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## Sample 6: Outline of argument — appealing conviction

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Use this form when you are appealing against your conviction. Complete it after you have received the Appeal Record Book from the court and have been allocated a hearing date. After you have completed it, send it to the Court of Appeal registry and the prosecutor. You must do this 28 days prior to your hearing date.

#### **IN THE COURT OF APPEAL SUPREME COURT OF QUEENSLAND**

**C.A. No. 555 of 2018**

**AND**

**THE QUEEN**

- v -

**JASON MATTHEWS**  
(Appellant)

#### **OUTLINE OF ARGUMENT ON CONVICTION -- ON BEHALF OF THE APPELLANT**

1. Introduction
  - 1.1 Jason Matthews was charged with manslaughter in relation to the death of his 3 year old daughter, Bianca Matthews on 30 December 2017. The Crown alleged the deceased was killed as a result of injuries sustained during an assault in the course of which the appellant delivered blows. Criminal responsibility was said to arise under Section 7(1) Code.
  - 1.2 The principal evidence against him fell into two categories:
    - (i) the medical evidence of a pathologist and a neuropathologist
    - (ii) the tape recorded confession of the appellant.
  - 1.3 He was tried before Judge Jamieson in the Supreme Court at Brisbane. The trial commenced on 12 February 2018 and ended on 3 March 2018. He was convicted of manslaughter and sentenced to 12 years' imprisonment.

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2. Summary of evidence

Write a summary of all relevant evidence here, up to 10 pages long. Make sure you note all references to the *Appeal Record Book*.

Here are some sample paragraphs for a Summary of evidence:

The central evidence in the trial came from four witnesses, the arresting officer, John Smith, a forensic pathologist, Sarah Brown, the mother of the deceased, Anna Matthews, and a neighbour, Louise Street.

Officer John Smith gave evidence that on 30 December 2017 police communications received a '000' call which detailed concerns from a neighbour about screaming inside the relevant address. He attended the address, arranged for an ambulance to attend, located various items of evidence and arrested the appellant. When in the police car going to the station, the appellant told him that he hurt his right hand a week before playing football.

Dr Sarah Brown gave evidence that the death was caused by a number of blows of moderate force to the head with either a blunt instrument or a clenched fist.

Anna Matthews gave evidence that she was at her sister's at the relevant time but that she received 26 missed calls from the appellant and text messages saying, "I've had it!" and "I'm sorry". She gave evidence that he was violent to her and to the deceased many times before and that he had no injury to his right hand when she left home the day before the incident.

Louise Street gave evidence that she heard a male adult voice screaming, crying from a child and the sound of slapping and whacking. She had heard that sort of thing many times before but this time it went on so long she called the police.

### 3. Grounds of appeal

It is submitted the trial miscarried because:

- A. The learned trial judge erred in admitting the evidence said to demonstrate a lie.
- B. The learned trial judge erred in failing to direct the jury as to the use they could make of the appellant's lies.
- C. The learned trial judge erred in admitting evidence of other acts of violence against the child not the subject of the charge (propensity evidence).
- D. If the propensity evidence was admissible then it was only admissible to demonstrate the context/relationship in which the relevant assault occurred.
- E. If the learned trial judge was right in admitting the propensity evidence, on either basis he erred in failing to properly direct the jury as to its permissible use.
- F. The appellant did not receive a fair trial because the trial judge failed to adequately sum up the defence case.

### 4. Submissions

Write down all the reasons why each ground of appeal should succeed. For example:

Grounds A and B:

Evidence of when and how the appellant's hand injury occurred was admitted, over objection. The evidence of Anna Matthews was demonstrated in cross-examination to be unreliable due to her poor memory and inaccurate description of the events of the preceding week. The evidence was not such as to demonstrate that it was a lie told in consciousness of guilt, but the jury were directed that they could consider it for that purpose. The jury should have been directed that they had to be convinced that it was, in fact, a lie, before they could reason toward the appellant's guilt.

Grounds C, D and E:

The evidence from Anna Matthews of prior assaults upon the deceased should not have been admitted because the evidence was unreliable, uncorroborated and so vague as to detail as to be worthless in the jury's consideration of the case. The evidence was more prejudicial than probative and should have, therefore, been excluded from the jury's consideration.

The directions given by the judge did not satisfy the requirements in *R v ABC* [2016] QCA 1 in that they did not define the conduct concerned and overstated the use to which that evidence could be put.

Ground F:

During her summing up, the learned trial judge spent almost two hours summarising the crown case but only twelve minutes summarising the defence case. She missed vital portions of the defence case and misstated the evidence of the level of screaming heard by Louise Street. *R v XYZ* [2013] QCA 2 is authority for the position that a summing up must be fair and balanced and properly state the evidence given during the trial without embellishment or flourish.

5. Orders sought

Write down what orders you want the court to make.

Signed: *J Matthews*

Dated: *10 August 2018*

SAMPLE