



## COURT OF APPEAL OF NEW ZEALAND

### TE KŌTI PĪRA O AOTEAROA

9 September 2025

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*Scott Watson v The King* [2025] NZCA 455

**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 and can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

#### **Court of Appeal’s decision**

In a 291-page decision, the Court of Appeal today declined to quash Mr Watson’s convictions for the murders of Olivia Hope and Ben Smart. The Court found there was no miscarriage of justice.

The focus of the hearing before the Court was the evidence suggesting two of Olivia’s hairs were located on Mr Watson’s boat *Blade* (the hair evidence) and the evidence that barman and water taxi driver, Guy Wallace, identified Mr Watson as the man with whom Olivia and Ben were last seen (Mr Wallace’s identification). The Court considered new evidence concerning the strength of the link between the two hairs and Olivia, the possibility the hairs were transferred onto *Blade* other than through Olivia being aboard *Blade*, and the possibility the hairs were actually hairs taken from Olivia’s home that were mixed up with the hairs recovered from *Blade* in the ESR lab. The Court was also presented with fresh evidence concerning the reliability of Mr Wallace’s identification.

In respect of the hair evidence and Mr Wallace’s identification, the Court has found there was no miscarriage of justice. Both items of evidence were properly before the jury, subject to challenge by the defence at trial and subject to appropriate jury directions by the trial Judge. The evidence presented on appeal does not demonstrate any issue with the safety of the jury’s guilty verdicts.

Considering the case overall, the Court is satisfied Mr Watson’s trial was fair and the jury’s guilty verdicts followed the Crown presenting a compelling case. Indeed, that case had many strands, not just the hair evidence and Mr Wallace’s identification. Mr Watson’s murder convictions must stand.

## **Background**

On 31 December 1997, Olivia Hope, aged 17, and Ben Smart, aged 21, attended a New Year's Eve celebration at Furneaux Lodge, Endeavour Inlet, Marlborough Sounds. In the early hours of 1 January 1998, a water taxi driver, Guy Wallace, took Olivia's sister, Amelia, and her friend, Rick Goddard, to *Tamarack* in a water taxi referred to as the Naiad. With them was a lone man and a young couple, Sarah Dyer and Hayden Morresey. Mr Wallace dropped Amelia and Rick at *Tamarack* and Ben and Olivia, who were aboard *Tamarack*, took their place in the Naiad. They said there was no room for them to sleep on *Tamarack* and were looking for somewhere to spend the night. The lone man offered his boat. That offer was accepted and Mr Wallace drove to a boat that was moored with other vessels, where Ben, Olivia and the lone man alighted. Olivia and Ben have not been seen, dead or alive, since.

Following a three-month trial in 1999 involving over 500 witnesses, a jury found Scott Watson guilty of the murders of Ben and Olivia. Some 26 years later, Mr Watson remains in prison. He maintains his innocence.

## **History in the courts**

### *Jury trial*

The key issue at Mr Watson's jury trial in the High Court in 1999 was whether Mr Watson was the lone man with whom Olivia and Ben boarded a boat the last time they were seen. It is now accepted that both Olivia and Ben died at the hands of the lone man in circumstances which amounted to murder.

The Crown case against Mr Watson was circumstantial and relied on numerous strands of circumstantial evidence. Circumstantial evidence is evidence of circumstances surrounding an event or offence from which a fact in issue may be inferred. Where there is no direct evidence of a crime, for example from an eyewitness, the prosecution will have to rely on inferences drawn from the evidence in order to prove a defendant is guilty. This is a common situation in criminal trials. Circumstantial evidence derives its force from the involvement of several factors that independently point to a particular factual conclusion. The logic that underpins a circumstantial case is that the defendant is either guilty or is the victim of an implausible and unlikely series of coincidences. The question whether guilt has been proved beyond reasonable doubt is answered by reference to the evidence as a whole.

The evidence relied on included two long blonde hairs (Hairs 12 and 13), which the Crown alleged belonged to Olivia and were recovered from Mr Watson's boat, *Blade*. It also included the fact Mr Watson was picked out as the lone man by Mr Wallace from a montage of photographs known as Montage B (Mr Wallace's identification).

### *Subsequent legal proceedings*

Mr Watson appealed his convictions to the Court of Appeal in 2000. The appeal was dismissed. Mr Watson applied to the Privy Council for special leave to appeal, which was declined in November 2003.

Mr Watson applied for the exercise of the Royal Prerogative of Mercy, which was declined in July 2013. Mr Watson made a second application for the exercise of the Royal Prerogative of Mercy in November 2017. As a result, in 2020, the Governor-General referred the question of Mr Watson's convictions to this Court to decide whether a miscarriage of justice may have occurred.

### **Two issues before the Court of Appeal for consideration**

The Court of Appeal's judgment considers in Part I the issue of the hairs, referred by the Governor-General. The Court also allowed Mr Watson to raise issues with the visual identification evidence that was before the jury at Mr Watson's trial, including Mr Wallace's identification. In that respect, Mr Watson's central argument before the Court was that the jury should not have been told that Mr Wallace picked him out as the lone man from a photograph montage compiled by the police which showed head and shoulders photographs of Mr Watson and seven other males (Montage B). Part II of the judgment considers the visual identification evidence.

### **The Two Hairs — Part I of the judgment**

When *Blade* was being forensically examined, a synthetic blanket with a tiger pattern on it (the tiger blanket) was located on a berth in the cabin of *Blade*. It was seized and transported to ESR's laboratory, where, on 19 January 1998, several hundred hairs were collected from it and placed into two self-sealing plastic bags. The hairs were examined on 22 January and then again on 7 March 1998. On 7 March 1998, Hairs 12 and 13 were identified. Hairs 12 and 13 were tested to analyse whether Olivia was the source of them. Nuclear DNA testing yielded a positive result for Hair 13 but no result for Hair 12. Mitochondrial DNA testing yielded a positive result for Hair 12 and a mixed/partial result for Hair 13.

### **Mr Watson's concerns with the hair evidence**

Mr Watson relied on new expert opinion challenging the reliability of the forensic evidence at Mr Watson's trial regarding Hairs 12 and 13.

Mr Watson had experts available to him who attended the trial, listened to the Crown's experts, and assisted trial counsel in preparing to cross-examine those experts. The experts advised that they could not advance the defence case beyond what had been achieved in cross-examination. That, according to junior counsel for Mr Watson at his trial, was why no expert witnesses were called on Mr Watson's behalf.

## **The Court's findings on the hair evidence**

In addition to the evidence at trial, the Court of Appeal considered evidence relating to the hairs from numerous expert witnesses (five called by Mr Watson and five called by the Crown). The expert witnesses called by the Crown included two witnesses who gave evidence at Mr Watson's trial: the ESR forensic scientist who discovered and performed most of the analysis of the hairs, Susan Vintiner, and the police detective who collected Olivia's reference hair samples from Olivia's bedroom, Detective Richard Rolton.

The Court considered questions concerning:

- (a) ESR's adherence to relevant quality standards relating to the collection, handling, and forensic examination of those hairs and other bodily material; and
- (b) the reliability of the results obtained from the DNA testing of the hairs conducted in New Zealand, Australia, and the United Kingdom; and
- (c) the fairness and accuracy of the evidence given at trial about the DNA testing and the results obtained from it.

The Court analysed the expert evidence in depth. The Court concluded:

- ESR held appropriate accreditation at the time the hair evidence was being processed, allaying any concern about ESR's general practices and procedures. ESR generally adhered to quality standards required at the time. The concerns raised with ESR's quality management system do not raise any real issue with the reliability of the hair evidence.
- The nuclear DNA testing results provided "very strong support" for the proposition that Hair 13 belonged to Olivia. That was accepted by all of the expert witnesses who addressed the nuclear DNA evidence (including those called by Mr Watson) and is what Ms Vintiner said at trial.
- At the time of Mr Watson's trial, the mitochondrial DNA testing results provided "strong support" for the proposition that Hair 12 belonged to Olivia or a maternal relative rather than someone selected at random from the population. None of the experts who addressed the mitochondrial DNA evidence cast serious doubt on the accuracy of the evidence at trial of John Bark, a forensic scientist, to that effect. The limitation that Olivia shares her mitochondrial DNA with her maternal relatives was clear at trial. Given the expanded mitochondrial DNA databases now available, the mitochondrial DNA results now provide stronger support for a link between Hair 12 and Olivia than they did at the time of Mr Watson's trial.

- Hairs 12 and 13, each returning positive results from different DNA testing, constituted two separate pieces of probative circumstantial evidence. The result for Hair 13 was of higher probative value but did not render irrelevant the less discriminating mitochondrial DNA result relating to Hair 12.
- The possibility that Hairs 12 and 13 were transferred to Mr Watson (directly or indirectly) during the events at Furneaux Lodge (rather than because Olivia was herself on *Blade*) was raised before the jury at Mr Watson's trial and indeed was raised by the Crown prosecutor as a possibility at the very start of the trial. Whether that possibility was a reasonable explanation for the presence of Olivia's hairs on *Blade* was a matter for the jury to determine, having regard to all the evidence. The defence had advice from an expert on the issue and defence counsel closed strongly to the jury on the topic.
- In the circumstances, the possibility that Hairs 12 and 13 were transferred from the Hope family home to a police officer, then to a different police officer, then to *Blade* and the tiger blanket, was speculation. Nevertheless, the steps taken to avoid any cross-contamination were explained to the jury and it was for the jury to assess whether such transference was a reasonable possibility, having regard to all the evidence.
- 7 March 1998 was the only occasion when it was possible for any hairs recovered from the tiger blanket to have been mixed with hairs from Olivia's home at the ESR lab (such that Hairs 12 and 13 were actually hairs taken from Olivia's home, not hairs located on *Blade*). All the expert witnesses addressing the issue (including those called by Mr Watson) accepted that.
- The possibility of such contamination was extremely unlikely, given:
  - The method of extracting hairs from the original bag of hairs from Olivia's home (ST05) minimised the risk of those hairs escaping. The decontamination measures taken by Ms Vintiner complied with the applicable guidelines at the time.
  - When an additional cut in the bag of hairs, ST05, was discovered during Mr Watson's trial, Ms Vintiner was taken by surprise. Ms Vintiner told the jury that she could not exclude the possibility the cut was present on 7 March. The position has since been clarified. The evidence suggests it is more likely than not the cut did not occur on 7 March, but rather much later when Ms Vintiner was preparing the samples for use by the defence. Viewed today, it is less likely than it was at trial that the cut in the bag had been made on 7 March and therefore less likely that any hairs from Olivia's home escaped from ST05 and became combined with the hairs recovered from the tiger blanket.

- Hairs 12 and 13 were not selected when the hairs recovered from the tiger blanket were examined on 22 January 1998. It was later determined there was a total of around 400 hairs recovered from the tiger blanket, of which five were blonde. After assistance from a technician, a total of 11 hairs were selected. Ms Vintiner was challenged at Mr Watson's trial about the fact she did not see any blonde hairs on 22 January. The technician assisting Ms Vintiner was not a witness at the trial but the fact technicians were used was known. Ms Vintiner said she was not surprised blonde hairs were not found on 22 January, given the very short time spent looking at the exhibit, that it was difficult to see blonde hairs when they are in a group of 400 brown hairs, but most importantly, the purpose of the examination on 22 January 1998 was to detect the presence of hairs with intact roots worthy of attempting nuclear DNA testing.
- The Crown prosecutor's closing submissions and the trial Judge's directions on the hair evidence were appropriate. The hair evidence was tested by Mr Watson's senior counsel, who was advised by experts. The hair evidence was properly before the jury as one of many strands of evidence supporting the inference that Mr Watson is guilty.

This is not a case where the scientific evidence used at trial has since been undermined and revealed to be unreliable. Indeed, the evidence given at trial has been confirmed as reliable by the experts who gave evidence at the appeal hearing.

The Court answered the questions contained in the Governor-General's reference as follows:

- (a) having considered evidence:
  - (i) we have concluded ESR generally adhered to relevant quality standards relating to the collection, handling and forensic examination of Hairs 12 and 13 and are satisfied there is no material issue;
  - (ii) we have found the results obtained from the DNA testing of Hairs 12 and 13 conducted in New Zealand, Australia and the United Kingdom reliable; and
  - (iii) we are satisfied as to the fairness and accuracy of the evidence given at trial about the DNA testing and the results obtained from it.
- (b) we conclude that none of the evidence given at Mr Watson's trial should be reconsidered in light of the evidence we have considered; and

- (c) we have determined, in light of our consideration, that a miscarriage of justice did not occur in respect of the hair evidence.

## **The Identification Evidence — Part II of the judgment**

### *Mr Wallace's evidence*

This aspect of Mr Watson's appeal focused on the evidence of Mr Wallace as to the identity of the lone man last seen with Olivia and Ben.

Mr Wallace said the lone man was the same person he had served at the bar over the course of the New Year's Eve celebrations and he had seen him a number of times that night. He gave a description of the lone man and a sketch was made of him by computer (a compusketch) under Mr Wallace's direction. In April 1998, Mr Wallace identified Mr Watson as the lone man when shown Montage B. Although not referred to at trial, in January 1998 Mr Wallace had been shown a black and white photograph of Mr Watson taken about eight years prior but did not identify Mr Watson from that. Mr Wallace described the lone man's yacht as a "big ketch" and provided a highly detailed description at trial. He maintained that *Blade* was not the boat at which he dropped the trio, principally because it was too small and single-masted.

Mr Wallace's first description of the man was provided on 3 January 1998. Mr Wallace said: "The guy on this ketch would have been about 32, about 5'9" tall, wiry build. He was unshaven but didn't have a moustache. He had short dark wavy hair and smelled like a bottle of Bourbon." Mr Wallace's first sketch of the lone man's yacht, made on 3 January 1998, included a question mark after the word "ketch".

### *Photographs*

At trial, the defence relied on a photograph of Mr Watson taken on New Year's Eve when aboard *Mina Cornelia* before going ashore. The defence claimed that Mr Watson's appearance was different from the appearance of the lone man encountered by Mr Wallace. This image, along with several others (for example, the compusketches, the photograph montages and an image showing the boats at Furneaux Lodge on the evening of New Year's Eve) is reproduced in the Court's judgment.

### *The expert evidence of Drs Gary Wells and Adele Quigley-McBride*

Drs Gary Wells and Adele Quigley-McBride gave expert evidence on behalf of Mr Watson, both via a joint report (the Report) and via examination before the Court.

The Court considered the first part of the Report was admissible expert evidence, providing a fresh, reliable and cogent discussion of the considerable limitations associated with eyewitness identification evidence and the ramifications of steps taken in obtaining that evidence.

However, the Court had considerable reservations about the second part of the Report, finding its conclusions do not withstand scrutiny and cannot be considered substantially helpful. The Court's concerns with Drs Wells and Quigley-McBride's evidence fell into five categories: reliance on incomplete material; misrepresenting the evidence; ignoring other relevant evidence; drawing conclusions that were inappropriate for them to draw; and giving evidence that was inconsistent with their position in other forums or papers.

For example, they placed considerable reliance on Mr Morresey's failure to identify Mr Watson as the lone man on the Naiad, yet they failed to acknowledge his evidence that he saw the lone man only from the back and would not be able to identify him. To rely on the fact Mr Morresey did not select Mr Watson from Montage B as a strong indicator of Mr Watson's innocence was quite wrong. They also ignored the evidence of other attendees at Furneaux Lodge that night, suggesting they were not talking about Mr Watson when a review of the evidence demonstrates they clearly were.

#### *The Court's analysis*

The admissibility of identifications of Mr Wallace made from Montage B was challenged before Mr Watson's trial and the decision that the jury should be allowed to hear about such identifications generally was not appealed.

The focus before this Court was Mr Wallace's identification of Mr Watson from Montage B specifically. The Court addressed a range of topics in analysing whether Mr Wallace's identification was properly before the jury. Its analysis was in accordance with the approach required by the law at the time. The Court concluded:

#### Montage B

Montage B did not predispose witnesses to pick out Mr Watson. Though the photograph of Mr Watson used in Montage B has been criticised for how it shows Mr Watson's eyes, other photographs on the police file show Mr Watson's eyes with the same appearance. The photographs of some of the other men in Montage B could also be said to show a person with hooded eyes. Looking at Montage B



overall, the photographs were sufficiently similar that there was no material risk of Montage B predisposing witnesses to identify Mr Watson's photograph rather than one of the other photographs.

#### The single photograph

The displacement effect arising from Mr Wallace being shown a single black and white photograph of Mr Watson in January 1998, which was taken eight years earlier, did not require Mr Wallace's identification to be excluded. The evidence does not suggest Mr Wallace's exposure to the single photograph was anything other than fleeting. It showed a considerably younger Mr Watson, most notably with a fuller face and closely cropped hair. Even if evidence of the single photograph being shown to Mr Wallace had been before the jury, it was unlikely to have had a material impact over and above the other material before the jury in any event. That material included the fact that, on an earlier date, Mr Wallace had been shown a video of Mr Watson by the media.

#### The circumstances of Mr Wallace's observations of the lone man

This was not a case of a fleeting glance by Mr Wallace. Rather, Mr Wallace observed the male at the Lodge for some time throughout the evening, both in the Main Bar and the Garden Bar. He then recognised that male at the jetty before he took him on the Naiad to *Tamarack* and then to his boat. It was also the defence case that it was the same man.

#### Issues raised by Drs Wells and Quigley-McBride

The two experts raised a number of issues which they suggested meant various witnesses were not talking about Mr Watson. However, the Court discounted those matters for the following reasons:

- The evidence demonstrates that Mr Watson cannot be excluded from being the man a witness is describing simply because the witness describes the man as having facial hair. While the *Mina Cornelia* photograph suggests Mr Watson was at least close to clean shaven early in the evening, many witnesses — who there is no doubt were talking about Mr Watson — noted Mr Watson having facial hair on New Year's Eve.
- Similarly, Mr Watson cannot be excluded as the lone man based on how the lone man's hair was described by Mr Morreseay or by Mr Wallace in his later statements and at trial. Witnesses describing a person we know was Mr Watson gave varied accounts of his hair length, ranging from "short" to "medium length" to "shortish" hair that was "longish at the back".

- The compusketches must be put in context by considering the totality of the relevant witnesses' evidence. In any event, it appears that the opinion of those with expertise in identification evidence is that composites are unreliable.
- Amelia Hope's description of the lone man on the Naiad is important and cannot, as the experts suggest, be put to one side. Her reference to the lone man having a receding hairline was consistent with evidence of those we know were referring to Mr Watson.

#### Supporting evidence of others at Furneaux Lodge that night

Drs Wells and Quigley-McBride discounted the identifications made by a number of those who attended Furneaux Lodge that night, saying they were irrelevant. They noted that it was always accepted Mr Watson had attended Furneaux Lodge that night and opined that the witnesses seemed to be talking about a different person or persons and they could not have been talking about Mr Watson because they described the "scruffy" man. But people who we know were discussing Mr Watson described him just so. An analysis of the evidence of the witnesses shows a large number of them anyway were talking about the same person (with one or two exceptions, for example in relation to a fight where it is not clear whether it was Mr Watson who was involved). It is the consistency and links between the witnesses which is identification evidence of significant weight.

The Court considered in some detail the evidence of earlier incidents at Furneaux Lodge in order to analyse whether they involved the same man — that man being Mr Watson. The purpose of that was to ascertain the likelihood that there was another lone man at Furneaux Lodge that night who could have been the lone man on the Naiad.

The Court considered that the links which tie the various witnesses' descriptions together and to Mr Watson are:

- references to sailing around Tonga;
- asking women if they wanted to go back to his boat or crew for him;
- using the phrase "dog on a chain";
- giving his name as Scott but giving different places where he was from;

- being more than simply flirtatious but overtly coarse and offensive to a number of women;
- being aggressive and generally behaving inappropriately;
- consistencies in descriptions of the man's physique, complexion and clothing (wiry or medium build, olive complexion, a white tee-shirt underneath a blue denim shirt with rolled up sleeves, and jeans);
- tattooed arms and a missing fingertip;
- spending a significant amount of time near Reg's Corner at the front of the Main Bar;
- rolling his own cigarettes and drinking spirits; and
- telling people he had a ketch.

Some of those witnesses deviate from those descriptors. For example, one witness described the man she encountered wearing a "dark shirt, possibly dark green". But that discrepancy is placed in context by the fact two other witnesses (who we know were talking about Mr Watson) described Mr Watson's shirt as "forest green" and "bluey green" respectively in early statements. Overall, the Court does not consider the witnesses were talking about different men — the minor discrepancies between their descriptions and the links the Court itemised are merely the expected product of the vagaries of memory.

Notwithstanding the criticisms of the identifications of Mr Watson using photograph montages, the Court concluded it could rely on the consistency of the witnesses' descriptions of the man's clothing and behaviour, in particular his topics of conversation, as well as general consistency in description of skin tone, the presence of tattoos, rolling his own cigarettes and the type of liquor he was consuming. The evidence supported a conclusion that the witnesses were discussing their interactions with the same man, Mr Watson. To that extent, even when the identifications of Mr Watson from Montages A and B are set to one side, the evidence against him is not materially weakened.

#### Observations of the Court

The experts placed weight on a comparison between Mr Watson's appearance on the night as shown in the *Mina Cornelia* photograph and the composites, saying they were "quite different". However, the same could be said of a comparison between the *Mina Cornelia* photograph and the two police

Montages, A and B. The Montage photographs taken in early-January 1998 show Mr Watson looking quite different. He looks somewhat dishevelled and his hair is curling on the top of his head and over his ears. The *Mina Cornelia* photograph was taken relatively early on New Year's Eve, prior to Mr Watson travelling by water taxi to shore. Once ashore, Mr Watson consumed, by his own admission, a considerable quantity of alcohol, and socialised in what was evidently a highly interactive and confrontational way, matters which might be thought to contribute to a person's appearance becoming more dishevelled.

This case demonstrates the fallibility of people's descriptions and identification evidence. There were descriptions given by witnesses where there is no dispute they were describing Mr Watson. Yet even amongst those witnesses, there were variations in description and a number were unable to identify him from a Montage or from television. The Court considered Drs Wells' and Quigley-McBride's reliance on descriptions to say Mr Watson could be excluded was not correct. In light of how others who saw Mr Watson at Furneaux Lodge that evening described Mr Watson, Mr Watson could not be excluded as the lone man just because of variations and discrepancies between descriptions.

The same is true of differences between the witnesses as to the timing of events. It is clear that Mr Watson came ashore at around 10 pm. It is also clear that Mr Wallace and two other bartenders, Roz McNeilly and Chey Phipps, were talking about the same lone man — the defence explicitly said so in closing at trial. Mr Wallace gave evidence he first saw the lone man at the Main Bar when the bar was starting to get busy, which he thought was between 8 pm and 9 pm. Roz McNeilly, by contrast, said she first saw the lone man at about 12.30 am. Mr Phipps gave yet another time, saying he served the lone man starting sometime between 11.10 and 11.50 pm (albeit he only started working at around 10.30 pm). The reality is that the people at Furneaux Lodge that evening, including bartenders, were generally not making a note of the exact times they saw a lone man, nor were they keeping any such men under continuous observation.

Had the trial been held today, with the benefit of expert evidence, the jury could have been better informed about the potential contaminating effect of the media coverage in particular. But when the Court stood back and analysed all the evidence, essentially putting to one side the fact of identifications from the Montages, it is reasonably clear that the witnesses were talking about the same person and that person was Scott Watson. As to whether Mr Wallace was talking about the same person, his evidence and the difficulties with it, were well exposed to the jury. But the Court's analysis is generally corroborative of his identification evidence.

It is important to consider what the witnesses did not see — the ketch described by Mr Wallace in the location where the lone man, Ben and Olivia alighted the Naiad.

### A ketch?

At trial, extensive evidence was led as to the boats that were at Furneaux Lodge on New Year's Eve 1997, following a police investigation which ultimately identified 176 boats as being in the vicinity and 105 in the immediate vicinity of Furneaux Lodge. There was also evidence that Mr Watson told a number of witnesses at Furneaux Lodge we know were interacting with Mr Watson that he had a ketch, which has two masts.

In closing, the Crown prosecutor suggested that Mr Wallace's evidence when he described the ketch was "rather remarkable" because of the amount of detail he provided about a vessel seen briefly in darkened conditions. Mr Wallace's first sketch for the police on 3 January included a question mark after "ketch".

As to Mr Morresey's evidence that the lone man's boat was a ketch, Mr Morresey's early statements did not suggest that the boat he was describing had two masts. Mr Morresey's first mention of a ketch came immediately after his involvement with the media and exposure to the account being given by Guy Wallace, who was at that time defending his claim it was a two-masted vessel.

When the issue of whether Mr Wallace dropped Mr Watson at a ketch or a sloop is considered alongside all the other evidence, and in particular the evidence as to the drop-off location, the issue falls away in importance. It is simply another example of the vagaries of memory and perception. Based on the Court's review of the evidence, nobody other than Mr Wallace and Mr Morresey said they saw a ketch in the area where Ben, Olivia and the lone man were dropped off, whereas that was the area where *Blade* was located. Mr Wallace's evidence about the drop-off location was corroborated by the evidence of Hayden Morresey and Sarah Dyer as to the direction the Naiad travelled when it left the *Tamarack*.

### The two-trip theory

Mr Watson had returned to *Blade* on a water taxi driven by Donald Anderson. The Crown case was that he later went back to Furneaux Lodge by means unknown.

The evidence of Mr Watson attempting to rouse those aboard *Mina Cornelia* and *Bianco* established that Mr Watson wanted to continue partying after Mr Anderson took him to *Blade*, providing an obvious reason for Mr Watson to return to shore.

The evidence suggested that Mr Watson was at Furneaux Lodge around 3.30 am. By this time the numbers of revellers had significantly reduced to around 100 people, a number of whom would have

been women. This further reduces the likelihood of there being another lone man who was dropped to his boat, which happened to be a yacht located near *Blade*, at a time after a particular incident that Mr Watson acknowledged he was involved in. A number of people were involved in or witnessed that incident.

It appears that Mr Wallace's trip on the Naiad with the lone man occurred sometime between 3.30 and 4.15 am. There is therefore nothing in the timing evidence to discount the Crown's two-trip theory as a reasonable possibility.

#### *The Court's findings on the identification evidence*

In the Court's view, the cumulative effect of that evidence strongly supports the admissibility of Mr Wallace's identification of Mr Watson from Montage B. Further, the respective Crown and defence closing addresses brought into sharp relief the need for the jury to critically consider, in light of all the evidence presented, which aspects of Mr Wallace's evidence were correct and which were not. Either Mr Wallace was right that the man in photograph number 3 was the lone man or he was right about the lone man's boat being a ketch. This is not a case where misplaced reliance on an overconfident eye witness appears to be the fulcrum on which the jury's verdict turned.

Ultimately, the Court considers the evidential value of the identification outweighed any unfairness associated with admitting it. It was properly admitted at Mr Watson's trial. Its admission did not give rise to a miscarriage of justice. The Court was therefore satisfied that it was appropriate for the jury to hear that Mr Wallace identified Mr Watson from Montage B.

#### **The Overall Case Against Mr Watson — Part III of the judgment**

Given the continued controversy surrounding this case and to demonstrate that the Court has fully considered all matters raised on behalf of Mr Watson, the Court addressed the case against Mr Watson overall in Part III of the judgment. The Court's findings are summarised here.

The only real issue at trial was whether Mr Watson was the lone man on the Naiad. The proposition that the lone man ashore at Furneaux Lodge was the same as the lone man who Mr Wallace transported on the Naiad was accepted by both the Crown and the defence at trial.

The defence comprehensively challenged the Crown case but accepted Mr Wallace's evidence that the man he served in the bar was the same man as on the jetty and in the Naiad with him. The defence used

Mr Wallace's description of the lone man, seeking to establish that the lone man could not be Mr Watson.

Relying primarily on Mr Wallace's evidence, the defence case was that the lone man was scruffier than Mr Watson, had longer hair, had more cash, had visible stubble, wore a Levi's shirt not Mr Watson's Country Road one, looked like the compusketches and had a ketch.

Mr Wallace's identification of Mr Watson from Montage B was described by the defence as so "pitifully weak" as to be no identification at all — in fact, it was said to exclude Mr Watson.

Importantly, however, the Crown case was expressly not based on the evidence of any single witness. The Crown was aware from depositions that there were significant challenges with Mr Wallace as a witness and those challenges, including those that undermined Mr Wallace's identification of Mr Watson from Montage B, were well ventilated before the jury.

The Crown prosecutor explicitly told the jury that the Crown had not "just hung its case" on Mr Wallace's evidence and his identification of Mr Watson from Montage B. Mr Wallace could not be right about the identification of Mr Watson and also right about the boat he saw. But the positioning of the boat to which Mr Wallace transported the victims, as described by him, was highly consistent with distinctive features of where *Blade* was positioned. The issue of whether Mr Wallace was correct in respect of his identification of Mr Watson but incorrect in respect of his identification of a ketch, was fully canvassed before the jury. Defence counsel in effect made the inverse point — Mr Wallace was wrong about the man but right about the ketch.

The circumstantial identification evidence against Mr Watson included descriptions of his interactions with numerous other partygoers at Furneaux Lodge throughout the night of 31 December 1997. There were strong consistencies between the descriptions of and behaviour by Mr Watson and the lone man, as discussed in Part II, to support the conclusion the lone man and Mr Watson were one and the same. The inconsistencies in various witnesses' descriptions were placed in context by the descriptions of witnesses we know were talking about Mr Watson. Mr Watson's behaviour towards women that night at Furneaux Lodge and on *Bianco* could be considered an important link with the lone man's comment towards Olivia in the Naiad, "you can come but he [(Ben)] can't", supporting the Crown's theory of a sexual motive.

The circumstantial evidence included significant inconsistencies between Mr Watson's own explanation of his movements on New Year's Day and the sightings (and non-sightings) of *Blade*, tending to show Mr Watson had lied about his movements and had engaged in suspicious behaviour, such as his alleged

presence in the Cook Strait on New Year's Day. The Crown was entitled to rely on those lies and that behaviour as circumstantial evidence of guilt.

The circumstantial evidence included the forensic evidence that immediately after New Year's Day, Mr Watson repainted and sanitised his boat (but when speaking to police referred only to the colour he had repainted it), the evidence about the missing squab cover and damaged squabs, his missing Country Road shirt and the evidence about the wipe marks on *Blade's* hull in a location consistent with where Mr Watson was seen directing his attention at Marine Head. The scratches on the hatch lining, consistent with an adult-sized fingernail, were similarly of note. Though the defence offered alternative explanations, Mr Watson's conduct from daybreak and in the following days was consistent with the actions of someone intent on avoiding detection and concealing incriminating evidence.

The circumstantial evidence also included the three Es' evidence (the evidence of three witnesses that Mr Watson expressed serious animosity towards women and talked about killing people at various times in 1997) and the evidence of prison inmates Mr J and Mr K that Mr Watson admitted murdering Olivia and Ben. The Court was satisfied there was no miscarriage of justice in respect of either of those categories of evidence. In respect of the three Es' evidence, the evidence was properly before the jury and the trial Judge's directions on it did not prejudice Mr Watson. In respect of Mr J and Mr K, the reliability concerns with their evidence were appropriately addressed through cross-examination and the trial Judge's directions rather than by preventing the jury from hearing their evidence. The key factors suggesting their evidence could not be relied upon were well exposed to the jury. The weight to be attributed to the evidence of Mr J and Mr K, in light of those issues, was a matter for the jury.

Other statements made by Mr Watson after New Year's Eve could also be viewed as pointing towards his guilt. One example was a statement Mr Watson made in respect of a feature about the Hope family shown on television. According to Mr Watson's former girlfriend, Mr Watson made a comment about Olivia's feelings towards her father.

The Crown case was that, by elimination, Mr Watson was the murderer. The murderer had to be a man who attended Furneaux Lodge and had a yacht moored in the inlet on 31 December 1997 in the location described by the witnesses, and who was in all probability the yacht's sole occupant.

Approximately 160 witnesses gave evidence as to the location of their boats, and who was aboard, in order to account for each of the more than 100 other boats moored in the vicinity of Furneaux Lodge on 31 December 1997. This was done to narrow the pool of those fitting the description "a lone man on a yacht moored at Furneaux" to just two. The other was discounted.



The defence submitted that the jury could not rule out the possibility another lone man came to Furneaux Lodge on a mystery ketch that may have come in late and left early. The defence relied on evidence from people who said they had seen ketches in the Marlborough Sounds area and wider vicinity. The Crown acknowledged it could not completely rule out that possibility but questioned its likelihood in light of all the other evidence in the case.

The Crown did not rest its case on Hairs 12 and 13 but that evidence was important. The nuclear DNA analysis of Hair 13 provided very strong support for the proposition that it came from Olivia and the mitochondrial DNA analysis of Hair 12 provided strong support for the proposition it came from Olivia or someone maternally related to her. The possibility of lab contamination or secondary transfer was explored at trial but remained speculative.

The strands of circumstantial evidence were extensively addressed during witness questioning and in the closing addresses. The prosecution sought to emphasise the incriminating effect of each of the strands. In contrast, the defence sought to offer explanations for the strands consistent with Mr Watson's innocence.

The extent to which each of the strands had residual value as inculpatory evidence, despite the defence's challenges, was ultimately a matter for the jury. In the Court's view, the incriminating value of some of the strands remained very much intact, whereas the incriminating value of other strands was shown to be relatively minimal. However, taken cumulatively, there is no doubt the jury was entitled to treat the strands of circumstantial evidence outlined as consistent with, and indeed pointing strongly towards, Mr Watson's guilt.

The Court does not suggest there were not errors and misstatements made during the course of the trial or in respect of aspects of the evidence. That is hardly surprising in a trial (and police investigation) the length and complexity of Mr Watson's. However, there was nothing in these errors and misstatements, either individually or cumulatively, which amounted to a miscarriage of justice.

Ultimately, the Crown presented a compelling circumstantial case to prove that only Mr Watson could have been the lone man who murdered Olivia and Ben. The evidence was carefully presented, challenged, and subjected to submission and analysis.

It was a fair trial.