

On the 23rd of May 1994 Pamela Lawrence was killed at her jewellery store in Perth, Australia. Pamela was brutally attacked with a blunt instrument, which caused multiple skull fractures. She suffered immensely prior to her death. The police assumed that the motive was robbery, even though no jewellery was missing from the store.

The police were quick to action and began to investigate over 100 people that were in the vicinity of the murder, including Andrew Mallard. Although Mallard didn't have a history of violence, he had been involved in petty offences.

Mallard was being treated for bipolar disorder at Graylands Hospital when he was first interviewed by the police on the 26th of May 1994. On the 10th of June 1994, Mallard was questioned again, this time at the police station for nine hours. This interview was not recorded but the police alleged that Mallard confessed to the murder during the interview. In spite of his alleged confession, the police did not arrest Mallard. Instead they released him for the second time. On the 17th of June 1994, Mallard was again questioned at the police station. One portion of this interview was videotaped for about 20 minutes, but it did not contain an out-right confession. He was released for a third time.

Four weeks later, Mallard was back in treatment at Graylands Hospital, which is where he was arrested for the murder of Lawrence. Lacking an eyewitness, and no physical or forensic evidence implicating Mallard in the murder, prosecutors relied on the police's allegation he confessed and the video taped interview in which he didn't confess, to convince a jury to convict him on the 15th of November 1995. He was sentenced to 30 years imprisonment.

Mallard insisted that he was innocent and appealed his conviction. It was denied. On the 3rd of December 2003, after Mallard had petitioned for clemency, the Supreme Court of Western Australia dismissed Mallard's second appeal. However, the court acknowledged that the case was riddled with inconsistencies.¹ Mallard appealed, and on the 15th of November 2005, the High Court of Australia overturned Mallard's murder conviction.² Finally, Mallard had won his fight for freedom after almost twelve years of wrongful imprisonment. He was released from the maximum security Casuarina Prison near Perth on February 20, 2006.

Why was Mallard Wrongfully Convicted?

Mallard was convicted solely on an alleged confession and a 20-minute videotaped inter-

Andrew Mallard Released After 12 Years Wrongful Imprisonment

By Serena Nicholls

view. The confessional evidence consisted of police notes of verbal interviews that Mallard consistently refused to sign because they did not accurately represent what he said. The sequence of events immediately prior to this alleged confession has one questioning its validity and reliability. In the first interview Mallard was undergoing treatment at a psychiatric hospital. Not only was Mallard suffering from a bipolar disorder but he had just been given a cocktail of drugs by his doctors.

Shortly before Mallard was interviewed for the second time he had been bashed by a man in a nightclub brawl. So at the time of his alleged confession Mallard was confused, vulnerable, emotionally exhausted and suffering from sleep deprivation. Mallard claimed that prior to his alleged confession he was continually threatened and mistreated by the police. Mallard even suggested that one of the detectives put a pistol in his face and instructed him to confess to the murder.

The defense also argued that the detectives capitalized on Mallard's vulnerability and tricked him into what the prosecution characterized as a confession. Mallard was told that he would be able to assist the police in solving the murder by putting forward his own theories on how the murder may have been committed. Through Mallard's gullibility and confusion, he began to recite hypothetical theories based on the information he had gained from the media and the detectives themselves. Mallard also drew a picture of the shop and the murder weapon by adding the details that had been given to him by the detectives. Although this scenario sounds convenient, Mallard passed two polygraph tests that scrutinized his involvement in the case. The results were not admitted as evidence by the Supreme Court because Australian courts do not view polygraph results as reliable evidence.

When the High Court overturned Mallard's conviction the judges emphasized that the prosecution had not adhered to the principle of equality of arms: "Of particular concern is that items of evidentiary material, consistent with innocence and presenting difficulties for the prosecutor's hypothesis of guilt, were actually suppressed or removed from material supplied to the defence."³ For ex-



Andrew Mallard on the day of his release with his mother (l) and sister (r), on Perth's waterfront.

ample, the prosecution withheld evidence in relation to witness statements and scientific testing that doubted the murder weapon.

Mallard's Case To Be Investigated

Although the Corruption and Crime Commission (CCC) has recently announced that it will conduct an investigation into the handling of Mallard's case, the commission's objectivity should be questioned. This is because the commission's General Counsel (at the time of the High Court judgement) is married to the prosecutor in the Mallard trial.⁴ Therefore, the commission may not be diligent in fully uncovering how the prosecution perverted the course of justice by failing to disclose vital evidence.

Police misconduct, hidden evidence and judicial error contributed to Mallard's wrongful conviction

It is the responsibility of the CCC to hold those involved in this miscarriage of justice accountable for their actions.

Particularly because Mallard is not a high profile person and most Australians have never even heard of his case of injustice.

Conclusion

Andrew Mallard's case is a perfect illustration of how a wrongful conviction can result from police misconduct, hidden evidence and judicial error:

- The police capitalized on Mallard's vulnerability and naivety in the legal system. They tricked him into appearing to confess to a murder that he did not commit.
- The prosecution deliberately withheld evidence that was consistent with Mallard's pleading of innocence.
- The judicial system erred by displaying a blind faith in the police and investigative process, and the prosecutor's honesty.

It was the cumulative effect of these actions that resulted in Mallard being framed for the murder of Pamela Lawrence, and being wrongly imprisoned for 11-½ years. Mallard's case serves as a warning to all Australians who are under the delusion that the law is impartial and unprejudiced. Mal-

Mallard continued on page 17

In the summer of 2002, Di Fingleton was Chief magistrate in the state of Queensland, in northeastern Australia. Fingleton notified Magistrate Anne Thacker in July 2002 that she had decided to transfer her from Queensland's largest city of Brisbane, to Townsville 700 miles north. Thacker promptly filed an appeal of Fingleton's decision to the judicial committee. Thacker was concerned about the hardship the transfer would cause her family. On August 12, 2002, Co-ordinating Magistrate Basil Gribbin provided a sworn affidavit to Thacker's lawyer supporting her challenge to the transfer.¹ Fingleton retaliated against Gribbin by sending him an email on September 18, 2002, giving him seven days to show cause why he should not be demoted from his position as a coordinating magistrate for his "insubordination" of providing the affidavit.

Queensland's Criminal Code § 119B states:

"A person who, without reasonable cause, causes, or threatens to cause, any injury or detriment to a judicial officer, juror, witness ... in retaliation because of ... anything lawfully done by the juror or witness in any judicial proceeding; is guilty of a crime. Maximum penalty - 7 years imprisonment."

Gribbin was a "witness" who had "lawfully" provided evidence in the form of his affidavit in the "judicial proceeding" of Thacker's appeal, and in retaliation Fingleton "threaten[ed] to cause" him the "injury or detriment" of a demotion. After an investigation, a two-count indictment was issued against Fingleton. She was charged with violating Criminal Code § 119B, and attempting to pervert the course of justice.

Mallard cont. from page 16

Mallard is a perfect illustration of how easy it is for the police to target someone for a crime that they did not commit.

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Endnotes and sources:

1 *Mallard v The Queen* [2003] WASCA 296.

2 *Mallard v The Queen* [2005] HCA 68.

3 *Id.* at 68 (Justice Kirby). (Under human rights conventions 'equality of arms' means that the conditions of trial do not "put the accused unfairly at a disadvantage.")

4 Corruption and Crime Commission (2005) 'Media Report: CCC to Investigate Controversial Case', released on 02/12/05.

Magistrate Awarded \$348,000 And New Job After "Threat" Conviction Tossed

By Hans Sherrer

On June 4, 2003, a jury convicted Fingleton of violating § 119B. It was her second trial: her first trial ended in a hung jury. The jury was unable to arrive at a decision about the second count. She was sentenced to one year in prison for threatening a witness in a judicial proceeding.

Fingleton was allowed to remain in her position pending the outcome of her appeal to Queensland's Court of Appeal. The appeals court upheld her conviction on June 26, 2003. However, the Court modified her sentence to six months imprisonment, and six months was suspended dependent on two years of clear conduct after her release. (*R. v. Fingleton* [2003] QCA 266 (26 June 2003)) Fingleton then resigned her judgeship and began serving her sentence.

In June 2005, more than a year after she had completed her sentence, Australia's High Court quashed Fingleton's conviction and entered a judgment of acquittal on both counts in the indictment – even though she had only been convicted of one count. (*Fingleton v The Queen* [2005] HCA 34 (23 June 2005))

The High Court didn't base its decision on the merits of the prosecution's case. Which was that Fingleton had illegally threatened to retaliate against Gribbin for filing an affidavit in support of Thacker's challenge to her transfer. Rather, the High Court unanimously (6-0) based its ruling on the premise that under Section 30 of Queensland's Magistrates Act, "a magistrate is not criminally responsible for anything done or omitted to be done by the magistrate in the exercise of an administrative function or power conferred on the magistrate under an Act, although the act done is in excess of the magistrate's administrative authority."²

Since the power to order Thacker's transfer was a part of Fingleton's administrative authority as Chief Magistrate, the Court ruled she was immune from prosecution for any of her actions related to that transfer that exceeded her authority – including her conviction for criminally violating § 119B. Having determined that Fingleton's criminal act was shielded from prosecution by the cloak of magisterial immunity, the Court considered her to have been wrongly convicted.

Queensland has no wrongful conviction compensation statute, so a person whose conviction is quashed must seek an *ex gratia* payment from the government, or sue the people responsible who are not immune from liability. (Judges, prosecutors, and defense lawyers in Queensland are immune from civil liability for a wrongful conviction.)

Queensland's Premier Peter Beattie initially took the hard-line that Fingleton would neither be considered for an *ex gratia* payment, nor would she be restored to her judgeship. His position was based on the fear that doing so would open the floodgates for every exonerated person in Queensland to make a claim for *ex gratia* compensation.

However, contrary to Premier Beattie's public posture, behind the scenes the government was negotiating with Fingleton. In September 2005 a settlement was announced that Queensland would pay Fingleton \$348,000 (\$475,000 Australian) in back pay, and she would be reinstated as a magistrate. She was not reinstated as chief magistrate because someone had been appointed to that position in her absence. She also didn't receive any payment, *per se*, for her wrongful imprisonment – since the monetary award was described as "lost earnings" from June 2003 to her reinstatement effective in October 2005.

Fingleton's "loss of income, liberty, reputation and trauma suffered" were cited as justifications for her payment and reinstatement. Beattie sought to distinguish her situation from other cases of wrongful conviction. Beattie said, "The High Court of Australia decided she never should have been charged, let alone served time in prison. This case is entirely different to others where people have been quite properly charged and convicted and then later acquitted."³

Beattie comment was likely referring to Pauline Hanson, the co-founder of Australia's One Nation political party who was convicted of election fraud in August 2003. Hanson was jailed immediately and served three months in prison before her conviction was quashed by the Court of Appeals in November 2003. The Court determined that the election fraud never occurred. Queensland's Attorney General formalized Beattie's comments in October 2005 by denying Hanson's claim for compensation, saying, "The convention with *ex gratia* payments in Queensland is, unless exceptional circumstances exist, a person acquitted of a criminal charge will not be compensated either for their legal expenses on defending the charge, or for any time spent in custody."⁴

Fingleton continued on page 18

