



SUMMARY OF JUDGMENT

Lynn v The King [2025] VSCA 315

The Court of Appeal (Emerton P, Priest and Kidd JJA) today granted Gregory Lynn leave to appeal against his conviction of the murder of Mrs Carol Clay on 19 March 2020 and allowed the appeal. The Court has set aside his conviction and ordered a new trial on the charge of murdering Mrs Clay.

Mr Lynn was tried for the murders of Mrs Clay and Mr Russell Hill in May and June 2024. On 25 June 2024, the jury found Mr Lynn guilty of the murder of Mrs Clay and not guilty of the murder of Mr Hill. He was sentenced to 32 years' imprisonment, with a non-parole period of 24 years. Mr Lynn sought leave to appeal against both his conviction for the murder of Mrs Clay and his sentence. In light of the Court's decision on the conviction appeal, it was not necessary to consider the application for leave to appeal against sentence.

In his appeal against conviction, Mr Lynn raised four grounds of appeal. Grounds 1 and 2 contended that he had suffered a substantial miscarriage of justice from the way in which the prosecution conducted the trial. The Court has upheld the first two grounds of appeal, concluding that the conduct of the prosecution so compromised the fairness of the trial that there was a substantial miscarriage of justice.

The following two central issues, in combination, formed the basis for the Court's conclusion:

- (1) In the closing address to the jury, the prosecution made a number of submissions challenging the credibility of the evidence given by Mr Lynn and one other witness without ever putting those matters to them. This occurred over repeated objections by defence counsel and despite warnings from the trial judge. In doing so, counsel breached a rule of fairness, known as the rule in *Browne v Dunn*. The matters the subject of those breaches, including as to Mr Lynn's post-offence
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conduct and his version of the events surrounding the shooting of Mrs Clay, were important to the case against Mr Lynn and he should have been given an opportunity to respond to them.

- (2) In his closing address, prosecuting counsel unfairly attacked the reliability and credibility of its own firearms and toolmark expert witness, Mr Paul Griffiths, without, again, having put the relevant matters to Mr Griffiths to give him a chance to respond. Mr Griffiths conducted gunshot trajectory tests based on Mr Lynn's account of what occurred when Mrs Clay was shot. In cross-examination by defence counsel, Mr Griffiths agreed that aspects of Mr Lynn's version of how Mrs Clay was shot were plausible or 'spot on'. Yet prosecuting counsel invited the jury to disregard Mr Griffiths' evidence entirely as 'total speculation', without a proper evidentiary basis for doing so. That approach wrongly invited the jury to ignore evidence which was favourable to Mr Lynn, and represented a significant departure from the obligations of fairness owed by a prosecutor to the accused.

The Court concluded that these breaches of evidentiary and procedural rules were sufficiently frequent and serious to occasion a substantial miscarriage of justice, in that their combined effect could have affected the outcome of the trial. The unfairness was unlikely to have been mitigated by the strong judicial directions that were given by the trial judge. While defence counsel's failure to seek a discharge of the jury, a decision that was an informed forensic choice, was relevant to whether the trial was irredeemably unfair, it was not a bar to finding that the trial miscarried.

Having found that there was a substantial miscarriage of justice, s 276(1) of the *Criminal Procedure Act 2009* required the Court to set aside Mr Lynn's conviction.

Given the serious nature of the murder charge, and the Court's conclusion that the evidence has not been compromised and the unfairness of the first trial will not permeate a new trial, the Court has determined that the interests of justice require Mr Lynn to stand trial again for the murder of Mrs Clay.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The

only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.