



HIGH COURT OF AUSTRALIA

6 November 2019

FENNELL v THE QUEEN
[2019] HCA 37

Today the High Court published its reasons for unanimously allowing an appeal from the Court of Appeal of the Supreme Court of Queensland. On 11 September 2019, the High Court quashed the appellant's ("Mr Fennell") conviction for murder and ordered that a verdict of acquittal be entered.

In March 2016, Mr Fennell was convicted by a jury of the murder of Liselotte Watson in her home on Macleay Island and sentenced to life imprisonment. The Crown case at trial was entirely circumstantial: it relied on opportunity in the form of Mr Fennell's access to Mrs Watson's home where she was known to keep large amounts of cash; motive in the form of Mr Fennell's interest in concealing alleged thefts by him from Mrs Watson and his gambling habits; and a miscellany of other allegedly inculpatory matters, including evidence from a couple, Mr and Mrs Matheson, that a number of years before the murder, they lent Mr Fennell a hammer which they identified as the hammer alleged to be the murder weapon. The hammer alleged to be the murder weapon was found in mangroves off Macleay Island, a short distance from banking documents and a shaving bag belonging to Mrs Watson.

The Court of Appeal dismissed Mr Fennell's appeal and held that the jury could have regarded Mr Matheson's evidence as convincing proof linking Mr Fennell to the alleged murder weapon. The Court of Appeal also found that there was sufficient evidence to support the Crown case on motive and opportunity. In the High Court, Mr Fennell appealed his conviction on the sole ground that the verdict was unreasonable or could not be supported having regard to the evidence.

The High Court unanimously held that the Crown case on opportunity and motive was extremely weak and it did not put Mr Fennell in a relevantly different position from numerous other residents of Macleay Island who had the common knowledge that Mrs Watson kept large amounts of cash in her house. Police had searched Mr Fennell's home and examined his person and found nothing linking him to the murder. Neither his DNA nor fingerprints were found at the crime scene and he was excluded as a contributor of DNA taken from the shaving bag. In light of CCTV footage, his opportunity was, at best, a very small window of time, which required an assumption about the time of the murder that was contradicted by other evidence. Accounting evidence showed that his gambling habits had not changed, that he was not in debt, and that he was ahead on his mortgage repayments.

The Crown conceded that if the Crown case on opportunity and motive was weak, Mr and Mrs Matheson's identification of the hammer found in the mangroves became essential evidence for a reasonable jury to convict Mr Fennell. The Court held that the evidence of Mr and Mrs Matheson identifying the hammer was glaringly improbable. Their evidence should have been given so little weight that, at best, it was barely admissible. The Court unanimously held that on the evidence it was not open for the jury to be satisfied of Mr Fennell's guilt beyond a reasonable doubt.

- *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.*