

Lundy appeal: Meal evidence 'misleading'



Lundy appeal told examining stomach contents to estimate time of death unreliable.

Examining stomach contents to estimate the time of death for Christine and Amber Lundy is deemed "so unreliable as to be of little value", according to a leading world expert in forensic pathology.

The time of death was crucial to the Crown case against Mark Lundy for their murders, who only had a three hour window to make the 300km round trip from Petone to Palmerston North in order to murder his wife and daughter.

On the second day of Lundy's appeal at the Privy Council in London, David Hislop QC strongly criticised the evidence of two scientists who gave evidence at Lundy's trial in 2002.

Dr James Pang told the trial jury that he estimated the time of death between 7pm and 7.15pm on the evening of August 29, 2000.

This was based solely on the basis of examining the stomach contents of the murder victims - a full stomach containing potato chips and probably fish - and noted the "distinctive" absence of the smell of gastric juices.

He did not take the temperatures of the bodies when they were found in the house, or examine them for rigor mortis. He also failed to weigh the stomach contents.

Given the time of the purchase of the meals at McDonald's at 5.38pm and the journey time home, Dr Pang said the digestion process was in the early stages which led to his estimated time of death.

His evidence was backed up at the trial by Professor Gilbert Barbezat, a consultant gastroenterologist, who was confident the murders happened within an hour of the last meal.

Professor Barbezat had never carried out a post mortem but had seen more than 100 of them.

The defence case at trial was that the murders happened after 10.52pm, based on computer time evidence, and therefore Lundy had a "cast iron" alibi as he was with a prostitute a short time later at 11.36pm.

However, Mr Hislop told the Privy Council that the science used to identify the narrow window of the time of death was "fundamentally flawed" and "without any scientific foundation whatsoever".

He presented affidavits from several medical professionals, including Professor Bernard Knight who is a leading world expert in forensic pathology, who reviewed the findings of the Crown experts. Ironically, Professor Knight was cited by Dr Pang during the trial.

He said that the use of stomach contents as an estimate of the time of death as "so unreliable as to be of little value" as there are a number of variables which make gastric contents almost useless to determine the timing.

Professor Knight particularly questioned Dr Pang's evidence that "absence of gastric smell" was an important factor. He considered this to be "utterly without foundation and little short of ludicrous" and had never heard of this suggestion.

Mr Hislop said the stomach content evidence was "misleading" to the judge and jury. He also criticised Lundy's trial lawyer for not rebutting the evidence at the time.

The estimated time of death of between 7pm and 7.15pm is crucial to the Crown case.

Cellphone records show Lundy was in Wellington when he had an eight minute conversation with his wife which ended at 5.38pm.

The Crown said he made the 150km journey back to Palmerston North, killed his wife and daughter, then drove back to Wellington when records show he had a phone conversation with a friend at 8.28pm.

The Privy Council appeal has so far focused on the police failure to disclose important documents and the science used to identify DNA matter as brain tissue.

Lundy is serving at least 20 years in prison after being convicted of the axe attack in their Palmerston North home in August, 2000.

The non-parole period was lifted from 17 years by the Court of Appeal after his appeal failed.