



HIGH COURT OF AUSTRALIA

24 April 2020

COUGHLAN v THE QUEEN
[2020] HCA 15

On 12 February 2020, the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Queensland and quashed the appellant's convictions for arson and attempted fraud and entered verdicts of acquittal. Today, the Court published its reasons for making those orders.

At around 6.00 pm on 18 July 2015, there was an explosion at the appellant's holiday home on Bribie Island, Queensland ("the house") which was destroyed in the resulting fire. The appellant was present at the scene and suffered burns to his left hand, lower back and face. In the aftermath of the explosion, the appellant ran from the premises and rode away on a motorcycle that he had parked around the corner earlier that afternoon. At around 9.00 pm, the appellant attended the Caboolture Police Station, where he reported the fire. The police who saw him accepted that he appeared to be distressed and in shock and that he said that someone had tried to kill him. They did not smell petrol on him. The appellant was cooperative and agreed to give the police the clothes that he was wearing at the time of the explosion. These included a pair of tracksuit pants and sports shoes, which subsequent testing established contained petrol residues. The appellant made a claim on his NRMA building and contents insurance policy in connection with the fire. He was subsequently charged by the police with arson and attempted insurance fraud. It was no part of the prosecution case that the appellant had any financial motive for the arson. The appellant represented himself at trial and at times appeared to be fixated with peripheral issues. He was ultimately convicted by the jury.

At trial, two youths, who were outside the house at the time, gave evidence of having smelt petrol shortly before the explosion. The police did not obtain statements from two other youths who were also present. Testing of the appellant's clothing revealed the presence of petrol residues. Ms Maxwell of the Queensland Police Service Analytical Services Unit, who conducted the tests, did not give any estimate of the amount of petrol residues. The minimum detection level for this test would yield a positive result for the presence of petrol residues from one drop of petrol in an Olympic-size swimming pool. She was unable to offer an opinion on the age of contact between the petrol residues and the tracksuit pants and the shoes. Sergeant Gormon of the Queensland Police Service's Gold Coast Scientific Office, and Lindsay Spencer, a fire investigation officer with the Queensland Fire Service, concluded that the explosion was caused by a build-up of gaseous vapours inside the house and an unknown source of ignition. Neither was able to identify the substance that gave off the gaseous vapours. Neither could exclude an electrical fire as a possible source of ignition. No samples were taken to test for the presence of accelerants. Ordinarily, an electric safety officer would examine the site, but no such examination was conducted because of safety concerns.

The Court of Appeal's analysis of the sufficiency of the evidence to support the verdicts depended upon inferences drawn from the expert evidence. The High Court found that in material respects their Honours overstated the effect of the expert evidence. Contrary to their Honours' finding,

Ms Maxwell's evidence was not capable of establishing that the appellant had been inside the house distributing petrol on the afternoon of the explosion. Given the force of the explosion and the intensity of the heat generated by the fire, the prosecution acknowledged at the hearing in the High Court that common sense might dictate that the appellant was not inside the house when the vapours were ignited; where the appellant was at that time, and the means by which the vapours were ignited, was submitted to remain, "to some extent, a mystery". In circumstances in which the evidence did not exclude (i) that gas was connected to the house; and (ii) the possibility of an electrical fire igniting whatever gaseous vapours had built up in the house, the High Court held that it was not open to the jury to draw the inference of guilt to the criminal standard; a conclusion strengthened by the absence of apparent financial motive for the appellant to set fire to the house.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*