

BETWEEN:

STEVEN MARK JOHN FENNELL

Appellant

and

10

THE QUEEN

Respondent

APPELLANT'S OUTLINE OF ORAL ARGUMENT

**Part I:**

I certify that this submission is in a form suitable for publication on the internet.

20 **Part II:**

*Circumstantial Evidence*

1. The assessment of a circumstantial case: individually and collectively.
2. Components of this circumstantial case: opportunity, motive and miscellany.

*The Crown case on opportunity*

3. At best the Crown case shows bare opportunity without additional probative value:
  - a. If accepted, the Crown case on opportunity shows no more than that the Appellant "could conceivably have attended the house" during the 31 hours in which the deceased was murdered.
  - b. Any such attendances were consistent with his usual visits.

- c. Numerous other witnesses were also familiar with the deceased and attended her home on a regular basis.
- d. The evidence of opportunity was, in any event, weak.

***The Crown case on motive: covering up the theft of \$5,000***

- 4. The theory that the Appellant stole \$5,000 is merely speculative:
  - a. He was authorised to withdraw money on the deceased's behalf.
  - b. The Crown case rests only on an unattributed amendment to a numeral in the impugned transaction.
  - 10 c. The deceased specifically authorised a number of withdrawals including (probably) the impugned transaction.
  - d. The financial evidence is incapable of demonstrating the matters attributed to it in the Court of Appeal.
- 5. The claimed motive does not fit with the physical evidence:
  - a. There is no sensible link between the Appellant and the items found at Thompson's Point.
  - b. None of the items found found at Thompson's Point would have incriminated him in any theft.
  - c. The "cake tin" evidence is speculative.
  - d. The evidence shows only a positive relationship.

20 ***The identification of the hammer by the Mathesons is so weak as to be incapable of holding up the Crown case***

- 6. The evidence carried almost every conceivable risk known to exist with identification evidence – whether of people or objects.
- 7. Without evidence capable of linking the Appellant to the hammer the Crown case is incapable of proof beyond reasonable doubt.

***The Crown cannot exclude the reasonable alternative hypothesis that the deceased was murdered in the course of an opportunistic theft***

8. The period in which she was murdered is long – covering some 31 hours.
9. It was common knowledge that the deceased had large quantities of cash at her house and the state of the house was consistent with having been searched.
10. A number of witnesses heard and saw things consistent with a disturbance in the area at various times.
11. There is zero forensic evidence linking the Appellant to the murder or to any of the items said to have been discarded as a consequence of the murder.

***Conclusion and remedy***

- 10 12. The jury's verdict was unreasonable. The evidence individually and collectively did not permit a conclusion of guilt beyond reasonable doubt. There is a genuine prospect that an innocent person has been convicted of murder.

Dated: 11 September 2019

  
.....  
Name: Saul Holt QC and K. W. Gover