

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
28 MAY 1974  
25 RUSSELL SQUARE  
LONDON W.C.1

IN THE PRIVY COUNCIL

No. 2 of 1973

---

---

O N A P P E A L

FROM THE SUPREME COURT OF THE STATE OF  
VICTORIA

---

---

B E T W E E N :

CHRISTOPHER RUSSELL LOWERY Appellant

-- and --

THE QUEEN Respondent

---

---

CASE FOR THE RESPONDENT

---

---

- 10 1. This is an Appeal by Special leave from a RECORD  
Judgment dated the 17th day of September 1971 of p. 509  
the Full Court of the Supreme Court of the State  
of Victoria sitting as a Court of Criminal  
Appeal (Winreke C.J., Little and Barber J.J.),  
which had dismissed the Appellant's application  
for leave to appeal against his conviction in p. 504  
the Supreme Court of the State of Victoria  
(Smith, J. and a Jury) on the 23rd day of June  
1971, on a charge of murder upon which the  
20 Appellant had been sentenced to death.
- 2. The Appellant was presented on the charge p. 1  
that he at Mount Napier in the State of Victoria  
on the 31st day of January 1971 together with  
Charles Ian King murdered Rosalyn Mary Nolte.  
The Deceased was a girl 15 years of age who  
lived with her mother in Hamilton.
- 3. The Trial took place in the Supreme Court  
of the State of Victoria sitting at Ballarat  
(Smith, J. and a Jury) between the 8th and 23rd

RECORD

days of June 1971. The Prosecution called material evidence to the following effect :-

(a) Douglas Gerald Hope Johnstone said that at about 11.40 a.m. on 1st day of February 1971 he found the Deceased's corgi dog on the Muroa road about 8 miles south of Hamilton. Attached to the dog was a lead with a chain choker.

(b) Norman Charles Mengler, a Detective First Constable stationed at Hamilton, together with John Barr, a station manager, said that on the 3rd day of February 1971 they discovered the body of the Deceased by a track running south into the bush at Mount Napier Reserve. The body was naked, lying face down in the bracken, trussed up with electric flex with a slip knot around the neck which passed down the side of the body and was secured to the hands and feet. Some distance back along the track Mengler found a beer can (Exhibit "E") on which was later found a fingerprint which (according to the unchallenged evidence of Kelvin Glare, a Senior Constable attached to the Fingerprint Identification Section in Melbourne) was identical with the left middle finger print of the Appellant. The clothing of the Deceased was also found scattered about in the immediate vicinity. Wheel marks were also noticed together with signs of bracken having been trodden down. Evidence was later given by Henry Gregory Huggins, a Senior Constable attached to the Forensic Science Laboratory in Melbourne, that certain of the said tyre marks were consistent with having been caused by the rear wheels of the Appellant's vehicle.

10

20

30

p.4 1.28

(c) Malcolm Arthur Hyde, a Police Constable stationed at Hamilton said that on the 3rd day of February 1971 he took a written statement Exhibit "BB" from the Appellant on the instructions of Detective Constable Mengler at Hamilton Police Station. The Appellant said in the statement that between 8.00 and 8.15 p.m. on 1st day of January 1971, when driving in his van with his co-accused Charles Ian King

40

p.535 1.16

he had seen the Deceased in Gray Street, Hamilton. After a conversation they took her in the van to the Commercial Hotel in Thompson Street where she got out. He stated that he had not seen her since.

RECORD

p.536 1.1

p.536 1.7

(d) Vivian Owen Womersley, a Detective First Constable attached to the Homicide Squad in Melbourne said that on the 3rd day of February 1971 he took a written statement Exhibit "GG" from King. This statement was in similar terms to that of the Appellant Exhibit "BB". Womersley said that on the 4th day of February 1971 he took a statement Exhibit "FF" from the Appellant. The statement set out the Appellant's previous account in greater detail and purported to describe his movements and those of King after leaving the Deceased at the Commercial Hotel, including the driving of a hitch-hiker to Coleraine. The Appellant stated that he and King later that evening visited the Appellant's parents-in-law at 3 Shakespeare Street where others present included his wife and a girl named Kevine Butterworth. After visiting a drive-in theatre he and his wife eventually returned to their home at about 3.30 a.m. the next morning. Womersley said that while this statement was being taken, and following an approach by Senior Detective Rippon, the Appellant was taken out to the police yard where his van was parked. The Appellant's attention was drawn to a jumper lead from the battery to the coil, used for starting a car without a key. The Appellant denied that he had seen it before and said he could not understand how it got there. He further said that he had similar coloured flex at home, taken from his old car. Rippon told him that the jumper lead was the same colour and size as that used to bind Rosalyn Nolte, and asked if he had killed her. The Appellant replied, "Do you think I'm a fucking madman? No, I didn't kill her." Womersley further said that on 6th day of February 1971 he and other officers saw the Appellant and King in the Appellant's van at Shakespeare Street and that they agreed to accompany the officers to Hamilton Police Station. On arrival King was interviewed separately, the evidence in regard to the electrical lead was put to him, and he made a verbal confession as set out in the record of

p.5 1.24

p.6 1.16

p.536 1.19

p.537 1.15

p.538 1.33

p.538 1.40

p.539 1.15

p.6 1.29

p.7 1.13

p.7 1.23

p.7 1.31

p.7 1.33

RECORD

p.12 1.45  
p.13 1.1  
  
p.13 1.7  
p.14 1.32  
p.14 1.41  
p.15 1.35  
p.16 1.16  
p.16 1.21  
p.16 1.23  
p.17 1.13  
  
p.18 1.28  
p.22 1.24  
  
p.39 1.12  
p.40 1.8  
p.40 1.32  
p.42 1.9  
  
p.43 1.34

interview Exhibit "HH". King stated that he and Lowery met the Deceased at about 8.00p.m. on the 31st day of January 1971 and that he remembered being at Mount Napier, although not going out there, or why they went. He described a savage attack on the Deceased by the Appellant in the course of which the Appellant "went mad", kicking the Deceased on the ground, hitting her, trying to strangle her, and eventually saying, "I'll have to kill her". The Appellant finally put a piece of flex around the Deceased's neck and tied the end of the cord around her legs and arms. He grabbed her shoulders and pulled them back and there was a "horrible crack". Afterwards they drove back to Hamilton. In answer to a question King said, "I think I might have helped to tie her up". He was asked "Why did you do this?" and replied "I don't know". King further said that the Appellant seemed calm and appeared to be enjoying it, and that the murder followed an earlier conversation with the Appellant during which the Appellant "said it would be good to watch her struggling "and something about" dying slow". Womersley said that on the 7th day of February 1971 King agreed to re-enact his version of the incidents at Mount Napier to enable a film of the proceedings to be made, and the officer described how he in fact did so.

(e) Graham James Davidson, a Detective First Constable attached to the Homicide Squad in Melbourne said that on the 4th day of February 1971 at Hamilton he took a statement Exhibit "OO" from King. This statement was in similar terms to the statement of the Appellant Exhibit "FF". Davidson further said that on the 6th day of February 1971 he was present when the Appellant was interviewed at Hamilton Police Station. The Appellant denied having been recently in the Mount Napier area. He said his earlier statement was correct. Eventually, after further questions about the electrical flex he asked to see the Superintendent and confessed. He said, "It all started about last Christmas. Charlie and I were at the bykes in Mount Gambier, we were boozed all week-end. We got this idea...

	to kill a chick. I'm not sure which one of us suggested it, but we decided to see what it would be like to kill a chick.....We were in the van on the Sunday night and Rosalyn came up and we decided it would be a chance". The Appellant described driving the Deceased to Mount Napier saying that he was directed by King who told the Deceased that they were taking her to see a friend at a party.. The Appellant said that it	<u>RECORD</u> p.44 1.24
10	was King who took her clothes off and King who fetched the cord. He was further questioned while a record of interview Exhibit "PP" was made. He said that he had held the Deceased while King took her clothes off and that King had tried to have intercourse with her. King fetched the flex which he wrapped round the Deceased's throat, and told the Appellant to hold her. He had dragged the girl down a gully on the instructions of King who told him to tie her up. King	p.44 1.40  p.44 1.46
20	eventually tied her up. Both men then walked back to the van. The Appellant said that he could not remember if he had hit, kicked or stamped on the Deceased. He agreed that he had had the flex in his van, and identified various articles of clothing, belonging to the Deceased. He was afterwards told he would be charged with murder. Davidson further said that on the 7th day of February 1971 the Appellant agreed to re-enact his version of the incidents at Mount	p.542 1.21 p.542 1.35 p.543 1.8 p.543 1.24 p.543 1.29
30	Napier to enable a film to be made, and described how the Appellant gave his demonstration.	p.546 1.2 p.548 1.12 p.547 1s. 35, 38 p.548 1.1 p.548 1.22 p.47 1.34

	(f) Kevine Merrilyn Butterworth, a clerk, said that between 9.00 and 10.00p.m. on the 31st day of January 1971 she saw the Appellant and King in Hamilton, and that they drove her in the Appellant's van to the home of the Appellant's parents-in-law in Shakespeare Street. She later went with the Appellant, his wife and King to a drive-in theatre in the Appellant's van, being	p.63 1.2
40	driven back at about 3.00a.m. to Shakespeare Street where she stayed the night. Miss Butterworth further said that when first in the van with the Appellant he asked what it was worth to him to take her home, and that she passed off this question as a joke. He hit her behind the head while she was in the van and kicked her as she was getting out. She said,	p.64 1.10 p.65 1.3 p.65 1.18  p.66 1.28  p.68 1.9 p.68 1.31

RECORD

p.68 1.29

p.69 1.17

p.69 1.27

"I think I even hit him too". Miss Butterworth also agreed that "what was going on in the car was mucking around....horseplay," which she took as a bit of a joke. She said she did not think there was anything sinister, malevolent or horrible about the approaches of the Appellant.

p.71 1.9

p.71 1.11

p.71 1.24

p.71 1.32

p.72 1.9

p.72 1.22

p.73 1.24

p.73 1.31

p.74 1.5

4. The Appellant gave evidence on oath. He denied taking part in the killing, or having ever planned to kill a girl. He was married and his wife was eight months pregnant. At about 7.15 p.m. on the 31st day of January 1971 he picked up King in his van. King almost at once took a tablet which he said was "Acid" (L.S.D.). They met Kevine Butterworth in Gray Street and took her to Shakespeare Street. He said "What's it worth to give you a ride up there?" He gave her a tap on the shoulder and she hit him back. He gave her a kick, not hard, on the behind as she stepped out of the car. Afterwards he drove

10

20

p.74 1.28

p.75 1.1

p.75 1.12

p.75 1.15

p.75 1.35

p.75 1.30

p.76 1.5

p.76 1.30

with King down the main street where they met the Deceased. She asked if they would take her to see Garry Bailey at a party. King said the party was at Toulong and directed the Appellant along an unfamiliar route by way of the Port Fairy Road. Eventually they arrived at a track. The Appellant realised there was to be no party and assumed that King wanted to have intercourse with the Deceased. After stopping, King and the girl got out and walked off up the track. The Appellant waited, drinking beer from a can. King returned to the van alone, took some flex and walked back. The Appellant followed to see what he was doing with it. After a short distance he came upon King trying to strangle the girl with the flex. The Appellant tried to restrain King who knocked him down twice, and told him to collect the Deceased's clothes and throw them away. He dragged the unconscious girl off the track and said to the Appellant, "Stop there or you'll be next". King then tied up the Deceased and ordered the Appellant back to the van. When they reached the road King released the dog and told the Appellant that they would have to work

30

p.77 1.10

p.77 1.18

p.78 1.9

p.78 1.11

p.78 1.22

p.78 1.31

p.79 1.9

p.79 1.14

p.79 1.29

40

RECORD

p.79 1.34  
p.80 1.5

p.81 1.7

p.82 1.35

p.83 1.23

p.84 1.12

p.84 1.19

p.84 1.36

p.87 1.18

p.87 1.36

p.88 1.24

p.90 1.28

p.163 1.19

p.165 1.33

pp.169 to  
171

out a story. He said that if the Appellant did not keep quiet he would "get at" the Appellant's wife. They both returned to Shakespeare Street where they told a story of taking a hitch-hiker to Coleraine. On a later occasion King came to the Appellant's flat and asked him to go over the story again. Afterwards the Appellant told his wife what had happened on the Sunday night, and she said he should go to the Police. He was reluctant to do so. He agreed with the Police evidence in respect of the interviews. Meanwhile King told him to say, if it should appear they could prove anything against King, that he was with King in it, helped him to do it, and that they had together "planned to kill a chick". King made further threats in connection with the Appellant's wife. Later, when in Police custody, the Appellant was told that King was making a statement involving him, and the Appellant was further threatened by the Police with violence if he did not tell them what they wanted. He made the record of interview Exhibit "PP" because he believed King was making a statement. Having spoken to his solicitor the previous evening he did not wish to take part in a film, but in fact later made the film not knowing whether he had any right to refuse or not. He went along with King's story because of fear for his pregnant wife, and completed the film because of the aggressive attitude of the Police. However, he was not really afraid of the Police, only of King: "I'd seen what he could do just mucking around, just for a joke". The Appellant stated that he had never previously been charged with a serious criminal offence, that he had expectations in connection with his father's business, that he loved his wife and was glad about their baby, and that he and his wife were moving into their first home. He denied handing King a document (Exhibit "C") when they were in the cells at Sillorat. The Appellant's wife was called on his behalf and said that she had been spoken to by King in a very vicious tone on the day following the murder. Stanley James Middrie and Walter Thomas Keane gave evidence of the

10

20

30

RECORD

Appellant's general reputation.

p.172 5. King also gave evidence on oath. He described his background and his interest in motor cycles. He had been taking L.S.D. and marijuana while a student in Melbourne. On his return home to Hamilton he was put on a bond to be of good behaviour for larceny. He had twice been unconscious following motor cycle crashes. The Appellant was a particular friend. On Boxing Day 1970 the Appellant had said to him, "I wonder what it would be like to kill a chick". King laughed it off. On 31st day of January 1971 King met the Appellant, and during the evening King took eight or nine tablets of Methedrine and a tablet of acid. The Appellant picked him up in his van, and took him first to Shakespeare Street. King confirmed the evidence of Kevine Butterworth. He remembered the Deceased getting into the van and then blacked out. He woke up in the scrub, alone in the van. He eventually walked further into the scrub and came upon the Deceased lying on the ground with the Appellant kicking her. The Appellant was yelling. King walked away and was sick. The Appellant went away, returned, and wrapped the flex around the Deceased's neck. He dragged her away and yelled to King to hold her legs and collect the Deceased's clothes. King was very confused. He had not known the flex was in the van. He and the Appellant returned to the van and, during the journey home the Appellant bragged that he had "killed Rosalyn", saying, "You helped me". The Appellant made up the story of the hitch-hiker, and of taking the Deceased to the Commercial Hotel. King denied that he afterwards spoke in a threatening manner to Mrs. Lowery. After the finding of the Deceased's body the Appellant asked him if he was sure he had the story of the hitch-hiker straight. King further gave evidence in connection with his subsequent interrogations by the Police, and of assisting the Police in making a film at Mount Napier. Finally the Appellant had handed to King a prepared statement Exhibit "K1" in the Appellant's handwriting setting out what he (King) was to say in Court, admitting that he

10

20

30

40



(King) had taken the initiative throughout, had put the flex round the Deceased's neck, and had threatened to kill the Appellant if he interfered. The statement included the sentence, "Lowery had nothing to do with the killing and I forced him to do what he did do". This was completely false.

RECORD

p.201 1.9

10 6. James Neville Carless, a school teacher, stated that he knew King at Hamilton Technical School in 1967 and 1968 and that he was not a leader, but just a boy who co-operated.

20 7. Francis Nicol Cox, a psychologist and Professor in the Faculty of Education at the University of Melbourne, stated that he had interviewed both King and the Appellant, each on a single occasion, and was familiar with the papers relating to the case against them. He was asked, inter alia, to make comparisons as to their mental characteristics with special reference to inherent aggressiveness. It was argued on behalf of King that these were issues raised by the defence of the Appellant. Objection was raised on behalf of the Appellant that this was not proper or relevant evidence. The learned Judge ruled in the following terms :

p.304 1.20

p.330 1.32

30 "It seems to me that each of these accused has made a statement to the police on 6th February in which he has told the Police of happenings out at Mount Napier in which he, the person making the statement, is cast in the secondary role and the other accused is cast in the leading and dominant role. Now one of the questions for the jury to determine will no doubt be in relation to each of these statements, whether it is a correct account of what really happened out there. And it appears to me that evidence by this witness as to the qualities of dominance, leadership, dependence, or submission, matters of that kind, in either  
40 of these accused would tend to establish facts which will make it more or less probable that what really happened out at Mount Napier is what is stated in one or other of those statements to the police.

p.319 1.38

RECORD

Not as a matter of intelligence but of general personality. That is the basis on which it appears to me that the kind of evidence in question is admissible. Opinion evidence, in my view, of facts which may be regarded by the jury as rendering more possible some facts in issue".

pp.321-323	Professor Cox then gave evidence of his	
p. 324 1.23	examination and of the tests which he had applied	10
	in the case of King. He concluded that King	
	showed open dislike of and contempt for the	
p.326 1.41	Appellant. He stated that there was consistent	
p.327 1.1	evidence of a passive dependent kind of personality,	
p.327 11.4 and 5	and also evidence of some impulsiveness. There	
p.327 1.13	was evidence of some quite intense aggressive	
	impulses over which his control was rather weak,	
	but they were likely to be reflected in sporadic	
	acts of aggression quickly over and done with	
	and not to be sustained. There was also	20
p.327 1.18	evidence of some capacity to relate adequately to	
	other people. The test picture was that of an	
	immature, emotionally shallow youth likely to	
	be led and dominated by more aggressive or	
p.327 11s.42,	dominant men and who conceivably could act out	
43 and 44	or could behave aggressively to comply with the	
	wishes or the demands or the orders of another	
	person. Professor Cox stated that he examined	
p.330 1.36	the Appellant before he examined King. He found	
	that the Appellant showed consistent evidence of	30
p.333 1.33	small capacity to relate adequately to other	
p.333 1.38	people. The Appellant showed a strong aggressive	
	drive with weak control over those aggressive	
	impulses, and showed ostentatious compliance	
p.333 1.39	covering a basic callousness. He appeared at the	
p.334 1.7	onset to be very nervous and anxious, and at	
p.334 1.11	the end of the session seemed very confident and	
	arrogant. Professor Cox further stated that an	
p.349 1.32	Apperception Test indicated some sadistic	40
	pleasure obtained from observing the suffering	
	of other people. The name commonly used was a	
p.350 1.18	psychopathic personality, meaning in this	
	context the tendency to seek immediate satis-	
p.350 11.26	faction or gratification without normal	
to 30	consideration of the consequences and without	
	consideration of other persons. There was no	

RECORD

- such indication in the tests which he had given to King. Professor Cox said that he had never tested King when he was under the influence of L.S.D, Methedrine, alcohol, or a combination, and he would therefore be unable to make a comparison with the Appellant if he (King) was under the influence of any of these factors. He said finally that, in regard to the lack of feeling for others, the difference between the two men was quite marked, the aggressiveness displayed by the Appellant being definitely more intense than that expressed by King, and that this would be reflected in the degree of lack of control to be anticipated in each case. The Appellant showed slightly more marked impulsiveness, but not the attribute of dependency which had been marked in King. Likewise King did not show the callousness and the sadistic tendencies which he had found in the Appellant.
- 10
- 20 8. Three doctors, John Ivan Balla, Henry Charles Bethune and Allen Austin Bartholomew, gave evidence in support of the defence of insanity raised by King on the approved basis that he was under the influence of L.S.D, Methedrine and alcohol.
9. Guy Hale Springthorpe, a doctor and psychiatrist, gave evidence for the Appellant in rebuttal of the evidence of Professor Cox. He stated that on the basis of information furnished to him there was no evidence that the Appellant was a sadist. He knew of no evidence that the Appellant had shown a psychopathic personality in his previous behaviour.
- 30
10. The learned Judge, in the course of his Charge to the Jury, dealt in detail with the evidence of Professor Cox, and later summarised the submissions made on behalf of King about the said evidence in the following terms :
- 40 "It was submitted that the killing here was done by one man - Lowery. It was submitted that having seen King in the box you should regard him as an honest and reliable witness. It was urged that this killing was a sadistic and callous one, and that on hearing of it your first reaction, the first reaction of
- p.355 1.2A  
p.362 11.15 to 18  
p.362 1.22  
p.363 1.33  
p.363 1.41  
p.364 1.6  
p.364 1.23  
p.364 11.31 and 32  
p.366 L.33  
p.378 1.14  
P.466 1.9

RECORD

any person, would be to ask what manner of man did this? And on King's behalf it was submitted that he (King) by the witnesses he called had tried to let you know. Then counsel for King went through the evidence bearing on the personality traits of King as appearing from the evidence of Cox and through the personality traits of Lowery as appearing from that evidence. It was urged that you should accept Cox's evidence as establishing that each of these men had the character traits to which he referred, and it was put that you should reject the evidence of Springthorpe insofar as it tends the other way". 10

The learned Judge concluded his summary of the submissions made for King by saying:

p.467 1.41 "And then finally counsel for King came back to the point - which of these two men is the more likely to have killed this girl? And it was submitted that your conclusion in regard to that inquiry should be 'Lowery'." 20

p.486 1.13 11. At the conclusion of the learned Judge's Charge to the Jury Counsel for the Appellant made application that the Jury should be discharged. It was argued that the evidence of Professor Cox was inadmissible and prejudicial because the Jury were bound to take it into account as being evidence of bad character, and because his references to sadistic tendencies and psychopathic personality would inevitably lead the Jury to believe that the Appellant was the kind of man who would be likely to commit murder. The learned Judge rejected the Application, saying that during the course of the evidence he had extended his view as to how far it was admissible. The Jury found both King and the Appellant guilty of murder. 30 40

12. The Appellant applied for leave to appeal against his conviction to the Full Court of the Supreme Court of the State of Victoria (Winreke,

RECORD

p.509 l.11

p.520 l.22

10 C.J., Little and Barber, J.J.) sitting as a Court  
of Criminal Appeal. Leave was refused on the  
17th day of September 1971. The grounds of appeal  
included the submission that the evidence of  
Professor Cox was inadmissible because it was  
irrelevant to any issue in the trial, was in the  
alternative excluded as a matter of law, and also  
that the material on which the opinions of  
Professor Cox were based was insufficient to give  
his opinions probative value. The Judgment of  
the Court was delivered by the learned Chief  
Justice. The Full Court considered the rule  
that the Crown was precluded from leading evidence  
that did no more than show that the accused had a  
disposition or propensity or was the sort of person  
likely to commit the crime charged. The Full  
Court rejected the submission for the Appellant  
that the rule of exclusion was equally applicable  
where the evidence was sought to be led, not by  
20 the Crown, but by one of the accused on a joint  
trial. The Full Court held that it was one thing  
to say that such evidence was excluded when  
tendered by the Crown in proof of guilt but quite  
another to say that it was excluded when tendered  
by an accused in disproof of his own guilt. There  
was no reason of policy or fairness which justified  
or required the exclusion of evidence relevant to  
prove the innocence of an accused person. That  
evidence might show disposition or propensity of  
30 a co-accused to commit the crime charged but that  
was also the case where such evidence was admissible  
when adduced by the prosecution as relevant to  
prove some such issue as intent, or identity, or  
to rebut accident or mistake. The Full Court  
expressed agreement with the views set out by the  
learned Trial Judge in his report to the Full  
Court and for the reasons given in support. It  
was further held that it was unnecessary to rule  
on a submission made by the learned Solicitor  
40 General that where evidence which was relevant  
and admissible was led by one of two accused,  
a Trial Judge had no discretion to exclude it.  
The Full Court was of the opinion that the  
discretion, assuming the learned Judge to have  
possessed it, was rightly exercised in the  
present case.

RECORD

13. The Appellant was given special leave to Appeal by the Judicial Committee on the 30th day of November 1972. The Petition in support of the application set out grounds relating to the evidence of Professor Cox, and the further ground (to which no reference was made on the hearing of the Petition) that the learned Judge erred in his direction to the Jury as to the meaning of aiding and abetting. This latter ground was also relied upon in a Petition on behalf of King which was dismissed. 10

14. The Respondent respectfully submits that this Appeal should be dismissed. The Respondent submits that the learned Trial Judge correctly admitted the evidence of Professor Cox as to the Appellant's psychopathic personality, his strong aggressive drive and weak control, the sadistic pleasure which he appeared to obtain from observing the suffering of other persons, and as to the marked difference between the two men. 20

15. It is further submitted that if, contrary to the foregoing submissions, the evidence of Professor Cox should not have been admitted and a miscarriage of justice was caused to the Appellant by the admission of such evidence, a new trial should be ordered pursuant to Section 568 (2) of the Crimes Act No.6231 (Victorian Statutes).

16. The Respondent respectfully submits that this Appeal should be dismissed and the Judgment and Order of the Supreme Court of the State of Victoria should be affirmed for the following, among other 30

REASONS

1. BECAUSE the jury were correctly directed both on the facts and the law of the case.

2. BECAUSE the evidence of Professor Cox was correctly admitted in evidence.
3. BECAUSE the jury were correctly directed upon the evidence of Professor Cox.
4. BECAUSE of the other reasons in the Judgment of the Full Court.
5. BECAUSE the Appellant has suffered no miscarriage of justice.

RECORD

B.L. MURRAY

ROBERT HARMAN

No. 2 of 1973

IN THE PRIVY COUNCIL

---

O N A P P E A L

FROM THE SUPREME COURT OF THE  
STATE OF VICTORIA

---

B E T W E E N

CHRISTOPHER RUSSELL LOWERY

Appellant

AND

THE QUEEN

Respondent

---

CASE FOR THE RESPONDENT

---

FRESHFIELDS,  
Grindall House,  
25 Newgate Street,  
London, EC1A 7LH.

Solicitors for the Respondent