IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Not Restricted

S ECR 2022 0241

DIRECTOR OF PUBLIC PROSECUTIONS — Crown

v

BARTOLOMEO ALEX RAPISARDA — Accused

JUDGE:	Jane Dixon J
WHERE HELD:	Melbourne
DATE OF HEARING:	16 and 17 April 2024
DATE OF RULING:	18 April 2024
DATE OF WRITTEN REASONS:	14 May 2024
CASE MAY BE CITED AS:	DPP v Rapisarda (No 2)
MEDIUM NEUTRAL CITATION:	[2024] VSC 217

CRIMINAL LAW – No-case submission – Murder – Whether fatal gunshot injury may have been the result of the actions of the deceased – Almost half of bullet missing – Circumstantial evidence and inferences – Whether reasonable mind could exclude hypothesis consistent with innocence as not reasonably open on the evidence – Defect in evidence such that evidence taken at its highest could not sustain guilty verdict – No case to answer – Jury discharged without verdict – Verdict of not guilty entered on the record – *Criminal Procedure Act 2009* (Vic), ss 226(1)(a), 241(2)(b) – *Doney v The Queen* (1990) 171 CLR 207 – *Case Stated by DPP (No 2 of 1993)* (1993) 70 A Crim R 323 – *Attorney-General's Reference (No. 1 of 1983)* [1983] 2 VR 410 – *R v Frank (No 2)* (2021) 288 A Crim R 104 – *R v Cengiz* [1998] 3 VR 720.

APPEARANCES:	Counsel	Solicitors
For the Crown	Mr J McWilliams with Mr L Crosbie	Office of Public Prosecutions
For the Accused	Mr DP Jones KC with Mr T Fitzpatrick	McNally and Gleesons

HER HONOUR:

Introduction

1 The Crown closed its case on 16 April 2024. Mr Jones KC, appearing on behalf of the accused man, Bartolomeo 'Alex' Rapisarda, submitted that there is no case to answer on the charge of murder brought against his client. Accordingly, the accused submitted that the Court should direct that an entry of not guilty be made on the record in respect of the charge.

2 After hearing argument by both parties on 16 and 17 April 2024, I upheld the Defence no-case submission on 18 April 2024 and entered a verdict of not guilty on the indictment. I gave ex tempore reasons at that time and indicated I would provide fuller reasons in due course. These are those reasons.

3 I observe that in the end, the no-case submission was focused on the nature of the gunshot injury to the deceased and the open inferences from the resultant evidence of the gunshot: in particular, whether the Crown could exclude that, in the course of handling his own rifle, a bullet discharged and ricocheted off a surface so that only fragments of the bullet entered the deceased's skull and brain.

4 Despite the narrow focus of argument by both parties on the no-case submission, I will set out the evidence led by the Crown more generally, as well as dealing in detail with the evidence of witnesses relevant to the nature of the gunshot injury.[1]

Factual background

5 The Crown case was that the accused murdered the deceased, Dennis Pollock, by shooting him with a .22 calibre Anschutz rifle shortly before 11.00am on 16 September 2017 in the backyard shed ('the enclosed shed') at 21 Station Crescent, Baxter ('the Baxter residence'). The following allegations formed part of the way the case was opened to the jury by Mr McWilliams (appearing with Mr Crosbie):

(a) The accused was the only other person home at the time the deceased suffered

[1] Namely S/Sgt Farrar, L/S/C Rooney, Dr Bedford and Ms Beeson.

the fatal gunshot injury.

(b) The deceased met the accused through his former long-term partner Evelyn Fry ('Evelyn'). Evelyn and the deceased had lived together at the Baxter residence for some years, but Evelyn became unwell with cancer in the 2000s. The couple separated in 2004. Evelyn became friendly with the accused whilst separated from the deceased. Ten years later, Evelyn returned to cohabit with the deceased. Evelyn's cancer returned sometime after returning to live with the deceased, and she succumbed to the disease and died in 2015. After Evelyn's death, a financial arrangement was made between the deceased and the accused.[2] The Baxter residence was to be split in two: the deceased would live in a separate portion at the rear, while the accused, his wife Maria Rapisarda and their teenage daughter would share the front portion of the house. The arrangement was formalised in 2015[3] and it was agreed that the deceased would remain living at the Baxter residence until his death, but that the house would be left to the accused in his will. A will prepared by Waters Lawyers Pty Ltd and signed by the deceased in 2016 bequeathed all of his property and superannuation to the accused.[4]

(c) The Crown alleged a financial motive for the murder on the basis that the accused was under financial pressure, which was said to be a source of tension proximate to the deceased's death. A loan had been taken out from APS Benefits Group ('APS') for $35,000 in the name of the deceased and Maria Rapisarda, and the loan repayments were in arrears. Despite the loan not being

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2 Evidence adduced before the jury was to the effect that, after Evelyn's death, the deceased did not believe he would be able to manage the mortgage payments on the Baxter residence. Prior to Evelyn's death, he had Evelyn's contribution, in addition to a carer's pension when he was caring for her. When the discussion of dividing the Baxter residence came up to help with mortgage payments, according to the accused's record of interview ('ROI'), the deceased said he did not want strangers living there, and asked the accused to move into the front part of the house with his family. That was how the agreement developed between the deceased and the accused.

3 An unsigned deed of arrangement became an exhibit in the trial (Exhibit P17), and evidence was adduced that the arrangement was that the work involved in partitioning the house was to be done and paid for by the accused, who was also to assume responsibility for the deceased's mortgage payments and any upcoming expenses connected with the property. The arrangement was to ultimately benefit the accused and his family, as the house was to be left to him in the deceased's will.

4 The deceased's will was tendered as Exhibit P16 at trial.

in his name, the accused was understood to be responsible for making loan repayments (rather than the deceased). The day before the deceased's death, a representative of APS had contacted the deceased about the payment arrears. The deceased had sent a text message to the accused that same day saying that APS were ringing regarding the loan: 'Alex aps are ringing about loan have not got payments.'[5] The finance broker who arranged the loan also sent a text to the accused the same day, advising him that APS would lodge defaults against the deceased and Maria and that it needed to be sorted out. Apart from the lapsed loan repayments, the accused had received reminders and overdue notices from various credit and utilities providers.

(d) On Saturday 16 September 2017, Maria Rapisarda and her daughter left for work at a local café at 7.45am. That left only the accused and the deceased at the Baxter residence. In the course of the morning, the accused and the deceased interacted with one another, and the accused made two trips away from the house: firstly, to Baxter Woolworths to buy cigarettes, and then later to a petrol station. The deceased left the house once to walk his dog, Polly.

(e) CCTV covering the outdoor areas of the Baxter residence ('CCTV footage') showed various movements of the accused and the deceased on the morning of 16 September 2017.[6] The central point that emerges from the CCTV footage is that the deceased must have suffered the fatal gunshot wound between 10.39am and 10.55am.

(f) The accused phoned 000 and said that the deceased had shot himself and had been suicidal.

(g) Police, paramedics and one of the deceased's neighbours attended the scene. Whilst they were present the accused entered the deceased's residence and exited shortly afterwards producing a handwritten note apparently written by

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5 Later in the trial, the informant gave evidence that the accused's phone records revealed a text message with these exact words sent by the deceased to the accused on 15 September 2017 at 2.32pm.

6 The Crown opening summarised what the CCTV showed of the deceased's and the accused's movements. I will refer to the CCTV evidence in detail later in this ruling.

the deceased.[7] The note alluded to the accused having helped the deceased financially and being owed over $40,000 by the deceased. The Crown submitted in their opening that it was unclear when the note was written, and that – although it was accepted it was written by the deceased – there was no evidence of when, why or how it was written, or what the $40,000 related to.

(h) The Crown alleged that the accused had given varying accounts of the events of that morning to police.[8]

(i) Pathologist Dr Bedford found the cause of death to be a gunshot injury.

(j) Professor Pandy, a biomechanics expert called by the Crown, opined that while it was possible that the deceased could have reached and engaged the trigger of the rifle found at the scene, it would have been difficult for him to do so.

(k) Friends and family of the deceased stated that he did not indicate he was having suicidal thoughts or intent before his death. The Crown case was that, despite undergoing cancer surgery in 2016, the deceased was future-focused and pleased with having overcome cancer.

6 The Crown submitted that the real dispute in the trial was whether the Crown could prove beyond reasonable doubt that the accused shot the deceased and caused his death, and that the jury should reject the proposition that the deceased shot himself or was suicidal.

7 In the Defence response to the Crown's opening, counsel for the accused, Mr Jones KC (appearing with Mr Fitzpatrick) posed the question:

> [D]id Mr Rapisarda pull the trigger. That is what this trial is about. Framed perhaps [in the] more legally correct way is this. Can the prosecution prove beyond reasonable doubt that it was Mr Rapisarda who pulled the trigger.[9]

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7 The note and its contents is discussed further below in this ruling.

8 The Crown case was that some of the things said by the accused at the scene to police and others were inconsistent with what he said in the 000 call and in his formal ROI. I will discuss this aspect later in this ruling.

9 T 78.

8 Mr Jones stated that the emphasis in this case was on the first element of murder, and he referred to the accused's record of interview ('ROI') conducted on 17 September 2017 between 1.00am and 4.00am, where the accused maintained in a detailed account under questioning by the Homicide Squad that he was not responsible for the deceased's death.

9 Mr Jones noted there was no dispute that the only people present at the Baxter residence leading up to the event were the deceased and the accused, but he placed emphasis on the accused's 000 call along with the CCTV footage as key pieces of evidence in the trial. Mr Jones also pointed out that it was the accused who had installed the CCTV cameras at the Baxter residence, and that the CCTV footage would show that leading up to the event, the deceased retrieved the rifle (with the silencer already attached) and took it to the backyard,[10] and that at various points, either one or both of the men were shooting at a target,[11] and could be seen going up to the target and appearing to inspect it over the course of the morning.[12] The deceased could also be seen drinking alcohol from early that morning.[13]

10 Mr Jones posited that the central issue between the parties was what happened between 10.39am and 10.55am, when it was common ground that both men were in the enclosed shed, noting that the shed is split into two parts. Whilst the Crown alleged that the accused shot the deceased in that period, the accused stated in his ROI that he had been in a different part of the shed before discovering the deceased unconscious on the floor, whereupon he checked him, attempted to revive him and called 000. Following the 000 call, the accused took paramedics to the deceased, who at that stage was still warm to the touch.

11 Mr Jones noted that the 000 call and ROI conducted on 17 September were two constants in the evidence: they were recorded and reliable, and the accused's distress

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10 At approximately 9.30am in actual time.

11 The target was mounted on a tree in the backyard.

12 Mr Jones noted that some portions of the area near the tree and the target were blind spots insofar as CCTV coverage was concerned.

13 It was established in subsequent evidence that the deceased was an alcoholic and had a blood alcohol reading of 0.05 at the time of his death.

during the 000 call was observable. Other things said by the accused at the scene in between those two recorded conversations were in issue regarding what was said and what was meant, taking into account that English was not the accused's first language.

12 Mr Jones said that it was not in dispute that the accused was not 'flush' with money at the relevant time, but he was also not financially ruined to the point of being driven to murder. Mr Jones also noted that the scene of the incident had been disturbed because paramedics initially were unable to find evidence of a gunshot injury and concluded that the deceased must have suffered a cardiac arrest. The rifle in the enclosed shed had been moved, as had the workbench on which it was seen resting.

13 Therefore, the way the case was opened highlighted that the question was whether the Crown could establish beyond reasonable doubt that it was the accused who inflicted the gunshot injury to the deceased (and not the deceased's own actions with his own rifle).

View of the enclosed shed

14 On the second day of trial, the Court convened at the scene for a view.

15 The general layout of the Baxter residence was examined. A driveway running north to south terminates at a rectangular metal garage with double doors. The metal garage has a wooden abutment jutting out to the west so that the entire shed forms an L-shape. Entering through the double doors of the garage and following through to the end one can then turn towards the west and walk around the corner into the abutting wooden shed ('the woodworking shed'). The garage with connecting woodworking shed were referred to as the enclosed shed. There is a door leading out from the southern end of the woodworking shed exiting in the direction of and proximate to a tree that hosted targets for shooting at. The targets and the tree had apparent bullet holes. It appeared that a person could be in the part of the enclosed shed composed by the metal garage and not see around the corner of the L-shape into the

woodworking shed.[14]

16 The jury were also shown into the rear of the house (which was the part occupied by the deceased), and in particular the shewer pointed out the location in the lounge area where the handwritten note was located on a coffee table in front of a sofa facing a television set. The rear of the house looked out onto the backyard.

Witnesses at trial, and the deceased's circumstances in the past and leading up to his death

17 A number of relatives and friends of the deceased were called to describe the deceased's background, including his distant and more recent past; their knowledge of the Rapisarda family moving in with the deceased; subsequent financial arrangements; and their knowledge of whether the deceased had spoken of suicide prior to his death. This included the deceased's two younger brothers, Wayne and Ashleigh Pollock; a friend and neighbour, Mr Dalmau; another friend, Mr Whittaker; the accused's friend, Mr Palmisano; and the accused's wife, Maria Rapisarda. The statement of Kerry Caughey (a deceased witness) was read in by agreement. A surgeon, Dr Cham, who had operated on the deceased to remove his prostate in 2016 was also called.

18 Two witnesses, Mr Owen and Ms Camuglia, were called on the topic of the $35,000 APS loan that was in arrears as at 16 September 2017.

19 Professor Pandy's pre-recorded evidence was played regarding whether it was possible as a matter of biomechanics for the deceased to have held the rifle and shot himself.

20 A body of evidence was called from paramedics, police, a neighbour (Mr Benwell) and Mr Palmisano, who attended the unfolding incident on 16 September 2017. Responding paramedics and police who were called included paramedics Collier and

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14 Two hand-drawn diagrams by the accused of the enclosed shed and woodworking shed layouts were tendered as Exhibits P19 and P20.

Allan, D/L/S/C Caddy,[15] D/L/S/C Foster,[16] Sgt Wilkins,[17] A/Sgt Walters,[18] D/S/C Butland, S/C Hames,[19] L/S/C Rooney and Ms Beeson. The forensic pathologist who performed the post-mortem examination, Dr Bedford, was then called, and the last witness to give evidence was the informant, D/S/C Argentino.

The friends and relatives of the deceased and of the accused

21 Both Wayne Pollock ('Wayne') and Ashleigh Pollock ('Ashleigh') testified that, to their knowledge, the deceased had not said or done anything to indicate suicidal intentions.

Wayne

22 Wayne's evidence included that the deceased was 6 years older than him, and whilst the deceased had undertaken a plumbing apprenticeship in his youth, he had frequented pubs in the 1970s and developed an alcohol habit that continued for the rest of his life. The deceased had left plumbing to work as a labourer for Guilfoyle's demolition company and bought the Baxter residence with Evelyn in the early 2000s. The pair were never married and did not have children. Evelyn used to take charge of the finances. After the period of separation between the deceased and Evelyn, she moved back in and her cancer had returned. The deceased told Wayne he would receive the carer's pension and he would care for her. By then, the deceased had been laid off by Guilfoyle's. The deceased was just doing cash jobs after being laid off.

23 Wayne gave evidence of his understanding of how the deceased came to know the accused through Evelyn, and of being told by the deceased after Evelyn's passing in March 2015 that he was concerned about his finances, as he was no longer receiving a carer's pension and still had to meet mortgage payments and other outgoings. In order to help with his finances, the deceased said he intended to take in a lodger, and he next mentioned that the accused and his family were moving in. Sometime after June 2015 when their sister passed away, Wayne became aware that the deceased had made the accused his beneficiary under his will. When he asked the deceased about

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15 A Senior Constable at the time of making his statement.
16 A Leading Senior Constable at the time of making her statement.
17 A Senior Constable at the time of making his statement.
18 A Leading Senior Constable at the time of making his statement.
19 A First Constable at the time of making his statement.

that, the deceased said it would be OK.

24 Wayne became aware that the deceased was diagnosed with prostate cancer in late 2015 or early 2016, and that the deceased had elected to have the prostate cut out in mid-2016. He understood that the surgery was successful, and that the accused and the accused's partner helped the deceased during his recovery from surgery. The deceased had a dog, Polly, that he loved and he would decline to visit Wayne in Melbourne because of the dog.

25 Under cross-examination, Wayne agreed that he understood the deceased was a heavy drinker who drank from the morning, throughout the day, and until he went to sleep at night. Wayne agreed that after the deceased and Evelyn moved to Baxter he did not spend much face-to-face time with the deceased. They mostly communicated by phone, and the deceased was quite reserved about his relationship with Evelyn and tended to keep what was going on in his life to himself. Wayne was not foretold of the split between the deceased and Evelyn. He did not see Evelyn in the last few years of her life, and when asked if he knew that Evelyn died by suicide and left a suicide note when she died, he said he did not know it was suicide but that she left a note.[20] He did not go to a funeral for Evelyn. He did not see the deceased after Evelyn died, and generally saw the deceased at Christmas or funerals only.

26 Wayne agreed that their sister, Kristine, died unexpectedly in June 2015, and that their father died in January 2017. The deceased was upset to learn of Kristine's death. Wayne agreed that the day-to-day care of the deceased after he became ill fell to the accused. He met the accused once when visiting the deceased in hospital after the prostate surgery. The deceased mentioned that as a result of his surgery he had to wear adult nappies.

27 Regarding the financial arrangement that the deceased made with the accused when the accused and his family moved into the Baxter residence, Wayne advised the deceased against it, but the deceased was adamant it was what he wanted. The

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20 T 113.

deceased did not conceal what he had decided to do in terms of his will and was up-front about it. He also mentioned a deed of arrangement being prepared by the accused's solicitor.

Ashleigh

28 Ashleigh's evidence was in a similar vein to Wayne's evidence. Ashleigh worked as a seafarer six months on/six months off on differing vessels and rosters until he retired in 2019. He last spoke to the deceased on the phone on 4 August 2017. The deceased seemed okay during that conversation and said he was going 'up the bush' somewhere for a week. Ashleigh echoed Wayne's evidence that he had no knowledge of the deceased having suicidal thoughts, and as to Polly rarely leaving the deceased's side.

29 Under cross-examination, Ashleigh confirmed his knowledge of a sequence of events in the deceased's life as follows: before Evelyn died, the deceased lost his long-term employment and was concerned about getting new employment because of his drinking problem; Evelyn's death occurred on 22 March 2015; Kristine's death occurred on 2 June 2015; the deceased was rushed to hospital in December 2015 with a health scare and was then diagnosed with prostate cancer in early 2016, leading to surgery that year; prior to the deceased's death in 2017 their father died; and the deceased had not had counselling for these losses to Ashleigh's knowledge.

30 Ashleigh saw the deceased a handful of times a year,[21] when he was not at sea. Ashleigh was aware that the deceased's drinking was a source of tension during his relationship with Evelyn and he knew she moved out for a period. He knew that at that time the deceased got in a boarder[22] in for 12 months or so (not the accused) to help with bills. Ashleigh confirmed that the deceased told him that after Evelyn moved back in and was unwell, the accused used to drive the pair to Evelyn's medical appointments.[23] Ashleigh also said the accused organised some paid work for the deceased assisting in the cleaning of bricks. Ashleigh was unaware of whether there was a funeral held for Evelyn and did not attend any such event. He was aware that

21 T 141.

22 (A young work colleague).

23 Noting that the deceased did not have a driver's licence.

after Evelyn died, the deceased no longer received a carer's pension. The deceased declined financial assistance offered by Ashleigh.

31 Ashleigh became aware from the deceased of the financial arrangement that was made around the time the accused and his family moved into the Baxter residence.[24] The last time Ashleigh saw the deceased was when he and his brother-in-law collected the deceased for their sister's funeral, and he last spoke to him by phone on 4 August 2017. The witness agreed that the deceased never spoke poorly of the accused, and conveyed that he was helped by the accused at home and regarding medical appointments and the like.

Mr Dalmau

32 Mr Dalmau gave evidence that he had been both a friend and neighbour of the deceased for 9–10 years and would see him about once per week. After the deceased was laid off by Guilfoyle's, Mr Dalmau helped him find labouring jobs elsewhere at times. He became aware of the deceased's intention to leave the house to the accused and questioned him about the merit of that, but the deceased said it was what he wanted. The accused was meant to do various home maintenance jobs for the deceased, but the deceased said it would take him a long time to get around to these things. After the deceased's cancer treatment, he was happy to be over it and be moving on. Mr Dalmau last saw the deceased on the Wednesday before he died while out walking his dog, and the deceased said he was good and was available for some work next week. He seemed happy and normal. When the witness learned of the deceased's death he visited the accused who was 'all upset'.[25]

33 Asked if the accused gave an account of what happened, Mr Dalmau said: '[n]ot in so many words'.[26] He outlined what the accused said and also mentioned a disagreement about the deceased's use of a slug gun in the backyard. Under cross-examination, Mr Dalmau agreed the deceased had a fascination with firearms. However, Mr Dalmau had only ever seen the deceased with a slug gun which he would use to shoot at birds.

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24 T 135.
25 T 157.
26 T 157.

Well before September 2017, the deceased told him that the accused was not happy with the use of the slug gun because his wife and daughter also lived at the house, but that the deceased would stand his ground and say it was his house and tell the accused that if he did not like it he could move out.[27]

34 The deceased and Mr Dalmau began to confide in one another, and the deceased said that if the time came and he had had enough of life he was not one to take pills or hang himself but he would do it with a gun.[28] Over the time Mr Dalmau knew him he said this about a dozen times, including in the 6 months before he passed away. Leading up to the last time he saw the deceased it was 'normal Dennis', but he agreed it was also 'still an intoxicated Denis'.[29] Asked about his conversation with the accused after learning of the deceased's death, Mr Dalmau agreed that English is not the accused's first language; sometimes he is easier to understand, but other times, such as when he appears to be stressed or emotional, he can be more difficult to understand and will talk a lot with his hands. Mr Dalmau observed that the accused was crying and emotional, and when asked how he was, the accused said, 'How do you think I'd be?'[30] The accused told Mr Dalmau about an argument he had with the deceased about the deceased using the gun in the backyard. He then said to Mr Dalmau that he had to go and get some cigarettes and money for the deceased (which Mr Dalmau understood to be at a time when Maria was still home), and that it was after this that the accused discovered the deceased.

Mr Whittaker

35 Mr Whittaker gave evidence that he used to work with the deceased at Guilfoyle's, and that the deceased became one of his three best mates. Closer to the deceased's death, Mr Whittaker generally saw the deceased about two to three times a week. Mr Whittaker understood that the deceased intended to partition the house so that the accused could move into the front of the house in exchange for taking on the ongoing expenses. He advised the deceased that he did not like the idea of this, but the

27 T 159.
28 T 159, 160.
29 T 163.
30 T 164.

deceased said he thought it was fine.[31] Mr Whittaker was aware that the deceased owned a .22 calibre rifle, and had seen him on one occasion using the rifle for target shooting on a tree in the backyard. He was aware of the deceased's cancer diagnosis and treatment, and sometimes drove him to appointments as the deceased did not drive. After the deceased successfully underwent surgery to remove his prostate, Mr Whittaker recalled that the deceased was 'upbeat as ever' and seemed his normal and outgoing self until his death.[32]

36 Mr Whittaker said he never saw the deceased depressed. Even after Evelyn's death, Mr Whittaker saw him at the pub one day, and when he mentioned he had not seen the deceased, the deceased said 'I've been organising a funeral' and was very blasé about it.[33] He never heard the deceased mention suicide or self-harm. He saw the deceased in the days before his death and there was no indication that he was depressed or sad, nor anything unusual.

37 Under cross-examination, the witness confirmed that the deceased did not appear upset when Evelyn or other family members died. Mr Whittaker did not know when the deceased's sister or father died and never heard anything about it. The witness did not know the deceased to be close to his brothers. The deceased rarely complained about anything and was not one to mention things on his mind.

Kerry Caughey

38 Mr Caughey was a friend and neighbour of the deceased[34] who had known him for somewhere between 28 to 30 years. He was aware that the deceased had been diagnosed with prostate cancer and was in remission following successful surgery. He described the deceased as a friendly guy who would talk to everyone in the street, but that 'he could be a loner too in that he wanted his own space'.[35] The deceased never spoke to him about suicide. The last time he saw the deceased would have been

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31 T 172.
32 T 174.
33 T 175.
34 T 718-20. This evidence was read in by agreement, as the witness had passed away since the time of making his statement.
35 T 720.

the day before his death. They spoke for about 30 minutes outside Mr Caughey's house, and the deceased mentioned he had a large quantity of tobacco and was waiting for it to dry out, and mention was made of plans regarding splitting some logs.

39 Mr Caughey described the deceased as a 'total alcoholic' who 'always had a beer in hand' and would 'take it to the extreme'.[36]

Salvatore 'Sam' Palmisano

40 Mr Palmisano gave brief evidence to the effect that he was a friend of the accused, and became aware of the accused and his family moving into the Baxter residence in 2015. He used to visit there from time to time and got to know the deceased. He visited on 15 September 2017 and saw that the deceased was making a table. He asked the deceased to make him a table, and the deceased agreed to do so. The following day the accused phoned him and asked him to come, saying something had happened to the deceased. When he arrived, police were there speaking with the accused. Under cross-examination, Mr Palmisano agreed that, to his observation, the deceased and the accused were quite good friends, and that the accused would take the deceased out just to get him out. They never said anything bad against each other.

Maria Rapisarda

41 Maria Rapisarda is the accused's wife, and gave evidence regarding the circumstances in which their family moved into the front part of the deceased's house. She was aware of an arrangement between her husband and the deceased pursuant to which she and her husband would ultimately purchase the house by making the mortgage repayments.[37] However, she was not aware of the precise details of the arrangements, as it was her husband who took care of their financial affairs.

42 She was aware the deceased had friends in the local area who would occasionally visit. She was not aware of the deceased making threats of self-harm. Although she accepted that the deceased would very rarely ever appear to be actually drunk, she

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36 He said the deceased would always bring 12 long neck beers to work, which he would drink throughout the day: T 719–20.

37 T 196–7.

knew him to be a functioning alcoholic who drank from morning until night.[38]

43 Asked about her family's finances in the months previous to the deceased's death, she said that they were 'just living a normal [life] – just paying bills'.[39] She was aware of the $35,000 loan taken out in her name but was not aware it was in arrears. She knew the deceased would go shooting but was not aware if there was a firearm at the Baxter residence. She had no knowledge of the deceased owing her husband any substantial sum of money.

44 Under cross-examination, she agreed she did not see a firearm but that the deceased said he would always go out shooting. Before moving to Baxter her family were living elsewhere and planning to buy a house. The agreement about the Baxter residence was between the deceased and her husband, and even though they were to take on the deceased's mortgage payments the house was to remain in the deceased's name. The payments to the deceased's mortgage were being made by the Rapisardas.

45 Before her family moved into the Baxter residence it was not in a liveable state. The witness described a number of improvements that were done to the house as part of its partitioning, including improvements to the deceased's section at the back where there was a new kitchen put in and the bathroom was spruced up. She also confirmed her understanding that, under the arrangement between the deceased and the accused, she and her husband would be responsible for upkeep and maintenance of the property.

46 She herself was employed as a manager of a café. Asked whether the deceased was invited to the front part of the house once per week the witness said: '[E]very day he was invited'.[40] She confirmed he would sit down with their family and share a meal at the dinner table once a week, but also that he could have a sit-down meal any day and it was an open-door policy for him. If she got home from work and the accused was not in the front part of the house, she would often find him out the back speaking

38 T 198–200.
39 T 200.
40 T 205.

with the deceased. Prior to the deceased's death, the deceased and the accused appeared inseparable.

47 The witness knew the deceased to have not been close with either of his brothers, but to have had a close bond with his sister. She was aware of the kinds of things her husband did for the deceased. She was aware of his morning routine where her husband would go around to the deceased's side of the residence in the mornings. She never saw them arguing. Their daughter Adriana used to call the deceased 'Uncle Dennis'.[41] The deceased was rarely without a bottle of alcohol from morning to night and used to wear a sling around his neck to hold the bottle.

48 The accused was working part-time for a friend who owned a limousine company, and was also quite handy at building things for cash. He had a ute with a compressor connected to a brick cleaning business that he operated at various times. During her relationship with her husband, it was not uncommon for bills to become overdue, but her husband would always say everything would be okay. Leading up to September 2017, her husband seemed normal, and did not appear stressed. He seemed perfectly happy and normal when she left on the morning of 16 September 2017. She was aware her husband was due to work that day as a limousine driver.

Dr Cham

49 Dr Cham gave evidence that he has a Bachelor of Medicine with a specialty as a urologist. On 30 March 2016 following biopsy he confirmed that the deceased had prostate cancer, and it was decided that surgery would be performed to remove his prostate. This occurred on 1 June 2016 and went smoothly. Over the next 9 months the cancer remained in remission, and the deceased was last seen on 9 March 2017 with a plan for tests every 6 months. On occasions when the deceased came to appointments, he came with a man he variously described as his son or stepson although they did not look similar. His brothers were listed as next of kin. The deceased never indicated suicidal thoughts. Under cross-examination, Dr Cham said the deceased was not offered counselling. He confirmed the man that would come

41 T 208.

with the deceased had dark skin and did not have the same facial features as the deceased. That person attended every time the deceased attended except perhaps the first time.

The APS loan

50 Mr Owen and Ms Camuglia were called to give evidence about the $35,000 loan that was in arrears at the time of the deceased's death. Mr Owen was a finance broker in September 2017 who conducted his own business since 1992. The accused was referred to him by Mr Palmisano in relation to a loan on 21 February 2017. He visited the Baxter residence to discuss a loan for $35,000 that was sought by the accused. Loans above $15,000 needed to be secured. Mr Owen told the accused, Maria Rapisarda and the deceased that the only way the loan would be possible was if Maria Rapisarda and the deceased were listed as the borrowers. The loan application documents referred to home improvements. Mr Owen spoke to the deceased and Maria about their obligations under the loan terms, including telling the deceased that as long as payments were kept up, a caveat over the home would not be needed; but that if they fell into arrears, a caveat could be registered by the lender to protect their interest. The deceased agreed to proceed. The loan amount was deposited in Maria Rapisarda's bank account.

51 Although the deceased and Maria were listed as borrowers, Mr Owen had the most contact with the accused in relation to the loan. The lender was APS and Mr Owen remained involved after the loan went through. In June 2017 the lender notified Mr Owen that the loan was in arrears and a number of payments had been missed, and that APS had decided to register a caveat to protect their interests. Mr Owen tried to call the accused about this, and then was told by the accused the payments had been made, but he did not understand that to be the case. He tried to speak to the accused a couple of times when this occurred, and he would say everything is fine, and Mr Owen would say that was not what he was hearing from the lender. He also spoke to the deceased on a couple of occasions because he had the most to lose if there were defaults. The deceased said he would speak to the accused about it.

52 Mr Owen did not speak to Maria on the topic. On 15 September 2017, the lender emailed Mr Owen saying they were intending to send a demand to the deceased and Maria for full payment of the loan plus outstanding interest and cost (if any). Mr Owen sent a text message at 2.32pm that day to the accused about the demand, noting the accused's emails were being returned (i.e. 'bouncing back') and seeking a meeting with all parties including the deceased, saying it had gone on far too long: 'Please sort it out'.[42] At 3.23pm he sent another message warning of defaults being lodged and asking the accused to ring him. No response was received.

53 Under cross-examination, Mr Owen agreed that when he spoke to the deceased over the phone about the loan being in arrears he was 'still fine 'about it. Mr Owen did not know who any letters of demand were addressed to, but said it would not have been the accused. The witness was asked about a text message from the accused on 4 August sending Maria's number and said: 'I take your word for that. I can't remember it.'[43] Regarding emails bouncing back, he said he just got that from APS and did not know what email address it was bouncing back from.[44] Asked about what was needed by way of provable income to get the loan, and whether that meant payslips and the like, the witness confirmed it did, along with employment type (casual, full-time, etc.). Under re-examination the witness said the deceased was fine with Mr Owen but definitely not happy about the repayments not being made.

54 Ms Camuglia was a credit officer and receptionist employed by APS. Her main role was to chase failed payments. A loan of $35,000 was advanced on 28 February 2017 and deposited to Maria Rapisarda's account. The deceased was listed as an applicant for the loan and fortnightly payments of $266.53 were to be made. Payments started failing on 13 May 2017 and three payments after that failed. Then in late June a payment of $800 was made to catch up the arrears. Then some payments failed on 7 and 23 July but a further payment of $533.06 was made in late July 2017. Payment failed on 4 August but was made up again a week later on 10 August.

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42 T 233–4.
43 T 235.
44 T 235.

55 Further payments failed and on 15 September at 2.32pm she telephoned the deceased because the last three payments had not been made. She told him the loan was in arrears to a total of $1060.69 and that a process was being put in place to issue a letter of demand. Asked if the demand was for the entire balance to be repaid, she said: 'No, just for the arrears or trying to get the fortnight[ly] payments back up.'[45] At the end of the conversation the deceased said he would ring Keith (Mr Owen). The witness confirmed that her written statement had mentioned that emails attempting to be sent to an email address relating to a brick cleaning service failed.

56 Under cross-examination, the witness confirmed that when she spoke to the deceased at 2.32pm it sounded like he was outdoors working and preoccupied with something else, and he remained sounding preoccupied when she told him she was ringing about the outstanding $1060.69. The letter of demand was sent to the Baxter address on 15 September by normal post, and stipulated that the person has 14 days to pay the arrears, and if the arrears were then not paid in full a default notice would be lodged if there was no further contact. She said: '[W]e're happy to negotiate with them'.[46] If there was silence in response, the in-house solicitor would send a legal letter stipulating 30 days to reply to the letter. If nothing is done by the borrower, a second default notice is lodged and the solicitor sends a second legal letter. If the customer still fails to make any payments or work with APS to clear the $1060.69, then after a further 60 days the matter is referred to a debt collector. The witness repeated her evidence about catch-up payments being made in the period between 12 May and 10 August , and agreed that by 10 August things were roughly where they were meant to be and that as at 15 September the 'grand total ' owed was $1060.69.[47]

The 000 call

57 A 000 call was made by the accused at 10.55am on 16 September 2017 and the

45 T 241.
46 T 244.
47 T 245.

recording and an accompanying transcript[48] were tendered and played.[49] The accused's account to the 000 call-taker was that he was in another part of the shed just before he found the deceased, and that he did not know what happened to the deceased but thought he may have shot himself as the deceased had talked about suicide in the previous few days:[50]

> RAPISARDA: I saw the old bloke that lives with me I think he shoot himself or something.
>
> OPERATOR: … Did you see this happen?
>
> RAPISARDA: No but I was here at home.
>
> …
>
> OPERATOR: [D]o you believe he shot himself sir?
>
> RAPISARDA: I don't know it could be I don't know, I don't know, I don't know.
>
> …
>
> OPERATOR: [S]o you just walked into the shed and found him there?
>
> RAPISARDA: Yeah I am working on the other side of the shed to get some tools to put in my car and after I go around and I saw him just low down.
>
> …
>
> RAPISARDA: He is alcoholic, for the last couple of days he talk about suicide, I tried to spend a long time with him.

58 He explained that he had tried unsuccessfully to get the deceased to breathe shortly before calling 000. He could only see a drop of blood:

> OPERATOR: [W]here did he shoot himself? What part of his body?
>
> RAPISARDA: We're [sic], he is in the shed.
>
> OPERATOR: Yep, okay. Is there any serious bleeding?
>
> RAPISARDA: I don't see any blood to be honest.

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48 There appeared to be a number of apparent mistranscriptions in the transcript and appropriate warnings were given.

49 Exhibit P6; although when the exhibit was introduced the Court was told the call was made at 10.56am it transpired that the accused's phone showed the call was made at 10.55: see, eg, T 376.

50 See generally the transcript of the accused's 000 call (Exhibit P6).

…

RAPISARDA: I saw a drop of blood next to him on the left side.

OPERATOR: You saw a small amount of blood?

RAPISARDA: Just a, just a drop.

…

RAPISARDA: I don't know, I don't know nothing I touched his face I tried to make him breathe but,

59 He was asked whether the deceased had a history of cardiac conditions or the like, to which he said no, referring instead to the deceased's cancer diagnosis:

OPERATOR: Did he have a history of heart condition or anything like that at all?

RAPISARDA: Who?

OPERATOR: The patient. You said you think he may have had a heart attack as well.

RAPISARDA: No, no he is living with me I was helping out his wife for seven years or longer. He had a prostate cancer operation. He, because I look after him because you know what's going on. We got a ummm high pressure by getting the medication for that. He is, he is a I be with him for the last couple of days because he is a, how do you say that when people drink too much.

60 He urged 000 to hurry and send an ambulance. He confirmed there was a gun nearby the deceased but he did not hear a gunshot:

OPERATOR: Did you see a gun?

RAPISARDA: Yeah he got a, I don't know what it is in English. A rifle maybe a long one.

…

OPERATOR: Did you hear the gun, the gunshot at all?

RAPISARDA: No.

The responding paramedics

61 Paramedics Collier and Allan were first on scene at 11.01am and were shown to the location in the woodworking shed where the deceased was slumped and semi-recumbent in the back left-hand corner of the shed. Paramedic Collier noticed a small

drop of blood on the baseball cap next to the deceased, and he said his immediate thought was the case was one of cardiac arrest, as it did not clearly appear to be a gunshot wound. The deceased's body was still warm.

62 Paramedic Collier noticed a rifle sitting on the Triton workbench in the shed. The workbench and stool in front of the bench were obstructing the capacity of the two paramedics to administer CPR to the deceased. Mr Collier noticed that the rifle was pointing directly at the deceased's head and he did not want to retrieve the deceased until the rifle was removed. He testified that he asked the accused three times to remove the rifle, and when that failed, paramedic Allan took the rifle outside and leaned it against a wall.[51] The workbench and stool were pushed to the right by about half a metre according to Mr Collier, and the deceased was carried outside to a position under the clothesline where CPR was unsuccessfully attempted. During the process of CPR, two MICA paramedics and several police units attended the scene.

63 The deceased was declared dead by paramedics at the scene.

The handwritten note

64 Paramedics initially believed that the cause of death was a cardiac event, as they could see no sign of gunshot injury. During the time that paramedics and police were present at the scene, the accused – seemingly followed by a neighbour, Mr Benwell – went inside the deceased's unit via the rear door that looked out onto the backyard. Mr Benwell said the accused mentioned needing to turn the TV down.[52] A note addressed to the accused ('the handwritten note') was located by the accused on the coffee table in front of the television. The handwritten note said:

> ALEX. I KNOW YOU HELPED
> ME FOR AT LEAST THE LAST
> TWO AND A HALF YEARS FINANIALY.
> I KNOW I OWE YOU OVER $40,000 UP TO DATE
> IF ANYTHING HAPPENS TO ME IT IS MY OWN ~~RESPONS~~
> RESPONSIBILITY.

---

51 The evidence of the position of the rifle on the workbench was mixed. Paramedic Allan recalled it being parallel and pointed to the north, and the accused sketched it during his ROI as being pointed to the west.

52 T 352.

65 The handwritten note was handed by the accused to Mr Benwell, who went outside and gave it to a paramedic. The paramedic then passed the handwritten note to a police member. Due to the contents of the note a decision was made to re-examine the deceased. S/C Caddy did this by tilting the deceased's head to the right whereupon a small hole consistent with a gunshot injury was detected behind the deceased's left ear.

66 The Anschutz .22 rifle that had been placed outside the shed by paramedic Allan was 'made safe' by S/C Caddy who pulled back the bolt or 'lock',[53] causing a spent projectile casing to eject onto the ground. S/C Caddy was unable to locate that casing after it fell to the ground.

67 Subsequently, a crime scene was declared and the backyard was cordoned off. Ballistics expert L/S/C Rooney attended the scene at 5.25pm with S/Sgt Farrar, at which stage crime scene photographers and videographers were present along with other police. Photographs were taken of the Anschutz .22 rifle that was later examined at the Ballistics Unit,[54] as well as various other firearm-related items located at the scene and in the deceased's residence.[55] These matters are discussed further in the evidence of L/S/C Rooney and the informant below.

Conversations with accused at the scene

68 The following witnesses were called by the Crown to give evidence at trial as to their recollections of conversations with the accused at the scene on the morning of 16 September 2017: D/L/S/C Caddy; Mr Benwell; D/L/S/C Foster; Sgt Wilkins; A/Sgt Walters; D/S/C Butland; and S/C Hames. There were differing versions amongst these witnesses as to what the accused was said to have done and said to attendees at the scene. Several police witnesses did not take or retain contemporaneous notes[56] of

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53 T 332.

54 L/S/C Rooney did not see the rifle at the scene. It seems that, before photographing it, the rifle was placed back onto the Triton workbench where it had first been seen by paramedics. The handwritten note was also placed on that workbench.

55 Including two boxes of ammunition inside a cupboard in the deceased's part of the house. Some of the ammunition inside the deceased's part of the house was 40 grain ammunition.

56 D/L/S/C Caddy (T 343–4); D/L/S/C Foster (T 411, 414); A/Sgt Walters (T 449); S/C Hames (T 514).

their interactions with the accused before preparing their written statements.[57] Some of them had no memory of whether the accused spoke with an accent or as to his manner of speaking.[58] Cross-examination of the abovementioned witnesses appeared to crystallise around the reliability of the witnesses in relation to the following topics:

(a) How long the accused was inside the deceased's part of the Baxter residence before he reemerged with the handwritten note and whether Mr Benwell followed the accused inside as was suggested from the CCTV footage;[59]

(b) Given that the CCTV cameras were still recording when the scene attendees were present, whether what they said they saw and did matched the CCTV footage of their movements and line of sight;

(c) What the accused said about where he was just before he first found the deceased noting that English was his second language and the degree of agitation described by the witnesses;[60]

(d) Whether the accused mentioned an argument about financial matters with the deceased prior to S/C Hames beginning to take a written statement from the accused.[61]

69 The Crown sought to make the case that the accused lied in the 000 call, and told lies about his movements that morning. The Crown filed a notice of evidence of incriminating conduct on 5 September 2023 (amended on 2 April 2024) which proposed to rely on the following items as evidence of incriminating conduct:

(a) The accused telling the 000 operator that;

(i) He thought the deceased had shot himself; and

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57 While the credit of witnesses in this respect was a matter for the jury, segments of CCTV were played by the Defence at trial to police witnesses to demonstrate the apparent lack of note-taking, and the potential that the accused said things that were not appreciated or noted down at the time. See, eg, T 417.

58 See, eg, T 344 (D/L/S/C Caddy); T 413 (D/L/S/C Foster). Cf Sgt Wilkins (T 432); A/Sgt Walters (T 450); S/C Hames (T 514).

59 See, eg, T 365 (Mr Benwell); T 433 (Sgt Wilkins); T 471, 535 (S/C Hames).

60 See, eg, T 393–4 (D/L/S/C Foster).

61 See, eg, T 472, 510–11 (S/C Hames).

(ii) That for the last couple of days the deceased was suicidal.

(b) The accused producing a note written on an earlier occasion by the deceased and giving it to a paramedic with the suggestion that this demonstrated that the deceased had shot himself.

(c) The accused telling Senior Constable Matthew Caddy, Leading Senior Constable Rebecca Foster and Leading Senior Constable Scott Walters he had located the deceased after he had returned from the shops and entered the back shed.

(d) The accused told First Constable Nathan Hames that he and the deceased used to argue often about financial issues, but then told Hames when making a formal statement that he and the deceased never argued about money.

70 At various stages, I indicated that I would take some persuasion that any of the alleged incriminating conduct was otherwise than intractably neutral.[62] However, given the Defence's successful no-case submission at the close of the Crown case, argument concerning the incriminating conduct ultimately fell away.

Kylie Beeson (forensic chemical trace expert)

71 Ms Beeson, a forensic officer employed by the Victoria Police Forensic Services Centre with expertise in chemical trace evidence and gunshot residue ('GSR'),[63] was called to give evidence about her findings from samples she examined. In considering her evidence it is notable that there was evidence before the Court that both the deceased and the accused had fired the rifle at the backyard target that morning before the period when the fatal injury must have been inflicted.

72 Ms Beeson attended Somerville Police Station on 16 September 2017 and took samples from the accused's hands. She then attended the Baxter residence and collected samples from the deceased's hands and from the wound area.

73 She later received a number of items for examination, comprising clothing worn by the accused and the deceased and paper bags that had been placed over their hands. Ms Beeson explained that GSR is the particles that come out of a firearm when it is

62 See, eg, T 264.

63 Ms Beeson has a Bachelor of Science with Honours in chemistry from Monash University as well as a post-graduate diploma in forensic science from Latrobe University. She had worked in the chemical trace unit for 19 years with specialised knowledge in gunshot residue

discharged. After the trigger is pulled, particles will then come out of the muzzle or the opening of the firearm itself but also out of any gaps such as the breech area within the firearm itself and land within close proximity to the firearm itself.

74 Regarding the distinction between classification of particles as being either 'characteristic' or 'indicative' of GSR, Ms Beeson explained that particles classified as *characteristic* of GSR are rarely found from any other source other than the discharge of a firearm. Particles that are classified as *indicative* of GSR are indicative of coming from a firearm, but they can also come from other more common sources within the environment. The majority of firearms will produce residue of some sort.[64]

75 Ms Beeson explained that when GSR is detected on a person's hands, clothing or other objects, that would generally indicate that a person has either discharged a firearm or was in close proximity to a firearm when it was discharged, or that they have come into contact with something with GSR on it.[65]

76 The latter alternative would involve a sort of contact transferral, as GSR particles are very small and behave 'just like dust', so they can be transferred through contact quite easily. You cannot see most GSR particles just with the naked eye.

77 She was asked about the scenario where someone had been a victim of a gunshot injury and responded:

> So there, we're really looking at, um, because that's come out of the muzzle of the firearm itself, we are looking at, um, more the wound area, specifically speaking.[66]

78 If GSR is not present, Ms Beeson explained that this would indicate that the person has not discharged a firearm, has not been exposed to a firearm when it was discharged, or has not come into contact with something that has GSR on it. However, she added that residues are quite small and can easily be lost due to a number of

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64 Common places to look for GSR include the hands of the person who may have fired the firearm or the clothing of the person who was in close proximity to the firearm being discharged, and with a victim of a gunshot injury they look at the wound area.

65 T 612.

66 T 612.

factors[67] or there could be other low-emission circumstances or a physical barrier that hinders detection of it.

79 Ms Beeson obtained samples from the accused and his clothing. The results of those samples were as follows:[68]

(a) Item 13 (accused's hands and the paper bags that covered them): No GSR particles were detected.

(b) Item 26 (dark grey knitted beanie): No GSR particles were detected.

(c) Item 27 (black hooded jumper): Two particles indicative of GSR were detected from the right sleeve.[69] One particle characteristic of GSR was detected from the right front. One particle characteristic of GSR was detected on the left sleeve. On the left front, there was one particle characteristic of GSR. On the hood, there was one particle characteristic of GSR as well as three particles indicative of GSR.[70]

80 She opined that the particles that were classified as characteristic and indicative of GSR detected on that jumper were formed on the discharge of a firearm and were collectively GSR but due to the low numbers she was not able to determine how or when they were deposited.[71]

81 Regarding the deceased and his clothing, her findings were as follows:

(a) Item 12 (GSR samples from the hands and wound of the deceased): The back of the right hand yielded one particle indicative of GSR. The right palm had one particle characteristic of GSR and four particles indicative of GSR. On the back of the left hand, there were three particles indicative of GSR and on the left palm, there were three particles indicative of GSR. Regarding the wound itself,

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67 The witness noted that washing, wiping, physical activity, or environmental impacts like rain, dew or wind are factors that can lead to loss of GSR. Some firearms do not emit significant amounts of GSR or the ammunition used is a type that produces a type of GSR that isn't readily detected.

68 T 615.

69 With elements lead and barium.

70 With elements lead and barium.

71 T 616, 617.

there were four particles indicative of GSR and several particles that had the appearance and composition of partially burnt propellant ('PBP'), as borne out by the following exchange:

> On the wound itself, there were four – sorry, the wound area itself, there were four particles classified as indicative of gunshot residue. In addition, there were several particles that had the appearance and composition of partially burn propellant.
>
> Perhaps that's new terminology, can you just describe what it is that you're referring to there?---So, when a firearm is discharged, the propellant within the ammunition will burn and it – those particles will be emitted from the muzzle of the firearm, so out of the end of the firearm and land in close proximity to um, the firearm itself. Um, and we classify those particles that we see um, as partially burnt propellant because they haven't fully burnt.[72]

(b) Item 3 (brown baseball cap): There were no GSR particles detected on the front of the cap, but there were six particles indicative of GSR[73] on the back.

(c) Item 7 (two paper bags removed from the deceased's hands): There were no GSR particles detected.

(d) Item 11 (clothing removed from the deceased during post-mortem):

- Hooded jacket: One particle characteristic of GSR on the right front; no GSR particles detected on the left front; on the right back, there was one particle characteristic of GSR and one particle indicative of GSR; one particle indicative of GSR on the left back; and there were no GSR particles detected on the hood.

- Tracksuit pants: No GSR particles detected.

- Boots: One particle indicative of GSR on the top area of the right boot; no GSR detected on the top of the left boot.

82 Ms Beeson opined that those particles detected on the hands and the wound area of the deceased, the cap as well as the hooded jumper and the black work boots were

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72 T 617–8.

73 With elements lead and barium.

formed during the discharge of a firearm and were from GSR. She also stated:

> [T]he presence of that partially burnt propellant detected on the sample from the wound area of Mr Pollock provided strong support for the contention that the firearm was discharged in close proximity to the deceased when it was discharged.[74]

83 Asked to clarify how long GSR can remain on clothing, Ms Beeson said that generally GSR will last longer on clothing than it will on hands. She referred to studies which show that when a firearm is discharged, the majority of those residues will be lost within the first four to six hours, but may last longer on clothing depending on a number of factors.[75]

84 Asked if PBP was the same as particulate matter[76] and whether it was typically visible to the naked eye, she confirmed that particulate material is an inclusive umbrella term and embraces all of the things that S/Sgt Farrar discussed in his evidence.[77] On its own, PBP is very difficult to see with the naked eye when not found in large volumes; regarding this particular wound site, Ms Beeson could not see any PBP until she analysed the sample under a stereo microscope.

85 The witness was asked about microscopic PBP and range, and the following exchange occurred:

> MR McWILLIAMS: What, if anything, can you say about the presence of microscopic partially burnt propellant and range other than close proximity in this case, or at all?
>
> MS BEESON: It's very difficult to, um, give an exact distance, um, on the gunshot residue and the propellant that was, um, detected. Um, I am trained to do distance determination tests, um, on targets such as clothing but in this case, it wasn't possible to be able to do those sorts of tests, um, but in this case because the partially burnt propellant was detected on that area, we do know that, um, for example, the residues that come from the primer travel further than the propellant, so when we do find the partially burnt propellant on a surface, um, we would

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74 T 620.

75 GSR will be shed from clothing due to the ordinary activities of a person walking about doing day-to-day tasks. More movement means more loss of GSR. She could not provide the outside period for clothing as there were too many factors: T 637.

76 As described by S/Sgt Farrar in the agreed facts document.

77 T 639.

give a rough approximate indication, um, of the shot being fired within 30 centimetres, for example. So anything greater than that, you're unlikely to find, um, the partially burnt propellant grains.

MR McWILLIAMS: And so in terms of that distance determination in this case, is your evidence that due to – because you were able to ascertain the presence of partially burnt propellant at the wound site and perhaps the presence of GSR at all, that is indicative of the weapon being in a range somewhere between, theoretically between contact and no further than 30 centimetres. Is that the effect of your evidence?

MS BEESON: That's correct, yes.

HER HONOUR: And that's the muzzle of the weapon to the wound site?

MS BEESON: That is correct, Your Honour, yes.[78]

86 Under cross-examination, Ms Beeson agreed that GSR is similar to a particle of dust and is contained in the gases that escape from a rifle, including from the end of the muzzle and working backwards from the magazine slot, the ejection port on top of the rifle and if the bolt is forward from there because it is not airtight. She agreed that if a rifle has been used and fired at least one round you would expect that there would be GSR on the rifle itself and on the end of the muzzle and potentially around the magazine slot and the ejection port.[79] She agreed to the possibility of primary, secondary and tertiary transfer of GSR from one person to another and that the more shots a person takes with a rifle the more GSR could land on them, but it was not the case that every time a shot is taken GSR would automatically fall on a person.[80]

87 Asked whether if someone is within a metre of someone else firing a rifle GSR can land on them, she said there have been studies done, and a person adjacent and within a metre would have low numbers of particles detected on them.[81] She agreed if that happened more than once with the bystander nearby that would increase the amount of particles that could land on that bystander.

88 She agreed that GSR can easily be removed, for example by wiping your hand on a

78 T 640–1.
79 T 643.
80 T 644.
81 T 644.

surface and regarding this particular deceased, given that there were paramedics and police officers searching and looking over his body making contact with him, that could dislodge GSR. Also, if a wound was bleeding it could wash away GSR, and searching around the wound site, parting the hair and so on could dislodge GSR.[82] She agreed the higher the calibre of the round the more GSR that you are likely to find, and conversely the lower the calibre the less. She did not take samples from work benches at the scene[83] nor sample anything from inside the shed. She agreed that if a rifle was fired in close proximity to a work bench you could possibly expect to find a lot of GSR on that surface.[84]

89 She agreed that where she says that GSR detected on the accused's jumper was likely formed on discharge of the firearm that could potentially either be from him pulling the trigger or from him being within a metre of the shooter, or from there being some sort of secondary transfer, and she simply could not determine how or when they were deposited. The total numbers were classified as a low number of particles.[85]

90 Asked whether – if a person was firing the rifle with their right hand, with the right hand being close to the magazine slot and the ejection port –you would expect more GSR on the right hand in that circumstance, she said, 'Correct, yes.' And she agreed that if the situation was reversed there would be more on the left hand as opposed to the right hand.[86]

91 In re-examination she was asked whether GSR could be expected to be found on the accused's hands by 6.30pm given the time that had elapsed and she said it would be very unlikely to find any particles present on his hands in the time that had elapsed, just from physical movement alone.

Crime scene examination evidence

92 Photographs of the interior of the woodworking shed depicted items visible on the

82 T 645.
83 T 647.
84 T 647.
85 T 650.
86 T 651.

Triton workbench after the movement of the firearm and the handwritten note. The Triton workbench was photographed showing: the Anschutz rifle and its accompanying (partially loaded) magazine; the handwritten note; an unattached rifle sling; an empty rifle bag; an unmarked brown bottle; a chamois cloth; a full cardboard box labelled .22 calibre Long Z Winchester cartridges and an empty plastic cartridge tray; an ashtray containing two smoked cigarette butts and three fired .22 calibre cartridge cases; and other miscellaneous paper scraps.[87]

93 A similarly branded and sized (but empty) cardboard cartridge box was present in the potbelly stove in the woodworking shed, and three empty cartridge casings were visible on the floor of the workshop.

94 The Anschutz .22 rifle seen on the workbench by paramedic Collier (and earlier by the accused, according to his account to police) is believed to be the gun that discharged the bullet that killed the deceased, given its proximity to the deceased when found and the fact that it was capable of firing cartridges of the type found to have been in use in the vicinity.

CCTV evidence

95 Four CCTV cameras installed by the accused covered much of the backyard including the woodworking shed and adjoining metal garage. They also covered much of the driveway running along the eastern side of the house leading to the metal garage which is connected to the woodworking shed.

96 The CCTV footage shows the movements of the deceased and/or the accused over a period between on the morning of 16 September 2017. The two men come and go from locations described as the 'makeshift shed'[88] and the enclosed shed throughout the morning.

97 Regarding the deceased's movements that morning, he is variously seen on the CCTV footage entering and exiting the rear residence with his dog Polly; moving between

87 Refer, generally, to Exhibit P3, particularly photos 41ff.
88 Refer, eg, T 93.

the makeshift shed, the rear door of the enclosed shed, the back fence of the property and the targets mounted on the tree in front of the rear entrance to the enclosed shed; and taking Polly for a walk away from the residence and returning to stop and talk with the accused through the passenger door of the accused's Ute while the Ute was positioned in the driveway facing Station Crescent.

98 Regarding the accused's movements during periods when he is present at the address that morning, he is variously seen on the CCTV to go in the direction of the front section of the house at times, as well as going to his Ute and in and out of the metal garage. He is seen interacting with the deceased at various points of time including in the aforementioned makeshift shed, near the rear door of the enclosed shed and the targets on the tree.

99 Based on the CCTV footage and the timing of the accused's 000 call, the window of time in which the deceased suffered the gunshot wound can be pinned to the period during which both the accused and the deceased are within the enclosed shed at the same time: a period between 10:39:19 am and 10:55:37 (at which point the accused is seen to emerge from the shed alone with the phone to his ear). The 000 call was made by the accused at 10.55am coinciding with the accused being seen on the CCTV emerging from the enclosed shed alone while pacing in an agitated manner around the backyard. Paramedics arrive on scene at 11am and are shown by the accused to the south-facing rear door of the woodworking shed.

100 MICA paramedics can be seen attending the scene along with police. At 11.10am a neighbour, Mr Benwell, arrives and comforts the accused, putting his arms around him. At 11.14am the accused, followed shortly after by Mr Benwell, are seen approaching the rear residence. At approximately 11.15am, the accused and Mr Benwell can be seen reappearing from the rear residence. Mr Benwell has the handwritten note in his hands and provides it to a paramedic.

101 The Crown supplied a document titled "CCTV Log – Key Events"[89] which

[89] Provided as an aide-memoire only and not tendered as a formal exhibit.

summarised what could be observed on the various CCTV cameras on the morning of the deceased's death, and I have selectively extracted the following sections of that document as follows:

Event	CCTV Time	Actual Time	Incident
7.	9:02:10 to 9:06:02	08:04:14 to 08:08:06	Alex Rapisarda and Dennis Pollock appear from rear residence with Polly. Both move to rear door of enclosed shed. [BREAK][90]
17.	9:53:30 to 9:54:37	08:55:34 to 08:56:41	Dennis Pollock appears from rear residence and takes Polly for a walk. [BREAK]
27.	10:29:20	09:31:24	Dennis Pollock appears from rear residence carrying rifle bag on right shoulder and goes to rear of enclosed shed.
58.	11:37:15 to 11:53:32	10:39:19 to 10:55:36	Dennis Pollock and Alex Rapisarda remain in enclosed shed.
59.	11:53:33 to 12:01:43	10:55:37 to 11:03:47	Alex Rapisarda moves from rear of enclosed shed to makeshift shed and walks around rear yard on phone.
60.	12:00:00 to 12:01:43	11:02:04 to 11:03:47	Paramedics arrive and attend rear of enclosed shed
63.	12:04:50	11:06:54	Further Paramedics and Police arrive and attend rear yard.
64.	12:05:37	11:07:41	CPR ceases.
65.	12:08:20	11:10:24	Daniel Benwell enters rear yard.
66.	12:10:17	11:12:21	Further Police enter rear yard.
69.	12:12:02	11:14:06	Alex Rapisarda approaches rear residence.
70.	12:12:28	11:14:32	Daniel Benwell approaches rear residence.
71.	12:13:24	11:15:28	Daniel Benwell and Alex Rapisarda appear from rear residence.
72.	12:13:34	11:15:38	Daniel Benwell provides note to Paramedic.
75.	12:27:41	11:29:45	Alex Rapisarda and Police exit rear yard. [BREAK]

Evidence of Professor Pandy

102 Professor Pandy is a Professor of Engineering, particularly Mechanical and Bio-Medical Engineering at the University of Melbourne, appointed there in late 2004. He holds a Bachelor and Master's Degree in Engineering from Monash University and a PhD in Mechanical Engineering specialising in Biomechanics from Ohio State

90 The Crown clarified that '[BREAK]' denotes sections of the CCTV footage where it skips forward in time to another segment: T 746.

University in the United States.[91] He noted that his specialisation was the field of biomechanics, which is the study of forces and motion in relation to the human body and the study of movement. His evidence was pre-recorded because he was expected to be overseas at the time of trial.[92]

103 Prior to Professor Pandy being called, a joint report had been agreed upon between himself and Defence expert Professor Rod Barrett, a professor in biomechanics from Griffith University in Queensland.[93]

104 Professor Pandy was asked to give an opinion in relation to aspects to the death of the deceased. He was given information about the fact that the deceased was shot with a rifle, and told the location and track of the wound, including the measurements of the wound from the heel to the mid-line and the exact description of the entry area of the wound behind the ear.[94]

105 Professor Pandy understood that the bullet had entered the deceased's head just behind the left ear and travelled slightly forward relative to the head, and he said: '[I]n biomechanics, if you look down on someone, it's called a transverse plane'.[95] He produced a scaled diagram that became Exhibit P1,[96] showing the configuration of the rifle relative to the location of the wound behind the left ear. He had drawn the orientation of the rifle to the head at the time the bullet was fired showing the angle in which the bullet entered. He was told that the rifle had a silencer attached and was provided the measurement of the distance from the end of the silencer to the trigger.[97] He used those measurements to calculate the distance from the tip of the deceased's middle finger to the shoulder. He agreed that the basic question he was asked was

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91 He also had two years post-doctoral training in mechanical engineering from Stanford University in the United States; his qualifications are more fully set out on page 6 of the pre-recorded evidence. There was no challenge to his qualifications.

92 Mr Glynn was acting for the Crown at the time of the pre-recording and called Professor Pandy.

93 Prior to trial the Defence filed an expert report from Professor Barrett on 10 July 2023 and that led to the two experts agreeing to provide a joint report.

94 Transcript of prerecorded evidence p 7.

95 Transcript of prerecorded evidence p 8.

96 As Exhibit P1 in Professor Pandy's prerecorded evidence (as distinct from the subsequent trial).

97 Transcript of prerecorded evidence p 11. Instructions he received were that the distance from the muzzle with the silencer attached to the trigger measured 734mm. The height of the deceased was 173cm and weight 68kg; distance from tip of left middle finger to posterior left elbow was 47.5cm; tip of middle finger to tip of left shoulder was 75cm; and distal left wrist to posterior left elbow was 28cm.

whether it would have been possible for the deceased to have depressed the trigger of the rifle that shot him, and part of that was establishing how far he would have to reach from the wound site.[98] He described that the distance he used from the shoulder to the mid-line was 22 centimetres, and he explained mathematically how he came to that figure. Asked about areas of variations among people – given that one figure he used was based on research on cadavers – he described a plus or minus standard deviation from the mean. He said that the variation could be anything from up to 0.5 centimetres to one centimetre, or anywhere between 0.5 centimetres and even 2 centimetres, either way plus or minus.[99] He added that the 22 centimetres calculation would also be give or take a centimetre.[100]

106 The last measurement Professor Pandy was required to perform was the distance from the wound location to the mid-line. He said he was given a CT scan but it was unclear how the distance was measured, and he also used normative (scale) data: so he decided to use a 50th percentile head size the first time he did it, to calculate where the wound was; and then the second time he did it he took into account the distance that was measured.[101] He agreed that plausible distances from the wound site to the mid-line of the body were 6.6 centimetres and 7.7 centimetres.[102]

107 Asked what his calculations meant in terms of what was the maximum reach of the deceased, Professor Pandy said if you assumed a distance of 6 centimetres from the wound site to the mid-line, then the distance from the tip of the middle finger to the wound would be 910 millimetres. If you took the figure of 7.7 centimetres referred to

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98 He calculated the reach by taking the dimensions he was given, the distance from the tip of the middle finger to the shoulder and then he had to get to the wound location and said, 'the only way I could get to the wound location is to go from the shoulder to the mid-line of the body and that was a dimension I didn't have, so I had to assume that dimension based on data that I found in literature from a very well-known source': Transcript of prerecorded evidence p 12. He took the dimension from Winter (understood to be the literature source referred to), from shoulder to shoulder, and took half of that width to get from the mid-line to the shoulder, and then could subtract out the distance from the mid-line to the wound location.

99 Transcript of prerecorded evidence p 14.

100 Transcript of prerecorded evidence p 15.

101 The two measurements he took were 6cm, given the average head size and head width, and another source referred to a head size of 15½ cm, that led to a distance of 7.7cm. Another figure he came up with was 6.6 cm which was taken from the original 6cm from the pathology report and factoring in the 25-degree angle of the wound track.

102 Transcript of prerecorded evidence p 17.

before, that distance would be 893 millimetres. He was initially given a figure of 15 centimetres for the distance between the end of the rifle and the deceased's head, which meant the minimum distance between trigger and wound location became 884 millimetres, and the difference between the reach and the trigger to wound location was 26 millimetres (2.6 centimetres), meaning there was up to 2.6 centimetres of reach beyond the trigger using the original figure of 6 centimetres. However, if the modelling was with the 7.7 centimetres figure it would be 9 millimetres. He agreed that there was some inherent variability or uncertainty in the distance for the reasons explained.[103]

108 He affirmed that it was possible for the deceased to have applied enough force to have engaged the trigger. Asked how difficult it would be to do that,[104] he said there were two parts to that question. The first part was about whether there was sufficient strength in the finger to press the trigger; he confirmed there was, since 15 Newtons of force was enough to press the trigger, 'which isn't much'.[105] The other part was whether the person can actually reach the trigger; he said it was possible based on the 26 millimetres figure, because the arm reach exceeds the minimum distance from trigger to wound location. However, he observed that if you had to hold the rifle up extended out to support the weight of the rifle, that seemed difficult; more difficult than the other scenario with the butt of the rifle resting on the ground in a vertical configuration.

109 He was then asked to consider another scenario where the rifle was supported on a table or a bench.[106] He said he had not previously been given that scenario to consider,[107] but thought if the rifle was resting on a table then the deceased would not have had to support its weight, so he would have been able to reach the trigger. That would be easier than supporting the weight of the rifle by holding it out and

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103 Transcript of prerecorded evidence p 20.
104 Transcript of prerecorded evidence pp 21, 22.
105 Transcript of prerecorded evidence p 21.
106 Transcript of prerecorded evidence p 22.
107 Later in cross-examination of the informant it was put to the informant that the first time Professor Pandy was asked to consider a scenario of the rifle being on the workbench when it discharged was after the production of Professor Barrett's report.

manipulating it and balancing it. He said:

> [I]f the weight of the rifle is – if everything else is the same other – except that the – that the rifle is resting on the table, I would say that is, um, easier than if the rifle is being – had – had to be supported under – against gravity, but still um, again my opinion would be that it would be ah, more difficult than having the rifle, ah, oriented vertically with the butt of the rifle resting on the ground.[108]

110 Under cross-examination, he agreed that a joint statement was prepared with Professor Barrett and there were no important points of difference on their broad conclusions, the main conclusion being that it was possible for the deceased to reach the trigger and discharge the rifle with a minimum distance of 150 millimetres, but easier to do so if that distance was reduced from 150 to 125 millimetres. He agreed it would be easier still if that distance was reduced to 120 millimetres and he agreed that as you reduce that distance it gets easier.

111 He agreed there were a number of variables for opinions in his report. The only real constant was the length between the end of the rifle and the trigger. He was reliant on other people giving him information that he could not necessarily cross-check.[109] He had not visited the scene, and was not given photographs taken on the day of the deceased's death. He was just given certain measurements and medical records and a CT scan. He agreed that the records show that the deceased had a history of swelling and pain in his right hand,[110] apparently caused by an injury sustained 10 years earlier, but the left hand was free of injury and pain.

112 He confirmed the calculations earlier given and conclusions based on the 150 millimetres figure as a stand-off distance, and that it was possible for the deceased to reach the trigger on that calculation,[111] and that it will become easier to reach if the stand-off distance was reduced to 125 millimetres. He showed what he meant by reaching out his left arm. He agreed that the finger could apply sufficient force and that as the distance between the tip of the middle finger and trigger was increased it

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108 Transcript of prerecorded evidence p 23.
109 Transcript of prerecorded evidence p 31.
110 Transcript of prerecorded evidence p 31.
111 Transcript of prerecorded evidence p 34.

may be possible to use other joints:[112]

> The greater the distance … that your fingertip would go past the trigger, the greater the leverage that Mr Pollock would've had?---The greater the reach [that the arm would have] … if the distances increase, then you've got this flexibility essentially to manoeuvre your arm and to push the trigger, there's more flexibility to do that in terms of reach [than if it was fully extended].[113]

113 Professor Pandy confirmed that both he and Professor Barrett agreed it was possible to engage the trigger and discharge the rifle when the rifle was supported near-vertically with the butt on the ground; and that when he did his second report, he considered a scenario of a distance of both 125 millimetres and 150 millimetres with the rifle supported in a near-vertical configuration with the butt resting on the ground or with it being stretched out horizontally.[114]

114 Professor Pandy agreed that the first time he was asked to consider the scenario of the rifle being placed on the workbench horizontally was when he was giving his evidence. Asked to comment on whether the difficulties that he envisaged with somebody holding the rifle out and balancing it and managing its weight would be removed if the rifle was on the bench, he agreed they would be removed in such a circumstance.[115] He confirmed he was not asked to consider the scenario of pushing rather than pulling the trigger. He was asked if he noticed that the test subject he used when the rifle butt was on the ground pushed the trigger downwards, and he said he did not notice that but he did notice there was more fluidity. Asked if the deceased could have had enough strength to compress the trigger while pushing it with a rigid finger, he said he had not done that calculation, but he thought probably yes.[116]

115 Asked about variations he used to arrive at a standoff distance, including using the two figures of 125 millimetres and 150 millimetres, Professor Pandy accepted that there was some natural variation he had to take into account and some uncertainty, but he did not think it changed the main conclusion, which was: '[I]f it's either 125

112 Transcript of prerecorded evidence p 35.
113 Transcript of prerecorded evidence pp 35, 36.
114 Transcript of prerecorded evidence p 36.
115 Transcript of prerecorded evidence p 39.
116 Transcript of prerecorded evidence p 41.

millimetres or 150 millimetres, that Mr Pollock would have been able to reach the trigger.'[117]

116 Then he was taken to his diagram and some motions he had made stretching his arm out and behind him; and he said he was naturally trying to get it to about 25 degrees. He was asked about maintaining the 25-degree angle if the head was swivelled to the right but the rifle maintained the same angle. He ultimately agreed that what was posited might preserve the 25-degree angle.[118]

117 Professor Pandy had never previously been asked to consider the possibility of the rifle being on a workbench or laying horizontal on a workbench.[119] He was shown a photo of the Triton workbench, and asked to consider the first scenario with the rifle laying on its side with the trigger and trigger guard being horizontal, with the weight of the rifle being carried by the workbench. He agreed it would be easier to depress the trigger when the rifle was being supported by the workbench rather than holding it up over his left shoulder. It would be easier than having to hold it up whether the distance was 125 millimetres or 150 millimetres. It was put that that scenario (the rifle on its side on the workbench) would involve the deceased lowering his height down, so kneeling or crouching at the end of the barrel, and Professor Pandy confirmed that in order to have the bullet go through his head, he would have to be at a level roughly where the muzzle is.

118 The witness was then asked about a second scenario of the rifle being flipped up so the trigger was pointing straight down.[120] He said in relation to that scenario that it would be more difficult because you would still have to balance the rifle because it won't stand up by itself; but he agreed that it would not be as difficult as if you had to worry about the weight of it by holding it up.

119 He was re-examined by Mr Glynn[121] about the scenario of the rifle being on the

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117 Transcript of prerecorded evidence p 43: he said '[T]hat uncertainty amounts to about give or take 1 centimetre here or there.'

118 Transcript of prerecorded evidence p 47.

119 Transcript of prerecorded evidence pp 49, 50.

120 Transcript of prerecorded evidence pp 51, 52.

121 Transcript of prerecorded evidence pp 53, 54.

workbench where his head would have had to have been, and he said:

> [H]is head would have to be at the same level as the workbench roughly … on which the rifle is resting, and he would have to be in somewhat of a crouched position … [I]t's obviously not possible from anything that I've been told … what that position might be, but I could imagine … kneeling or on his haunches or some variation of those … His head would have to be … oriented … roughly level with the workbench with … a 25-degree angle to … the rifle 25 degrees from ear to ear to the rifle.[122]

120 He agreed that whichever way the deceased's head was looking, the rifle would have to be 25 degrees behind him: 'That's what I would think, yes, because the trajectory of the bullet was … from the back to the front'.[123]

121 The Crown also produced evidence from ballistics experts S/Sgt Farrar and L/S/C Rooney, which is summarised as follows below.

Evidence of Senior Sergeant Farrar

122 S/Sgt Farrar is attached to the Ballistics Unit of the Victoria Police Forensic Services Centre. He has been in the police force since 1988 and attached to the Ballistics Unit since 2005. His evidence was adduced as part of an agreed statement of facts and tendered as Crown Exhibit P4.

123 The purpose of examinations conducted by S/Sgt Farrar was to attempt to determine the distance between the end of the silencer attached to the rifle and the deceased's head when the rifle was discharged ('muzzle-to-target distance'). He performed a series of tests with the Anschutz .22 rifle by firing shots (with the silencer attached) at one-centimetre intervals between contact with the silencer – up to 40 centimetres – into white pieces of cardboard called 'witness cards'. After each shot was discharged, each witness card was examined with the naked eye for the presence of particulate material. S/Sgt Farrar continued increasing the distance between the end of the rifle and the witness card until he could no longer see evidence of any particulate material on the witness cards.

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122 Transcript of prerecorded evidence p 53.
123 Transcript of prerecorded evidence p 54.

124 A number of limitations to S/Sgt Farrar's opinion were noted.[124] He was ultimately unable to determine the precise muzzle-to-target distance, other than to say that the silencer was not in contact with the deceased's skin at the time of firing. He also noted that the result of the witness card testing was that he could not see any particulate material when the muzzle-to-target distance was 125 millimetres (12.5 centimetres) from the witness cards.

125 Regarding particulate material, it is relevant to quote what S/Sgt Farrar said in full:[125]

> When a firearm is discharged, soot (carbon), produced by the combustion of the gunpowder, emerges from the muzzle of the weapon. The soot contains vaporised metals from the primer, bullet and cartridge case.
>
> Powder deposits relate to deposits of small fragments of unburnt, and/or partly burnt grains of gunpowder that emerge from the muzzle of the weapon.
>
> a. A firearm will generally emit a quantity of soot and unburnt or partially burnt grains of powder from the muzzle upon discharge. This material is called particulate material. This material is very light and does not travel a great distance from the muzzle.
>
> b. The distance that particulate material travels can vary from firearm to firearm.
>
> c. Ammunition type can be a further variable.
>
> d. Particulate material is different to gunshot residue ("GSR"). GSR cannot be seen by the naked eye and is only detectable under an electron microscope.
>
> Senior Sergeant Farrar examined photographs of the injury caused to the deceased and observed there was an absence of sooting, tattooing and/or powder deposits to the area around the wound site including within the hair and to the skin.

Evidence of L/S/C Rooney

126 L/S/C Rooney gave evidence that he is currently stationed at the Victoria Police

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124 Including (*inter alia*) that the angle of the muzzle to the witness cards was not known; that how the witness cards accept particular material (compared to hair or skin) is unknown; that particulate material can sometimes be washed or wiped away; that the hair around the wound was not examined for particulate material (only the skin was examined after the area was shaved); and that the amount of particulate material when this rifle was fired could vary from shot to shot. The presence of the silencer was another factor that could change the nature of the material emerging from the muzzle at the time of discharge. Also, Winchester Z brand 22 long calibre cartridges loaded with 29 grain bullets were used as ammunition during the tests in an effort to replicate the kind of bullets collected from the scene.

125 Refer Exhibit P4.

Crime Scene Unit in Bendigo. He has specialisations and expertise in ballistics and in firearms and toolmark examination. Asked how long he had been attached to the Forensic Services Department of Victoria Police, he said he was a member of Ballistics for 6 years and Forensics itself for 18 years.[126]

127 He gave evidence that he attended the scene of the incident in his role on 'the ballistics side of things' because there was believed to have been a firearms incident.[127]

128 He attended the Baxter residence at 5.25pm with S/Sgt Farrar when crime scene members were already there and a crime scene video was being produced. He received a briefing about what was known from other police. He was taken through the crime scene photographs (Exhibit P3) and acknowledged what they showed, including the layout of the enclosed shed. He noted that the scene had been altered between the taking of the photographs and his arrival, but that he was told where the deceased was originally located in the back left-hand corner near some timber offcuts and a lathe which was against the northern wall of the woodworking shed.[128]

129 L/S/C Rooney confirmed that what was visible in photo 30 of Exhibit P3 was a rifle and some other items on top of a Triton workbench: a black item that was a magazine, a sling, a cardboard cartridge ammunition box, a brown PET bottle and a brown coloured case/rifle bag. He verified that photo 32 showed three evidence markers on the floor, each with fired cartridge cases near them, although he did not know who placed the markers down.[129] He noted regarding some of the wooden boards near the lathe area in photo 37 that there appeared to be blood running down one of the boards. Photo 42 (zooming in on the top of the workbench) also showed an ammunition tray that cartridges are usually kept in. The yellow box was labelled '22 Long Z' which is a calibre of .22 ammunition. There was a similar box there, upended and emptied. An ashtray in photo 44 had 3 fired cartridge cases in it.[130]

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126 T 543.
127 T 544.
128 T 549.
129 T 551.
130 The witness explained there was also a yellow box, and inside the yellow box there was ammunition,

130 The witness explained the difference between a cartridge and a fired cartridge:

> [T]he entire component … brand new as such … goes in a firearm. And then it breaks down [into] a little black part … is the actual bullet or the projectile. Behind that, the bronzy colour is … the cartridge case, so when they are fired, the bullet, the black part becomes a fired bullet, the brass component at the back … becomes a fired cartridge case. They separate.[131]

131 The rifle had already been removed when L/S/C Rooney attended the scene, but he identified it from photographs as the rifle that was seized and provided to him later. He examined the wound behind the deceased's ear. He attended the autopsy the following day and S/Sgt Farrar was given the fragments of fired projectile that were extracted by Dr Bedford from the deceased's body.[132]

132 L/S/C Rooney later received the Anschutz bolt-action rifle fitted with a silencer and 3 cartridge cases, the rifle magazine containing 2 cartridges, and one ammunition box containing 50 .22 long calibre Winchester branded cartridges.[133]

133 He described the make-up of the rifle to the jury, and showed how the suppressor/silencer was attached on the end of the rifle by rolling it on. He explained the measurements of the rifle with and without the silencer. He explained that the sling visible as being on the workbench in the crime scene photos was capable of being attached at two points on the rifle so it could be carried over the arm. He referred to the trigger guard and the trigger, the hole where the magazine is inserted, the black magazine, the cocking handle that can be pulled back and forth to load a fired bullet into the barrel, and a safety on the other side which could be pushed back so the rifle could fire. He also referred to the ejection port: '[W]hen the fired bullet is fired the cartridge case … will come out of there'.[134] He identified the magazine that was seized, and he noted that the rear sight on the rifle came off during test firing; it was

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and there was an empty white plastic box upended with no ammunition in it (but of similar appearance) that would have at one point stored ammunition in a way that can be seen in the other ammunition box; but since the other ammunition box was full it was unlikely the empty tray came from the yellow box: T 553.

131 T 554.

132 T 560.

133 A full box.

134 The rifle became Exhibit P8.

a V-shaped item.[135]

134 L/S/C Rooney gave the measurements for the rifle.[136] On examination, both the rifle and the silencer contained PBP, which showed that it has been discharged at some stage, as PBP was present both in the silencer and the bore of the firearm.[137] He said the trigger pull on this rifle was 1.504kg, which was within the limits of this firearm, and he was able to discharge it by applying pressure to the trigger at the firing range. He was aware of test firing at witness cards done by S/Sgt Farrar using the rifle. He gave the weight of the rifle.[138] He noted that the rifle was capable of discharging a projectile with or without the silencer in place.

135 Although not relevant to the event, L/S/C Rooney became aware, subsequently, that there were two other firearms located at the address, being a separate .22 calibre rifle and a shotgun.[139]

136 L/S/C Rooney was extensively cross-examined by Mr Jones. The witness confirmed his understanding of where the deceased was found in the shed, and he agreed that if one looked at photo 31 of Exhibit P3, the Triton workbench was visible in that photo with a rifle on top of it. He agreed that there was an impression of the deceased's buttocks in the sawdust near the leg of the lathe where the deceased had been found. He agreed that inside the shed, some surfaces were made of metal and some of wood and some of glass, and that there were items scattered on the floor and on benches.

137 L/S/C Rooney was shown a photo of the bullet fragments that were handed by the pathologist Dr Bedford to S/Sgt Farrar in his presence and he described them as two minute fragments of lead.[140] He agreed that in some cases when examining a crime scene, it was definitely possible to retrieve the projectile – that is, the bullet – in its

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135 T 564.

136 The overall length was 943mm, the barrel measured 500mm, and the muzzle-to-trigger distance was 597mm; and if the Gold Spot model silencer was affixed to the rifle, the overall length became 1,084mm, and with the silencer attached the muzzle-to-trigger distance became 734mm.

137 T 573.

138 With the magazine being emptied it was roughly 2.1 kilograms. With the suppressor (silencer) attached it was 2.25 kilograms.

139 These were located in the deceased's part of the house.

140 T 578.

entirety.[141] He also agreed that a projectile can sometimes be retrieved in an undamaged state, and when that occurred it can be compared with a firearm to see if it came from that weapon.[142] In this case, with only two minute fragments of lead they could not do that. L/S/C Rooney was asked, 'Putting aside the other evidence simply based on those two minute fragments of lead, you will not be able to say that that was a 22 calibre round?' and answered, 'I couldn't, no.'[143] He was asked if he had weighed the fragments of lead and said they weighed 5.04 grain in total.[144] He was then asked about the weight of a complete projectile:

> MR JONES: What would be the weight of a complete projecti[l]e, that is the part that would then leave the cartridge, go through the barrel and hit a target. What would be the weight of a bullet?
>
> [Mr Jones then clarified that his question concerned a .22 calibre round]
>
> ROONEY: If it's a 22 long rifle which is what we found in the magazine, if it's the same type as that, they generally weigh 60 grain.[145]

138 A subsequent statement of agreed facts was tendered by the Crown[146] from L/S/C Rooney, and it stated that .22 calibre ammunition comes in a range of weights that are measured in grains. These include 29 grain, 30 grain, 40 grain and in some instances up to 60 grain bullets. The statement then referred to the nature of cartridge cases and packaging found at the scene, and that Winchester brand .22 long Z calibre cartridges were used in test firing. The projectile component of a Winchester brand .22 long Z calibre cartridge is 29 grain. Because cross-examination of L/S/C Rooney had earlier proceeded on the basis of the indication of a 60 grain projectile, the answers provided need to be considered in light of the revised indication of projectile weight. However, as will be shown later in these reasons, the evidence of L/S/C Rooney remains relevant in indicating a discrepancy of up to 13.88 grain between what was present in the deceased's skull at autopsy and the weight of the discharged projectile.

139 L/S/C Rooney was cross-examined about ricochet of bullets. He was asked whether

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141 T 578.
142 T 579.
143 T 579.
144 T 579. 'Grain' represents a particular ballistics unit of measurement for weight.
145 T 579.
146 At the close of the Crown case on 16 April 2024.

generally, when a bullet is fired from a rifle, if it is a soft target the bullet will go into that target, and he responded that generally they would.[147] The following exchange then took place:

> 'Sometimes, however, a bullet can hit a surface and bounce?---Correct.
>
> When that bullet hits the surface, it doesn't necessarily stay intact. Is that right?---That's right.
>
> So a bullet could hit a surface, bounce but break apart?---That's right.
>
> Just to make it easy for the jury to understand, a bullet could hit a surface, part of the bullet could break away and go, for example, left - - -?---Yes.
>
> - - - and the other part could go right?---Correct.[148]

140 He agreed that generally when a bullet ricochets off a surface you expect either damage or some sort of deformity in the bullet, and that with a soft surface being hit squarely by a bullet you would expect a round entry wound, but that that shape could change if it was a ricochet. He agreed that, for example, an oval-shaped entry wound could be consistent with a ricochet, and that a wound that has jagged edges could be consistent with a ricochet entry wound. He agreed that when a bullet hits a surface and ricochets it will lose velocity.

141 He was asked whether – considering the total weight recovered by the pathologist of 5.04 grains, and that a complete and intact bullet would weigh 60 grains – he could exclude that what he was handed was not a bullet that had been ricocheted off a surface. He said he could not exclude that.[149] Again, it should be noted that this question and answer was premised on a 60 grain cartridge, not a 29 grain cartridge that was later conceded to be more relevant to the scenario. However, the Crown did not seek to have the witness recalled to reconsider his answer based on the lesser grain weight and a significant discrepancy in weight still existed.

142 L/S/C Rooney conceded he was not asked to examine any of the surface areas inside the enclosed shed to see if there were any marks that might be consistent with a

147 T 580.
148 T 580.
149 T 581.

ricochet; but it is a standard procedure, and he did not notice any. He looked around most areas of the shed, floor, ceiling, and workshop items such as 'lathes and things like that'; but given timeframes, 'you can't cover everything'.[150] It was an examination with the naked eye, and he agreed he could not be confident that he covered every single area, and that it would possibly need a team of examiners doing a grid square search of the enclosed shed to do so.[151]

143 Regarding the trigger pull amount of force measured at 1.504kg, that was within normal limits for a .22 calibre long rifle, but it was on the lighter side of those limits; and pistols, such as those used by police officers, have higher trigger pull measurements.[152] He said standards around the world for rifles like this one on the lower end are 1.35kg, and on a higher end are 2.7kg; so this one was getting towards the lighter end. He agreed with Mr Jones that, generally, the higher the calibre the weapon, the greater force required to pull the trigger.[153]

144 L/S/C Rooney gave evidence about 'drop tests' that were conducted. It was found that the Anschutz rifle discharged when dropped from a height of 45 centimetres.[154] The test is done by holding the rifle to one's side and dropping it vertically onto a rubber mat. Only one height is used for that test, being 45 centimetres while holding the rifle out to the side. He said: 'You drop it. It will hit the rubber mat; bounce … It will discharge or not discharge'.[155] In relation to this firearm, it did discharge on the drop test.[156] He did not do further tests to see if it would discharge when dropping from a height of 30 centimetres or 20 centimetres or lower.

145 L/S/C Rooney agreed that while it would be possible to cock the rifle, turn it on its side and drop it (to determine whether it would fire when dropping it from a horizontal position as opposed to a vertical position), the drop test is done in accordance with protocols with the rifle vertical and pointing straight up. There was

150 T 581–2.
151 T 582.
152 T 583.
153 T 583.
154 T 573, 583–4.
155 T 584.
156 T 583.

no drop test done with the rifle laying horizontally. Instead, there were some 'bump tests' done using a rubber mallet and hitting the rifle in different areas with the mallet, but the gun did not discharge with the bump tests.[157]

146 L/S/C Rooney was also asked various questions about alternative ways the trigger could be depressed or manipulated to make the rifle fire if there was a live round in the chamber and the weapon was cocked with the safety off.[158] He agreed that you can pull the trigger with any finger or thumb, or you could push the trigger. The witness put the barrel over his left shoulder with the butt facing towards Mr Jones and was pushing on the trigger with his fingers to demonstrate this. The witness agreed that you could pull the trigger back with an object if the object was hard and rigid enough in order to push the trigger back, and that you could use a piece of string or rope attached to the trigger and pull the string backwards. If the trigger was set up and the string could be attached and somebody could pull it backwards, it would let the rifle off. The string could be configured in different ways and looped at different angles.

147 The witness agreed that there was a sling at the scene which had a clip on each end; and the clip could go on the trigger. A scenario was put using the sling and one hand to hold the barrel of the gun in place.[159] The witness said that the scenario was within the realm of possibility. The witness agreed for that to be done the rifle could be positioned on a bench with the trigger guard pointing downwards. He was then asked to consider the rifle turned on its side in a flattened position and he agreed that that was also a possibility.[160]

148 In re-examination, L/S/C Rooney confirmed that when he was at the scene he was there to conduct a thorough examination of a crime scene where there had been a suspected suspicious death in relation to a firearm. He was then asked the following

157 T 586.
158 T 586.
159 T 587.
160 (The questioning about use of the sling appeared linked to the fact that the rifle sling was found lying on the Triton workbench near where the rifle was, and the accused in his ROI said the sling had been attached to the rifle when he saw it earlier that morning.)

questions and gave the following answers.

> [Y]ou conducted an examination of the wound area on Mr Pollock's – behind Mr Pollock's left ear. Is that right?---Yes.
>
> Yes. Just dealing with that for a moment. On inspection of that wound, did you consider the possibility of a ricochet injury having inspected the wound?---Not at that time, no.
>
> The inspection of the wound, did it give you any cause to consider that that would be a direction that the investigation should encompass?---It didn't, no.
>
> No. When you conducted a thorough crime scene examination of the wood working shed, was there anything that you observed within the shed that prompted in you, an experienced crime scene examiner as you've told us, to consider in the course of the investigation the possibility of a ricochet injury was a viable part of the investigation?---I didn't, no.
>
> Looking at the totality of the evidence that was available to you, was there anything that led you to the conclusion that a possibility of a ricochet injury was a viable pathway for this investigation to embark upon?---I didn't.[161]

149 He was asked whether bullet fragments removed from the deceased were the totality of what was in the deceased, and he said he assumed it was, but when he weighed it, it was obvious it wasn't. Asked if it is common for .22 calibre ammunition to break up on impact, he said it was a broad question, but from his experience, .22s that he has examined have not separated and have not broken up. He was asked about the effect of .22 ammunition being fired into a human skull and whether it is common in that scenario for the ammunition to break up in those circumstances. He said: 'There has been some breaking up in the past, yes.'[162]

150 The witness was asked to explain in more detail how the bump test was done, and said you strike the top of the firearm quite hard in three separate locations to simulate it falling off a shelf height or fireplace height. The outcome of the test was that it did not discharge. When the drop test was done, it was done with the rifle vertical and the butt stock striking the ground and the barrel pointed upwards.

151 The witness was then asked to hold the firearm in different configurations to postulate the causing of the injury behind the ear. The witness was asked to summarise what

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161 T 592.3 and onwards.

162 T 593.

he did for the transcript[163] and said:

> I placed the … muzzle of the silencer against the back of my ear as best I could … to reenact what … I was mention[ing] was a possibility could've happened. And then I was trying to put my thumb on the trigger enough to pull the trigger, but again, the angles will be all incorrect as to what was at the post-mortem.
>
> MR McWILLIAMS: Yes. And you're using … your left hand to hold the rifle out over your left shoulder, that's right?---Right, yes.[164]

152 Asked to clarify the degree of kickback of a .22 rifle, he said: 'It's minimal … it's … very light.'[165]

153 He was also asked whether – given the trigger pull weight of 'one and half kilos, or thereabouts' – in order to exert that much force on the trigger to activate it, if the rifle is sitting on a bench or a table, and the trigger is attempted to be pushed or pulled, there was a risk that this would result in the movement of the rifle overall prior to the trigger being discharged, and he said: 'Yes. The firearm has to be weighted, or held in place in some way'.[166]

Evidence of Dr Bedford

154 Dr Bedford is a forensic pathologist, working at the Victorian Institute of Forensic Medicine (VIFM). He has a specialist degree in forensic pathology and has been practising at VIFM for 18 years.[167] He performed a post-mortem examination on the deceased on 17 September 2017. The deceased weighed 68 kilograms and was 173 centimetres tall. The most significant finding upon external examination was the gunshot entry wound just behind the left ear. There was a ragged defect in the skin, just behind the left ear, and a three millimetre diameter hole. It had an abrasion rim, which was irritation to the skin around the hole. There was no evidence of sooting,[168] and no muzzle imprint. Nor was there any stippling, which is another variation of

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163 T 597.
164 T 597.
165 T 606.
166 T 606. This was not to be taken as excluding being held in place by one hand.
167 He has been practising as a pathologist generally for 34 years. He has given evidence many times in courts in relation to findings from autopsies.
168 Described as when material coming from the propellant on the gun arrives there.

that. Dealing with fatal gunshot injuries is within his expertise, and he has reviewed a significant number of them over the years.

155 The presence of sooting, muzzle imprint or stippling is relevant to determining potential range; so if there is a muzzle imprint, it shows the gun is being opposed to the skin surface, and if there is sooting, that is an indication that the tip of the gun is close to the skin. Stippling is the next step back, where some of the propellant has spread out around the actual hole, and with stippling: '[W]e … tend to call that intermediate range and that may be in the order of one to one and a half metres. Outside of that, we call it distant or long range.'[169]

156 Dr Bedford confirmed that, on the information available, the wound did not have the characteristic of being a contact wound, but beyond that, there was insufficient information to form a further view about potential range.[170] It was a pathological interpretation to put it in the category of long or distant range,[171] based on not seeing the factors mentioned. Dr Bedford added that the problem in this case was that we know there was a silencer involved on the gun, and as part of that process it can get rid of some of the propulsive gases that are set off with the gun: 'So, the kicker here is that the silencer can markedly change some of the things that pathologically we look at'.[172] Asked if he would therefore defer to the ballistics experts who do experiments regarding range, he said his role was to provide a pathological range; but then there are forensic ballistics experts who have access to the gun and can do test firing, and that is the number one method of determining range on a gunshot.[173]

157 The witness was then taken to some measurements he made including as to where the wound was located.[174] Asked about the internal examination of the brain and the

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169 T 680.

170 T 680.

171 The witness clarified that this was a pathological term, not specifically a clinical concept.

172 T 681.

173 T 681.

174 He measured 163 centimetres from the base of the deceased's heel to the centre of the wound. Given the deceased was 173 centimetres tall, it was 10 centimetres from the top of his head and about 6 centimetres from the midline of his body. The midline is literally the centre of the head; like a measurement effectively cutting the body in half. As to measurements of the left arm, that was broken up between the wrist and the elbow, the elbow and the shoulder, and the left middle finger to the elbow: T 681–2. He later clarified the measurements were taken without shoes on the deceased.

wound track,[175] he said that there was blood around the base of the brain associated with the arachnoid layer, and there was evidence of a gunshot wound track going from the left side of the brain, largely horizontal, but also going forward from the back of the head to the front of the head, just reaching the other side of the brain, where there were some fragments of bullet material.[176] Along the track there were very fine fragments of metal from the bullet and also small pieces of skull that had broken up with bullet going through.[177]

158 Dr Bedford was taken to a bundle of pathology photographs[178] and explained each one. Photo 33 showed the wound when they had removed some of the hair from the scalp to highlight the gunshot entry wound. He identified the two fragments of projectile, which were taken out of the brain at autopsy, seen in photos 63 and 64. Asked if they were the totality of bullet fragments present in the internal wound, he said they were not, but those two bits were easily obtainable from out of the brain, and were the biggest of what he saw macroscopically, so they were handed to the ballistics officers.[179]

159 Dr Bedford was then taken to two images of a CT scan that were tendered in evidence as Crown Exhibits P11 and P12. He said in relation to CT scanning there are variations on how they can look at the tissue. If they wanted to look at bone or metal or brain there are different settings. Exhibit P11 was a CT scan showing the axial slice of the deceased's brain and highlighting the upper left third of the brain tissue, and it was a slice cutting straight across horizontally through the brain and the skull; and there were two bright white fragments, which were almost certainly the two fragments removed from the brain shown in photos 62 and 63.[180] There were other white markings running from the very right side of the picture, like debris running along from the hole in the skull: 'We can see a defect in the left side of the skull on the right

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175 The witness said sometimes 'tract' is used and sometime 'track'; it was 'a bit English debatable' but he would stick with the terminology of 'track': T 684.

176 T 684.

177 T 684.

178 T 685; Exhibit P10.

179 T 686.

180 T 687.

side of the picture, then a pathway towards the bigger white fragments, and there's debris which is gunshot … pieces that are quite small in that area'.[181]

160 Exhibit P12 was a CT scanned image of the head and neck;[182] a vertical slice straight down through the body highlighting the path of the bullet's trajectory showing a number of very fine and less fine fragments running basically horizontally across to the other side of the brain where the bigger white fragments were (which were the bits of the projectile).[183]

161 Asked to offer an opinion as to the cause of death, he said it was a gunshot wound to the head. He referred to comments made in his report as part of his findings:

> Comment no.1 was the post-mortem examination has confirmed that death has been caused by a gunshot wound to the head. This causes increased pressure in the brain and within the skull and is associated with bleeding; no.2 the entry wound is in the left temporoparietal region which we've discussed, just behind the left ear, with tract extending from the back to the front, so from the back of the head to the front of the head at an angle of approximately 25 degrees to the midline, so left of centre moving towards the front, and generally as we can see from the pictures with the horizontal path, projectile fragments were identified near the entry but also on the other side of the brain where they have not exited the skull; no.3 as there was no muzzle imprint, no stippling and no soot associated with the entry wound, this wound is pathologically classified as being of distant range.[184]

162 He noted that there were no other significant injuries. Toxicology results revealed an elevated blood alcohol reading of .05, which is the Victorian driving limit, which was in the blood and in another sample they had taken as well.

163 The witness was asked about his expertise in fatal gunshot injuries and mentioned that he would have seen in the order of 10 to 15 a year, which, over 20 years, was about 200 to 300. He was familiar with the concept of a ricochet injury as distinct from a direct fire injury.[185] Asked whether – in his experience observing fatal gunshot injuries over that period of time – he had observed any arising as a result of a ricochet

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181 T 687.

182 Later described by Dr Bedford as a CT scan showing a coronal slice of the brain.

183 T 691. When asked about the orientation, he said that the pictures are taken in horizontal slices, and in the software program you can rotate it, twist it, or turn it on different angles.

184 T 691–2.

185 T 693.

injury, he said that, in that time in the Victorian jurisdiction, he did not recall seeing any confirmed ricochet fatalities.[186] To define what a ricochet was, it was a bullet bouncing off something; so 'if it's going to bounce off a brick wall or something like that [it] is going to be quite severely damaged by it and also leave (sic)[187] a lot of its velocity' and therefore be less likely to be involved in fatal wounds, but that would depend on how high-powered the gun or rifle was, and also on the type of bullet.[188] He added:

> [I]t also depends on whether it's a glancing blow to that object that it's ricocheting off or it's a more solid contact, so clearly, the most likely scenario where it still could potentially cause injury and severe injury and death is if it's a glancing blow to a surface but again, I'm not aware of any cases in Victoria.[189]

164 Asked, '[I]s it more high powered more likely, less high powered less likely?', he replied:

> Part of it is that, so the more high powered it is, even if its velocity has been diminished by impact with something, it still has potential to be relatively high speed as against a low velocity being even lower than it has less potential to cause significant injury.[190]

165 Asked if he would include a .22 calibre rifle in a lower-powered category, he said it was not high-powered nor low-powered; but he would defer to the ballistics [experts] as to the situation there, and that it would depend on what the rifle was, the sort of projectile, and there were 'quite a few' variables.[191]

166 Asked about the type of injury pattern you would expect to see with a ricochet injury he said: 'My feeling would be that a – a significant ricochet off a surface is going to damage the projectile which means it's not as well defined an entry into the skin and not as well defined entry through the skull'.[192] He said it would be more likely that the bullet has been damaged and potentially fragmented.[193] He also said that with a direct shot injury, 'we see well demarcated holes in say the skull … and that would be

186 T 693.
187 My own note of what he said was 'lose', not 'leave'.
188 T 693.
189 T 693.
190 T 694.
191 T 694.
192 T 694.
193 T 694.

a significant finding for me'.[194]

167 Asked about his expectation in terms of internal injury for a ricochet injury, he said: '[I]n particular, if there was fragmentation of the bullet … one would expect there may be more than one path within the brain where the brain has been injured, so fragmenting and separating and diverging.'[195] He also observed that regarding the surface wound, you may see satellite injuries if material from the ricochet site caused extra injuries around the entry wound.[196]

168 Regarding his expectations for injury patterns from 'an ordinarily fired .22 calibre long rifle' and a direct shot surface wound, he said:

> We would expect to see a relatively rounded entrance wound … usually a single track and … in cases going through [the] skull, we see changes in the skull. So, in this case we saw a nicely rounded defect in the skull on the left side and another change which we call internal bevelling, which was … quite clean and typical of a gunshot wound through the skull.[197]

169 He went on to say that he would favour this injury being a direct shot as distinct from a ricochet, because it was a relatively smooth single entry through the skin, with no satellite areas, no significant laceration or bursting of the skin; and also the changes in the skull were typical of direct entry into the skull with the hole it makes and the pathway being singular and direct.[198]

170 Regarding the projectile fragments seen in the CT scan, he was asked if he was able to estimate the proportion of total projectile fragments that the two pieces represented, and he said: 'Looking at the CT scan using our blue metal algorithm, my general estimation is that I've been – I've provided maybe a third to a half of the material that I believe to be within the brain cavity.'[199] He agreed that that was an estimate,

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194 T 694–5.

195 T 695.

196 T 695; this was described as 'debris really in essence'.

197 T 696.

198 T 696.

199 In reference to the blue metal setting available, I asked the witness whether the CT scan image we were looking at was the blue metal setting and he said: 'No. The blue metal is quite clearly blue um, yeah, we've not been shown a picture of the blue metal setting' (T 688) (neither of the two CT images were said to be the blue metal setting).

attempting to be as accurate as he could.[200]

171 In answer to a jury question, he said death would have occurred almost instantaneously or at most in a few seconds.

172 Under cross-examination, by reference to page 4 of his report he conceded that the external aspect of the wound appeared to have a ragged defect in the skin approximately 3 millimetres just posterior and slightly superior to the left ear.[201]

173 He agreed that the track was generally horizontal (generally flat) and behind the left ear.[202] Asked about the 25-degree angle going forward, and whether that would be approximately to the right-hand side or the right eye, the witness said, yes, in general terms.[203]

174 Mr Jones confirmed with the witness that a bullet can go into a skull and come out the other side, depending on velocity. Asked whether, when that happens, you have a small hole for the entrance wound and a larger hole for the exit wound, Dr Bedford agreed in general terms. He was then asked the following questions:[204]

> So that's if the bullet when it goes through has enough velocity to not only go through one layer of the skull but to exit the other side of the skull?---Correct.
>
> If the velocity is slightly less, that's still enough to penetrate the skull on one side, it can still reach the other side of the skull but bounce, can't it?---Yes, it can.
>
> And what I mean by bounce, it would for example, go through, rather than going out like the first example, it would then bounce back at a certain angle into the brain?---If we can use the term, we do call that a ricochet.[205]

175 The witness was asked,[206] and agreed, that that was a form of internal ricochet.

176 Then the witness was asked whether there were scenarios where the bullet has enough

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200 T 697.
201 T 702.
202 T 702.
203 Some other questions were asked about where (given the 25-degree angle) the bullet would have exited, and the witness said, around the level of the right ear, but not as far forward as the right eye; and he agreed he meant on the 'eye side' of the right ear, not the back side: T 703.
204 T 704.
205 T 704.
206 By both myself and Mr Jones.

velocity to go into the skull and reaches the other side of the skull, but rather than ricocheting at a sharper angle it can follow the path of the skull internally. The witness said that would be uncommon, but it would be possible.[207] He was then asked:

> You then have of course a bullet has enough to go through the skull and it can make its way all the way to the other side of the skull but it doesn't have enough force to either penetrate through or to ricochet from it?---That's true.
>
> And for example, in this case, there's a bullet that goes in but it doesn't even make its way out to the other side of the skull?---Correct.[208]

177 Noting his description of the ragged defect to the skin (as seen in photo 33 of Exhibit P10) being the outside of the wound, Dr Bedford was asked about the internal part of the examination where the skin is removed and the brain is removed and you can see the skull, such that it is possible to see through behind that wound:

> Would you agree that the hole that was in the skull, it wasn't circular. Rather, it was more like an oval shape?---Yes.[209]

178 The witness was then taken to Photo 43 – which was one of the autopsy photos not previously before the Court and was a more graphic zoomed-in image – to demonstrate the oval shape of the hole. The witness agreed that it was the hole in the skull behind the external wound, and that it was 'definitely oval.'[210] That photo was tendered as Defence Exhibit D1.

179 The witness was then taken to his description of the projectile fragments removed from the brain. He agreed there were two photos of the two fragments; there were only two fragments in total, but the two photos showed the two fragments on either side.[211] There was a third to a half of the quantity of those two fragments still left in the brain.[212] When handed to the police, the two fragments weighed 5.04 grains; so given his estimate of 'half to a third' he was asked:

> Ten – five and 10 grains left so if you put that back in there, there were about 15 in total before you removed anything on your estimate?---On my estimate,

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207 T 704.
208 T 704.
209 T 705.
210 T 705.
211 T 707.
212 T 707.

yes.[213]

180 Asked about ricochets generally (not internal ones) and the variables that come into play, Dr Bedford agreed that one variable was the velocity that a projectile might lose once it hits an object, and another might be the calibre of the weapon. Asked whether another variable might be (and there were two parts to it) the distance from the end of the barrel to the object that the bullet ricochets off, and the distance between the object that it ricochets off and where the bullet eventually ends up, he answered: 'They would be variables, yes.'[214] The witness also agreed that distance was a variable. The following exchange then took place:

> But also, the way in which the bullet might eventually strike its ultimate target. For example, what I mean by that, if it's not a square on hit, there's a chance it might glance off?---Sorry, not a square on hit from – I've lost your scenario there.
>
> Ricochet to the person?---I – I think I did say before that it would be most likely to have an impact if it was a glancing blow to something, so I'm not suggesting it's capable of doing a 180 and then we're really getting into the realm of ballistics test firing and can that bullet possibly hit something and what sort of ricochet pattern could it have.
>
> …
>
> [T]alking about a direct hit, so put ricochet out of your mind, but a direct hit from a bullet, you would typically expect a round, that is a more round hole in the person, wouldn't you?---I'm happy to see it as a smooth-edged hole.[215]

181 He clarified further that: '[I]t's only going to be totally round if it's absolutely perpendicular. If there's a slight angulation, then we run into ovoid patterns'.[216]

182 The witness was then asked:

> So, if the front pointy bit of a bullet goes through [the skin], that is where you if you follow that from the front pointy bit down to the base will create a nice circle in effect?--- A smooth defect.
>
> If it hits to the side, still of the smooth side but to the side, it would create perhaps more of a oval shape?---It can create an oval shape, but it can also … we can sometimes see an abrasion pattern that is to one side or the other …

213 T 707.
214 T 708.
215 T 708.
216 T 709.

which highlights that it's little bit tangential, so sideways in its impact.[217]

183 The witness was then taken to the CT slides and Exhibit P11. The following exchange occurred:

> Yes. So, there are four parts to that now. Now, the top left part, we'll call that the first quadrant, that's where you can see something that appears to be shining?---Ah, bright, yes.
>
> Yes. Something's that [sic] bright. That, whilst you can't be certain, that you expect reflects the larger of the - larger pieces of the projectile that you removed?---Yes.
>
> Now, if you then move to the right of that, you can see obviously almost directly in line with it on the right-hand side there's a smaller bright area which is perhaps the second largest there; can you see that?---Yes, I can.
>
> That you expect you [sic] represents the second part of the projectile that you removed?---I don't recall fully, but it's quite likely.
>
> Now, below that, this is the second one, directly below that, you can see several dots leading all the way to a break. Obviously, that white area on the outside, that's the skull?---Yes.
>
> …
>
> So, from going back to the second large sort of bright area, the projectile, going down there are traces of smaller bits, that is smaller white bits going all the way to roughly the entry wound?--That's right.
>
> Now, just so there's clarity in relation to that, does that represent simply projectile fragments, or does that represent projectile and bone fragments as well?---It is a mix.
>
> Going back to quadrant one, that large one, that's simply projectile though?---Yes.
>
> To the right, the second biggest one in the second quadrant, that's what you expect to be simply projectile material?---Yes, it is.
>
> However, that track below it is a mixture between bone and projectile fragments?---Correct.[218]

184 Having identified the small dots of white roughly in a horizontal path in the second CT scan (Exhibit P12) that were a mixture of bone and projectile fragments and having identified the two fragments that he removed from the brain, Dr Bedford was asked:

> And so when you're providing an estimate of the portion that you removed representing a half or a third, this is roughly of the total amount of projectile

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217 T 710.

218 T 711.

> that was there, that's a comparison between the two large pieces and the mixture that you can see off to the right-hand side?---Yes.
>
> And that same question and answer would apply to the previous exhibit as well. Is that correct?---Yes.[219]

185 In re-examination, the witness said the ovoid pattern to the injury was not inconsistent with a 25-degree angle wound track:

> [A]nd otherwise not inconsistent or perhaps put better otherwise consistent with being a direct fire injury as against a ricochet?---Yes.[220]

186 A further final question was asked by Mr Jones:[221]

> [I]n relation to the fragments that you took out and on your estimate of what was remaining … if the fragments you took out had amounted to … 5.04 grains … then looking at on your estimate what there would have been in total … that would to a round figure amount to 15 grains?---Correct, yes.
>
> On the high end?---Yep. Yes.
>
> Potentially 10 grains up to 15 grains?
>
> HER HONOUR: Do you agree with that?---Ah, yes.
>
> MR JONES: Now, if the high end of that 15 grains represented an incomplete part of the bullet … do you still stand by that your preferred finding that this is a direct gunshot injury?---I find it challenging that there's that discrepancy but I'm only taking my findings particularly from what I see in the wound, um, but I appreciate your point.[222]

The accused's unsigned statement

187 The accused provided (but did not sign) a witness statement on 16 September 2017 taken by S/C Hames, which became Exhibit P7 in the trial.

188 S/C Hames said he was asked by D/S/C Eaton to take a statement from the accused as to what the accused could say about the events of the morning of 16 September 2017. S/C Hames said that he had spoken with the accused earlier (without making a note of the conversation), and the accused mentioned that he had entered into a

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219 T 712 (a reference to Exhibit P11).
220 T 713.
221 (To ensure compliance with *Brown v Dunn*).
222 T 714.

financial agreement with the deceased and loaned him money, and that the accused was 'frustrated' by it.[223] However, the witness said that when he brought up those earlier discussions regarding financial matters during the actual taking of the statement, the accused disagreed that was the case and denied that he had had to lend money to the deceased. Part-way through the statement-taking process, S/C Hames was informed by D/S/C Butland to cease the statement and the accused was placed under arrest.

189 Cross-examined, S/C Hames accepted he had no other notes of his interactions with the accused on 16 September 2017 other than when he was asked to take a formal statement from the accused. The witness agreed that the accused looked like he was going to throw up and appeared to be in a state of shock before S/C Hames started taking the statement; and that the accused appeared to constantly zone out such that S/C Hames had to keep repeating his questions over and over to prompt a response. The witness said that, at the time, he was not sure exactly what the aim of the statement was, other than to capture the accused's recollection and version leading up to and encapsulating the incident. S/C Hames was not sure if he was the initial person to bring up the topic of money when he was taking the statement, or whether it occurred organically through eliciting the 'free narrative' with the accused.[224] The witness was taken to his handwritten notes of the conversation with the accused which formed the formal statement, and these were read out in Court. The statement was not completed and signed because S/C Hames was stopped by D/S/C Butland. S/C Hames was shown portions of CCTV footage and asked about apparent inconsistencies vis-à-vis his own witness statement and responded relevantly.

Content of accused's incomplete statement (Exhibit P7)

190 The accused's unsigned and unfinished[225] statement provided the background to his 6-7 year relationship with the deceased; the deceased's prior health issues; and the living and financial arrangements at the Baxter residence:

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223 T 509.

224 T 518.

225 As mentioned, S/C Hames was told to cease taking the statement during the process of doing so.

> When Evelyn passed away Dennis had trouble paying the mortgage on his place as he didn't have a job. I moved in and helped him out financially and with anything he needs.
>
> …
>
> Dennis gambled his money away I think cause I don't know what he did with it.
>
> …
>
> We never argued about money, I tried to make his life easy and I never told him about my own money issues to keep it easy for him.

191 The accused also explained the deceased's ownership and use of firearms at the property:

> Dennis loved guns, back when his wife was alive he showed me like a rifle that was cut off, but I haven't seen it since – I'm not sure if he still has it. A couple of months ago he put a target on a tree out in the backyard. He showed me a long rifle and said that he'd just got it back from a friends house. I saw him in the shed shooting it from the shed while he was inside, at the target on the tree.
>
> He always talked about guns, he loved it.

192 The accused alluded to the $35,000 APS loan and associated financial arrangements:

> In March I took out a $35,000 so I could go on a trip to Italy. And I gave him [the deceased] $5000 to help him out. I have no idea what he did with the money, he asked me for $500 just yesterday and I gave him $350 yesterday and another $150 this morning.

193 The deceased relevantly recounted the events of the morning of 16 September 2017 as follows:

> I came back from the petrol station and went out the back in the shed where Dennis was working on the left. I noticed his gun on the table as you come in. I said to him "You still have this shit, what are you going to do with it". He said he wanted to shoot targets with it. I told him "fuck off" in a friendly way and I went and put my tools in my car.
>
> When I walked back to the shed Dennis showed me the rifle and said "This thing on the top of the rifle is loose and I think that's why I miss the target". He asked me if I could try and shoot the target. I tried and shot once at the target. Dennis checked the target and told me that I shot to the left of the target and that he could shoot better than me.[226]

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226 The unfinished statement ends here.

Evidence of the informant

194 The informant gave evidence on several aspects of the case.

195 Regarding CCTV at the Baxter residence, he confirmed the location of the four CCTV cameras, and said that they operated from equipment in the accused's part of the house.[227] He noted the timestamps on the CCTV footage were wrong.[228] A compilation of the CCTV footage was played as part of his evidence and became Exhibit P13.[229] Some additional excerpts not in the compilation were later tendered by the Defence. Some further photos taken at the Baxter residence on 16 September 2017 were tendered showing, inter alia, the CCTV monitors in the accused's part of the house and some internal parts of the deceased's part of the house.[230] Photos showed the deed of arrangement and an invoice from Waters Lawyers relating to the deed located in the deceased's part to the house.

196 D/S/C Argentino confirmed the nature of the ammunition and cartridge cases and packaging in the enclosed shed, including a seemingly empty package in the potbelly stove. The package in the potbelly stove became Exhibit P15 and appeared to match the empty plastic cartridge tray located on the Triton workbench. The description on that packaging read: 'Winchester very low velocity reduced charge accurate 29 grain lead bullet.'[231] All the ammunition-related items found in and around the shed appeared to pertain to Winchester Long Z .22 ammunition.

197 D/S/C Argentino confirmed that CCTV footage from relevant businesses had also been obtained, showing that the accused went firstly to Woolworths and later to a Caltex service station on the morning of 16 September 2017 (as had been asserted by the accused in his ROI).[232]

198 Regarding the accused's finances, D/S/C Argentino testified that it was his understanding the accused had a number of unpaid debts, in addition to the APS

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227 (Two cameras under the south-facing eaves at the rear of the house, and two cameras located in the driveway as pointed out on the view.)

228 58 minutes faster than real time.

229 An agreed log was also compiled and made available to the jury as an aide-memoire.

230 Exhibit P14.

231 T 760.

232 T 762.

arrears, including:

(a) $2,405 in mortgage repayments; however, the informant confirmed under cross-examination that the accused had made the following mortgage repayments in September 2017:

- $2,404 on 5 September 2017;
- $2,505 on 15 September 2017; and
- $2,402 on 20 September 2017;[233]

(b) $1,703.88 in arrears (as at 16 August 2017) for a car loan from Right Road Finance regarding his white Toyota Hilux. The accused was required to make weekly repayments of $122.35.[234]

(c) $1,498.75 in school fees, based on text messages sent from the school to the accused's mobile phone between 14 June 2017 and 12 September 2017. Under cross-examination, the informant conceded that he had not obtained any documents from the school to determine this debt amount, and was unable to confirm whether this debt was still outstanding as at 16 September 2017.[235]

(d) $463.31 to Alinta Energy; however, the informant was shown a document suggesting that on 29 August 2017, the accused had made a payment to Alinta Energy for $402.80, which would leave only a difference of $60.51 outstanding.[236]

(e) $281.20 to South East Water;[237] however, it emerged that the accused had made a payment of $281.20 to South East Water four days after receiving a text message reminder about this outstanding payment.[238]

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233 T 805.

234 As at 14 September 2017, a balance of $17,313.25 was still owing under the loan.

235 T 803.

236 T 804.

237 According to a text message on the accused's phone dated 24 August 2017.

238 The informant was shown the accused's Bank of Melbourne records which revealed that payment of the outstanding amount had been made by the accused to South East Water on 28 August 2017.

(f) $381.60 owing to Fines Victoria.[239]

199 Upon the deceased's death, the accused stood to inherit the Baxter residence under the deceased's will and his superannuation, although the informant was unable to confirm the precise balance of the superannuation account at the time of the deceased's death.[240] The unsigned deed of arrangement referred to earlier was tendered as Exhibit P17.[241] It pre-dated the deceased's most recent will.[242]

Record of Interview (Exhibit P18)

200 A ROI was conducted by D/S/C Argentino and D/S/C Quinnell at the Frankston Police Station 17 September 2017 commencing at 1.10am.[243] D/S/C Argentino gave evidence that the recording malfunctioned resulting in only an audiotaped interview instead of a video and audiotaped interview.[244] During his ROI, the accused provided an account of the events of the morning of 16 September 2017. In particular, the accused recalled that both he and the deceased had fired the Anschutz rifle at the tree that morning, and he recounted a specific interaction in which the deceased had complained about an issue concerning the sight on the rifle, and asked the accused to help him fix it. As told by the accused during the ROI:

> Dennis told me - he showed me something on his rifle, the - the thing where you look when you try to get the target, you know, the little metal thing there … He said, "Alex, look here. This thing move. It's not straight … That's why I not get the centre [of the target]." I said, "So I can't fix that."[245]

201 The accused recounted that the deceased then encouraged him to shoot at the target using the rifle:

> He take me to the target … he says, "Try." I know Dennis, so I try to shoot the

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239 The informant could not confirm whether this amount was still outstanding as at 16 September 2017 (T 805).

240 The informant gave evidence that at the relevant time, the sum of the deceased's superannuation account amounted to approximately $200,000 (T 763); however, under cross-examination it was conceded that no documents, either from the accused's or the deceased's part of the house, had ever been located revealing how much superannuation the deceased had in his account (T 802).

241 Referred to earlier in these reasons.

242 The unsigned deed of arrangement provided for the document to be dated 'the [insert] day of [insert] 2015'; whereas the signed will was dated 15 June 2016.

243 The ROI was tendered as Exhibit P18.

244 This was unfortunate given that, as can be seen in the CCTV footage on 16 September 2017, the accused appears to communicate through hand and arm gestures in combination with speaking.

245 ROI Q25-26, p 12.

> target. I try and I go on the left side. He go to check. He says, "Alex", you know, "You're totally out." I said, "Mate, I'm not good for this stuff." Anyway, I give the rifle to him and I keep going.[246]

202 During his ROI, the accused repeatedly denied shooting the deceased or seeing the deceased shoot himself, and claimed to police that he loved the deceased and would not have hurt him. When police suggested that it was unlikely the deceased would have been able to shoot himself and that it was more likely there was third party involvement, the accused told police:

> Look, I'm – I'm - I - what - what do you want me to say? What do you want me to say? I have nothing to say. The only thing I can say was I understand now you think I did that. Now, I love the man. I've done everything for him. You can ask to - who you want … From the hospital, the neighbours, to - everyone. I help him - I - I help him his wife. I've done everything. I love the man … Because how I can do something like that to a person like Dennis, and in my place? Sir, I'm there. I got my cameras there. I know the cameras are there. I know everything in there. So am I stupid, or what? But are you - are you serious? Sir, if you think - if - if I have to go - I don't wanna even think about it, do something like that, but - I have no reason either … I love the man, I love the man. And I'm ready to do whatever you want to show I've done bloody nothing.[247]

203 Regarding the moment he says he discovered the deceased in the shed, the accused described attempting to help the deceased breathe before calling 000:

> I had a cigarette. Come back inside and I saw Dennis in the corner. And I try - I go straightaway to him and try to - I put my hand in his mouth because I saw his vein on the neck moves, on the - on the - on the right side. So I said, "Dennis." I - I make him - I - I put my hand in his - in his mouth and nose like that and I leave it. He go like (demonstrates verbally) like that, so I try again. And I try - I got a - a - a rag there. I tried to - to clean his - it was - no, I'm trying to wake him up … And after I saw the blood - a little, just a drop of blood next, so I - I - I panic - panic. I shock. I get up. I think I get up straightaway. Dunno, I dunno. I'm just shock. Get my phone, call the triple zero, ask for an ambulance and the police, but the ambulance first.[248]

204 Once the ambulance arrived, the accused described leading paramedics to where he found the deceased in the shed, and seeing the rifle 'on the table' (being a reference to the Triton workbench). Asked what he thought must have happened, he said 'I think he shoot himself. That's what I said to the ambulance straightaway'.[249] The accused

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246 ROI Q26, p 12.
247 ROI Q320-322 pp 62–3.
248 ROI Q26 p 13.
249 ROI Q118 p 33.

went on to say the following:

> I don't like it much, but he loved guns. He talk always about guns … when he's upset, when he's sad or whatever, he say always he do something, you know … I asked Billy to tell Dennis about - you know, to not buy this shit. I don't like it. And I remember he said to Billy, "No, I need that 'cause when I have enough, then see ya later, mate".[250]

205 When questioned as to how it was possible that he did not hear the gun being discharged, the accused provided the following explanation:

> Q: Where you were - and, again, I don't know the garden and I don't know the layout of the shed. But would you expect to hear a shot discharged from that firearm?
>
> A: Sorry, what's that?
>
> Q: From where you say you were when Dennis must have been injured … knowing that rifle and knowing where you were and where Dennis was … would you expect to hear that shot discharge?
>
> A: Honestly - - -
>
> Q: Would you not hear the bang?
>
> A: If I – even – I don't remember if I heard a bang or not. But even if I heard a bang, he's still playing with the thing. You understand what I mean? … He's s [sic] still shooting, so I not pay attention on something. So if I hearing a shot … there's nothing unusual. He playing with that. So even if I - if I'm here, and he did a shoot there, I don't pay attention because he does already. I know he does.[251]

206 Regarding the rifle sling, the accused said the following:

> A: [W]hen I saw the gun before, when he bring that out, when I saw it at the beginning and he's shooting, he got a - how you say? You know, that thing that - the fabric stuff. You know the one that hold it, you know, when you put it on your - -
>
> Q: Yes. Like, the sling?
>
> A: The sling. My - my - my ..... is really .....
>
> Q: Yeah – no, that's O.K.
>
> A: I explain you - - -
>
> Q: The little shoulder - shoulder strap.
>
> A: Yeah, the one, you know, how you put your rifle like that, O.K.

250 ROI Q119-121.
251 ROI Q299-312.

....Whether - maybe I don't tell you that. I forgot to tell you that. It just come up - come up in my mind now … That thing, when he's shooting, was on. I saw him with that thing. When I touched it, it was on. And after, I think - I think – you'll have to check that with the guy who get the gun. I think that the - how you say it, again? Of- - -

Q: The strap.

A: The strap was off. Ask the - ask the police. I think that was off, next to the - the gun was here, and the strap next. You have to ask the police who get the gun.[252]

207 The informant was able to verify that, after searching police databases, the accused did not have any convictions in any states or territories in Australia, nor had he been charged with any other criminal offences. The informant had also made relevant enquiries with Interpol, and confirmed that the accused had no criminal history in Italy either.[253]

208 The informant was asked about the handwritten note ostensibly written by the deceased. That note was written in pen and was found on a coffee table in the deceased's part of the Baxter residence ('the penned note').[254] Another note written in pencil[255] was found on the same table as the penned note, and appeared to be a draft of the penned note ('the draft note'). Both documents were subjected to handwriting analysis and were found to be consistent with having been written by the deceased.[256]

209 In cross-examination, the informant confirmed he had obtained samples of the deceased's handwriting from various documents found throughout his part of the house, and that the accused had been asked to provide handwriting samples during his ROI.[257] He also confirmed that there were no folds in the penned note. D/S/C Argentino confirmed that expert 'indentation analysis' was also performed on the two handwritten documents.

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252 The sling was off the gun when police attended and was on the Triton workbench.

253 T 801.

254 The note is visible in photo 48 of Exhibit P3, and was the same note Mr Benwell can be seen holding in the CCTV footage.

255 As shown in photo 86 of Exhibit P3.

256 T 780. The informant confirmed that the handwriting and indentation experts were from 'the forensic science part of Victoria Police': T 794.

257 T 792. The accused was asked to write three words, being 'financially', 'responsibility' and 'helped' – those samples were tendered as part of Exhibit P20.

210 In addition to the penned note and the draft note, there was a further note located on the same abovementioned coffee table with a BIC lighter seen resting on top of the note.[258] This third document was described by Mr Jones as a sketch plan of sorts, also written in pencil, with the word 'Alex' written in one corner ('the sketch note') and was also subject to handwriting and indentation analysis. The draft note was located on the coffee table, underneath the sketch note.[259] Indentation analysis revealed that indentations of the penned note could be found on the draft note as well as on the sketch note.[260]

211 D/S/C Argentino was asked and relevantly responded:

> Based on the analysis of the handwriting expert … the writing in that document and the draft which is the document we saw before, that handwriting was consistent with the samples of Mr Pollock's handwriting?---That's correct.
>
> …
>
> We know that Mr Rapisarda found that document, correct?---That's correct.
>
> Putting that fact to one side, there was nothing in terms of writing or indentations that you could link from those documents to Mr Rapisarda causing [sic], is that right?---Yeah, there's nothing that came out of our investigation that suggested or proved that Mr Rapisarda wrote those two letters.[261]

212 Evidence was led regarding luminol and Hemastix testing of the shed, the import of which according to Mr McWilliams was to show that there were drops of blood in a line from roughly where the deceased was located and following the path the paramedics would have taken to take him out of the shed, and also because other witnesses referred to seeing some blood.[262]

213 Evidence was also received as to the accused man's height, his cooperation with investigators, and the fact that a head-to-toe examination was performed by a forensic medical officer looking for any injuries. Questions were also asked about the extent

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258 As seen in photo 65 of Exhibit P3.

259 T 791.

260 T 793.

261 T 795.

262 The notes of forensic biologist Ms Haycraft were tendered (Exhibit P23), and Mr McWilliams explained the purpose of tendering the notes when the Court inquired about what the evidence showed.

to which it was possible to see into the woodworking shed through the shed windows. It was established that no firearms-related items were found in the accused's side of the house.

214 D/S/C Argentino confirmed that the accused was not charged until 4 March 2022 and had not sought to leave the jurisdiction in the interim period.

Principles

215 At the close of the Crown's case, the Defence is entitled to make a 'no-case' submission pursuant to s 226(1)(a) of the *Criminal Procedure Act 2009* (Vic), which relevantly provides as follows:

> **226 Accused entitled to respond after close of prosecution case**
>
> (1) After the close of the case for the prosecution, an accused is entitled—
>
> (a) to make a submission that there is no case for the accused to answer;
>
> …
>
> (2) When ruling on a no-case submission by an accused, the trial judge may take into account the evidence already given of an expert witness called on behalf of any accused in the trial.

216 The test to determine whether the accused has a case to answer is well-established, and was articulated in the case of *Doney v The Queen*[263] ('*Doney*') as follows:

> [I]f there is evidence (even if tenuous or inherently weak or vague) which can be taken into account by the jury in its deliberations and that evidence is capable of supporting a verdict of guilty, the matter must be left to the jury for its decision. Or, to put the matter in more usual terms, a verdict of not guilty may be directed only if there is a defect in the evidence such that, taken at its highest, it will not sustain a verdict of guilty.[264]

217 In *Doney*, the High Court held that neither the power of a court of criminal appeal to set aside a verdict as unsafe and unsatisfactory, nor the inherent power of a court to stay or delay proceedings in order to prevent an abuse of process, provides any justification for interfering with the traditional division of functions as between judge

263 (1990) 171 CLR 207.

264 Ibid 214–5 (Deane, Dawson, Toohey, Gaudron and McHugh JJ). The Court explored what 'tenuous' or weak or vague evidence means at 214.

and jury in a criminal trial.[265]

218 Regarding the unique perspective of the jury as fact finders, the High Court in *Doney* also observed:

> [T]he purpose and the genius of the jury system is that it allows for the ordinary experiences of ordinary people to be brought to bear in the determination of factual matters. It is fundamental to that purpose that the jury be allowed to determine, by inference from its collective experience of ordinary affairs, whether and, in the case of conflict, what evidence is truthful.[266]

219 In considering a no-case submission, the trial judge must take the prosecution case at its highest, by drawing all inferences that are favourable to the prosecution and reasonably open on the evidence.[267] A judge is not called upon to determine whether she or he thinks the accused should be convicted; rather, the test is whether, as a question of law, a jury could lawfully find the accused guilty.[268]

220 Chief Justice King, of the South Australian Full Court of Criminal Appeal in *Case Stated by DPP (No 2 of 1993)*,[269] summarised the principles to be applied where the Crown's case depends on circumstantial evidence as follows:[270]

> If the case depends upon circumstantial evidence, and that evidence, if accepted, is *capable* of producing in a reasonable mind a conclusion of guilt beyond reasonable doubt and thus is *capable* of causing a reasonable mind to exclude any competing hypotheses as unreasonable, there is a case to answer. There is no case to answer only if the evidence is not capable in law of supporting a conviction. In a circumstantial case that implies that even if all the evidence for the prosecution were accepted and all inferences most favourable to the prosecution which are reasonably open were drawn, a reasonable mind could not reach a conclusion of guilt beyond reasonable doubt, or to put it another way, could not exclude all hypotheses consistent with innocence, as not reasonably open on the evidence.

221 Justice Croucher in *R v Frank (No 2)*[271] helpfully reviewed the authorities dealing with no-case submissions and circumstantial evidence including reference to the

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265 Ibid 215.
266 Ibid 214.
267 See, eg, *Attorney-General's Reference (No. 1 of 1983)* [1983] 2 VR 410; *Case Stated by DPP (No 2 of 1993)* (1993) 70 A Crim R 323; *R v Galbraith* [1981] 2 All ER 1060.
268 See, eg, *May v O'Sullivan* (1955) 92 CLR 654; *Zanetti v Hill* (1962) 108 CLR 433.
269 (1993) 70 A Crim R 323, 326–7.
270 Ibid 327 (emphasis in original).
271 (2021) 288 A Crim R 104.

abovementioned cases and the case of *R v Cengiz* ('*Cengiz*'),[272] in which the Victorian Court of Appeal considered the no-case test in a case based on circumstantial evidence.

222 In summary:

(a) In considering a no-case submission, the trial judge must take the prosecution case at its highest, by drawing all inferences that are favourable to the prosecution and reasonably open on the evidence.

(b) It is fundamental to the purpose, and indeed genius, of the jury system that the jury be allowed to determine, by inference from its collective experience of ordinary affairs, whether, and in the case of conflict, what evidence is truthful.

(c) If there is evidence (even if tenuous or inherently weak or vague) which can be taken into account by the jury in its deliberations, and that evidence is capable of supporting a verdict of guilty, the matter must be left to the jury for its decision.

(d) Axiomatically, a verdict of not guilty may be directed only if there is a defect in the evidence such that, taken at its highest, it will not sustain a verdict of guilty.

(e) There will be no case to answer *only if* the evidence is not capable in law of supporting a conviction. In a circumstantial case, this would mean that even if all the evidence for the prosecution were accepted, and all inferences most favourable to the prosecution and reasonably open were drawn, a reasonable mind could not reach a conclusion of guilt beyond reasonable doubt.

Parties' submissions

Defence submissions

223 It is convenient to first deal with the no-case submission as advanced by the Defence.

224 The Defence submitted that the issue for this application is whether it is reasonably

272 [1998] 3 VR 720.

open on the evidence that the bullet ricocheted off a surface before it struck the deceased. Accordingly, it was submitted that the inference is not only open on the undisputed evidence, but it also cannot be rationally excluded by the Crown.

225 The Defence relied on the test as stated in *May v O'Sullivan*[273] and adopted the approaches taken in *Doney* and *Cengiz.*[274] The Defence also placed reliance on *Case Stated by DPP (No 2 of 1993)*[275] referred to above.

226 In advancing their no-case submission, the Defence pointed to the following pieces of evidence adduced in the course of the trial:[276]

> In this case, the relevant spent cartridge was lost. Despite this, the court should infer that the round that caused Mr Pollock's death was a 29-grain bullet. This inference is reasonably open on the evidence. It is also the most favourable inference to the prosecution.
>
> Dr Bedford removed two projectile fragments from Mr Pollock. These weighed 5.04 grains. On Dr Bedford's estimate, these two fragments represented half to a third of the total fragments in the deceased's brain. Therefore, on Dr Bedford's estimate, there were a total of 10 to 15 grains of projectile fragments in Mr Pollock's skull. A more precise estimate would amount to 10.08 to 15.12 grains of projectile fragments in the deceased.
>
> A comparison with exhibits P11 and P12 reveals that when one compares the extracted projectile fragments to those left in the deceased's brain, which reflected a mixture of projectile fragments and bone, the estimate of the total weight of the projectile fragments weighing between 10.08 to 15.12 grains was a generous estimate for the prosecution.
>
> Therefore, taking the prosecution case at its highest, if there were a total of 15.12 grains of projectile fragments taken from the deceased, there is still, based on the lowest available .22 calibre round weighing 29 grains, 13.88 grains of projectile fragments missing from the deceased's brain. Framed another way, only 52% of the bullet was in the deceased. This means that 48% of the bullet did not enter the deceased. At the close of the prosecution case, at least 48% of the bullet remains unaccounted for. The fact that a significant portion of the bullet is unaccounted for is an indisputable fact.
>
> The question then is, if the complete bullet did enter the deceased, what happened to the remaining 48% of the bullet? The only reasonable inference is that the missing 48% of the bullet did not enter Mr Pollock. If it did not enter Mr Pollock, then the bullet must have been significantly damaged between leaving the barrel of the gun and before Mr Pollock was wounded. The only

273 (1955) 92 CLR 654 at 658.
274 [1998] 3 VR 720.
275 (1993) 70 A Crim R 323.
276 The following is taken from the Defence's written outline of its no-case submission which was handed up at the close of the Crown case on 16 April 2024.

> thing that could damage a bullet to this extent is if it hit an intermediary object and ricocheted. This is the only reasonable inference that is open on the evidence.
>
> If that is the case, the rifle was not pointed at Mr Pollock when it was discharged. If it was pointed directly at Mr Pollock, it would have resulted in a direct entry wound whereby either the entirety of the bullet would have been lodged in the deceased, or it would have resulted in an exit wound.

227 Mr Jones KC largely repeated these points in his oral submissions, stressing if what entered the deceased was fragments of a bullet deformed after hitting an intermediary target leading to loss of part of the projectile (as in a ricochet) then the Crown case for murder based on the accused pointing the rifle at the deceased and shooting him cannot be made out. The fact that almost half of the projectile was unaccounted for at autopsy was said to be an indisputable fact.

Crown submissions

228 On 17 April 2024, the Court received written submissions in response to the no-case submission.

229 The issue, as stated by the Crown, was whether, regarding the first element of murder, the Crown could on the evidence exclude an hypothesis consistent with innocence: namely whether the fatal injury sustained by the deceased was caused (presumably by inadvertent discharge of the firearm by the deceased) from a 'ricochet projectile' rather than as a result of a 'direct entry' projectile.

230 The Crown submitted as follows:[277]

> The only evidence relied on by the accused to support the hypothesis that the fatal injury was caused by a ricochet projectile concerns the weight of the projectile fragments recovered from, and observed in, Mr Pollock on autopsy as opposed to the manufactured weight of the projectile.
>
> It is submitted that the question posed by the accused at [14] of his outline misstates the relevant question for the Court on this application. The relevant question is not whether the Crown can provide an explanation for apparent discrepancy between the recovered (and observed) projectile fragments and the manufactured weight of the projectile, but rather the question is whether the jury could rationally conclude *on the whole of the evidence* that the 'ricochet hypothesis' is not reasonably open.

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277 Taken from the Crown's written outline of response to the Defence's no-case submission filed on 17 April 2024 (emphasis in original).

231 In opposing the Defence's no-case submission, the Crown noted that the evidence relevant to the 'ricochet hypothesis' came from the witnesses Rooney, Farrar, Beeson and Bedford.

232 In oral submissions, Mr McWilliams pointed to the evidence of L/S/C Rooney, who was called to give evidence on the interpretation of physical evidence vis-à-vis the mechanism of gunshot injury. Mr McWilliams referred to portions of his evidence referred to earlier in this ruling wherein L/S/C Rooney indicated that although he was not asked to examine inside the shed for marks consistent with ricochet, it is a standard procedure, and he did not notice any, and did look at most areas he could inside the workshop. Attention was drawn to answers given in re-examination to the effect that, having examined the wound on the deceased at the scene, he did not at that time consider the possibility of a ricochet injury, nor consider that that would be a direction that the investigation should encompass. Also, his answer that when he 'conducted a thorough crime scene examination of the wood working shed', he did not consider the possibility of a ricochet injury was a viable part of the investigation and that he also was not led to the conclusion that a possibility of a ricochet injury was a viable pathway for this investigation to embark upon on the totality of the evidence that was available to him.

233 Mr McWilliams also referred to the evidence of L/S/C Rooney that he conducted bump testing of the firearm by hitting it with a rubber mallet to simulate dropping and it did not discharge.

234 He also referred to the evidence of S/Sgt Farrar and Ms Beeson as being instructive on the question of the possible range of distance between the muzzle and the deceased's head. Mr McWilliams noted that the result of witness card testing performed by S/Sgt Farrar was consistent with the weapon being no closer than 12.5 centimetres from the wound site at the point of discharge. Range testing showed that any less than 12.5 centimetres resulted in particulate matter being visible on the target.

235 Meanwhile, Ms Beeson's evidence was that the weapon could be no further than 30

centimetres from the wound site based on finding several particles (on microscopic examination) that had the appearance of PBP. The Crown's written submissions extracted portions of Ms Beeson's evidence that dealt with the properties of PBP,[278] especially as concerned samples from the wound area and the identification of four particles classified as indicative of GSR, and several particles that had the appearance and composition of PBP, with the presence of PBP on the sample from the wound providing strong support for the contention the firearm was discharged in close proximity to the deceased; the presence of PBP at the wound site being suggestive of a range somewhere between contact and no further than 30 centimetres (viz. muzzle of the weapon to the wound site).

236 The Crown submitted that, based on Ms Beeson's evidence that the PBP could only have been emitted from the muzzle of the firearm, the firearm must have been no further than 30 centimetres from the back of the deceased's head. As a matter of logic, the gun must have been close enough to deposit propellant at the wound site. This was said to leave no room for a ricochet.

237 The Crown also referred to Dr Bedford's evidence that the attributes of the fatal gunshot injury were more consistent with a direct shot as opposed to a ricochet injury.

238 Although the no-case submission was narrowly focused on an hypothesis consistent with innocence, based on the unaccounted-for projectile and the likelihood that the bullet hit an intermediate target, when asked about the relevance of any suicidal behaviour regarding what the deceased may have been doing with the firearm at the relevant time, Mr McWilliams submitted that the handwritten note found by the accused should not be characterised as a 'suicide note' and the Crown's case is that it is simply 'writing on a paper'.[279] Furthermore, Mr McWilliams submitted that the evidence taken as a whole runs inconsistently with a finding that the deceased was contemplating self-harm at the relevant time, noting that no witnesses have indicated that the deceased was considering such a course, but to the contrary, on the evidence

278 As set out in paragraphs [71]–[91] of this ruling.
279 T 835.

the deceased was 'future-focused'. The weight of the evidence on that issue would comfortably be sufficient for the jury to exclude suicide as a reasonable explanation for how the injury was sustained.

239 When asked about how the Crown explain the issue of the missing projectile weight, Mr McWilliams properly conceded that the Crown cannot offer an explanation regarding the missing bullet fragment. He submitted that the argument about discrepancy in the projectile weight may ground an argument that the ricochet theory is reasonably arguable, but that on the whole of the evidence he had just referred to the jury could rationally conclude the ricochet hypothesis was not reasonably open in the face of that evidence. The Crown submitted that the matter was quintessentially a jury question, the jury being the ultimate arbiters of the facts in the trial.[280] Mr McWilliams thus argued that the no-case submission should be rejected.

240 In response, Mr Jones KC emphasised that the issue remains for this Court that there is no rational explanation for the evidence that almost 14 grains of the bullet is missing. An explanation would be there if there was an exit wound, however this is not the case. The only reasonable explanation, it was submitted, was that something happened to the bullet. It cannot be the case that it was a direct shot – the bullet must have hit an intermediate object.

241 Regarding the evidence of Ms Beeson, the firearm could not have been directly in front of and 30 centimetres or less from the wound site, as that kind of direct impact would be an impossibility having regard to the missing 14 grains.

242 Regarding Dr Bedford's evidence, the Defence highlighted that the fact that Dr Bedford had not seen firsthand a ricochet fatality does not assist the Crown. It was submitted that Dr Bedford's opinion was further 'troubled' by the missing bullet fragments. The evidence was that the wound had ragged edges, and Exhibit D1 shows that the wound is not circular, it is oval-shaped with straight edges.

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280 Crown's written outline of response to the Defence's no-case submission, 7 [16].

Analysis

243 In analysing the above arguments, I accept that it is open to the jury to find that:

(a) L/S/C Rooney, an experienced crime scene examiner and ballistics examiner, was not prompted by anything he noticed at the scene to consider ricochet, and that in accordance with standard procedures he examined surfaces within the shed at the crime scene as well as the injury to the deceased.

(b) Dr Bedford preferred that the injury was from a direct impact and not a ricochet: he thought it was a smooth entry wound and referred to internal bevelling and the fact that he had never seen a ricochet injury that was fatal before, and was not aware of it happening in Victoria. He referred to the probable loss of velocity if bullets bounce off (for example) a brick wall, although a glancing ricochet would involve less loss of velocity, and he referred to variables such as the distance over which the bullet travels. At the conclusion of Dr Bedford's evidence, and with leave of the Court, following re-examination, Mr Jones asked Dr Bedford if he stood by his finding that a direct shot was to be preferred if the 15 grains represented an incomplete part of the bullet, and Dr Bedford conceded that he found it challenging and appreciated the point.[281]

(c) The evidence of S/Sgt Farrar and Ms Beeson supported a likely muzzle-to-target distance of between no less than 12.5 centimetres[282] and no more than 30 centimetres.[283] Ms Beeson's evidence was that, on microscopic examination of samples from the wound, the presence of several particles of PBP was consistent with that substance coming from the muzzle of the firearm[284] and landing on the wound within a 30 centimetres distance. S/Sgt Farrar described particulate material including unburnt and/or partially burnt grains of powder emitted from the muzzle of the firearm on discharge as very light material that does not travel a great distance from the muzzle, and as being different to GSR

281 As set out in [185] of this ruling above.
282 On the evidence of S/Sgt Farrar.
283 On the evidence of Ms Beeson.
284 In the present case, this would have been the silencer which was attached to the end of the muzzle.

and not visible to the naked eye but detectable with an electron microscope. There was, however, no detailed evidence from S/Sgt Farrar or Ms Beeson (or indeed any Crown witness) about the precise way in which that substance is transmitted, travels through the air and lands.[285]

(d) The firearm did not discharge on the bump test being applied.[286]

(e) A jury could find that the deceased was not suicidal on the morning of 16 September 2017.

244 The current case is a circumstantial case. The no-case submission has been framed on a particular aspect of the evidence said to give rise to a reasonable hypothesis consistent with innocence that the fatal injury to the deceased was not the result of a direct impact bullet and must have impacted an intermediate surface prior to impacting the deceased.

245 Ultimately, I accept the Defence submission that the evidence is not capable in law of supporting a conviction. In other words, even if all the evidence for the Crown is accepted, and all inferences most favourable to the Crown and reasonably open are drawn, I have reached the conclusion that a reasonable mind could not exclude the Defence hypothesis consistent with innocence in order to reach a conclusion of guilt beyond reasonable doubt.

246 I do not see how a jury acting reasonably could be persuaded beyond reasonable doubt that the projectile that impacted the deceased's skull was the result of a direct impact from the rifle being pointed at the back of the deceased's head when there is no exit wound and nearly half the total projectile is missing and unaccounted for and the only portions that were able to be extracted by the pathologist were 2 'minute' deformed fragments weighing 5.04 grain in combination.[287]

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285 Nor any evidence about variable factors that may influence its dispersal.

286 Although, as mentioned, it did discharge during the drop test.

287 Dr Bedford's evidence at [178] above was that apart from the two fragments he removed (weighing 5.04 grain), the projectile material that remained inside the deceased's skull represented a half to a third of that quantity, leading to the estimate of a total figure of 10 to 15 grain. Therefore, the Defence position

247 Taking the Crown case at its highest, and accepting the evidence referred to above along with the entirety of the evidence before the jury, in my view the evidence of the unaccounted-for bullet fragments presents a defect in the evidence such that, taken at its highest the evidence will not sustain a verdict of guilty.

248 I therefore uphold the no-case submission.

249 I will formally direct a verdict of not guilty in respect of the indictment under s 241(2)(b) of the *Criminal Procedure Act 2009* (Vic) and I intend to discharge the jury from delivering a verdict on the charge.

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that at least 13.88 grains remained unaccounted for was a scenario based on the most favourable inference for the Crown.

CERTIFICATE

I certify that this and the 81 preceding pages are a true copy of the reasons for ruling of Jane Dixon J of the Supreme Court of Victoria delivered on 18 April 2024.

DATED this fourteenth day of May 2024.

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Associate