



## HIGH COURT OF AUSTRALIA

2 April 2025

THE KING v ZT  
[2025] HCA 9

Today, the High Court allowed an appeal from a judgment of the Court of Criminal Appeal of New South Wales. The central question in the appeal was whether, in circumstances where a majority of the Court of Criminal Appeal did not listen to or watch any part of the recordings of the principal evidence implicating the respondent in the murder of the deceased, the Court of Criminal Appeal erred in concluding that the reasonable doubt they held as to the respondent's guilt was not capable of being explained away by the natural advantages held by the jury in having listened to and watched that evidence.

After a trial in the Supreme Court of New South Wales, the respondent was convicted of murder and sentenced to a substantial term of imprisonment. The principal evidence implicating the respondent in the commission of the offence was the respondent's alleged admissions in intercepted telephone calls and police interviews. Recordings of those telephone calls and police interviews were tendered at trial as exhibits and played to the jury.

A majority of the Court of Criminal Appeal upheld the respondent's contention that his conviction was unreasonable or could not be supported having regard to the evidence. Kirk JA (with whom Sweeney J relevantly agreed) did not listen to or watch the recordings of the intercepted telephone calls or police interviews but concluded that the alleged admissions were not sufficiently reliable to demonstrate the respondent was guilty of murder. Kirk JA considered that this doubt could not be resolved by the natural advantages of the jury because listening to the intercepted telephone calls did not give the jury any significant advantage in assessing their significance to the case. In dissent, Fagan J noted that he had listened to short passages of the first police interview in which portions of the intercepted telephone calls were played back to the respondent. His Honour concluded that the advantages enjoyed by the jury in listening to the intercepted telephone calls and watching the police interviews resolved any doubt that might be experienced by appellate judges.

In allowing the appeal, four members of the High Court held that nothing precludes, and there is no impediment to, an appellate court reviewing recorded witness testimony, or viewing or listening to any exhibit or testimony which is recorded, if there is a real forensic purpose for doing so. It was further held that, in circumstances where the doubt the Court of Criminal Appeal held about the respondent's guilt concerned the plausibility of the respondent's admissions in the intercepted telephone calls and recorded police interviews, and there was the real potential for the jury to have enjoyed advantages in listening to and watching that material, the Court of Criminal Appeal did not have a rational basis to conclude that the jury had no advantages capable of resolving their doubt without having seen and heard a sufficient part of the intercepted telephone calls and police interviews to identify the extent, nature and scope of the jury's advantages, if any. As the grant of special leave to appeal did not extend to having the High Court determine whether the respondent's conviction was unreasonable, the orders of the Court of Criminal Appeal were set aside, and the matter was remitted to that Court for redetermination in accordance with the reasons of the High Court.

*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.*