



HIGH COURT OF AUSTRALIA

20 October 2010

POLLOCK v THE QUEEN

[2010] HCA 35

Today, the High Court quashed Andrew Murray Pollock's conviction for murder and ordered that a new trial be held.

In November 2008, Mr Pollock was convicted in the Supreme Court of Queensland of murdering his father. The key issue at trial was whether the prosecution excluded the defence of provocation in s 304 of the Queensland *Criminal Code*. This was a retrial. His conviction for murder at an earlier trial was overturned on appeal to the Queensland Court of Appeal.

The deceased died at his home early in the morning of 31 July 2004. Mr Pollock had spent the previous night before at the deceased's home drinking with a group of people. The group included the deceased, an ex-girlfriend of Mr Pollock and a female friend of hers, Mr Pollock's brother, and a woman that Mr Pollock had met earlier in the evening. During the evening and the early hours of the following morning several events occurred. Mr Pollock told his brother he had been sexually abused as a small boy by the deceased. Mr Pollock and the deceased, who had consumed a significant amount of alcohol, exchanged hostile words. One of the women present engaged in sexual intimacies with the deceased. This last event was said to have upset Mr Pollock significantly and he demanded that the woman and Mr Pollock's ex-girlfriend leave the premises. When the deceased was told of this demand, he became very angry and threatened to kill Mr Pollock. There was physical evidence pointing to a fight having taken place in Mr Pollock's bedroom. There were at least two versions of how the fight may have progressed. The first was that it started in the bedroom, proceeded outside and, during its course, Mr Pollock picked up a rock and struck the deceased. On another version of events, based on admissions made by Mr Pollock to his ex-girlfriend, the deceased had entered his bedroom, they wrestled, Mr Pollock injured the deceased's face and the deceased had gone into the bathroom. Mr Pollock banged on the bathroom door, the deceased jumped out of the bathroom window, Mr Pollock and the deceased fought outside, Mr Pollock picked up a rock and the deceased challenged him in strong language to use the rock.

The judgment of the Court of Appeal setting aside Mr Pollock's earlier conviction had set out a seven-part test, any element of which it was said would, if proved beyond reasonable doubt, exclude the defence of provocation. The fifth element was that "the loss of self-control was not sudden". The seventh element was that, when Mr Pollock had killed, "there had been time for his loss of self-control to abate". At Mr Pollock's retrial in 2008, the jury was directed in terms of this test. The prosecution submitted that the interval while the deceased was in the bathroom made out the fifth and seventh elements of the seven-part test.

The High Court held that the directions given to the jury wrongly invited them to exclude provocation as a partial defence available to Mr Pollock if they found that there had been any interval between the provocative conduct and the act causing death.

The Court ordered that the appeal be allowed, that Mr Pollock's conviction be quashed and that a new trial be held.

- *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.*