

Plenty of questions still to be answered

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OUT OF JAIL: Mark Lundy was photographed entering the address specified during his bail hearing.

News of last week was Mark Lundy's release on bail after the Privy Council's decision to allow his appeal and set aside the convictions for killing his wife and daughter in 2000.

However, celebrations would have been muted because understandably, getting out of pokey after 12 years with a probable retrial when most of the country is convinced you are still a double murderer is hardly grounds for a party.

One alert media scout lurched straight to the end-game when asking the prime minister if compensation would be payable. John Key said, politely, that it was a bit early to be considering that issue. However, it will arise.

Most people can accept that Mark Lundy may not be a murderer, but struggle with the issue left hanging: so who is it then? It is very difficult to imagine that there is someone who would invade the Lundy home when Mark was away, kill his wife and child in brutal fashion and then melt back into the general population, never to randomly murder again.

There are such people one supposes, and one of them probably killed Scott Guy, but it is almost inconceivable that Christine and Amber Lundy had done anything that would have given a stranger a motive for what they suffered.

It is correct that the Crown does not have to prove motive, but without it prosecution is rendered far more difficult: juries like reasons, people like reasons. And that is where Mark came in; he either had a motive, or one could be easily fashioned out of suggestions of marital disharmony and general frustration.

In that respect, the Crown relied on adverse inferences created when Lundy's defence found itself having to accept Mark engaged a prostitute on the night in question. The Crown still had major problems because messing about with a hooker 150 kilometres away has never been strong evidence of anything much.

That was where brain tissue came to the rescue, along with some shonky deductions as to the time of death based on stomach contents and even shonkier conclusions about the time the family computer was turned off. Add to all that the Crown contention that Lundy had only 2 hours 35 minutes to get from Petone to Palmerston North, run 500m from his car to the house (not much of a runner either), put on overalls and a wig, find the murder weapon, tamper with the computer, kill the victims, stage a break-in, run back to the car and dispose of the evidence; all without being seen.

Even a Formula One driver would struggle to make the drive in the time available. The average speed would be 116kmh, which seems reasonable, but allowing 20 minutes to run to and from the house etc, the average speed climbs to over 130kmh.

OK, so anyone can go that speed in a straight line for a few minutes, but when corners, compulsory stops, towns, hills and other traffic are allowed for, Lundy would have to have travelled from Petone at speeds in the region of 160kmh then to do the same thing on the return leg.

The appeal succeeded on several grounds but, notably, the evidence about the tiny blood stains found on Lundy's polo shirt discovered inside his untidy Ford Falcon were not, as the crown experts had suggested, brain tissue.

There is a theory, which goes like this: brains should stay inside the head.

The Crown found the so-called brain tissue material 59 days after the murder and, with it, compelled the jury to accept that Lundy must have murdered Christine and Amber because how else would their brains get on his shirt? The samples were identified as such by a Texas pathologist, Dr Miller, using an untested and unreliable method of analysis. If nothing else, that shows how far the police needed to go to find the conclusion they wanted.

This all has shades of the hair in Scott Watson's trial, or more recently, the mismatched dive boot in the MacDonald trial. The Privy Council rightly accepted that the "brain tissue" conclusion was unreliable and, reading between the lines, this was as good a case of "rent-an-expert" as ever there was. In addition, the council found that the naughty old police failed to disclose a document wherein they sought permission to refer the matter to the Texan because a neuropathologist, Dr Teoh, had told them the tissue sample was too degenerated to be identified as brain tissue and ought not be allowed to form the basis of a conviction.

The Crown must have lost that memo because 12 years after the trial and about five minutes before the Privy Council hearing they found it again, possibly down the back of their London taxicab back seat, and gave it to counsel for Lundy straight away.

There were other aspects of appeal but in the end, it was all about brains, or lack thereof. When all appeal bases are combined, one wonders how our Court of Appeal managed to dismiss the appeal. Judith Collins says there is nothing wrong with our justice system, but then she would say that wouldn't she? And 12 years later? Not exactly fast either.