

**CASE NOTE - Lyons v The Queen [2020] VSCA 127****Tanya Hall**

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**PARTIES**

**First Appellant:** Christine Lyons

**Respondent:** The Queen

**Second Appellant:** Ronald Lyons

**FACTS**

The First Appellant, Christine Lyons sought leave to appeal against both her conviction for attempted murder and conviction of murder. The Second Appellant, Ronald Lyons sought leave to appeal against his conviction of attempted murder.

The circumstances surrounding the appeal involved an allegation that Christine, Ronald and a man named Peter Arthur (who was Christine's partner and carer) planned to kill a woman named Samantha Kelly. Ms Kelly lived with Christine, Ronald and Peter and her four children in Kangaroo Flat. Having suffered from cancer and undergone a hysterectomy, Christine was unable to bear children. Sometime in mid-January 2016 it was alleged by Peter that all three offenders had formed a plan to kill Ms Kelly by overdose of sedatives, so that Christine could take over the care of Ms Kelly's children. Peter was then allegedly directed to kill Ms Kelly by other means as the process of poisoning her was taking too long. On 23 January 2016 Ms Kelly was bludgeoned to death in a bungalow on the Kangaroo Flat property. She was struck approximately seven times to the head with a hammer. The blows were administered by Peter who later confessed to the murder. He then led police to a dry creek bed near Maryborough, where he had taken her body and partially buried it.<sup>1</sup>

Peter plead guilty to the murder and agreed to give evidence against Christine and Ronald in exchange for a discounted sentence. Both Appellants denied any

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<sup>1</sup> *Lyons v The Queen* [2020] VSCA 127 ('*Lyons*') at [1] per McLeish, Emerton and Weinberg JJA.

involvement in either the attempts to poison Ms Kelly or the actions which resulted in her death. They claim that Peter had killed Ms Kelly of his own volition and that they had no previous knowledge of what he was going to do.<sup>2</sup>

### **JURISDICTION**

The Appellants sought leave to appeal the judgment set down by Kaye JA in the Trial Division of the Supreme Court of Victoria. This case was determined by McLeish, Emerton and Weinberg JJA in the Victorian Supreme Court of Appeal. The date of the hearing was on 24 March 2020 and judgment was handed down on 20 May 2020.

### **PROCEDURAL HISTORY**

In November 2016, Peter pleaded guilty to the murder of Ms Kelly before giving an undertaking that he would give evidence against the Christine and Ronald at their trial. As a result, Peter received a discounted sentence of 22 years imprisonment with a non-parole period of 18 years following an appeal from the Crown.<sup>3</sup>

Before giving evidence, Peter was examined by psychiatrists from both sides who agreed that there was no evidence that Peter's memory was affected by a recognised psychiatric disorder.<sup>4</sup> The Crown case against the Appellants at trial was based to a largely on Peter's evidence, however independent evidence was also adduced. Both Appellants relied upon what they allege to be underlying inadequacies in the credibility and reliability of Peter's evidence at trial.<sup>5</sup>

### **GROUND OF APPEAL**

Christine's grounds of appeal:

- (1) That the verdicts of guilty on Charges 1 and 2 were unsafe and unsatisfactory
- (2) That the verdict of guilty on Charge 2 was inconsistent with the acquittal of Ronald Lyons of that charge.<sup>6</sup>

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<sup>2</sup> *Ibid* [4].

<sup>3</sup> *Ibid* [38].

<sup>4</sup> *Ibid* [39].

<sup>5</sup> *Ibid* [43].

<sup>6</sup> *Ibid* [8].

Ronald's ground of appeal:

(1) That the verdict of the jury on Charge 1 (attempted murder) was unreasonable or could not be supported having regard to the evidence.<sup>7</sup>

## OUTCOME

All three judges unanimously refused both Appellant's applications for leave.<sup>8</sup>

## EXAMINATION OF JUDGMENT

### *General Submissions*

Both Appellants argued that no rational jury could have been satisfied beyond reasonable doubt based on Peter's evidence. They submitted that Peter had numerous accounts of how he had murdered Ms Kelly and that he had been blatantly untruthful to the police, as well as under oath.<sup>9</sup> Both Appellants submitted that the charges against them were based solely on what Peter had said and, at least in terms of the murder, there was no independent support for his account of events.<sup>10</sup> Furthermore, both contended that it was not until well into Peter's plea that he gave evidence inculcating Christine and Ronald directly in the actual killing, which they argued was only because Peter realised things were not going well for him.<sup>11</sup>

### *First Appellant*

Counsel for Christine noted the three versions that Peter had put forth as to how Ms Kelly died.<sup>12</sup> Counsel then had reference to *M v The Queen*<sup>13</sup> which was recently affirmed by the High Court as an authoritative statement of principle in *Pell v The*

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<sup>7</sup> Ibid [9].

<sup>8</sup> Ibid [216].

<sup>9</sup> Ibid [108].

<sup>10</sup> Ibid [109].

<sup>11</sup> Ibid [110].

<sup>12</sup> Version One was on 11 February 2016 where he admitted to killing Ms Kelly in self-defence without the involvement of Christine or Ronald. Version Two took place in September 2016 where Peter claimed that there was a plan to murder Ms Kelly through the overdose of sedatives and that he was directed that Ms Kelly's death should be expedited. In Version Three Peter claimed to have been directed by Christine and Ronald to kill Ms Kelly because the poisoning was taking too long. Ronald was said to have walked with Peter to the bungalow and shown the murder weapon to be used on Ms Kelly.

<sup>13</sup> (1994) 181 CLR 487 ('M').

*Queen*<sup>14</sup>. Counsel had further reference to *M*<sup>15</sup> for the contention that Peter's evidence included many 'discrepancies' and 'inadequacies' and should be regarded as 'tainted' or otherwise lacking in probative value.<sup>16</sup> Counsel relied upon the fact that Peter had admitted that he was uncertain as to whether his third version of events were genuine 'flashbacks' as opposed to fantasies.<sup>17</sup>

Counsel submitted that without the additional gloss in Version Three which implicated Christine, her conviction for murder could not stand.<sup>18</sup> Counsel further submitted that Version Three was obviously illogical and that no jury acting reasonably could be satisfied to the requisite standard that Christine was involved in the decision to kill Ms Kelly in those circumstances.<sup>19</sup> Utilising the language in *Pell*, it was argued that Peter's evidence must have led a reasonably acting jury to entertain a doubt about Christine's guilt, notwithstanding the advantages they experienced in having seen Peter's evidence. Counsel conceded that this argument was significantly weaker for Charge 1<sup>20</sup>, due to both the body of evidence indicating Christine's overwhelming desire to be a mother to Ms Kelly's children<sup>21</sup> as well as the connection between the drugs prescribed to Christine and those identified in Ms Kelly's toxicology report.

Counsel submitted that on the matter of 'participation' in the murder, the prosecution relied wholly on unsatisfactory evidence given by Peter as to the words allegedly spoken by Christine at or about the time of Ms Kelly's murder.<sup>22</sup> Counsel submitted that Peter had a very strong motive to adhere to his third version of events as he knew that failure to do so would result in an increased sentence.<sup>23</sup> Given the unreliability of Peter's evidence, Counsel argued that the inconsistent verdicts,

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<sup>14</sup> [2020] HCA 12 (*Pell*). This threshold requires the appellate court to consider "... 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" (*M* at 493).

<sup>15</sup> *M* (1994) 181 LR 487, 494 (emphasis added).

<sup>16</sup> *Lyons* [2020] VSCA 127 at [120].

<sup>17</sup> *Ibid* [131].

<sup>18</sup> *Ibid* [112].

<sup>19</sup> *Ibid* [113].

<sup>20</sup> *Ibid* [120]-[122].

<sup>21</sup> Evidence was led that Christine had effectively taken over the role of mother to Ms Kelly's four children and had become particularly attached to the youngest daughter, 'Dorothy' (a pseudonym) who she would call 'Shaneeka'. She also allegedly began calling 'Sarah' (a pseudonym), the second youngest child by the name 'Neisha'. It was claimed that if Christine had daughters of her own, they would be called by those names.

<sup>22</sup> *Ibid* [127].

<sup>23</sup> *Ibid* [132].