

# High Court overturns murder conviction

PM - Tuesday, 15 November , 2005 18:38:00

**Reporter: David Weber**

MARK BANNERMAN: The High Court has quashed the murder conviction of a man who was suffering from bi-polar disorder at the time it's alleged he committed the offence.

Andrew Mallard was convicted of murdering a woman in Perth. The High Court, however, has ruled that his alleged admissions to the crime were unreliable.

The Court said Mr Mallard made "bizarre and fanciful" statements during interviews, one of which was conducted at a Perth mental hospital.

Mr Mallard was convicted in 1995 and he's attempted several appeals in Western Australia.

Now, despite winning the High Court appeal, he'll remain in custody pending a re-trial, which may not be held until the middle of next year.

David Weber reports.

DAVID WEBER: Perth jeweller, Pamela Lawrence, was found lying in a pool of blood in her shop in Mosman Park in May 1994. The 45-year-old had been hit repeatedly on the head. The object that was used to kill her was never found.

Andrew Mallard was staying nearby. He'd denied killing Ms Lawrence, but police alleged that he confessed.

In a unanimous decision, the High Court has quashed his conviction and heavily criticised the Court of Criminal Appeal in WA.

It's almost two years since the Mr Mallard's appeal was rejected three-nil.

Mr Mallard's lawyer, Malcolm McCusker QC, says his client was very pleased to hear of the decision.

MALCOLM MCCUSKER: Andrew Mallard was supposed to have confessed to the police that the assailant killed Lawrence with a wrench, and he drew a wrench.

Bear in mind that this man was suffering from bi-polarity and he thought, as he said at his trial, that he was assisting the police by giving them his theories. They asked him to draw a wrench and he did.

The prosecution counsel produced the drawing of a wrench to the jury at the trial and said, look, he's drawn the wrench, the murder weapon, and that was the case from beginning to end as presented to the jury.

DAVID WEBER: And his speculation was taken and used as a confession, but he

wasn't really in a state of mind to really be doing that?

MALCOLM MCCUSKER: No, he wasn't. He certainly wasn't, because of his mental condition and we have now... we have psychiatric evidence from experts to say that one of the features of the condition he was suffering from, bi-polarity, is what they call grandiosity, which means that people in that condition will do things like think that they're assisting the police which the ordinary human being would not.

DAVID WEBER: Andrew Mallard had passed a lie detector test, but the WA Court of Criminal Appeal ruled that the results were not admissible. The issue did not go to the High Court.

Malcolm McCusker says he'll seek to have the lie detector evidence admitted in any re-trial.

The Director of Public Prosecutions in WA, Robert Cock, says he's disappointed by the High Court's decision.

He says Andrew Mallard will remain in custody, pending his decision on a re-trial.

ROBERT COCK: At the moment, there will be a re-trial.

Obviously, I have the discretion to decide whether, firstly on the evidence, which I'll have to now re-evaluate in light of the time that's passed since the original trial, look at witnesses who are now available and determine whether, on my published guidelines, there are reasonable prospects of securing a conviction and also look at the public interests and assess whether in my view the public interest requires a re-trial in the case.

DAVID WEBER: Given that the conviction has been quashed, can he not be released awaiting re-trial?

ROBERT COCK: Mr Mallard still stands charged with the most serious offence under our criminal code, that of wilful murder. The Bail Act provides that in such an offence a person charged is not able to go to bail unless there are exceptional circumstances.

DAVID WEBER: Is there any sense of urgency with the re-trial?

ROBERT COCK: Obviously, it's important that every person who faces a charge should have that tried as soon as possible, as soon as practicable.

I would like this matter to be dealt with as soon as practicable too, but I understand that there are delays in the courts. This is until, as I understand it, as late as June of 2006, and so it may be not possible for this matter to have a trial until after then.

MARK BANNERMAN: The Director of Public Prosecutions in Western Australia, Robert Cock. He was speaking there with David Weber.