

The state's flimsy case

Life ruined

For six years Lloyd Rayney has gone to bed each night wondering whether he would be spending the rest of his life in jail for the murder of his wife.

That all but ended on Monday when three appeal judges exposed the flimsiness of the state of WA's case against Mr Rayney.

They dismissed its attempt to overturn the verdict of not guilty to wilful murder or manslaughter, which Justice Brian Martin brought down in the Supreme Court last November.

Unless the state launches a High Court appeal, Mr Rayney can continue to be a father to his two daughters and reflect on the ruinous emotional and financial expense - probably more than \$2 million - of being accused of murder.

He has no right to be reimbursed that money by the state. It is gone forever.

Other, far less serious charges relating to recording phone conversation on his household phone are yet to be heard.

For its part, the state is licking its wounds over a massive failed police investigation, a failed prosecution, and now a failed appeal.

The prosecution and appeal were run by the NSW Office of the Director of Public Prosecutions, because both Lloyd and Corryn Rayney were so well connected in WA legal circles. Judges also came from interstate.

The WA government is awaiting an invoice from the NSW DPP for the appeal bill. Like the trial, it will not be cheap.

Mr Rayney also has a defamation case pending against the WA police over a statement made early in the investigation.



Lloyd Rayney allows himself a smile outside the Supreme Court after the State's efforts to obtain a retrial for the murder of his wife were refused by three appeal judges on Monday. Photo: Billie Fairclough

How does an innocent person behave?

The myth that a normal, innocent person would behave in a particular way was exposed by Lloyd Rayney's trial judge and accepted by the three appeal judges.

This became an important issue at Mr Rayney's trial after the prosecution forcefully alleged he had displayed "consciousness of guilt".

The trial judges noted that John Agius, the prosecutor at Mr Rayney's trial, had emphasised that Mr Rayney did not make eye contact with Corryn Rayney's father-in-law when the pair went together to a police station to report Corryn missing.

"Mr Agius sought to have the trial judge draw an incriminating inference from [Mr Rayney's] inability to look his father-in-law in the face," they said.

But, the appeal judges said, the trial judge, Brian Martin, had noted that this overlooked the "less than ideal" marital

and family situation.

Justice Martin noted that an emotionally charged situation had developed, where the Coutinho family, Mrs Rayney's sisters, "became very close to the police".

"Finally the wider family relationship collapsed entirely," the judge wrote.

The appeal judges said the state had alleged Mr Rayney's actions and statements after his wife disappeared reflected the state of mind of a guilty person.

These included descriptions by various people of his responses to news of the discovery of his wife's body, his refusal to allow his children to mix with his wife's family, and shielding the children from police during the investigation.

Justice Martin noted that Mr Rayney had initially given police free access to the children, and had co-operated with all police requests.

He wrote: "It is necessary to ask how a normal innocent person would be expected to behave in this most complex matrix of traumatic circumstances."

He said the state had set out to demonstrate that in the weeks after his wife's death Mr Rayney had not behaved as a normal, innocent person would have behaved.

But, said Justice Martin: "There is no such normal, innocent person who sets a standard of behaviour."

"Such a person and standard are myths."

He said fallacies of such reasoning had been particularly exposed in sexual assaults and whether victims of sexual assault are expected to behave in particular ways.

The appeal judges agreed that so-called guilty behaviour "did not reveal any consciousness of guilt. Rather, that aspect of his behaviour was perfectly consistent with innocence".

Clues to Corryn's killer

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back so bad he could not pick up young children.

Mrs Rayney's body was carried 25m from grassy Wattle Track in King's Park to her grave through, spiky bush, without leaving a trail or trace. Her killer or killers had dug a hole deep enough to bury her headfirst.

Afterwards, alleged the state, Mr Rayney abandoned Mrs Rayney's disabled car in Kershaw Street Subiaco, and walked the 7.8km home to Como at night, without being seen or recorded by security cameras.

Early next morning, witnesses said he appeared completely normal, showed no sign of distress, physical scars or exertion, even to an experienced detective, two courts have accepted.

Back at the car, Mrs Rayney's boots were found in the passenger side rear footwell. Her watch and passport were missing. Her handbag had been rifled, found emptied in the driver's side rear footwell.

Something bad had happened in the back seat where her body had been transported. There were fluid traces and lots of still-unidentified fingerprints. Her face had been pressed into the seat back-rest.

Someone had evidently tried to sexually assault her. Her belt was undone and the zip on her jeans partly torn open.

Saliva on her neck and in intimate places may or may not have been hers.

TOWN OF CAMBRIDGE Coast Ward

Please re-elect Councillor Otto Pelczar

RFD, MBA(UWA), BAppSc(WAIT), FIEAust, CPEng, CD
recipient of City of Perth's 1993 Civic Medallion.

Member of Rotary, RSL and University Club of WA (Foundation Member). President Ocean Gardens Residents' Assoc 2009 - 2011



Lived in City Beach since 1974 and successfully lobbied for the creation of the 'Town of Cambridge' as well as 'First past the post' voting. If re-elected, I will try to change the Local Govt's "building proposal" Rules which currently pit neighbour against neighbour!

Having to complain against one's neighbour creates disharmony in the community. It is the elected Councillor who needs to be empowered to make those difficult decisions. If he/she gets it wrong, they will fail to be re-elected. Please see the letters below*

I completed, with distinction, a Master of Business Administration degree. Elevated to Fellow - The Institution of Engineers Australia (in recognition of my involvement with the \$4.3 billion RAN Submarine project). This provided me with a unique mix of qualifications and experience. It led Sir Ernest Lee-Steere, Perth's former Lord Mayor to write "Otto's qualifications (for Perth City Council) are impeccable". During my time on that Council, I served for 2 years as Chairman Ocean Gardens Retirement Village Board. It also led to being appointed a Sub-Warden of the State War Memorial in 1990 and yes, I am still there!

Semi-retired, I now manage a Defence Dept sponsored

PLEASE PLACE JUST THE ONE (1) TICK ON THE BALLOT PAPER AS SHOWN.

PELCZAR Otto



organisation at Leeuwin Barracks on a part time basis. I thus have the time and energy to assist Coast-ward electors. With no political affiliations, I can act independently and be fair to all.

* Otto was very helpful in clarifying Council processes and offering guidance in resolving a local dispute. His attention to detail and commitment to local government are commendable qualities to bring to this position' (signed) Melita Brown, W. Leederville

* I was recently in conflict over building proposals of a neighbour and found Otto Pelczar to be one of the few councillors to show genuine interest and concern. He offered a prompt response, understood the nature of the problem, and offered a sensible solution. I believe he deserves full support from this electorate. (signed) Dr David Jones, City Beach.

What killed the state's case

The state's case against Lloyd Rayney was that he acted alone in planning to murder his wife and then killed her in cold blood.

The case against him was circumstantial – that he planned to kill his wife after she returned home from her regular bootscouting class at 9.45pm on August 7, 2007.

The couple had been planning to divorce, were at the point of separation and had been arguing over access to financial records.

The state contended that Mr Rayney had agreed to show his wife those records after bootscouting, but maintained he was unable or unwilling to produce the records.

Mr Rayney's defence said witnesses and emails proved that Mr Rayney had accepted the inevitability of divorce and the couple were planning to work out the details of an amicable agreement that night without involving lawyers.

Three appeal judges this week accepted the possibility that this was true, and put into stark perspective the unlikelihood of Mr Rayney committing murder in the alleged timeframe.

"The case had become one of premeditated murder or nothing ... a planned execution" the judges wrote.

They said the Rayneys' eldest daughter, Caitlyn, had been due to return to their Como home from a concert at Burswood that night after it finished at 9.30.

Though the judges did not say so, this meant Caitlyn would have been dropped off by her friend's mother, Shana Russell, at the same time Mrs Rayney was due to return home.

The concert started and finished late, but Mr Rayney was unaware of this.

According to the prosecution team, Mr Rayney was murdering his wife and hiding her body, probably at the side of the house, when the concert party could have arrived "literally at any moment".

When they did arrive, Mr Rayney invited his daughter's friend and her mother into the house and, Ms Russell told the court, he appeared completely normal.

Ms Russell's evidence about the planned and actual times of arrival at the Como home was "potentially extremely damaging to the state's case", the appeal judges said.

In addition, Mr Rayney had only reluctantly agreed to let Caitlyn attend the concert, and had refused to allow her to sleep over at Ms Russell's home, insisting that she return home to do her homework.

This evidence undermined

that lynchpins of the state's case, the appeal judges said, namely that Mr Rayney had planned for some time to murder his wife.



Familiar exhibits from Lloyd Rayney's murder trial ... One of Corryn Rayney's scuffed boots, a liquidambar seedpod, Corryn Rayney's makeshift grave-site in King's Park, and the two controversial seedpods and their containers.

Murder trial delay bound in secrecy

Authorities won't say why a murder trial involving a troubled police detective has been delayed until next year.

Paolo Nunzio Stagno and Danielle Kovac appeared in the Supreme Court over the murder of Mite Naumovski in Nollamara nearly two years ago.

Detective Sergeant Carl Salvatore Casilli was part of the team investigating the murder and was due to give evidence in the trial.

Detective Casilli was charged earlier this month with illegally accessing police information after a five-month Corruption and Crime Commission investigation.

Detective Casilli worked on the Lloyd Rayney murder prosecution. Mr Rayney was found not guilty last year, and an appeal by the state was dismissed on Monday.

The Department of Public Prosecutions said the reason for adjourning the trial of Mr Stagno and Ms Kovac until February next year had been suppressed.

The CCC alleges Detective Casilli was in a relationship with a lawyer and passing police information about her clients to her from 2008 until this year.

It is also alleged Detective Casilli accessed personal information about the lawyer and her mother.

A CCC spokeswoman said the investigation was continuing.

Detective Casilli is due to next appear in court on October 7.

Doubts over seedpods in hair

Lloyd Rayney's lawyers failed to overturn a decision on highly contentious seedpod evidence.

His lawyers said that it was open to the appeal court to decide whether three liquidambar tree seedpods said to have been found with Corryn Rayney's body were evidence planted by police.

A large liquidambar tree grew in the front yard of the Rayney family home.

It was central to the state case that Mrs Rayney returned home and was killed there.

But the three appeal judges said they agreed with the original trial judge, Justice Brian Martin, that two of the pods found in her hair were not planted.

The appeal judges did not go into detail, saying it was unnecessary because they had decided to dismiss the state's two grounds of appeal.

But they did say they had viewed a video of a doctor's examination of Mrs Rayney's hair the night before the seedpods were found there.

Dr Gerard Cadden did not find the seedpods that night and said

he found it difficult to accept that he had missed them.

"In our view the [video] result is inconclusive," the appeal judges wrote.

"We agree with the trial judge that what it shows does not preclude the possibility that the seedpods were in the deceased's hair at the time of the preliminary inspection."

A third seedpod, said to have been found in Mrs Rayney's body bag months after the first two, was discarded as evidence by the trial judge because he found the police evidence about it was unreliable.



food for thought...



\$10

pizza
tuesday



\$10

schnitzel
wednesday



\$10

curry
thursday