



Huge waves and a high tide combined to make a scary spectacle along the coast this week. But it was also another chance to catch a wave for dedicated surfers like this man (inset) who went in at Cottesloe Cove and within seconds was sucked south about 50m before he could get up enough momentum to get through the breakers. Pictures: Paul McGovern

# Judge's errors jailed Christie, says QC

Lawyers for Rory Christie argued this week that he had been wrongly jailed for murder because of a series of judge's errors.

They said that Justice Len Roberts-Smith had made the errors when summing up the evidence for the jury at the end of a five-week trial last October. The lawyers argued that the mistakes were so serious that Mr Christie should be released from jail without the need for a re-trial.

The most serious errors, Mr Christie's lawyers said, were comments about an expensive Zegna tie owned by Mr Christie that was central to his conviction for the murder of his ex-wife, Susan.

Tom Percy QC said the judge's directions had been "dangerously inadequate".

The judge had suggested that

tests by police had shown a massive amount of blood on the tie, but this was wrong, Mr Percy said.

The judge repeated the mistake for the jury just an hour before it came back with a verdict of guilty after two days of deliberation, Mr Percy said.

At the time he made the comments, the judge was asking the jury to consider Mr Christie's explanation of how Susan Christie's DNA got on three tiny stains on the tie, including at a child's birthday party.

A witness who said he attended that party gave evidence this week that Mrs Christie had a blood nose there and that Mr Christie was present, wearing a suit and tie.

Crown prosecutor Troy Sweeney told the appeal judges that the guilty verdict was justified on the evidence presented to the jury.

The court was expected to finish hearing the appeal this Friday.

Then the three judges will examine all the appeal evidence, including thousands of pages of trial transcript, photos and videos, and make a decision.

They will then order either that Mr Christie's conviction stands and he stays in jail; he has another trial; or is released from prison without the need for a re-trial.

The third option happens rarely, when the court decides that the conviction was "unsafe and unsatisfactory".

Mr Christie is in jail and asked to observe the appeal, although he was not required to give evidence.

He was refused because the big ceremonial Supreme Court One where the appeal was held does not have prisoner security.

The public gallery was full on some days, with some high-profile observers of the appeal.

One of its issues involved a clash at the end of last year's trial between Justice Len Roberts-Smith and Mr Percy.

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• More reports pages 6, 7

## Jeweller on trial

Subiaco jeweller Ron Smales's fate is in the hands of a District Court jury considering evidence against him in a fraud case.

He has been on trial since Monday, when he pleaded not guilty to two charges of attempted fraud against an insurance company involving four watches and two rings after his shop was burgled in October 2001.

His former staff said that the Smales jewellery shop in 2001 was a very unhappy place where the boss, Ron Smales, was erratic, had hearing problems and apparently planned to defraud an insurance company.

But his defence lawyer accused the senior staff of disliking the boss and wanting to get rid of him when he was in an emotional state because of a difficult separation.

Mr Smales seemed calm and composed during the trial, which included two staff describing how he had knelt, crying on his office floor, kissing one of them and clutching the hand of another as he begged their forgiveness.

General manager Robyn Stevenson said Mr Smales had poor communication skills, behaved inappropriately, had no idea of business protocol and dressed inappropriately.

Senior salesman John Bookless said he had been worried about staff morale because Mr Smales cancelled sales commission but spent \$500,000 on a product without research.

Mark Trowell, lawyer for Mr Smales, said Ms Stevenson and Mr Bookless had decided Mr Smales had done something wrong before they discussed the issue with him.

Earlier, a former Smales head jeweller, Barrie Lander, told the court he had seen Mr Smales take watches from a broken show case and put them in his pocket.

• More reports page 5

## Free kick for footy fans?

Next month is the 100th anniversary of Subiaco Oval – and Subiaco mayor Tony Costa wants to celebrate with a day of free football.

He said: "This is a great opportunity for the WA Football Commission and its sponsors to throw open the doors and give

the football public a free day. "It could be a carnival day with free drinks and ice-creams for kids.

"The Football Commission has made millions out of football fans. This is a chance, one day in 100 years, to give something back."

Mr Costa, a life member of

Subiaco Football Club, said the oval was taken from Subiaco council 15 years ago by the state government and given to the Football Commission at zero rent for 99 years.

Before then, the council had been paid \$50,000 a year by the WA Football League.

Mr Costa said that despite getting the ground free, the commission now had the highest-priced football in Australia at Subiaco.

He said he would raise the centenary idea with the commission.

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## Judge's direction 'dangerously inadequate'

The judge at Rory Christie's trial was taken to task this week for what a defence lawyer called a "dangerously inadequate" direction to the jury about Mr Christie's expensive Zegna silk tie.

He had told the jury there was evidence of a massive amount of blood on the tie, but this was wrong, Tom Percy QC told the appeal judges.

He said Justice Len Roberts-Smith's interpretation of evidence about a chemical test on the tie had the potential to lead to a miscarriage of justice.

The judge had told the jury that a big section of the tie, 39cm long, had given a reaction "to blood" when treated with the testing agent luminol.

But his remarks had the potential to be extremely misleading, Mr Percy said.

Luminol reacted to other substances, including cleaning agents and cleaning products, according to police evidence at the trial given two weeks before the judge addressed the jury, Mr Percy said.

Luminol testing was not conclusive.

It could give a false positive reaction to cleaning fluid, and the crown maintained that the Zegna tie was dry-cleaned after Mr Christie murdered his ex-wife Susan.

The judge repeated this error to the jury just an hour before it



Rory Christie visited the unit, where Susan Christie allegedly died, during his trial last year.

made its decision on the second day of its deliberations, said Mr Percy.

Before lunch, the jury returned with a question about the tie, and Justice Roberts-Smith repeated that the 39cm luminol reaction was a reaction to blood.

Immediately after lunch, the jury returned with a verdict of guilty to murder.

Mr Percy submitted that the judge's direction was that the luminol reaction was effectively proof of a big quantity of blood on the tie.

He did not balance that direction with the known dangers inherent in the police evidence. His direction gave the impression that there was definitive evidence that the tie had been

• Please turn to page 57

# Judge 'broke all the rules'

Rory Christie's trial judge "broke all the rules", his defence counsel told the Court of Criminal Appeal on Wednesday.

The judge had told the jury they could find Mr Christie guilty even if he had not taken his tie to the dry-cleaner on the day of the murder.

The prosecution said the alleged trip to Herdsman Drycleaners with a blood-stained tie was a crucial part of the crown case, said Mr Percy.

But the judge then told the jury that they could decide that Mr Christie's tie with Susan Christie's DNA on it did not have to be the one that went to the dry-cleaners.

"We say that the judge must not run a different case than has been run by the prosecution," Mr Percy told the three appeal judges.

If the prosecution had changed ground like that it would be impermissible. So it must also be impermissible for the judge to change the prosecution's ground, he said.

The breaking of these rules led to "a substantial unfairness", Mr Percy said.

He said the judge had also made an error when he instructed the jury about the time of the murder.

• Please turn to page 57

## Love in Canada, death in Perth

Rory and Susan Christie met in 1996, when Susan, who lived in Shenton Park and was separated from her first husband, went to Canada to visit her brother.

They returned to Perth and married, and their son Fraser was born the same year.

Both university graduates, Mr Christie worked as an accountant for Silver Chain while Mrs Christie kept house in Shenton Park.

Their marriage deteriorated. Mrs Christie, described by friends as witty, quick, intelligent and pretty, had a drinking problem, made worse by a head injury she suffered in London in the 1980s.

She became abusive, violent and

sexually promiscuous when drinking.

Mr Christie said she would leave their son alone in his cot while she went out drinking.

He gave up his job to look after Fraser, and the couple separated. There were bitter custody disputes in the Family Court.

By November 2001, Mrs Christie (42) was living in a one-bedroom unit in Currie Street, Daglish, and Mr Christie, now 35, was living with a new partner in Whitfield Street, Floreat.

He had full custody of his son, and lived off a trust fund created by his family in Canada.

Mrs Christie was last seen alive

at 10.28pm on Thursday, November 15.

Seven months later, police seized a tie from Mr Christie's wardrobe at his house in Derby Road, Subiaco.

He was charged with wilful murder of Susan, and convicted of murder by a jury in the Supreme Court in October last year after a five-week trial that heard evidence from 103 witnesses.

He is serving a term of life imprisonment.

On Tuesday, he launched an appeal against the verdict in the Court of Criminal Appeal, before justices John McKechnie, Rene LeMiere and Lindy Jenkins.

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# Witness tells of blood nose at birthday party

Rory Christie's son's fifth birthday celebrations, a month before Susan Christie disappeared, could be crucial to giving Mr Christie a chance at freedom.

A person who says he was at the party has come forward since Mr Christie was convicted last year of murdering Mrs Christie.

He has given details to the Court of Criminal Appeal of how Mrs Christie got a blood nose at the party.

Justice John McKechnie told the court that if the judges accepted the point being made by the witness, it alone would lead to a re-trial of Mr Christie.

At Mr Christie's trial in September and October, the crown said the party was a fabrication, invented by Mr Christie to explain how his ex-wife's blood might have got on his tie.

The tie evidence was crucial in convicting Mr Christie (35) of murder, for which he is now serving a life sentence in Casuarina prison.

The crown said that because of the Family Court animosity between Susan and Rory Christie, it would have been impossible for them to be present in an amicable situation, such as their son's birthday.

The new witness, a juvenile, has said Mr Christie was present when the party moved from Mrs Christie's flat in Currie Street, Daglish, to a park across the street, where egg and spoon races were held at Mrs Christie's insistence.

Then there was sword fighting going on, using sticks, he said.

Mrs Christie was bending over when the birthday boy swung a stick backwards over his head, striking his mother on the nose.

The witness said Mrs Christie jumped back with blood pouring from her nose,



Susan Christie: her body has never been found.

clutching her face. She had blood on her hands, face and clothes.

Mr Christie had been wearing a suit and tie, the witness said.

Mr Christie gave evidence at his trial that when he was leaving the party, Mrs Christie had hugged the boy and then passed him to Mr Christie, who had carried him to the car.

The Court of Criminal Appeal was told that the new witness came forward in November, after the trial, after being asked by a relative whether he recalled any such incident.

This week, Mr Christie's defence team put forward reasons why this witness had not been examined earlier.

One reason was that before the trial, they had no warning that the crown would challenge Mr Christie's account of the birthday celebration.

David Grace QC, for Mr Christie, said the crown would have known about this part of Mr Christie's defence because it was raised at a bail application.

He said the crown's challenge to the existence of the egg and spoon races and Mr Christie's blood-nose evidence would have influenced the jury's assessment of Mr Christie's credibility.

Mr Christie's instructing solicitor, Ian Farquhar, of Mosman Park, gave evidence this week that before last year's trial it was his decision alone not to question the new witness about the birthday incident.

He said that in the circumstances, he felt questioning would be inappropriate. His precise reasons cannot be reported because the appeal court issued a suppression order to the news media on any evidence that identified the witness.

There was debate at the appeal on whether the new evidence would be admissible.

Justice McKechnie said it did not appear the evidence had been withheld for tactical reasons, such as providing grounds for a later appeal.

He said if the evidence could wholly or partially change the course of the trial, its exclusion from the appeal could lead to a miscarriage of justice.

## Lawyer: Jury should have heard fake job insight

**A psychiatric report on Rory Christie should not have been kept from his trial jury, Mr Christie's lawyer told the Court of Criminal Appeal this week.**

The report sought to explain why Mr Christie had faked having a job - he dressed in a suit each day and told his family he was going to work.

Instead, he caught the train from Daglish station and went to employment agencies, then read in the state library before going home in the evening.

David Grace QC told the appeal court this account of "living a lie" undermined Mr Christie's credibility to the jury.

He said it was suggested at the trial that Mr Christie had some sort of mental defect or illness that would cause a jury to be suspicious of his actions.

The jury had heard from a witness who said his ex-wife, the murder victim Susan Christie, had called Rory Christie "a psycho".

Before Mr Christie's trial last year, he was examined by psychiatrist Steven Proud.

Dr Proud wrote a report to say Mr Christie was depressed about not being able to obtain work and had low self-esteem.

His personality was non-confrontationist. There was anecdotal evidence that purporting to go to work was a known phenomenon.

But the trial judge, Justice Len Roberts-Smith, ruled that the jury should not have the report.

Mr Christie's lawyers argued this week that the report should have been admitted in evidence.

Justice John McKechnie said he had difficulty seeing anything in the report that would qualify as expert evidence - knowledge that would not be known to a layman.

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# Artificial reefs a swell idea

## SURFING

with Cameron Bedford- Brown

**Artificial reefs are back in the news with a number of projects planned or proposed in WA.**

An artificial reef looks almost certain to be built at Mahomet's Beach in Geraldton, while plans to improve the surf at City Beach may be announced soon.

Farther south, Albany surfers are fuming that the local council may hijack plans to build an artificial reef at Middleton Beach and build it at Emu Point to prevent erosion.

The Geraldton Board Riders Club is spearheading a campaign to have a reef built and has been working on the project for several years.

The club secured a \$20,000 grant to study the idea and have been carrying out surveys to gauge public reaction.

Long-time Geraldton surfer Leon Norris said Mahomet's was an ideal location because it received a lot of swell but

was sheltered from the full force of Geraldton's famous strong southerly winds by offshore reefs.

He said the reef would be built about 250m offshore from Mahomet's beach.

"The estimated cost for construction of a reef that would supply a 100m right and 100m left is about \$1.5 million," Leon said.

"The reef would be constructed from geo-textile bags, each bag about the size of a double-decker bus that can be filled with sand and submerged in the water which is only 5m deep.

"Indications from studies already undertaken are that for every dollar spent on the reef \$33 dol-

lars will be returned to the local economy.

"Our next objective is to obtain funding for the research and design phase, estimated at about \$130,000."

In Perth, Cambridge council is interested in building reefs to prevent beach erosion and appease the demands of its keen wave-starved community of surfers.

City Beach Surf Riders is WA's oldest club, with a 40-year history, but with only three recognised breaks in the suburb, things can get desperate surfwise.

Club president Jaxon Crocker said the club had been pushing for some offshore structure to be built to create more waves in the area.



An extension to Floreat groyne has been suggested as a way to alleviate erosion and create waves for local surfers. Picture: Luke Simon.

# 'Errors jailed Christie'

• From page 1

The judge had given Mr Percy a stern rebuke for invoking the Lindy Chamberlain and John Button cases.

In a sequel this week Rory Christie's defence team said the judge's remarks were impermissible and could have led to a miscarriage of justice.

Last October, Mr Percy reminded the jury of scientific evidence given at the Christie trial that there was no way of telling the age of DNA in spots on Mr Christie's tie, which he had owned for 10 years.

Mr Percy had told the jury to be very careful before finding Mr Christie guilty because in the future a new test could show that the blood got there before Mrs Christie was murdered.

"We would all look pretty sheepish," he said.

He said Mr Button was exonerated after 40 years because of advances in science.

David Grace QC, also representing Mr Christie, told the Appeal Court this week that the trial judge had admonished Mr Percy in front of the jury.

Mr Percy had been told he was inviting the jury to speculate in an impermissible way, and that his argument contained a logical fallacy.

"It was a significant admonition that coloured the submissions made to the jury by the defence counsel," Mr Grace said.

The judge was not even-handed, Mr Grace said.

The judge had failed to admonish the prosecution in a similar way for inviting the jury to speculate.

The prosecution suggested to Mr Christie, without evidence, that he had deliberately stained his tie to justify having it cleaned, Mr Grace said.

It has also been suggested that Mr Christie had deliberately spilt milk in the car alleged to have carried Mrs Christie's body.

This, said the crown, was to justify a thorough cleaning. The suggestion was withdrawn the next day.

Mr Grace said the suggestion of deliberate milk-spilling was indicative of guilt, but the crown was not admonished in the same way Mr Percy had been.

The judge's attitude to the defence and prosecution had not been balanced, Mr Grace submitted.

He submitted that this alleged lack of balance in front of the jury applied to a number of other points, including a 20 litre container of hydrochloric acid Mr Christie had bought a few days before Mrs Christie disappeared.

The crown had suggested there was something sinister about this, but it was later found to be the wrong type and insufficient quantity to dispose of a body.

There had also been gross interference with the crime scene, Mrs Christie's flat, before the police sealed it two weeks after the occupant disappeared.

# Plenty to carp about

## FISHING

with Gary Shugg

**It has been a long time since I fished the mighty Murray River, the one in South Australia, that is.**

As it was my brother Mark's 50th birthday, Jo and I, along with my mum, flew to Adelaide and then made the three-hour drive to Barmera, in the riverland district of South Australia for a week on a houseboat.

The last time I was in Adelaide was about 27 years ago and the fishing was pretty good for golden perch, known locally as callop or yellow belly, and if you were lucky maybe even a Murray cod.

Of course, there was always the dreaded European carp, which has devastated the Murray.

We headed upstream a couple of kilometres to our first night's mooring. We tied the houseboat to a couple of sturdy trees, and as the rain started to fall a small fire was lit on the bank and we all huddled around for warmth.

The lines were set from the boat and also the river bank, with either worms or shrimp as bait.

And then we waited for about two hours for our first bite.

A small callop was caught and released and then another was landed, which was also under-size.



Gary Shugg with not his biggest fish - a golden perch caught in the Murray River in South Australia

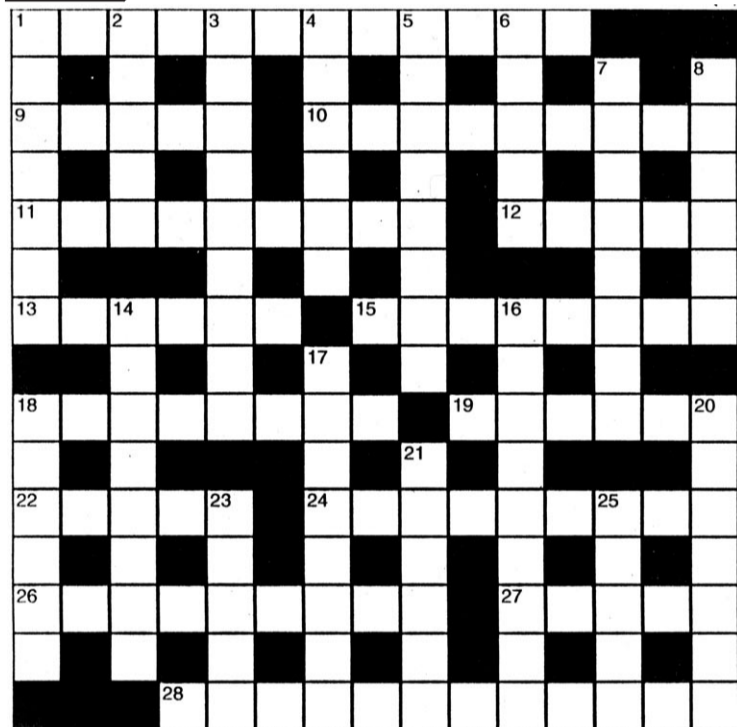
A couple of carp followed, which were dispatched humanely, as these fish are not allowed to be returned to the water alive.

For the rest of the night I think we had only one other bite, and sitting under an awning on a houseboat while it is raining and near-freezing is not exactly my kind of fun. But we stuck it out for a few hours before retiring for the night.

The next morning was bright and clear, but the fish still refused to co-operate, so it was back to Renmark for Mark's party (which to our and the guests' surprise also turned out to be a wedding).

So after four days of fishing in freezing temperatures we didn't land one edible fish.

## PS crossword No 324

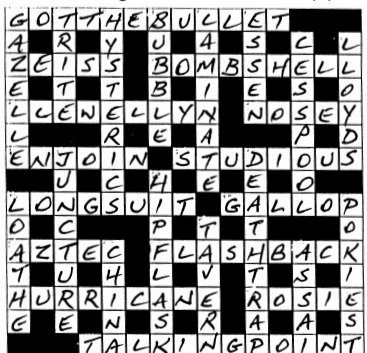


### ACROSS

- 1 Moccasins seem to be headed for trouble (2,3,7)
- 9 Detection system must work soundly (5)
- 10 Explosive star shattered parvenu with so much fuss (9)
- 11 Little Richard's joint is hard to run (5,4)
- 12 She's probably nuts, and into chocolate (5)
- 13 Get-together for the gregarious (6)
- 15 Stress added energy to purser's letters (8)
- 18 RC/Shiite clash was murder, she wrote (8)
- 19 Weak appraisal of a company man (6)
- 22 Monstrosity buff? (5)
- 24 Cautioned about learning ... (9)
- 26 ... of celestial bodies' effect on our lot (9)
- 27 Chilling result ended rejoicing (5)
- 28 Go flat out to get medical help? (3,3,6)

### DOWN

- 5 Manipulative control of dolls on line? (8)
- 6 Some won't, or choose not to, fire-up (5)
- 7 Dance to the Greek mandolin (8)
- 8 A rebel hideout established by WA lake (6)
- 14 Naval vessel assumed firm right to examine note (8)
- 16 Italian area reserved for touring Romanians? (3,6)
- 17 Vital craft for one's existence, in the main (8)
- 18 Got back into prison for the loose dress (6)
- 20 Boss was a crafty German (7)
- 21 English actor was frightfully game, we're told (6)
- 23 Global agreement from Tokyo, curiously (5)
- 25 Amin got to back this ass (5)



Last week's solution - No 323  
Solution in next week's POST

## TOWN OF CAMBRIDGE

# Southport Street - Railway Parade to Cambridge Street - Proposed Road Works

Council is seeking community comment for the proposed street works for Southport Street from Railway Parade to Cambridge Street including the intersections. The issues to be addressed are road pavement widening, kerbside parking and street enhancement. There is a display in the Council Office Foyer Notice Board outlining the proposed street modifications. This display will be available between the 23 July 2004 and 9 September 2004. There will be a public meeting at 6.30 pm on Wednesday 28 July 2004 at the Council Office Reception Area to discuss the proposal.

Your comments concerning this project would be appreciated by the 9 August 2004.

GRAHAM D PARTRIDGE  
Chief Executive Officer

