

# Mallard trio face discipline

Three of 10 people who were in the firing line over the Andrew Mallard case had misconduct opinions delivered against them this week.

Four were against Mal Shervill, the officer-in-charge of the investigation, and two against David Caporn, who worked on the case.

Both were detective-sergeants at the time, and are now assistant commissioners.

There were also two opinions of misconduct against Ken Bates, who prosecuted Mr Mallard at his 1995 trial for the murder of Pamela Lawrence.

The opinion in Mr Bates' case related to the way he conducted the trial, and his presentation of the murder weapon evidence and lack of disclosure of tests conducted with a weapon on a pig's head.

Acting Commissioner John Dunford recommended disciplinary action against all three.

One of the most dramatic allegations made at last year's Corruption and Crime Commission hearings has not resulted in adverse finding against anyone.

This was that jewellery from murder victim Pamela Lawrence's shop was planted on Mr Mallard during an undercover operation.

Judge Dunford said there were circumstances to suggest Mr Shervill arranged for an undercover officer to give Mr Mallard some jewellery from Flora Metallica, with the intention that it be found on him and link him to the crime.

Mr Shervill submitted that the jewellery given to Mr Mallard was a brooch unconnected to the crime scene, and that had police wanted to plant evidence on Mr Mallard, they would have made a better job of it.

Judge Dunford concluded that the commission was unable to form an opinion on whether the jewellery given to Mr Mallard was the same jewellery collected from the shop by police, or if it was, whether it was the result of any improper conduct by police.

One of the misconduct opinions against Mr Shervill was that he requested a chemist to delete all references to salt-water tests on Mr Mallard's clothes.

This could have influenced the trial outcome, Judge Dunford said.

Other points made by Judge Dunford were:

- Train videos were examined only for signs of Andrew Mallard, not for another suspect who could have been Simon Rochford, despite information from an eye-witness, Lloyd Peirce.

Mr Peirce, who saw a man running from the direction of Mrs Lawrence's shop, was antagonised when he himself was "in effect accused of being the murderer".

A warrant against Mr Peirce contained false information, but the officer involved should be given the benefit of the doubt.

There was no justification for not following up Mr Peirce's information, which might have changed the whole investigation.

- Mr Mallard stole a chalice from Iona Presentation College in Mosman Park and returned next day posing as a detective investigating the theft of a chalice. He called himself a con-man and a flim-flam man.

- Mr Mallard's "confessions" were a tangle of stories in conflict with the known facts, possibly untrue; contradictions; and third-party admissions immediately retracted. At no point did he directly admit harming Mrs Lawrence.

Police refused to accept Mr Mallard's denials.

Mr Mallard was clearly suffering from some form of psychiatric condition. Detective-Sergeant Caporn knew he was given to fantasy and was a known liar, but interviewed him over a lengthy period.

Of his story of the murder, Mr Mallard said he had "made it all up" and "maybe I'm psychic".

- The circumstances of the interviews did not amount to misconduct under the CCC rules.

Mr Mallard was not cautioned until after he had made "admissions".

- Nobody seemed to consider that Mr Mallard was right and two alibi witnesses wrong about the time he returned home. Police always maintained there was an unexplained 90-minute gap in his movements.

- There was no forensic evidence to link Mr Mallard to the crime scene.

- A letter Mr Caporn wrote to the prosecutor to have Mr Mallard committed to Graylands psychiatric hospital was not honest or impartial and could constitute misconduct.

- Problems of police not disclosing evidence continued up to 2006. Mr Shervill told the Commission it was not the practice of the police in 1994 to disclose exculpatory matters or prior inconsistent statements of witnesses to the defence. There is no longer any excuse.

- In 1994-5 there seemed to be an attitude that case investigators looked only at those matters that tended to inculcate the person to be charged, and ignored matters that exculpated or cast doubt on their guilt.

- Mr Bates listed to Mr Mallard's trial jury 12 or 15 things known by Mr Mallard that only the killer could know. All could have been obtained from media reports or guessed.

- When charges against Mr Mallard were finally dropped, comments in court that he was still a prime suspect were inappropriate.

The general public would understand it to mean "we know he did it, although we cannot prove it". The Director of Public Prosecutions has apologised for the comment.

- Similarities between the murder of Mrs Lawrence and Simon Rochford's girlfriend, Brigitta Dickens, were overlooked, even though Mr Mallard and Mr Rochford, the man believed to have killed both victims, were charged by the same officers within a day of each other. The autopsies were carried out by the same pathologist, Dr Clive Cooke.