



## HIGH COURT OF AUSTRALIA

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### THE QUEEN v STEVEN WAYNE HILLIER

The ACT Court of Appeal had erred in its approach to circumstantial evidence in the murder case against Mr Hillier, the High Court of Australia held today.

Mr Hillier, 43, of Chisholm in Canberra, was charged with the murder of his former de facto wife, Ana Louise Hardwick, 35, who was found strangled in her Isabella Plains home on 2 October 2002. The couple lived together from 1987 to 1999 and had two children. When they separated the children lived with Mr Hillier, but in June 2002, on Ms Hardwick's application, the Family Court of Australia ordered that the children reside with her. Mr Hillier had an appeal pending when Ms Hardwick died. The prosecution case was that Mr Hillier murdered Ms Hardwick to avoid losing custody of their children. He was convicted in the ACT Supreme Court and sentenced to 18 years' jail. The Court of Appeal, by majority, allowed an appeal and ordered that the conviction and sentence be set aside. It concluded there was a real possibility that another person was responsible for Ms Hardwick's death, pointing to the presence of an another person's DNA on Ms Hardwick's pyjamas, a pair of handcuffs (still in their packaging) and matching marks on the bedhead, bruises on her wrists, footprints in soot from a fire lit in her bedroom after she died, and fingerprints and hair from an unidentified source. The Director of Public Prosecutions sought special leave to appeal to the High Court, arguing that the Court of Appeal erred in substituting its views of the evidence for the verdict of the jury, and in setting aside Mr Hillier's conviction rather than ordering a retrial. The application was argued before a High Court full bench as on appeal.

The DPP argued that Mr Hillier had the opportunity to kill Ms Hardwick, he had a motive as he was concerned about losing custody, his DNA was also on Ms Hardwick's pyjama top, and chemical injuries to his fingertips were caused to avoid being fingerprinted. In the week before she died, Mr Hillier made numerous phone calls to doctors, psychiatrists, lawyers and counsellors to seek assistance with his Family Court appeal, but the calls stopped when Ms Hardwick is thought to have died.

The High Court unanimously granted the special leave application and allowed the appeal. By a 4-1 majority, the Court remitted the matter to the Court of Appeal for rehearing. One member of the High Court would have ordered a retrial. The Court held that the majority in the Court of Appeal had identified facts which, examined in isolation from other evidence, were treated as requiring the conclusion that it was not open to the jury to be satisfied of his guilt beyond reasonable doubt. The High Court held that the Court of Appeal failed to consider whether, on the whole of the evidence, all of it circumstantial, it was open to the jury to be persuaded beyond reasonable doubt that Mr Hillier was guilty. Neither at trial, nor on appeal, was a circumstantial case to be considered in piecemeal fashion. The conclusion that a guilty verdict was not open to the jury could only be reached if some aspects of the evidence were assessed separately from the rest. The Court held that the reasoning of the Court of Appeal majority was erroneous.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*