



**COURT OF APPEAL OF NEW ZEALAND**  
**TE KŌTI PĪRA O AOTEAROA**

9 October 2018

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**MARK EDWARD LUNDY v THE QUEEN**  
**CA232/2015, [2018] NZCA 410**

Press summary

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

Mr Lundy has appealed against his conviction for the murders of his wife Christine and daughter Amber, aged seven, at the family home in Palmerston North early in the morning of Wednesday 30 August 2000. Mr Lundy was first convicted in 2002 but the convictions were set aside on appeal to the Privy Council. He was tried again in 2015 and those are the convictions under appeal. The principal issues advanced on appeal related to the probative value and prejudicial effect of scientific evidence relied on by the Crown to link Mr Lundy to the murders. Mr Lundy also argued that there were significant omissions from the trial Judge’s summing up, and that the retrial was an abuse of process because of substantial changes to the Crown case compared with that advanced at the first trial.

The Court of Appeal has upheld Mr Lundy's convictions, rejecting all but one of the grounds for his appeal.

For reasons that the Court explains, it has decided that scientific evidence relied on by the Crown based on mRNA tracing was inadmissible notwithstanding that it had been ruled admissible pre-trial by the High Court, a ruling confirmed by this Court on pre-trial appeal. However, the Court rejected Mr Lundy's challenge to the admissibility of the immunohistochemistry (IHC) evidence which was advanced by the Crown to establish the presence of central nervous system tissue (CNS tissue) on two stains on Mr Lundy's shirt, noting that all of the experts called at the retrial agreed that the IHC methodology and results showed that the tissue was CNS tissue.

The Court of Appeal's ruling that the mRNA evidence should have been excluded required the Court to consider whether Mr Lundy would have been convicted notwithstanding the admission of this evidence.

Because Mr Lundy was retried on an indictment first presented in February 2002, the consideration of that issue took place under the proviso to s 385(1) of the Crimes Act 1961, as if it had not been repealed. Section 385 of the Crimes Act provides that the Court must allow an appeal if, amongst other things, it is of the opinion that there has been a miscarriage of justice. However, that is subject to the proviso, which states:

... provided that the Court of Appeal or the Supreme Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

The question of whether the proviso should be applied involves two considerations. First, the Court must feel sure of the guilt of the accused in the sense that, on a review of all the admissible evidence, conviction was inevitable. Secondly, the Court must be satisfied that the trial was fair, with the result there had been no breach of the right to a fair trial guaranteed by s 25(a) of the New Zealand Bill of Rights Act 1990.

Therefore under the proviso the Court was required by its terms to consider whether, notwithstanding the determination that the mRNA evidence was inadmissible, the appeal should nevertheless be dismissed on the basis that no substantial miscarriage of justice has actually occurred. A number of specific issues were raised for Mr Lundy which it was said raised a reasonable doubt. Having considered these issues the Court has determined that none of them, on their own or collectively, undermine the strength of the Crown case. The Court is sure of the guilt of Mr Lundy notwithstanding the rejection of the mRNA evidence. It is also satisfied the trial was fair. Therefore, the Court has decided that the proviso should be applied and the appeal dismissed.

Contact: Cate Brett - Chief Advisor Judicial Development and Communications  
Phone (04) 466 3437, cell phone or 021 557 874 email [cate.brett@courts.govt.nz](mailto:cate.brett@courts.govt.nz)