



## R v Day

### BACKGROUND

On 27 February 2012, Jason Jon Garrels, a general labourer, was fatally electrocuted on a large construction worksite in Clermont, Queensland. At the time he was electrocuted, Mr Garrels was holding upright a construction sub-board, which was being erected onsite in an attempt to comply with a Workplace Health & Safety Queensland (**WHSQ**) issued Electrical Safety Protection Notice. The site was extremely wet and muddy on the day of the death. The accident was a result of negligent electrical work performed by Nathan Brian Day. Mr Day's additional training, education and competency merely consisted of a simple TAFE diploma revolving around accounting and business related practices, which was irrelevant to electrical qualifications and competencies. Mr Day was deemed under qualified to hold an electrical contractors licence in both a coronial inquest and tribunal proceedings. Mr Day had his licence suspended after these proceedings and did not return to the electrical trade. Onsite, there was a general assumption by the workers that all the electrical work they were exposed to was electrically safe. However, Mr Day did not properly install the fuses, electrical wiring and safety switches to an ungrounded electrical switchboard, resulting in the construction sub-board being held by Mr Garrels becoming electrified. Similarly, Mr Day did not isolate the power before Mr Garrels commenced work on the electrical switchboard. Preventative measures could have been easily taken in this regard. Mr Day claimed in a coronial inquest that he correctly installed electrical safety switches to the switchboard despite his actual failure to do so. Mr Day attempted to corroborate testimonies with a fellow colleague during a WHSQ investigation in an attempt to put blame onto Mr Garrels for his own death. In a further attempt to hide his guilt, Mr Day immediately stripped the site's switchboards upon the death of Mr Garrels and claimed he was doing so to make the site "electrically safe". Expert evidence presented upon the coronial inquest contradicted this claim, as electrical common practice would dictate that Mr Day could have simply padlocked and tagged the isolator switch once it had isolated the electricity to make it electrically safe. This is a far quicker and more accessible method than stripping an entire electrical switchboard.

Before the Brisbane Supreme Court, Mr Day pleaded guilty to one count of manslaughter and one count of perjury on 9 March 2018. Justice Helen Bowskill sentenced Mr Day to seven years jail for the manslaughter offence and two years for perjury to be served concurrently. Mr Day will be eligible for parole on 9 March 2020.

### PREVIOUS CORPORATE PROCEEDINGS AGAINST PRINCIPAL CONTRACTOR

In relation to the same incident, the principal contractor for the site, had previously pleaded guilty to one count of failure to meet electrical safety obligations in breach of s 36 of the *Electrical Safety Act 2002* on 6 August 2013. On that occasion, Industrial Magistrate Baldwin fined the defendant \$90,000 (a reduced fine coming from what was originally a \$100,000 penalty range) and ordered investigation, professional and court costs totalling \$9856.25 with no conviction recorded.

Her Honour recognised the defendant's failure to ensure the installation was electrically safe and was held to be responsible for failing to ensure that the electrical power supply to the construction-wiring switchboard was isolated and as a result, was held responsible in exposing Jason Garrels to an energised construction wiring switchboard onsite.

In reaching her decision, Magistrate Baldwin took into account mitigating factors, which included a lack of previous recorded prosecutions for any electrical or workplace health and safety breach, cooperation with investigative authorities, and an early guilty plea.

### **CROWN SUBMISSIONS - R V DAY SENTENCING**

At the sentencing of Mr Day, Todd Fuller QC, counsel for the prosecution, referred to the case of *R v Patel; ex parte A-G (Qld)* [2011] QCA 81 in his submissions. Mr Fuller referred to the 4-fold test in *Patel* that refers to aggravated circumstance in which a manslaughter sentence should be increased for an adverse and negligent action at [174]:

1. The defendant was aware of their limited capabilities;
2. The defendant undertook the dangerous task disregarding their limited capabilities;
3. The defendant had an appreciation for the level of duty required to carry out the dangerous task; and
4. The defendant's acts led to a detrimental outcome.

Mr Fuller further referred to the commentary in *Patel* that disputed *R v Watson* [2009] QCA 279 as a valid authority for manslaughter sentencing, where no sentencing range has been provided. *Watson* suggests that the head sentence for a single count of manslaughter of the kind committed by the appellant in that case should be less than 5 years imprisonment. However, in *Patel* it was held that the penalty should be higher if there was an element of protection from the community (s 9(1) (e) *Penalties and Sentencing Act 1992* (Qld)) and an element of general or personal deterrence (s 9(1)(c)). By establishing an element of necessary protection and general deterrence for workplace health and safety purposes, the prosecution submitted that *Patel* was analogous for the purposes of the sentencing of Mr Day.

Justice Bowskill brought up an issue with this analogy in determining the type of conduct present. The defendant in *Patel* was responsible for the death of three patients under a higher standard of duty as a medical practitioner, with an exclusive relationship with each of his clients. The prosecution put forward that Mr Day's negligence had the potential to harm more than one person. The prosecution submitted that the nature of the negligence should be considered over the consequence. Mr Fuller submitted in both the current case and *Patel* that there was (1) ignorance over a period of time in regards to the defendant performing a job they were unqualified for and (2) ignorance of red flags and precautions while undertaking the task.

When considering perjury, the prosecution referred to *R v Pacey* [2005] QCA 203, which held that deterrence was of great importance in a case of perjury. It was held that imprisonment should be invariably imposed in cases of perjury, even in instances where the offender had no previous convictions and other mitigating factors such as a guilty plea, youth, and cooperation with authorities. It was also held that an aggravated sentence may be awarded in circumstances where a defendant uses perjury in an attempt to frame another.

### **DEFENCE SUBMISSIONS**

Tony Glynn QC, counsel for the defence, based his submissions as a matter of fact rather than a matter of law. The defence applied for a reduced overall sentence based on the adverse affects a



longer sentence would have on the client. This involved written testimony regarding Mr Day's previous depression and suicidal attempts due to his parents' death in a motor vehicle accident in 2008 that went to inquest. Mr Day displayed remorse and shame for perjuring in an inquest. The defence used Mr Day's previous experiences as an aggrieved party in an inquest to evidence this. Additionally, it was submitted that Mr Day was given advice by his solicitor to be honest and consistent with his testimony. The defence claimed that Mr Day had no clear understanding of this advice as he already perjured and chose to keep a consistent testimony instead.

The defence submitted a psychiatric report as expert evidence that Mr Day was recovering from his depression during the death of Jason Garrels. The Defence stated that this evidence was not self-serving as Mr Day saw the Psychiatrist after his suicidal thoughts far before the death of Jason Garrels. The report stated that Mr Day had immense suffering because of the death of Jason Garrels. The Psychiatrist concluded that remorse and appreciation of consequences are highly unusual in these circumstances and thus established that Mr Day was highly unlikely to reoffend.

The defence further submitted that Mr Day had no reason or understanding for the negligent actions he took at the time of Jason Garrels death. Mr Day was beyond his own capacity (a fact already pre-established in tribunal proceedings) and took the job knowing this, but did so as a young 25-year-old man trying to advance his career. The defence submitted that Mr Day held no intent to harm as the same risk present to Mr Garrels could have happened to Mr Day himself.

## **COURT FINDINGS**

When addressing the sentencing for manslaughter, Justice Bowskill held that the death of Jason Garrels was a direct result of Mr Day's failings. Her Honour held that Mr Day did make a conscious choice to take on work that Mr Day was neither competent, nor possessed the self-certification to undertake, placing numerous lives of fellow workers at risk. Had Mr Day not failed to ensure the fuses were operative or that a safety switch had been installed, the electrical current would have been instantly stopped and would have prevented the death of Jason Garrels.

When addressing the sentencing for perjury, Justice Bowskill considered Mr Day's intentional attempt to shift the blame of the death onto Jason Garrels. Mr Day colluded with another colleague the day after the death suggesting they tell investigators that Jason Garrels had taken it upon himself to assist. Justice Bowskill held this act to amount to a calculated deceit by Mr Day to cover up his failures.

When addressing the defence's request for a reduced sentence, Justice Bowskill accepted the defence's submissions to consider the remorse Mr Day had for the deceased and his family. However, it was held that Mr Day's attempt to cover up his role in Jason Garrels' death diminishes this consideration. Her honour also considered in this decision, the emotional impact Jason Garrels' death had on his family. It was found that the impact was one of "profound grief" and was evidenced by various impact statements put forward by the prosecution.

**Case notes by: Steven Reynolds, Law Clerk at Australian Business Lawyers & Advisors.**