



**THE UNIVERSITY OF SOUTHERN
QUEENSLAND LAW SOCIETY
2021 CHAMPIONSHIP MOOT QUESTION**

The Championship Moot problem question is a criminal dispute between Timothy Randall (Appellant) and the Crown (Respondent).

The counsel for the appellant will represent Timothy Randall. The counsel for the respondent will represent the Crown in this matter.

The Appellant was granted leave to appeal after his conviction in the Supreme Court of Queensland on the grounds that he advanced in his (below) written case.

Leave was granted on the following four grounds:

Grounds of Appeal:

In relation to the murder conviction,

1. That the learned trial judge erred in allowing the evidence of Mr Randall's search history and that it instead should have been held to have been inadmissible.
2. That the learned trial judge erred in not dismissing juror number 11, Rachelle Strawberry, on grounds of bias as per s 56 of the *Jury Act 1995*.
3. That the learned trial judge erred in allowing the evidence of Mr Randall's confession which was illegally obtained through the use of coercion and illegal tactics by the police.
4. That the learned trial judge erred in refusing to leave for the jury's consideration self-defence under s 271 of the *Criminal Code Act 1899* (Qld).

Orders sought by the appellant:

That the appeal be allowed, and for his conviction to be quashed.

AT THE SUPREME COURT OF QUEENSLAND

COURT OF APPEAL

CITATION: *R v Randall* [2020] QSC 420

PARTIES: **Randall, Timothy Elias**

(Appellant)

v

STATE OF QUEENSLAND

(Respondent)

Introduction

[1] The defendant, Mr Timothy Randall was convicted of one count of murder, s 302 of the *Criminal Code Act 1899* (Qld), on 14th of November 2020 in the Supreme Court of Queensland. Mr Randall now appeals to the Supreme Court of Queensland, Court of Appeal on the following grounds;

1. That the learned trial judge erred in allowing the evidence of Mr Randall's search history and that it instead should have been held to have been inadmissible.
2. That the learned trial judge erred in not dismissing juror number 11, Rachelle Strawberry, on grounds of bias as per s56 of the *Jury Act 1995*.
3. That the learned trial judge erred in allowing the evidence of Mr Randall's confession which was illegally obtained through the use of coercion and illegal tactics by the police.
4. That the learned trial judge erred in refusing to leave for the jury's consideration self-defence under s 271 of the *Criminal Code Act 1899* (Qld).

Circumstances of the Offending

[2] The appellant, Mr Timothy Randall was a 39-year-old male living in the greater Brisbane region with his partner, Ms Nicki Gratton. Ms Gratton had previously been involved in a relationship with Mr Ethan Benson ('the deceased'), who lived at 123 Appletree Road, Brisbane with his roommate Mr Andrew Lawson. Both the defendant and Ms Gratton were at the time legally unemployed and relied heavily upon Ms Gratton's illegal income as a sex worker.

[3] At 9pm on the night of the 23rd of January 2019, Ms Gratton's work client became unavailable leaving Ms Gratton without an income for the night. She was then contacted by the

deceased through an internet site where her sexual services were advertised. The two agreed that Ms Gratton should come over to the deceased's residence and perform sexual acts in return for money. Ms Gratton knew that her former partner had a lot of money as well as firearms at his residence. Both the appellant and Ms Gratton were reportedly out of money. Ms Gratton then informed the defendant of this information and the two set about hatching a plan to steal the money.

[4] It was decided that Ms Gratton should take up the deceased's offer to perform sexual acts for money while the defendant should sneak into the deceased's house to search for money and guns and take them back outside to the car. There, he should wait for Ms Gratton to return and then drive them both back home. The two then drove to the deceased's residence at 10:30pm and Ms Gratton entered the home with the deceased, who was unaware of the defendant's presence in her car.

[5] The deceased and Ms Gratton walked in and sat on the couch in a friendly manner. The deceased then produced a pipe to smoke methylamphetamine. Instead of the defendant sneaking into the house unobserved as planned, he suddenly appeared in the same room as the defendant and Ms Gratton. He was dressed in black like a burglar and was masked. The defendant was spotted by the deceased who then proceeded to pull a small pistol from his pocket and point it at the defendant. The defendant rushed forward and punched the deceased. A fight then ensued.

[6] Ms Gratton grabbed a nearby baseball bat and struck the deceased on the head. She then fled the house. The bat was left on the floor. The deceased was stunned and fell back onto the couch. The defendant grabbed a nearby tennis racket and hit the deceased multiple times before it broke, then used the nearby bat to hit him a couple of more times on the back of his head. The fighting continued subsequently.

[7] The defendant stated during the trial, that his sole intention was "to make sure that me and Ms Gratton both got out of there alive". He said that at one point he, the defendant, and the deceased both fell to the ground outside the house on the patio. The defendant kept hitting the deceased who was "sort of kicking himself up off his left elbow and covering his head". The defendant hit him on the back of the head once more. He said that he "wasn't really aiming the blows" and that he "was just sort of trying to stop him from getting to another gun." At this point the deceased stopped moving and blood was visible on the back of his head.

[8] The defendant at this point dragged the deceased body back into the house. The defendant said that he noticed an air rifle nearby on a bench in the house and he took it. He then went back the way he had come into the lounge room.

[9] Ms Gratton then re-entered the house. She told the defendant that she had collected the broken handle of the bat, "the gun", a black backpack and a gun case that "she believed had more guns in it". She had already put these things into the car. Together they went out the front door to the car. The defendant put the rifle into the back seat, and they drove off.

[10] After the two left the scene, Mr Lawson, the deceased's roommate, arrived home at around 1am to see the deceased lying face down on the patio and called for the police and the ambulance. When the ambulance arrived, they declared Mr Benson deceased due to multiple traumatic blows to the head.

Trial

[11] During the first day of the trial, the defendant's internet search history was admitted into evidence after a Voir Dire on request of the prosecution. It was revealed by the prosecution that earlier that night at 9:30pm, the appellant had searched the phrase 'how to get away with murder' on the search engine Bing. The prosecution requested that this evidence be admitted to evidence for consideration as they believed it was necessary to prove the defendant's intent to commit murder and that the defendant had intended to cause harm to the deceased regardless of the original plan. The defence attempted to object to the use of this evidence stating that it had no relevance to the case as it was searched prior to the commencement of the alleged crime and that it was likely the defendant searching up a popular television show to watch.

[12] The prosecution disagreed and stated that the evidence was of material relevance to the case as it proved intent as other parts of the defendant's Bing search history revealed that the defendant had also searched, 'how to break into a house' around 10pm on the 23rd of January, as well as the *Criminal Code Act 1899 (Qld)* and had looked at sections relating to murder and it was therefore important that the jury had access to the defendant's search history. Justice Powers agreed with the prosecution and admitted the evidence to the jury and allowed them to have access to the defendant's search history.

[13] After the second day of the trial, juror number 11, Rachele Strawberry, posted the following tweet on her Twitter account:

'All men are just filthy violent killers that deserve to be held accountable for their actions.'

[14] The following day, the defence met with the Justice Powers and the prosecution to discuss this matter and argued that this was reasonable grounds for dismissal. The defence's case was that her tweet was clear evidence of bias against the defendant as it showed that the juror was likely to vote to convict and argued that the juror should be dismissed for bias as considered in s 56(1) of the *Jury Act 1995 (Qld)*.

[15] The prosecution disagreed stating that this was not justifiable grounds for juror removal as the tweet did not mention anything related to the case and was merely the juror's opinion on men and that she was not likely to be biased in making her decision. Justice Powers agreed with the prosecution and allowed for juror 11 to continue to sit on as a juror.

[16] During the third day of trial, Sergeant Mick Pickles was called by the prosecution as a witness to give evidence. Sergeant Pickles had held Mr Randall in custody for questioning on the 30th of January 2019. The questioning between the two of them was recorded by the room's camera. This video recording was played to the jury and judge. During the questioning, Sergeant Pickles questioned the defendant on whether or not he had struck the deceased and intended to kill him. The defendant, seeming exhausted, replied, "I did, I killed him. He hurt her so I wanted him to feel pain like she did when they broke up." However, it was revealed in cross-examination by the defence that Mr Randall had been held in custody by police for 10 hours at the time at which he confessed which is longer than the allowed time of 8 hours as per s 403 of the *Police Powers and Responsibilities Act 2000 (Qld)*. No application was made to extend the time.

[17] The defence argued that any evidence from the recording by Sergeant Pickles should be excluded as it was a problematic confession as Mr Randall had been held for longer than the allowed period of time. The prosecution stated that the evidence should be allowed as it was essential to their case. Justice Powers found in favour of the prosecution and allowed the confession to continue to be considered by the jury.

[18] During the fourth day of trial, the defence counsel attempted to raise s 271, self-defence, for the jury's consideration. In order for that provision to be engaged, there had to be evidence that:

- a) the defendant was unlawfully assaulted;
- b) the defendant did not provoke the assault;
- c) the nature of the assault was such as to cause a reasonable apprehension of death or grievous bodily harm; and
- d) the defendant believed, on reasonable grounds, that he could not preserve himself from death or grievous bodily harm otherwise than by using the force that he used.

[19] The defences' case was that Mr Benson assaulted the defendant with the pistol and that this assault was unlawful and unprovoked and that s 271 of the *Criminal Code Act (Qld)* should apply. The prosecution case was that s 267 applied in this circumstance and that therefore s 271 was not applicable in this circumstance. Under that provision, Mr Spencer would have been acting lawfully in pointing his pistol at the appellant if:

- (a) he was in peaceable possession of his home;
- (b) Mr Benson believed that the appellant was there intending to commit an indictable offence;
- (c) Mr Benson had reasonable grounds for that belief;
- (d) Mr Benson believed that it was necessary to use the gun in the way in which he did in order to prevent or to repel the appellant from remaining;
- (e) Mr Benson had reasonable grounds for that belief; and
- (f) He pointed the gun at the appellant for that purpose.

This was based on the fact that there was sufficient evidence to prove that Mr Benson believed that the defendant was in his house to commit an indictable offence.

[20] Justice Powers found in favour of the prosecution, stating that Mr Benson's assault with the pistol came within s 267 meaning that s 271 had to be excluded as there is no self-defence against a lawful assault because self-defence should not entitle a defendant to create a situation of emergency and to provoke an attack upon themselves, and yet claim the right to defend themselves against that attack by shooting or killing his assailant.

[21] After deliberations on the 4th day of the trial, the jury returned a verdict of guilty and the defendant was subsequently sentenced to life imprisonment.

Sections of relevant Law

Criminal Code Act 1899 (Qld)

s267 Defence of dwelling

It is lawful for a person who is in peaceable possession of a dwelling, and any person lawfully assisting him or her or acting by his or her authority, to use force to prevent or repel another person from unlawfully entering or remaining in the dwelling, if the person using the force believes on reasonable grounds—

- (a) the other person is attempting to enter or to remain in the dwelling with intent to commit an indictable offence in the dwelling; and
- (b) it is necessary to use that force.

s271 Self-defence against unprovoked assault

(1) When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for the person to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

(2) If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that the person cannot otherwise preserve the person defended from death or grievous bodily harm, it is lawful for the person to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.

s302 Definition of *murder*

(1) Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say—

(a) if the offender intends to cause the death of the person killed or that of some other person or if the offender intends to do to the person killed or to some other person some grievous bodily harm;

(aa) if death is caused by an act done, or omission made, with reckless indifference to human life;

(b) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;

(c) if the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of a crime which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such crime;

(d) if death is caused by administering any stupefying or overpowering thing for either of the purposes mentioned in paragraph (c);

(e) if death is caused by wilfully stopping the breath of any person for either of such purposes;

is guilty of *murder*.

(2) Under subsection (1)(a) it is immaterial that the offender did not intend to hurt the particular person who is killed.

(3) Under subsection (1)(b) it is immaterial that the offender did not intend to hurt any person.

(4) Under subsection (1)(c) to (e) it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

(5) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

Jury Act 1955

s56 Discharge or death of individual juror

(1) If, after a juror has been sworn—

(a) it appears to the judge (from the juror's own statements or from evidence before the judge) that the juror is not impartial or ought not, for other reasons, be allowed or required to act as a juror at the trial; or

(b) the juror becomes incapable, in the judge's opinion, of continuing to act as a juror; or

(c) the juror becomes unavailable, for reasons the judge considers adequate, to continue as a juror; the judge may, without discharging the whole jury, discharge the juror.

Police Powers and Responsibilities Act 2000

s403 Initial period of detention for investigation or questioning

(1) A police officer may detain a person for a reasonable time to investigate, or question the person about—

(a) if the person is in custody following an arrest for an indictable offence—the offence for which the person was arrested; or

(b) in any case—any indictable offence the person is suspected of having committed, whether or not the offence for which the person is in custody.

(2) However, the person must not be detained under this part for more than 8 hours, unless the detention period is extended under this division.

(3) If this part applies to the person because of section 398(b) or (c), the person must be returned to the watch-house or other place of custody as soon as reasonably practicable after the detention period ends.

(4) In the 8 hours mentioned in subsection (2) (the detention period)—

(a) the person may be questioned for not more than 4 hours; and

(b) the time out may be more than 4 hours.

(5) The detention period starts when the person is—

(a) arrested for the indictable offence; or

(b) taken into police custody under a removal order; or

(c) taken from a watch-house; or

(d) otherwise in the company of a police officer at a watch-house, prison, or detention centre, for the purpose of questioning the person.