



## HIGH COURT OF AUSTRALIA

21 March 2018

RONALD MICHAEL CRAIG v THE QUEEN  
[2018] HCA 13

Today the High Court unanimously dismissed an appeal from the Court of Appeal of the Supreme Court of Queensland.

The appellant was convicted of murdering his partner on or about 21 January 2011. The appellant's relationship with the deceased was characterised by heavy consumption of alcohol and domestic violence. On 22 January 2011, the appellant attended the Brunswick Heads Police Station, admitting that he had cut the deceased's neck, killing her. In a recorded interview with police, the appellant stated that he and the deceased had been drinking alcohol on the night of 21 January 2011 and had a disagreement, that the deceased had picked up a knife and that he had disarmed her and cut her on the neck "in the heat of the moment". At trial, the appellant's case was that he had not intended to kill, or cause grievous bodily harm to, the deceased. The case relied on his account in the interview raising a doubt that in his intoxicated state he formed the intent to make his act murder.

The appellant did not give evidence. He had been advised, incorrectly, by his counsel that if he gave evidence it was likely that he would be cross-examined on his criminal history, including a conviction for a fatal stabbing. However, his counsel had also correctly advised him that if he gave evidence that was consistent with a written account he had given to his solicitor, he would be cross-examined on the inconsistencies between that account and the account given in his police interview. The appellant instructed his solicitor and counsel that he did not wish to give evidence and to run his case on the narrow issue of intent.

On appeal to the Court of Appeal, the appellant contended that his trial had miscarried because his decision not to give evidence was based on the incorrect advice that it was likely that this would lead to disclosure of, and cross-examination on, his criminal history. The Court of Appeal rejected this challenge, holding that there was a sound forensic reason for the appellant not to testify.

By grant of special leave, the appellant appealed to the High Court. He submitted that the Court of Appeal erred in applying an objective test to the determination of whether there had been a miscarriage of justice. He argued that the incorrect advice had deprived him of the capacity to make an informed choice to testify. The Court held that an appellate court's assessment of whether there has been a miscarriage of justice as a consequence of an accused's decision, based upon incorrect legal advice not to give evidence, requires consideration of the nature and effect of the advice on the decision, and is not an assessment of whether there is an objectively rational justification for the decision. The conclusion that there has been a miscarriage of justice requires an appellate court to be satisfied that it was the accused's wish to give evidence and that the incorrect legal advice effectively deprived the accused of the opportunity to do so. The Court held that the Court of Appeal's conclusion, that there was not a miscarriage of justice, was correct in circumstances in which the evidence did not establish that the appellant's trial would have been conducted differently had the incorrect advice not been given.

- *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.*