Patterson v The King
Director of Public Prosecutions v Patterson
[2026] VSCA 253

30 October 2026

The Court of Appeal (McLeish, Taylor and Kidd JJA) today dismissed an appeal by Erin Patterson against three convictions for murder and one conviction for attempted murder after she served a meal containing death cap mushrooms at a lunch in her home. The deceased victims were Donald and Gail Patterson, who were the parents of Ms Patterson's estranged husband, and Gail's sister Heather Wilkinson. The survivor was Heather's husband Ian Wilkinson.

Ms Patterson's appeal raised seven grounds. The first alleged that the accommodation arrangements for the jury contravened the principle that justice must not only be done but must be seen to be done. The judge's tipstaff, who was one of the jurykeepers, had assured the judge that there had been no interaction between the jury and the informant or prosecution solicitors. The Court held that this was significant to identifying the fair-minded observer's reaction to the accommodation arrangements. As against that assurance, there was only conjecture, guesswork or surmise. The Court concluded that a reasonable observer knowing the facts would not think that the jury might not have discharged their duties according to law. This ground therefore failed.

The second ground contested the admission of expert evidence derived from mobile phone data, about possible visits by Ms Patterson to two locations which had been the subject of internet postings about death cap mushroom sightings. The Court found that this evidence was admissible as part of a wider circumstantial case which included the purchase by Ms Patterson of a food dehydrator on the same day as one of the possible visits, and the identification of debris from death cap mushrooms in that dehydrator after she had discarded it in the days following the lunch. This ground therefore also failed.

The third ground contended that the trial judge wrongly excluded evidence of photographs of mushrooms found on an SD card in Ms Patterson's home, which the defence had sought to tender during the prosecution case. The evidence was admitted as part of the defence case. The Court refused leave to appeal on this ground.

The remaining grounds alleged that a substantial miscarriage of justice had resulted from the way the prosecution treated the issue of motive during the trial, and from what were said to be the unfair cross-examination of Ms Patterson and the oppressive nature of the prosecution's closing submissions. The Court refused leave to appeal on these grounds.

The appeal against conviction was therefore dismissed.

The Court upheld an appeal by the Director of Public Prosecutions against the fixing of a non-parole period of 33 years by the sentencing judge. The Court found that it was not reasonably open to fix this period because it did not reflect the criminality of Ms Patterson's conduct, including the fact that her intent to murder all four victims was sustained for nearly three weeks, from when she invited them to lunch, through to preparing and serving the poisonous meal and then for the next week as she repeatedly tried to hide the truth about the source of the mushrooms. As was to be expected, the victims endured severe illness and protracted suffering.

Ms Patterson's conduct was characterised by an elaborate series of deceptions, including the false cancer claims deployed to explain the absence of the children, the false denials of having foraged for mushrooms, the repeated false assertions as to the source of the mushrooms and the destruction of evidence. The offending was carefully planned and deliberate. It represented a cruel breach of trust to members of her extended family.

In resentencing, the Court held that it was necessary that the sentence vindicated unequivocally the primary value that our society places on each individual human life. This offending was extraordinarily cold and calculated and stood to be denounced in the strongest terms. In all the circumstances, the case involved such shocking criminality that it was inappropriate to fix a non-parole period.

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.