SUPREME COURT OF QUEENSLAND

CITATION:	*R v Zafirovska* [2020] QCA 128
PARTIES:	**R** **v** **ZAFIROVSKA, Simona** (appellant)
FILE NO/S:	CA No 58 of 2019 SC No 856 of 2018
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Brisbane – Date of Conviction: 13 March 2019 (Lyons SJA)
DELIVERED ON:	12 June 2020
DELIVERED AT:	Brisbane
HEARING DATE:	21 February 2020
JUDGES:	Fraser and McMurdo and Mullins JJA
ORDER:	**Appeal dismissed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the appellant was found guilty of the murder of her mother – where the appellant's case was that the deceased was killed by intruders without the appellant's involvement – where the deceased's injuries were caused by blunt force trauma consistent with being struck with a piece of timber – where the piece of timber was found concealed under a bookshelf in the appellant's bedroom – where, on the evidence, it was probable that the assailant would have had some blood spatter on them – where no blood was found on the appellant, on her clothing or in her bedroom – where no sign of a forcible entry was found – where there was evidence of tension in the relationship between the appellant and the deceased – whether the jury's verdict was unreasonable *R v Baden-Clay* (2016) 258 CLR 308; [2016] HCA 35, applied
COUNSEL:	J R Hunter QC, with S J Cartledge, for the appellant P J McCarthy QC for the respondent
SOLICITORS:	Gleeson Lawyers for the appellant Director of Public Prosecutions (Queensland) for the respondent

[1] **FRASER JA:** I agree with the reasons for judgment of McMurdo JA and the order proposed by his Honour.

[2] **McMURDO JA:** At some time in the early hours of 28 October 2016, the appellant's mother was killed, in her own bed, by head injuries caused by blunt force trauma. The mother lived in this house with the appellant who, at 7 am on that morning, called 000 to say that there were intruders in the house and that she was hiding in her own bedroom and hearing footsteps on floors and stairs. When police arrived only some minutes later, only the appellant and her mother (by then deceased) were in the house.

[3] Later that day, police found, in a corner of the appellant's bedroom, a piece of decking timber which, later analysis showed, had a small trace of the deceased's blood. The appellant was interviewed by police on that evening, and again six days later, and on each occasion she denied killing or being involved in the killing of her mother, and denied knowing that the piece of wood was in her bedroom.

[4] She was charged with the murder of her mother, by herself inflicting the blows to the deceased with the piece of timber. After a 13 day trial, she was convicted by the jury of that offence. She appeals against the conviction on the ground that the jury's verdict was unreasonable.

The appellant's 000 call

[5] The call was made at 7 am and the appellant was still on the phone when police arrived at around 7.18 am. A recording of the call was played to the jury, and a transcript was provided for their assistance.

[6] The appellant spoke in whispers, saying that someone was inside the house, as she could hear from her room. She said that "the dogs have been barking". She could hear footsteps on the wooden floors, and did not know how these persons had entered the house. At another point, she said that she could hear footsteps "creeping up the stairs" inside the house. She was asked whether it was her mother who was moving about, and she answered "No, no." At another point, she was asked whether her mother had gone out, to which the appellant replied that she did not know, having not left her room.

[7] The appellant was asked whether "your dog" would "normally" bark, and answered "Yes". A little later in the call, the appellant was asked, "What about your dog. Wouldn't your dog bark if there was someone there?", to which the appellant replied, "I woke up I woke up to the dog barking." She was then asked whether she knew, "What's happening with your dog now?", to which she replied, "No they're not barking".

[8] The appellant told the operator that she could "hear them speaking", indicating that she could hear more than one voice.

[9] She said that every time that she heard the footsteps, an alarm in her room "went red". She was urged to leave her room as soon as she heard the police arrive so that she could let them into the house. She said that to do so she would need to get a remote control from her car (in order to open the driveway gates).

[10] At 7.11 am, she was saying that she could still hear footsteps. This was just after she was told by the 000 operator that police on their way to her house were at Coopers Camp Road, and therefore at least some minutes away. About a minute and a half later, at 7.13 am, the appellant told the operator that she could not hear anything more. At 7.16 am, she told the operator that she could hear the intercom at her house, signalling the arrival of police. From what she was saying, the intruders must have been there as late as 7.11 am, and left at some time in the next five minutes, very shortly ahead of the police.

The arrival of the police

[11] Two police officers arrived. They had to climb over a high front fence, but were then able to enter the house through the front door.

[12] The two officers were Senior Constable Louise Child and Senior Constable Will Pattie. He was the first to enter the house, through a door which he described as one of a pair and "slightly ajar" from the other. Immediately they saw the appellant, standing in the doorway of her bedroom and holding her phone. They asked her where the noise had come from and she indicated a direction which led them to her mother's bedroom.

[13] In that room they found the mother's body on the bed. Constable Pattie attempted to take the pulse of the deceased, and he described her arm as moving freely with no signs of rigor mortis. From his previous work in a morgue, he was able to describe the level of warmth of the body at about half way between the moment of death and when a body became completely cold.

[14] He searched the house whilst Constable Child stayed with the appellant, in the lounge room. The front door, the bedrooms of the deceased and the appellant, as well as the lounge room, dining area and kitchen, were on this upper level. There was a deck from this level, where one of the dogs was present and allowed to come into the house for a short period, before it was returned to the deck. Constable Child said that the door to the deck was unlocked.

[15] Constable Child described the appellant as distressed and wanting to see her mother, but she was not allowed to do so. Constable Child described the appellant's then appearance. The appellant was wearing pyjamas. The back of her hair was "very smooth", and her hair was "very, very neat, very dry, perfect". She noticed that the appellant had "very neatly manicured" nails. She said that the appellant "had no smell to her", meaning that she could not smell any soap or shampoo or anything else on the appellant. There were no blood specks or anything of that kind on the appellant, or anything else about her appearance which "alerted [her] suspicions."

[16] Soon after, the appellant was examined at a neighbour's house by ambulance officers. The appellant then complained of numbness in her legs. An ambulance paramedic was asked whether there was anything unusual about the appellant's appearance, and answered that "she looked quite well-presented … her hair had been done … she didn't look like she'd just woken up."

The injuries to the deceased

[17] It was formally admitted that the deceased died on 28 October 2016. Rigor mortis was present when a pathologist, Dr Milne, arrived to examine the deceased at 12.20 pm. He had been informed that the paramedics who had arrived at the scene,

not long after 7 am, had not attempted to resuscitate the deceased, which Dr Milne said was an appropriate response having regard to the injuries which the deceased had suffered. Dr Milne was unable to estimate the time of death.

[18] Two mobile phones belonging to the deceased were found next to her bed. They carried spatters of her blood. The most recent use of one phone had been to send a text message at 12.11 am on that morning. The other phone had been most recently used to send a text message at 1.40 am on that morning.

[19] Dr Milne found the deceased lying on her back in her bed, with evidence of severe head injuries. The deceased was wearing a pyjama shirt, pyjama pants and underpants. There was blood spatter around her bedroom. He noticed a lot of blood on the deceased's face, and "obvious severe injury to the head inconsistent with life". There were several lacerations which were consistent with blunt force trauma. His opinion at that time was that there had been "blunt force impacts to the head". Police had not then identified a weapon.

[20] When Dr Milne came to conduct the post-mortem examination, he was shown the piece of wood. He described it as a piece of decking type timber, which was "a solid piece of material" which he weighed at 1.29 kilograms.

[21] His post-mortem examination showed that all of the injuries appeared to have been of a similar age and looked very recent. There was hypostasis, which Dr Milne described as a settling of the blood by gravity. The hypostasis was into the deceased's back, consistently with her having died on her back.

[22] From the post-mortem, he described in detail severe head injuries, with extensive bruising to much of the face and with evidence of fractures involving the skull, the eye sockets, the nose and cheek regions. He described a particular injury, to the area between the eyebrows, where there were "four parallel, linear abrasions", measuring nine to 20 millimetres in length and each one to two millimetres wide, separated by three millimetres of normal skin. Dr Milne described this as a "patterned injury", the relevance of which was that the pattern indicated the use of a particular weapon. In his opinion, that injury was consistent with a blow from the piece of wood (or a similar item) which had that pattern on one side of it.

[23] Dr Milne could not say how many blows had been inflicted. There were 26 head injuries, but a person struck with a weapon, such as the piece of wood, might suffer several injuries from the one blow. He estimated that there was a minimum of seven blows.

[24] Some hairs were found in one of the deceased's hands. A forensic scientist, Ms Airlie, conducted some tests from which she concluded that the hairs would not respond to DNA testing, because they were hairs in the telogen growth stage so that they had no nuclear DNA within their root.

Bloodstaining

[25] As already noted, when he arrived at the scene, Dr Milne observed blood spatter around the deceased's bedroom. In cross examination, he was asked whether, given the number of blows, and the length of the weapon, he would expect that the assailant would have had "a fair degree of blood splatter on them". He answered that on account of the blood spatter at the scene, he would expect there to be blood spatter on that person.

[26] Ms Airlie undertook an analysis of the pattern of bloodstains on the deceased and in her bedroom. On that analysis, the deceased had not moved from the position in which she had been lying throughout the attack upon her. The deceased was found under a blanket that would have been placed over her after the attack, and on which there were transfer bloodstains. Ms Airlie said that it was possible that they were attributable to the piece of wood having had blood wiped from it by the blanket.

[27] She said that the bloodstain found on the piece of wood was inconsistent with blood having been washed from it, because there was no diluted blood found on it, thereby indicating that the blood on the piece of wood may have been wiped.

[28] In Ms Airlie's opinion, the bloodstaining in the deceased's bedroom indicated that whoever attacked her would have been on the bed when most of the blows were delivered.

[29] The appellant's bedroom was examined for bloodstains or spatters, and none were found. In the sink in her ensuite bathroom, there was found what was described as a TMB positive stain, meaning no more than that it was possibly a bloodstain, but also that it could have been, for example, the residue of a cleaning agent. A swab was taken for analysis and Ms Airlie said that no blood was located there.

[30] No blood was found on any item in the wheelie bin at the house. A small amount of blood was found on the door to the deceased's bedroom and on the floor below that door, but no blood was found in any other part of the house. What appeared to be blood in the entry area proved not to be so. Water samples were taken from the pipes below the kitchen sinks and other showers in the house. However no trace of blood was found. Nor were any bloodstains found upon an examination of the appellant's clothing.

Gloves

[31] Police found a packet of rubber gloves between the top mattress and ensemble of the appellant's bed. The bag was not seized by police, fingerprinted, or tested for DNA. Police were unable to say whether the bag had been opened and whether any gloves were missing. It did not appear to have any bloodstains on it.

The piece of wood

[32] Although this was described at the trial as a piece of wood, more accurately it was a composite material called Modwood, containing a mixture of recycled plastic particles, recycled paper and wood products. A witness described the material as "quite waterproof" and heavier than timber.

[33] The material was similar to that on decking around the swimming pool at the house. A police officer, Mr Payne, said that he was told by the appellant that some material had been left over from a renovation of that deck.

[34] At its widest, the object was seven centimetres in width. It was 92 centimetres in length. One of its ends was a pointed shape. It had also been shaped so that it gradually narrowed towards its other end, so that it would be easily gripped with one or two hands. This was more than an offcut from the work to the deck, and it appeared to have been shaped in this way to be used as a weapon.

[35] On one side was a furrowed surface which had a pattern which corresponded with the pattern of one of the injuries to the deceased.[1] The small amount of blood which was visible on the object was a bloodstain within some of the furrows. This was less blood than was to be expected, having regard to the amount of blood found on and around the deceased, if this had been the murder weapon and had not been cleaned or wiped. No fingerprints were found on the object. However, a swab apparently taken from the bloodstain established the presence of the deceased's DNA.

[36] In the ceiling above the deceased's bed was a brown mark, which caused police to cut from that area a piece of Gyprock, so that it could be compared to the piece of wood. Testing which was carried out on the brown residues present on the piece of Gyprock revealed that the material which made up the piece was identical, in its relevant physical properties and chemical nature, to the brown mark that was on the ceiling. A forensic scientist, Mr Asmussen, said that the mark on the ceiling would have been made by a "glancing smear", because there was not "a lot of impact with the ceiling itself".

[37] Senior Constable Camp said that she found the object in the appellant's bedroom, at about 4 pm on the day that the police were called. She observed the piece to have red staining on its ribbed side that appeared to her to have been blood. She described the stain as dry but bright. Other police officers who then saw the object described the blood as wet.

[38] Prior to the object being found, police had extensively photographed the interior of the house, including the appellant's bedroom. The object was said to have been found in a corner of the room, at one end of the wall which was opposite the appellant's bed. To reach that corner from the door to the room, a person would walk down a few steps and then walk between a built in wardrobe on that wall to their left, and the bed to their right. At that end of the wall, there was a space between the wardrobe and the corner, in which there was a freestanding piece of furniture which was variously described in the evidence as a bookshelf, a bookcase, a cupboard, and a shelving unit. I will call it the bookshelf. It filled most of the space between the wardrobe and the corner. It had open shelving, the lowest shelf being close to the floor.

[39] When police first arrived, and when the room was first photographed, there were two items which had been placed on the floor against the front of the bookshelf. One was an item described by Constable Camp as "a movable trolley, or a movable stand with shelves", although, as the photographs show, it had no wheels. The "trolley" had three levels of shelving, upon which were several items, including a piece of carry-on luggage. The other item which was also in front of the bookshelf was a suitcase.

[40] The trolley and its contents and the suitcase, in combination, would have blocked any view of the piece of wood, where it was found by Constable Camp. Her evidence was that at about 4 pm, she and another officer, Sergeant Bernados, were conducting a search of the room when she moved what she then described as "the shelving unit", but which in context was clearly the "trolley", and the suitcase, so that she could search the area which she described as the "recess", which, in

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1 Described above at [22].

context, meant the area between the end of the wardrobe and the corner, occupied by the bookshelf.

[41] Her evidence was that having done so, she could see something on the floor, in the small space between the end of the bookshelf and the corner. She removed that item, which was this piece of wood. She described where she had seen the item, by reference to photographs which were taken by a police officer shortly afterwards. However there was no photograph taken of the object in the position in which she found it.

[42] The photographs which were then taken show that along the front of the bookshelf, between the lowest shelf and the floor, was a piece of "facing board". However, Constable Camp said that at the sides of the bookshelf, there was a space between the lowest shelf and the floor, which she described as a "void". She said that she saw the end of the object protruding from this void, on the right hand side of the bookshelf (as she faced it). She described it as "poking out from under the cupboard". She said that she was able to remove it from there without having to lift the "cupboard" (meaning the bookshelf).

[43] In cross examination, she was asked whether the piece of wood was "horizontal" when she first saw it, to which she answered that she did not think so and believed "it was on an angle". She explained that answer by saying that it was "due to the … length of the piece of the wood and the width of the cupboard." By that she appeared to mean that because the bookshelf was not as wide as the piece was long, it had not been left so that it was parallel to the front of the unit.

[44] Sergeant Bernados said that Constable Camp brought the piece of wood to his attention once she had located it "behind a bookshelf which was in the room". He said that "I saw that she had brought it out from behind a bookshelf". He observed what appeared to be "sort of red, wet staining within the rivets on one side of the piece of timber".

[45] The cross examiner made no substantial challenge to the evidence of either of these witnesses. Nor in this Court is it suggested that the jury should not have accepted, on the basis of this evidence, that the piece of timber was found on that afternoon, in the corner of the appellant's bedroom and in a place which, until then, had been invisible whilst it was behind the trolley (and the items on it) and the suitcase next to it.

[46] In his address to the jury, the appellant's trial counsel said that there were some parts of Constable Camp's evidence which the jury might "think rather strange". He focussed upon evidence from her that when she first saw the piece, under the bookshelf or "cupboard", she "thought it may have been something holding the [bookshelf] up, like a chock to hold the [bookshelf] up if the floor was uneven". Counsel suggested that it made no sense that Constable Camp would then have tried to move it, without lifting the bookshelf. He argued to the jury that it was problematical that there was no "independent evidence of the way in which that piece of wood was placed under the [bookshelf]", but there was only "this assertion". But counsel continued his address to the jury by saying:

> "Now, the – the wood, the bat, we're told – and no reason to doubt – had blood on it. We are not told whether the bat was bloodied side up

> or bloody side down on the – in the position it was located, and the floor isn't swabbed to confirm its presence. But nonetheless, there seems to be no doubt that the wood – the piece of wood – was found in the bedroom."

The evidence of neighbours

[47] The prosecution called evidence from several neighbours, from which it attempted to establish that no person had left the house on that morning before the police arrived, and that the dogs at the house had not been barking.

[48] One neighbour walked past the house just after 5.50 am, on his way to catch a bus to work. The appellant's house was in Jillinda Place, a few doors from its intersection with Kays Road. The witness said that he saw a man, in running gear, on the opposite side of Kays Road. He thought that it was unusual that this man glanced at him six or seven times and then ran off at a fast pace.

[49] Another neighbour noticed a white utility parked in front of the appellant's house, at about midnight. He said that he could hear the voices of males coming from it and arguing, with the car still running. That neighbour lived on the other side of Jillinda Place, on the corner of Kays Road. Then, at about 2 am, he said, he went outside for a cigarette and noticed that the utility was no longer there. He said that he had seen that vehicle previously frequently parked in front of the house, about two or three times a week.

[50] Another neighbour, who lived almost opposite the appellant's house, said that she woke up about midnight, and again at 3.30 am, and heard nothing on either occasion. That witness also testified that the appellant had told her that she had become concerned about an incident where letters had been taken from her mailbox, opened and then returned to the mailbox. The appellant had told the neighbour that she had bought a second dog to improve security at the house. Her husband also gave evidence. He said he was awake from midnight until well into the following day, and heard nothing. He said that the dogs at the appellant's house would bark if they were at the front of the house, but not if they were kept at the back of the house.

[51] Another neighbour said that she frequently heard the dogs bark but did not hear them bark on this morning and nor did she hear any disturbance.

[52] A neighbour said that one of the dogs would bark if anybody walked down the side of the appellant's house. She said that she had been for a run at about 6 am, and had twice gone past the appellant's house and seen and heard nothing there.

[53] There was evidence from a neighbour who was doing renovation work on his back deck, which overlooked the appellant's house. He remembered other neighbours leaving for work, and he saw the police first arrive. But he heard and saw nothing before then. He accepted that he had been walking to and from his deck at times during this morning.

[54] One of the appellant's next door neighbours said that at the time, she was in dispute with the appellant and her mother about their dogs barking. She said that the appellant and her mother were very conscious of their security and often called the police. She had observed one of the dogs being trained to be aggressive.

[55] A neighbour said that he saw a small dark hatchback reverse out of a driveway, belonging to either the appellant's house or the house next door to it, at around 7 am.

[56] Another neighbour was out walking in this street at about 6.30 am, but heard or saw nothing of significance and did not notice any dogs barking.

[57] Another neighbour, who lived at the rear of the appellant's house, said that he would often hear dogs barking but not on this morning.

[58] Police officers gave evidence that they had conducted extensive investigations in the neighbourhood in an attempt to identify the man who had been seen in the running gear, and they had conducted a search of the locality, which was cordoned off shortly after 7.15 am.

[59] There was other evidence directed to a question of whether the dogs tended to bark a great deal. None of that evidence, or the evidence of a police reconstruction to show that the dogs barked if somebody approached along the fence line, was significant.

Security at the house

[60] A locksmith gave evidence to the effect that none of the doors in the house appeared to have been the subject of a forced entry. There was no evidence that the front door lock had been picked. However, there was no examination of the windows or the garage door and there was an internal door between the garage and the house.

[61] There was a motion sensor in the appellant's bedroom. There was evidence, from the installer of that device, that it would not sense movement through a closed door. A police officer gave evidence that the sensor would react, and flash a red light, in response to a person walking past the appellant's bedroom, when the door was open.

[62] On the floor of the deceased's bedroom, police found a machete, in a sheath and covered in dust. On testing, it showed no traces of blood.

Valuable items at the house

[63] In the lounge room, police found drawers which had been opened and documents which had been strewn on the floor. None of the documents was said to be significant.

[64] On the dining room table were cases containing cash, a set of keys, a bank cheque made out to cash and some handwritten notes.

[65] An envelope containing $2,300 was found in the deceased's wardrobe. A brown paper bag containing $1,100 was found in the appellant's desk drawer, and there were purses with cash, totalling $770, found in her car in the garage.

Forensic examination of the appellant

[66] Soon after police arrived at the house, the appellant was required to wear something described as a "zoot suit", which was an overall suit made of plastic material which

was designed to contain any evidence on the appellant or her clothing. At the same time, she was required to wear boots of the same material and gloves. Subsequently, in the presence of a crime scenes officer, Ms Tadina, the appellant was required to take off those items and her own clothes which she was wearing underneath them. As she did so, she was required to stand on paper which was then collected, placed into a sealed bag and sent for analysis. No relevant evidence was found from this process.

[67] Mr Tadina took swabs from the back of the appellant's hands and her palms, as well as from the tops and soles of her feet. She did fingernail scrapings from underneath the nails on each of the appellant's hands. The nails were not cut for them to be included in the testing because the appellant "was wearing thick acrylic nails that we couldn't cut". The jury saw photographs of the appellant's hands and, in particular, her fingernails.

[68] The result of all of this forensic analysis was that it yielded no evidence which assisted the prosecution case. It showed that there was no blood on the appellant's hands, and they were not bruised or otherwise damaged, including the fingernails.

The appellant's circumstances

[69] The appellant was born in 1996. Her parents were immigrants from Macedonia, who made many return visits to that country. It appears that it was on one of those trips that the appellant was born.

[70] In 2011, the appellant's father travelled alone to Macedonia, where tragically he died in a fire. Six months later, the appellant and her mother travelled to Macedonia, where her mother then remarried a man named Neshovski. The appellant, her mother and Mr Neshovski then came to Australia, where at first they lived in a flat in Brisbane, because the house at Jillinda Place was leased. Later they moved to the house.

[71] The mother's marriage to Mr Neshovski was unsuccessful, and he returned to Macedonia, where the couple were then divorced.

[72] Before then, the mother had transferred the house to the appellant, to prevent her husband claiming any interest in it. The appellant remained the registered owner of the house when her mother was killed. The house was mortgaged.

[73] At the trial, it was proved that Mr Neshovski was not in Australia when the mother was killed. There was a formal admission that he departed Australia for Macedonia on 16 August 2016 and that there was no record of him returning until 3 June 2017.

[74] Several witnesses described the relationship between the appellant and her mother as a close and loving one. One witness recorded seeing them at a Macedonian community event in August 2016, where the appellant and her mother were holding hands and apparently happy together.

[75] The deceased worked as a cleaner. The appellant did some work as a cleaner, but was a full time student, studying at QUT to be a teacher. There was evidence that she was not performing well academically in the months leading up to this event. Text messages showed that she was unhappy at university and behind with her work.

[76] The deceased went to Macedonia in April 2016, returning in early June. She then showed one of her colleagues a picture of an expensive gold necklace which she had purchased for the appellant's 21st birthday. The appellant knew about the necklace, and told police about it. They found it in the house where the appellant said it would be, in a suitcase in a storage area underneath the stairs.

[77] The appellant was financially dependent upon the deceased, who bought her gifts, including a car.

[78] In mid-2016, the appellant went to Macedonia for a holiday. However, she did not want to return to Australia because she had a boyfriend in Macedonia. There was evidence that the deceased insisted that the appellant return, and organised the appellant's flight home. The appellant returned to Australia on 2 August 2016. A witness said that in October 2016, the deceased told her that she had laid down the law to her daughter, and that the appellant knew that the deceased would withdraw her support if the appellant did not toe the line.

[79] On 30 September 2016, the appellant went to a travel agent and obtained a quote for a flight to Macedonia, saying that she had family whom she wished to visit. She said that she was wanting to fly in October, but was flexible with dates, and that she was intending to stay between six months and a year. She asked for a quote for a one way business class flight. That agent sent her an email on 6 October, asking whether the quote was to be accepted, and on the following day, the appellant said that she would not be doing so. The records of the same travel agency showed that the appellant had asked for a quote for the same trip, at another of its offices.

[80] On 7 October 2016, the appellant went to another travel agency, again to ask about airfares to Macedonia. She said that she was flexible about dates, but preferred 28 or 29 October as the departure date. She made a booking with that agency to depart on 29 October but did not pay for it. She told that agent that she wanted an extra baggage allowance because she was moving to Macedonia.

[81] On 21 October 2016, the appellant went to a branch of the Suncorp Bank, which held a mortgage over the house, and inquired as to the amount which could be drawn down on that security. She was told that she could draw about $97,000. She said to the bank officer that she wanted to travel to Macedonia on a long trip. She was then referred to the manager at that branch. She told him that she intended to rent the house out and travel overseas in order to care for a sick relative there, and that because no one else would be living in the house, it could be rented out at about $750 per week. She was informed that she could not draw down the funds immediately and that the whole process would take three to four weeks. She asked the bank manager for an estimate of the maximum which she could borrow on the house in the circumstances, and was told it was $175,000. She did not pursue the matter further with the bank.

Police interviews of the appellant

[82] Shortly after police had arrived at the house, the appellant was taken from the house to a neighbour's house, where Constable Child stayed with her until another officer did so a few hours later. The appellant told Constable Child that her father was deceased, at first saying that he had died two years earlier, and subsequently, that he

had died in 2011. The appellant asked Constable Child whether she could call her boyfriend in Macedonia and was allowed to do so.

[83] Senior Constable Loth, who took over from Constable Child, was told by the appellant that she felt dizzy, had a headache and was feeling a heaviness. The appellant told her that she had spoken with her mother on the previous evening, when her mother came home from work and had some dinner before going to bed. She said that she had phoned her boyfriend in Macedonia at sometime between 3 am and 3.30 am, because she could not sleep, after which she then went to sleep.

[84] The police interviewed the appellant at a police station on 28 October and again on 3 November 2016.

[85] In the first of those interviews, the appellant said that she said goodnight to her mother at about 10 pm, and took one of the dogs to its bed outside the front door. The appellant then went to her bedroom, where she watched television and spoke to her boyfriend in Macedonia. She said she had a shower at some point, and went to sleep at about 3.30 am. Records from her phone showed several calls to her, from a number which she had designated as "My Baby", in the early hours of that morning, the last of which finished at around 3.43 am.

[86] She told police that the door to her room could be easily opened, even by a wind. She had a thong which she used as a door jam, because without it the door would open by itself.

[87] She said that she woke up when the dog outside the front door was barking. She described hearing sounds like large feet stomping and screeching on the wooden floor, which did not sound like her mother's footsteps. She did not investigate what was causing the noise because she was scared.

[88] She told police that the monitor in her room kept flashing red as if there was someone walking near her room. She dialled 000, hiding under the blankets as she did so.

[89] She said that when she got out of bed, to let the police into the house, the door to her own bedroom was open, but not fully so. She said that she had locked the front door on the previous night after she had taken one of the dogs outside. She believed that her mother would have taken the other dog below the back deck for the night.

[90] She said that she and her mother had been involved in car accidents in 2012 and 2013, as a result of which a psychologist had diagnosed her with post-traumatic stress disorder.

[91] When she was asked what had happened at the house, she said that someone had broken in, her mother had been hurt and had passed away.

[92] She said that she was not aware of any weapons in the house. Police showed her pictures of the piece of timber, told her that it had blood on it and said that it had been found in her bedroom. She said that she had never seen it before. She was also unaware of the machete which police had found next to the mother's bed.

[93] She was told that a white utility had been sighted outside the house at about 2 am. She said that she knew nothing about that.

[94] She told police that she had planned to go to Macedonia to live with her boyfriend for a couple of months and then to return to Australia. She had not discussed that plan with her mother.

[95] After this first interview, the appellant stayed with family friends. One member of that family gave evidence of a conversation with the appellant about what had occurred at the house. The effect of what the appellant said to her was the same as the version which the appellant had given to police.

[96] She was interviewed by police again on 3 November 2016. Police read to her part of a statement by a witness that she and her mother had argued about when she should come back from Macedonia. The appellant told police that she did not recall being given any kind of ultimatum about her mother withdrawing financial support if she did not return. She denied that there was any unpleasantness between her and her mother on her return.

[97] Police told her that they had forensically tested the piece of wood, and that it had her mother's blood on it. She said she knew nothing about the piece of wood.

[98] Police told her that they had tested the sensor in her room, and said to her that when the door was shut, the sensor would not activate. The appellant said that she knew that it would activate. The appellant told them that she had withdrawn $1,000 from the bank in the week leading up to her mother's death. She said she did so because her mother was saying that they needed the money. That amount was drawn in cash. She told police that she had been to another bank because her mother had asked how much money she could obtain. She said that she had no recollection about talking to anyone at the bank about renting out the house. She could not say why she had not taken her mother with her when talking to the bank.

[99] She denied being responsible for her mother's death.

Other evidence

[100] It is unnecessary to discuss the other evidence called in the prosecution case.

[101] The appellant neither gave nor called evidence.

Discussion

[102] Although there was other evidence which supported the prosecution case, ultimately the case depended upon what the jury was to make of the evidence about the piece of wood. The prosecution had to prove that the deceased was killed by this object, that it had been concealed in the appellant's bedroom, and that it was the appellant who had concealed it. If those facts were established, the jury could exclude the possibility that the deceased had been killed by an unknown intruder.

[103] The proof, or otherwise, of those three facts had to be considered by reference to the whole of the prosecution case. The proof that it was the appellant who had concealed the object in her bedroom, required an assessment of a body of evidence which was not all one way. But the proof of the first and second facts was relatively straightforward.

[104] There was no formal admission that it was this object which was the murder weapon. But the prosecution case on that issue was compelling. The piece of timber had the deceased's blood upon it. That blood was described as fresh. It was within the furrows of one side of the object, and the pattern of those furrows corresponded with the pattern of one of the injuries to the deceased.

[105] Whilst there was this trace of blood upon the object, it was not carrying the amount of blood which would have been expected from such an attack. The object had not been washed. But the absence of more blood could be explained by the possibility that it had been wiped clean, and the presence of blood on the blanket, which was placed over the deceased's body after the attack, was consistent with the use of the blanket to wipe blood from the piece of timber. It is unsurprising, therefore, that the appellant's case, both at the trial and in this Court, was conducted upon the premise that the weapon was this object.

[106] There was no formal admission that the object was found in the appellant's bedroom, in the location described by Constable Camp and Sergeant Bernados. There was some testing, in the cross examination of Constable Camp, of her evidence about finding the object. However, the particular part of her evidence, which was criticised by defence counsel in his address to the jury,[2] was not something which should have concerned the jury about accepting her evidence overall. Nor did the fact that police did not photograph the object, when it was in that position, provide a basis for doubting her evidence. Importantly, her evidence was not challenged upon the basis that the object could not have been placed in the position in which it was said to have been found.

[107] Therefore, that was evidence, which it was open to the jury to accept, which proved that the piece of wood was found by police in that corner of the appellant's room, in a location where it was unlikely to be seen, at least unless the trolley and the suitcase, which must have been placed in front of it, were moved from their positions in front of the bookshelf. Once the jury accepted that the piece of wood was found in this location, the inference was irresistible that it had been deliberately concealed there. Unsurprisingly, that fact was uncontested in this Court.

[108] As to who it was who had concealed the object in the appellant's room, the respective arguments of the parties presented the jury with two possibilities. The first was that it was the appellant. The second was that it was an intruder or intruders, who, having used the object to kill the deceased, had hidden it in that position whilst the appellant was in her bed.

[109] The second possibility would have involved an exercise of considerable difficulty. It would have required the intruders to discover a location where the object could be concealed, and then to manoeuvre it into that position under the bookshelf. They would then have moved the trolley and the suitcase into the positions in which police first found them. Those things may have required removal from in front of the bookshelf before the object was put under the bookshelf. The trolley had several items on it, making for a further difficulty in moving it, once or perhaps twice, whilst the appellant remained unaware of their presence in the room. All of this may have occurred in darkness, or in a poorly lit room at least. The appellant said that she had been sleeping until shortly before 7 am. When the appellant rang

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2 Referred to earlier at [46].

000, she described hearing footsteps on the flooring outside of her room. But she did not suggest that an intruder may have been in her room.

[110] To assess whether it was the appellant who concealed the object, it is necessary to consider the other evidence.

[111] A number of things indicated that the deceased was concerned for her own security in this house. A second dog had been acquired as a watch dog. The front door could be reached by an intruder only by their climbing a two metre fence (as the police had to do). A machete was apparently kept by the deceased beside her bed.

[112] Yet no sign of a forcible entry was found. There was no apparent explanation for the fact that one of the front doors was slightly open when police arrived. An intruder may have left by the front door, having entered the house at another point. However, no such point of entry was obvious from the investigation. It was suggested, in the appellant's argument, that the intruder may have had a key to the house. Whilst that is a theoretical possibility, there is nothing to suggest that it was anything more than that.

[113] The evidence of the neighbours was of limited significance. Some of it was consistent with a possibility that someone else had been at the house. There was the evidence of the neighbour who saw a man, in running gear, who looked at the witness several times before running away. There was the evidence of a utility parked outside the house, with the sound of men inside it who were arguing. But overall, none of the evidence of neighbours either proved that no one else had been at the house at a relevant time, or showed a significant possibility that someone had been there.

[114] The evidence about the dogs was of some assistance to the prosecution case. No witness recalled a dog barking from the house at a relevant time on the previous night, and some witnesses recalled that they had heard no barking. But this evidence was of limited value to the prosecution case, because it was not unlikely that a dog at the house had been barking, and that a witness who said otherwise had an imperfect recollection. These dogs often barked, and the sound of them early on this morning need not have struck a neighbour as a memorable event at the time.

[115] The evidence of the appellant's personal circumstances, and her intention to leave for Macedonia, assisted the prosecution case. It is true that she had the benefit of the registered ownership of the house, from which, with the concurrence of the bank, she would have been able to borrow a large sum to facilitate her intended departure and extended stay in Macedonia. However, it is another thing to say that she would have been sure that she could do so, regardless of the strong objection to that course which she would have expected to come from her mother.

[116] There was some evidence that the relationship between the two was a close and loving one. But there was also evidence that there had been considerable tension between them when, a couple of months earlier, her mother had demanded that she return home from Macedonia and resume her education. On her return she continued to do badly in her studies. The jury could have inferred that she had developed a deep resentment and hostility towards her mother, whom she may have seen as unfairly preventing her from pursuing her chosen new life in Macedonia with her boyfriend.

[117] A hurdle for the prosecution case came from the evidence about the personal appearance and condition of the appellant, together with the absence of any evidence of blood in her bedroom or on her clothing.

[118] Dr Milne testified that he would have expected there to be blood spatter on the assailant. And the pattern of blood spatter in the deceased's bedroom indicated that some of the blood must have fallen on a person, who was between the deceased and where blood was spattered on a wall. It is true, as is submitted for the respondent, that the extent of that spatter on the assailant was unknown. And the respondent's argument points out that there was not a marked transfer of blood throughout the home. But on the evidence, it was probable that the assailant would have had some blood spatter on them, and yet none was found on the appellant or her clothing.

[119] No evidence was found of any cleaning of blood from a person, the police having checked all of the sinks and showers. However, as was conceded for the appellant, the absence of blood in the sinks, showers and drains did not prove that the appellant had not cleaned blood from herself.

[120] The appellant's hair was dry and very tidy, indeed so tidy that to one witness, she did not look as if she had just got out of bed. However this was not a critical impediment to the prosecution case. The jury may have considered that she had been able to clean a spatter of blood, if any, from her hair.

[121] Her fingernails were well kept and she had no signs that her hands had been used to wield the weapon. In that respect, the jury may have thought that the appellant was wearing gloves. A packet of gloves was found, curiously, between the mattresses in the appellant's bed. Against that, police found no used gloves. However, it was possible that they had been hidden, or disposed of in some way which was not discovered by police.

[122] The absence of any blood, beyond the deceased's bedroom, was curious if the killer had been an intruder. It was improbable that an intruder, with blood spattered on them, had walked through the house, perhaps opening drawers and searching for something, before departing the house, but leaving no trace of blood. The absence of blood was more easily explained by the appellant having cleaned it before calling the police.

[123] Dr Milne's evidence was that it was impossible to determine the time of death. The deceased's phones were used no later than 1.40 am. Call records for the appellant's phone showed calls to and from her boyfriend in the early hours of that morning, but no later than 3.43 am. Consequently, on the prosecution case, it was possible that the deceased was killed some hours before she rang police at 7 am, during which she could have cleaned herself, dried her hair, washed and dried any clothing she had been wearing and cleaned any place, apart from the deceased's bedroom, where blood may have been.

[124] I return to the significance of the piece of wood, as the murder weapon, being concealed in a relatively inaccessible place in the appellant's bedroom. I have discussed already the practical difficulties for an intruder or intruders in first discovering that place, and then effecting the concealment of the object, without the appellant becoming aware of their presence. It is inconceivable that this could have occurred at a time when the appellant was awake. If she was hiding under the

bedclothes in a state of heightened alertness, she could not have been unaware of the presence of someone doing this in her room, only a couple of metres away.

[125] Alternatively, if the intruders had hidden the object in her room whilst she was asleep, it seems inconceivable that they would not have then left the house, rather than staying there, moving about so as to alert the dogs and talking to each other, as the appellant said she heard when she awoke.

[126] Further, there is no evident explanation for why the intruders would have gone to so much trouble in order to leave the weapon in that place. To do so would have involved, at the least, a high risk of an encounter with the appellant in her room. And if the intruders had decided to leave the object in the house, there is no evident reason why they would seek to hide the object at all.

[127] It was suggested that the intruders' intention may have been to place the object in the appellant's bedroom, in order to implicate her. That is no more than a theoretical possibility. There was no reason suggested by the evidence for the intruders to try to implicate the appellant. And in any case, to hide the weapon in such a way that the object might not be found at all during an investigation, would have been inconsistent with that being the intruders' intention.

[128] The appellant's DNA was not found on the piece of wood. But that could have been the case for several reasons, not the least of which was that she handled it with gloves.

[129] In my conclusion, on the whole of the evidence, there was no significant possibility that the piece of timber was hidden by an unknown intruder. That possibility was excluded by the practical impossibility that without the appellant being aware of it, there had been someone in her room, searching for a place in which to hide the weapon, placing it in this void underneath the bookshelf, and moving large items in front of it. The exclusion of that possibility is supported by the absence of an evident explanation for the intruder to do so, together with the other circumstances which I have described as supporting the prosecution case.

[130] The prosecution had to prove that it was the appellant who killed the deceased. The evidence enabled the jury to make that finding unless there was some alternative hypothesis, which was raised by the evidence, by which she was innocent of the unlawful killing of her mother. The defence case at the trial, and on this appeal, was that her mother was killed by another person or persons who were unknown to her, and without her involvement. That hypothesis was raised by the evidence containing her version of events. On all of the evidence, and in the way in which her case was conducted, it was that alternative hypothesis which the prosecution had to disprove beyond reasonable doubt.

[131] The ultimate question here is "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".[3] In my conclusion, it was open to the jury to find that it was the appellant who killed her mother, if the jury found, as it was entitled to do, that she hid the weapon. There was nothing in the evidence to suggest, and nor is it contended, that the appellant did not intend to kill, or at least do grievous bodily harm, or that the killing was justified in law.

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3 *M v The Queen* [1994] HCA 63; (1994) 181 CLR 487 at 494-495; *R v Baden-Clay* [2016] HCA 35; (2016) 258 CLR 308 at 330 [66].

Order

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

[133] **MULLINS JA:** I agree with McMurdo JA.