackay said it did happen again on 22 September 2010. The deceased came home from the hotel at about midday. He was drunk. That afternoon the deceased approached Mackay whilst he was cleaning the driveway. The deceased swore at Mackay. He changed to being very angry. The deceased said he was sick of Mackay. The deceased then walked into the shed. Mackay could not see what he was doing but it sounded like he was looking for something. Mackay panicked as he did not know what the deceased was up to and took his dogs and left the property. As he was leaving he heard the chainsaw turning over.

[28] Mackay said when he later returned to the property to obtain some food for his dogs the deceased was asleep in the carriage. Mackay observed that a green four wheel drive motorbike was smashed up and cut to pieces. It had been undamaged when he left earlier in the day. The motorbike was in the shed he had heard the deceased go into before hearing the chainsaw start up. Mackay said he had had "a gutful" and did not want to return to the property. He left the area some two days later. Mackay had his dogs put down and caught a taxi to Toowoomba. He did not want to risk the

deceased catching him at the bus station. He then booked a ticket interstate under a false name. Mackay left everything he owned at the property. He was too scared to go back and pick it up.

[29] Mackay did not tell the deceased's parents he was leaving the property or where he had gone. When the deceased's auntie later rang him asking him to pick up his possessions from the property she asked where he was living. Mackay did not tell her at that time. That telephone call occurred after the deceased died but Mackay did not know that at that time. Shortly after that telephone call, Mackay was telephoned by a detective in Ipswich. Mackay still did not know the deceased was dead. Mackay thought the telephone call was because the deceased had been caught growing cannabis. He told police the deceased had been growing cannabis at the back of the property near the creek and that he did not want anything to do with it.

[30] Mackay said the deceased had told him in the past he had guns. Mackay had only ever seen the deceased with a .22 rifle, in the early 2000s when he was living on a neighbouring property. In about 2003 or 2004, the deceased told Mackay he had sold a shotgun, a .243 rifle and two .22 rifles to Paul Lee. Mackay never saw the deceased with any of those guns. He did see the deceased in possession of hunting magazines. He was also aware the deceased had hidden firearms from time to time on the property in capped PVC piping buried towards the back of the property.

[31] Mackay said after the deceased died he moved back to the property for some time. Whilst there he found some gun parts out in the bush lying on the ground. They were a couple of hundred metres from the railway carriage. He had not previously seen them. At the time he found the gun parts there had been a lot of floods in the area. He was looking in a gully and saw a bag on the ground. When he picked the bag up there were some gun parts lying there. He placed them in his pocket and removed the bag. He left them on the outside table. About four or five days later he gave them to police.

[32] Mackay said at the time he left the property the glass in the door to the railway carriage was not broken. He did not see any guns on the property throughout 2010. Mackay said when he was living on the property, the deceased was taking medication. On some days, the deceased did not take his medication. He was also drinking alcohol and smoking cannabis every day. Mackay agreed the deceased never hit him, attacked him or was violent to him. He just used to yell and scream.

[33] The appellant moved onto the property in 2010 after the deceased's father offered him a place to stay on his release from custody. The appellant had met the deceased's father in prison. The deceased's father said the appellant told him in custody he was a tent boxer. He had had 43 boxing fights. The deceased's father saw the appellant exhibit his boxing prowess. From his observations, he was a capable, competent boxer. The deceased was also a capable, competent boxer. The deceased had boxed with the Queensland champion in a training session and had acquitted himself well.[10] The deceased's father estimated the deceased and the appellant were about the same size, maybe a little taller than 5'4"-5'5".[11] The deceased was of a stocky, solid character.

[34] At the time the appellant moved onto the property the deceased was living there by himself in the railway carriage which had been converted into living quarters. The

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10 AB28/25.
11 AB34/5.

deceased had commenced living on the property in about January 2010. The deceased's father said the deceased became depressed after the breakdown of his marriage in 2006. He was anti-social. The deceased's father thought it would be a perfect fit for the appellant to live on the property. It would give his son a break and allow him to come into the city.

[35] The deceased's father said that at one time the deceased owned a shotgun. The shotgun was a long double barrelled shotgun. It was not a sawn-off shotgun.[12] To his knowledge, the shotgun was sold some years before the deceased's death. The deceased also had possession of a handgun. The handgun, which had been buried on a neighbouring property, was destroyed by the deceased's father prior to the deceased's death.

[36] The deceased's mother last saw the deceased the weekend prior to his death. He stayed at their home. She had been concerned about the deceased staying at the property on his own as he had a history of depression. The deceased had been treated for it with medication in the past and was still taking medication at the time of his death. She described the deceased's mood as "good as gold" on the weekend before his death.[13] The deceased's mother attended the property the week after Mackay left to make sure the deceased was okay. The deceased was guilty about the fact Mackay had left the property. She knew the deceased had a handgun at one point but she never saw it.

[37] Michael Ambrose was contacted by the appellant in 2010 with a request that he train the appellant in the boxing industry. He discussed a training arrangement with the appellant. He gave the appellant a couple of training sessions. The appellant paid him $50 a training session. He asked the appellant how he had that sort of money having just come out of prison. The appellant said he and a friend had "a little dope plantation", about 900 plants located towards Esk. The appellant said he had a horse and a dog on that property. In about November 2010, the appellant told Ambrose he had taken a drive into Brisbane and purchased a shotgun for around $300. He bought the gun for business. Ambrose saw the appellant again after that conversation for further boxing sessions.

Triple 0 call

[38] Jean Fynes-Clinton, a communications officer with the Queensland Police Service, took a triple 0 call at about 7.13 pm on the evening of 15 December 2010. The caller wanted to report an incident at Mt Mulgowie Road, Esk. The caller said "I think a bloke's shot himself out there". The caller said "his gun went off". The caller said he was in shock but wanted to report it. He said the deceased was "Carl" and that he did not know his second name. He lived in Mt Mulgowie Road.

[39] During the call, the caller said he had just walked in from road and the deceased was going crazy. He was going off his head. The caller thought the man was dead and that he thought "he's killed himself". When asked why, the caller said because "it didn't look good when I seen [sic] him". He said the man was going off with the gun, waving it around and "gone and shot himself". The caller said he had come up the road to ring police. Fynes-Clinton repeatedly asked the caller for his name but did not give it.

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12 AB20/45.

13 AB39/25.

[40] Fynes-Clinton said records revealed the deceased lived on Mt Mulgowie Road. She range both his listed home telephone number and mobile number. There was no answer. She did not leave a message. Carlene Trezise, a member of the Queensland Police Service, was then contacted by police communications, at about 7.40 pm on 15 December 2010, and asked to check for a possible suicide at Mt Mulgowie Road. She attended the address and found a lowset house. She did a perimeter check with her torch and returned to her vehicle. She did not knock on the door of the residence. There did not appear to be anyone home. There were no lights on at the residence. She did make an enquiry of the property across the road. A male person there said they had not heard a shot.

Appellant's statements

[41] Louise Mary Candy met the appellant in early November 2010 at the Fortitude Valley train station. The appellant knew her ex-partner in prison. Candy saw the appellant about two weeks later at a food van in Spring Hill. Candy next had contact with the appellant on about 9 December 2010. The appellant contacted her by telephone. She went to the Fox Hotel with him on one occasion. She met Bobby McNicol at that time.

[42] Candy was travelling to Townsville on 16 December 2010. On the night before, the appellant telephoned her and said he was around the corner from where she was living in New Farm. She met him at the corner. They later went to a hotel in Mitchelton. The appellant told her he had had a bit of trouble. He had been at a friend's place. They had been drinking and his friend turned on him. The friend had a pistol and a shotgun. The friend was ranting and raving.

[43] The appellant said the friend started to march him out of the house saying "it's got to be done, it's got to be done". The appellant said he thought he was going to die. There was a bit of a scuffle and the gun went off in his friend's face. The friend had been standing up against a wall. The appellant said it was either him or the appellant. The appellant said he did not have the finger on the trigger, that he did not fire the trigger.[14] All he had tried to do was get the gun away from his friend. The appellant said his friend was dead. The appellant said he tried to stop his friend from shooting him. They scuffled and in the process the gun went off. During the scuffle, the friend ended up against a wall. He also told her that he had stood in the friend's blood.

[44] The appellant said he wanted to let the police know, or someone know because of his family. He was concerned about the deceased's family finding him at the property rather than the police. The appellant said he should call the police. The appellant did not need persuading to go to police. The appellant decided that that was what he needed to do.[15] Candy said the appellant stopped the vehicle on Waterworks Road, Ashgrove. The appellant left the vehicle. He came back and said he could not get through to the police. They then travelled a further distance to another telephone box. The appellant appeared to be talking on the telephone. He came back and said he had made an anonymous call.

[45] Candy said the appellant said he wanted to have a good night's sleep and he was going to hand himself in in the morning. Candy said the appellant was wearing a khaki t-shirt and denim shorts. She did not see any injuries on him. Candy said they arrived at the hotel at Mitchelton around 7.00 pm. The appellant gave her some money and

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14 AB77/15.
15 AB86/1.

Candy went in and paid for a room. She gave her identification details. The room was booked in her name. They were able to sneak the dog into the room. Whilst there they spoke about what was the next plan of action. It was planned to drop the appellant into the police station in the city the next morning.

[46] Candy said they woke up about 8.00 am the next morning. The appellant was getting rid of clothes he did not want to take to gaol with him. The appellant had two bags. He put clothes in a plastic bag. The khaki t-shirt he had been wearing the previous evening went into the plastic bag. She was not sure whether the denim shorts also went into the plastic bag. They left the hotel and travelled towards the city. They stopped along Windsor Road, Red Hill so that the appellant could put the clothes in a wheelie bin on the side of the road.

[47] Candy said they then travelled to Roma Street. The appellant asked her to make sure that Robert McNicol got the car. The appellant gave Candy his phone, key card and the car keys. She also thinks he gave her a pocket knife. Candy returned to New Farm. When she returned to New Farm she had a look in the boot of the vehicle. The bags she had seen in the appellant's possession were no longer in the vehicle. Candy spoke to McNicol. She gave him the phone, key card and knife. McNicol took the car keys but did not take the car. McNicol arranged for someone else to take the car.

[48] Robert McNicol knew the appellant earlier in 2010. He described his fighting ability as "knuckle on really well"[16]. By that expression he meant the appellant was better than most at boxing. McNicol reacquainted with the appellant late November, early December 2010 after the appellant had left messages for him. The appellant told him he was doing some boxing training with Ambrose. McNicol later met up with the appellant in Brisbane on several occasions. On one occasion the appellant told him he had bought a shotgun. McNicol did not ask any questions about the shotgun.

[49] McNicol saw the appellant outside the Roma Street Police Station one morning in December 2010. This was about a week or so after the conversation about the shotgun. He had not arranged to meet him at that time. The appellant had a cattle dog with him. The appellant called McNicol over. The appellant said he had "f'd up – fucked up big time".[17] The appellant was stressing out pretty badly. He seemed very upset. The appellant said he was going to hand himself in to the police. He told McNicol after the dog had been collected by the RSPCA he would hand himself in to police. The appellant asked McNicol if he was doing the right thing. McNicol said it was the best thing to do to sort it out. It was the first time McNicol had seen the appellant so stressed and very upset. Normally, he was pretty "collected".[18]

[50] McNicol said in the conversation outside the police station the appellant told him his vehicle was at Candy's house and that Candy had his clothes and personal items such as telephone, wallet and credit card. He told McNicol he could have his motor vehicle and the money and telephone. The appellant said for McNicol to get them off Candy. McNicol later contacted Candy to collect those items, including the car. McNicol found clothes in a bag in the boot of the car when he collected the vehicle.

[51] Police subsequently took possession of the personal items, the mobile phone and the vehicle. He was in the process of selling the car when police collected it. McNicol had used the appellant's mobile phone. He put his own SIM card in it. He gave the

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16 AB112/30.
17 AB114/30.
18 AB117/44.

SIM card to police. McNicol was going to wash the clothes he found in the boot because they stank. He could not recall whether he washed them before giving them to police.

[52] Andrew Smith, an Inspector of Police, was working at the Roma Street Headquarters on the morning of 16 December 2010. He observed a male with a dog standing on the steps to the building at about 10 o'clock. He asked if he was alright. The male replied, "I've done something very serious and I want to hand myself in, but I'm concerned about my dog".[19] Smith replied "that's not a problem" and ushered him into the building. The appellant said his name was Jamie Teichmann. Smith left the appellant with an officer at the front counter. Smith described the appellant's demeanour as fine, calm and cooperative.

[53] Daniel France was working on the front counter of the Police Headquarters on the morning of 16 December 2010. At approximately 9.00 am a male person approached the counter and said words to the effect, "I think you guys are looking for me".[20] France asked him what for, and the male replied, "I saw a guy shoot himself". The male paused and said, "But I didn't shoot him, I just saw him do it". France asked for the male's driver licence. He produced a licence in the name of Jamie Rex Teichmann.

[54] France was told by the appellant the shooting had taken place at the dam. France did not know what dam until he performed a computer check. That computer check revealed that police wished to speak to the appellant. France arranged for Detectives to attend the counter. France saw no injuries on the appellant and the appellant made no complaint of any injuries. He described his demeanour as calm; he did not appear to be upset or distressed at all. He was polite and co-operative. He believed the appellant was wearing a pair of rugby-style shorts and a shirt. He estimated the appellant was 175cm tall, and of a thicker build. The appellant had a dog with him at the time.

[55] Bonita Young (formerly Campbell) was one of the police officers who attended on the appellant at the front counter at the request of France. She had a very brief conversation. Her notes recorded she spoke to the appellant around 9.30 am. He gave his name as Jamie Rex Teichmann. He gave his date of birth and telephone number. She asked the appellant why he was there. He stated he had witnessed "a mate shoot himself". The appellant claimed he was checking the shoes on his horse when his mate had come at him with two shotguns and threatened to shoot him. His mate then shot himself. The appellant said he was the only one there and he freaked out and left. The appellant said he had contacted police and advised them where to find his mate.

[56] Darren Edwards also spoke to the appellant at Police Headquarters on the morning of 16 December 2010. He arranged for him to attend Homicide's office upstairs. He had other officers make arrangements for the appellant's dog. Edwards said the appellant told him about an incident at Esk involving a man named Carl and Carl being shot with a pistol. At that time Edwards had not been told anything about the matter by any other police officer. Edwards arranged for the conversation to be recorded thereafter.

[57] During that recording the appellant confirmed he had told police he was attending to his horses' hooves when the deceased became aggressive towards him, accusing him of being an undercover police officer. The deceased had a pistol and a shotgun and threatened the appellant with them. He was going to kill the appellant. The deceased

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19 AB118/35.
20 AB120/22.

pointed the weapons at the appellant who thought he was dead. The appellant said he managed to talk the deceased out of his aggression and calmed him down, but the deceased went off again. The deceased then directed the shotgun at the appellant's head. The appellant did not know if it was loaded. The appellant flinched and the deceased put the gun down again and calmed down. The reference to having flinched was accompanied by the appellant doing a quick movement away.

[58] The appellant said he told the deceased to come inside to have a beer. They went inside the railway carriage. The appellant said the deceased lived there by himself. Whilst in the structure the deceased pointed the gun at the appellant's head. The appellant told him to calm down. The appellant denied he was an undercover police officer. The appellant said the deceased was off his head on dope. The deceased said, "I've got to get rid of you now, too late now, I've got to get rid of you". The deceased marched the appellant outside to kill him. As they were leaving the appellant took a dive to wrestle him to try and get the guns off the deceased. They were wrestling and the gun went off. The appellant thought it missed and continued to wrestle the deceased. The appellant then checked the deceased and saw "he was gone".

[59] The appellant told Edwards there was no phone reception and so he drove to Ipswich. The appellant did not know what to do with his dog so he then drove to Brisbane. He stopped at a telephone box and rang 000 and reported that something had happened. The appellant said he decided to come into the police station this morning. The appellant confirmed this is what he had told the officer downstairs at the front counter. The appellant said he had nothing to hide. The deceased "was dead" and the appellant had done everything he could, including calling triple 0.

[60] The appellant told Edwards he knew the deceased through his father, who he met in jail. The appellant denied killing the deceased. He said he was trying to diffuse the situation as best he could. The appellant did not know why the deceased thought he was an undercover policeman. He thought it must have been because he was on drugs. Edwards said the appellant was cooperative with police throughout. He seemed calm and understood what he was doing.

The scene

[61] Karlene Trezise attended the property with two other police officers, Sergeant O'Reilly and Senior Constable Duller, on the morning of 16 December 2010. The property gate was locked and police climbed the fence and walked up the driveway. At the end of the driveway was another high locked gate. Police scaled the gate. When police approached the railway carriage, Trezise observed there was a door open. Duller could see an arm hanging out of a doorway to a train carriage. He satisfied himself the person was dead. They did not go into the carriage. They set up the property as a crime scene.

[62] Kim Edwards lived near the property. She was approached by police on 16 December 2010. She told police she heard three or four consecutive shots coming from the property one day in December 2010. They were all in succession. On the next afternoon she heard a single shot come from a similar direction across the road. On neither occasion did she investigate the gunshots. The single shot occurred the day before she was approached by police. She agreed that, living in a rural area, she often heard gunshots.

[63] Once the train carriage was accessed by police, they found the deceased lying in a pool of blood on his back adjacent to the open doorway to the carriage. The deceased had sustained an obvious head injury, from a shotgun blast. There was a shotgun on the ground nearby. Duller satisfied himself the person was deceased. Fingerprint identification confirmed the body was the deceased.

[64] During a subsequent post-mortem Duller was given a container of several metal pellets obtained during the post-mortem. He subsequently returned to the scene and found a quantity of drug paraphernalia. There was a substantial number of seeds in a shed on the property and items that could be used for growing a crop. Duller did not find a crop actually growing.

[65] Andrew Timms, a scenes of crime officer, attended the property on 16 December 2010. He undertook DNA trace swabs on some Fourex Gold stubbies. Two of the Fourex stubbies were found in a plastic bag at the front of the garage. One was in the shed. Swabs were taken from the mouth area to see who was drinking them. A swab was also taken from a can of coke located in a plastic bag in a paved area outside the railway carriage and from other bottles contained in the carriage. Timms also took DNA samples from the front and back of the hand of the deceased and one from his chest area.

[66] Timms returned to the property on 17 December 2010. He took further swabs to test for DNA. Those swabs were taken from a rear door handle in the kitchen area, the handle on the open door, and the handle of another door at the other end of the railway carriage. DNA samples were also taken from a Samsung mobile phone. A fingerprint was located on that phone but it was unidentifiable. Later, Timms undertook examination of a motor vehicle, the barrel of a .22 rifle, a silencer, two magazines and a set of keys. All were swabbed for DNA. Those items, other than the car, had been located in bushland, a distance of 100 to 200 metres from the railway carriage. There were a lot of trees in that area.

[67] Steven McConville, a police officer specialising in scenes of crime, attended the property at around 5.00 pm on 16 December 2010. He took a series of photographs of the area and of the deceased. He also took photographs of a handgun and black pump action shotgun. The handgun was located on the floor of the lounge area. The shotgun was located adjacent to the deceased. There was a live shotgun shell also on the floor in that area. He assisted in packaging clothing which was taken for analysis. Robert Guy, a police officer, took footprints of both feet of the appellant whilst he was in the watch house. He gave them to the arresting officer, Jamie Housman.

[68] Michael Clark, a police officer attached to the ballistics unit, attended the property on 16 December 2010. He located some bloodstaining and a fragment of lead on the paved area outside the railway carriage. The lead fragment was found several metres away from the door to the railway carriage. Its position was consistent with having been expelled from the scene at the time of a shotgun blast. It could have impacted something within the carriage and been deflected out of the open doorway. The blood stains could possibly have been expelled at the time of the shooting.

[69] Clark also located some fabric pieces in that area and within the carriage. These fabric pieces were similar to pieces of fabric fibres found on the left hand of the deceased. The fibres appeared to have been blasted or subjected to some form of force. A possible explanation was that the fabric was in close proximity to the muzzle at the time of discharge of the shotgun. Sometimes when cleaning a shotgun, a piece

of material may remain inside the muzzle or be trapped within it. A person may also have placed a wad of material in the muzzle to stop insects or dust getting in there for storage purposes.

[70] Within the carriage, Clark observed lead fragments. A fragment was located just inside the doorway. A live shotshell was also located beside a shotgun. Examination of the shotgun located on the ground revealed there were three shotshells within the tubular magazine underneath the barrel along with one Winchester shotgun shell located on the ground. The safety switch was off so that the weapon was in the fire position. When Clark moved the chamber forward and backwards there was a discharged shotshell within the chamber.

[71] Clark took measurements of the distance between the location of the shotgun and the location of the deceased. The muzzle was 75 cm from the head and 24 cm from the right hand. A swab was taken of apparent blood stains on the left hand side of the muzzle. Swabs were also taken of other parts of the weapon including the trigger, the safety switch and the right hand side of the pistol grip.

[72] Clark said the normal loading position for the shotgun would be to grab one to five shotshells and insert them in the base. The shells are pushed manually into the tubular magazine, one at a time. When the mechanism is pulled back, one shotshell from the magazine is loaded into the chamber. If the safety switch is off, the shell is discharged by pulling the trigger. The discharged shotshell will remain in the chamber. If the gun is loaded again, the loading mechanism ejects the discharged shotshell onto the ground.

[73] Clark said the shotshell located on the ground had marks indicating it had been within the magazine on more than one occasion or in a firearm that left similar marks. It was not possible to date when those marks were made. They could have been made the night of the incident, the day before, a week before or a year before. The marks on the shotshell indicated it had been in the magazine and ejected at some earlier time.

[74] Clark obtained gunshot residue from the deceased's hand. A lead fragment was found adjacent to the deceased's right hand. In the vicinity was a plastic component from a discharged shotshell. It appeared to be blood stained. Clark located another lead fragment in the corner of the carriage behind the open door. Another lead fragment was located in the vicinity. A further lead fragment was located on the fitted sheet on a mattress that was on its side, three to four metres away from the area where the deceased's body was found. It is possible the lead fragment had hit a solid object and ricocheted off the surface. Tests conducted on the mattress resulted in a positive reaction for lead. There were two areas of superficial damage. One tested positive for lead. That could mean the damage was caused by the lead fragment located on the mattress while it was still moving.

[75] Clark said a .22 long rifle calibre pistol was discovered in the lounge area of the carriage. The pistol had a detachable box magazine containing nine rounds of ammunition. There was a further live round inside the pistol which was loaded with the hammer cocked. Both safety mechanisms on the pistol were in the fire position. To discharge the pistol, all that needed to be done was to pull the trigger. There were two different brands of ammunition present in the pistol. All were capable of being fired from that gun. Clark swabbed either side of the hand grip of the pistol as well as the safety switches, the magazine release buttons, the trigger and the hammer. He later handed the firearms and ammunition, including the discharged shotshell to Jeff Faulks, a fingerprint examiner.

[76] Clark returned to the scene on 18 December 2010. He conducted a further examination of a damaged door to the railway carriage. That door was in close proximity to the location of the deceased. He observed further pieces of damaged fabric throughout the carriage. He located one further lead fragment in the vicinity of the location of the shotgun. A closer inspection of the door revealed a quite large hole in the glass. Above that location was another small perforation. It was consistent with impact damage.

[77] Clark said there were two actual holes in the open door. One was quite small. The other was significantly larger. He was unable to rule out the possibility that the small one was caused by one of the pellets from the shotgun cartridge. The larger damage was consistent with the door being struck with significant velocity to overcome its structural integrity and punch a hole through it.[21] Clark conducted lead testing on the perforations on the blinds on the open doorway. It was negative. He did not recall testing the glass in the doorway but said it was not uncommon for lead testing to produce a negative result on glass. Clark agreed that the large hole found in the glass was too large to have been caused by any of the lead pellets unless the existing lead had stayed together. If that was the case he would have expected to see a significant amount of damage to the blind behind it.

[78] Clarke's examination did not reveal that further lead pellets had gone through the glass behind the doorway, although he could not discount that lead fragments may have passed through and caused subsequent damage to the rearward blinds or slipped through a gap. Clark said there was apparent damage to the part of the blind in the middle of the door. That damage may not be as a result of this event but there was a slight fracture along the blind that bent inwards. Clark also located pieces of glass on the ground near the door. There was also a piece of glass near the deceased's right foot.

[79] Clark opined that tissue splatter and apparent blood staining observed by him,[22] supported the autopsy conclusion that the bullet entered just above the right eye on the right hand side of the forehead, suggesting the deceased was standing slightly more to the right hand side of the door than the left. The fractures to the glass and the door may have not occurred as a consequence of the shooting event. However, they may have been generated by the pellet found down range from that location on the floor or by ejected bone or lead fragments. The fractures constituted damage consistent with having been caused by the incident. Some parts of the deceased's brain were located down range from the door, forward of the open door, above the doorway and on the awning just outside the open doorway.

[80] The fact most of the lead particles were found towards the western end of the carriage was suggestive that was the direction the weapon was pointing on discharge. Although some were found behind the location of the deceased towards the living area and bedroom end of the carriage including one particle found in the mattress, Clark said it was not uncommon for pellets to strike surfaces and come back towards the direction of the shooter. Clark agreed that if the weapon was facing in the direction towards the outside of the open doorway, a significant proportion of the lead particulars may have gone far enough outside that they were not recoverable.

[81] Melissa Airlie (formerly Bell), a scientific officer with the Queensland Police Service, attended the property and undertook an examination for blood stains on 17 December 2010. Her examination of the exterior of the carriage located some small apparent blood stains on the floor outside of the door to the railway carriage. They tested

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21 AB245/1.

22 AB233/35.

positive for blood and had the appearance of blood. There were also blood stains outside the side door, some of which had directionality from the carriage to the outside. Apart from that, the blood stains outside were difficult to determine by way of the mechanism of the blood stain as to whether it was passive or a projected blood stain. Some of the blood stains outside were projected blood stains which had come from inside the carriage to the outside of the carriage.

[82] Airlie said passive blood stains were blood stains that fall under gravity alone. Projected blood stains are blood stains where an extra amount of force is applied to that blood stain. Another type of blood stain is a transfer blood stain. That is a stain where an item has blood over it and it transfers that blood onto another object. There can be movement within transfer blood stains. The surface upon which the blood stain is located may also impact upon an interpretation of whether the blood stain is passive, projected or transferred.

[83] Airlie said in the event of a high powered bloodletting event, say with a shotgun, blood travels at high velocity causing misting. Her examination revealed that throughout the carriage there was a lot of really small tiny projected blood stains consistent with a misting pattern. These blood stains could be attributed to the high power shotgun that was likely to have been discharged in the area of the kitchen.[23] A fan in the carriage also could contribute to the misting effect of particulars of blood around the carriage.

[84] Airlie said the door to the carriage was 1.91 metres high. This door contained a glass panel the bottom of which was 1.1 metres from the ground and the top 1.66 metres from the ground. That glass panel was damaged. Behind the glass was a wooden blind. The knobs on the ropes to the blind contained transfer blood stains. Transferred blood stains were also located on a doorknob. Airlie opined that if the deceased was standing in front of the door there were no projected blood stains located behind the door which could not be explained by the blood having travelled over the top of the door and then forward.[24]

[85] In the area adjacent to the door where the body had been located, projected blood stains were found as well as transfer and passive blood stains. In the area close to the door were large passive blood stains. Some of the larger blood stains had evidence they had been projected blood stains. A large irregular transfer blood stain was located in the kitchen area. In that area there was also located small projected blood stains consistent with blood having travelled from the door over onto the cupboard of the kitchen.[25]

[86] Airlie located organic matter, most likely brain matter, on the side of the cupboard. An area above the doorway also contained brain matter, as did the awning outside that doorway. Her examination of the doorway from the kitchen area revealed there were blood stains in the area indicative of the door having been open at the time of bloodshed. The fact there was no blood on the gas stovetop behind the door supported the door having been open.

[87] Airlie located some older dried blood on the end of a mattress near a chair in the lounge area. There was also a transfer blood stain on the side of a couch. It could have occurred due to somebody sitting in the chair. She was not able to age the blood stains but they were quite red, suggesting a recent event. Airlie located a projected blood stain on the couch which could be consistent with blood falling from a person's mouth.[26]

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23 AB165/5.
24 AB170/20.
25 AB162/15.
26 AB173/40.

[88] Airlie located both passive and transfer blood stains in the vicinity of the chair and television in the kitchen/lounge area. Airlie said blood stains were also located in the area between the chair and the television. When regard was had to the projected blood stains that radiated from the doorway in the vicinity of the body, it was physically impossible to have a blood stain travel from that area all the way into the living area and then do a 90 degree turn and fall onto the wall. She therefore opined there were two distinct events.

[89] Airlie said a pistol was located on the floor of the lounge area. There was a passive blood stain located next to the pistol and underneath the pistol. It was consistent with the blood passively depositing on the floor prior to the pistol being deposited onto the floor.[27] There were passive blood stains also located in the area of the deceased's foot. They were underneath the foot consistent with the blood stains being deposited prior to the deceased being located in that position.[28] Airlie also located passive blood stains on the tile area underneath where a shotgun was found by police. This was consistent with the blood being deposited before the weapon was left or placed on the ground.[29]

[90] Airlie opined the blood found on the couch could be consistent with blood being projected from in between the chair and the TV towards the chair in a downwards arc. It could be associated with other stains in the area between the couch and the TV. She could not say which blood deposit happened first in that area, although it was most likely the blood stains in the other area of the carriage came after those in this area. The final bloodletting event was most likely adjacent to the door. In that area was found passive and projected blood drops as well as the shotgun. It was possible the passive blood shed onto the floor occurred prior to the projected blood shed as a result of the firing of the shotgun.

[91] Airlie concluded it was likely an incident had occurred in the living area prior to any contact being made with the floor. As a consequence of that incident blood was passively deposited in this area and then a person or object moved through the blood causing some transfer blood stains in that area. A bloody person had also made contact with the couch resulting in transfer blood stains. Passive blood stains indicated movement towards the kitchen area with a definite trail of passive blood stains coming from the lounge area. It was likely there was thereafter an incident in which the deceased was injured up against the open door.

[92] The projection of blood and other biological matter was consistent with there being only one incident at that point. The blood stains found in that area were consistent with the position the deceased was found in by police. The blood staining was consistent with the deceased having moved from the other side to being close to where lots of his blood transferred to the wall, and then sliding down with his head in the area where it was finally located.

[93] The presence of passive and projected blood stains under the shotgun and pistol rendered it likely the blood stains were deposited on the ground prior to those weapons being deposited on the ground. Airlie did not, however, locate any blood stains on the shotgun other than a positive area on testing the side of the shotgun just above the front grip. There was no visible blood stain. Airlie said blood stains located near the head of the deceased could be attributed to a projected stain like an arterial spurt or a major breach.

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27 AB174/40.
28 AB179/5.
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[94] Jeffrey Faulks, a fingerprint expert with the Queensland Police Service, attended the property on 16 December 2010. He identified the deceased from a digital photograph of a fingerprint of the deceased. Faulks returned to the scene on 18 December 2010. He subsequently undertook fingerprint examinations of a shotgun, pistol and ammunition. He was not able to find any fingerprints on any of those items.

[95] On his inspection on 18 December 2010 he found a fingerprint on a stubbie contained in a plastic bag hanging on a peg in the verandah area outside the railway carriage. The bag had rubbish in it. It had been standing in blood. The fingerprint was identified as the defendant's. He also found footprints which he was subsequently able to identify as being the left foot of the appellant. It was likely the blood was on the ground before the footprint was made in it but Faulks could not say that was the scenario with any certainty. The same applied to two partial footprints found which he could not identify. He did not find any identifiable fingerprints inside the carriage.

Autopsy

[96] Alex Olumbe, a senior specialist in forensic pathology, undertook an autopsy of the deceased on 18 December 2010. The deceased was approximately 165 cm tall with a weight of 85.6 kg. The deceased had an obvious injury to the head, predominantly on the right side. The right eyeball was completely disrupted and bulging outwards. The left eye was intact. There were no injuries to the ears or upper and lower jaws. There were injuries to the mouth. There was disrupted brain substance located in the body bag.

[97] Dr Olumbe said the cause of death was a shotgun wound to the head with death being instant. The deceased, if standing, would have collapsed immediately. He would not have been able to walk anywhere. The other injuries to the mouth occurred shortly prior to the fatal injury. Some of the bruising on the face was consistent with an injury when the deceased was still alive. A laceration to the deceased's mouth was also likely to have been inflicted when he was still alive and before he was shot.

[98] The bruises and lacerations in the area of the lips had to occur just before the time of death because there was no indication of the body beginning its healing process. They certainly could not have been inflicted after the gunshot. Those injuries were consistent with blunt force trauma or with the deceased's body coming into contact with a blunt surface. The laceration to the corner of the mouth was consistent with that section having hit one of the deceased's teeth behind it. It did not necessarily require a large degree of force. The injury was roughly contemporaneous with the gunshot wound, as were the areas of abrasion and bruising on the left hand side of the deceased's back. Those injuries could have been caused by events such as the body slamming hard against a door, cupboard or a shelf or some hard surface.[30] Those injuries were separate.

[99] Dr Olumbe said there was a complex injury to the head involving a massive disruption of the right forehead, including the scalp and skull. This injury extended from the inner angle of the right eye towards the right side of the head and measured to a length of about 170 mm from the front to the back and sideways about 120 mm. There was a gaping defect of about 80 mm. There was disruption to the brain, which was partially pulped. He could, however, follow a wound track. There were superficial facial injuries including symmetrical bruising on the cheeks and a bruise on the lateral aspects of the upper right lip and the upper section of the chin straddling the midline.

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30 AB316/25.

[100] Reconstruction of the deceased's body revealed an irregular gunshot entry wound being 20 mm x 22 mm. It contained the characteristic feature of stippling which comes from partially burnt powder or buffer which lands on the skin surface. Such a finding is consistent with gunshot injuries. Stippling was located on the entire forehead but predominantly on the right of the forehead and on the upper section of the skull. There was a little amount on the left side and some around the left temple. Dr Olumbe located some small powder-like material resembling soap powder on the surface of the body which ballistics specialists identified as resembling buffer from the shell of a shotgun.

[101] Dr Olumbe said an examination of the entry wound revealed the projectile entered the head but did not have enough force to exit the skull. The trajectory of the entry wound was mainly horizontal with a slight deviation of about 10 degrees downwards. The entry into the skull would have affected the flight of the pellets to some extent but he found two intact pellets and multiple fragments located within one location on the back of the head which confirmed the entry wound was close to horizontal and relatively straight but slightly downwards from the horizontal plane.[31] If the head was tilted forward that changed the angle compared to the ground.

[102] Dr Olumbe's examination revealed the firearm was shot from an intermediate range. The distance between the muzzle and the deceased was at least 10 cm away but less than 120 cm. Dr Olumbe undertook some measurements of the deceased's arms to assist in determining the reach of the firearm. There was a distance of 32 cm from the shoulder to the inner aspect of the elbow and 27 cm from the inner aspect of the elbow to the outer aspect of the wrist on the deceased's right arm. On the left arm those measurements were 32.5 cm and then 26 cm.

[103] Dr Olumbe said the deceased also had abrasions to his back and an ill-defined bruise on the back of his right hand. These abrasions were consistent with a form of blunt impact such as clenched fists or even falling to the ground or hitting a wall. The laceration to the lip was also consistent with being sustained following an impact on the hard surface including a tooth. The evidence of blood dropping onto the couch could be explained by the blow to the mouth. The abrasions to the back could also be explained by the deceased hitting a surface such as a wall or the ground. It was likely that the injuries to the back occurred before death.

[104] An examination of the samples of the deceased's blood, urine and eyeball fluid revealed the presence of alcohol at a level of 0.187 per cent, more than three times the legal driving limit. A low level of an anti-depressant and the active ingredient of cannabis was also found in the deceased's blood. None of these substances contributed to the deceased's death. The alcohol reading suggested at some point prior to the deceased's death his blood alcohol concentration must have been even higher. That point would not have been too long before his death. The reading in respect of cannabis also strongly suggested recent use of cannabis within a few hours.

DNA evidence

[105] Analysis of DNA material revealed a swab taken from the 12 gauge Winchester buck shot shell matched the reference DNA profile of the deceased. It was estimated the probability the DNA originated from someone other than and unrelated to the deceased was approximately 1 in 6,800 billion. A similar probability arose from

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31 AB310/5.

a swab of the partial barefoot impression contained on the living room floor, a swab of passive blood stain from the floor of the kitchen area, a swab taken from the side of the pistol and other swabs of projected and passive blood stains on the floor of the kitchen area.

[106] A swab from the right hand side of the pistol grip produced a mixed DNA profile indicating the presence of DNA from at least two contributors. This DNA could have originated from the deceased with the probability that it originated from someone other than and unrelated to the deceased being approximately 1 in 6,800 billion. A swab of blood stain from the muzzle of the shotgun resulted in a partial DNA profile consistent with the deceased with the probability the sample originated from someone other than and unrelated to the deceased being approximately 1 in 330 billion. Similar, but lesser probabilities were obtained in relation to swabs located on other parts of the pistol and shotgun and swabs taken from the couch. Swabs taken from the deceased matched his reference sample.

[107] Fingernail scrapings taken from the hands of the deceased produced a positive result on a presumptive screen testing for blood. The DNA profile obtained from those samples was a match to the full profile of the deceased. Such a finding was entirely unremarkable. Testing of the swab from the knob of the blind did not obtain any DNA profile. Some testing of swabs from the headrest of the couch also did not produce a DNA profile.

Ballistic evidence

[108] Clark later conducted an examination of the shotgun and pistol located in the carriage. The shotgun was a Mosberg pump action shotgun with a 12 gauge calibre. It contained a pistol grip forearm and quite a short barrel. The approximate overall length was 64.5 cm with a barrel length of 39.4 cm. The muzzle to depress trigger measurement was approximately 54 cm. A depressed trigger is only approximately 4 mm. Its ammunition was a buckshot containing nine pellets arranged as three, three, three surrounded by buffer.

[109] An examination of the shotgun revealed it was capable of discharging. The trigger pressure was approximately 1.2 kg. A standard firearm would have greater than 1.1 kg. Anything lower is considered a hair trigger. Drop and strike safety tests performed on the shotgun with and without the safety on did not result in any discharge of the shotgun. He also pushed either side of the trigger left and right and pushed the trigger forward. On no occasion did the shotgun discharge under those circumstances. The shotgun would normally be operated by holding it in two hands. Whilst it was possible to hold the weapon in one hand, it would make it clumsier and make it difficult to cycle shots through the gun, particularly if the operator was holding a pistol in the other hand. Clark could not rule out the possibility of undertaking that task.

[110] Clark also examined the pistol located on the floor. The pistol also was a self-loading pistol. Once the magazine was inserted and the slide was pulled back and released the gun was loaded ready to fire. The process of pulling the slide back removed anything existing in the chamber and inserted a new bullet into the chamber. That mechanism also cocked the hammer of the pistol. It was possible whilst the round was still in the chamber to manually uncock and recock the hammer of the pistol. There was evidence of repellent residues consistent with it having been fired since it was last cleaned but he found no discharged cases and there was a full magazine with nine bullets in the magazine and one located in the chamber.

[111] The pistol had two safety switches. One was thumb operated beside the trigger. The other was mounted on the top of the pistol itself. Once the pistol has been manually racked on, each trigger pull will fire, causing the magazine to automatically reload until it was empty. It was possible to keep on firing until every round was discharged.

[112] Clark agreed the longer barrel later found at the scene some time afterwards could be swapped in and out of the pistol for the shorter barrel. The process required movement of a take down lever and tilting the barrel. The pistol was sold with a conversion kit involving the extended barrel and an extended magazine. The magazine still had a capacity of 10 rounds. Clark subsequently examined a black cylindrical device which contained an expansion chamber, a common feature in the design of silencers. The spring within that device had retained some steel wool. It contained internal threading and was capable of being screwed onto a firearm. It was not, however, capable of screwing onto either barrel of the pistol. Both barrels did not have a threading to retain it. Clark later tested it by placing it on an unrelated external threaded muzzle. It significantly reduced the sound of discharge. The device was a working silencer but it was incapable of being attached to either the pistol or the shotgun found at the scene.

[113] Clark agreed the mechanism for loading the shotgun was to pull the forearm section rearward towards the trigger. That process ejected any round in the barrel, whether it had been fired or not and loaded a new cartridge into the chamber ready for firing. The forearm then cannot be drawn back again unless the release is pressed, thereby uncocking the shotgun. That release mechanism is located on the side of the gun. It can be uncocked by the operator using the thumb of their right hand.

[114] Clark said the shotgun cartridge found on the ground next to the shotgun had not been fired but had marks to indicate it had been fed through the magazine and chamber of the shotgun on several occasions. It had at least seven marks consistent with being hit at least seven times by the interrupter inside the shotgun. It also had two marks consistent with ejector marks but those marks could not be identified to that particular gun. Whilst it was not possible to definitely say the shotshell had been fired through that weapon it was more likely to have been, having regard to those identifying marks.[32]

[115] Clark could not discount that the lead fragments he recovered were damaged lead shot from the shotgun. The total weight of lead fragments recovered was approximately 68 per cent of what would be in a standard shotshell. It was possible other fragments had gone as far as the grass and not been recovered. There may also be some still at the scene as some fragments may be not readily detectable. There may also be lead still within the deceased.

[116] Clark opined that the deceased was in the vicinity of the open doorway immediately prior to being shot. The deceased's body was located with the head resting up against the timber side of the cupboard. The body was also in contact with the door just inside the doorframe. The left arm and hand were protruding from the doorway. The torso and hip were up against the door. The other hand was extended to the side of the body.

[117] The autopsy showed that the deceased had stippling in the entry wound. Stippling can be caused as a result of the propellant in the shotshell or the buffer. Subsequent tests conducted by Clark on the shotgun revealed that stippling was obtained if the muzzle was 10 cm from the target but it was of a smaller diameter to the marks

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32 AB243/35.

observed on the images at autopsy.[33] A similar test at two metres revealed the pellets started to separate causing individual holes which were not observed on the injuries on the deceased. As a result of those tests, Clark opined that the minimum range for the location of the muzzle from the deceased at the time of shot was 10 cm and the maximum range was two metres.

[118] Clark conducted a second testing on 8 March 2011. It also produced stippling from the shotgun at 10 cm. The stippling was of a smaller diameter than seen on the deceased. Clark then tested at various ranges, 15 cm, 50 cm, 75 cm, 1 metre, 1.25 metres, 1.5 metres, 1.75 metres and 2 metres. He subsequently conducted two further shots at 1.6 metres. Both of those test shots produced pellet separation indicating that it was too far given the injuries inflicted on the deceased. As a result of that testing, Clark reduced the maximum range to 1.6 metres. However, based predominantly on the stippling generated by the buffer, the likely range was between 50 cm and 1 metre.[34] Two tests he undertook at 75 cm were consistent with the injury to the deceased.

[119] Clark said the cartridges contained in the magazine also had marks suggesting they had been through that particular shotgun more than once. Those shotshells had varying marks consistent with the interrupter of the weapon striking that shell. Some had marks consistent with the firing pin striking the primer at the end of the cartridge. Two rounds had light firing pin impressions consistent with the shotshells being in the chamber of the gun at the time the muzzle of the gun struck the ground or struck something with force.[35]

[120] He did not conduct further tests on the markings on the rounds of ammunition contained in the chamber of the pistol because there was no evidence to suggest that it had been fired and there was no request to do so. He did take swabs from the left and right hand sides of the grip of the pistol, and the slide of the pistol. Those locations were likely to be good sources of contact DNA. Those swabs were sent off for DNA analysis.

[121] Ian Bruce, a police officer with ballistic experience, said a shotgun shell is designed to reduce damage to the pellets within the shell during the firing process by keeping the pellets as round as possible prior to reaching the intended target. A spent shot-shell does not exit the barrel. It remains in the chamber to be either automatically discharged, if it is an automatic shotgun, or to be pumped out if it is a pump action shotgun. A shotgun shell contains a buffer which is plastic and irregular in shape. It ranges in size and looks a bit like washing powder.

[122] Whether there is buffer material after the discharge of a shotgun depends on the ammunition brand, the construction of the components and the distance between the target and the muzzle of the firearm. The buffer material is fine and light and does not tend to be projected as far as the pellets. The closer the muzzle is to the target the more likely you are to find buffer particles. The material Bruce observed was like the buffer material used in Winchester load shotshells.

[123] Bruce was present at autopsy when some metal fragments and what appeared to be metal pellets were removed from the deceased's head. A visual examination of the gunshot wound and area around the gunshot wound appeared to indicate buffer-like

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33 AB235/45.
34 AB239/20.
35 AB244/30.

particles present on the wound and areas around the gunshot wound to the face. Bruce collected some of these buffer-like particles and gave those and the pellets to Clark.

[124] Andrew McIntosh, a consultant in biomechanics and ergonomics, examined the blood stain patterns described by Bell. He also considered the report of Dr Olumbe. He assessed whether the deceased's arm length allowed him to have reached the trigger of the weapon and to have discharged it at a distance from his own face. In his opinion, there was a possibility, if the muzzle of the shotgun was 10 cm away from the entry wound, for the deceased to have accessed the trigger and attained the angle of his entry wound. That possibility arose whether the angle was elevated slightly instead of being lower. However, once the muzzle was 15 cm away from the entry wound it was not possible for the deceased to have accessed the trigger. The weight of the weapon did not alter those conclusions as it was a fairly lightweight weapon.

[125] Dr McIntosh agreed the primary focus of his assessment was whether the deceased would have been able to access the trigger. Whilst he was given measurements of the length of the deceased's arm, he was not provided with details of the length of the deceased's hand. Dr McIntosh used height stature and a scaling factor to estimate the length of the deceased's hand. He added that measurement to the total length of the arm provided by Dr Olumbe's measurements. Dr McIntosh accepted that if you clenched your hand around something the distance in question would be approximately the length from the shoulder to the wrist, although it may be a little bit longer.

[126] Dr McIntosh was aware Clark had put a best fit of the distance between the muzzle and the deceased as between 50 cm and 100 cm from the entry wound.[36] At that range, it would have been impossible for the deceased to have depressed the trigger in any way. Dr McIntosh was not asked to provide an opinion about whether, at the best fit range of half a metre to a metre between the muzzle and the entry wound, the deceased would be able to reach the end of the barrel of the shotgun. However, knowing the length of the deceased's arm it would still be difficult for the deceased to have reached the muzzle as the shoulder was backwards to the entry wound. That conclusion made an assumption that the deceased was standing upright at the time of the entry wound. If the deceased were bent over and his head was bent forward or towards the point of the shoulder that would shorten the required distance. If the deceased's head was turned to the right, that would bring the possible distance from the muzzle to the entry wound to effectively the length of his arm. However, in that event the deceased was only holding the muzzle. He could not discharge the firearm by holding the muzzle at a distance.[37]

Forensic evidence

[127] Gary Asmussen, a forensic scientist, undertook a forensic examination of a single short-sleeved shirt on 22 December 2010. He also undertook an examination of the deceased's hands for gunshot residue. He subsequently took a similar sample from the appellant. The sample taken from the back of the right hand of the deceased was found to contain 14 lead particles. No particles were found on the back of the left hand. The particles found on the right hand were characteristic of gunshot residue, although he could not unequivocally state they were of that origin. The fact gunshot residue is found on a person does not necessarily render that person the likely shooter. Gunshot residues are transient evidence. They are deposited on any surface close to

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36 AB299/45.

37 AB304/25.

or near a firearm discharge. Gunshot residue can also arise from reloading a weapon, although not cycling the weapon will decrease the amount of what is called breach emanating gunshot residues.

[128] Asmussen said victims of a gunshot injury tend to have gunshot residue on their hands from the muzzle blast. That residue can arise from touching the wound itself immediately from the blast or the victim shielding him or herself with their hands at the time of the blast. The likelihood of gunshot residue from the muzzle blast increases with the closeness of the muzzle. You would expect to find lead particles anywhere within 1.6 metres. Gunshot residue emanating from the muzzle of the shotgun escapes partly as material projected forward and also as part of the gaseous cloud that emanates from the end of the shotgun. That gaseous cloud disperses in more of a card-like formation around the end of the muzzle than a directional projection forward. If someone was grasping the barrel of a shotgun at the time it was discharged it was possible you would find gunshot residue on the hand that was grasping the barrel were it close enough to the end of the ejection point, particularly if the firearm had not been cleaned so that there were lead deposits from previous firings.

[129] The samples taken from the appellant were not found to contain any gunshot residue particles. However, as the appellant was sampled approximately 24 hours after the gunshot, Asmussen would not expect to find gunshot residue on the hands of a living person. After six hours, it was not expected to find gunshot residue due to the transient nature of gunshot residue particles. Those particles are easily removed by daily activity such as rubbing your hands, hands in pockets, going to the bathroom and washing your hands.

[130] Julie Butler, a police scientific officer, examined the appellant's Holden commodore on 23 December 2010 for gunshot residue. She also took a swab of material that appeared to be blood from the front passenger door. Subsequent testing revealed no DNA profile. Accordingly, it may not have been blood. She also examined clothing taken from the appellant being shoes, a t-shirt and shorts. No blood was located on any of the items. She subsequently examined clothes taken from McNicol's residence. Nothing of interest was found on any of those clothes.

Other evidence

[131] Thomas Armitt was one of the police officers involved in a forensic search of the property on 19 December 2010. During that search, personal items of the deceased were seized including his wallet, personal papers and drug paraphernalia such as a clip seal bag which contained some cannabis. A number of cannabis plants were found growing in pot plants in a rear paddock behind the converted train carriage. There were other clip seal bags containing green leafy material. A crop had been pulled from the ground. He estimated the crops were about 100 metres from the railway carriage behind a shed.

[132] Jamie Housman, the investigating officer of the deceased's death, undertook an examination of the mobile phone being used by the appellant at the time of the deceased's death. He also examined the phones being used by McNicol, Candy and the deceased. That examination revealed that on 14 December 2010 a text message was sent from the deceased's mobile phone to the appellant's mobile telephone stating "tried calling can't get through got a full day's work need help with when can you come?" Housman said, on his examination, there was not apparently any work being done on the property, other than relating to the cannabis crop.

[133] Housman said on 15 December 2010, calls were recorded from McNicol to the appellant's mobile phone at 11.24 am for 101 seconds. There was also an earlier, shorter call at 11.12 am. Both those calls were recorded as coming from a phone tower at Kilcoy about one hour from the property. At 5.12 pm that day the appellant made a telephone call to Candy's mobile phone. Three minutes later there was a further call to that phone for 45 seconds. Both calls were in the vicinity of the Ipswich area, approximately one hour from the property. There was a later call from the defendant's mobile to Candy at 6.08 pm for 21 seconds. The mobile phone tower recording that call was based at New Farm in Brisbane, at least a half an hour from Ipswich. The next call was at 8.12 am on 16 December 2010 from Grovely which was nearby to the Brook Hotel. A subsequent call 17 minutes later was in the vicinity of Petrie Terrace. There were then calls to and from McNicol at 8.29 am and 8.34 am. The last call at 8.34 may have occurred whilst the defendant was outside police headquarters at Roma Street.

[134] Housman subsequently located a vehicle which had been in the possession of the appellant. By the time he had located it, it had been on sold to other people after the appellant had apparently given it to Candy, who had handed it to McNicol. On 3 May 2011, he returned to the property as a result of information that some parts related to a firearm had been located on that property. He was told they had been located in an area near the dwelling.

[135] Examination of firearm records by Alfred Cavanagh, a police officer in the Weapons Licensing Branch, revealed a .22 calibre bolt action rifle previously registered to the deceased's father had been destroyed by the NSW Police in April 2006. The deceased's father had held a firearms' licence from 1 November 1997 until it expired on 31 October 2007. The deceased's father also had a Category A rifle, an air rifle. He had subsequently provided a statutory declaration saying it was destroyed in a fire at his property.

[136] Cavanagh said a Category C shotgun, a Mosberg, found at the scene had never been registered in Queensland or in Australia. It had been imported into Australia on 22 February 1985 but there was no further record of it thereafter. A search of the records revealed the appellant had never held a firearm licence in Queensland. The deceased also did not hold a licence or permit between 2 April 1998 and 16 December 2010. He had held a previous licence which expired on 1 April 1998, when the deceased did not re-apply for a licence.

Summing up

[137] The trial Judge observed that the prosecution contended the appellant had told three lies that afforded some evidence he had killed the deceased. Those suggested lies were telling the triple 0 operator the deceased had committed suicide, telling Candy and Edwards the appellant did not pull the trigger of a shotgun and claiming the shooting occurred whilst the appellant and the deceased were wrestling and involved in a scuffle.

[138] The trial Judge directed the jury it was for them to make up their own minds whether the deceased had told falsehoods and, if so, whether he did so deliberately. The trial Judge noted the defence accepted the first of the statements was to the appellant's knowledge untrue in that the deceased did not take his own life. However, the defence did not accept the remaining statements were lies. The defence case was that the appellant told the truth in making those statements.

[139] The trial Judge set out for the jury the circumstances of the triple 0 call and the statements made by the appellant to Candy and to Edwards. The trial Judge directed the jury that a statement by an accused person that is shown to be false may in some circumstances go indirectly to prove something but that it would be wrong for them to approach the case on the basis that if the appellant told lies he must have killed the deceased. The trial Judge directed the jury that for a lie to have a tendency to prove guilt "it must be a lie which an innocent person would not tell and which was told for the reason that the accused perceived that the truth is inconsistent with innocence".[38]

[140] The trial Judge directed the jury they could not use a lie told by the appellant as supporting an inference he had caused the deceased's death unless the following requirements were met. First, that they were satisfied by other evidence that the statement in question was false and the appellant knew it was false, that is, that it was a deliberate lie. Second, that any such lie was concerned with some circumstance or event connected with the deceased's death that revealed a knowledge of that event. Third, that the appellant told the lie realising the truth of the matter would incriminate him "because he believed the truth would show that he had caused the death of [the deceased] by shooting him, having pulled the trigger and discharged the weapon".[39]

[141] The trial Judge directed the jury an accused person may tell lies for reasons other than a realisation that the truth of the matter would incriminate him. If the appellant lied for some reason other than to avoid incrimination in the death any such lie could not be used as evidence the appellant caused the death of the deceased, let alone that he murdered him. People have innocent explanations for lying and any reason of that kind could not be regarded as indicative of guilt.

[142] The trial Judge further directed the jury there was a difference between murder and manslaughter. None of the lies contended for by the prosecution "can be regarded as tending to prove the mental element of murder, that is, intention to kill or cause grievous bodily harm". The trial Judge directed the jury that even if they were satisfied the appellant had deliberately lied about the death of the deceased, realising the truth would incriminate him, the jury could not "go further and infer that the lie or lies tell you anything at all about the intention, if any, with which the accused discharged the shotgun" and the jury "could not conclude that the lie shows that [the appellant] realised that the truth would show that he had killed [the deceased] intentionally or intending to cause grievous bodily harm".[40]

[143] Finally, the trial Judge directed the jury that in order to prove the guilt of the appellant the prosecution must satisfy the jury beyond reasonable doubt of four matters:

> "First, that the accused himself engaged the trigger of the shotgun causing the weapon to discharge firing the fatal shot. If the accused did not himself pull the trigger he cannot have caused the death of [the deceased] and for that reason, he could not be guilty of murder. Secondly, the prosecution must prove beyond reasonable doubt that the accused made a conscious choice to pull the trigger that resulted in the fatal discharge. That has to be established because, under our law, a person is not criminally responsible for an act that occurs independently of the exercise of his will. Now, the act in question for

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38 AB360/28.
39 AB361/5.
40 AB361/30.

> your purposes is discharging the loaded shotgun by engaging the trigger. So the prosecution must prove beyond reasonable doubt that that act was a willed act by the accused, that is to say, that discharging the loaded firearm was the accused's choice, consciously made to do that. Thirdly, that in firing the fatal shot, the accused intended to kill [the deceased], or at least to cause him some grievous bodily harm. Now, such an intention I have referred to it elsewhere as the mental element, is, as I have said, requisite to a conviction for murder. Fourthly, the prosecution must establish that the case is not one of self-defence.
>
> Now, on the defence case, the first element is not proved beyond reasonable doubt because there is evidence, in particular, in the statements of the accused and Miss Candy and Senior Sergeant Edwards, to the effect that he did not engage the trigger of the shotgun, that is to say that he did not pull the trigger.
>
> The defence case in respect of the second element is that the prosecution has not proved beyond reasonable doubt that engaging the trigger was a willed act. In other words, if the accused did happen to engage the trigger, on the defence case, he is not shown to have made a conscious choice to do that. Rather, it is a reasonable possibility that engaging the trigger, if that is what he did, was an unwilled act on his part that occurred during a wrestle or a scuffle with [the deceased] involving the weapon.
>
> What, then, of the third matter that must be established, intention to kill or cause grievous bodily harm. On the defence case, the prosecution has not proved beyond reasonable doubt that the accused held such an intention when the fatal shot was fired. As to the fourth matter that the prosecution must establish beyond reasonable doubt, the defence case is that the prosecution cannot prove beyond reasonable doubt that the case is not one of self-defence."[41]

[144] The trial Judge then directed the jury on the elements of self-defence and on the need for the prosecution to negate self-defence.

Appellant's submissions

[145] The appellant submits the verdict of the jury was unreasonable because the statements made by the appellant to Candy and Edwards raised a hypothesis consistent with innocence, namely, that the shotgun discharged during a struggle after the deceased had produced the shotgun and threatened the life of the appellant. The case against the appellant for murder was purely circumstantial as there was no direct evidence he shot the deceased or, if he did so, he did so intentionally, and no direct evidence of an intention to kill or do grievous bodily harm or of any motive for the appellant to kill. As such, it was not open to the jury to be satisfied of the appellant's guilt beyond reasonable doubt.

[146] The appellant submits there were aspects in the evidence supportive of what the appellant told Candy and Edwards. The nature and location of the blood stains were consistent with a fight starting in the lounge area of the carriage. A trail of blood

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41 AB361/40 – 362/28.

stains thereafter continued from where the fight started to the location of the deceased's body. There was evidence of movement through the blood and the appellant's footprint being found in blood was consistent with the bleeding deceased moving over the area first. The location of the pistol in that area was also supportive of the appellant's account.

[147] Other evidence supportive of the appellant's account included the deceased's irrational threatening and violent behaviour in the months prior to his death, the deceased's history of concealing weapons, the location of parts of a pistol subsequent to his death a distance from the carriage, the deceased's DNA being on both weapons, the presence of an unfired shotshell on the ground consistent with cycling having occurred in the course of a struggle and the unlikelihood of that cycling if it had been an intended killing by the appellant. The expert evidence was also supportive of the appellant's account. The fatal shot was fired from a close range, being between 10 and 160 cm.

[148] The appellant submits that consideration of all this evidence was consistent with an accidental killing or a killing in self-defence. The appellant's statements in the triple 0 call were consistent with the appellant not wishing to admit his involvement in an accidental killing or killing in self-defence. That conduct must be considered against the fact that the appellant made the call and subsequently voluntarily attended police, conduct inconsistent with the consciousness of guilt of murder.

[149] The appellant submits the directions to the jury on consciousness of guilt led to a miscarriage of justice as the directions given to the jury as to the use that might be made of such evidence were inadequate in the particular circumstances. The trial Judge directed the jury that if they were satisfied that the appellant's assertions he did not pull the trigger of the shotgun and that the shooting occurred whilst he and the deceased were wrestling or involved in scuffle, were lies, that could amount to evidence of consciousness of guilt of unlawful killing. However, that same evidence was relied upon by the defence as grounding a reasonable hypothesis consistent with innocence. In those circumstances, the appellant's lies could not be established without proof of the appellant's guilt. The directions were therefore unnecessary and carried with them the risk of a wholly circular argument as to the appellant's guilt.

[150] The appellant submits the jury ought to have been directed they would need to be satisfied beyond a reasonable doubt that the appellant had so lied before using such evidence as consciousness of guilt. Proof of the appellant's guilt logically required the jury to be satisfied beyond reasonable doubt that the appellant's version of events was not true. Instead, the directions regarding lies invited the jury to reach such a conclusion in furtherance of proof of the appellant's guilt, without application of a requirement they be so satisfied beyond reasonable doubt.

[151] Similarly, the direction in relation to the appellant's alleged lie to the triple 0 operator that the deceased had committed suicide was inadequate. The jury should have been directed to consider whether the alleged lies might only evidence a consciousness of being involved in events that led to the death of the deceased falling short of unlawful killing, namely, an accidental killing or a killing in self-defence.

Respondent's submissions

[152] The respondent submits the jury's verdict was not unreasonable. The jury were presented with two competing hypotheses, namely that the gun had unintentionally discharged during a struggle, or that the appellant had deliberately shot and killed the

deceased at close range with a shotgun. There was ample evidence to support the latter hypothesis and the jury properly could conclude that the former hypothesis was excluded beyond reasonable doubt.

[153] Evidence supportive of the first hypothesis only came from the appellant's accounts to Candy and the police officer, Edwards. The reliability of that account was called into question by the appellant's admitted lies to the triple 0 operator suggesting the deceased had committed suicide. That alone was a sufficient basis for the jury to reject the truthfulness of his accounts to Candy and Edwards.

[154] The respondent submits there were also manifest inconsistencies in the accounts given by the appellant to Candy and police. Those differences were consistent with the appellant's account changing over time concerning matters of detail which also provided a sufficient reason for the jury to reject his description of events. The appellant's account also was inconsistent with the scientific evidence. Whilst aspects of it may be moulded to fit that evidence, the evidence established the deceased was shot and killed while standing at or very close to an open door of the carriageway.

[155] That evidence compelled a conclusion the deceased was shot while standing with the shotgun levelled more or less directly in front of his face with the muzzle between 50 and 100 cm away. Such a conclusion was inconsistent with the appellant's version he was being marched outside prior to the fatal shot and excluded the possibility of the gun unintentionally discharging during a struggle and scuffle. Further, the presence of an ejected live cartridge near the deceased was consistent with cycling of the gun which did not have to have occurred accidentally during the course of a struggle. The jury was thereafter entitled to be satisfied of the appellant's guilt beyond reasonable doubt.

[156] The respondent submits the directions concerning lies were in accordance with the benchbook. They did not result in a miscarriage of justice. Significantly, no application was made for redirection at trial. The directions must also be seen in the context of the four issues at trial. First, did the accused engage the trigger of the shotgun causing it to discharge the fatal shot. Second, did the appellant make a conscious choice to pull the trigger. Third, did the appellant intend to kill or cause grievous bodily harm to the deceased. Fourth, has the prosecution proven the appellant was not acting in self-defence.

[157] The directions concerning the lies that the appellant did not pull the trigger and that the shooting occurred in the course of a struggle, did not involve circular reasoning. It was open to the jury to conclude the appellant had lied before making any final determination of his guilt. The scientific evidence disproved his version. An acceptance of that evidence supported the only reasonable conclusion, namely, that the appellant deliberately pulled the trigger on the shotgun. The jury was specifically directed the alleged lies were not relevant to consideration of the issue of intent. Importantly, the alleged lies were not the sole issue to be resolved by the jury. Once the jury had concluded they were lies, the jury still had to consider the question of self-defence. A conclusion the appellant had lied because he knew the truth would implicate him properly was available to assist the jury in their assessment of the issue of self-defence.

[158] The jury were properly not directed that they must be persuaded beyond reasonable doubt of the alleged lies. The High Court expressly rejected that directions as to lies constitute a circularity in the standard of proof.

[159] Finally, the respondent submits that the direction in relation to the alleged lie to the triple 0 operator properly directed the jury as to the relevant matters. The jury were expressly told that an accused person may lie for a variety of reasons. The jury was expressly told that there may be innocent explanations for lying and that if there was any such reason to lie they could not take into account the lie as indicative of guilt. In the circumstances, there was no miscarriage of justice.

Discussion

Miscarriage of justice ground

[160] A lie can be used as evidence of an accused's guilt only if a jury is satisfied the lie was in fact a lie and that it was "concerned with some circumstance or event connected with the offence".[42] In considering this issue, two matters are important. First, the alleged lie must be precisely identified for consideration by the jury. Second, there must be precise identification of "the circumstances and events that are said to indicate whether it constitutes an admission against interest".[43]

[161] Once those requirements are met, the jury may only take the lie into account "if they are satisfied, having regard to those circumstances and events, that it reveals a knowledge of the offence or some aspect of it and that it was told because the accused knew that the truth of the matter about which he lied would implicate him in the offence, or … because of 'a realization of guilt and a fear of the truth'".[44]

[162] In the present case, the trial Judge correctly directed the jury as to the requisite elements. The trial Judge also set out with precision the alleged lie, and the circumstances and events said to indicate whether those alleged lies constituted admissions against interest.

[163] In the case of the first alleged lie, namely, the statement to the triple 0 operator, the defence conceded at trial that the deceased did not take his own life. The jury would therefore have had little difficulty in concluding that a statement the deceased had committed suicide was untrue. A perusal of what was said to the triple 0 operator arguably did not go as far as a bald assertion the deceased committed suicide. The assertion the deceased shot himself could be consistent with a short form assertion the deceased had caused the gun to discharge, rather than the appellant.

[164] Be that as it may, in context it cannot be said the direction to the jury as to the need to be satisfied the statement made by the appellant to the triple 0 operator was a lie, was deficient. Further, the directions to the jury in relation to the use to be made of such a lie plainly directed the jury as to the proper use to be made of any such lie. The jury was expressly directed it could not use that lie, if it found it to be a lie, as evidence the appellant had intentionally killed the deceased. There is no basis to conclude that such a direction was inadequate or resulted in a miscarriage of justice.

[165] The second and third alleged lies, namely, that the appellant did not pull the trigger and the shooting occurred in the course of a struggle, were in a different category. Those alleged lies were directly relevant to the defence contention that there was a hypothesis consistent with innocence that could not reasonably be excluded by the

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42 *Edwards v The Queen* (1993) 178 CLR 193 at 210.
43 *Edwards v The Queen* (1993) 178 CLR 193 at 210-11.
44 *Edwards v The Queen* (1993) 178 CLR 193 at 211.

jury, namely, that the shotgun discharged during the struggle after the deceased threatened the appellant with the shotgun.

[166] In respect of each of these lies, the jury was expressly directed as to the need to be satisfied, firstly, that each of those statements was a lie and secondly, as to the use that could be made of any such lie. Importantly, the jury was expressly directed that even if it was persuaded those statements were false, they must be satisfied the false statement concerned some event connected with the deceased's death that revealed a knowledge of the event and that the lie was told because the appellant realised the truth of the matter would incriminate him. In respect of this latter aspect, the jury was expressly directed that the accused "must be lying because he believed that the truth would show that he had caused the death of [the deceased] by shooting him having pulled the trigger and discharged the weapon".[45] That direction expressly directed the jury to the very circumstance that must be considered before the jury could be satisfied the alleged lies evidenced a consciousness of guilt.

[167] Contrary to the appellant's submission, such a direction did not involve circular reasoning. The jury at this point was considering the issue of whether the appellant caused the death of the deceased by pulling the trigger and discharging the weapon. The jury was entitled to consider the alleged lies together with the other evidence as a whole in determining the issue. As was observed by the majority in *Edwards*:

> "Although guilt must ultimately be proved beyond all reasonable doubt, an alleged admission constituted by the telling of a lie may be considered together with the other evidence and for that purpose does not have to be proved to any particular standard of proof. It may be considered together with the other evidence which as a whole must establish guilt beyond reasonable doubt if the accused is to be convicted. If the lie said to constitute the admission is the only evidence against the accused or is an indispensable link in a chain of evidence necessary to prove guilt, then the lie in its character as an admission against interest must be proved beyond reasonable doubt before the jury may conclude that the accused is guilty. But ordinarily a lie will form part of the body of evidence to be considered by the jury in reaching their conclusion according to the required standard of proof. The jury do not have to conclude that the accused is guilty beyond reasonable doubt in order to accept that a lie told by him exhibits a consciousness of guilt. They may accept that evidence without applying any particular standard of proof and conclude that, when they consider it together with other evidence, the accused is or is not guilty beyond reasonable doubt."[46]

[168] The alleged lies were not the only evidence against the appellant. They were also not an indispensable link in the chain of evidence necessary to prove guilt. Proof the appellant deliberately told these lies about the circumstances of the deceased's death was but a fact-finding in determining the ultimate fact, namely, that the appellant deliberately pulled the trigger causing the shotgun to discharge into the deceased's head.

[169] The determination of causation, whilst an indispensable link in the chain of evidence necessary to prove guilt, must be viewed in the context of the summing up as a whole.

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45 AB361/5.

46 *Edwards v The Queen* (1993) 178 CLR 193 at 210.

The jury was expressly directed that in order to convict the appellant of murder, the prosecution had to prove beyond reasonable doubt, first, that the appellant himself engaged the trigger of the shotgun causing the weapon to discharge firing the fatal shot, second, that the appellant made a conscious choice to pull the trigger that resulted in the fatal shot, third, that the appellant in firing the fatal shot intended to kill the deceased or at least cause him grievous bodily harm and, finally, that the case is not one of self-defence.

[170] The direction in respect of the first and second elements expressly required the jury to be satisfied beyond reasonable doubt the appellant had made a conscious choice to pull the trigger that resulted in the fatal discharge. Against that background, there was no need to direct the jury that the lie, in its character as an admission against interests, must be proved beyond reasonable doubt. There can be no doubt the jury, in reaching the conclusion the appellant was guilty of murder, was properly directed of the need to be satisfied beyond reasonable doubt that the appellant consciously pulled the trigger of the shotgun, thereby killing the deceased.

[171] There is no reasonable basis to conclude the appellant, by reason of the directions given by the trial Judge in respect of alleged statements evidencing a consciousness of guilt and the use to be made of those statements, was deprived of a reasonable prospect of acquittal of the charge of murder. There is no basis to conclude there has been a miscarriage of justice. This ground fails.

Unreasonable verdict ground

[172] A determination of this ground requires the Court to undertake an independent review of the evidence to determine whether it was open, upon the whole of the evidence, for the jury to be satisfied beyond reasonable doubt of the appellant's guilt of the offence of murder. The relevant principles were summarised in *R v SCH*:[47]

> "In such a case, the question which an appellate court must ask itself is whether it considers that, upon the whole of the evidence, it was open to the jury to be satisfied beyond reasonable doubt that the defendant was guilty. In most cases, a doubt experienced by an appellate court will be a doubt which a jury ought also to have experienced. In such a case of doubt, it is only where a jury's advantage in seeing and hearing the evidence can explain the difference in conclusion as to guilt that the appellate court may conclude that no miscarriage of justice occurred. However, if the evidence contains discrepancies, displays inadequacies, is tainted or otherwise lacks probative force in such a way as to lead the appellate court to conclude that, even making full allowance for the advantages enjoyed by the jury, there is a significant possibility that an innocent person has been convicted, then the court is bound to act and to set aside a verdict based upon that evidence." (Citations omitted)

[173] In undertaking that assessment it is appropriate to consider the evidence absent any consideration of the appellant's statements as lies. The jury were properly directed that those statements, even if accepted to be lies, could not be used as evidence to establish the necessary element of intention such as to found a conviction of murder.

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47 [2015] QCA 38 at [7].

[174] A consideration of the evidence as a whole, absent those statements, amply supports a conclusion that a verdict of murder in the present case was not unreasonable. The position of the deceased's body, the angle of the entry wound, the presence of stippling in the entry wound consistent with shotshell buffer and the location of blood and organic matter around the door and its surrounds and on the paved area outside, supported a conclusion the deceased was killed by a shotgun blast discharged when the muzzle was between 50 and 100 cm from the deceased.

[175] The jury was entitled to conclude such a scenario was only consistent with the deceased being killed by the appellant deliberately firing the shotgun at the deceased's head, intending to kill him or cause him grievous bodily harm. The evidence as to the deceased's arm reach and the ballistic evidence as to the results of drop and other tests on the shotgun, supported a conclusion that only the appellant could have engaged the trigger and that engaging was deliberate. The lack of injury to the appellant and of evidence of any struggle in the carriage supported the jury's conclusion beyond reasonable doubt that the discharge occurred with the requisite intention. That scenario excluded, as a reasonable hypothesis, a killing in self-defence or a discharge of the gun unintentionally.

[176] The presence of an undischarged shell on the floor near the location of the shotgun did not render such a conclusion unreasonable. The presence of the live shell on the ground was consistent with the appellant having cycled the gun so as to load it prior to deliberately pulling the trigger, discharging the shotgun shell into the deceased's head with the requisite intention. The shotgun was not the appellant's shotgun. In those circumstances the jury was entitled to infer the appellant may not have been aware the shotgun had a live shell in its chamber when he used it to intentionally kill the deceased.

[177] Whilst the evidence of blood stains was consistent with a fight having started in the lounge area of the carriage prior to the fatal shot occurring near the open doorway, that evidence did not render the jury's verdict unreasonable. That trail was consistent with an altercation which ended in the appellant using a shotgun to intentionally kill the deceased by deliberating pulling the trigger to discharge a shotgun shell into the deceased's head.

[178] This conclusion accords the special respect and legitimacy to be afforded to the jury's verdict. The primacy of that verdict was reiterated in *R v Baden Clay*:[48]

> "65. It is fundamental to our system of criminal justice in relation to allegations of serious crime tried by jury that the jury is 'the constitutional tribunal for deciding issues of fact'. Given the central place of the jury in the administration of criminal justice over the centuries, and the abiding importance of the role of the jury as representative of the community in that respect, the setting aside of a jury's verdict on the ground that it is 'unreasonable' within the meaning of s 668E(1) of the *Criminal Code* is a serious step, not to be taken without particular regard to the advantage enjoyed by the jury over a court of appeal which has not seen or heard the witnesses called at trial. Further, the boundaries of reasonableness within which the jury's function is to be performed should not be narrowed in a hard and fast way by the

48 (2016) 334 ALR 234 at 246 [65] – [66].

considerations expressed in the passages from the reasons of the Court of Appeal explaining its disposition of the appeal.

66. With those considerations in mind, a court of criminal appeal is not to substitute trial by an appeal court for trial by jury. Where there is an appeal against conviction on the ground that the verdict was unreasonable, the ultimate question for the appeal court 'must always be whether the [appeal] 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."

Conclusions

[179] There was no miscarriage of justice in the trial Judge's direction to the jury in relation to the appellant's alleged lies, evidence of consciousness of guilt and the use to be made of such evidence. There is no basis to conclude those directions gave rise to a significant risk an innocent person has been wrongly convicted of the offence.

[180] The verdict of the jury was not unreasonable. A consideration of the evidence amply supports a conclusion that it was open to the jury to be satisfied beyond reasonable doubt of all of the elements necessary to establish guilt of the offence of murder.

[181] I would order that the appeal be dismissed.