COURT: SUPREME COURT OF TASMANIA (COURT OF CRIMINAL APPEAL)

CITATION: *Gale v Tasmania* [2024] TASCCA 3

PARTIES: GALE, Darren Ward
v
STATE OF TASMANIA

FILE NO: CCA 2117/2019

DELIVERED ON: 13 May 2024

DELIVERED AT: Hobart

HEARING DATE: 13 October 2022

JUDGMENT OF: Blow CJ, Brett J and Jago J

CATCHWORDS:

Criminal Law – Appeal and new trial -Verdict unreasonable or insupportable having regard to evidence – Appeal dismissed – Murder – Circumstantial case – Whether rational hypothesis consistent with killing amounting to manslaughter.
Aust Dig Criminal Law [3476]

Cases cited:
Attorney-General's Reference No 1 of 1996 (1997) 7 Tas R 293.
Dansie v The Queen [2022] HCA 25, 274 CLR 651.
Doney v The Queen (1990) 171 CLR 207.
M v The Queen (1994) 181 CLR 487.
R v Baden-Clay [2016] HCA 35, 258 CLR 308.
R v Ciantar [2006] VSCA 263, 16 VR 26.
R v White [1998] CanLII 789, [1998] 2 SCR 72, 125 CCC (3d) 385.
Weissensteiner v The Queen (1993) 178 CLR 217

REPRESENTATION:

***Counsel*:**
Applicant: F Cangelosi, D Loganathan
Respondent: D G Coates SC, T Barr
Solicitors:
Applicant: Logan & Partners
Respondent: Director of Public Prosecutions

Judgment Number: [2024] TASCCA 3
Number of paragraphs: 38

Serial No 3/2024
File No CCA 2117/2019

DARREN WARD GALE v STATE OF TASMANIA

REASONS FOR JUDGMENT

COURT OF CRIMINAL APPEAL
BLOW CJ
BRETT J
JAGO J
13 May 2024

Orders of the Court:

1 Leave to appeal granted.
2 Appeal dismissed.

Serial No 3/2024
File No CCA 2117/2019

DARREN WARD GALE v STATE OF TASMANIA

REASONS FOR JUDGMENT

COURT OF CRIMINAL APPEAL
BLOW CJ
13 May 2024

1 On 22 November 2016 police officers found the headless body of a man named Noel Joseph Ingham in a shallow grave off a bush track in the Dulverton area. The applicant in these proceedings, Darren Ward Gale, was charged with his murder, tried before Wood J and a jury, found guilty of murder, convicted, and sentenced to imprisonment. He has applied for leave to appeal against his conviction for murder. He accepts that it was open to jury to find that he killed the deceased in circumstances amounting to culpable homicide. However he contends that the evidence was not strong enough for the murder conviction to be sustained, that the verdict was unreasonable, and that this Court should quash the murder conviction and substitute a conviction for manslaughter.

Background

2 The evidence established that the deceased died in late July 2016. He was a 57 year old disability pensioner. He was living in a two-bedroom unit in Ulverstone which he had rented in September 2014 from an organisation named Housing Choices. The rent was paid directly to Housing Choices by Centrelink. On a couple of occasions he had sublet the second bedroom. He rented the second bedroom to the applicant from about 14 or 15 July 2016. He had two valuable dogs. Neighbours gave evidence that they were always kept in immaculate condition.

3 The last confirmed sighting of the deceased was on 22 July 2016 when he visited a doctor in Ulverstone, accompanied by the applicant. CCTV footage relating to that visit was played at the trial. There was evidence that he had another appointment on 28 July 2016, but that an unidentified male telephoned that morning and cancelled the appointment. Evidence established that the deceased's phone activity largely ceased on 29 July 2016. His spending of money ended on 28 July 2016. A neighbour named Victor Jamison gave evidence that he last saw the deceased in late July 2016, and that he last saw the deceased's car at the residence the following day. Mr Jamison gave evidence that the applicant continued to reside at the unit after the deceased was no longer seen.

4 An employee of Housing Choices named Glenda Kelly gave evidence to the following effect. On 1 August 2016 she wrote to the deceased notifying him that there would be a routine inspection of his property on 18 August. She attended the property on that day and found a note on the door advising that he was away in Hobart for tests for a couple of weeks and would be in contact when he got back. Nobody answered the door. On 19 September she received a telephone call from a woman who advised that the deceased had not been at his home for some time and that another person had started living there. She went to the unit the next day to deliver a notice to vacate. She spoke to the applicant there. She told him that he would have to vacate by 10 October.

5 On 4 October Ms Kelly informed Tasmania Police that she held concerns for the deceased's welfare and that she had been dealing with the applicant in respect of the unit. Ms Kelly returned to the unit on 5 October and again spoke to the applicant. I will refer later to that conversation and Ms Kelly's observations on that day.

6 The police began to investigate the disappearance of the deceased on 4 October 2016. After speaking to the applicant and inspecting the unit, they obtained a warrant for a telephone intercept on the applicant's phone. From 13 October onwards they intercepted and recorded calls during which he spoke to people about the deceased. On 17 October 2016 police officers attached a tracking device to

the applicant's vehicle. The tracking device revealed that the vehicle had travelled to an area at Dawson's Siding Road, between Latrobe and Dulverton on 21 October and again on 31 October.

7 On 1 November 2016, as a result of a report from members of the public, police officers located the deceased's vehicle off a track off Quicksand Road at Latrobe. The vehicle had been burned. Items of property matching items missing from the deceased's unit were found in the bush nearby. Police officers installed surveillance cameras in the area. On 16 November the cameras recorded the applicant moving a roll of carpet in the area. As a result, a large scale search was conducted on 22 November, and the deceased's grave was located. The skeletal remains of two small dogs were located about 80 metres west of his car.

The parties' cases at trial

8 The case against the applicant was wholly circumstantial. It was strengthened by admissions made by the applicant, who gave evidence at the trial. The evidence adduced by the Crown that tended to implicate the applicant in the killing and to indicate that the killing amounted to murder included evidence as to the state of the deceased's unit after his disappearance, scientific evidence as to blood found in that unit, the evidence of a pathologist as to a post-mortem examination, and a large body of evidence relating to the applicant's post-offence conduct.

9 Ms Kelly's evidence as to the state of the unit on 5 October was to the following effect. There was a large hole in the plaster of the kitchen wall. Carpet had been removed from the lounge, the hall, and the main bedroom. Much of the furniture had been removed.

10 The Crown relied on evidence of an examination of the deceased's unit conducted on 13 October 2016. Human blood was detected. Samples were collected and sent for DNA analysis. Human blood was detected on the ceiling of the unit. A number of the samples matched the DNA of the deceased and the appellant. The deceased's blood was found on a hall cupboard, the lounge room door, and the lounge room wall. The blood on the ceiling was described as spatter, indicating that it had struck the ceiling with force. The deceased's blood was also found on a kitchen chair, on a powerboard in the bedroom, and in a lineal transfer stain in the hall leading to the main bedroom.

11 The Crown relied on evidence from a forensic pathologist, Dr Christopher Lawrence, who conducted the post-mortem examination of the deceased. His examination did not reveal any trauma or injury that established the cause of death. The Crown case was that the applicant removed the deceased's head because it would have revealed the cause of death. Dr Lawrence considered that the decapitation occurred after death. He noted an injury to the deceased's left hand and wrist. His opinion was that the hand injury was a defensive type of injury resulting from the use of some force. He considered that it was likely to have been caused by the deceased attempting to protect part of his body from a blunt force injury, but accepted that it could have been inflicted by falling against an object with some degree of force.

12 The evidence relied on by the Crown as to the applicant's post-offence conduct, included evidence to the following effect:

- The applicant continued to live at the deceased's home until required to vacate by Housing Choices.
- The applicant used the deceased's vehicle. He was apprehended for drink driving in it on 30 July 2016.
- The applicant used the deceased's credit card to buy tobacco and petrol on 30 July 2016.

- On 31 July 2016 and 7 August 2016 the applicant sent text messages to the deceased's mobile phone to create an impression that he did not know that the deceased was dead. The mobile phone was found by police officers in the bush near the remains of the deceased's vehicle on 8 November 2016.

- While he continued living in the deceased's home, the applicant sold, gave away, burned and abandoned various possessions of the deceased. He put a "for sale" sign on the deceased's boat in late July 2016, and sold it to a man named Williams on 24 August 2016. Neighbours gave evidence that they did not see the deceased's dogs again after his disappearance in July 2016. The applicant sold a television set to a neighbour of the deceased, and offered that neighbour a screen door, a washing machine and plants from the deceased's unit and garden as well. The police recovered the television set, the screen door and some plants from that neighbour's home on 27 October 2016. On 28 October 2016, after he had moved out of the deceased's unit, the applicant told police officers that he had white goods from the unit, including a washing machine, a refrigerator and a television. He also told them that he and the deceased had pulled up the carpet that was missing from the unit. On 30 November 2016 police officers recovered an outdoor setting that had belonged to the deceased from the home of the applicant's brother. The brother told the police that the applicant had said that he had purchased the items for $50 at a garage sale. Near the place where the deceased's vehicle was found, police officers found a large roll of carpet, pieces of underlay, the remains of a couch that had been set on fire, and the remains of some dining chairs that had been set on fire. The carpet and underlay were found to match the carpet and underlay remaining at the unit.

- The applicant told lies to various people about the deceased's whereabouts. In particular, he wrote the note to Housing Choices. That note purported to have been written by the deceased.

- On 5 October 2016, during the inspection by people from Housing Choices, the applicant gave a false account as to how damage to the property had occurred. The applicant told Ms Kelly that the deceased's dogs had wet on the carpet, that the deceased had taken it up because they could not clean it, that he did not know how the damage to the wall had occurred, that he did not cause it, that he was the only person with a key other than the deceased, and that the deceased had moved his furniture out and put it into storage.

- On 6 October 2016 the applicant told lies in a statutory declaration that he provided to the police. He said that between 20 and 25 July he and the deceased had decided to pull up the carpet in the unit as the dogs had "shit and pissed all over it", and that the deceased took the carpet to the tip. He said that on 28 or 29 July the deceased starting moving out his things, including the lounge, a table, two beds and kitchen utensils. He said that he did not know where the deceased was taking his stuff. He said that the deceased's TV was still in the unit, and that he thought that he was coming back to get it. He said that he last saw the deceased on 1 or 2 August. He said that he had been trying to contact the deceased since 1 or 2 September. He said the deceased had sent him a message on 31 July saying that he would come back and get his vehicle, that he had a buyer for the dogs, and that he would take some more of his stuff. He said that the deceased had asked him to sell his boat at the end of June. He said he had no idea where the deceased was.

- The applicant made comments to two witnesses, Mr Flamingini and Ms McCullagh, to the effect that he knew about the circumstances of the deceased's disappearance.

- After the applicant had been arrested and remanded in custody, he made a phone call during which he told a friend that he was the "only one" in Tasmania who knew what had happened, and that he was going to "go with self-defence".

13 There was a body of evidence that suggested that the applicant had reasons for hostility towards the deceased. There was evidence that he had little in the way of possessions when he moved

in to the deceased's unit on 14 July 2016. A number of witnesses gave evidence that the applicant told them that he had moved in as a carer for the deceased. There was evidence that the deceased told a witness named Stephanie Sharp in a phone call on 19 July 2016 that he thought he had made a mistake in renting out the room to the applicant. He did not explain to Ms Sharp why he had formed that opinion, but there was evidence that he had required some previous occupants to move out, and that he had maintained a clean residence and had had regular routines. When the applicant accompanied the deceased to see a doctor on 22 July 2016, the deceased told the doctor that he wanted to complete a form so that he could facilitate access to his superannuation funds. According to the applicant's statutory declaration, the deceased had about $76,000 in superannuation. A witness named Brendan Broadwater gave evidence that he said that the deceased told him he was accessing those funds $10,000 at a time. The evidence suggested that the applicant wanted to benefit financially from his association with the deceased, and that the deceased was not happy with him living in his unit.

14 There was evidence that the applicant spoke very disrespectfully about the deceased in some of the phone calls intercepted by the police. In a call on 27 October 2016 he said, "I've had enough of Noel. I have had enough of his bullshit. I have had enough of his hiding … I reckon he's fuckin' hiding somewhere." In another call on the same date he referred to the deceased as a "cunt". On this occasion he said, "I would laugh if he fuckin' turned up at the fuckin' police station tomorrow and fuckin' walked straight in hey. Here I am. I tell you what, if he does, I am gunna punch the cunt in the head."

15 The applicant's case at trial essentially was that the death of the deceased had been an accident, and that he had disposed of the body and taken other steps in order to avoid being falsely accused of murder.

16 His evidence was to the following effect. On the morning of 29 July he and the deceased drank together for about 4 ½ hours. He fell asleep. He was woken by a prodding to his groin. The deceased had an axe handle and was shoving it into his groin. They were sitting on a couch next to one another. The applicant swore at the deceased and abused him. He put his hand over his groin. The deceased then hit him on the knee twice. He swore at the deceased again. The deceased hit him a third time. The axe handle struck the top of his knee, causing a lot of pain. He grabbed the axe handle and the deceased's thumb. They both stood up. The deceased went to throw a punch with his left hand but he blocked it. The deceased was bleeding from a cut on his head near his left temple where the applicant had stuck him. He pushed the deceased back onto the couch and went to leave the room. As he went to leave, the deceased threw the axe handle. It hit his back and then the wall, leaving a little hole. He went down the passage towards his bedroom. He heard a big bang from the lounge room. He walked back to check on the deceased. He found him lying slumped across the couch and a little table with his head on top of the fish tank. He grabbed him by the back of the arms and went to hoist him up. Blood was everywhere. They both fell on the floor. When the deceased hit the floor he let out a big breath. The applicant checked his pulse and put his hand over his nose and mouth to check if he was breathing, but he was not breathing. He had a big gash on the side of his head near the temple in the shape of a V where he had landed on top of the fish tank. He immediately thought that he would be blamed for the death.

17 In relation to his post-offence conduct, the applicant gave evidence to the following effect. He left the unit, drove in the deceased's vehicle, and was intercepted by the police. After returning to the unit he decided to clean up and get rid of the deceased. He thought that the police would blame him if they were to turn up and see the deceased with two gashes to his head. He used the deceased's card to buy tobacco and fuel and then threw the card away on 30 July. On the evening of 30 July and into the morning of 31 July, he drowned the deceased's two dogs. He put the deceased's body, the dogs' bodies and a bicycle into the deceased's car and drove it into the bush at Dawson's Siding Road. He dug a hole. Before he buried the deceased, he decided to cut his head off. He did that because the police would assume the deceased had been killed if they saw the two head wounds. Also he thought the police would not know who it was without a head. He put the head in a backpack, drove the car to

Quicksand Road, and set it on fire. He then left the area on the bicycle. He dropped the head off the bridge over the Mersey River in Devonport and rode back to Ulverstone. He buried the body to make sure the deceased was not found. He sent messages using the deceased's phone and made calls to that phone knowing the deceased was dead. He pulled up the underlay that was on the floor and cleaned the walls to remove evidence of blood. Some of the underlay was placed in a bin. Some was taken to Dawson's Siding Road. He and the deceased had removed the carpet in the deceased's unit prior to his death. He burnt the car because he could not leave it lying around as people would ask questions. He took the deceased's couch and dining table to Dawson's Siding Road. He burnt the couch because it had blood on it. He wrote the note to Housing Choices to make out that the deceased was still around. He told lies to cover up what had happened.

18 The applicant gave evidence that he had been trained in first aid. He also gave evidence that he did not attempt to resuscitate the deceased, and that he did not call an ambulance or otherwise seek assistance for the deceased at the time of his death.

Applicable legal principles

19 The killing of the deceased did not amount to murder unless the facts fell within the scope of s 157(1)(a), (b) or (c) of the *Criminal Code*. Those provisions read as follows:

> "(1) Culpable homicide is murder if it is committed–
>
> (a) with an intention to cause the death of any person, whether of the person killed or not;
>
> (b) with an intention to cause to any person, whether the person killed or not, bodily harm which the offender knew to be likely to cause death in the circumstances, although he had no wish to cause death;
>
> (c) by means of any unlawful act or omission which the offender knew, or ought to have known, to be likely to cause death in the circumstances, although he had no wish to cause death or bodily harm to any person."

20 The applicant may well have been intoxicated at the time of the killing. However, for the purposes of s 157(1)(c), intoxication is irrelevant to the question whether the applicant ought to have known whether a particular act was likely to cause death in the circumstances: *Attorney-General's Reference No 1 of 1996* (1997) 7 Tas R 293.

21 As I have said, the Crown case was based on circumstantial evidence. The relevant principles are as stated by Deane, Dawson, Gaudron and McHugh JJ in *Doney v The Queen* (1990) 171 CLR 207 at 211:

> "Circumstantial evidence is evidence which proves or tends to prove a fact or set of facts from which the fact to be proved may be inferred. Circumstantial evidence can prove a fact beyond reasonable doubt only if all other reasonable hypothesis are excluded."

22 The approach to be taken by an appellate court when it is contended that a verdict was unreasonable, or unsafe and unsatisfactory was explained in *M v The Queen* (1994) 181 CLR 487 by Mason CJ, Deane, Dawson and Toohey JJ as follows, at 494-495:

> "In most cases a doubt experienced an appellate court will be a doubt which a jury ought also to have experienced. It is only where a jury's advantage in seeing and hearing the evidence is capable of resolving a doubt experienced by a court of criminal appeal that the court may conclude that no miscarriage of justice occurred. That is to say, where the evidence lacks credibility for reasons which are not explained by the manner in which it was given, a reasonable doubt experienced by the court is a doubt which a reasonable jury ought to have experienced. If the evidence, upon the record itself, contains discrepancies, displays inadequacies, is tainted or

> otherwise lacks probative force in such a way as to lead the court of criminal appeal 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." (Footnotes omitted.)

23 That passage was approved in the unanimous judgment of Gageler, Keane, Gordon, Steward and Gleeson JJ in *Dansie v The Queen* [2022] HCA 25, 274 CLR 651, in which their Honours said the following, at [8]:

> "That understanding of the function to be performed by a court of criminal appeal in determining an appeal on the unreasonable verdict grounds of a common form criminal appeal statute was settled by this Court in *M*. The reasoning in the joint judgment in that case establishes that 'the question which the court must ask itself' when performing that function is 'whether it thinks upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty', that question being 'one of fact which the court must decide by making its own independent assessment of the evidence'." (Footnotes omitted.)

24 *Dansie* was a murder case in which the evidence of guilt was wholly circumstantial. The Crown case was that the accused had deliberately pushed his wife's wheelchair into a pond with the intention of drowning her. The High Court said the following as to the approach required in determining the appeal, at [38]:

> "What each member of the Court of Criminal Appeal needed to do in order to apply the test in *M* in the circumstances of this case was to ask whether he was independently satisfied as a result of his own assessment of the whole of the evidence adduced at the trial that the only rational inference available on that evidence was that the appellant deliberately pushed the wheelchair into the pond with intent to drown his wife and, if not, whether the satisfaction arrived at by Lovell J could be attributed to some identified advantage which Lovell J had over him in the assessment of the evidence."

25 Counsel for the applicant submitted that all the evidence of his post-offence conduct was equally consistent with his crime having been manslaughter rather than murder. However there can be cases in which it is open to a jury to infer that the nature of an offender's post-offence conduct supports a finding of guilt of a more serious offence rather than a less serious one. Two important statements of the relevant principles were made by Major J, delivering the judgment of the Supreme Court of Canada, in *R v White* [1998] CanLII 789, [1998] 2 SCR 72, 125 CCC (3d) 385. His Lordship said, at [27]:

> "As a general rule, it will be for the jury to decide, on the basis of the evidence as a whole, whether the post-offence conduct of the accused is related to the crime before them rather than just some other culpable act. It is also within the province of the jury to consider how much weight, if any, such evidence should be accorded in the final determination of guilt or innocence."

26 His Lordship said the following at [32]:

> "The result will always turn on the nature of the evidence in question and its relevance to the real issue in dispute. It is possible to imagine cases in which evidence of post-offence conduct could logically support a distinction between two levels of culpability for a single act, or between two offences arising from the same set of facts. By way of illustration, where the extent of the accused's flight or concealment is out of all proportion to the level of culpability admitted, it might be found to be more consistent with the offence charged."

27 Those two passages were cited with approval by the High Court in *R v Baden-Clay* [2016] HCA 35, 258 CLR 308 at [73] and [74]. In that case the accused had been found guilty by a jury of the murder of his wife, but the Queensland Court of Appeal had set aside the murder conviction and

substituted a conviction for manslaughter. The High Court held that that course had not been open to the Court of Appeal, and restored the conviction for murder. When the case was before the Court of Appeal the accused had raised for the first time a hypothesis that he had delivered a blow which killed his wife without intending to cause serious harm. The Court of Appeal quashed the murder conviction on the basis that that hypothesis could not reasonably be excluded. However that hypothesis was inconsistent with evidence given by the accused at his trial. The evidence established that the accused had a motive for the killing of his wife, that he was the last person to have seen her alive, that he made false denials to the police about an ongoing affair with another woman and sought to prevent them learning of that affair, and that he took steps to conceal his wife' s body to conceal his part in her death. The High Court (French CJ, Kiefel, Bell, Keane and Gordon JJ) said, at [74]:

> "There may be cases where an accused goes to such lengths to conceal the death or to distance himself or herself from it as to provide a basis on which the jury might conclude that the accused had committed an extremely serious crime and so warrant a conclusion beyond reasonable doubt as to the responsibility of the accused for the death and the concurrent existence in the accused of the intent necessary for murder. There is no hard and fast rule that evidence of post-offence concealment and lies is always intractably neutral as between murder and manslaughter."(Footnote omitted.)

28 In a footnote at the end of the first sentence of that passage, the Court referred with approval to the decision of the Victorian Court of Appeal in *R v Ciantar* [2006] VSCA 263, 16 VR 26. In that case a motorist had been found guilty by a jury on a charge of culpable driving causing death. On appeal, one of his contentions was that the judge had misdirected the jury concerning evidence of his flight from the scene of a fatal collision, and that the evidence of flight was equally consistent with a consciousness of guilt of less serious driving offences, including a drink driving offence. The Court of Appeal (Warren CJ, Chernov, Nettle, Neave and Redlich JJA) said the following at [39]-[40]:

> "39 In our view the argument cannot be sustained. For even allowing that a possible explanation of the applicant's post-offence conduct was that he was conscious that he had committed one or more of the lesser offences, as opposed to the offence charged, it does not follow that the post-offence conduct could not be left to the jury as something which was capable of supporting an inference that the applicant was conscious that he had committed 'the offence charged'.
>
> 40 We accept that there may be some circumstances in which post-offence conduct is equally consistent with two or more possible offences or is otherwise intractably neutral. Where that is so, it may not be open, even on the totality of the evidence, to draw an inference that the accused had a consciousness of guilt of some particular conduct at the time that he told lies or performed some act which the prosecution relies upon as constituting post offence conduct. But where such lies or conduct are considered in the context of all of the evidence it is not to be assumed that it will usually be so. Indeed, in the scheme of things, it is not likely to be so in many cases." (Footnote omitted.)

29 It is clear from the verdict of the jury that they must have rejected the applicant's evidence to the effect that he did not inflict the injury that caused the death of the deceased, and was not in the same room at the time. If those assertions were not true, it must follow that the applicant alone knew how the deceased met his death, and yet failed to give evidence of what truly happened. In that situation, the High Court's decision in *Weissensteiner v The Queen* (1993) 178 CLR 217 is relevant. That case concerned a murder trial. The accused had set off with two other people in their boat. The other people were never seen again but he remained in possession of the boat. He was charged with their murder. The case against him was entirely circumstantial. He chose not to give evidence. The trial judge directed the jury that they could more safely draw an inference of guilt from the proved facts since he had elected not to give evidence of relevant facts which must have been within his knowledge. The High Court held that that direction was appropriate.

30 In this case, the applicant did give evidence, as did the accused in *Baden-Clay*. However the principle discussed in *Weissensteiner* is relevant because he chose not to give evidence as to the true cause of death when that was solely within his knowledge. In *Weissensteiner*, Mason CJ, Deane and Dawson JJ said the following, at 227-228:

> " … in a criminal trial, hypotheses consistent with innocence may cease to be rational or reasonable in the absence of evidence to support them when that evidence, if it exists at all, must be within the knowledge of the accused."

31 That passage was cited with approval by the High Court in *Baden-Clay* at [50]. In deciding whether a rational hypothesis exists consistent with the applicant's crime having amounted to manslaughter and not murder, any such hypothesis can be more readily rejected on the basis that the applicant did not give evidence as to what truly happened.

Was the verdict unreasonable?

32 By virtue of the second limb of s 157(1)(c) of the *Criminal Code*, the crime of murder can be committed by means of any unlawful act which the offender ought to have known to be likely to cause death in the circumstances, even if that offender did not wish to cause death or bodily harm. The evidence of the blood of the deceased found in the unit strongly supported inferences that that blood must have come from wounds to the deceased caused by the applicant, and that the applicant ought to have known that such wounds would be likely to cause death. The greater the amount of blood spilt, and the wider the distribution of spilt blood, the less reasonable any hypothesis consistent with manslaughter becomes. The evidence that the applicant cut off the dead man's head and threw it into the Mersey River tends to support an inference that he must have inflicted one or more fatal injuries to the man's head. Indeed he gave evidence that there were two wounds to the man's head, and implied that one of those wounds (though not inflicted by him) had been the fatal one. One can infer that he feared that he would be more likely to be found guilty of murder if the police found the head than if it was alleged that he had cut off the head and got rid of it.

33 The evidence of the deceased's defensive injury and the evidence of the hole in the kitchen wall tended to indicate the extent of the violence that had led up to the death of the deceased.

34 The evidence as to the post-offence conduct was extraordinary. The lengths that the applicant went to in disposing of the carpet, underlay, couch, table, chairs and head compel an inference that his conduct towards the deceased must have involved a level of violence such that he either knew or ought to have known that his acts were likely to cause death in the circumstances. That inference is strengthened by the evidence of callousness in his post-offence conduct, particularly his living rent-free in the deceased's unit, at the scene of the crime, for nearly three months, stealing and disposing of his property, telling lies about his disappearance, and denigrating him.

35 Having regard to the whole of the evidence, particularly the evidence as to the state of the deceased's unit, the defensive injury, and the applicant's post-offence conduct, it was clearly open to the jury to be satisfied beyond reasonable doubt that the applicant was guilty of murder, if only on the basis of the second limb of s 157(1)(c). The only reasonable inference to be drawn from the whole of the evidence is that applicant killed the deceased by means of an unlawful act that he knew or ought to have known to be likely to cause death in the circumstances.

Conclusion

36 For these reasons I would grant leave to appeal, but dismiss the appeal.

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DARREN WARD GALE v STATE OF TASMANIA

REASONS FOR JUDGMENT **COURT OF CRIMINAL APPEAL**
BRETT J
13 May 2024

37 I agree with the Chief Justice, and would join in the orders proposed by his Honour.

DARREN WARD GALE v STATE OF TASMANIA

REASONS FOR JUDGMENT **COURT OF CRIMINAL APPEAL**
JAGO J
13 May 2024

38 I agree with the Chief Justice and join in the order dismissing the appeal.