



**SUPREME COURT
OF WESTERN AUSTRALIA**

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The State of Western Australia v Rayney [No 3] [2012] WASC 404
(INS 83 of 2011)

JUDGMENT SUMMARY

This judgment summary issued by the Court is provided as an aid to obtaining a prompt understanding of the outcome of the lengthy reasons for decision delivered in this matter. It is not an addition to, or qualification upon, those reasons and has no purpose or effect beyond that stated.

- 1 Lloyd Patrick Rayney (the accused) is charged that on or about 7 August 2007 at Perth he wilfully murdered his wife, Corryn Veronica Ann Rayney (the deceased) contrary to s 278 of the *Criminal Code* (WA) (the Code). Further and in the alternative, he is charged with the crime of manslaughter contrary to s 280 of the Code in that on the same date and at the same place he unlawfully killed the deceased.
- 2 The deceased was last seen alive at approximately 9.30 pm on Tuesday 7 August 2007 when she left a boot-scooting class held in the Bentley Community Centre. She died during the evening of Tuesday 7 August 2007 or in the early hours of Wednesday 8 August 2007 and her body was buried that night in an area of bushland in Kings Park a short distance from a sandy track leading off Lovekin Drive known as Wattle Track. The grave was discovered on Wednesday 15 August 2007.
- 3 It is the case for the State that the accused killed the deceased at the matrimonial home in Como after she returned home from boot-scooting and transported her body to Kings Park in her vehicle where he buried her. The accused contends that the evidence does not implicate him in the killing of the deceased and that the police conducted a narrowly focussed investigation which was biased against him. While there were instances of unacceptable conduct by some investigators ranging from inappropriate to reprehensible, there is no evidence that lines of inquiry were not properly investigated.

4 An application by the accused to be tried by judge alone was granted. The reasons for the granting of the application are irrelevant, but it is common ground that the investigation into the death of the deceased and the subsequently charging of the accused attracted extensive publicity and created an atmosphere within the broader community that was, at least potentially, prejudicial to the accused. I mention these matters by way of historical context only. The reasons for seeking a trial by judge alone and for the making of the order are irrelevant to my consideration of the evidence and to my decision.

5 The accused is presumed to be innocent of any crime unless the evidence led in this court satisfies me to the appropriate standard that he is guilty of a crime. The burden of proving the accused's guilt rests upon the State. There is no burden upon the accused.

6 The State must establish the accused's guilt to my satisfaction beyond reasonable doubt. It is not enough for the State to show a mere suspicion of guilt, or even to show that the accused is probably guilty. The State must go further and prove guilt beyond reasonable doubt. To put it another way, if there is a reasonable possibility that the accused is not guilty, I must return a verdict accordingly.

7 In order to prove that the accused committed any crime, the State must prove that by his actions the accused was responsible for the death of the deceased and responsible in the criminal law. Obviously, the State must exclude the possibility that someone other than the accused caused the death of the deceased. In addition, the State must prove that the deceased did not die of natural causes. If it is a reasonable possibility that the deceased died of natural causes, the accused is not guilty of murder or manslaughter.

8 During the trial it emerged that the deceased suffered from coronary artery disease. She was susceptible to suffering from a cardiac event which could have rendered her unconscious or killed her. However, the totality of the evidence has satisfied me that the deceased did not die of natural causes.

9 I am satisfied that somewhere between the Bentley Community Centre and Kings Park the deceased was subjected to a violent assault that caused trauma to the intervertebral discs and the brain. Those injuries were not life threatening and it is probable that the deceased was rendered unconscious rather than killed. Whoever attacked the deceased and rendered her unconscious decided to bury her and transported her to Kings Park in the rear of her vehicle for that purpose.

10 Having regard to the presence in the deceased's nasal passages of pollen from the area of the gravesite at Kings Park, and to the absence of pollen in the nasal passages from any other locality, I have concluded that the deceased probably took her last breaths in the immediate vicinity of the gravesite. Either the assailant prevented the deceased from breathing and killed her before she was buried, or the deceased was alive when buried and breathing was prevented by the soil placed on top of her body.

11 The State did not present an eye witness to the death of the deceased. In order to prove objective facts from which the State contended I should be satisfied that the accused killed the deceased, the State relied upon evidence of surrounding circumstances commonly known as circumstantial evidence. Like direct evidence, circumstantial evidence can be good, bad or indifferent. I am required to decide what facts I find are proven and then to determine what inference or inferences I am prepared to draw, and to draw beyond reasonable doubt, from the proven facts. I am required to consider all the proven facts together and to determine whether those facts in their entirety leave a reasonable doubt or lead me to a conclusion beyond reasonable doubt that the accused is guilty of either wilful murder or manslaughter.

12 The reliance by the State on circumstantial evidence requires that I consider the possibility that the proven facts do not necessarily point to guilt. A verdict of guilty cannot be returned unless the proven facts are such as to be inconsistent with any reasonable hypothesis other than that the accused is guilty. Guilt must not only be a rational inference, but it must be the only rational inference that the proven facts enable me to draw.

13 The drawing of inferences from proven facts is different from speculation. There is no room in the criminal court for speculation or speculative theories. Inferences can only be drawn if the facts proven by the evidence properly support the drawing of the inferences.

14 In the context of circumstantial evidence, it is essential to apply strictly the burden of proof. It would be entirely inappropriate to start with a presumption of guilt and then consider whether the evidence is consistent with that view. This is a process commonly adopted in everyday life, but it must be avoided in the criminal court. The accused is presumed to be innocent unless the evidence positively proves guilt beyond reasonable doubt.

15 The accused exercised his right not to give evidence. No inference adverse to the accused can be drawn by reason of the fact that he chose not to give evidence.

16 As will appear in my reasons which will be published at the conclusion of this summary and after I give my verdicts, the accused engaged in discreditable conduct. Evidence concerning such conduct was not admitted to show that the accused is a person of bad character. The fact that the accused engaged in discreditable conduct and could, therefore, be viewed as a person of bad character, cannot be used to reason that the accused is the type of person who might kill his wife, or that by reason of his bad character he is likely to have killed her. Such reasoning would be unfair and is prohibited.

17 The accused was born in 1962. He was admitted to practise law in 1984 and for a number of years worked as a prosecutor in the Western Australian Office of the Director of Public Prosecutions. At the time of the deceased's death the accused was working as a barrister in private practice.

18 The accused is a quiet and measured person who maintains his calm demeanour and appearance even in situations of stress. While in a social setting in the absence of the deceased the accused was capable of exhibiting charm, generally speaking he is normally reserved in his public demeanour. Notwithstanding his reserve, in appropriate circumstances the accused is sensitive and can display emotion.

19 The accused was very proud of his professional reputation and appreciated the utmost importance of integrity and ethical behaviour both in public and private life. He was ambitious in his professional life.

20 The deceased was born in 1963 and, after graduating in law, worked for the Commonwealth Government before being employed by the Western Australian Government. At the time of her death she was a Registrar of the Supreme Court of Western Australia.

21 The deceased was not a quiet and reserved person. She possessed a friendly and outgoing personality and was mentally strong to the point, at times, of being 'hard nosed'. In her professional life the deceased was highly regarded and was described as 'extremely conscientious, diligent and effective'. She was a 'very good mediator'.

22 For a number of years prior to the death of the deceased, the relationship had not been happy. The accused engaged in an extramarital sexual relationship with another woman for about three years prior to moving to Bermuda in 2003 to take up a position as Senior Crown Counsel. By the time the accused went to Bermuda the deceased believed the accused had been unfaithful and had engaged in a breach of trust. She also believed that the accused's gambling was a problem and that he had lost a lot of money.

23 After the accused returned from Bermuda, the marital relationship steadily deteriorated. The deceased was concerned that the accused was losing money through gambling and constantly demanded that the accused provide her with complete financial records relating to his income and expenditure. The accused persistently resisted providing financial information to the deceased.

24 The deceased's concern about the accused's gambling was well founded and the accused's resistance was for good reason. While there is no evidence as to what gambling, if any, the accused undertook in Bermuda, through TAB and Centrebet accounts, over 10 years from 1997 to 2007 the accused lost a total of \$115,660.35.

25 The marital relationship continued to deteriorate and on 25 June 2007 the deceased effected a formal separation by placing a bed for the accused in his study at the rear of the home. At times exchanges between the deceased and the accused were acrimonious and included threats by the deceased to publicly expose the accused's conduct and damage him professionally.

26 Anxious to find out what the deceased was saying and what strategy she was planning with her solicitor, in mid-July 2007 the accused arranged for the installation at Como of equipment which would record both ends of telephone conversations involving the home telephone. The accused knew that he was setting out to engage in illegal telephone tapping and he incurred expenses of approximately \$2,000 in order to achieve his purpose of obtaining what colloquially might be called 'inside information'. The accused obtained CDs of the recordings and he has either destroyed those CDs or secreted them away from discovery by investigating police officers.

27 By August 2007 the accused had accepted the reality of the breakdown of the marriage and inevitable separation. The accused accepted the advice of his solicitor and provided bank statements to his solicitor in preparation for disclosure. The deceased and the accused agreed to meet during the evening of Tuesday 7 August 2007 to discuss outstanding issues without the involvement of lawyers. Both were in a positive frame of mind and hopeful of a satisfactory resolution. Nevertheless, as the accused was not in a position to supply the financial information at the meeting, the possibility remained that the deceased would become angry and threaten to expose publicly the accused's private life and damage his prospects of advancement in his professional career.

28 A large volume of evidence was led concerning the history of the relationship and the state of that relationship at the time the deceased disappeared. The significance or otherwise of that evidence does not

depend upon volume. Nor does it depend on the extent of media interest which has been excited by tales of infidelity and marital discord. The State sought to draw from the evidence an inference that the accused possessed a motive to kill the deceased because he did not want to disclose the financial information and the deceased posed a threat to his professional future. However, equally open is the alternative view that if a motive ever existed, by 7 August 2007 it was no longer a consideration because the accused had accepted that he had to provide the financial information and move out of the home.

29 Both the deceased and the accused were devoted to their children and both wanted a resolution in the best interests of the children. From the perspective of the accused, the evidence establishes that he believed it would be inappropriate to take the children away from their mother as they needed her.

30 Notwithstanding the breakdown of the relationship, and the acrimonious exchanges from time to time, the accused never displayed any physical aggression or extreme anger towards the deceased. At no time did the accused physically threaten the deceased or apply any physical force to her. Similarly, there is no suggestion in the evidence that the deceased behaved in a physically aggressive manner towards the accused.

31 The State also led a large volume of evidence concerning the conduct of the accused after the deceased disappeared and after her body was found. According to the State, this conduct was indicative of the conduct of a man who had killed his wife. However, when properly analysed, the totality of this evidence does not support the State contention. Much of it tends to undermine the State position. If other evidence points to the accused's guilt, there are aspects of his behaviour that might be viewed as consistent with that guilt, but in the absence of such evidence pointing to guilt the accused's conduct from 8 August 2007 onwards is equally consistent with the conduct of an innocent father who found himself in a particularly traumatic and complex matrix of circumstances.

32 As to the evening of 7 August 2007 Caitlyn, who was then aged 13 years, was taken to a concert by a friend of the family, Ms Shana Russell. The deceased left for boot-scooting at about 7.30 pm leaving the accused and Sarah, then aged 10 years, at home. When Sarah went to sleep between 9.30 pm and 10.00 pm, the deceased had not arrived home. Sarah did not wake up during the night.

33 I am satisfied that the deceased left boot-scooting at about 9.30 pm
intending to drive home and meet with the accused to discuss the
resolution of their outstanding marital issues. The totality of the evidence,
including forensic evidence, has satisfied me that the deceased arrived
home at about 9.45 pm or a little earlier.

34 Ms Russell brought Caitlyn home at between 10.40 pm and
11.00 pm. The deceased's car was not visible. It is the case for the State
that after Sarah went to sleep, and before Caitlyn arrived home, the
accused executed his plan to kill the deceased. According to the State,
while Sarah was asleep in the house, in a little over an hour the accused
killed the deceased, hid her body at the side of the house, shifted her car
and parked it away from the house where it could not be seen and returned
to the house to wait for Caitlyn. The State contended that time constraints
and the risk of discovery would have prevented the accused from putting
the body of the deceased in the rear seat of her car before moving it away
from the house.

35 Earlier in the evening Ms Russell had spent time talking with the
accused about a personal issue. When she returned with Caitlyn, the
accused invited Ms Russell in to the house, but she declined. Neither
Ms Russell nor Caitlyn noticed anything unusual about the accused. To
Ms Russell, the accused seemed perfectly normal and relaxed and nothing
was out of place. The accused's demeanour suggests that either he
exercised a remarkable degree of control, or he had not killed the
deceased and was unaware of what had happened to her.

36 Caitlyn went to bed at approximately 11.30 pm and would have been
asleep by about midnight. I reject Caitlyn's evidence that she was later to
bed and would not have gone to sleep until the early hours of the morning.

37 It is the case for the State that after Caitlyn went to sleep, the accused
made his way on foot to where he had left the deceased's vehicle and
drove it back to the house. According to the State, the accused then
dragged the deceased across the paving bricks at the front of the house
and manoeuvred her body onto the rear seat of the car, after which he
drove the vehicle to Kings Park. The evidence upon which the State
relied to support this scenario is mentioned shortly.

38 The case for the State requires that the accused obtained a digging
implement between Como and Kings Park. Shovels from the Rayney
home had previously been lent to a friend who still had them. There is no
evidence as to how or where the accused obtained the digging implement.

39 Whoever buried the deceased lowered a bollard blocking the
entrance to Wattle Track and drove up the sandy track. After the burial,

however, when the car was backed out the underside caught on the bollard causing significant damage, including a hole in the transmission oil sump. Oil leaked from the sump and provided a trail of the car's movements from Kings Park to Kershaw Street, Subiaco where the engine stopped because of the loss of oil and could not be restarted. I am satisfied that the deceased's car was abandoned in Kershaw Street at about 2.30 am.

40 The accused was familiar with Kershaw Street and was aware that a number of legal practitioners who knew him lived in Kershaw Street. If it was the accused who was driving the deceased's car, bearing in mind the engine was revving and the car was losing power, it is surprising that the accused chose to turn into a street in which people who knew him lived.

41 The car having been abandoned in Kershaw Street at about 2.30 am, it is the State case that the accused made his way home to Como on foot. Extensive inquiries with taxi drivers and public appeals for assistance have failed to produce any witness who saw the accused between Kershaw Street and Como. No CCTV camera captured any footage of the accused, but the CCTV cameras on the Narrows Bridge across which the State contends the accused would have walked were not operating at that time.

42 I accept the State evidence that in ordinary circumstances it is possible to walk from Kershaw Street, Subiaco to the house at Como in approximately 90 minutes. On the State case the accused could have been home soon after 4.00 am in time to clean up, get some rest and be ready to wake the children at about 7.30 am.

43 The evidence led by the State established that the accused had sufficient time after Caitlyn went to sleep to move the deceased's body to Kings Park and bury her. However, an analysis of that opportunity, in conjunction with other evidence, reveals the improbability of the State case.

44 The accused is a little less than 174 cm in height and in 2007 weighed approximately 67 kg. He had suffered from significant back problems for many years. The accused was engaged in a sedentary occupation and he did not exercise. For some years the accused had led a sedentary life and in August 2007 he was in a soft physical condition.

45 The deceased was 160 cm in height and weighed approximately 78 kg. Moving or carrying a deceased person of that weight would have been a difficult task for the accused. On the State case, the accused hid the deceased's body and later manoeuvred it into the back seat of her car.

46 As to the burial, digging the large hole for the grave involved the excavation of a very large quantity of sand. The deceased was carried from the car to the grave and placed in it. The excavated sand was then shovelled back into the hole and vegetation was placed across the top of the grave in an effort to conceal it.

47 Having regard to a film of parts of a reconstruction of this sequence of events which involved a larger police officer of a stronger build than the accused digging a hole of the same dimensions and refilling it, I am satisfied that the accused would have taken at least an hour to undertake these activities. Further, at the conclusion of those activities the accused would have been perspiring heavily, out of breath and exhausted. It is unlikely that the accused would have been able to carry out the burial without experiencing pain in his back.

48 In addition to undertaking the burial, on the State case the accused experienced the trauma of his plans going awry when the deceased's car was damaged and he was forced to abandon it in Kershaw Street. The accused then had to walk for at least 90 minutes from Kershaw Street to Como and be ready to proceed as normal from about 7.30 am.

49 The accused drove the children to school and, from about 8.30 am, was constantly in the company of office staff, colleagues and a client. At 10.00 am he appeared alongside other counsel in the Corruption and Crime Commission. Significantly, none of the numerous people who saw and spoke with the accused during 8 August 2007 and the following days saw any indication in the accused's demeanour, or apparent physical condition, to suggest that he had been up all night engaged in the course of activities advanced by the State. Those observing the accused included experienced police officers, one of whom was specifically looking for signs of any bruises, scratches or other marks that might suggest the accused had been involved in an altercation.

50 If, throughout the night of 7 August 2007, the accused had engaged in the dreadful and exhausting course of behaviour which the State attributes to him, it is highly improbable that he would not have exhibited some sign, however slight, of the effects of the night's arduous and traumatic events.

51 The State advanced a case that using his experience as a prosecutor and barrister, the accused planned to commit the perfect crime. A moment's reflection reveals that this contention is not supported by the evidence.

52 If the accused planned to commit the crime, he chose to do so in the matrimonial home which he would have known the police would quickly

consider a potential crime scene. Secondly, he allowed Caitlyn to go to the concert which limited his opportunity to commit the crime to about an hour, at the most, being the period after the deceased arrived home and before Caitlyn was due to return from the concert. On this case, not only was the accused required to kill the deceased in that hour, he also had to hide the deceased's car and body until Caitlyn arrived home and went to sleep. All of this had to occur while Sarah was asleep in the house.

53 According to the State, the accused planned to leave the children alone in the house while he brought the deceased's car back to the house; retrieved the deceased's body, dragged it across the front brick paving and manoeuvred it into the car; drove to Kings Park; buried the deceased; disposed of the deceased's car; and made his way home. Finally, if the State case is accepted, this plan involved leaving the deceased's car somewhere for it to be found giving investigators the opportunity to obtain forensic evidence from it.

54 The lack of logic in several areas of this case is obvious.

55 There is an additional problem for the State with respect to this case. Counsel for the State specifically contended that the accused must have killed the deceased at Como because he would not have taken the risk of leaving the deceased hidden alongside the house unless she was dead. He would not have taken the risk that she might regain consciousness. The problem for the State arises because the evidence does not prove that the deceased died at Como. To the contrary, I have concluded that she probably took her last breaths at Kings Park. This finding undermines a significant aspect of the State's reasoning.

56 There is one area of evidence which is capable of supporting an inference that the accused was involved in the burial of the deceased. It is the finding on 11 August 2007, before the deceased's body was found, of a dinner place card bearing the accused's name within a short distance of Wattle Track. The accused took the place card with him after a dinner on 28 July 2007 and an inference is open that he dropped the card while in the vicinity of the gravesite in the early hours of Wednesday 8 August 2007. Subsequently the accused falsely stated that he drove the deceased's car to the dinner which would explain how the place card came to be near the gravesite. The inference could be drawn that the accused lied because he knew the place card implicated him in the killing which he had carried out and he was hoping to establish an innocent explanation for the presence of the place card in Kings Park.

57 Notwithstanding that such an inference is open, it does not follow that the State has proven guilt. Sometimes an apparently incriminating piece of evidence has an innocent explanation that is not obvious;

sometimes an apparently implausible explanation is true. Human affairs are not like jigsaws cut to size and shape. Strange events happen for odd reasons. Mysteries emanating from evidence given in criminal cases remain unsolved. The criminal law is replete with examples of miscarriages of justice caused in cases reliant on circumstantial evidence, particularly when the heart of the case rests on the interpretation of forensic evidence. This is why the law guards against miscarriages of justice by requiring that a particular approach be taken to circumstantial evidence which leaves no room for doubt that the burden of proof has been discharged.

58 The State case cannot succeed on the basis of the place card alone. That brings me back to the evidence at Como upon which the State relies to prove the guilt of the accused. This evidence may conveniently be described as 'forensic evidence' concerning damage to the deceased's boots and clothing and the finding of particles of brick, paint and plastic on the deceased and her clothing. It also includes the presence of two seed pods from a Liquidambar tree in the hair of the deceased.

59 Put shortly, I am satisfied from the forensic evidence that the deceased was attacked in the front yard of her home or on the verge immediately outside her home. I am satisfied that the deceased was attacked and was in difficulty on the ground when the two seed pods from the Liquidambar tree in the front yard at Como became attached to her hair. If she had been free to do so she would have immediately removed them. Injuries to the intervertebral discs and the back of the deceased's head are consistent with the deceased being attacked from behind. If the deceased was attacked and immediately silenced before she got inside, and if Sarah was asleep and the accused was in the family area or to the rear of the house, it is probable that the accused would not have been aware of what was happening.

60 It is in the next step of proving that it was the accused who attacked the deceased that the State case experiences difficulties.

61 First, while significant, the fact that the deceased was attacked in the area of her home does not in itself prove that the accused carried out the attack. Like the evidence relating to the place card, it is a piece of circumstantial evidence to be considered in conjunction with the rest of the evidence.

62 The critical question is whether any evidence points in the direction of the accused as the attacker. There is no evidence from within the house or in the yard to implicate the accused in the attack on the deceased. In order to connect the accused with the attack, the State constructed a scenario to fit with the window of opportunity between the deceased's

arrival at home at about 9.45 pm and the return of Caitlyn at between 10.40 pm and 11.00 pm. This scenario includes the accused attacking the deceased, dragging her body in the process of hiding her and later dragging her to the vehicle. The State contends that these dragging events are proved by the forensic evidence.

63 I do not accept the State case as to the dragging events. The major problem with the scenario constructed by the State is the absence of any evidence to support it. I am far from persuaded that the forensic evidence in the form of soil, particles of brick and paint and damage to boots and clothing points to a dragging event.

64 Further, the State scenario is contradicted by evidence, or more accurately, the absence of evidence. If the dragging events postulated by the State occurred, some signs of dragging or disturbance, particularly in the moss, would almost certainly have been left. Detailed examinations of the brick paving at the front of the house did not reveal any signs of dragging.

65 Put shortly, the scenario created by the State is a critical step in the process of implicating the accused in the attack upon the deceased. There is no evidence to support that scenario and evidence tends to contradict it. In these circumstances, the State case in this crucial area of the crime scene does not rise above speculation advanced in an endeavour to fill a very significant gap in the State evidence.

66 As to other possible scenarios, there is evidence which raises the possibility of a sexually motivated attack on the deceased. The forensic evidence is consistent with such an attack occurring in the front yard or on the verge. If the deceased was attacked from behind she could easily have been deprived of the opportunity of making a noise or of attempting to defend herself.

67 The accused does not have to prove an alternative to the State case. I mention this possible alternative of a sexually motivated attack to explain that in addition to failing to prove its scenarios, the State has failed to disprove an alternative explanation consistent with the accused's innocence.

68 The State contended it is so highly unlikely that someone would attack the deceased outside her home that such a possibility should be rejected. Ordinarily the community hopes that such events do not happen, but on occasions the community is shocked to learn that such attacks do occur. More importantly, the question for the Court is not whether it is likely that someone would attack the deceased outside her home at 9.45 pm at night. Nor is the Court asked to decide who killed the

deceased if it was not the accused. The task given by law to the Court is to decide whether the evidence proves beyond reasonable doubt that the accused killed the deceased.

69 The case for the State is beset by improbabilities and uncertainties. Crucial evidence is lacking and the absence of evidence tells strongly against the State. Endeavours by the State to fill critical gaps and explain away improbabilities are primarily no more than speculation without foundation in the evidence.

70 The accused has engaged in discreditable conduct, including knowingly arranging for illegal telephone interception, making a false declaration and giving deliberately false evidence to a court while on oath. The evidence raises suspicion; in some instances quite strong suspicion. But discreditable conduct does not prove guilt and suspicion, even strong suspicion, falls well short of proof beyond reasonable doubt.

71 For the reasons I now publish, I am not satisfied that the accused killed the deceased. I find the accused not guilty of wilful murder and not guilty of manslaughter.

The full judgment of the Court is available on the Supreme Court of Western Australia website at www.supremecourt.wa.gov.au.