



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

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#### Important Information

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IN THE HIGH COURT OF AUSTRALIA  
SYDNEY REGISTRY

BETWEEN:

THE KING

Appellant

and

ZT

Respondent

**APPELLANT’S OUTLINE OF ORAL SUBMISSIONS**

**Part I: Publication**

1. This outline of oral submissions is in a form suitable for publication on the internet.

**Part II: Outline of Propositions**

2. The central issue in the CCA was the admissions made by the respondent in intercepted telephone calls and in recorded police interviews: AWS [14]; see e.g:
  - a. Appellant’s Further Materials (**AFM**) at 20; CAB 167 [54]-[55] (Kirk JA), 201 [167] (Fagan J);
  - b. AFM 222, 228; CAB 169 [62]-[63] (Kirk JA), 207 [179] (Fagan J);
  - c. AFM 300-301; CAB 170 [68] (Kirk JA), 212 [189]-[190] (Fagan J); and
  - d. AFM 434; CAB 172-173 [74]-[75] (Kirk JA), 220-221 [209]-[211] (Fagan J).

*Assessment of evidence by CCA*

3. The recordings of the telephone intercepts and police interviews were a critical part of “the whole of the evidence” for the purpose of the CCA’s application of *M v The Queen* (1994) 181 CLR 487 (JBA 266). The transcripts of the recordings were not a substitute for the exhibits which comprised that evidence: CCA Transcript in Respondent’s Further Materials at 127-129; Summing Up at CAB 26; cf CAB 187-188 [124]-[127] (Kirk JA); AWS [27]-[30].

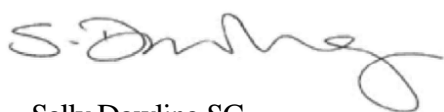
4. The observations of this Court in *Pell v The Queen* (2020) 268 CLR 123 (***Pell***) at [36] (JBA 360) and *SKA v The Queen* (2011) 243 CLR 400 at [29] (JBA 410), [31] (JBA 411), [116] (JBA 467) are distinguishable: AWS [21]-[22], [30].
5. In the present case, there was a real forensic purpose for the CCA to have regard to the exhibits themselves: AWS [31]-[32]; CAB 240 [255]-[257] (Fagan J). A proper analysis required consideration of things able to be seen and heard on the recordings: cf CAB 188 [128] (Kirk JA); AWS [5](a), [44](a).
  - a. The intended meaning of a number of the respondent's admissions was contested: AWS [34]-[35].
  - b. The evidence called for an assessment of: AWS [37]-[43]:
    - i. when the respondent was rehearsing false exculpatory accounts: e.g. CAB 172 [72] (Kirk JA), 216 [200] (Fagan J);
    - ii. when the respondent was genuinely acknowledging his culpability (whether for murder in the jury's assessment: e.g. CAB 216 [199]-[200], 239 [253] (Fagan J); or for his involvement in disposing of the body in the majority's assessment: e.g. CAB 169 [64] (Kirk JA)); and
    - iii. when the respondent was merely fantasising or compulsively saying things that were not true, as characterised by the majority: e.g. CAB 175 [81], 186 [121] (Kirk JA).
6. The majority erred in concluding that the jury enjoyed no relevant or significant advantage as a result of having listened to the telephone intercepts and watched the police interviews: AWS [5](b), [44](b). Here, the jury had a distinct advantage: AWS [47]; *Dansie v The Queen* (2022) 96 ALJR 728 at [13]-[14] (JBA 139), [17] (JBA 140); *R v Baden-Clay* (2016) 258 CLR 308 (***Baden-Clay***) at [65] (JBA 405).
  - a. The majority conceived of the jury's advantage too narrowly: AWS [36], [48]-[49]; *Pell* (2020) 268 CLR 123 at [37]-[38] (JBA 360-361).
  - b. The meaning of, and weight to be ascribed to, the respondent's admissions were matters in the province of the jury: AWS [48].

- c. Without regard to the exhibits, the majority could not have full regard to the jury's advantage. Nor could the majority deny the significance of that advantage as identified by Fagan J: CAB 240 [257]; AWS [26], [45].

*Treatment of admissions as part of Crown's circumstantial case*

7. The majority's approach involved a piecemeal consideration of the case against the respondent, contrary to *Baden-Clay* (2016) 258 CLR 308 at [47] (JBA 363), [77] (JBA 371) and *Lang v The Queen* [2023] HCA 29 at [251]: e.g. CAB 166 [50] (Kirk JA); AWS [5](c), [57].
8. The majority reasoned that the truth of the respondent's admissions required proof beyond reasonable doubt. It was not necessary for the Crown to "establish beyond reasonable doubt that the admissions made were sufficiently reliable": CAB 187 [122] (Kirk JA); AWS [52]-[53], [55]. The reliability – presumably meant in the sense of factual accuracy – of individual admissions was not indispensable to proof of the respondent's guilt.
9. By seeking to identify which of the respondent's different accounts could be accepted as reliable, the majority: e.g. CAB 156 [6] (Kirk JA):
  - a. depreciated the force of the Crown's circumstantial case; and
  - b. overlooked that it was open to the jury to accept, as proof of the respondent's guilt, that he had repeatedly acknowledged his involvement in the murder: CAB 190-191 [136]-[138], 241 [258] (Fagan J); AWS [55]-[56].

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