



HIGH COURT OF AUSTRALIA

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Details of Filing

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**IN THE HIGH COURT OF AUSTRALIA
ADELAIDE REGISTRY**

No A 4 of 2022

BETWEEN:

PETER REX DANSIE

Appellant

and

THE QUEEN

Respondent

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RESPONDENT'S OUTLINE OF ORAL PROPOSITIONS

Part I: This Outline of the propositions to be advanced in oral argument is in a form suitable for publication on the internet.

20 **Part II: Outline of the propositions to be advanced in oral argument.**

1. ***M v The Queen and the Libke* elucidation. (RWS [9]-[14])**

M v The Queen (1984) 181 CLR 487 at 493, 494-5; JBA Vol II, 265-267

Libke v The Queen (2007) 230 CLR 559 at [113]; JBA Vol II, 179-180

Pell v The Queen (2020) 268 CLR 123 at [43]-[45]; JBA Vol II, 120-121

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- An appellate court will conclude that it was not open to the trier of fact to be satisfied of an appellant's guilt beyond reasonable doubt where the court, upon undertaking an independent assessment of the evidence at trial both as to quality and sufficiency, has a reasonable doubt about the guilt of the appellant that cannot be resolved on the basis of the trier of fact's advantage in seeing and hearing the witnesses.
- If it was not open to the trier of fact to be satisfied of an appellant's guilt beyond reasonable doubt in the sense described above, then it follows that the trier of fact must have entertained a reasonable doubt.

2. **The conceptual difference between the task of the trier of fact and the task of a court of appeal where the unreasonableness ground is engaged. (RWS [15])**

M v The Queen (1984) 181 CLR 487 at 493, 494-5; JBA Vol II, 265-267

R v Baden-Clay (2016) 258 CLR 308 at [65]-[66] : JBA Vol II, 332-333.

- Under the common form appeal provision, appellate jurisdiction is exercised to determine whether error has occurred in the exercise of original jurisdiction to try the charge.

3. The “bookends” to Livesey J’s judgment betray no error or misunderstanding of the correct approach.

a. “Disposition of Appeal”: CAB 253-255 : [413]-[417] : (RWS [19]-[20])

- [413]-[415] : CAB 253-254 - reflect points 1 and 2 above.
- [415] : CAB 254 - the primary function of the trial court : *M v The Queen* (1984) 181 CLR 487 at 493 : JBA Vol II, 265; *R v Baden-Clay* (2016) 258 CLR 308 at [65] : JBA Vol II, 332.
- [416] : CAB 254-255 - an independent assessment has been undertaken and the outcome expressed in the terms of *Libke*. At [417] : CAB 255 it is expressed in conformity with *M* and the *Libke* elucidation.

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b. “Conclusion”: CAB 298-299 : (RWS [37])

- [505] : CAB 298 - the distinction between the appellate and trial functions is repeated.
- [506] : CAB 299 - reflects the functions as described in *M v The Queen* (1984) 181 CLR 487 at 494: JBA Vol II, 266.

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4. Livesey J’s discussion of the “Role of the Appeal Court” further demonstrates a correct understanding of the approach and applicable principles.

“Role of the Appeal Court” : CAB 255-262 : (RWS [21]-[23])

- [422] : CAB 256 - this paragraph addresses the common form appeal provision in its entirety : *Filippou v The Queen* (2015) 256 CLR 47 at [4] : JBA Vol II, 228.
- [423] : CAB 256 - correct and unobjectionable
- [424]-[441] : CAB 256-262 - three features to bear in mind:
 - [425] : CAB 256 - an independent assessment of the whole of the evidence, both as to sufficiency and quality - I have done that.
 - [426]-[434] : CAB 256-258 - no solid obstacle in this case to proof of guilt (i.e. it was a question of whether the ultimate inference could be drawn to the criminal standard) : nonetheless there were findings made that took into account demeanour that were not challenged.
 - [441] : CAB 262 - is correct having regard to the observations in *Pell* at [37]-[39]. Restraint is to be exercised absent the identification of error of a kind recognised by any of the limbs to the common form criminal appeal provision.

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Nothing in Livesey J’s discussion of the role of the appellate court suggests that notwithstanding the “bookends”, his Honour has acted differently.

5. Livesey J’s method demonstrates adherence to the correct approach.

a. Livesey J’s preliminary observations:

- [430] : CAB 258 - no fact was identified which was an obstacle to proof of guilt.
- [433] : CAB 258-259 - the adverse credibility findings have not been challenged : see also [468] : CAB 271.
- [434] : CAB 259 -the trial judge’s credit findings are important.
- [443]-[471] : CAB 262-272 circumstantial reasoning : [461] : CAB 268 there was no indispensable intermediate fact in this case.
- [471] : CAB 271-272 - the trial judge’s intermediate conclusion regarding the plausibility of Mrs Dansie accidentally drowning did not reflect an error in reasoning.

10 b. “The evidence and findings in this case” : CAB 272-291 : (RWS [24(e)])

- [473]: CAB 272 - *For the purposes of my own review ...*

c. “Adverse Credit Findings” : CAB 291-294 : (RWS [24(f)-(g)]-[26])

- [474]-[476] : CAB 291 - *I am satisfied that there was a proper basis for these findings ... I agree with them.*
- [477]-[487] : CAB 291-294 - the trial judge’s rejection of the defence hypothesis was open on the evidence. *Respectfully, I agree...*

d. “Considering the inferences available on the evidence” : (RWS [27]-[30],[33]-[35])

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- [491] (1)-(6) : CAB 294-296 - *betray an independent assessment. ...the circumstantial case becomes compelling.*
 - [492] : CAB 296 - the trial judge’s credit findings must also be taken into account.
 - [493] : CAB 296 - properly understood Livesey J is referring to inferences that he has identified, not inferences that the trial judge said he had drawn. The inferences identified by Livesey J provide *on an independent review a clear pathway to proof of guilt beyond reasonable doubt.*
 - [494] : CAB 296 - the competing inferences of themselves do not establish a doubt.
 - [495]-[496] : CAB 296-297 - a return to the point made at [422] but made with respect to the competing inferences in this case which will require the court to intervene if they necessarily *raise scope for a reasonable doubt.*
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e. “Reviewing the video and audio evidence” : (RWS [36])

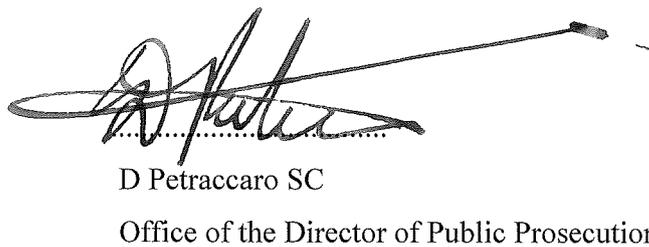
- [500]-[504]: CAB 298 - the appellant’s records of interview and the recording of his 000 call supported the adverse findings made by the trial judge. *And, with respect, I agree with his treatment and findings.*

Dated: 14 June 2022

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