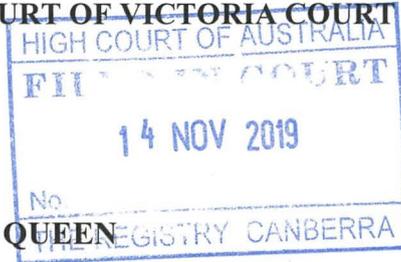


ON APPEAL FROM THE SUPREME COURT OF VICTORIA COURT OF APPEAL

BETWEEN:

THE QUEEN



Appellant

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-and-

AKON GUODE

Respondent

APPELLANT'S OUTLINE OF ORAL ARGUMENT

Part I: INTERNET PUBLICATION

1. This Outline is in a form suitable for publication on the internet

20 **Part II: PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT**

2. CRITERIA FOR INFANTICIDE MET

Charge 1 on the Indictment qualified for Infanticide on the basis of paragraph (b) of s.6(1) *Crimes Act 1958* (Vic) (JAB 24).

Dr Sullivan first report [66] (CAB 288) second report [23] (CAB 292).

3. CROWN'S SUBMISSIONS ON RELEVANCE OF MENTAL STATE

The Crown's sentencing submissions were to the effect that it was not the charge of infanticide that influenced the way in which the murder and attempted murder were approached for sentencing purposes, but rather the principles of *Verdins*.

30 Oral submissions (CAB 128);

Written submissions at [27]-[28] (CAB 171-172)

R v Verdins (2007) 16 VR 269 (JAB 26)

4. LASRY J AND WEINBERG JA COMPARED TO COURT OF APPEAL

Lasry J and Weinberg JA approached the issue of the respondent's mental state, in particular her moral culpability, with reference to the principles in *Verdins*.

Lasry J [53]-[58] (CAB 334-335)

Weinberg JA [34]-[35] (CAB 372)

The Court of Appeal approached the issue with reference to the prosecution's acceptance of a plea to infanticide and the terminology of s.6(1).

[33] [61] [65] [67] (CAB 384&ff)

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5. COURT OF APPEAL SHOULD HAVE APPROACHED TASK BY
CONSIDERING THE STRENGTH AND QUALITY OF THE EVIDENCE

The legislative definition of infanticide does not stipulate any particular level or threshold of imbalance that must be exceeded before the offence is committed.

In comparison, what matters to a sentencing court should be what the evidence shows about the nature, extent and effect of the mental impairment experienced by the offender at the relevant time.

R v Verdins (2007) 16 VR 269 at [8]-[13] (JAB 28&ff)

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6. APPROACH OF COURT OF APPEAL INCONSISTENT WITH LEGISLATIVE
INTENTION

The approach of the Court of Appeal does not sit comfortably with the legislature confining the application of infanticide to the death of a child up to two years.

VLRC Recommendation (CAB 202-203)

Court of Appeal judgment [64] – [65] (CAB 395)

7. APPROACH OF COURT OF APPEAL COULD LEAD TO INCONSISTENT
SENTENCING OUTCOMES

Absent a charge of infanticide, the Court would have been required to consider the respondent's mental state in the usual way. The inclusion of a charge of infanticide should not have altered that approach.

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8. ORDERS SOUGHT

Confirm that orders sought are those set out in Notice of Appeal (CAB 406).

Dated: 14 November 2019

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K E Judd QC

Director of Public Prosecutions

Telephone: 9603 7508

Facsimile: 9603 7460

Email: director@opp.vic.gov.au


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A Ellis

Crown Prosecutor

Telephone: 9603 2604

Facsimile: 9603 7460

Email: angela.ellis@opp.vic.gov.au

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