



HIGH COURT OF AUSTRALIA

Public Information Officer

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ANDREW MARK MALLARD v THE QUEEN

The High Court of Australia today ordered a retrial of Mr Mallard, who was convicted exactly 10 years ago of the murder of Perth jeweller Pamela Suzanne Lawrence. It unanimously allowed the appeal and held that the Western Australia Court of Criminal Appeal had erred in the way it dealt with Mr Mallard's petition for clemency.

On 23 May 1994, Mrs Lawrence, 45, was found dying in a pool of blood in her shop in Mosman Park after being struck repeatedly on the head with a heavy instrument that was never found. Mr Mallard who was staying nearby was convicted. He appealed unsuccessfully to the Court of Criminal Appeal and was refused special leave to appeal to the High Court. After the discovery of various material in the possession of police but never disclosed to the defence, Mr Mallard petitioned for clemency. Pursuant to section 140(1)(a) of the *Sentencing Act*, the Attorney-General referred the petition to the Court of Criminal Appeal which dismissed it in 2003. Mr Mallard, now 42, was granted special leave to appeal to the High Court.

Section 140(1)(a) requires "the whole case to be heard and determined as if it were an appeal". The Court held that the Court of Criminal Appeal took an overly narrow approach to this task, as it proceeded as if there were inhibitions upon its jurisdiction to consider, not just the evidence that was adduced at trial, but also its relevance to the further evidence that Mr Mallard sought to introduce and rely upon in his petition for clemency. The High Court held that "the whole case" embraced all the properly admissible evidence, whether new, fresh or previously adduced, for or against an appellant. The words "as if it were an appeal" referred to the making of orders, the following of appropriate procedures, and the requirement that the court should apply the proviso, in section 689(1) of the *Criminal Code*, that despite an appeal point being decided in favour of an appellant, the appeal should be dismissed if no substantial miscarriage of justice had occurred.

Mr Mallard allegedly made various admissions in three police interviews, with only one, of 30 minutes, recorded. One interview was conducted over more than eight hours while he was a patient at Graylands Mental Hospital. Another occurred after Mr Mallard had spent the night at a nightclub, had been beaten up, and had had little sleep. He also frequently denied killing Mrs Lawrence. In the interviews he made highly fanciful and bizarre statements, sometimes speaking in the third person. Discrepancies existed between his statements and the reality, such as what Mrs Lawrence was wearing. He said the assailant would have used a Sidchrome wrench, which he drew for the police. It only emerged at the second appeal that police attempts to replicate Mrs Lawrence's wounds by striking a pig's head with a wrench and other objects kept in her workshop were unsuccessful. Witnesses' statements were retyped by police to exclude material favourable to Mr Mallard, including a description of a man seen in the shop by a girl whose mother worked there. Other witness statements were not disclosed. A scientist's report had two pages missing.

The Court held that Mr Mallard's confessions were unreliable and the non-presentation of evidence meant this was not a case where the *Criminal Code* proviso should apply. It ordered that his conviction be quashed and a new trial held. The Court noted however that having regard to what had emerged and to the *Criminal Code* now providing that admissions in serious cases are inadmissible unless videotaped it would be open to the Crown not to proceed with a retrial.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*