

THE QUEEN v HILLIER (C1/2006)

Court appealed from: Court of Appeal, Supreme Court of the Australian Capital Territory

Date of judgment: 15 December 2005

Date referred to Full Court: 4 August 2006

The respondent, Steven Wayne Hillier, was charged with the murder of his former de facto partner, Anna Louise Hardwick, to which he pleaded not guilty. On 26 November 2004, following a jury trial, he was found guilty and sentenced to 18 years' imprisonment with a non-parole period of 13 years. The respondent appealed to the Court of Appeal which, on 15 December 2005, by majority allowed his appeal and set aside his conviction and sentence. The Crown seeks leave to appeal to the High Court from that decision, to set aside the orders of the Court of Appeal or in the alternative for an order that the respondent be retried. The matter was referred to the Full Court for hearing as if on appeal.

A few days before Ms Hardwick's death, the Family Court made final orders awarding custody of the two children of the relationship to her. There was evidence of considerable animosity by the respondent towards the deceased. The deceased was discovered by her parents, lying on the floor of her bedroom. There was no sign of forced entry to the house. A post-mortem examination determined that the deceased had died from neck compression, and not from the effects of a small fire in the bedroom, which appeared to have been deliberately lit to conceal the cause of death. DNA material was found on the lapel of the deceased's pyjamas, purchased some time after her separation from the respondent, which could have been that of the respondent, who was alone on the night the deceased was murdered. The respondent denied any involvement in Ms Hardwick's death.

In the Court of Appeal, the respondent, although represented by counsel, sought and obtained leave to address the Court, and also handed up a substantial volume of written material, much of which had not been tendered during the trial. By majority (Higgins CJ and Crispin J, Spender J dissenting), the Court of Appeal upheld the appeal and set aside the conviction on the ground that the verdict of the jury was unreasonable. The majority held that a number of factual issues, which had not been advanced during the trial or appeal and several of which were only advanced in the material handed up by the respondent during his submissions to the Court of Appeal, led to a "substantial possibility" that a person other than the respondent was responsible for the death of the deceased. Spender J, in dissent, held that the hypothesis of the majority was "utterly speculative" and that the factual issues on which it was based did not reflect the evidence which was before the jury.

The grounds of appeal include:

- Whether the majority of the Court of Appeal erred in substituting its views of the evidence for the verdict of the jury, and in taking account of evidence not tendered at the trial;

- Whether the majority of the Court of Appeal erred in concluding that it was impossible to conclude that it was open to the jury to find that the guilt of the respondent had been proven beyond reasonable doubt;
- Whether the majority of the Court of Appeal erred in setting aside the respondent's conviction rather than ordering a retrial.