SUPREME COURT OF QUEENSLAND

CITATION:	*R v Coughlan* [2019] QCA 65
PARTIES:	**R** **v** **COUGHLAN, Eamonn Charles** (appellant)
FILE NO/S:	CA No 152 of 2018 DC No 1125 of 2017
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	District Court at Brisbane – Date of Conviction: 6 June 2018 (Clare SC DCJ)
DELIVERED ON:	16 April 2019
DELIVERED AT:	Brisbane
HEARING DATE:	12 November 2018
JUDGES:	Fraser and Morrison JJA and Mullins J
ORDER:	**The appeal is dismissed.**
CATCHWORDS:	CRIMINAL LAW – PARTICULAR OFFENCES – PROPERTY OFFENCES – ARSON AND LIKE OFFENCES – GENERALLY – where the appellant has been convicted of arson and attempted fraud arising out of the destruction of his house and a resultant claim on his insurance policy – where the appellant contends he was not the person that set the fire – where the appellant claims that someone outside his house was screaming at him at the time of the fire – whether or not there is a reasonable hypothesis consistent with innocence CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the appellant contends that there was evidence of another man running from the house, who could have been the arsonist – where the appellant contends that there was evidence that the appellant was being chased, which explained why he ran away from the scene – where there were others at the scene who could not be excluded as having set the fire – where it is contended the scientific evidence did not exclude sources of ignition inconsistent with the appellant setting the fire – where it is submitted that the scientific evidence could not exclude that the presence of petrol residue on the appellant's shoes and tracksuit pants was the result of cross-contamination – where the presence of a redhead match suggested corruption of the

investigation process – whether there is an inference consistent with innocence reasonably open on the evidence

CRIMINAL LAW – APPEAL AND NEW TRIAL – OBJECTIONS OR POINTS NOT RAISED IN COURT BELOW – IMPROPER ADMISSION OR REJECTION OF EVIDENCE – GENERAL PRINCIPLES – where the appellant contends that he was denied a fair trial because of the failure by the prosecution to disclose two reports of an investigation police officer until such time as that officer had completed his evidence and departed for overseas – where the appellant submits that the prosecutor failed to disclose the identity of a number of youths who were at the scene of the car arson that occurred prior to the arson of the appellant's house – whether the undisclosed material might have influenced the result of the trial

CRIMINAL LAW – APPEAL AND NEW TRIAL – MISCARRIAGE OF JUSTICE – PARTICULAR CIRCUMSTANCES NOT AMOUNTING TO MISCARRIAGE – MISDIRECTION OR NON-DIRECTION – where the appellant contends that the failure to give a direction pursuant to s 21A(8) of the *Evidence Act* 1977 (Qld), in respect the evidence of a child witness, constituted a substantial miscarriage of justice – where failure to give the appropriate direction constitutes an error of law which renders the trial irregular – where that failure does not necessarily give rise to a miscarriage of justice – whether or not the failure is capable of giving rise to an inference adverse to the appellant

Evidence Act 1977 (Qld), s 21A(2), s 21A(8)

Barca v The Queen (1975) 133 CLR 82; [1975] HCA 42, followed
M v The Queen (1994) 181 CLR 487; [1994] HCA 63, cited
R v Baden-Clay (2016) 258 CLR 308; [2016] HCA 35, followed
R v PBA [2018] QCA 213, cited
SKA v The Queen (2011) 243 CLR 400; [2011] HCA 13, cited

COUNSEL: D O'Gorman SC, with D Wells, for the appellant
M Hynes for the respondent

SOLICITORS: Moreton Bay Regional Community Legal Service for the appellant
Director of Public Prosecutions (Queensland) for the respondent

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

[2] **MORRISON JA:** Between about 5.00 pm and 6.00 pm on Saturday, 18 July 2015, the appellant was waiting outside his house at Bribie Island. He was renovating that house, which was not where he lived. He said he had been waiting to see a man he

had met only once three days before, who had expressed an interest in buying a motorbike the appellant was selling for someone else. The motorbike was parked some distance away, around the corner and out of sight.

[3] The buyer did not show up. As the appellant walked to the front of the house it exploded and burned. The explosion was so strong it blew out aluminium panels, which landed about 20 metres away. The house was destroyed.

[4] The appellant was close enough to be burned on his left hand, back and face. He immediately ran off down the road, past a number of people. Two of those people were at or near the front gate of the next-door neighbour. He then rode the motorbike away, off Bribie Island.

[5] At 7.45 pm police spoke to the appellant's wife. The appellant was not home and his wife could not contact him. Shortly after 9.00 pm that same night, the appellant arrived on the motorbike at the Caboolture Police Station. No-one had seen him in the interim. He was distressed, injured with burns, and had burnt clothing and shoes. Later that night he was interviewed by police.

[6] He was charged with arson and attempted fraud arising out of the destruction of his house and a resultant claim on his insurance policy. After a trial (at which the appellant represented himself) he was convicted on both counts. He challenges those convictions on this appeal.

[7] The amended notice of appeal lists that grounds sought to be agitated:

(a) Ground 1: the verdicts of guilty are unreasonable and cannot be supported having regard to the evidence;

(b) Ground 2: an hypothesis advanced by the appellant was not excluded, namely someone other than the appellant caused the appellant's home to explode;

(c) Ground 3: the appellant was denied a fair trial by the failure of the prosecution to disclose:

i. a report of Officer Bioletti dated 19 August 2017 and a related report until after Officer Bioletti had completed his evidence and departed for overseas;

ii. the identity of a number of youths who were at the scene of the car arson in the vicinity of 62 First Avenue, Bongaree on 12 April 2015; and

(d) Ground 4: the trial judge failed to properly direct the jury in accordance with ss 21A(2) and (8) and s 39PC of the *Evidence Act* 1977 (Qld).

[8] At the hearing of the appeal the ground relying on s 39PC of the *Evidence Act* was abandoned.

[9] In the way in which the appeal was conducted Grounds 1 and 2 became a combined ground, namely that the basis upon which it was said that the verdicts were unreasonable and cannot be supported having regard to the evidence, was because an hypothesis advanced by the appellant was not excluded.

[10] The car arson referred to in Ground 3 is the shorthand description of the incident on 12 April 2015 outside the appellant's house at Bongaree in which his car was

destroyed by fire and for which he received a payout from NRMA Insurance of $85,000. The appellant caused the evidence relating to the car arson to be adduced at the trial in the course of his cross-examination of witnesses.

Factual matters

[11] Because of the various issues raised on appeal by the appellant it is necessary to examine the whole of the evidence at the trial,[1] not just that concerning the alternative hypothesis. That may have been required in any event,[2] but some matters raised were peripheral to the contentions concerning the alternative hypothesis.[3] The schedule attached to these reasons will facilitate a better appreciation of the evidence.

[12] Many matters that I shall deal with were the product of the appellant's representing himself at the trial, and the issues he pursued, especially as to what he repeatedly described[4] as corrupt practices or persecution by the investigating police officers and other police.

Witnesses who were near the house

[13] There were a number of witnesses who happened to be near the appellant's house and saw him run away after the explosion.

[14] The first set was two friends who drove to the house next door and were there when the house exploded and burned. They were Kye Patruno and Jack Dyke. They drove there with Jessie Drayton[5] and Jake Long. Long and Drayton did not provide statements to police, because they had moved interstate, though Long was willing to do so.

[15] Then there were two friends, Amy Freeman and Jasmine Trindall who were on the street and saw a man running away. Then the neighbours, Azure Blakers, Dayna Spann and Liam Harwood.

[16] There were 24 police witnesses, many of them called to testify about the investigation. Of those 24, three were scientific officers, and another eight were made available for cross-examination.

[17] Finally, there was a witness from the insurer (NRMA), a doctor and a witness from the Queensland Fire Service as to the cause and origin of the fire.

Evidence of Patruno

[18] Patruno said that in July 2015 he was living with his mother, next door to the appellant's house. On the day of the explosion he and some mates[6] had been planning to go camping. They gathered camping equipment from Dyke's house then went to Patruno's house to gather some more. At that house Patruno got out with Drayton, but Dyke and Long waited in the car as they were not needed to gather the camping things.[7]

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1 For ease of reference, and without intending any disrespect to any witness, to the extent possible I intend to refer to witnesses by their surnames.

2 *SKA v The Queen* (2011) 243 CLR 400 at [20]-[22]; [2011] HCA 13; *M v The Queen* (1994) 181 CLR 487 at 493-494; *R v Baden-Clay* (2016) 258 CLR 308 at [65]-[66]; [2016] HCA 35.

3 For example, some of the criticism of the disclosure by the prosecution.

4 Both in front of the jury and in his interviews which were played to the jury.

5 Who also used the surname "McDougall". He was referred to in the evidence by both surnames; I intend to use "Drayton" unless the circumstances require otherwise.

6 Drayton, Long and Dyke.

7 Appeal Book (**AB**) 62.

[19] The car was a silver Subaru station wagon.[8]

[20] As they walked to the gate Patruno noticed there was a strong smell of petrol.[9] As he walked inside the smell got less. While in his room he heard a "smash of glass which was followed by … almost instantaneously an explosion that was followed by a shockwave that actually … had a bit of force behind us … pushing us away from the house that was on fire".[10] Within a matter of 20-30 seconds they ran outside, saw the fire and ran out onto the nature strip, just in front of the fence, to ask if anyone was in there. He walked as close as he could to the fire and called out something like "Is anybody OK? Is anyone in there?" He waited for a few minutes. He could not hear or see anyone from the front of the property so he joined his friends who were still in the car, Dyke in the front and Long in the back.

[21] After those in the car said something to him he looked around and saw a dark shadowy figure running away.[11] He could not give a description of the person running.[12] Later in cross-examination Patruno rejected the suggestion that he was wrong about seeing the person run off.[13] Some other people started to turn up.

[22] He could not recall any other cars parked in the street. He did not hear anyone yelling out.[14] He made sure emergency services had been called before leaving to go camping, and thought that the fire services had arrived before he left.[15]

[23] In cross-examination Patruno said he was close enough to the house that it "was almost burning me";[16] he accepted that was about eight metres away.[17] He described his position:[18]

> "I saw a house on fire so I ran up as quickly as I could to whatever position was safe for me … until I felt the flames were too hot for me."

[24] When Patruno and his friends left they went to see if they could find the person they saw running off, but they did not see him.[19] He said they saw no-one, and "…we went around the blocks in Bongaree before we realised that we don't really know what we're going to do if we do find him and we need to get on with organising the rest of the night because we have other people we had to contact and other things to pick up and whatnot".[20]

[25] Cross-examination touched upon the contact Patruno had with Officer Weare.[21] He said he did not like Bribie Police.[22] Patruno accepted that his statement to police was given about two years and four months after the fire.[23] He then explained why it took so long:[24]

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8 AB 68 line 2.
9 AB 62 lines 32-37, AB 65 line 35.
10 AB 62 line 46 to AB 63 line 2; AB 72 line 33.
11 AB 64 lines 19-26; AB 114 lines 5-9.
12 AB 68 line 12.
13 AB 114 line 32 to 115 line 8.
14 AB 69 line 27.
15 AB 69 lines 38-45.
16 AB 73 line 34.
17 AB 78 line 18.
18 AB 76 lines 5-9.
19 AB 113 lines 21-29.
20 AB 117 lines 22-27.
21 AB 79-81. Weare was the investigating officer.
22 AB 82 line 12.
23 AB 81 line 33.
24 AB 82 lines 27-33.

> "Because I was … under the impression that Detective Ben Weare was a part of the Bribie Island police. And, because of my personal issues with the Bribie Island police, I did not want to be, really, a part of it. Also, the fact that if somebody is capable of setting somebody's house on fire, I was scared for my own life at the same time and did not want to get involved. And I didn't want to bring my mum into it, because she has very high stress levels when it comes to danger like that."

[26] Patruno then accepted that it was when he realised that Weare was not part of Bribie Police that he decided to give a statement, and also "when [Weare] stated that it was a very important thing for him … to gather witnesses".[25] It was Patruno's mother who convinced him to give a statement.[26]

[27] He said that Weare had told him that the appellant was accusing him of the arson.[27] The cross-examination was then directed to what Patruno had been told before he gave his statement. Patruno said "that statement was all me",[28] and "I was just worried about my mum".[29]

[28] Although Patruno accepted that Weare had told him he "could be possibly accused as a suspect", he could not recall when that was, but it was after he gave his statement.[30] He said Weare made no promises to him about not being charged.[31]

[29] Patruno rejected the appellant's suggestions that he was a liar in his evidence.[32] He agreed that at a previous trial he had answered a question as to whether Weare was protecting Patruno: "I'm not sure about protecting, but he's just trying to make sure that we are safe and nothing happens to us." He explained he was referring to himself and his mother.[33]

[30] Patruno agreed that he had previously spoken to Channel 7 TV and suggested that the explosion may have been triggered by a Molotov cocktail. However, he explained, as he had done at the previous trial, that his comments were because of a game he had played, called Grand Theft Auto, in which part of the game is to start explosions with a Molotov cocktail, explosives, a sticky bomb or a grenade.[34] He later explained that he was asked for a theory about what happened and he gave that answer, but it was not something that he actually knew.[35] He mentioned a Molotov cocktail because, as he understood it, they were made out of glass and he had heard glass smashing.[36]

[31] Patruno rejected the proposition that he said to other people "Don't say I was here".[37] He said that the three[38] who accompanied him to his house were the only ones with

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25 AB 83 line 11.
26 AB 85 lines 28-36; AB 108 line 30 to AB 109 line 14.
27 AB 83 line 46 to AB 84 line 9.
28 AB 84 line 46.
29 AB 85 line 2.
30 AB 85 lines 5-13.
31 AB 85 line 23, AB 87 line 32.
32 AB 86 lines 1-5.
33 AB 86 line 40 to AB 87 line 8.
34 AB 88 line 37 to AB 89 line 22.
35 AB 132 lines 35-46.
36 AB 133 line 28.
37 AB 92 lines 1-6.
38 Drayton, Long and Dyke.

him, until people from up the street began arriving.[39] He could recall recognising some of those who arrived, such as Trindall, and the neighbours from two doors down, the Blakers.

[32] Patruno said he first spoke to uniformed Police Officers the next day after the fire, or the day after that. He could not recall what they asked, but simply answered their questions.[40] He said he was not questioned as a suspect, and was not surprised that that was the case.[41]

[33] Patruno was cross-examined about his being able to smell petrol and it was suggested (but not accepted) that the wind was in the direction away from his mother's house. He answered that it "Must have been a shitload of petrol".[42] He later rejected the suggestion that he was lying about smelling petrol.[43]

[34] A number of questions were put to Patruno about his house being known as a drug house, all of which were denied.[44] He was cross-examined about his criminal history and said he had only ever been to court once,[45] for offences of possession and supply of dangerous drugs.[46] No conviction was recorded and he was fined $1,000.[47]

[35] Patruno said he was sure he and his friends left before the police arrived.[48] He said he knew they were coming, he did not have to wait and he had other things to do.[49]

[36] Cross-examination turned to the arson on the appellant's car, three months before the house fire.[50] Patruno said that night he was with Drayton and a girl called Janaya Lauren. They had been down at the waterfront. He denied various suggestions put to him including that he went to get petrol and set fire to the car.[51] He also said that there had not been violent attacks or break-ins at or close to his home.[52]

[37] Cross-examination turned to whom Patruno had spoken prior to the trial. He said he had spoken to Long via the internet prior to the previous trial,[53] but not to Drayton because he could not get in contact with him.[54] He said part of the reason for that was because Drayton was a bad alcoholic who was a violent drunk and had anxiety attacks. Drayton had been drinking the night of the fire.[55]

[38] Patruno said that he assumed, but did not know as a fact, that people went into the bush opposite the houses owned by the appellant and Patruno's mother, to drink alcohol and smoke drugs.[56]

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39 AB 92 lines 28-36.
40 AB 93 lines 25-41.
41 AB 94 lines 6-26.
42 AB 95 lines 1-14.
43 AB 100 lines 21-38.
44 AB 95 line 38 to AB 97 line 7.
45 AB 97 line 35.
46 AB 98 line 8 to AB 99 line 46.
47 AB 100 lines 1-5.
48 AB 101 lines 6-7.
49 AB 101 line 21.
50 AB 102-103.
51 AB 128 line 37.
52 AB 128 lines 42-46.
53 The previous trial was in November 2017.
54 AB 107 lines 25-45.
55 AB 107 line 45 to AB 108 line 11.
56 AB 111 line 28 to AB 113 line 42.

[39] As to the events on the night of the fire Patruno said that Drayton stayed with him the whole time, and Dyke and Long stayed in the car.[57] He could not recall seeing anyone around the house.[58] He did not notice any other cars outside, but accepted it was possible that he did not see one.[59]

Evidence of Dyke

[40] Dyke said that he, Patruno, Drayton and Long drove to Patruno's house in a silver Subaru Liberty wagon. He and Long remained in the car while Patruno and Drayton went inside to grab some things. The car windows were down. Dyke asked Long if he could smell petrol, and Long agreed. A little bit later he "just felt … or heard this big bang". He looked around and the house was on fire. They got out and had a look around. He told Long to call the fire brigade.[60]

[41] Dyke started walking to the front gate. Someone came running out. Dyke "stopped to see if he was all right, asked if he was okay". He ran straight past him and "then he just kept running, so I just left him".[61] He described the man, what he saw, and what happened:[62]

> "And what were your observations of that person?---Grey stubble. Like, short – like, a unshaved beard sort of thing. He looked older – a bit older, and he had a grey hoodie on with jeans, I think, and a backpack.
>
> Okay. Did you say anything to that person?---I just asked, "Are you okay" and, like [indistinct] "Are you okay? What's happened?" And then he just kept walking. He didn't look up at me or anything.
>
> Okay. So you said he was walking?---Yeah, quick paced walking out.
>
> Okay. Did you see anyone else at the property at that time?---Not at the property.
>
> Okay. So after you saw that person, where did he go?---He walked past me towards this way, like, towards the corner.
>
> Yep?---And then once he got a bit further past, he started to speed up, and I stopped looking. I didn't chase him or anything …
>
> …
>
> So when he – you saw him, did you turn around and see where he went?---Nah, once he went past me and ignored me I just kept looking at the house."

[42] Dyke said they returned to the car. He was not aware of other cars parked in front of the houses, nor driving along. He did not hear any yelling. People were gathering in front of the house.[63]

[43] Dyke said they were there about 15 minutes. They left before the fire brigade arrived but he knew they were on their way. They then went camping.[64]

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57 AB 115 lines 13-21.
58 AB 115 lines 23-34.
59 AB 115 line 45 to AB 116 line 8.
60 AB 138-139.
61 AB 139 lines 25-42.
62 AB 140 lines 7-37.
63 AB 141.
64 AB 142.

[44] In cross-examination he was taken to his statement which said that it was Long who first commented on the petrol smell, but that Dyke smelt petrol. Dyke said that could not now recall who made the comment first as it was three years ago.[65]

[45] He said that when they left they drove to the waterfront and then on to the camping area. They did not go anywhere else and did not look for the person who was running.[66]

[46] Dyke agreed that he described in his statement what he felt after smelling the petrol: "It felt like a big gust of wind going by. It was so strong that it actually pushed my head forward, and I didn't – but didn't throw my head forward violently or hurt."[67] He tried to explain that it "wasn't force or anything like that … It was more of a push".[68]

[47] Dyke said that after they returned from camping his mother said he should speak to police, so he did of his own accord, about two or three days later.[69] He gave his statement to Weare.

[48] Dyke said he was still in the car when he turned around and saw the house on fire. There were flames coming out of the house and bits of the house falling onto the ground.[70] He saw a man coming out of the front gate and he walked right past Dyke.[71]

[49] Dyke said that before arriving at Patruno's house the four friends had been at a skate park.[72] He was asked about the route taken when they drove away, which he said was to the end of the jetty road then towards Red Beach. He said they were not looking for anyone in particular, and not looking for the person seen to be running away.[73]

[50] Dyke accepted that there were "little details" that differed between his statement and the two occasions he gave evidence.[74] He did not agree that the differences were significant, for example precisely how far away from the boundary line he was, and precisely where he was when he saw the running man; also just who it was who smelt petrol first.[75] He reiterated that he saw the running man come out from the property, and as he walked over the man passed him close by, and Dyke asked him if he was okay. Dyke rejected the suggestion that whatever version of his evidence he gave, he was a liar.[76]

[51] Dyke rejected the suggestion that Weare had told him what the questions would be.[77] He then confirmed that it was his mother who prompted his going to be interviewed by the police, not some thought that his car registration number might be traced, or that he had been involved in criminal behaviour.[78]

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65 AB 142 lines 31-45.
66 AB 143 lines 17-26.
67 AB 143 lines 45-47.
68 AB 144 lines 1-7.
69 AB 144 lines 11-22.
70 AB 145 lines 11-16.
71 AB 145 line 27 to AB 146 line 2.
72 AB 215.
73 AB 215 line 35 to AB 216 line 2.
74 AB 216 lines 4-7.
75 AB 217-222.
76 AB 222 line 23.
77 AB 223 lines 1-9.
78 AB 225-226.

[52] Dyke agreed that his relations with Patruno had since collapsed and they now hated one another.[79]

[53] He confirmed that he saw Patruno and Drayton enter Patruno's house, and saw them come out the front gate.[80] After they went inside to get camping gear the next time Dyke saw them was when they were outside standing next to him.[81]

[54] Dyke accepted that it was possible there were other cars driving past as he was not looking out for them.[82]

[55] Dyke was cross-examined about his criminal history which, he said, was all for drugs.[83] All of it post-dated the fire.[84]

[56] In re-examination Dyke said that Weare had not told him what to say at all, nor did he suggest that Dyke change any content. The statement was given by Dyke telling him what happened, and Weare writing it down.[85]

Evidence of Trindall

[57] Trindall's evidence was in three forms: a recorded police interview,[86] a pre-recorded session on 30 November 2017 at the previous trial, and an appearance via closed circuit television during the present trial. All three were played for the jury.

[58] In her police interview Trindall (then 12 and a-half years old) said that she and Freeman had been at her grandmother's house and they left and were heading down to the jetty. They then heard "this big bang". She looked up and saw smoke and "heard little pops". They went to see what it was. She described seeing a "person that was running, he was wearing … everything black even the motorbike and he went and turned towards the jetty". She was "not sure if he turned in any streets 'cause we didn't look back after that … and we saw no number plates either". She said they stayed between 10 and 20 minutes and then headed down to the jetty.[87]

[59] She described the man: "I could only see like under his nose and down … he could've been wearing a black hoodie or a black hoodie and cap or just a cap" … But he definitely had long clothes on".[88] He "just kept running … he quickly got his motorbike and then he took off ...".[89] They were only about three metres from him.[90] She subsequently recalled that he also had a black bag, half on his arm.[91]

[60] She said that when they heard the bang they were at the kindergarten, which was about four minutes from where the fire was.[92]

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79 AB 226 lines 7-14.
80 AB 226 lines 30-35.
81 AB 228 line 3.
82 AB 229.
83 AB 231 line 27.
84 AB 231 line 22 to AB 232 line 2.
85 AB 232 lines 26-41.
86 Transcript at AB 965.
87 AB 967-968.
88 AB 969.
89 AB 969 line 56.
90 AB 970 lines 20-36. In her interview she demonstrated her estimate of a metre by using her outspread hands.
91 AB 974 lines 1-18.
92 AB 969 line 23.

[61] Asked to describe him further, she said he "had like a big jaw thing like his jaw was pretty bulgy … Amy saw that he had like an orangey-red beard". However, she did not see the beard.[93] She said that "all I pretty much remember 'cause it happened in a flash" was that "he was wearing black and him running".[94] She described the motorbike as not like a Harley. She said it had no numberplate.[95] Asked to describe it she said:[96]

> "It was just plain black. He hopped on it. We like looked behind to see if we could get the number plate number and … we saw the red light on it but there was no number plate at all like you know how it reflects? Yeah we saw nothing …".

[62] At the present trial Trindall confirmed the truth of what she had said on both previous occasions. In cross-examination she said she did not actually see the person getting on the bike.[97] At the scene of the fire her cousin (Ethan Spinks) and uncle (Mick Spinks) walked past going back to Trindall's grandmother's house.[98]

[63] Trindall was asked how long it took to get to the house on fire, and said:[99]

> "I was at my nan's and I heard this big bang. And I was, like, "Fireworks" and I ran down the street and I seen a person run towards the bike and then I seen this huge flame and big pile of smoke just, like, rising up."

[64] Asked in cross-examination to describe the man running away, Trindall said he had a darkish beard and "we thought he was wearing a beanie".[100] She was then asked to describe the beard:[101]

> "Yeah. What was the beard like? Describe the beard for me?---I don't know how to explain. It's probably – I don't know. Like, a goatee practically. Yeah. That's what we thought [indistinct]
>
> You're indicating – you're moving your hand – because obviously the – the video can't [indistinct] you're moving your hand to indicate a long – longer beard; is that fair? How many - - -?---Probably, like, to here.[102]
>
> Okay. So you're – I don't know, your Honour, if your Honour just watched. Can you just indicate that again.[103] Down to – no. Just a moment ago, you put your hand down – yeah. Okay?---Yeah.
>
> HER HONOUR: So down to about - - -
>
> MR COUGHLAN: So, okay, you're probably indicating about six inches.

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93 AB 970 lines 44-55.
94 AB 971 lines 9-11.
95 AB 974 line 45.
96 AB 974 lines 50-55.
97 AB 164 line 34.
98 AB 166 lines 1-6, AB 167 lines 3-4.
99 AB 169 lines 4-6.
100 AB 169 lines 16-22.
101 AB 169 lines 23-44.
102 At this point she held her hand under her chin, about one hand width down.
103 At this point she did so, using her thumb and index finger, about 75 mm apart, and from her chin.

HER HONOUR: Maybe longer. Down to about the chest.[104]

MR COUGHLAN: Down to the chest. So maybe - - -?---Yeah."

[65] Trindall said she was pretty confident the bike had no numberplate,[105] and confirmed what she had said previously that she could not see the reflection of a numberplate and thought it had probably been removed.[106]

[66] She was asked about the carpark next to the day care centre or kindergarten, and said she only saw "hardly any", "about four", cars there and only one motorbike.[107]

[67] She said she saw Patruno at the scene of the fire. He was carrying some pillows and getting into a white car which was parked on the grass at the front of the Patruno's house. The car then left. That was about 10 to 20 minutes after she arrived there.[108]

[68] The appellant cross-examined Trindall on her criminal history, which consisted of a number of Children's Court appearances in relation to drug offences, wilful damage, burglary, stealing, receiving tainted property and other offences of dishonesty. All the offences post-dated the house fire, and occurred when she was 14 to 14 and a-half years old.[109]

[69] Trindall's recorded evidence from the previous trial was played for the jury.[110] It was substantially the same as in the present trial. She also said: (i) she saw Patruno leaving in a car which had been parked at the front of his house, about 10 minutes after she got there; (ii) the carpark at the day care centre only had a couple of cars in it; (iii) the area around that car park was less visible than the area outside the houses at 60 and 62 First Avenue; and (iv) she had spoken to uniformed police at the fire.

Evidence of Freeman

[70] Freeman's evidence took the form of a pre-recorded police interview when she was 16, and oral evidence by video link at the trial.

[71] In the police interview Freeman said that she and Trindall were walking along a street when "we seen someone running and so we were confused … So we looked down right away and it was a house on fire. Thought it was fireworks at the start … and then we looked up and it was smoke". The man "jumped on a motorbike and … drove off down to the jetty way".[111] He was dressed in black.[112] He also had a black bag on his shoulder, which she described as like a Nike shoulder bag.[113]

[72] Freeman said she thought the man had a beard and the bike, which was black, did not have a numberplate.[114] Freeman described the bike as being like one that her family

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104 At this point she was holding her hand and indicating mid chest.
105 AB 170 lines 40-42.
106 AB 172 line 33 to AB 173 line 20.
107 AB 174 lines 16-26.
108 AB 174 lines 32-36, AB 176 lines 7-30.
109 AB 178-179.
110 Exhibit C. It was given on 30 November 2017.
111 AB 957 lines 45-60.
112 AB 958 line 32.
113 AB 960 line 23; AB 963 lines 36-45.
114 AB 960 lines 27-34.

owned, and which her mother called a "Ninja Bike".[115] Shortly after that she said she thought the man "looked like he had a beard", and was wearing a hoodie or a hat, and no gloves.[116]

[73] In her oral evidence at the trial Freeman confirmed the truth of what she had said in the interview.

[74] In cross-examination she was asked about the beard and said that "it wasn't a long beard, but it was a medium kind of just scruffy beard", a little less than 15 centimetres in length.[117] She said it wasn't stubble and she did not see its colour.[118] She confirmed that she looked at where the numberplate would be and did not see one.[119]

[75] She said that at the scene of the fire there were others around including some who were friends of Trindall.

Evidence of Spann

[76] Spann lived on the same street. She was just about to sit down for dinner with her parents and partner[120] when they were interrupted:[121]

> "I arrived home after work, just about to sit down for dinner, and I heard an explosion. So my first instance was to run outside, and to the right I seen the blaze of the fire up in the right, and then straight ahead of me I seen someone running in the distance in the dark.
>
> Okay. Could you describe that person?---It was really hard. It was really dark. All I could remember is just a tall guy, maybe in like a black leather, but my whole instance was to run, so I just did what I did, call out asking if everyone – if it was okay and, yeah, just straight away I ran straight to the house.
>
> When you called out, was there a response?---No.
>
> And did you see anyone else running at that time?---No, no."

[77] She got out of her house within about 10 seconds.[122] She saw the running man straight away, and watched him for about 15 or 20 seconds.[123] Then she ran to the house which was "pretty much incinerated". She saw two leather gloves on the ground, out at the front.[124] People gathered at the fire. She noticed only one car parked nearby and that was one which had some kids getting into it.[125] She stayed until the fire brigade arrived, but left before the police got there.

[78] In cross-examination she was asked about the car outside, which she described:[126]

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115 AB 961 lines 13-28.
116 AB 964 lines 16-23.
117 AB 187 lines 32-43.
118 AB 187 line 47 to AB 188 line 3.
119 AB 188 lines 5-12.
120 Harwood.
121 AB 197 lines 13-24.
122 AB 199 line 5.
123 AB 198 line 12, AB 199 line 8.
124 AB 198 lines 21-26.
125 AB 198 line 44.
126 AB 200 lines 31-34.

> "All I could notice was kids – they were all getting into a car, but all I could notice was a kid was complaining about – something about being – he couldn't believe this has happened, and he was still a little bit aggressive about it and got in the car with his friends and drove off."

[79] She said that the kids were about 18, and stayed about 10 to 20 minutes.[127]

[80] Spann said her house was about 200 metres away and she felt the explosion as a vibration through the timber floors.[128] She confirmed she called out the running man and he did not respond.

Evidence of Harwood

[81] Harwood was Spann's partner. His gave evidence as to what he experienced the night of the fire:[129]

> "Can you tell me what you were doing that evening?---I think it was about 6 o'clock that evening. We were just sitting around getting ready for dinner. I think we heard a loud explosion that pretty much shook the house. Dayna's father thought it may have been a gas bottle, so he quickly ran out back. Me and Dayna went out the front, and in the distance we could see, like, glowing from a fire. We then started to walk out towards the house. We saw someone running in the opposite direction of the house.
>
> Can you describe that person that you saw?---It was just a male figure. He looked like he had a jacket and pants like jeans and that on, but it was dark, so I couldn't really tell what colour or anything like that it was. I'm pretty sure Dayna yelled out something on the words of, "Are you okay? What's going on?" There was no reply. And then I proceeded – well, we both proceeded towards the direction of the house and, as I was walking that way, I was calling the – triple 0.
>
> When you saw the male person, did you see whether he was carrying anything?---Yeah, I think he had a backpack over his shoulder.
>
> And how far away would you have been from him when you first saw him?---I think it was probably about 20 to 30 metres away.
>
> And how long did you watch him for?---It would have been 30, 40 seconds, something like that."

[82] He could recall someone pointing out some gloves on the ground. He thought they stood at the fire for about 10 or 15 minutes.[130]

[83] Nothing of consequence arose out of his cross-examination.

Evidence of Blakers

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127 AB 200 lines 39-46.
128 AB 202 lines 1-6.
129 AB 206 lines 10-32.
130 AB 208 lines 3 and 25.

[84] Blakers lived on an adjoining property. At the time of the fire she was in high school. That night she described what occurred:[131]

> "Okay. Can you explain what happened that evening?---That evening, from what I recall, I was outside hanging washing out and I've walked back inside to go sit back down at the TV, and I've heard a massive loud bang and it felt like a – a tree had fallen on our house. I'd walked back out the back to see what it was, seeing the massive orange flame coming from up behind my yard and I've walked straight back out the front to my front yard to leave to see if it was Bee's[132] house, which was a friend of mine on the corner. And as I've run out my gate and up the street, I've seen a man jog across the top of our street, which is First Avenue, I believe.
>
> Yeah?---And he's run along. I assume it was a man because it was a man figure. He's run along the top of it and into a cul-de-sac that links up with Bonham Street. And I've seen a taillight and I've heard a motorbike or what I thought was a motorbike start up and drive off.
>
> Okay. Is that man you saw, are you able to describe what it is you saw?---Black beanie or black hat, black long sleeve shirt, black pants and it was like a glisten underneath his jawline, what I assumed to be stubble or a beard.
>
> Yeah. Were there any – was there any lighting in the area at that time?---There's an orange streetlight, I'm not too sure if it's still orange, but there's a streetlight at the end of the street that he's run or ducked underneath before going into the cul-de-sac.
>
> And how long did you see that person for?---Ten seconds, 10 to 15 seconds."

[85] By the time the fire brigade and ambulance arrived there were other people watching.[133] As she ran up her own street the First Avenue she spoke briefly to Patruno's mother.[134]

[86] In cross-examination Blakers said that she reached the house of Patruno's mother no more than about two minutes after the explosion.[135] She did not see Patruno or speak to him.

[87] She was asked why it was that her statement came two years and ten months after the fire. She said she had moved away from Bribie Island and had only just returned when Mrs Patruno prompted her to speak to the police.[136]

Evidence of the first responders

[88] Senior Constable Bird and Constable Golinski (attached to Bribie Island police station) were the first police officers on the scene. The fire brigade were already there.

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131 AB 579 lines 1-23.
132 A reference to Patruno's mother, Bianca Patruno.
133 AB 581.
134 AB 581 lines 10-34.
135 AB 582 line 29.
136 AB 584 lines 4-9.

[89] Bird said they received a call to attend the fire at about 6.19 pm and they were there at 6.32 pm. CCTV dash-cam from inside their vehicle recorded their journey to the fire. It captured images of a motorbike passing them at 6.25 pm on the Bribie Island Bridge.[137]

[90] When they arrived there was a crowd of people. Bird was directed to a pair of gloves on the ground. The gloves were separately bagged in clip seal bags and put into the police vehicle. Both officers took photos at the scene. They remained there until 8.30 pm. At about 7.10 pm other officers arrived,[138] and Weare at about 7.30 pm.

[91] Bird ascertained who owned the property. From that he got the appellant's address for his home, and rang the number linked to that address. He spoke to the appellant's wife, but was unable to speak to the appellant.[139]

[92] When Bird reviewed the dash-cam footage he captured the image of the motorbike crossing Bribie Island Bridge, but he could not identify it and so could not determine if it had anything to do with the fire.[140] The Moreton Bay Regional Council had CCTV on the bridge but he did not enquire of them as to obtaining that.[141] The motorbike on the police dash-cam was the only bike Bird saw when reviewing the footage.[142]

[93] Bird was cross-examined about whether he was told certain things by Weare at the previous trial.[143] He said that while he waited to give evidence on the previous occasion other officers were there. He could recall Weare, Harris and Driver being there from time to time.[144] He could not recall any conversation with Weare.[145]

[94] Golinski gave similar evidence as to arriving at the scene of the fire and being directed to some gloves on the ground. He spoke to Trindall and Freeman, a man called Houseman, Spann, Harwood and Mrs Patruno, noting their details and a brief version of events. At about 8.15 pm a line was formed and a search conducted from 60 First Avenue down to the child-care centre.

[95] In cross-examination Golinski said he did not know Patruno and had no dealings with him. On the way to the scene they passed a number of cars, but saw nothing suspicious. When he reviewed the dashcam footage he noted the motorbike and said he believed there was a car behind it. He agreed it was possible that the Council CCTV might have shown who was following the motorbike.[146]

Evidence of Officers Cole and Slater

[96] On the night of the fire Cole was stationed at Burpengary, and working with Senior Constable Slater. They were asked to attend the appellant's address at Narangba and inform them that their house at Bribie Island had burned down.[147] They went there

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137 Exhibit 14.
138 Scenes of Crime Officer Pankhurst, Senior Constable Hand and Senior Constable Seddon.
139 AB 243.
140 AB 248 lines 24-29.
141 AB 248 lines 33-45.
142 AB 249 lines 1-8.
143 AB 250-251, 257.
144 AB 257.
145 AB 251 lines 14-22; AB 252 lines 5-10; AB 257 lines 44 to AB 258 line 1.
146 AB 263.
147 AB 275.

about 7.30 pm and spoke to the appellant's wife for about 10 minutes. The appellant was not home. During the conversation Mrs Coughlan unsuccessfully attempted to contact the appellant. When they told her what had happened she seemed surprised and was shaking.[148] After that Cole had no further involvement. Slater's evidence was to the same effect.

[97] In cross-examination Cole said that when they told her she was distraught.[149] Slater had the conversation with Mrs Coughlan and asked if she owned the property at Bribie and whether she knew where the appellant was. Mrs Coughlan said the appellant was out with friends and that the house had just been renovated. She was surprised when the police arrived, then upset when told about the fire.[150]

[98] Cole was asked whether he had discussed his evidence with Weare, either last time or this time, and he said no.[151] He agreed that at the previous trial he described Mrs Coughlan as being upset and hard to understand in her answers.[152]

[99] In cross-examination Slater confirmed that he had been told about the appellant having made a complaint against Weare. He had been told that by Weare, after the previous trial. Slater was unsure where he was when he was told that, or who else was present. However, he said it "wasn't much of a conversation", but more of a "passing comment".[153]

Evidence of Caboolture police officers

[100] Several police officers from Caboolture police station were called as to the events on the night of the fire.

Evidence of Constable Pilgrim

[101] Pilgrim was stationed at Caboolture on the night of the fire. At about 9 pm the appellant arrived. He was agitated and his clothing was burnt. There was strong smell of burnt clothing.[154] Pilgrim spoke to Constable Burgess, and an ambulance was called. Acting Sergeant Harris and Burgess spoke to the appellant while Pilgrim was there.

[102] In cross-examination Pilgrim accepted that his statement was made nine months later.[155] He had not made any notebook entries and was not asked to make a statement until close to when it was done.

[103] Pilgrim accepted that the appellant was extremely scared and possibly in shock when at the station counter.[156] He agreed it was possible that the appellant arrived before 9 pm.[157] The appellant was taken to a room where his clothing was taken and placed in a bag, and the Queensland Ambulance Service officers attended.[158] Pilgrim came

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148 AB 276 line 16.
149 AB 277 line 9.
150 AB 278 line 24.
151 AB 280.
152 AB 282 lines 6-21.
153 AB 401 line 16.
154 AB 283.
155 AB 285 line 14.
156 AB 285 lines 39-44.
157 AB 286 line 42.
158 AB 288 lines 15-31.

and went from that room during that process. Harris placed the clothing into a bag.[159] Pilgrim did not place anything in that bag or another paper bag.[160]

[104] Pilgrim said he had not discussed his evidence with others at the previous trial or this one.[161]

Evidence of Senior Constable Burgess

[105] On the night of the fire Burgess was stationed at Caboolture. At about 9.11 pm Pilgrim made her aware that the appellant had presented himself. She looked at the time and made a note immediately after the ambulance took the appellant.[162] The appellant looked distressed, his clothing was torn in places and had ash on it, and he was burnt on the hand. The appellant showed that his back was burnt.[163]

[106] Burgess spoke to Harris and also by phone to Detective Eaton. The appellant was taken into a room by Harris and the ambulance officers. Burgess remained outside.

[107] In cross-examination Burgess was asked what the appellant said when she asked what had happened. She answered:[164]

> "You explained it to me that your house had been set alight and that you had been burnt after trying to sell a motor bike."

[108] Burgess accepted that the appellant may have said that someone tried to kill him.[165] She remained outside while the appellant's clothing was taken and she did not see what was in the bag.[166] She accepted that when exhibits are taken it is the normal practice to tape or staple the bag.[167] She said there was a property store at Caboolture police station where the bag of clothing could have been lodged.[168] She did not add anything to the bag,[169] and did not see anyone other than Harris deal with it.[170]

Evidence of Senior Constable Harris

[109] Harris was the shift supervisor at Caboolture on the night of the fire. He first saw the appellant when the appellant was with Burgess, and he had a bag and some clothes with him.[171] He was somewhat dishevelled and had a burn on his left hand. The appellant had a black backpack with him.[172] He seized the appellant's clothes and possessions.[173]

[110] Harris described what he did when he got the clothes:[174]

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159 AB 288 lines 42-47.
160 AB 289 line 1, AB 291.
161 AB 290.
162 AB 292-293, AB 299.
163 AB 293.
164 AB 295 line 24.
165 AB 295 line 37.
166 AB 296.
167 AB 297 lines 29-32.
168 AB 298.
169 AB 299 lines 36-46.
170 AB 300 line 1.
171 AB 302 lines 31-34.
172 AB 304 lines 42-46.
173 AB 303-304.
174 AB 304 lines 20-31.

> "Okay. So can you just explain what you saw and what you did when the clothing was removed from the defendant?---Certainly. So I had a fresh brown exhibit bag that I obtained from the station. I opened that up. I asked the defendant to remove – to the best of my recollection – to remove the property, and I had him place it into the bag. I didn't want to have too much – it's – generally my procedure, personal procedure is not to have too much contact with the property, and I was aware that it was going to be tested or it was required for testing, so I didn't want to contaminate anything. If I just hold the bag open, I'll get the defendant to place the items in.
>
> Okay?---And then I sealed the bag, so - - -
>
> Did you have any gloves on or anything at the time?---I don't believe I did, no."

[111] Harris said he did not search the backpack thoroughly but would have had the appellant open the backpack so that Harris could visually inspect the contents.[175] Everything was put in the paper bag, which had a property receipt that would have been stapled to the top.[176] The top of the bag was "scrunched up" … or folded", and then stapled.[177] The bag was then placed next to Harris' desk, and stayed with him until passed to detectives.[178] The bag remained in Harris' possession the whole time,[179] and remained in his sight.[180]

[112] Harris was asked if there was a reason why the bag was not lodged. He answered:[181]

> "Okay. Is there a reason why you didn't lodge it at the property point?---I wasn't the lodging officer. If it was my property and I was to lodge the property, there's different sealing procedures. But I was simply just sealing the property and maintaining – or holding the continuity of that until I handed it over to the investigator. And then they would do with it as they see fit and eventually lodge it. So - - -
>
> Okay. And all of that clothing was placed in the brown – that paper bag together?---That's correct.
>
> Yeah?---Yeah. Everything was. Yeah."

[113] The bag was handed to Detectives Harbers and Sowden in the form in which Harris had kept it.[182] Harris said it was not his job to lodge the property in the bag, but to hand it to the detectives when they arrived.[183]

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175 AB 305 lines 1-3.
176 AB 305 lines 8-21.
177 AB 306 line 21, AB 313 lines 10-15.
178 AB 306 lines 24-40.
179 AB 307 line 9.
180 AB 308 line 11.
181 AB 307 lines 11-21.
182 AB 307 line 41, AB 321 lines 17-23.
183 AB 323 lines 1-5.

[114] In cross-examination Harris said he did not believe he was wearing gloves.[184] The appellant put to Harris that he lied in giving his account that it was not Harris but rather the appellant who put the items in the paper bag. Harris responded:[185]

> "What do you say about that?---Well, look, all I can say is – give my evidence to the best of my recollection. And my recollection is I held that bag open. I had no reason to touch your property. My – the reason for seizing that property was for forensic analysis. And – but the last thing I want to do is contaminate it by handling it. If I'm seizing the property, I'll hold that bag open. And my recollection is that's exactly what I did, and I asked you to place those items – or you simply placed those items into the bag for me."

[115] Harris agreed that best practice would have been to seal the exhibit bag, and it could have been sealed better. However, his intention was that whatever was in the bag was not lost or misplaced. He said that "Nothing could've been taken from the bag. Look, I didn't have my eyes on it 100 per cent. It was next to me. … It was in my periphery. I certainly didn't leave the room. … The bag was always with me."[186] Harris said that the bag was "sealed fairly tight with staples". However, responding to a hypothetical scenario put by the appellant, namely that there was a corrupt police officer there, Harris accepted that in such a case it small item could be inserted between the staples:[187]

> "Yep?---The assertion that – well, the suggestion you put to me before that there is, hypothetically, out there, one bad apple, one corrupt police officer; if they wanted to place a match in that bag, if I was momentarily distracted by looking away, of course that's a possibility. That's something that could occur.
>
> Yep?---There is a gap there.
>
> And can I just – well, I say to you, officer, I'm not suggesting someone did put petrol in the bag?---Yep.
>
> I'm just saying they could put something small, something of a small nature?---That's correct, yep."

[116] Harris denied that he had not dealt with the appellant's property in the best way possible:[188]

> "… Do you accept that you never dealt with the property in the best way possible?---No, I reject that. I'll just clarify, that room that we referred to, the key, is a room where property that is lodged is stored for safekeeping. I wasn't lodging the property. The property that goes in that room must be lodged against our system with a barcode. The key I refer to is not a key that I retain on my person. It goes into a drawer which everyone has access to. The property in that room would be accessible by any police officer in the entire Moreton district. If they come to the station, they get access to that key. The extra work I refer to would be walking down a set of stairs to put the

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184 AB 310 lines 16-19.
185 AB 310 lines 34-40.
186 AB 319, AB 321 lines 32-37.
187 AB 321 lines 4-15.
188 AB 334 lines 13-27.

> property in that room, putting the key back in the property – in the property drawer. And then, when detectives turn up a short time later, having to get that key back out, walk back down the stairs and get the property. I knew police were coming. I knew they weren't far off and I knew they were coming to see me. It made no sense to put that property or lodge it – I retained that with me. And, shortly after, when they arrived at the station, I handed that property over."

[117] The appellant sought to put to Harris that his injuries meant he was physically incapable of putting his clothes into the bag, to which Harris responded:[189]

> "HER HONOUR: All right. What do you say about that? --- Look … all I can recall, sir, is that I was in that doorway and then I had you present your property and hand it to me. Now, … I don't recall if there was some extraordinary way that you had to contort your body to get that property off, but, to the best of my recollection, sir, is there was nothing that stood out. You had ridden to the station on a motorcycle. So, obviously, there was some ability to contort your body and move and lean, for that process. And, to the best of my recollection at the time of seizing that property, you were able to remove that property without any help or hindrance. But, again … that's my recollection, sir.
>
> Sorry. When you say it's the best of your recollection, does - - -?---Yes, your Honour.
>
> - - - mean that you couldn't rule – you wouldn't rule out the possibility that you helped Mr Coughlan?---No. I certainly didn't help Mr Coughlan. But, whether he had to move into that room to sit down onto a chair, that may have been the case. But I didn't help the defendant, no.
>
> So – all right. So … you say definitively that you did not touch the clothing or assist him in any way. Is that your evidence?---That's correct, yes, your Honour.
>
> All right. It's not the best of your recollection; it is your certain evidence. Is that what you're saying?---Look, I can't recall, your Honour.
>
> All right. So you're not certain?---Not certain, no."

[118] Harris denied that he had emptied the rucksack onto the table then written down the items before putting them back into the bag.[190] The appellant put to Harris that he was a liar for denying that he had emptied the items onto the table,[191] and Harris disagreed. Harris agreed that the appellant voluntarily handed over his clothes, and that he was very helpful.[192] He also agreed that there were CCTV cameras at the station and had the appellant's arrival time been disputed early enough they could have been checked to verify the time; but he had not been asked to do that.[193]

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189 AB 311 line 37 to AB 312 line 16.
190 AB 314 line 30 to AB 315 line 19; AB 351 lines 1-8.
191 AB 315 line 18.
192 AB 317 lines 30-40.
193 AB 318 lines 31-44.

[119] Harris agreed that there was no mention of a red-head match in his notes, the field property receipt or the audio recording.[194] He denied that he put the match in there.[195] He was cross-examined as to evidence he had previously given on the topic of the match:[196]

> "And then you go on to say unless – no, I'll read it so that:
>
> > *No, look, unless that was in a pocket or some concealed space within the clothing and it's fallen out. Look, I don't know. What I will say, however, is that no other person had access to the bag. It was under my constant observation, next to my right leg, for the entire of the period of time from when it was seized – to you – to when I handed it to the detectives. I can assure you with 100 degree – per cent certainty that no one opened that bag and no one had access to it after I seized it from you.*
>
> Did you say that?---Yes.
>
> And you accept today that you may have been distracted and someone, if there was a bad apple, could have gone past that bag?---Well, it's a possibility."

[120] The cross-examination continued with Harris' evidence at the previous trial, to the point when the previous trial adjourned for the day, at which point Harris agreed that the then trial judge had told him not to discuss his evidence with anyone.[197] The warning was repeated several times the next morning.[198] Later Harris was reminded of the evidence he gave at the previous trial, that when he and Weare were walking out of the courthouse after Harris' evidence was concluded, but when Weare's evidence had not commenced, Harris said something about the presence of the match:[199]

> "You said:
>
> > *I just shook my head and I said, "I can't believe", obviously – I don't entirely remember. I remember saying words to the effect, "I can't believe there's a match."*
>
> Is that correct?---Yes.
>
> Okay. Officer, do you accept that you've been given four warnings not to discuss evidence?---Well, I was [indistinct] to discuss my evidence, yes.
>
> And do you accept that you did discuss your evidence?---No, I do not accept that. I – there was no discussion. I – the comment that I made was off the cuff. It was directly relating to a meeting that myself and two detectives were in with the prosecutor. As soon as I left that meeting, I walked out the front of the courtroom and I made a comment that related to the conversations in that meeting. Ben made

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194 AB 313 line 39 to AB 314 line 2.
195 AB 349 line 28.
196 AB 326 lines 34-46.
197 AB 332 lines 6-14.
198 AB 332 lines 30-44.
199 AB 342 lines 6-23.

no comment or reply. It was off the cuff. If that was wrong, I apologise, but at no time, as I said, have I discussed my evidence."

[121] The appellant then went into the previous evidence further, at the insistence of the prosecutor:[200]

"[APPELLANT]: Okay. Sorry:

I can't believe there's a match or something like that. I shook my head. I don't even know whether I said –

Indistinct – "I said" – and then it's got "indistinct", because the typist can't pick it up. Said:

[indistinct] in his presence, but as I'm walking, but that – that was it. It was literally about two or three words. So, those two or three words, officer, were given and discussed during evidence, while you were giving evidence yesterday, weren't they [indistinct] That subject was discussed while you were giving evidence?---Yeah.

Yes. I'm asking you?---Yes.

Was the subject of the match discussed while you were giving evidence yesterday?---I don't recall if the actual match was discussed yesterday, specifically.

Do you recall now that it was discussed specifically and you were advised not to discuss the evidence?---Yeah, I was advised not to discuss the evidence, yes.

All right. Okay. You went on to say afterwards:

I merely – it was kind of an accident.

Is that correct?---Yes.

So you're saying it wasn't intentional, but it just happened?---Certainly not. It was just an off the cuff comment of surprise as I left the meeting. That's right."

[122] Harris agreed that he took responsibility for the fact that he mentioned the match, and said that Weare had not prompted it: "Certainly not, no." Harris rejected the proposition that there was any impropriety in his comment, explaining that it was an "off the cuff comment" and not discussing his evidence:[201]

"Okay. I then asked you – and I'll just summarise it, if you want me to. I then say:

Do you think that's in appropriate what you did?

And you said no, you didn't think it was inappropriate; is that correct?---Yes, like I said, my interpretation was I was – it was an off the cuff comment directly relating to the conversation that he had been part of in the office. I didn't believe I was discussing my evidence, but, like

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200 AB 343 lines 12-42.
201 AB 344.

> I said, if I was misguided, I apologise. That certainly wasn't my intention, so - - -
>
> Okay. Did you discuss any other evidence with Officer Weare?---No, certainly not.
>
> Okay. And, up to coming into court today, was there any other inappropriate, or what someone else might consider inappropriate, conversations between you and Officer Weare?---No, certainly not.
>
> Or other witnesses in this case?---No, certainly not."

[123] Harris was then cross-examined about a conversation during the previous trial, at the conclusion of day 4 in a room in the courthouse prior to his leaving. He said that the then prosecutor's female instructing clerk was present, as was Weare, Detective Bioletti and himself, but not the prosecutor, Mr Green.[202] He related what was said:[203]

> "… So, the court was finished for the day. The three of us – sorry, four of us were in that room. And I believe Detective Weare was speaking with her in relation to the general progress of the trial – where we're at, what's happening. We finished those sort of conversations, and then the female made comment that – to Weare that there's been an allegation of – that you were alleging that a match has been placed into the bag. I didn't contribute to that conversation, but I was within earshot, in that room when it was made, the comment was made, so it shocked me."

[124] Harris also agreed that the female clerk had said something along the lines of wanting to know:[204]

> "… the witnesses that needed to be recalled, namely Harris, Pankhurst and Sowden. This included the reason why, which was the allegation put forward by the defendant that evidence was not sealed properly and that, somehow, an officer placed a single match inside, and this was to explain why the certain witnesses were needed. We, as in [the prosecutor] and I, both accepted that the story was ridiculous and that we understood the inconvenience that this was causing to all the officers."

[125] Harris maintained that Green was not present during that conversation.

[126] In re-examination Harris said that the seizing of the appellant's property had been electronically recorded, starting halfway through that process. That recording was then played to the jury, and made Exhibit 19. On it the voices of Harris, Pilgrim and Burgess could be heard from time to time, describing the property.

[127] I have listened carefully to Exhibit 19. It records Harris saying that the clothing and motorbike would be seized, and then saying to the appellant: "So what I'll do is **I'll get you to place … your black t-shirt into the paper bag we've got there**."[205] Then, shortly after, it records Harris asking the appellant to hold onto the backpack, and the appellant then explaining to Harris what was in the backpack: "It's got car

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202 AB 344-345.
203 AB 346 lines 4-11.
204 AB 347 lines 25-40.
205 Emphasis added.

keys in it, mate. … Yep, **they're my car keys, house keys, glasses**." It seems plain from the recording that the appellant had the backpack open at that point.

Evidence of Senior Constable Harbers

[128] Harbers was the police officer who collected the bag containing the appellant's property from the Caboolture Police Station. He arrived at about 9.55 pm. Harris gave him the bag "which was sealed".[206] He went into another room and opened the bag with Senior Constable Pankhurst, so that Pankhurst could examine each item. Harbers removed each item,[207] and each one was repackaged in individual bags.[208] The clothing was taken by the Scenes of Crime Officer (Pankhurst).[209]

[129] In cross-examination Harbers said that it was he who removed the backpack; he said he had put in his statement that it was he who removed the backpack, but that "if there's a photo, that should show who's removed the backpack".[210] When he eventually looked in it he saw a match was inside.[211] He said he did not put the match there and was not aware of anyone else who did.[212] He was shown a photograph which revealed he was wearing gloves when the items in the bag were removed.[213]

[130] Harbers said that the order in which things were removed was: (i) first, the helmet; (ii) then the backpack; (iii) then, the clothing, which was underneath the backpack.[214]

Evidence of Senior Constable Sowden

[131] Sowden accompanied Harbers to Caboolture police station. He said he and Harbers removed the items from the bag, while wearing gloves, and Pankhurst photographed them.[215]

[132] In cross-examination he said that details of what was done was later entered in the QPS running log by either Weare or Detective Sergeant Eaton. Sowden said that he did not see anything inappropriate done with the appellant's property.[216] He said that he did not add a match to the property.[217]

[133] He said he had been in a room outside the court during the previous trial, with Weare and Harris, but he could not recall anything that was said.[218] When shown a photograph of the bag, he said that it was a standard bag and that sometimes they were stapled or folded as well, but that depended on the individual officer.[219]

Evidence of Sergeant Pankhurst

[134] Pankhurst was a Scenes of Crime Officer with 18 years in that division and about 13 years of general policing experience. He attended at the scene of the fire. He was responsible for receiving the black gloves which Bird had found on the ground, sealing them up and signing on the seals. He kept them in his possession until lodging

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206 AB 354 line 13, AB 355 line 7.
207 AB 357 line 31.
208 AB 358 lines 10-13.
209 AB 358 lines 42-45.
210 AB 358 line 16.
211 AB 358 lines 15-22.
212 AB 358 lines 38-40, AB 360 lines 9-16.
213 AB 361.
214 AB 361 lines 34-41.
215 AB 365-366.
216 AB 368 line 27.
217 AB 370 line 19.
218 AB 368-369.
219 AB 370-371.

them in the property room at Burpengary Police Station. He spent close to two and a-half hours at the scene of the fire. He arrived at Caboolture Police Station at 9.55 pm, having been told that someone had presented there with burns.

[135] He took possession of the paper bag from Harris and proceeded to individually package the items that were in the bag.[220] As each item was removed it was photographed and packed into a cryovac bag. At the same time photographs were taken of the various items.

[136] Pankhurst identified photographs of the various items, including a backpack and its contents. Those photographs included a photograph of a redhead match. He identified a jacket, and the fact that the left pocket on the inside had some damage consistent with having been burnt.[221] He also identified the photographs of the shoes that the appellant had worn describing their appearance as being "like, a melting sort of scenario had occurred on the shoes", caused (he thought) by heat.[222]

[137] Pankhurst said he kept the individual bags in his custody and transported them to Burpengary Police Station whether they were lodged. The only items he did not take were the helmet and backpack which were placed in a bag and left with the detectives.

[138] On the following day he went back to the scene of the fire. One item found was a small torch.[223] Pankhurst identified various photographs showing damage to the house. He also identified the various locations where he took swabs for the purpose of forensic testing.

[139] In cross-examination Pankhurst was asked questions about whether the house might have contained asbestos and, if so, how much. He said it was likely that there was some asbestos in the house given its age, but he could not say how much.[224]

[140] Pankhurst denied that either he or anyone else had done anything inappropriate in the nature of putting the matchstick in the bag.[225] He was cross-examined about best practice in terms of folding, stapling or sealing the bag in which the individual items had been put. He agreed it was not best practice to have it folded and stapled as it was, and he would have preferred to have sticky tape seals with signatures. However, Pankhurst said you had to take into consideration that the bag was full and it was "a little bit impossible" to have achieved best practice.[226]

[141] Pankhurst agreed that if the items had been put together there was a possibility of transference of material from one item to another,[227] but he could not comment upon whether that would contaminate all the contents, as that was a matter for an expert.[228] He also agreed that the forensic officer who tested the items would not have necessarily been aware that the items had been re-bagged by him, but his evidence was that "it's not going to change how she analyses those particular items, as far as I'm aware".[229]

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220 AB 375.
221 AB 376-377.
222 AB 378 lines 1-10.
223 The appellant had admitted at the trial that the torch was his: AB Vol 1 p 25.
224 AB 388.
225 AB 389 lines 32-36.
226 AB 390-391.
227 AB 392.
228 AB 392 line 29.
229 AB 392 line 17.

Evidence of Maxwell

[142] Maxwell was an officer employed in the Analytical Services Unit of the Queensland Police Service. She analysed various items which were given to her, being five items of clothing, namely a pair of tracksuit pants, a pair of sports shoes, a grey and black jumper, a black t-shirt and a blue jumper. She conducted tests on them for ignitable liquid residues. Having described the process she followed, Maxwell identified the results:[230]

(a) the tracksuit pants and shoes were found to contain petrol residue;

(b) both jumpers and the t-shirt were found to contain light to medium aromatic-product-class ignitable-liquid residues, consistent with trace-petrol residues;

(c) the tracksuit pants and shoes were probably in contact with liquid petrol, and the other three items were probably in contact with petrol vapours;

(d) she could not offer an opinion on the age of the contact, only that petrol residues were found;

(e) because an item such as the track pants was sampled as one whole item there was no way of telling on which part of the item the petrol was;

(f) it was highly likely that the shoes and the track pants were in contact with liquid petrol; the shoes had a higher level of reading than the tracksuit pants;

(g) if the items had been in the one bag it was possible that some of the petrol vapours had transferred from one item to another, but highly unlikely that the petrol residue on the track pants and shoes was from cross-contamination; whilst highly unlikely, Maxwell could not exclude it as a possibility; and

(h) there was an explanation for why the shoes and track pants might have petrol residue, whereas the other items only had vapour residue; by reference to a particular journal she identified that when petrol was poured from different heights it would cause a positive result on lower garments; this particular case was consistent with what was published in that article.

[143] In cross-examination the appellant attacked Maxwell's expertise on the basis that she was an employee of the Queensland Police Service. Maxwell maintained that she was "here today as an independent expert".[231] On the topic of cross-contamination she was questioned about whether it could occur if she was given only five out of 10 items from the original bag. Her response was that whilst it was a possibility that there was cross-contamination in that way the only item she would probably be concerned about "would be an open jerry can full of petrol".[232] She identified the other items[233] and said that she would not expect to have petrol residues on them or have them cause a cross-contamination event.[234]

[144] Maxwell explained that she could only report on the items that she was given. In respect of possible consequences in relation to cross-contamination, she reiterated

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230 AB 411-413.
231 AB 414 line 8.
232 AB 417 line 8.
233 The motorcycle helmet, backpack and a pair of keys.
234 AB 417 line 19.

that the shoes and tracksuit pants "were consistent with being in contact with a liquid petrol source".[235]

[145] Cross-examination continued as to whether fumes or vapours would be left on clothes from events such as mowing the lawn, filling petrol cans or filling a car with petrol. By reference to a journal article Maxwell said that "members of the public aren't walking around with petrol on their clothing, even if you're filling up your car or even if you work in a profession where you're dealing with petrol".[236] She also discounted that what was found on the clothing could have been the product of the clothing being stored in a shed which had fuel containers in it. Referring to the fuel containers she said if they were airtight they might release a small amount of fumes, "but not enough to give the profiles that I'm seeing".[237]

[146] Maxwell also said the profiles she obtained were not consistent with other sources such as paint, varnish, methylated spirits or oil.[238]

[147] Maxwell also discounted the prospect that the residues she found might have been caused by contact with police officers who had been at the scene of the fire, saying it was "highly unlikely", and that "the quantities of petrol identified on the shoes and the tracksuit pants was significant compared to the other three items which was petrol vapours … so in my opinion there was … liquid petrol in contact with the shoes and/or the tracksuit pants".[239]

[148] Maxwell was also cross-examined about the fact that the items had been put all together in one bag before being separated. She said it would not have affected the results:[240]

> "Because I found petrol residues I'm not concerned about loss of evidence. If the clothing had been … not packaged correctly for a period of time and nothing was found … they're potentially unreliable because something has been lost. But you could also consider them potentially unreliable because something could have been introduced in that time. But anything that's happened to that clothing prior to it being submitted to me, I cannot comment on that. I can only comment on what's been submitted to me and what I analysed."

[149] Maxwell was referred to evidence she gave at the first trial concerning potential unreliability of results, but said that the potential unreliability she had referred to was because she had five individual results as opposed to a single result, and it was not because of how the items had been packaged.[241]

[150] In re-examination Maxwell reiterated that the shoes and the tracksuit pants probably had liquid petrol on them, as a result of coming into contact with a liquid petrol source, whereas the other three items had been in contact with petrol vapours as opposed to liquid.[242] She also ruled out contamination from the matchstick, unless the matchstick was soaked in petrol residue. Finally, Maxwell said that she was less

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235 AB 418 line 28.
236 AB 421 line 4.
237 AB 421 line 31.
238 AB 422.
239 AB 424 lines 14-23 and 34-44.
240 AB 426 lines 6-13.
241 AB 426 line 26 to AB 427 line 3.
242 AB 429 line 14.

concerned about cross-contamination from the items being put together in one bag, than she would have been if the clothing had been in contact with an outside source like an open jerry can of petrol.[243]

[151] In terms of her expertise Maxwell said that she had prepared about 100 statements of evidence for cases, and been involved in about 500 cases as a case officer. Of all those, she had only been called to give evidence three times because in the other cases her evidence had been accepted.[244]

Evidence of Detective Senior Constable Bioletti

[152] Detective Senior Constable Bioletti was the first of eight police witnesses called simply to make them available for cross-examination by the appellant.[245] Bioletti was the officer investigating the vehicle fire that occurred on 12 April 2015. He gave evidence that he had conducted the investigation independently and in conjunction with other sources, and professionally.[246] Points arising from his cross-examination included the following:

(a) the investigation into the car arson was an ongoing one, in which the appellant was a suspect;[247]

(b) he contacted the appellant about that arson on 2 July 2015; the delay on his part was that whilst the file was with him in May 2015, the office was inundated with other investigations which had priority;

(c) the earlier part of the investigation was being conducted by Bribie Island police;

(d) in relation to CCTV footage, he asked Sergeant Driver to ensure that he obtained it from the Caltex service station, Driver did so, and Bioletti believed that it had been reviewed but found to have no evidentiary value;[248]

(e) in terms of information requested by the appellant, the appellant was advised that he had to be specific in what he required, and the police were given guidelines as to what was required, and it was provided;[249]

(f) in the conversation on 2 July 2015 Bioletti advised the appellant that he (Bioletti) had two suspects or persons of interest that he was coming to Bribie Island to see;[250]

(g) the two suspects referred to in the conversation on 2 July 2015 had been provided by the appellant;[251]

(h) Bioletti accepted that it was his responsibility to look into the CCTV footage of possible leads; he followed up a particular witness with a surname Kelly and took a statement from him;[252]

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243 AB 429-430.
244 AB 423 line 1, AB 430 lines 17-24.
245 Four of those (Bioletti, Robson, Montero and Driver) were involved in the investigation of the arson on the appellant's car. One (Beddoes) had contact with the NRMA, and the final one (Murray) was involved in the disclosure of document by the QPS.
246 AB 448.
247 AB 449 lines 31-45.
248 AB 451.
249 AB 451.
250 AB 453.
251 AB 454.
252 AB 457.

(i) Bioletti interviewed a local resident of the area who identified that five youths were seen, shortly before the car arson, heading towards the service station;[253] no names were mentioned by the witness, but simply the fact that some youths had approached him and given him a cigarette;

(j) as to the CCTV footage and the youths that had been identified, at the time the Bribie Island police were conducting the investigation they mentioned to Bioletti that they had made contact with some persons and a lot of those persons were cleared of having any contact in relation to the incident;[254]

(k) Bioletti agreed that at some stage he formed the opinion that the appellant had been responsible for the arson of his car;[255]

(l) in relation to the house arson, Bioletti said that he provided some information to the officers involved in that investigation, made enquiries and talked to witnesses, and tried to have both arsons connected; he recommended that the appellant be charged with the car arson; the result of the recommendation was a direction not to proceed with any charges;[256]

(m) Bioletti had suspicions in relation to the house arson that led him to contact Dixon Homes and investigate their involvement;[257] and

(n) the Dixon Homes aspect[258] was investigated and found not to provide any support, and therefore discounted.[259]

[153] Bioletti was cross-examined about conversations he had had with a representative of NRMA, Ms Anderson. He was read parts of transcripts of recorded telephone conversations with Anderson. This culminated with a conversation being put in which Bioletti said to Anderson that (in effect) there was nothing really solid in terms of evidence with respect to the house, and "if you look at the vehicle as a stand alone … we've got nothing at all that we can proceed with".[260] Bioletti agreed that those words were said and also that he said:[261]

> "Obviously that we've got concerns. We believe he is our suspect in relation to this. … And, even though its circumstantial that we've got the house, if we can get strong circumstantial build up with the vehicle, as well … we can – hopefully can be in a position that we'll charge him for the vehicle, as well, and also the fraud and see if we can get your dollars returned and back to you."

[154] Bioletti explained that in such cases an insurance company assisted police, and vice versa.[262] Bioletti repeated that he was only the investigating officer for the vehicle fire, and not the house fire. Bioletti said that the conversations were simply part of the investigation.[263]

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253 AB 459.
254 AB 460.
255 AB 463.
256 AB 467.
257 AB 467-468.
258 This was a lead that suggested that the appellant was intending to put a Dixon Homes house on the land which would have required the existing house to be moved or demolished.
259 AB 469.
260 AB 474 lines 32-40.
261 AB 475 lines 5-21.
262 AB 475.
263 AB 477 line 33 to AB 478 line 3.

[155] As the cross-examination continued the appellant made it clear, in the presence of the jury, that the relevance of the questioning, and in particular the Dixon Homes material, was that "where it leads to is the collusion between NRMA and the officer … to keep denying me access to information for two and a half years …".[264] As the cross-examination continued on the conversations between Bioletti and Anderson, Bioletti reiterated that the conversations were part of an ongoing investigation, typical of sharing between an insurance company and the police in arson cases, and some of the more cryptic phrases[265] sounded like strategies that were being discussed. Bioletti made the point that he would not discuss strategies with the appellant.

[156] Bioletti denied that there was any strategy to stop the appellant getting access to material to show that the crime had not been investigated properly.[266]

[157] Bioletti rejected suggestions that the car arson case was being pursued simply because the appellant was "winding a few people up", reiterating that it was being pursued because the appellant had committed an offence.[267] Bioletti said that his comment that "a few people want to really see this all the way through", referred to getting a successful outcome by way of a conviction.[268]

[158] Cross-examination then turned to the number of allegations of misconduct that had been made against Bioletti, totalling about 76. The appellant proposed to go through each one individually.[269] Bioletti made the point that in about 20 years of service a police officer received quite a few complaints. Bioletti rejected the suggestion that he was a police officer who was not honest and who lacked integrity.[270]

[159] In re-examination Bioletti confirmed that in the 20 years he had been a police officer there were 76 complaints, only one of which was substantiated.[271] He was also asked, and confirmed, that the car arson was an ongoing investigation in which the appellant was still the prime suspect. He was then asked to identify why it was that he believed the appellant was a suspect, at the time he had the conversations with Anderson at the NRMA. He answered:[272]

> "Those discussions were in relation to both the house and the vehicle fires. The evidence in relation to both, I believe, was substantial, in fact, even to the point where I detailed a report, which was then sent through my officer in charge, requesting approval to go ahead and charge [the appellant]. … [T]hat report was extremely detailed, because of the – I won't say the clouding that [the appellant] causes, but he makes a lot of noise, and, as a result of that, a lot of those things have to be investigated to confirm, first of all, that there's no issues with what's being said. So, as a result, in that report, there was several other investigations that had nothing to do with the two in particular matters with the arson of the vehicle, as well as the house. So that report covered those areas …"

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264 AB 480 line 30.
265 Such as "external stuff" in a comment about what was going to be relied upon: AB 485 line 24.
266 AB 487 lines 6-9.
267 AB 489 line 25 to AB 490 line 2.
268 AB 489 line 41 to AB 490 line 12.
269 AB 491 and following.
270 AB 493 line 32.
271 AB 494 line 9.
272 AB 495 lines 18-27.

[160] Bioletti agreed that the evidence obtained in relation to the car fire was circumstantial, and a version of "similar fact" evidence in that the same address was involved and in both occasions the appellant made no attempt to put the fires out.

[161] Bioletti said that when he had the conversations with Anderson he was not aware of all the evidence that had been obtained in relation to the house fire.[273]

[162] The appellant cross-examined Bioletti further, this time on the topic of whether he had been present during the first trial when the prosecutor made a comment about the match being discovered. Bioletti could not recall whether he was present or not, and did not recall that being said in front of other officers.[274]

Evidence of Senior Constable Robson

[163] Robson was another police officer involved in the investigation of the car arson, and made available for cross-examination.

[164] In cross-examination Robson confirmed that he and Senior Constable Contessa were called to the appellant's house on the night of the car arson. He confirmed that his statement about the events included that when they arrived the appellant walked towards the police vehicle in a panicked state, holding a kitchen knife. Further, he was directed to drop the kitchen knife which he did, and he then apologised and said someone had set his car on fire.[275] Robson agreed that the appellant advised that he could not think of anyone who would set his car on fire.

[165] He was asked questions about whether he spoke to one Kelly that night, confirming that he did. Kelly's statement to Robson was that he was in the front of his garden "and a group of youths came past and he asked them cigarettes, they said they'd just come from a party and they were looking to buy cigarettes or something similar, and he pointed them in the direction of the Caltex Service Station …".[276] Robson said that that was what he recalled, even if it was not in accordance with what was in his police statement.

[166] Robson said he was not aware that the appellant had made complaints against police officers, and in particular Weare.[277]

[167] Robson said he made enquiries about CCTV footage at the Caltex service station, but could not say what the outcome was.[278] He gave reasons why the footage was not obtained, namely that the console operator did not have the ability to burn the footage there and there, it was 1.00 am when the incident happened and it would have been a couple of hours after that that Robson was speaking to the console operator, and the matter was handed over to other crews in the morning.[279] Robson did not know if anyone else collected the CCTV footage. In relation to Kelly, Robson confirmed that he did not take a statement from him.

[168] In re-examination Robson said that when they were in the area of the car fire they did not see any other people in that area, on the street or in the vicinity of the car.[280]

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273 AB 496.
274 AB 498-499.
275 AB 513.
276 AB 514 line 23.
277 AB 515.
278 AB 518.
279 AB 519.
280 AB 521 line 44.

Further cross-examination of Robson as to his interview with Kelly on the night revealed: a group of four boys and one girl were walking east towards Kelly's property; Kelly asked him for a cigarette, which they gave him; Kelly directed them towards the Caltex; there was no distinct stench of petrol and the group were not walking hurriedly.[281]

Evidence of Senior Constable Contessa

[169] Contessa attended the scene of the house fire on the day after it occurred. The area was marked off with police tape, there was a handover from other officers to Contessa and a crime scene log that was maintained.

[170] In cross-examination Contessa confirmed that he had attended at that property on the night of the car arson as well. He could recall Kelly approaching him and telling him that there were a few youths in the area before the car fire started. Contessa said that he attended at the Caltex service station to ask about the CCTV footage, but did not attend there to collect it.[282]

[171] Contessa denied telling the appellant "that there were druggies next door and it may well have been mistaken identity".[283] In re-examination Contessa said that on the night of the car arson they saw no one in the area or on the street or in the vicinity of the car.

Evidence of Senior Constable Montero

[172] Montero was another police officer involved in the investigation of the car arson, and made available for cross-examination.

[173] Montero said she attended with Sergeant Driver at the appellant's address in relation to the vehicle fire on 12 April 2015. She said she did not know a person by the name of Kye Patruno, nor would she be able to identify him.

Evidence of Sergeant Driver

[174] Driver was another police officer who had some involvement in the car arson investigation, and was made available for cross-examination.

[175] Driver agreed that in his interview with the appellant on the morning after the car fire the appellant was calm and friendly and revealed something as to his service as a police officer in the UK. Driver's recollection of the conversation was vague. The appellant told him that the rear passenger window of the vehicle had been broken before the vehicle was engulfed in flames, and that he had previously heard a noise and been out to investigate it, then heard another noise later and went out to investigate that, at which time he discovered the car on fire.[284] Driver also recalled giving evidence at the first trial about the fact that the appellant had mentioned a neighbour who had reported seeing youths in the area prior to the car being set alight, and Driver then made enquiries at the neighbour's house. His evidence at the first trial was that he had learned "that a group of youths were in the vicinity of the scene between 30 and 40 minutes prior to the time of the offence.[285]

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281 AB 522-523.
282 AB 526.
283 AB 527 line 11.
284 AB 536-537.
285 AB 538 line 15.

[176] Driver confirmed evidence from the first trial, in his police statement, about having spoken to Patruno in relation to the events the previous night. Patruno had told Driver that at about 1.30 he had been walking towards the appellant's house. He was with a female called "Gina". Patruno said that as he walked up the road towards his house, he thought his house was on fire, which is why he made a comment to that effect to the appellant. Patruno did not see anyone else in the street at the time.[286]

[177] Driver said that he collected CCTV footage from the Moreton Bay Regional Council, from CCTVs located at the western end of First Avenue. However, he did not collect footage from the Caltex service station. The footage from First Avenue showed no evidentiary value.[287] Driver could not recall any conversation with Bioletti in which Bioletti asked him to ensure that he obtained the CCTV footage from the Caltex service station. However, he could recall a conversation with Bioletti about the jetty footage in First Avenue.[288]

[178] Driver was cross-examined about the route that Patruno might have taken from the area where he was walking, and agreed that a more direct or the quickest route available would have been to go through the school, but that would involve trespassing and in any event the fence on the side from which he was travelling was around two metres high.[289]

[179] In re-examination Driver confirmed that when he spoke to Patruno his evidence was that he had seen the car fire from a distance, walking eastbound on First Avenue.

Evidence of forensic analyst McEvoy

[180] McEvoy's evidence was as a forensic recording analyst who downloaded CCTV footage of the car park of the Narangba Valley Tavern. He explained the system by which the footage was recorded, which cameras were recording and when and how footage was overridden once the hard drive was full. He downloaded CCTV footage and gave it to Weare.

[181] In cross-examination McEvoy explained that once the material was downloaded and recorded to a hard drive the material was kept in an electronic recording secure storage area. That footage was picked up by Officer Thomas of the Redcliffe CIB on 28 September 2015.

Evidence of Detective Sergeant Beddoes

[182] Beddoes was an officer who had contact with the NRMA. He was made available for cross-examination.

[183] In cross-examination Beddoes said that he knew that Bioletti was the investigating officer of the car arson, and he could recall discussing it with Bioletti. Beddoes recalled that there was a house arson and that the appellant had been charged in relation to it. He could recall ringing the appellant on the morning after the arson to tell him that the crime scene had been finished.

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286 AB 540.
287 AB 540-541.
288 AB 542.
289 AB 543.

[184] Beddoes could not recall answering a phone call from an NRMA officer who was looking for Eaton. He was played a recording of a conversation which he said involved someone who sounded like him. In that call, he agreed that he made a joke of the house arson.[290] The appellant finished his questioning at about that point saying "I'm finished with this piece of crap".[291]

Evidence of Plain Clothes Senior Constable Johnson

[185] Johnson was involved in the execution of a search warrant at the appellant's property. She was made available for cross-examination.

[186] In cross-examination Johnson said that she executed the warrant in company with Weare. Her memory was that she first met Mrs Coughlan at the execution of the search warrant. She could not recall meeting Mrs Coughlan in an interview room at the Burpengary Police Station.[292] Various parts of a recorded conversation were put to Johnson, and her response was that she did not recall any of it.[293]

[187] The cross-examination turned to the events at the execution of the search warrant. Johnson could not recall comments between Mrs Coughlan and Weare. She could recall giving Mrs Coughlan a warning that she did not have to say anything and that it would be recorded. She could not recall what was taken and what was not, and only had a vague memory of seeing computers at the address.[294] She could recall enquiries being made with Gumtree as to the source of ads placed in it, but not the details. She was cross-examined about the seizure of computers and how they might be logged in. She said she was qualified to download information off her mobile phone but not off a computer, and not qualified to analyse any data.[295]

[188] She was cross-examined about the fact that the search included going through underwear drawers, and explained that the drawers could hold iPads, tablets, USB sticks, hard drives or even external hard drives.[296] She could not recall much of the conversations that were had with Weare.

Evidence of Sergeant Gormon

[189] Gormon was a police officer called to give scientific evidence as to the causes of fires. Her evidence was given as an expert scientific officer.

[190] Having explained the various causes of a house fire,[297] and the method by which one could determine the cause of a fire, her evidence turned to the fire at the appellant's house. She arrived on the scene just after 8.30 pm. She could not get inside the house because of the extensive damage. Turning to her conclusions, she said:

(a) the origin of the fire was within the building itself; the fire had not started in the garage and then moved into the house;[298]

(b) she could not say where in the house the fire originated;

(c) she was unable to determine the ignition source because they were not able to get in and determine what was inside the house, or speak to its occupants;

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290 AB 557.
291 AB 557 line 44.
292 AB 564.
293 AB 565-566.
294 AB 571.
295 AB 572.
296 AB 573.
297 Natural causes, spontaneous combustion, electrical causes and human involvement.
298 AB 648 lines 8-12.

(d) she was not able to determine the fuel source;

(e) for an explosion to occur there had to be a large amount of fuel in gaseous form[299] and that has to mix with oxygen to a requisite level; if that occurred, and then an ignition source was added "you get an immediate explosion, so an expansion of those gases causing heat, fire … and a shockwave and that's often what people feel";[300]

(f) because of the destruction of electrical wires and appliances she could not rule out an electrical fire;[301] and

(g) there was no likelihood of it being a natural fire, nor could it have been a Molotov cocktail.[302]

[191] In cross-examination Gormon said that whether one would expect a big strong smell associated with the vapours causing an explosion, depended upon whether the structure was sealed. If all the windows and doors were closed then one would not necessarily expect the strong smell.[303]

[192] Gormon confirmed her conclusion that the area of origin of the fire was determined to be the interior of the house, that the ignition source was unable to be determined, that the first fuel ignited was unable to be determined, and neither was the cause of the fire able to be determined.[304]

Evidence of Dr Black

[193] Dr Black was the surgical burns registrar at the Royal Brisbane and Women's Hospital. He treated the appellant on his transfer from Caboolture. He gave evidence of the appellant's injuries:

(a) burns to the left hand, on the back of the hand and the palm and also to the fingers; numerous blisters and some singed hair;

(b) the burns to the left hand were treated with skin grafts;

(c) fairly superficial burns to the face; and

(d) a third-degree, full thickness burn to the lower back, requiring a skin graft.

[194] In cross-examination the appellant sought to establish what medications he was on prior to the injury. The medical history showed a drug called Escitalopram for depression, a Norspan patch and a non-steroidal anti-inflammatory for lower back pain.[305] The medical records indicated that the appellant had back injuries prior to the day of the fire.

[195] Dr Black said that he was not a qualified forensic pathologist and therefore could not comment on the mechanism of the injuries. However, he was able to say that the injuries on the left hand were consistent with a flash burn, which involved a short amount of time during which heat was applied to the skin, "more of a singing kind of

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299 Such as a leaking gas cylinder or petrol.
300 AB 649 line 40 to AB 650 line 2.
301 AB 650.
302 AB 651.
303 AB 653 lines 7-12.
304 AB 656 lines 9-14.
305 AB 640 line 9.

injury".[306] He went on to explain that a flash injury would have less indication of blisters, and therefore this injury was "between a flash and a flame … a longer exposure to flame onto that hand".[307]

[196] Dr Black expressed the view that the facial injuries were more consistent with a flash burn. Beyond that he was not prepared to express an opinion.

Evidence of Mr Spencer

[197] Spencer was a fire investigation officer of considerable experience. He was called to give expert evidence as to the cause and origin of the fire. He first arrived at about 9.00 am on the morning after the fire. He gave his opinion that the origin of the fire was difficult because of the damage to the building and the best he could do was to say that it was on the north-west side of the house.[308]

[198] As to the ignition source, he was able to rule out certain sources but not able to determine the fuel involved. The damage allowed him to conclude that it was a "rapid developing fire with … a vapour explosion".[309] In Mr Spencer's opinion the cause of the fire was "direct human involvement", meaning "a fire that has been lit by a person … knowing it should not be lit".[310]

[199] He gave his reason for concluding it was a vapour fire for a number of reasons:

(a) glass was blown into small pieces on the north and towards the south for up to 20 metres;

(b) aluminium louvres on the verandah were blown out and distorted in a very unusual fashion, not fire damaged at all, but rather blown out on to the footpath; and

(c) the western wall had blown directly off its foundations, so that the base of the wall was literally blown out.[311]

[200] Mr Spencer then identified various features shown in photographs including distorted and twisted aluminium louvres lying on the footpath, where they had been blown by the explosion. Based on various aspects of what he observed he was able to eliminate the electrical boxes being the source of the fire.[312] Whilst he could not rule out an electrical origin for the fire, the remaining damage was not consistent with an electrical slow developing fire. Further, he was able to rule out a Molotov cocktail as the cause because it would develop into a natural fire, developing slowly, and that was not what was observed.[313]

[201] In cross-examination he was asked whether at the previous trial he had conversations with police officers in relation to complaints or discussions of the case. Spencer could not recall the nominated officers (which included Bioletti and Weare), nor any discussions about the case, complaints by the appellant, or any of the other nominated

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306 AB 643.
307 AB 643 line 20.
308 AB 660 lines 39-44.
309 AB 661 line 8.
310 AB 661 lines 25-29.
311 AB 661 line 40 to AB 662 line 3.
312 AB 668 lines 1-11.
313 AB 669 lines 1-17.

persons.[314] He said that he did not have any discussion relating to the case when he had lunch with the police officers.

[202] Spencer was asked if it was possible that the ignition source could have been by a remote control device:[315]

> "And – okay. Could the ignition source of the fire been cause by remote control or some other way other than a Molotov cocktail?---As in a time delay system?
>
> I don't know?---I can't - - -
>
> In any way?---Like, it's possible.
>
> Okay. And if it was caused by a remote control device, do you accept it could have been caused down the road, by a car over the road or anywhere within distance - - -?---If that's possible. Yes."

Evidence of Ms Anderson - NRMA

[203] Anderson was a claims officer responsible for NRMA Insurance. She dealt with the appellant's claim in respect of his house. She gave general evidence about the nature of the NRMA Insurance policies, both for house and contents. She said that in the context of the appellant's claim she had had a number of telephone conversations with him, but did not meet him. The telephone calls were recorded, as were calls between herself and the investigating police officers.

[204] As for the appellant's property, it was insured for building and contents to the extent of $435,000. Of that, $375,000 was for the building, and $60,000 for the contents. By reference to the policy Anderson explained that one of the exclusions was for any malicious act, which would include setting fire to one's own home.

[205] Anderson explained the process by which claims were investigated, which involved an assessor attending at the property and if issues were identified by that assessor the matter would be referred through to the investigation department who would appoint investigators in various areas of expertise. She explained the concern over the appellant's claim was that there was evidence that the fire had been deliberately set and a fire forensic assessor was appointed to investigate that issue. The outcome was that the claim was denied and notice of that decision was given to the appellant. The denial of the claim was based on evidence from the forensic investigator.

[206] In cross-examination Anderson agreed that the appellant had supplied all documentation that had been requested of him.[316] She was aware that NRMA had disclosed files to the appellant, but was unaware of whether there had been redactions, as she was not involved in that process.[317]

[207] Anderson explained that the NRMA always co-operate with police and any request to which they had responded would have not been simply a verbal request over the phone, but followed-up by a written request.[318] The cross-examination concerned

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314 AB 675-676.
315 AB 678 lines 10-19.
316 AB 592.
317 AB 592-593.
318 AB 593.

whether file notes which had been provided to the appellant had been censored by NRMA. Anderson was not aware of that, nor did she do so.

[208] Anderson agreed that the appellant was in a good financial position according to the bank records and statements that the NRMA obtained, and that the house had been under renovations. She also agreed that the policy was not in joint names.[319]

[209] Anderson explained that she did not know whether NRMA had disclosed very little, if anything, to the appellant and said that she was not in a position to make a decision about whether his claim was likely to be denied.[320] She was not aware of any outstanding financial ombudsman service complaint. She also denied knowing that there were a number of audio recordings supplied which, according to the appellant, the NRMA said did not exist.[321]

[210] Anderson agreed that she was provided with information from her investigating assessor, that the fire was suspicious.[322] She also agreed that soon after the fire occurred the appellant notified NRMA that police were investigating him.[323] She also agreed that when suspicions about the house fire were raised detectives also raised suspicions about the nature of the car fire.[324] Anderson also agreed that there was a dispute with the tow truck company that towed the appellant's vehicle, which involved people from that firm swearing and threatening staff at NRMA.[325]

[211] Anderson accepted that the appellant had advised the NRMA that someone outside his house was screaming at him at the time of the fire.[326]

[212] Anderson was taken to a number of recorded conversations between herself and others. The first was on 21 July 2015, between Anderson and a person with the name "Chris", which she eventually identified as being a person from Vendor Management Australia, a third party agency that would instruct forensic investigators for NRMA. She could not remember the conversation. A second one on the same day was between herself and a person she identified as either the assessor or an investigator. The conversation included the unidentified male speaker referring to the fire claim as "dodgy as hell". In one part of the conversation Anderson referred to the claim in respect to the vehicle, saying "I can't believe we didn't investigate that. We just paid him out like $85,000". In respect of this and other conversations Anderson said that if it was in the notes then she agreed she said it.

[213] In respect of the investigation of the car fire Anderson agreed that she did nothing to interfere with that investigation.[327] She said that NRMA required identification from anyone asking for information, and information would not be provided without that identification.[328] However, she accepted that it was possible that on the first occasion

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319 AB 595.
320 AB 596 line 25.
321 AB 597 lines 24-28, AB 598 lines 1-5.
322 AB 596 line 30.
323 AB 598 line 35.
324 AB 599 lines 22-26.
325 AB 599 lines 28-38.
326 AB 601 line 16.
327 AB 606 line 18.
328 AB 606-607.

she spoke to the police officers she did not enquire as to who they were or where they were from.[329]

[214] Anderson agreed that the appellant had hundreds of thousands of dollars of financial credit available to him.[330] Anderson confirmed that the NRMA would investigate and interview the appellant and then provide transcripts of the interview and their enquiries to the police, by way of co-operation with the police investigation.[331]

[215] Anderson could not recall the conversations with various officers,[332] nor could she recall whether searches were conducted by the NRMA investigators, nor some of the details of what was revealed in the records.[333] However, she agreed that the appellant supplied all the receipts and invoices for the work which he had done on the house, to an amount of approximately $90,000.[334]

[216] Anderson accepted the content of a conversation with one of NRMA's assessors or investigators, the context of which was that the police had expressed the view that the appellant was quite difficult to deal with and belligerent and therefore the investigator was of the view that the police might be happy for NRMA to interview him because more might be obtained than through the police interviews.[335] Anderson could not recall whether the appellant told her that he had "caused a senior constable from the Queensland Police Service to be sacked and the police didn't like [him]".[336] She agreed, however, that the appellant advised her that he had serious complaints outstanding against senior police officers for abusive behaviour and corrupt practices.[337]

[217] Anderson agreed that the appellant told her he was happy for an insurance investigator to come out and see him, because he was not happy with the way the police had treated him.[338] She also accepted that each time the police made contact with the appellant, he had contacted NRMA and advised them so.[339]

[218] Anderson was taken through further conversations which she had with either assessors or investigators. Some of them involved comments relating the appellant's complaints about how police were treating him badly, and the suspicions of either the police or the investigators that the appellant might have burnt his own house down.[340] Anderson agreed those things were said, if they were recorded in the notes. She accepted that the appellant had told her that he was heavily medicated when he was in hospital, and that affected his memory.[341] She also agreed that the appellant advised her that "someone was outside the house shouting at [him] at the time of the arson".[342] Some of the notes recorded conversations which she could not recall.[343]

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329 AB 607 line 21.
330 AB 608 line 10.
331 AB 609 lines 5-20.
332 AB 610.
333 AB 615.
334 AB 615 lines 18-25.
335 AB 615 lines 35-42.
336 AB 616 lines 1-6.
337 AB 616 lines 8-10.
338 AB 616 lines 35-39.
339 AB 617 line 14.
340 For example at AB 618.
341 AB 618 lines 38-43.
342 AB 618 line 45.
343 For example, at AB 620.

[219] Another conversation put to Anderson in cross-examination was between her and the technical assessor.[344] Once again Anderson agreed it was said if it was in the notes, but she could not specifically recall parts of the conversation. A comment attributed to Anderson was that the appellant had emailed the document given to him to appear in court and she said, with reference to that: "He emailed it to me the other day, which I always think is hilarious, like, when he emails me these things".[345] Once again Anderson said that she made the comment if the note recorded it. The same applied to a comment in a conversation later on the same day where she said "If we knock the home claim on the head, that's a good result for us".[346]

[220] Anderson did not know whether the appellant had assisted the NRMA in relation to a fraudulent claim made by the tow truck driver.[347] Anderson agreed that she had spoken with Bioletti and Weare in relation to a theory that the appellant had tried burning down the house with a car. However, she could not remember the details of the conversation.[348]

[221] Further conversations were put to Anderson in cross-examination, and in respect to them her position was that if it was in the notes it was said, but she had no specific memory of it.[349] The content of those conversations included whether NRMA would make the site safe because of the concern about asbestos, comments with the investigators as to the task of informing the appellant that his claim was going to be denied, and comments by Weare that he was "trying to forget about [the appellant] as much as I can because I hate him".[350] Anderson could not recall the conversation.

Evidence of Plain Clothes Senior Constable Tice

[222] Tice attended at the hospital when Weare interviewed the appellant on 22 July 2015. That was his only involvement in the matter. He was made available for cross-examination.

[223] Tice said he made no notes or other reports in relation to the incident. Prior to giving evidence he had the opportunity to look through a transcript of the recording of the interview. Early in the cross-examination about that interview Tice said he did not remember the appellant objecting to Weare taking possession of his laptop.[351] Tice was then taken through the recording which concerned the laptop computer and Weare's decision to take possession of it.[352] No questions were asked about the passage read out to Tice, but he could recall asking a question in the interview as to what the appellant used in order to put ads on Gumtree, a question which was not answered.[353] Tice said that he had not seen the warrant, but it was explained to the appellant that the laptop was not on the warrant, but nonetheless Weare was going to take possession of it.

[224] Tice was cross-examined about the process for getting information from an organisation like Gumtree. He said he did not know what that process was, and had not made enquiries of Gumtree himself, nor with EBay.[354]

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344 Commencing at AB 628.
345 AB 630 lines 3-5.
346 AB 630 line 21.
347 AB 631 line 14.
348 AB 631 lines 37-46.
349 For example, at AB 632-633.
350 AB 633.
351 AB 694 lines 24-27.
352 AB 694-698.
353 AB 697 line 43 to AB 698 line 5.
354 AB 699.

[225] Tice said that he was not aware that the appellant had made complaints about Weare, that he did not regularly go on operations with Weare, nor did he socialise with him.[355]

[226] Tice was cross-examined about an exchange which occurred after Weare had told him that he was taking his laptop. Tice did not agree that the appellant was "a little bit upset, that [Weare] advised [him] that it was going to take two years before [he] got given it back", saying that the appellant appeared agitated with how the interview had gone.[356] Tice agreed that Weare indicated he wished to speak to the appellant's wife, but denied that Weare had pushed his finger into the appellant's face and said to him "You're finished".[357]

[227] Tice explained that he had no involvement in the matter other than the interview on that day. He could recall the appellant telling Weare that he [the appellant] did not mind Weare speaking to his wife, but he did not want his wife speaking to Weare on her own.[358]

[228] Tice also recalled the appellant telling Weare: "I'll happily turn around so that I can't signal to her, I can't indicate to her, anything, but I just want to make sure that she's comfortable by me being there with her".[359] He also agreed that Weare told the appellant that that was not going to occur, and he was not going to allow the appellant to influence his wife.[360] As that part of the interview concluded Tice could recall the appellant saying he was finished and Weare saying: "Okay, we're finished", or "Okay, you're finished". However, he did not agree that Weare pushed his finger very close to the appellant's face.[361]

Evidence of Detective Senior Constable Eaton

[229] Eaton was one of the investigating officers in respect of the house arson, second to Weare. He and Weare attended at the scene of the fire on the night it happened, arriving at about 7.30 pm. He gave evidence about the steps taken to secure the crime scene, speak to witnesses and take statements from them. He had been informed that uniformed police had attended the appellant's premises that night and spoken to his wife, but Eaton also attempted to telephone the appellant on his mobile phone number. The number rang out.

[230] Later that night he was informed that the appellant had presented at the Caboolture Police Station. He gave directions for any items in the possession of the appellant to be seized. Later that night he and Weare went to see the appellant at the Caboolture Hospital. He noticed that the appellant had burns to his hand and face but notwithstanding that the appellant said he was not in any pain. The appellant was lucid, coherent and able to speak clearly. Eaton said that there were a number of conversations which were recorded in about four parts, the conversations being interrupted by the requirement for medical assistance.

[231] Several days later Eaton was returned to the Sunshine Coast to his normal duties, and Weare took over the investigation.

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355 AB 699.
356 AB 702 lines 16-22.
357 AB 703 lines 3-6.
358 AB 703 line 41.
359 AB 703 lines 44-46.
360 AB 704 lines 1-5.
361 AB 705 lines 1-17 and AB 706 lines 3-26.

[232] In cross-examination Eaton was asked whether Weare had made him aware that there were complaints against Weare. He said the first he knew the complaints had been made was when he received a letter from the police service referring to a complaint against both Eaton and Weare.[362]

[233] Eaton said that the appellant did not decline to answer any questions put to him at the interviews, and also agreed that he [Eaton] suggested to the appellant that the appellant could have done the arson.[363] Eaton also agreed that part of the interview was concerned with what other motives or what other persons could be involved, and in that respect agreed that the appellant had told them "I'm not pointing my finger at anyone".[364]

[234] Eaton accepted that the appellant had told them who might dislike him for different things which he had done, and that one of those was the tow truck driver.[365] Eaton agreed that he [Eaton] was suspicious about the location of the appellant's ute, and had asked the appellant that if the ute was burned or stolen would he be making an insurance claim on it.[366] Eaton asked the appellant if he would be making an insurance claim on his house.

[235] Eaton said that he had contacted NRMA and had a general recall of the conversation. He told NRMA that they were investigating the fire and were treating it as suspicious. That was a fairly standard conversation he would have with an insurance company.

[236] Eaton agreed that the appellant had told them that there was a car outside his home and someone shouting at him, and he also agreed that they told the appellant that they had spoken with witnesses and no-one had seen a car outside.[367]

[237] Eaton accepted that in a conversation with a person at NRMA, in the course of identifying whether there was an insurance policy and a claim, he said:[368]

> "Okay. Well, what happened is that that house has been completely burned to the ground on Saturday night, and circumstances, to say the least, are highly suspicious. We're conducting an arson investigation, and [the appellant] is the prime and only suspect in relation to it."

[238] Eaton also accepted that in the same conversation he said to the NRMA representative:[369]

> "Given that he had the arson of his motor vehicle at the premises there some three months and just from a report that I read, … that would be highly suspicious, too, that … an arson of a vehicle has been done by [the appellant] as well. Ah, look, the short version of the event is that [the appellant] … was seen at the scene of the … arson. He was seen to run away from it, and he was seen to jump on a motorbike … disappear into the distance, and then he presented himself to the police

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362 AB 714 lines 28-32.
363 AB 716 line 9.
364 AB 716 lines 36-41.
365 AB 717 lines 4-9.
366 AB 717 lines 38-46.
367 AB 720 lines 1-8.
368 AB 722 lines 34-37.
369 AB 723 lines 31-39.

> station some three hours later with … some fairly serious burns, saying that his house had been blown up."

[239] Eaton also accepted that he said, in that conversation:[370]

> "He basically says that … he drove up from his … house at Narangba on a motorbike. And he said he was going to sell the motorbike to an unknown person. And then for some reason, he felt this whole deal was suspicious, so he parked his motorbike down the road and walked up to the house. And as he got to the house, it exploded. He got burnt and then he decided to disappear into the darkness for three hours before presenting himself to the police."

[240] Eaton denied that he was intending to mislead NRMA to ensure that the insurance claim was denied. It was put to him by the appellant that the appellant did not say that he felt the whole deal was suspicious. Eaton reiterated that the appellant said that he was "suspicious or worried about the deal or something may happen".[371]

[241] It was put again to Eaton that he was misleading NRMA in order to ensure that the insurance was not paid out, which Eaton denied, saying that in his conversation with the NRMA individual Eaton was paraphrasing a three hour interview into three sentences. Further, the contact between the insurance company and the investigators was, according to Eaton, something that happens in every single case.[372]

[242] Further bits of that conversation were put to Eaton and could recall some parts but not recall others. It was put again that he was making statements to mislead NRMA, which he denied.[373] In that context Eaton accepted that he said to the NRMA individual:[374]

> "No [indistinct] … that'll just come through to me, yep. So look, it might just be worth putting a note on the file too, just for your investigators, obviously, a complaint's going to be made at some stage, one assumes from him … or his wife. Look, he's really belligerent, difficult person to deal with. He's quite – he tends to be quite standover-ish. … he's told a multitude of lies to investigators so far and he's just one of those difficult characters … to deal with. So it might just be worth just a little flag for your investigators when they're speaking with him."

[243] With reference to that comment Eaton denied that he was acting with malicious intent to ensure that the insurance investigation was influenced against him.[375]

[244] In relation to the interview at the hospital the appellant asked Eaton whether he [the appellant] had made any threats at that time. Eaton said that he "made a comment right at the end" but Eaton "took it to be a silly, stupid comment", which he did not regard as a threat.[376] Eaton then explained that in the course of a conversation where the appellant said that he knew police could "stitch people up" and Eaton's response was that "Nobody's trying to brick you up". The appellant's comment at the end of

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370 AB 727 lines 12-18.
371 AB 728 lines 10-16.
372 AB 728.
373 AB 730.
374 AB 731 line 43 to AB 732 line 3.
375 AB 732 line 7.
376 AB 733 lines 27-29.

that was, according to Eaton, "If you think that I'm the sort of person that has burned my house down, then you better be careful when you're going to your car", which Eaton took as indicating an impression that there would be a bomb under the car. However, he said he did not take it with any seriousness, but rather as a "stupid throwaway comment".[377]

[245] The appellant put to Eaton a different version of that part of the conversation. Eaton did not accept that it was the correct version.[378] Eaton also said that he was not aware of any version of that conversation that Weare had referred. Also, Eaton said that he did not have any notes in relation to that incident.

[246] Eaton accepted that during the interview at the hospital the appellant had advised them that he was happy to be interviewed, did not want a solicitor there and did not need a friend or family member involved. Eaton also accepted that the appellant advised that he wanted to be the one that notified his wife of the fact that he was in hospital. Eaton also accepted that when the appellant went to call his wife at about midnight, Eaton advised him that someone was on the phone to her and speaking to her.[379] Eaton said that the appellant took great offence to that, but the appellant's attitude did not change.[380]

[247] What followed was cross-examination in respect of the number and nature of complaints that had been made against Eaton during the course of his employment with the police force.[381] In that context a number of propositions were put to Eaton about how investigations of such complaints were carried out, whether they were substantiated and the outcomes. In large part Eaton rejected the propositions put to him. The appellant put to Eaton that there were 311 complaints against him, which Eaton rejected.[382] Further complaints were put to Eaton[383] and most or all of them were said by Eaton to have proved baseless.

[248] Eaton was then asked whether he had made enquiries in relation to the CCTV footage or anything else to see if the appellant was being followed away from his house address, and whether Eaton had looked at any other persons of interest. Eaton said he had interviewed a Jake Pullen (the owner of the motorcycle), but that he had not personally made enquiries about CCTV footage. He accepted that Pullen had told him that the appellant was selling his motorbike.

[249] Eaton agreed that he was aware that the appellant had made complaints against senior police officers.[384] That was said by the appellant at the hospital.

[250] In re-examination Eaton was asked about the complaints which had been alleged. He said that 17 complaints in 28 years was "probably low", and some of them would have been investigated and dealt with without his being interviewed.

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377 AB 733 lines 31-44.
378 AB 735 lines 21-40.
379 AB 737 lines 37-45.
380 AB 738 lines 13-14.
381 AB 738 and following.
382 AB 740.
383 AB 742-744.
384 AB 746 line 20.

[251] Eaton was asked whether the appellant was the prime suspect at the time Eaton spoke to NRMA, and if so, why. He responded:[385]

> "So when we arrived at the fire scene, there was a fire at … the premises. [T]he intelligence was that that fire was suspicious. Obviously, … it needs to be examined, but on the general view of it, it was suspicious fire. It was ascertained that [the appellant] was not at home and the wife did not know his whereabouts. These things that I mention, each and every one of them by themselves is not necessarily important. … [I]f you look at them in isolation, they really don't mean anything. But when they're all put together, it can form a picture. So we have … a fire scene that is suspicious in nature. A witness or witnesses at the scene have seen a male person run form that premises and hop onto a motorcycle that was parked a number of doors down. [the appellant] was not at home, and his wife did not know his whereabouts. Then some two and a half hours later, we get a phone call to say that [the appellant] has presented at the Caboolture Police Station. He is riding a motorcycle and he has burns to his body. So at that particular stage, he becomes a suspect, without a shadow of a doubt. We then speak to [the appellant] in a record of interview format … at the hospital. In that interview, he provides a version and outlines a number of things. … So it was largely what was gathered at the scene, what we knew of [the appellant], absolutely the things that he said in that record of interview, and in the absence of that stage of any other suspects, is he the prime suspect? Absolutely, he was the prime suspect."

Evidence of Detective Senior Constable Weare

[252] Weare was the primary investigating officer in respect of the house arson. He and Eaton happened to be working at Burpengary Police Station on the night of the fire and because other officers were busy they volunteered to go to the scene. Prior to that time he knew nothing about the appellant.

[253] In his evidence in chief Weare identified the various steps taken in the course of the investigation:[386]

(a) Freeman and Trindall were collected and taken to Bribie Island Police Station where statements were taken;

(b) other witnesses were giving statements at the station that night;

(c) having been informed that the appellant had arrived at Caboolture Police Station, they left to speak with him; their interview was recorded;

(d) they next saw the appellant at the Royal Brisbane and Women's Hospital, where another conversation was recorded;

(e) CCTV footage was acquired from the Moreton Bay Regional Council; one camera near First Avenue did not cover the roadway, and was therefore irrelevant; the second camera was at the Bribie Island Bridge and footage was obtained from that camera;

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385 AB 747 line 25 to AB 748 line 2.

386 AB 750 and following.

(f) enquiries were made with the Bribie Island State School, but they did not have CCTV footage;

(g) the child care centre down the road from the scene of the fire had only dummy cameras;

(h) when they were at the scene of the fire on the night they did not speak to Dyke or Patruno; at some point between the first interview at Caboolture Hospital and the second at Royal Brisbane and Women's Hospital Dyke's mother phoned the police station and passed a message that Dyke had been present at the time of the fire; as a consequence a statement was taken from Dyke;

(i) information was obtained from NRMA Insurance;

(j) CCTV footage was obtained from the Narangba Valley Tavern; and

(k) the phone analysis was not possible because it had been established that the appellant did not have his phone with him at the time.

[254] In cross-examination Weare was asked whether, during the interview at the Royal Brisbane and Women's Hospital, it was his opinion that the appellant was intimidating his wife, and Weare answered in the affirmative.[387]

[255] Cross-examination of Weare's complaint history commenced with a complaint from 2008.[388] Weare gave a full explanation, accepting that he was investigated for making inappropriate comments in relation to a domestic violence and post-traumatic stress disorder, but refuting the fact that he was investigated for verbally abusing someone. Cross-examination then continued with a complaint from 2009 where again Weare gave a full explanation, including the fact that the complaint was unsubstantiated.[389]

[256] That pattern continued with other complaints[390] where Weare gave an explanation of the substance of the complaint, the explanation why it wasn't substantiated or why there was nothing in the complaint. In some cases Weare could not recall the incident being referred to.

[257] Cross-examination then turned to an interview between Weare and the appellant's wife on 22 July 2015, at Burpengary Police Station. Weare accepted that he took the appellant's wife into an interview room, closed the door, that it was only the two of them in that room, and that he made no notes.[391] He denied that he acted inappropriately towards the appellant's wife in speaking to her alone.[392]

[258] In relation to the interview at Royal Brisbane and Women's Hospital, when the appellant's wife attended, Weare denied the suggestion that he pushed his finger into the appellant's face and said that when he used the phrase "You are finished" he meant "You're finished attempting to influence a potential witness in an arson investigation", namely the appellant's wife.[393] The appellant questioned whether

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387 AB 771 line 46.
388 AB 775.
389 AB 777-778.
390 AB 778 and following.
391 AB 787 lines 39-49.
392 AB 788 line 3.
393 AB 790 lines 8-11.

Weare had been trying to get a reaction from him that was not favourable to him and the following exchange occurred:[394]

> "I'm putting to you, you wanted to get a reaction from me that wouldn't be favourable to me. You want me to react in a way that I'd like to react to you now, don't you, and that wouldn't be in my best interests, would it, in front of the jury?---I don't care.
>
> You're trying to provoke me?---I don't care.
>
> You don't care?---I don't care how you act. I don't care how you react.
>
> Yeah?---I'm just here to answer questions.
>
> Because you hate me, don't you, Officer?---I probably wouldn't go that far.
>
> Okay. I'll play you an audio recording later one where you say to Karen Lee Magnuson:
>
> *I don't want to think about Mr Coughlan because I hate him.*
>
> ?---Okay.
>
> HER HONOUR: So you do accept that you said that?---If it's on a recording I might have said it at some stage, your Honour. I've probably said things to that effect about Mr Coughlan over the years."

[259] In relation to the interview conducted with the appellant's wife at Burpengary Police Station, Weare said that he did not take any notes because he did not see the need to do so, nor did he record the conversation.[395] As to what was said at that interview Weare accepted:

(a) that the appellant's wife had said she had no suspicion at all and strongly believed that the appellant was not involved;

(b) the appellant's wife explained how much that house meant to them, and that there was expensive furniture in it and their children's personal belongings;

(c) that the relationship between herself and the appellant was strong; and

(d) the appellant's wife said that their nephew was ill and they were paying for his treatment.[396]

[260] Weare accepted that he told the appellant's wife that there was a very good chance that the appellant would be charged with arson. He could also recall telling the appellant's wife that the insurance company will not pay out for the house. Weare agreed that he asked the appellant's wife if she was scared of the appellant, and the appellant's wife said that she was not. He agreed that he told her that she was not that far from being a suspect herself and that he [Weare] was "All ears to listening to anything she wanted to tell".

[261] Weare said that he did not believe the appellant's wife wanted to provide a statement that day and that she had indicated to him (not verbally, but certainly by her body language) that she did not want to do so.[397] At that point, and in the presence of the jury, the appellant accused Weare of being a liar and being worried about perjury. He

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394 AB 790 lines 23-43.
395 AB 793.
396 AB 804-805.
397 AB 807 line 35 to AB 808 line 1.

said: "You're a liar, you commit perjury and you know you're going down for it. She didn't want to do a statement. Yeah, liar".[398]

[262] Weare was taken to a statement which he had done in which, with reference to that occasion when he saw the appellant's wife at the Burpengary Police Station, he said that she had "Declined to provide a statement". In respect of that he said that she declined to give a statement by "Non-verbal communication".[399] He explained that "All of her body language, and perhaps even emotion of her had indicated that she wasn't willing".[400]

[263] As to his opinion that the appellant's wife had declined to make a statement, and signify that by non-verbal communication, Weare was asked to explain what that was and answered:[401]

> "Body language. I … have recollection of [the appellant's wife] shaking her head, but I can't – because of the passage of time, I can't be certain about that, but basically to answer your question, everything about the way [the appellant's wife] was responding to questions and holding herself suggested to me that she didn't want to provide a statement. That was my belief at the time."

[264] Weare said that he accepted everything that was recorded in the audio recording taken by the appellant's wife during the interview at Burpengary Police Station. That included Weare saying to the appellant's wife "I think we won't take a statement from you today", and "I just proceeded under the guise that we were going to get some bloody good lies from you before you …".[402]

[265] A part of what Weare accepted he said included his saying to the appellant's wife, by way of a joke: "… we'll wait until you're in private before we start beating you and stealing your stuff".[403] Weare said that the appellant's wife was upset and it was a joke to try and make her feel at ease, and it worked.[404]

[266] Cross-examination turned to a suggested list of enquiries which Weare could have made, but were not. They included (with Weare's explanation) the following:

(a) SMS messages sent between the appellant and Weare, but not disclosed; Weare said those messages were on a phone which he no longer had, but in any event the messages were purely about logistical arrangements, such as when to attend the police station, and possibly something about disclosure;[405]

(b) enquiries in relation to the vehicle parked outside his address at the time of the explosion;

(c) enquiries in relation to the CCTV cameras on the bridge; and

(d) enquiries with Channel 7 News because a witness had referred to a Molotov cocktail being thrown.

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398 AB 808 line 10.
399 AB 810 line 33.
400 AB 810 line 37.
401 AB 832 lines 10-14.
402 AB 812 lines 4-17.
403 AB 813.
404 AB 814 line 1.
405 AB 826-827.

[267] Weare was cross-examined about his treatment of the appellant's computers and property when it was seized.[406] Weare said that he did not book the computers and property into the property store, but plugged the computers in and conducted some basic enquiries, looking at web histories and the like, specifically with regard to Gumtree. He explained that the property was left in his office at Burpengary for one or maybe two nights. The room was locked. It was put to him that that was an example of the investigation, where property had not been dealt with properly. Weare responded that the property was correctly handled because the appellant had asked Weare to give back the property as soon as he could and to make that possible it was not booked into the property room.[407]

[268] In relation to the photograph of a motorbike going across the Bribie Island Bridge, Weare was asked whether any steps had been taken to enhance the picture so that the registration of the motorbike could be made out. He said that it may have been discussed but it was not something he could comment upon.[408] Weare agreed that the appellant had probably travelled over the bridge hundreds of times during the nine months when he was renovating his house, and that if he had wanted to go onto the island without being seen he could have used a boat or waited until after dark.[409] Weare agreed that it was daylight when the appellant crossed the bridge.

[269] Other examples of areas where the appellant questioned Weare as to enquiries not made include:

(a) enquiries in relation to the church on First Avenue opposite the car park;

(b) enquiries with the parishioners of that church who were present between 5.00 pm and 6.00 pm; Weare said that he did not know if there was a church service that day;

(c) going back to the scene some time later to try and get witnesses to come forward; Weare said that they did that and Patruno and Blakers were interviewed;

(d) revisiting the scene to enquire whether anyone had witnessed the motorbike being parked at the church; Weare explained that the appellant had admitted that that was where he had parked his motorbike;[410] and

(e) enquiries with any of the CCTV's or cameras to ascertain whether the appellant was being followed that night; Weare explained that one could not make out vehicle registrations or even particularly good descriptions from some of the CCTV footage, so enquiries were not made beyond the bridge; Weare added that the statement from Patruno was to the effect that they followed the appellant for a short time but did not cross the bridge.

[270] Weare denied the suggestion that he had made a decision to charge the appellant within seven hours of the arson occurring.[411] He denied the suggestion that there was a conversation to the effect that if the appellant agreed not to put in an insurance claim

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406 AB 834 and following.
407 AB 836.
408 AB 838.
409 AB 838.
410 AB 843 line 6.
411 AB 845 line 29.

he would not be charged with fraud, a conversation which occurred whilst the digital recorders had been turned off.[412]

[271] Weare said he could not recall that part of the conversation where the phrase "Brick you up" was used, but that some comment along that line had been made as revealed by the recordings. Weare said he could recall a comment by the appellant "About something being placed under a car" and Eaton responding along the lines of "Don't go there. There's no need for that".[413] Weare also said that he did not recall that conversation being particularly heated. Weare was permitted to give his recollection of that part of the conversation and he did so:[414]

> "HER HONOUR: All right?--- - - - the sequence of events. So at the Caboolture Hospital, the interview between [Eaton], myself and [the appellant] was quite cordial, for want of a better description. There was no – there was no raised voices or threats or anything of that nature. It was a conversation. We were pretty direct with [the appellant] in terms of putting things to him. At the end of the conversation, I recall we were waiting for a notice to serve stored communications, which is in the recording. You hear us discussing that. And we were waiting [Sowden] to bring that down to the hospital. I recall after the recorder was switched off there was some conversation about [Sowden] meeting us out the front with the form. I believe I may have even stepped away, just even for a short distance, just to get a form from [Sowden], and I came back. When I came back, I think that's where I came into the conversation and I think that's when I heard the comment about things placed under the car. And given the previous – to be honest, at that point, I had well and truly tuned out of the conversation. I think you can hear at the end of the interview at the Caboolture Hospital, I – I wasn't really saying much. I'd sort of – I think I'd asked all the questions that I wanted to ask him. When I heard [the appellant] make this comment about something under the car, obviously it sort of was a bit of a sort of a surprise and so I listened into the conversation and that's when I heard the exchange between [Eaton] – well, [Eaton] and [the appellant] when [the appellant's] gone – sorry – where [Eaton] has gone, 'There's no need for stuff like that.' The [appellant's], I think, misunderstood a comment that was made by [Eaton]. And my recollection was that there was a further conversation where sort of everything was smoothed over and – and we were fine and I didn't – I don't recall it being a particularly hostile exchange. It was just a misunderstanding over some comment that [Eaton] had said. I may have discussed it with [Eaton] afterwards. I think the comment was something along the lines of 'bricking up.' I don't actually know what 'bricking up' means. It's not a comment – it's not a phrase that I use. It's a very – I would describe it as a very sort of old-school term – term that, perhaps, someone of the experience of [the appellant] might use and the experience of [Eaton] might use. But it's not a term that I use really. And then having listened to the recording at the Royal Brisbane Hospital, [the appellant] acknowledges that there was this

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412 AB 845 line 45 to AB 846 line 6.
413 AB 846.
414 AB 847 line 35 to AB 848 line 25.

> conversation and I think [the appellant] actually brought it up and said that he had said something inappropriate, which I assume he's referring to the car comment, and [Eaton] had said something about bricking up. And, as I said, at the – during the conversation at the Royal Brisbane Hospital, this was a misunderstanding and there was no particular offence or anything like that taken by me at the time or by [Eaton] at the time. It was just the conversation. There was a misunderstanding. I thought it was smoothed over. That's my recollection of – of what happened."

[272] Weare said that he did not record the conversation with the appellant's wife because he did not see the need to.[415] As for the conversation with the appellant, Weare said he did not recall that conversation being heated, nor the appellant using offensive language. He agreed that he asked the appellant whether he had any complaints about the way the interview was conducted, but disagreed that he had done so a number of times.[416]

[273] Cross-examination included putting to Weare that within 84 hours of the fire he had decided to charge the appellant. Weare disagreed, saying that he did not know at what stage he made that decision, but he did consider that the appellant had committed the offence.[417] Weare was asked what evidence he had after 84 hours, and he responded: (i) there was a fire; (ii) the appellant was running away from the scene with burns; (iii) evidence of flight; and (iv) a story that made no sense.[418]

[274] Weare agreed that the appellant did not have his house keys for the Bribie Island house in his possession on that night.[419]

[275] Weare was asked whether he ever investigated the possibility that anyone else was a suspect and he responded: "Did I ever investigate? … I'd have to say no. I never really investigated. There were a couple of lines of inquiry that were … raised. … they seemed sort of …",[420] at which point the appellant interrupted with another question.

[276] Weare said he did not make inquiries in relation to the tow truck driver,[421] nor did he make inquiries with Channel 7 television, but in that case it was because he spoke to the witness directly.[422] Weare said that the delay in disclosing the CCTV footage from Narangba Valley Tavern was connected to issues with formatting the footage, and having it recopied onto a hard drive, and that disclosure issues were something to do with the prosecutor, rather than himself.[423]

[277] When questioned about whether he had reviewed the various receipts for the renovation work, Weare said that he could not recall those receipts, but "NRMA provided what I've provided in the brief of evidence. That's the only information I'm aware of".[424] Weare said he did not dispute the fact that the house had been extensively renovated.

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415 AB 848 line 43.
416 AB 849.
417 AB 850 lines 42-45.
418 AB 851 lines 4-15.
419 AB 852 line 11.
420 AB 856 lines 3-6.
421 AB 856 line 27.
422 AB 857 line 18.
423 AB 857 lines 23-28.
424 AB 858 line 11.

[278] When cross-examined about the question of whether Harris had made mention of the redhead match in the course of the first trial, Weare said he did not recall having any conversations with Harris nor a specific conversation about a match.[425] When pressed by the trial judge Weare said that he could recall the appellant making reference to the match in a pre-trial hearing but he could not recall any conversation with Harris concerning a match.[426] The appellant continued to press the point, and Weare adhered to his evidence that he could not recall a comment by Harris about a match.[427]

[279] Weare denied the suggestion that he might have discussed the case with Patruno in the current trial, when he conveyed Patruno and his mother from Caboolture to the court. Weare said that he did not discuss the case with Patruno: "I basically was trying to make sure that [Patruno] was in a good emotional state, so we talked about everything but, really".[428] Weare said they talked about things such as music and videos, trying to keep Patruno on track as he was nervous about giving evidence.

[280] When questioned about Patruno and Drayton, Weare accepted that they were in the area the night of the car arson, as well as the house arson.[429] He did not accept the proposition that he had never investigated either of those two and their involvement in the arson, saying that they were never treated as suspects and Patruno had produced a statement. Further, he had taken a statement from Dyke.[430]

[281] It was put to Weare that he had been coaching witnesses outside the courtroom, which he denied. He explained:[431]

> "I accept that I gave them advice in terms of the procedure and what would happen when they were giving evidence. In terms of telling them what evidence to give, … I wasn't there. They're giving evidence about their own observations, and so, realistically, there was no need to coach them, not that I would anyway. But did I give them advice on the procedure and what would happen? Yes, absolutely. They're teenage boys, or they were teenage boys at the time who have … never been to the District Court or a higher court to give evidence. … Did they give evidence in the District Court? No. So did I give them advice on what would happen? Absolutely. Of course. … if you're saying that I influenced their evidence in any way then that's just false."

[282] Weare said that he was not aware that NRMA had provided 65 audio recordings after they said they had none, nor did he instruct NRMA to censure their documentation.[432] He was asked to respond in relation to an email he had sent Anderson (NRMA) where, in relation to NRMA's documents, he said "I'm assuming you guys will want to censure this somewhat as it is sensitive and not particularly relevant to the matter before the court". As to that, Weare said he did not say that they should do anything with their documents, only that they may want to and that "redacted" was probably a better description of what he was referring to. He made the point that it was up to NRMA as to what they released and did not release.[433]

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425 AB 858 lines 19-42 AB 859.
426 AB 860-861.
427 AB 862 lines 28-34.
428 AB 864 line 31.
429 AB 865.
430 AB 866.
431 AB 869 line 45 to AB 870 line 12.
432 AB 873.
433 AB 873 lines 17-32.

[283] Weare said he would not dispute the fact that the appellant came back from Brazil of his own free will to face the trial.[434]

[284] In relation to NRMA Weare said that he did not make notes of his contact with them "because anything that they might do is not really of my concern".[435] He agreed that he had asked them to provide evidence, and they did so and he submitted that to the prosecutor.[436]

[285] Weare was cross-examined about taking a statement from Dyke, and denied that he told Dyke what to put in it.[437] He was then asked what enquiries he made of Long and Drayton, two of the teenagers who were in the car outside the house. Weare responded:[438]

> "I went to Drayton's house. I went to another house which was believed to be his father's address. … [Drayton] has moved to New South Wales, unknown location. [Long] had moved to New South Wales temporarily. I went to an address for him early on and actually spoke to him and he was actually going to provide a statement. In the interim he moved to New South Wales also. He later returned to Queensland … [then having said they did not provide statements] I believe around the time of the trial [Long] was back in Queensland and I actually spoke to him. I managed to speak to him through [Patruno] and, subsequent to that, he's returned to New South Wales, unfortunately."

Evidence of Sergeant Murray

[286] Murray was the officer in charge of Caboolture Police Prosecution Corp, and was made available for cross-examination.

[287] Cross-examination of Murray concerned an order made by Magistrate Ho in April 2016, relating to the house arson and the car arson. Murray explained that there was an order for full disclosure made on 5 April 2016 and that order was rescinded several months later.[439] The appellant put to Murray that the effect of the judgment was that disclosure was an ongoing issue, but Murray disagreed and produced the transcript of the hearing in August 2016, which was the final directions hearing relating to disclosure.

Evidence produced by the appellant

[288] The appellant neither gave nor called evidence.

Appellant's case as revealed to the jury

[289] Whilst the appellant did not give evidence it is the fact that the appellant's interviews were before the jury, and he addressed the jury on the basis that they revealed the truth. Further, the appellant's conduct of the trial was such that he managed, despite the efforts of the trial judge, to make many statements in front of the jury as to what he said was the true state of affairs, the defence case, his version of events, and his complaints about the police (both in respect of the investigations and generally).

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434 AB 888.
435 AB 896 line 29.
436 AB 896 lines 32-37.
437 AB 898 lines 1-4.
438 AB 898 lines 9-21.
439 AB 907.

What he said also revealed much of his attitude to the police and his belief that he was persecuted.

[290] From the interviews themselves the following were the essential facts in the appellant's account:

(a) the appellant had been renovating his house at Bribie Island; he was coping with his moods going up and down, and he saw a psychologist and psychiatrist every month; he described himself as "fucked mentally", and that he had a "medical disorder" that would sometimes send him into a rage for no reason at all; he said he would go "hot and cold";

(b) sometimes he stayed at the house while renovating;

(c) the appellant lived at Narangba; he drove the bike to Bribie Island but told his wife he was "going to see the guys from the Club", i.e. the 4wd club;

(d) the appellant left his car at the Narangba pub;

(e) he said he intended to sell the bike to a man he met for the first time a couple of days before (on Wednesday); he had no name or contact details for that man, who did not have a motorbike licence; he had not told anyone about the potential sale or that he was going to sell it that day;

(f) he drove the bike to the area of his house, but left it hidden from view around the corner; he did so because he thought there might be something dodgy about the sale; he did not want the bike going and him not getting the cash;

(g) he waited for about an hour; the buyer did not turn up;

(h) he did not have his keys with him so he stayed outside the house, reading a newspaper;

(i) the appellant saw no-one else at or near the house during the time he was there;

(j) as he came from the back to the front of the house it exploded and caught fire;

(k) he was so close that he was burned on his hand and back; his clothes were burned and the tops of his shoes were melted;

(l) he hit the ground, and a guy was screaming or shouting at him at the front; that person was in a car parked outside his house, on the driver's side of that car;[440] he described the car as a Subaru or Forester station wagon;

(m) he ran to his bike and drove away; he took off because his car had been burned six weeks before; he thought he was being followed;

(n) he saw no-one else running; when the police described other people saying they saw a man running from the house the appellant said "Mate oh that's me. I ran";[441]

(o) he did not intend to go home, and did not do so; he did not ring his wife; he did not ring the friend he was supposed to be meeting; he did not seek treatment for the burns; he did not change his clothes;

(p) he did not go to the police because he said he had not had a good experience with them; but the bad experience was one where the son of a friend of a friend was charged by an Inspector Smith, and somehow the appellant ended up

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440 Or standing there: AB 1068.

441 AB 1038.

paying $4,000 for a barrister to assist; the case went to trial and there was no conviction; and since then the appellant thought he was "persecuted … because of that and … things started happening to me. I get a speeding ticket for going one kilometre [over] the bloody speed limit";

(q) he gave another example of his being persecuted by police; he was driving with a man called Jake Pullen, and the car was stopped for a random breath test; the police asked to see the appellant's licence which he said "was not normal"; he summarised it: "… but why am I the way that I am? Because whenever I've been stopped and Jake gets pulled up all the time whatever else like that you know";[442]

(r) he explained not going home or to the hospital as being that "I wasn't [taking] whatever problem it was back home", and "I didn't know who was following me" and "I thought I was being followed";

(s) instead he drove to places unknown for several hours; at some point he went to a derelict house and washed his face and hands at a tap;

(t) he described the trip:[443]

> "I went down the highway and then I took lefts and rights and stayed off and made sure no one was following me. Mate I sat there thinking what am I gonna do? And I had no way of ringing my wife … and I'm sitting there literally … shivering … and thinking what the fuck's going on?"

(u) three hours after the explosion he attended at Caboolture Police Station;

(v) he described the decision to do that:[444]

> "I turned right down the highway. I did a series of left and rights and that to make sure I wasn't being followed, alright? I ended up in a street that I don't know the [name] of the street on. It had a garden tap. I put my hand and my face in the garden tap okay because I felt something on my face. I didn't know it had been burnt as badly as it has. I could see my hand was burnt. There was no pain, okay? I went down and I sat there and I thought what the fuck is this to do with, alright? And I'm panicking and I didn't want to go home. I have-, can't find my um phone or my wallet or anything like that and I didn't know where to go. I didn't want to take any problem back home and I sat there and I thought police-, what the fuck is this to do with and I thought that's the only place I can go and be safe. I don't know the time difference between when the fore happened and when I went to the police station."

(w) the appellant was asked for a possible motive; he said "I haven't upset anyone. I don't know anyone. I don't live on the island";

(x) he was a former policeman in the UK, and had spent time in the combat engineers division of the army reserves, and had training in explosives "riggin' up explosives, blowin' up things, using fuses, using time cord, det cord".[445]

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442 AB 1030.
443 AB 1008.
444 AB 1070.
445 AB 1055.

Legal Principles – unsafe and unsatisfactory verdicts

[291] The principles governing how this ground of appeal must be approached are not in doubt. In a case where the ground is that the conviction is unreasonable or cannot be supported having regard to the evidence, *SKA v The Queen*[446] requires that this Court perform an independent examination of the whole evidence to determine whether it was open to the jury to be satisfied of the guilt of the convicted person on all or any counts, beyond reasonable doubt. It is also clear that in performing that exercise the Court must have proper regard for the pre-eminent position of the jury as the arbiter of fact.

[292] In *M v The Queen* the High Court said:[447]

> "Where, notwithstanding that as a matter of law there is evidence to sustain a verdict, a court of criminal appeal is asked to conclude that the verdict is unsafe or unsatisfactory, the question which the court must ask itself is whether it thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty. But in answering that question the court must not disregard or discount either the consideration that the jury is the body entrusted with the primary responsibility of determining guilt or innocence, or the consideration that the jury has had the benefit of having seen and heard the witnesses. On the contrary, the court must pay full regard to those considerations."

[293] *M v The Queen* also held that:[448]

> "In most cases a doubt experienced by 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."

[294] Recently the High Court has restated the pre-eminence of the jury in *R v Baden-Clay*.[449] As summarised by this Court recently in *R v Sun*,[450] in *Baden-Clay* the High Court stressed that the setting aside of a jury's verdict on the ground that it is unreasonable is a serious step, because of the role of the jury as "'the constitutional tribunal for deciding issues of fact',[451] in which the court must have 'particular regard to the

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446 (2011) 243 CLR 400 at [20]-[22]; [2011] HCA 13; see also *M v The Queen* (1994) 181 CLR 487 at 493-494.
447 *M v The Queen* at 493; internal citations omitted. Reaffirmed in *SKA v The Queen*.
448 *M v The Queen* at 494.
449 (2016) 258 CLR 308 at [65]-[66]; [2016] HCA 35; internal citations omitted.
450 [2018] QCA 24, at [31].
451 Citing *Hocking v Bell* (1945) 71 CLR 430 at 440; [1945] HCA 16.

advantage enjoyed by the jury over a court of appeal which has not seen or heard the witnesses called at trial.'"[452]

[295] Further, as was said by this court in *R v PBA*,[453] in the course of elucidating the applicable principles:

> "The question is not whether there is as a matter of law evidence to support the verdict. Even if there is evidence upon which a jury might convict, the conviction must be set aside if "it would be dangerous in all the circumstances to allow the verdict of guilty to stand". The Court is required to make an independent assessment of the sufficiency and quality of the evidence at trial and decide whether, upon the whole of the evidence, it was reasonably open to the jury to be satisfied beyond reasonable doubt that the appellant was guilty of the offence of which he was convicted."

Discussion – Grounds 1 and 2

[296] It is convenient to examine these grounds by reference to the central pillars of the appellant's contentions at trial and before this court. They were: (i) that there was evidence of another man running from the house, who could have been the arsonist; (ii) there was evidence that the appellant was being chased, which explained why he ran away; (iii) there were others at the scene, specifically Patruno, Dyke, Drayton and Long, who could not be excluded as having set the fire; (iv) the scientific evidence did not exclude sources of ignition inconsistent with the appellant setting the fire; (v) the scientific evidence could not exclude that the presence of petrol residue on the appellant's shoes and tracksuit pants was the result of cross-contamination; and (vi) the presence of the redhead match suggested corruption of the investigation process.

[297] In examining these grounds it is necessary to bear in mind the legal principles that apply to the question of excluding other hypotheses.

Legal principles – alternative hypothesis

[298] A reasonable hypothesis consistent with innocence means a reasonable hypothesis having regard to the whole of the evidence, not to each individual item of circumstantial evidence regarded separately.[454]

[299] In *Peacock v The King*[455] O'Connor J said:[456]

> "The duty of a jury in regard to circumstantial evidence is often in practice stated briefly, and, I think, accurately, in these words:—'The circumstances must be such that the jury may reasonably draw from them an inference of the prisoner's guilt, and can reasonably draw no other inference.' It is, I think, necessary for the purposes of this case to add that an inference to be reasonable must rest upon something more than mere conjecture. The bare possibility of innocence should not prevent a jury from finding the prisoner guilty, if the inference of guilt is the only inference open to reasonable men upon a consideration

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452 *Baden-Clay* at 329, citing *M v The Queen* at 494, and *MFA v The Queen* (2002) 213 CLR 606 at 621-622 [49]-[51], 623 [56]; [2002] HCA 53.
453 [2018] QCA 213 at [80].
454 *R v Beble* [1979] Qd R 278 at p. 290.
455 (1911) 13 CLR 619.
456 *Peacock* at 661.

> of all the facts in evidence. There are some observations in *Starkie on Evidence*, 3rd ed., on this aspect that are worthy of attention. At page 577 the learned author says:—
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> 'What circumstances will amount to proof can never be matter of general definition; the legal test is the sufficiency of the evidence to satisfy the understanding and conscience of the jury. On the one hand, absolute, metaphysical and demonstrative certainty, is not essential to proof by circumstances. It is sufficient if they produce moral certainty to the exclusion of every reasonable doubt; even direct and positive testimony does not afford grounds of belief of a higher and superior nature. To acquit upon light, trivial and fanciful suppositions and remote conjectures, is a virtual violation of the juror's oath, and an offence of great magnitude against the interests of society, directly tending to the disregard of the obligation of a judicial oath, the hindrance and disparagement of justice, and the encouragement of malefactors. On the other hand, a juror ought not to condemn unless the evidence excludes from his mind all reasonable doubt as to the guilt of the accused, and, as has been well observed, unless he be so convinced by the evidence that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest; and in no case, as it seems, ought the force of circumstantial evidence, sufficient to warrant conviction, to be inferior to that which is derived from the testimony of a single witness, the lowest degree of direct evidence.'
>
> In drawing an inference of guilt, or in declining to draw it, the jury must act upon the facts established in evidence, and if the only inference that can reasonably be drawn from those facts is that of the prisoner's guilt, it is their duty to draw it. They cannot evade the discharge of that duty because of the existence of some fanciful supposition or possibility not reasonably to be inferred from the facts proved."

[300] The reasons of O'Connor J in *Peacock* were adopted in *Barca v The Queen*,[457] per Gibbs, Stephen and Mason JJ:

> "When the case against an accused person rests substantially upon circumstantial evidence the jury cannot return a verdict of guilty unless the circumstances are 'such as to be inconsistent with any reasonable hypothesis other than the guilt of the accused': *Peacock v. The King* (1911) 13 CLR 619, at p 634. To enable a jury to be satisfied beyond reasonable doubt of the guilt of the accused it is necessary not only that his guilt should be a rational inference but that it should be 'the only rational inference that the circumstances would enable them to draw': *Plomp v. The Queen* (1963) 110 CLR 234, at p 252; see also *Thomas v. The Queen* (1960) 102 CLR 584, at pp 605-606. However, 'an inference to be reasonable must rest upon something more than mere conjecture. The bare possibility of innocence should not prevent a jury from finding the prisoner guilty, if the inference of guilt is the only inference open to reasonable men upon a consideration of all the

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457 (1975) 133 CLR 82 at 104. See also *Doney v The Queen* (1990) 171 CLR 207 at 211.

> facts in evidence.' (*Peacock v. The King* (1911) 13 CLR, at p 661). These principles are well settled in Australia."

[301] That passage in *Barca* was adopted by the High Court in *Knight v The King*.[458] Referring to *Knight*, this Court has recently held that the established principles are that: neither this Court nor the jury need to be concerned with mere conjecture; the hypotheses that are of significance are those that are reasonable, and a hypothesis that ignores the facts is not a reasonable one.[459] As it was put by Fryberg J in *R v Rae*,[460] "inferences must be rational inferences based upon evidence; guesswork, speculation or intuition are not permitted". And the competing inference "must be logically based, that is, it must bear some logical relationship to the evidence from which it proceeds".[461]

[302] In *R v Kaddour*,[462] Sofronoff P said:

> "[29] Any circumstantial case is pregnant with competing inferences. It is therefore 'essential to inquire with the most scrupulous attention what other hypotheses there may be which may agree wholly or partially with the facts in evidence'. Such a hypothesis might arise from within the prosecution case or it might arise from evidence led by the defence.
>
> [30] However, to be material for consideration, any hypothesis had to be a reasonable one. In order for a hypothesis to be a reasonable one in that sense it must be based upon something more than mere conjecture. In *Peacock v The Queen* O'Connor J said:
>
> > '… an inference to be reasonable must rest upon something more than mere conjecture. The bare possibility of innocence should not prevent a jury from finding the prisoner guilty, if the inference of guilt is the only inference open to reasonable men upon a consideration of all the facts in evidence.'"

[303] The statement of principle, that in order for a hypothesis to be a reasonable one in that sense it must be based upon something more than mere conjecture, was established by *Peacock* and most recently restated by *R v Baden-Clay*[463] where the court said:

> "For an inference to be reasonable, it 'must rest upon something more than *mere conjecture*. The bare possibility of innocence should not prevent a jury from finding the prisoner guilty, if the inference of guilt is the only inference open to reasonable men upon a consideration of all the facts in evidence' (emphasis added). Further, 'in considering a circumstantial case, *all of the circumstances* established by the evidence are to be considered and weighed in deciding whether there is an inference consistent with innocence reasonably open on the evidence' (emphasis added). The evidence is not to be looked at in a piecemeal fashion, at trial or on appeal."

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458 (1992) 175 CLR 495 at 509.
459 *R v Sharma; R v Agrawal* [2017] QCA 209 at [72].
460 *R v Rae* [2006] QCA 207 at [55].
461 *Wood v R* [2012] NSWCCA 21 at [372].
462 [2018] 3 Qd R 575; [2018] QCA 37 at [29]-[30]; internal citations omitted.
463 *R v Baden-Clay* (2016) 258 CLR 308 at 324 [47]; internal citations omitted.

[304] In my view, the critical feature here is the statement in *Baden-Clay*, that in considering a circumstantial case, *all of the circumstances established by the evidence* are to be considered and weighed in deciding whether there is an inference consistent with innocence reasonably open on the evidence.

Evidentiary support for another man running from the house

[305] The jury had before it a body of evidence which established, beyond reasonable doubt that the appellant was at the scene of the house explosion and fire, and then ran from that location along the pathway next to First Avenue, in the direction of the jetty. Further, that he was running to where his motorbike had been parked, in the small car park adjacent to the kindergarten near the corner of Bonham Street and the inner First Avenue.[464] The evidence putting the appellant both at the house and running along First Avenue comes from a variety of sources, including the appellant in his own interviews:

(a) Patruno was positioned near the front of the appellant's property after the explosion,[465] and saw a figure running on First Avenue, past Cumming Street; by that description the person was heading in the direction of the jetty;

(b) Dyke was next to the car parked outside the neighbouring property when the appellant ran past him;[466] he described the man as carrying a backpack and wearing a hoodie and jeans;

(c) Trindall saw a man running at the end of Bonham Street, near the kindergarten or day care centre; he was running the direction of the jetty; that man got on to a motorbike and rode towards the jetty; he was dressed in black and wearing a hoodie and a black bag was on his arm;

(d) Freeman saw a man running when she was in Bonham Street; that man got on to a bike outside the day care centre and rode towards the jetty; the man was dressed in black and wearing a hoodie or a hat, and had a black bag on his shoulder;

(e) Freeman said the man rode away on a Ninja Bike, which was the name of the bikes shown in Exhibits 8 B and C; the man she saw had no gloves on; the appellant had dropped his gloves near the house;

(f) Spann lived at No 52 on the inner First Avenue; she ran outside when the explosion happened and saw a man running; no one else was running in that area; she was sure he was wearing black leather; she had the man positioned in the vicinity of the footpath running between the main First Avenue and inner First Avenue;[467]

(g) Harwood saw a man running away from the house; he had a backpack over his shoulder; he noted that the man was in the vicinity of the footpath between the main First Avenue and inner First Avenue;[468]

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464 As Exhibit 1 reveals the main part of First Avenue extends in a generally east-west direction at the front of the appellant's house. As one travels west towards the jetty the first street to the left is Cumming Street, then the next is Bonham Street. If one turned left off First Avenue down Bonham Street (running in a southerly direction) one would then encounter the inner First Avenue, which bears the same name as the main First Avenue, but commences as a cul-de-sac just short of Cumming Street and runs in a westerly direction across Bonham Street until it connects with Foster Street.

465 See Exhibit 1.

466 See Exhibit 7.

467 See Exhibit 10.

468 See Exhibit 11.

(h) Blakers lived in Cumming Street, and was in that street when she saw a man jog across the top of First Avenue and into the inner First Avenue cul-de-sac; she heard a bike; the man was wearing a black beanie or hat, black shirt and black pants; she recollected that the man was somewhat inside the footpath running along the main First Avenue and positioned to enter the cul-de-sac end of inner First Avenue;[469]

(i) the position of the day care centre or kindergarten, with its small car park was shown by Bird to be in an area near the corner of inner First Avenue and Bonham Street;[470]

(j) in his interview the appellant said he had parked the bike "around the corner";[471] he identified himself as the person that Patruno, Dyke, Trindall, Freeman, Spann, Harwood and Blakers would have seen;[472]

(k) in his second police interview the appellant said that on the day of the explosion he "parked the motorbike down the road in a little car park", and that is where he got on the bike and rode away;[473]

(l) in cross-examination it was put to Blakers that the bike she heard could have been leaving from the day care car park, and she responded in the affirmative;

(m) Weare was cross-examined by the appellant on the basis that the appellant did park in the day care car park;[474] and

(n) the appellant neither heard nor saw anyone at the house or in the house while he was there;[475] the only person that he noticed was a man next to a car after the explosion; that must have been Dyke.

[306] Trindall and Freeman identified that the motorbike they saw was one similar to the bike ridden by the appellant. The bike ridden by the appellant on the night (minus its seat) is shown in Exhibit 8C. When Freeman was shown Exhibit 8C she was told, by reference to the wheels, "this is the actual wheels on a bike that was in the area on that night".[476] That was an admission that Exhibit 8C shows the bike which the appellant rode that night.

[307] The bike identified by both Trindall and Freeman is that shown in Exhibit 8B. When Trindall was shown Exhibit 8A she said that the bike she saw "didn't have the muffler on it", which she identified as "the exhaust – that silver thing". The appellant's bike, as shown in Exhibit 8C, did have such an exhaust, but the answer could easily be that Trindall saw it from the other side, that being the side on which there was no exhaust.

[308] Finally, Exhibit 36 shows the appellant riding towards Bribie Island on the day in question.[477] The motorbike in that photograph is consistent with that shown in Exhibit 8C, and demonstrates that the silver exhaust was only on the right hand side of the

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469 See Exhibit 29.
470 Exhibit 16.
471 AB 981.
472 AB 1038.
473 AB 1079 line 18.
474 AB 840 line 3 to AB 841 line 37, AB 843 line 6.
475 AB 1097.
476 AB 189 line 31.
477 The CCTV footage across the relevant window of time showed only that bike going across the bridge.

motorbike. If Trindall and Freeman saw the bike only fleetingly, and from its left side, it is not surprising to find that neither of them identified a silver exhaust as a feature.

[309] In my view, on the evidence referred to above it was open to the jury to be satisfied beyond reasonable doubt that:

(a) the appellant was at the house when it exploded and burst into flame;

(b) no-one else had been in the vicinity of the house during the time he was there;

(c) he was wearing dark clothing and carrying a backpack;

(d) it was the appellant who was seen by Patruno, Dyke, Trindall, Freeman, Blakers, Spann and Harwood;

(e) none of those persons saw a second man in the vicinity;

(f) the appellant's motorbike was parked in the car park at the kindergarten day care centre;

(g) the appellant ran there, travelling wholly or in part along the pathway on main First Avenue; and

(h) it was in the kindergarten day care centre car park that he got on his motorbike and rode in the direction of the jetty.

[310] Further, in my view, it was open to the jury to conclude that there was no other man seen by any of those witnesses. Once the totality of that evidence is considered, it becomes apparent that Trindall and Freeman were mistaken to the extent that they said that the man they saw had a beard and that the motorbike had no registration plate. The appellant's motorbike had a registration plate, as is evident from Exhibits 8C and 36. The appellant himself made no suggestion that the bike he rode did not have a registration plate. On the evidence reviewed above it was the appellant who was seen by Trindall and Freeman, and on the appellant's motorbike.

[311] As to the issue of the beard, the following matters suggest that the jury could certainly discount that evidence:

(a) when Freeman was first interviewed she was asked to describe the person she saw and in that description she said "I think he had a beard … that what we'd seen";[478] towards the end of that interview she qualified it by saying "it looked like he had a beard";[479]

(b) in her evidence Freeman said it was not a long beard "but it was just a medium kind of just scruffy beard", possibly about 15 centimetres long and certainly not stubble;[480] she did not see what colour the beard was;[481]

(c) when Trindall was interviewed by police she said that Freeman "saw he had like an orangey-red beard", but she didn't see it;[482] in her evidence she was asked to describe the person she saw, and all her answers were what "we" thought or saw;[483] so she said "We thought he had a … darkish beard" and

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478 AB 960 line 27.
479 AB 964 line 16.
480 AB 187 lines 32-47.
481 AB 188 line 3.
482 AB 970 lines 44-55.
483 AB 169 lines 16-25.

"darkish sort of hair, we guess, because of the beard" and then when she called it a goatee she said "that's what we thought".

[312] On that basis the evidence about the man having a beard was not compelling. In my view, it was open to the jury to reject that aspect of the evidence of Trindall and Freeman, but nonetheless accept that the person they saw was the appellant running to his own bike and riding away.

[313] The prospect of there being a second man running at the same time, in the same direction, to the same car park, wearing no gloves and riding away on the same sort of bike, is fanciful.

Was there evidence to support the appellant's assertion that he was chased?

[314] The appellant in his interviews certainly said that he believed he was being chased by someone, linking that with his identification of a man standing near the car and screaming at him. As the review of the evidence above shows, that person was almost certainly Dyke, and the car was the car the four teenagers had arrived in, on their mission to obtain camping gear. The evidence excludes the conclusion that there was another car or another man or that anyone else was calling out or screaming to the appellant.

[315] It was suggested before this Court that there was evidence tending to show the appellant was right to think he was being chased by someone. However, a proper review of the evidence does not support that conclusion.

[316] Patruno did say that when they drove away they "went to see if we could find him", referring to the man who had run away.[484] However, the four teenagers only left the scene a considerable time after the appellant had ridden away. The best estimates put that time at least 10 minutes and up to 20 minutes after the explosion had become apparent and people had begun to gather. By then the appellant would have been a long way away and certainly nowhere near First Avenue. There was no chance whatever that the appellant saw the teenager's car following him, because it was not.

[317] The only other evidence to which attention was drawn in this respect was the dash-cam footage from the police car as it crossed the Bribie Island Bridge on its way to the fire scene, and the still photograph taken from that footage.[485] Neither of those exhibits supports the conclusion. It simply shows a motorbike rider crossing the bridge with a car a considerable distance behind him, at least 30 metres. The time signature recorded on the dash-cam footage reveals a three second interval between the motorbike and the next car. If a speed of about 60 km per hour was assumed[486] the distance was 50 metres, or about 10 car lengths. That accords with what can be seen in the footage. The dashcam footage does not have the car travelling at a particular speed which would suggest it was chasing the motorbike as opposed to simply following because it happened to be driving in the same direction.

[318] It is this aspect of the case where the jury were presented with another curiosity about the applicant's account. It was that when he got on the motorbike and rode away he headed to the Bruce Highway where he turned right towards the Sunshine Coast and "then I did a series of lefts and rights".[487] Exhibit 42 shows the path that the appellant

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484 AB 113 lines 24-29, AB 117 line 12 to AB 118 line 10 and AB 119 line 24.
485 Exhibit 37.
486 A conservative assumption given the appellant's description of how he rode away.
487 AB 1079 lines 16-30.

took from his house at Narangba to the house at Bribie Island. It shows the reverse path that the appellant took from the Bribie Island house out to where the road joins the Bruce Highway. On any view, that is a considerable distance, which one can estimate from that exhibit at in excess of 20 kilometres. Even allowing for the fact that the appellant might have been in a state of shock following his being caught in the explosion, the jury might well have been sceptical about the suggestion that the appellant continued to think he was being pursued all the way to the Bruce Highway, when it is only after joining the Bruce Highway that he then did the series of left and right turns. The jury were entitled, in my view, to conclude that that particular part of the account was unreliable, and reject it.

[319] This survey of the relevant evidence serves to demonstrate that there was no foundation for a conclusion that the appellant was actually being pursued, even if he believed for a time that he was.

Others at the scene - Patruno and Dyke's actions after the explosion

[320] The contention was that there were numerous persons at the scene, some with criminal records, particularly Patruno and his companions, and the possibility that one or other of them might have caused the fire could not be excluded.

[321] This part of the case must centre on Patruno and his companions. There was no rational suggestion that any other person who was present that night could even remotely fit the bill.

[322] Suggestions were made by the appellant during the course of the trial that the four boys in the car outside[488] were possible suspects in the house fire and the fact that they left before the police arrived tended to show that. Given that, it was curious that the appellant did not directly put to either Patruno or Dyke that they were involved in the house fire. However, their evidence otherwise, and the evidence of other witnesses who were there on the night, reveals a closer picture of what occurred.

[323] Patruno said he was there when other people showed up after the explosion.[489] He said that all four of them stayed for about 10 to 20 minutes[490] and left just after the fire brigade had arrived,[491] but before the police arrived.[492]

[324] In terms of the others who gathered at the scene, Patruno said he spoke to some of them,[493] that he saw Trindall[494] and saw others who he identified as Blakers and a neighbour from two doors down.[495]

[325] Dyke gave evidence that they did not leave straight away.[496] There were people at the scene afterwards, and the four boys left after the fire brigade was called and before

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488 Patruno, Dyke, Drayton and Long.
489 AB 69 line 31, AB 92 line 36.
490 AB 69 line 39.
491 AB 69 line 44.
492 AB 101 line 7.
493 AB 91 line 30.
494 AB 92 line 16.
495 AB 92 line 38-43.
496 AB 140 line 44.

the police arrived.[497] They were there about 15 minutes before leaving.[498] He could not recall which of the people at the scene had turned up first.[499]

[326] In her interview Trindall said that when she was at the scene afterwards she saw Patruno "grabbing his pillows and stuff",[500] and confirmed subsequently that she had seen him at the scene.[501]

[327] In her evidence at the trial Trindall said there were people at the scene, including her cousin and uncle, who walked past.[502] She said that she saw Patruno with some pillows, getting into the back of a car and then reversing out of the driveway.[503] That was about 20 minutes after she got there. That account was much the same as her evidence at the first trial.

[328] Freeman's evidence was shorter on this aspect, saying nothing about it in her interview or in her evidence in chief. In cross-examination some evidence was put to her from the first trial, to the effect that she saw Drayton's friends run out of Patruno's house and towards the house on fire.[504]

[329] Spann said that there were others at the scene before the police or the fire brigade arrived.[505] There was only one car out the front of the house, and the teenagers were getting into it.[506] When they got into the car one of the teenagers was saying that he "couldn't believe this had happened", and was "a little bit aggressive about it". They drove off after a period of about 10 to 20 minutes.[507] She said she stayed about 10 minutes, and then left after the fire brigade had arrived but before the police.[508]

[330] Harwood said that after the explosion there were about 10 people at the scene, watching the fire.[509] He didn't know the people there. He said that he stayed about 10 to 15 minutes and the fire brigade and police arrived while he was there.[510]

[331] Blakers said that there were about 30 people there when the police and the fire brigade arrived,[511] and she spoke to some of them, including Patruno's mother.[512] However, she did not see Patruno there.[513]

[332] Whilst there may have been some inconsistencies between Trindall, Freeman, Spann, Harwood and Blakers, some of which may have been attributable to differing memories, the jury had no reason to reject their evidence as dishonest or unreliable. That evidence established that Patruno and his three companions remained at the

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497 AB 141 line 44 to AB 142 line 17.
498 AB 143 lines 4-8.
499 AB 230 lines 13-26.
500 AB 972 line 56.
501 AB 973 line 8.
502 AB 166 and AB 167 line 3.
503 AB 174 line 32, AB 176 lines 7-30.
504 AB 193 line 25 to AB 196 line 21.
505 AB 198 lines 34-40.
506 AB 198 lines 44-46.
507 AB 200 lines 30-46.
508 AB 199 lines 34-38.
509 AB 207 line 33, AB 208 lines 14-18 and AB 209 lines 10-15.
510 AB 208 lines 20-25.
511 AB 580 line 45 to AB 581 line 7.
512 AB 581.
513 AB 582 line 45 to AB 583 line 26.

scene afterwards for a time period up to 20 minutes before leaving in their car, which in the meantime had remained at the scene. Further, Trindall's evidence was that when she saw Patruno getting into the car he had pillows with him. That evidence was not challenged. It directly supported Patruno and Dyke's account that they were retrieving camping gear and left to go camping after having remained at the scene for some time. Trindall, Freeman and Spann all saw either Patruno or Patruno and his friends at the scene, and leaving in an orderly way. None of that would have suggested to the jury that it was the conduct of someone who had just brought about the explosion and consequent fire. The reference by Spann to one of the four teenagers being a bit aggressive in his statement that he could not believe that it had happened, does not carry the matter anywhere. The four teenagers had just witnessed the explosion of a house and the force of that explosion, and then a fire fierce enough to consume the house in short order. It would hardly be surprising that one or other of them was either agitated or appeared to be a bit aggressive in saying they could not believe what had happened. It was hardly the sort of thing one would see frequently.

[333] The jury were then left with the evidence of Patruno and Dyke, supported, as it was, in a material respect by the evidence of Trindall, and the general evidence of their conduct in the aftermath. Their evidence was that they did not cause the explosion or fire because they had simply turned up, parking outside in order to go into Patruno's house and retrieve camping gear. It was in the course of that task that the explosion and fire occurred. Further, the jury would have been aware of the fact that the appellant did not put to Patruno or Dyke that they were involved, nor did he put to Patruno or Dyke that the other two teenagers were involved. The jury could well conclude that Patruno's conduct in staying for nearly 20 minutes and then calmly leaving with pillows in his possession, was hardly the conduct of somebody who had just set fire to or caused an explosion in the appellant's house.

[334] The absence of Drayton and Long as witnesses was explained by Weare. Drayton had moved interstate to an unknown address before a statement could be taken. Long had moved interstate, but had agreed during a period back in Queensland, to give a statement. However, he moved away again to an unknown address.

[335] Within a day or so of the fire the police had Dyke's statement. When he returned from camping he voluntarily went to the police station and was interviewed. That account did not implicate any of the four teenagers. In fact, police had the statements from Trindall, Freeman, Spann and Harwood. Those statements supported what Dyke said, in terms of the appellant being the only person running away from the fire.

[336] In my view, the jury could rightly reject the possibility that any of the four teenagers were involved, or should have been suspects.

Scientific evidence - Maxwell

[337] The significance of the scientific evidence given by Maxwell lies in the fact that the appellant's tracksuit pants and shoes were found to contain petrol residues and, in Maxwell's opinion, it was "highly likely … that those two items were in contact with liquid petrol". To properly assess the impact of that evidence, some closer analysis is necessary.

[338] Maxwell's expertise and methodology were not in question at the trial. She said that the five separate items of clothing[514] were separately packaged in individual fire-

[514] Tracksuit pants, sports shoes, a grey and black jumper, a black t-shirt and a blue jumper.

debris sampling bags. She then tested them individually and obtained five results. The results were:

(a) the tracksuit pants and the shoes were found to contain petrol residue;[515]

(b) the other items were found to contain "light to medium aromatic-product-class ignitable-liquid residues";[516] and

(c) because the results on the jumpers and the black t-shirt did not identify all of the relevant compounds, Maxwell was unable to definitively say that the residues were petrol, but "it appeared to be petrol".[517]

[339] Maxwell was asked whether the results for the tracksuit pants and shoes meant that petrol had been in direct contact with those items. Initially her response was that those two items were "probably" in contact with liquid petrol,[518] but she then refined that opinion, saying:[519]

> "It's highly likely, that those two items were in contact with liquid petrol. In particular, the shoes had a higher level of reading than the tracksuit pants. … [T]he profile was consistent with … a full profile of petrol. So it's consistent with being in contact with liquid petrol."

[340] As for the tracksuit pants and the shoes, Maxwell was unable to say on which part of those items the petrol had been in contact. That was because the sample taken is of the one whole item and the vapours are contained within the fire-debris sampling bag.[520]

[341] Maxwell was then asked whether the fact that all five items had once been contained in the one bag meant that petrol vapours had transferred from one item to another item. She said that if one of the items had petrol residue on it and the others did not, then it is possible that some of the petrol vapours could have transferred on to the other items. That is, from the items that had petrol residue to the items that did not. However, it was "highly unlikely" that the petrol residue located on the track pants and shoes could have been the result of cross-contamination from the other items.[521] That said, Maxwell said she could not exclude it as a possibility. That conclusion was then explained further in re-examination when Maxwell was asked whether the fact that petrol was poured on the clothing meant that all of the clothing would have been expected to have petrol residue. She answered:[522]

> "Petrol that's come into contact with clothing; it would depend on which item it was, which items came into contact with it. If it was in contact with one of the items and they were all in close proximity to each other, then you might expect petrol vapours to be detected on the other items. So previously I mentioned that I think that the shoes and the tracksuit pants probably had liquid petrol on them. So they've probably been – they've come into contact with a liquid petrol source whereas the other three have more in contact with petrol vapours as opposed to liquid."

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515 AB 411 line 29.
516 AB 411 line 30.
517 AB 411 line 44.
518 AB 412 line 2.
519 AB 412 lines 33-38.
520 AB 412 line 27.
521 AB 412 line 40 to AB 413 line 6.
522 AB 429 lines 10-17.

[342] Maxwell was asked whether the fact that there was petrol residue on the tracksuit pants and shoes, namely at the lower end of the body, and only a light to medium aromatic-product-class ignitable-liquid residue on the other upper clothing, what conclusion might be reached. She answered:[523]

> "So there is a journal article that's been published in relation to finding petrol on clothing, and it's in relation to the transfer of petrol on clothing and shoes while pouring petrol around a room. It's published by the Forensic Science International Journal in the year 2000. And the reason why this article was published was for a question like this that has just been asked in court. And what it showed was that petrol, when it's poured from different heights, you're more likely to find a positive result on the lower garments, depending on where the petrol is being poured from. So in this particular case, the finding of petrol on the lower garments and trace petrol on the upper garments is consistent with what's been published in this article."

[343] The learned trial judge asked Maxwell whether the presence of the liquid petrol on the tracksuit pants and shoes could have occurred if it were the case that some petrol had been poured into the bag and landed on them. Maxwell agreed that if that was the scenario then it would account for what was found on the test.[524]

[344] Cross-examination also pursued the question of whether activities such as mowing the lawn, filling petrol cans, filling cars or boats or cleaning with flammable liquids, might leave fumes and vapours on the clothes. Maxwell answered by reference to a published journal article which was the result of a study investigating the presence of petrol on the clothing and shoes of members of the public. There had been three groups of people, the first being those who had filled their car with petrol, the second group of people who had recently filled their lawn mowers with petrol and the third being a service station attendant, a mechanic and a professional lawn mower. In the first group no traces of petrol were found. For the second group, of the 17 people tested petrol was detected on two pairs of shoes from two different people, and components of petrol detected on a third. As for the third group, after a number of shifts and work petrol was detected on the upper and lower clothing of the service station attendant, but no petrol residue otherwise. Maxwell summarised the effect of the study in these terms:[525]

> "So the purpose of this study was to show that members of the public aren't walking around with petrol on their clothing, even if you're filling up your car or even if you work in a profession where you're dealing with petrol."

[345] Maxwell also said that even if the clothes had been stored in a shed which contained fuel containers which were not airtight, the amount of fumes released would be "not enough to give the profiles that I am seeing".[526]

[346] Maxwell was asked whether stains on the clothing could have been from paint, varnish, methylated spirits or other flammable items such as oil. She said: "[T]he profiles that I obtained weren't consistent with any of those products that you've just

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523 AB 413 lines 32-41.
524 AB 418 lines 26-31.
525 AB 421 lines 4-7.
526 AB 421 line 31.

mentioned".[527] She explained that the profile she found was "almost a full profile" and that a petrol profile did not look like any of the products that had been mentioned.

[347] Maxwell was also asked whether, if the clothes and other items had been left on the floor of a police station, through which police officers who had been at the scene of the arson and in contact with water containing petrol or fuel, were walking, that might account for what was found on the items. Maxwell responded:[528]

> "Highly unlikely for a number of reasons. One, the study that I've previously mentioned, that people aren't walking around with petrol on their clothing and secondly, that the quantities of petrol identified on the shoes and the tracksuit pants was significant compared to the other three items which was petrol vapours. … So in my opinion there was … liquid petrol in contact with the shoes … and/or the tracksuit pants."

[348] Maxwell explained that the amount of petrol to get a positive result was, by analogy, a drop of petrol in an Olympic sized swimming pool, or one part in a million litres.[529] Even so, she reiterated her opinion that it was "highly unlikely" that the results could have been the product of policemen walking through the station.[530]

[349] The end result of Maxwell's evidence was that she remained firm on several matters, namely:

(a) the results of her testing the tracksuit pants and shoes was that they had been in contact with liquid petrol, the shoes more so than the tracksuit pants;

(b) the probability that those two items had been in contact with liquid petrol was put as "highly likely";

(c) the readings on those two items were such that they could not have been the result of cross-contamination from the other items of clothing; that was "highly unlikely";

(d) the results on the tracksuit pants and shoes were consistent with published research in relation to the product of pouring petrol around a room while wearing those clothes;

(e) the results could not have been the consequence of wearing the clothes over time, or leaving them in a shed where fuel was contained in other containers;

(f) it was highly unlikely that any of the results could have been the product of cross-contamination from police officers walking through the police station; and

(g) the tracksuit pants and shoes had liquid petroleum on them and they had probably come into contact with a liquid petrol source, whereas the other items of clothing had only come into contact with petrol vapours.

[350] There was no good reason for the jury to reject Maxwell's evidence. Her expertise, though not conceded by the appellant, was outlined by her in her evidence. In short:

(a) she had been in the analytical services unit for six years;

(b) she held a Bachelor of Applied Science, majoring in chemistry and forensic science, and held a Masters Degree in scientific studies;

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527 AB 422 line 15.
528 AB 424 lines 14-23.
529 AB 424 lines 28-32.
530 AB 424 lines 42-44.

(c) her day to day activities included the analysis of trace evidence, and in particular samples collected for testing for ignitable-liquid residues;

(d) she had prepared over 100 statements in relation to over 500 cases in which she had been involved, and had only been called as a witness three times, because her evidence had been accepted in all other cases;

(e) she had been involved in about 200 to 300 cases at the time she did the tests on the appellant's clothing; and

(f) she carried out peer review of other co-workers work, and provided training to new practitioners.

[351] The significance of Maxwell's evidence lies in the conclusion that the tracksuit pants and shoes were highly likely to have come into contact with liquid petrol, whereas all other items of clothing showed traces of petrol residue. Further, the cross-contamination that was possible by reason of all of the items being put in the one bag by Harris only went in one direction. That is, the residue found on the tracksuit pants and shoes could not have been derived by cross contamination from the other items, but rather the existing petrol residue on the tracksuit pants and shoes could have been the source of cross-contamination by way of petrol vapour on the other items.

[352] The other matter of significance in Maxwell's evidence relates to the question put by the trial judge concerning a hypothetical scenario under which: (i) liquid petrol was poured into the bag; and (ii) it landed on the clothing or shoes. In that scenario Maxwell agreed that it might account for the conclusion that the tracksuit pants and shoes were consistent with being in contact with a liquid petrol source.[531]

[353] However, there was simply no evidence upon which the jury could conclude that there was any likelihood of liquid petrol being poured into the bag. None of the six witnesses involved in the seizure of the appellant's clothing, its initial bagging and then its redistribution into individual sealed bags, suggested any such thing. Further, none of them gave evidence that anything inappropriate was done to the bag which Harris used.

[354] Harris himself said that when the items were put in the bag, they were put in by the appellant. Exhibit 19 reveals that to be true. It records the appellant identifying items in the open pocket on his backpack, and being asked to place the items in the brown paper bag. Following that Harris folded or "scrunched" the top and stapled it. The bag then remained in the close vicinity of Harris[532] until it was handed over to the scenes of crime officers. There is not the slightest suggestion that any of those persons, or anyone else in that time period, introduced a liquid petrol source into the brown paper bag. The proposition was, on all the evidence, completely fanciful. It might be one thing to say that someone could insert a small and rigid item such as a matchstick through the folded and stapled top of the bag, but totally another to suggest that somehow someone, without being seen, was able to introduce some petrol, necessarily in liquid form, through the opening of the bag and avoiding both the helmet and the backpack (the top two items in the bag) and falling neatly onto the tracksuit as well as the shoes. The jury were, in my view, compelled to reject that proposition. It was more than speculative.

[355] At this point I can turn to the question of the redhead matchstick.

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531 AB 418 lines 25-31.

532 Near his legs at a desk.

Significance of the redhead match

[356] The evidence concerning the existence of the redhead match in the appellant's backpack needs to be examined, not the least because the appellant ran the defence case on the basis that its presence could only have been as the result of corrupt behaviour by the police, or some sort of police joke, which amounts to the same thing.

[357] There were only six witnesses who gave evidence concerning the handling and treatment of the appellant's clothing, backpack, shoes and helmet between when he arrived at the Caboolture Police Station and when they were handed over to the Scenes of Crime Officer, Pankhurst. They were Pilgrim, Burgess, Harris, Harbers, Sowden and Pankhurst.

[358] Pilgrim's evidence was that he did not touch any of the appellant's items[533] and it was not suggested that he did. Pilgrim said that he saw Harris putting at least some of the items in the brown paper bag.[534]

[359] Burgess said she was not in the room when the items were retrieved from the appellant, and did not touch them.[535] Apart from suggesting that she might have been in the room at some point, it was not suggested that she had touched them either.

[360] Harris gave evidence that he got the appellant to put the items in the bag.[536] He said he had the appellant open the backpack and did a visual inspection.[537] In doing that he saw keys and glasses. It was put to him that he had upended the backpack onto the table, which he denied.[538] It was also put to him that having upended the backpack he (Harris) then put the items back into it, which he denied.[539] That evidence, including what was put to Harris, was silent on whether the backpack had been zipped closed when it went into the brown paper bag.

[361] Harbers said he removed the items with Pankhurst.[540] He said he removed the backpack, saw the match was in there, but could not recall if the backpack was zipped closed.[541]

[362] Sowden was present with Pankhurst when the items were removed from the brown paper bag. Sowden said he removed the items and they were photographed by Pankhurst.[542] He first saw the match in a photograph.[543]

[363] Pankhurst said the items were removed and photographed. They were removed sequentially from the top, and photographed sequentially.[544] That meant that the order in which the items were removed from the brown paper bag was: (i) the helmet;[545] (ii) the backpack;[546] and (iii) then the remaining clothing and shoes.

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533 AB 287.
534 AB 288.
535 AB 294.
536 AB 304, 310 line 21 and 312 line 9.
537 AB 305 line 1.
538 AB 314 line 30.
539 AB 315 line 4. See also AB 351 line 4.
540 AB 357 line 31.
541 AB 358 line 19, AB 361 line 43.
542 AB 365 line 30.
543 AB 370 line 22.
544 AB 375-376.
545 Shown in exhibit 21, photograph 526.
546 Shown in exhibit 21, photograph 527.

[364] Photograph 528 in Exhibit 21 was a photograph of the front pocket of the backpack, and photograph 531 was a photograph of the match in that pocket. Harris was not asked whether the backpack was zipped up or not but photograph 527 shows the backpack as it came out of the brown paper bag. The backpack's front pocket was then unzipped, and Harris said with reference to that pocket, that "it's been undone …".[547] Harbers said that it was he who removed the backpack, and "if there's a photo, that should show who's removed the backpack".[548] That supports the conclusion that photograph 528 shows the backpack as it came out of the paper bag.

[365] In terms of the order in which the items were removed, Harris said that the helmet came first, then the backpack.[549] Photograph 541 in Exhibit 21 shows the bag used by Harris, and photograph 526 in Exhibit 21 shows the helmet. A comparison suggests that the helmet would have nearly filled the bag from side to side.

[366] Harris had said that he got the appellant to open the backpack.[550] The appellant put to Harris that he had emptied the contents of the backpack onto the table, which Harris emphatically denied.[551] That proposition was not put to Pilgrim. It is falsified when one has regard to Exhibit 19, the audio recording taken by Harris of at least part of the process of seizing the appellant's clothes and other items. In Exhibit 19 it is apparent that the appellant identifies what is contained in the front pocket of the backpack, namely two sets of keys (one a set of car keys and one house keys), and glasses. Exhibit 19 does not record anything which would suggest that the backpack was upended on a table, but rather that the appellant was looking into the open front pocket when he identified those items. Exhibit 19 then records the bag being put into the brown paper bag, by the appellant.

[367] The nature of the defence case was revealed when the appellant put to Harris that he was a liar when he denied that he (Harris) had put the items in the bag. Exhibit 19 reveals Harris asking the appellant to do so.

[368] On Maxwell's evidence, as well as the photographic evidence in Exhibit 21, there was no rational prospect that the petrol residue found on the shoes and the tracksuit pants could have emanated from the matchstick. The photographs show it plainly to be in the open pocket of the backpack which was sitting above the shoes and tracksuit pants in the brown paper bag. In that position it is simply not possible for the matchstick to have created the contact with liquid petrol which, according to Maxwell's evidence, was evident from the test results. There is no evidence that the matchstick was ever in contact with the tracksuit pants and the shoes and it would have to be both of those items, as each returned a result for contact with liquid petrol. In my view, the jury were compelled to reject that suggestion as fanciful.

[369] One underlying theme which permeated the appellant's view of the police officers in the case was that there was corrupt conduct on their part, both as to the investigation and as to the presence of the match in the backpack. However, the suggestion does not bear scrutiny. For it to have any currency the relevant corrupt officer had to be one of those who were near or dealt with the brown paper bag, more specifically Pilgrim, Burgess, Harris, Harbers, Sowden or Pankhurst. None of those officers had

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547 AB 376 line 23.
548 AB 358 line 16.
549 AB 361 line 37.
550 AB 305 line 1.
551 AB 314-315.

met the appellant before the night when he presented himself at the police station, and none of them were the investigating officers in the case. There is no rational suggestion on the evidence that any of those officers might have behaved in a corrupt way, by putting the matchstick inside the brown paper bag, and into the top pocket of the backpack. And even if they had done so, the proposition still confronts the difficulties set out above. In my view, the suggestion was rightly rejected by the jury. It was borne more out of the appellant's apparent paranoia about police officers in general, than any rational assessment of what occurred.

[370] The remaining suggestion about how the matchstick got into the backpack, inside the brown paper bag, was that it might have been put there by some officer playing a joke. There is no evidence to support that suggestion, and the sequence of the handling of the appellant's clothing, whilst perhaps not best practice, tells heavily against acceptance of it. In my view, the jury could exclude it.

Criticism of the police investigation

[371] The appellant's attack, both at trial and before this court, covered a number of areas, with differing focus. For present purposes it is possible to put to one side the repeated allegations of corruption made at the trial, as they were not explicitly repeated on the appeal. Instead the focus was on criticising the police investigation for its inadequacies.

[372] In what follows I intend to put to one side the assertion that biased police were involved in the investigation of the car arson. Bioletti was the investigation officer in that regard, and he was not involved in the house arson. Similarly, Weare and Eaton were involved in the house arson, but not the car arson.[552]

[373] The appellant's submissions before this court were that the investigation was inadequate because:

(a) Weare decided, soon after commencing the investigation, that the appellant had committed the arson, thereafter treating him as the sole suspect; and

(b) As a consequence, Weare did not investigate:

(i) the tow truck driver involved in the car arson:

(ii) CCTV footage of the appellant being pursued; and

(iii) Trindall's uncle and cousin who were at the scene of the fire;

(iv) the exhibits taken from the appellant at Cabooture Police Station were not correctly logged or correctly bagged, and that had an impact upon the scientific evidence from Maxwell;

(v) police initially dismissed the appellant's suggestions of a car being present and a man screaming at him;

(vi) two of the four teenagers who were present on the night did not give evidence (McDougall and Long) and police did not take a statement from McDougall;

(vii) no forensic tests were conducted on the car, the teenagers clothing and no search was done of their houses;

(viii) no statement was taken from the appellant's wife;

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552 As will be apparent, Eaton was only involved in the house arson for a very short time.

(ix) those people who were at the scene on the night (apart from those mentioned above) were not pursued for statements.

[374] In order to properly assess the quality of those criticisms it is necessary to review what police were told at about the time they commenced their investigation, and what steps were taken.

Statements of witnesses called

[375] On the night of the fire a number of witnesses were interviewed by police at the Bribie Island Police Station. That included Trindall, Freeman, Spann and Harwood. Neither Spann nor Harwood mentioned the presence of a car. Spann did not recall seeing the car until the first trial,[553] which explains her failure to mention it to Bioletti or Weare. Harwood made no mention of the car, even in his evidence at the trial.

[376] The interviews of Trindall and Freeman were exhibited, and played to the jury. Trindall told the police that she saw Patruno there, getting into a car with pillows.[554] She also said that there were many people at the scene watching the fire and her cousin and uncle had walked passed. She told police that she spoke to her cousin and uncle, who said that they had seen nothing and asked her to pass that on to the police. She did so.

[377] Freeman did not mention the car or the four teenagers. She told police that there were others looking at the house when it was burning. That was true, as the uniformed police at the scene knew; they spoke to various people there and took preliminary accounts.

[378] At the time when they first interviewed the appellant, Dyke had not provided a statement. It was only when he returned from camping that spoke to his mother, that he rang the police and then went to see them.[555] He then gave a statement to the police, which they had prior to seeing the appellant on 22 July 2015. Dyke's statement reflected what he said in his evidence, identifying the four teenagers, that it was Dyke's car and he was driving, and that they had driven to the house and parked. He and Long stayed in the car, while Patruno and Drayton went inside to get camping gear. His account to police included having smelt petrol, the explosion, the man running past him at the front of the house, calling out to that man, one of the four teenagers calling the fire brigade, and departing later.

[379] On Dyke's evidence, as well as that of Patruno at the trial, Dyke was the only one who had called out to the man who was running from the house. Neither Patruno nor Drayton were outside at that point; Patruno only saw a shadowy figure some distance away.

[380] Therefore by 22 July the police had the eyewitness account of Dyke, identifying all four teenagers and what occurred. They also had the evidence of Trindall who had said she saw Patruno on the night of the fire, and specifically that when he was getting into the car he was carrying pillows. Police also had the estimate of Dyke, Trindall and Spann that the teenagers had stayed for about 15 minutes after the explosion and fire started, that the teenagers had called the fire brigade, they had waited during the time when others had gathered at the scene and even had some interaction with other people.[556] Police also had the fact that Dyke contacted them voluntarily to provide a statement.

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553 AB 201 lines 1–3.
554 AB 972.
555 AB 144 lines 11–22.
556 Trindall told police that she had said "hi" to Patruno.

[381] When the police interviewed the appellant after having obtained Dyke's statement, they revealed to the appellant the essence of what he had told them. That included identifying the car, the explosion, the man running (which was accepted by the appellant to be himself), the calling out by Dyke and the fact that the departure of the teenagers was in order to go camping.[557]

[382] Patruno did not give his statement until two years and four months later. It tallied with the statement given by Dyke. By the time Patruno gave his statement he had fallen out with Drayton and Dyke. There is no reason to doubt the evidence that Patuno and Dyke had fallen apart, to the level of hatred, and therefore no reason to think that there was any collusion between them as to their statements.

[383] Eaton's evidence was that he and Weare attended at the scene of the fire at about 7.30 pm. Possible witnesses were identified to them by uniformed police who were already at the scene and several statements were taken back at the police station that night.[558] He and Weare met the appellant at the hospital that night, and Eaton spoke to the bike owner (Pullen). Eaton's involvement was quite limited and he was back on other duties on the Sunshine Coast on the Tuesday following the Saturday fire.

[384] Weare's evidence reveals the various steps taken in the course of the investigation:[559]

(a) he and Eaton were at the scene of the fire at about 7.30 pm, at which time other police and the fire brigade were already there;[560]

(b) that night they interviewed Trindall and Freeman, and other witnesses were being interviewed by other officers at the Bribie Island Police Station;[561]

(c) that night they saw the appellant at the Caboolture Hospital; by then his clothing and the motorbike had already been seized;

(d) he obtained CCTV footage from the council, relating to the Bribie Island bridge, eliminating other cameras as being irrelevant because they were not focussed on the roadway;[562]

(e) he checked the local High School and the Childcare Centre for relevant CCTV footage, but they had none;

(f) he spoke to people at the scene of the fire, though not Patruno or Dyke who had left by then;

(g) by 22 July he had Dyke's statement, taken at the police station;[563]

(h) he obtained the CCTV footage from the Narangba pub, showing the appellant's utility parked there on the afternoon of the fire;

(i) he spoke to the appellant's wife on 22 July;[564]

(j) by 22 July he had taken five statements;[565]

(k) having obtained the photograph of the motorbike going over the bridge he looked to establish the time of sunset for that day;[566]

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557 AB 1109-1113, and AB 1131-1136.
558 AB 710 line 14.
559 Leaving aside his contact with the NRMA to obtain whatever information they had.
560 AB 750.
561 AB 750 line 22.
562 AB 751.
563 AB 866.
564 AB 792-793 and AB 804-808.
565 AB 806 lines 16-20.
566 AB 839 line 31.

(l) he did a Telstra search in relation to the appellant's mobile phone and a "lantern analysis";[567] he then examined the texts on that phone;

(m) he seized the appellant's phone and computers;

(n) he followed up the suggestion that the appellant had been interested in moving the existing house in order to put a new one on the block, saying he did not ever believe that suggestion;[568]

(o) he attempted to take statements from Long and Drayton; he went to McDougall's house, only to find that Drayton had moved to New South Wales at a unknown location; Long had also moved to New South Wales but when he returned to Queensland Weare spoke to him and Long agreed to do a statement; before it could be taken Long went back to New South Wales.[569]

[385] There were things put to Weare and which he agreed that he did not investigate. They included the following:

(a) he did not enquire at the local church, of its priests or parishioners;[570]

(b) he did not investigate the possibility of identifying other cars following over the bridge;[571]

(c) he did not obtain CCTV footage apart from that relating to the bridge;[572]

(d) he made no enquiries in respect to the tow truck driver;[573]

(e) he did not speak to Channel 7, but explained that was because he had spoken to the relevant witnesses directly;[574] and

(f) he did not interview the neighbours who had looked after the appellant's house (called Brooks), even though it seems they could only have spoken about the state of renovation.[575]

[386] In my view, the so-called deficiencies do not impugn the quality of the investigation. True it is that Weare always considered that the appellant was the prime or only suspect, and did not investigate the possibility that someone else might be a suspect.[576] However, when asked about that he did say that there were a couple of lines of enquiry raised but he was in the process of answering "they seemed sort of …" when the appellant interrupted his answer.[577] Looking at the things not done, there are good reasons to see why there were not done, and why the absence of doing them had no material impact:

(a) the review of the evidence concerning where the appellant parked the motorcycle and the descriptions given by all those who saw a man running on the night (see paragraphs [305] to [319] above) makes it clear, in my view, that

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567 AB 876 line 44 and AB 891 line 1.
568 AB 874 line 26.
569 AB 898.
570 AB 840 line 37 and AB 842 line 43.
571 AB 844 line 22.
572 AB 844 line 36.
573 AB 856 line 27.
574 AB 857 line 18.
575 AB 868 line 30.
576 AB 856 lines 3-6.
577 AB 856 lines 3-6.

there was no other bike and there was no other man, either there or running; therefore enquiries at the church, or of its priests or parishioners would have been pointless;

(b) similarly, that that same review of the evidence establishes, in my view, that there was no pursuit of the appellant; therefore attempting to investigate other cars supposedly following him over the bridge was pointless;

(c) for the same reason, CCTV footage apart from that concerning the bridge would add nothing;

(d) there was no credible evidence at the trial that the dispute between the tow truck driver and NRMA over his fees for towing the burned out car could have translated into anything concerning the house arson; that driver's anger was directed at the NRMA not the appellant;

(e) there was no point interviewing the neighbours called Brooks, as the only source of information that was suggested they might give was as to the state of renovations of the appellant's hours, a matter not in issue at the trial;

(f) the failure to obtain statements from Drayton or Long was explained; Drayton had moved to an unknown location; as for Long, Weare spoke to him and he was agreeable to providing a statement but went back to New South Wales before that could happen; the appellant only ever identified that there was one person shouting or screaming at him, while standing beside a car; that was plainly Dyke, who said that Long had remained in the car; the statements of Patruno and Dyke, given in circumstances where there was no possible collusion about their contents, and in circumstances where there was enmity between Patruno and Drayton and Drayton and Dyke, suggests that the absence of statements from the other two did not fatally compromise the investigation; that is particularly so, given that Patruno's statement was supported in a material particular by the evidence obtained from Trindall on the night of the fire, namely that she had seen Patruno there about 20 minutes after she arrived, which time he was getting into a car with pillows in his possession "grabbing his pillows and stuff"; and

(g) the handling of the appellant's item of clothing was not something Weare was involved in; the review of the evidence as to that matter (see paragraphs [100] to [141] above) shows that it did not materially impact upon the quality of the investigation; in that respect Maxwell's evidence that the cross-contamination could only go one way,[578] and (inferentially) not from the match (see paragraphs [337] to [370] above), was important.

[387] The appellant also complained that the NRMA was not even handed in its treatment of the appellant. Even assuming that to be so, it is not something in control of the police investigation.

[388] It is also true that Weare and others expressed a dislike of the appellant, even to the point of Weare using the word "hate" in respect of him. However, the appellant was evidently a difficult person to deal with, belligerent and threatening in terms of complaints about police conduct. His first interview with Weare and Eaton contained a number of instances where he proclaimed the success and frequency of his

578 From the shoes and track pants to the other clothes, and not vice versa.

complaints about police behaviour in the past, and having had a police officer sacked. His reaction over the issue of who spoke to his wife first, on the night of the fire, could not endeared him to the investigating police. The real question here is whether the police officers personal views somehow impeded the quality of the investigation. For the reasons set out above I do not accept that to be so.

Conclusion

[389] The jury were confronted with a dilemma which they had to resolve in terms of the assessment of the evidence overall. On the one hand they had the interviews with the appellant, in which he steadfastly denied any involvement and said that he was never in the house on that afternoon. And there was no obvious financial motive to carry out the arson.

[390] On the other hand, the expert evidence established that the explosion was as a result of vapour, it originated inside the house, and at some point the appellant's tracksuit pants and shoes came into contact with liquid petrol. That contact with petrol could not have been as a result of the casual activities of filling a car at a service station or mowing the lawn or storing the clothes in a shed. Because the appellant did not give evidence, there was no basis upon which the jury could have concluded that any such thing was possible.

[391] Therefore, as against the appellant's denials of involvement, and as well the lack of obvious motive, there was very powerful evidence from the scientific experts that the appellant's shoes and tracksuit pants had been in contact with liquid petrol within hours before the items were tested.[579] What, then, is the explanation for the appellant's having come into contact with liquid petrol on his tracksuit pants and shoes on the afternoon that his house burned down as a result of a vapour explosion. In my view, the obvious response is that the appellant was involved in distributing petrol which led to that explosion.

[392] Further, the mere fact that the appellant's shoes and tracksuit pants were in contact with liquid petrol that afternoon was a powerful piece of evidence compelling rejection of the appellant's version that he was not in the house at any time that afternoon. On the appellant's account given in the interviews there was no occasion that day when his shoes or tracksuit pants could have come into contact with liquid petrol. The two versions are simply irreconcilable, but there was compelling support for the presence of the petrol from Maxwell.

[393] The scientific evidence that the appellant's shoes and tracksuit pants exhibited contact with liquid petrol then brings into significance the evidence of Patruno and Dykes, that they could smell petrol. The appellant was the only person seen near the house that afternoon. He was not chased by another man, nor followed on the motorbike. The dash-cam footage gives no support at all to that notion. His account of riding many kilometres to the Bruce Highway before doing his suggested series of left and right turns in order to avoid the pursuit could rightly be seen by the jury as fanciful. Likewise the unaccounted period of several hours until he presented at the Caboolture Police Station.

[394] The lack of an obvious financial motive was but one factor which the jury had to weigh. They were told to bear in mind that the appellant had lost personal items in

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[579] Maxwell's evidence, based on studies by a colleague, was that the petrol residue degraded after about four hours: AB 412 lines 16-24.

the fire, which added to the lack of financial motive. However, lack of motive is not fatal to the conclusion of guilt.[580]

[395] Further, the jury had a body of evidence that might have suggested that the appellant had a volatile character, and the explosion and fire were the result of a black mood on his part.

[396] On a number of occasions the appellant described his mental state to the police:

(a) when he described the argument he had with his wife that morning as "a little bit of a blue" over her refusal to pick up some leaves, he said he "got the shits with her" and told her he was "going to see the guys from the club";[581]

(b) he took Citalopram for stress and anxiety, or mixed mood;[582]

(c) he stayed over quite often at the Bribie Island house if he was "having a shit time … with moods up and down"; in that context he said he was seeing a clinical psychologist every month, and as well he was seeing a psychiatrist;[583]

(d) he described getting involved in things "to stop me going completely mad and my psychiatrist has said it's a good idea";[584]

(e) he said "I just forget things and I can remember some things and I don't remember other things and I just don't know what it is, why it is, and it's not Alzheimer's or anything like that I don't think but as they say … I've become a bit of a hypochondriac. I've had every mental check done that you could have done. I'm fucked mentally alright";[585]

(f) when referring to the argument with his wife he said "… have you ever lived with anyone with a medical disorder? … like are they unpredictable sometimes? … I get into a rage for no reason sometimes … and what I do is get in the car and fuck off. I go for a drive and I just say leave me alone, don't talk to me … what I was feeling guilty about was psychological abuse by me having rages in the house";[586]

(g) describing the period after he had argued with his wife on the day of the fire, he said that he had gone over to Caboolture to pick up some strawberries, then left his ute at the Narangba pub; he sat there "trying to calm myself down";[587] and

(h) later in the second interview he referred to himself when he said "I've got a mental illness".[588]

[397] It is not necessary to reach a conclusion as to the impact of this part of evidence.

[398] In my view, it was open to the jury to conclude that the appellant was guilty, notwithstanding the absence of an obvious financial motive. More particularly, it was open to them to do so, having excluded all reasonable hypotheses. Those proffered by the appellant at the trial and before this court, when assessed on *all of the*

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580 *De Gruchy v The Queen* (2002) 211 CLR 85, [2002] HCA 33 at [57].
581 AB 988.
582 AB 994 line 56 to AB 995 line 2.
583 AB 1000 lines 1-11.
584 AB 1027 line 43.
585 AB 1028 line 46.
586 AB 1031 lines 10-30.
587 AB 1086.
588 AB 1165-1166.

circumstances established by the evidence,[589] do not rise above mere conjecture or speculation.

[399] These grounds fail.

Ground 4 – failure to properly direct the jury

[400] The appellant contended that the failure to give a direction pursuant to s 21A(8) of the *Evidence Act* 1977 (Qld), in respect of Trindall's evidence, constituted a substantial miscarriage of justice. Trindall was a child witness and an order was made for her trial evidence to be pre-recorded under s 21AK of the *Evidence Act*, and then played to the jury.

[401] For reasons which will appear, it was wrongly conceded by the Crown that the learned trial judge did not give a direction in accordance with the terms of s 21A(8) of the Act.

[402] The failure to give the appropriate direction constitutes an error of law which renders the trial irregular.[590] However, that failure does not necessarily give rise to a miscarriage of justice. Where the failure is not capable of giving rise to an inference adverse to the accused person, no miscarriage of justice arises.[591]

[403] Trindall's evidence was pre-recorded between 9.23 am and 10.05 am on day 2 of the trial. It was pre-recorded but not played to the jury until later. The next witness was Freeman, whose evidence commenced at 10.17 am. Just before her evidence was taken the trial judge gave a direction in these terms:[592]

> "… Now, just before her evidence is taken, I'll just give you a further direction about the way in which the evidence of children is taken. As I said, it is the law in Queensland that the evidence of children needs to be taken in this way. So … – by the recording of the interview with the police and then the recording in advance of the trial from a remote room, that is routinely done because it is the law and **you must not draw any inference about [the appellant's] guilt from the way in which … the evidence of the children is taken in this case**.
>
> **Their evidence** … – will be taken or has been taken in accordance with the law and, as it is done in all such cases. **The probative value of the children's evidence is not increased or decreased because of the way in which the evidence is taken because it's taken in that way** and not the usual way that adult witnesses give their evidence. The evidence is not to be given any greater or lesser weight because of the way in which it's taken. In other words, you assess the evidence of the child as if he or she was giving evidence in the courtroom before you during the trial, but taking into account that that evidence is fractured – taken in two stages. So back in 2015 and more recently."

[404] As is evident from the first paragraph of that direction, the learned trial judge made the direction in respect of both Trindall and Freeman, by using the phrase "the evidence of the children is taken in this case". Then, in the second paragraph, the references to "their evidence" and "the child's evidence" encompassed both Trindall and Freeman.

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589 *R v Baden-Clay* (2016) 258 CLR 308 at 324 [47].
590 *R v Michael* (2008) 181 A Crim 490 at [36].
591 *R v AJH* [2018] QCA 86 at [27]-[32].
592 AB 184 line 44 to AB 185 line 14; emphasis added.

[405] Trindall's evidence was described, in the presence of the jury, as "the evidence of the second child witness".[593] Both the s 93A interview and her pre-recorded evidence were played, commencing at 11.56 am, and therefore after the direction referred to in paragraph [403] above had been given.

[406] This ground of appeal fails.

Ground 3 – non-disclosure

[407] The appellant contends that he was denied a fair trial because of the failure by the prosecution to disclose two reports of Bioletti until such time as Bioletti had completed his evidence and departed for overseas.[594] It is also contended that the prosecutor failed to disclose the identity of a number of youths who were at the scene of the car arson.

[408] The question to be answered on this issue is whether the undisclosed material might have influenced the result of the trial. As was said in *R v Colagrande*:[595]

> "In *R v HAU*, Keane JA, with whom Cullinane and Jones JJ agreed, said that where documents were not disclosed in breach of the prosecution's obligation, then the Court of Appeal cannot ignore "even a relatively slim possibility that the defence has been forensically disadvantaged by the non-disclosure". His Honour said that non-compliance by the prosecution with its obligations of disclosure was such a serious breach of the pre-suppositions of a fair trial as to deny the application of the proviso, at least when the undisclosed material might have influenced the result of the trial. The hurdle for the defence raised by non-disclosure is, therefore, a low one."

[409] It is not the case that every non-disclosure will result in a miscarriage of justice, as it depends upon whether the outcome of the trial would have been adversely impacted:[596]

> "The question is whether this non-disclosure has resulted in a miscarriage of justice. In *R v Cox*, McMurdo P said that the test to determine whether there has been a miscarriage of justice in this context is an undemanding one, namely it is whether the material which was withheld could have made a difference to the verdicts. Similarly, in *R v HAU*, Keane JA said that "even a relatively slim possibility that the defence has been forensically disadvantaged by the non-disclosure" cannot be ignored."

[410] Bioletti was one of the police officers made available for cross-examination. His evidence was given on day 5 of the trial[597] and concerned only the investigation of the car arson, and whether he was present at the first trial when Weare disclosed that the appellant had made a complaint against him.

[411] The sequence of events concerning the reports is as follows:

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593 AB 212 line 7.
594 Reliance was placed on *Grey v The Queen* (2001) 75 ALJR 1708 and *R v HAU* [2009] QCA 165.
595 [2018] QCA 108 at [22]; internal citations omitted.
596 *R v Grimley* [2017] QCA 291 at [36].
597 Commencing at AB 447.

(a) the appellant requested disclosure of the reports over the weekend of 26 and 27 May 2018, after Bioletti had completed his evidence but before the close of the Crown case;[598]

(b) upon the request being made the prosecutor obtained the documents and provided them to the appellant on Monday, 28 May, day 6 of the trial;[599]

(c) the appellant, knowing that Bioletti had left the country, expressly stated that he was "not seeking to have [Bioletti] recalled, but … seeking to be able to comment on that in my closing speech";[600]

(d) in the course of submissions to the learned trial judge once the report had been provided, it became apparent that the newly disclosed report contained, in substance, no more than Bioletti had said in evidence namely, identifying the evidence he had in respect of the car arson;[601]

(e) the appellant twice told the learned trial judge that it was an issue "that will be dealt with in another jurisdiction" or was "for another jurisdiction";[602] and

(f) the appellant did not seek to have Bioletti recalled, even by a method which would not require his return to Australia, such as by telephone.

[412] The first report by Bioletti, dated 19 August 2016,[603] set out the case as Bioletti saw it in respect of the car arson, and sought a direction to prosecute. It referred to the various steps taken in respect of contacting the appellant, interviewing witnesses, reviewing other fires in the area and reviewing the state of the evidence. All of those matters could have been made the subject of cross-examination by way of telephone link, if the appellant so chose.

[413] The second report, dated 12 February 2017 was concerned with the rejection of a direction to prosecute. As with the first report, if anything could have been made of its contents that could have been done by cross-examination by telephone link.

[414] In my view, the inference is clear, namely that the appellant appreciated that the evidence that could be established from the reports was already before the court, as the review of Bioletti's evidence (see paragraphs [152] to [162] above) demonstrates. The appellant had already cross-examined Bioletti (and others) with a view to establishing that the investigation of the car arson was done poorly and that he may have been the target of that arsonist. As the reasons above reveal, the appellant was the only person at his house on the afternoon leading up to the explosion,[604] he was the only person seen to run away from the fire, he was the only person to ride away on a motorbike, and whatever he thought at the time it was the case that he was not pursued.

[415] The second aspect of complaint is that the prosecutor did not disclose the identity of a number of youths who were at the scene of the car arson. This point does not carry much weight. By the time of Bioletti's evidence Patruno had already given his own evidence in which he was cross-examined about the night of the car arson, and revealed that he was with Drayton and a female (Janaya Lauren), and gave evidence as to what they had done.[605] It had been put to Patruno, and denied, that he had set

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598 AB 576 line 22.
599 AB 576 line 2 and lines 20-27.
600 AB 576 lines 7-9.
601 AB 577 lines 7-25.
602 AB 576 line 30 and AB 577 line 39.
603 Exhibit LMcM-1 to the affidavit of McMahon.
604 Leaving aside the four teenagers.
605 AB 102.

fire to the appellant's car.[606] Further, there was other evidence from Driver that Patruno had been spoken to at the time of the car arson.[607]

[416] The critical difficulty confronting this ground is that in this case, unlike *Colagrande* or *Grimley*, the disclosure occurred prior to the close of the Crown case and at a time when the witness could have been recalled, even if only by phone. The appellant expressly disavowed any desire to have Bioletti recalled.

[417] In those circumstances it is difficult to conclude that the failure to disclose the reports or identity of the youths at the scene of the car arson could have impacted upon the trial in relation to the house arson. I do not reach that conclusion.

[418] This ground fails.

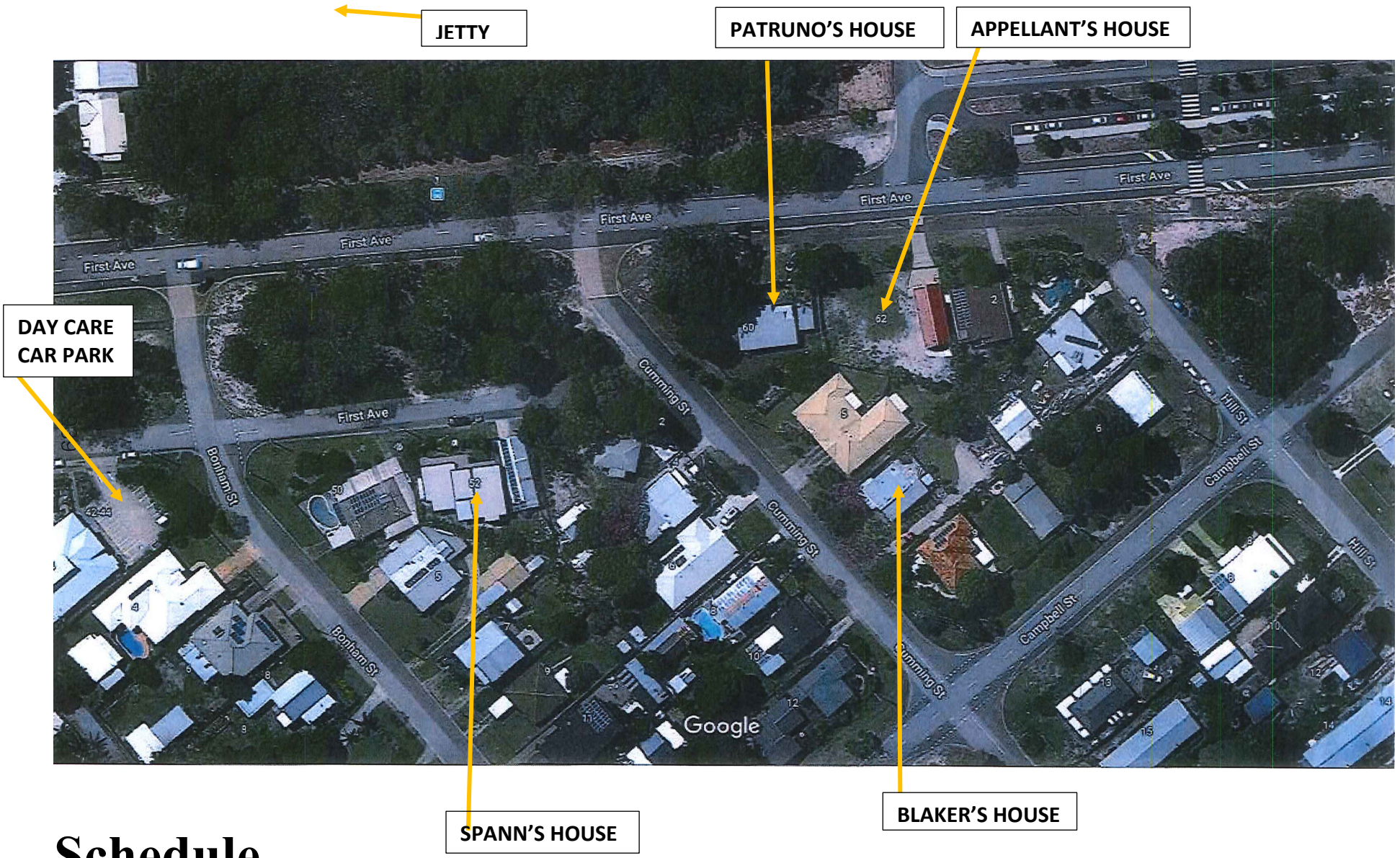
Disposition of the appeal

[419] All grounds have failed. I propose the following order:

1. The appeal is dismissed.

[420] **MULLINS J:** I agree with Morrison JA.

606 AB 128.
607 AB 539.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