



HIGH COURT OF AUSTRALIA

Public Information Officer

3 February 2005

THOMAS NICHOLLS v THE QUEEN
MARTIN GRAEME COATES v THE QUEEN

The High Court of Australia today ordered a new trial for Mr Coates in relation to admissions allegedly made to police while a video camera was switched off, but dismissed Mr Nicholls's appeal against exclusion of evidence of out-of-court statements alleged to show bias by a witness.

Mr Coates, 41, Mr Nicholls, 33, and Mr Coates's girlfriend and Mr Nicholls's housemate Amanda Kayelene Hoy were convicted in the Western Australian Supreme Court of the 1998 murder of Perth prostitute Clare Garabedian, who was to give evidence in an assault case against Mr Coates and Ms Hoy. Adam John Davis claimed he was offered \$2,000 to give Ms Garabedian a "hot shot" (a heroin overdose) while posing as her client at a motel in the suburb of Rivervale. She shot up twice and while she was asleep Mr Davis rang Ms Hoy to say he needed more heroin which she left for him near the motel. Mr Nicholls and Mr Coates each rang to ask whether Mr Davis had killed Ms Garabedian. He told them he had not done so.

Mr Davis said the pair arrived and Mr Nicholls held a pillow over her face, Mr Davis and Mr Coates each injected her with heroin, Mr Coates stood on her neck, Mr Davis cleaned away fingerprints (although his were later found), Mr Nicholls collected incriminating items, and Mr Coates wiped down Ms Garabedian's body with a wet towel. Mr Davis pleaded guilty to murder and was sentenced to a minimum term of 15 years on an undertaking to testify against the others. Mr Coates and Mr Nicholls denied his version but the Crown also relied on admissions allegedly made by Mr Coates during a break in the videotaped interview with police, evidence that his brother-in-law provided a false alibi, evidence of motive, forensic evidence and phone records.

Police officers gave evidence that during the 45-minute break in filming Mr Coates asked about his options and said he could not cope with jail. He allegedly said Mr Davis and Mr Nicholls had committed the murder while he was at home and said he wanted to do a deal to testify against the other two in exchange for the lesser charge of conspiracy to murder. When the video camera was back on, the officers did not ask Mr Coates to repeat his statements, which he later denied making. No notes were made until the next day and those notes have disappeared. The Supreme Court and Court of Criminal Appeal both held that the circumstances of the unrecorded admissions fell within an exception to the provision that admissions were inadmissible unless recorded on videotape. But the High Court, by a 4-3 majority, held that the circumstances did not constitute a reasonable excuse for the lack of recording and that the exception did not apply. The Court ordered that his conviction be quashed and a new trial be held.

The Supreme Court excluded as hearsay evidence from Joseph Paul Ross that Mr Davis had told him that he had lied about Mr Coates and Mr Nicholls's presence in the motel room and other aspects of their involvement. It did so on the basis of the rule that an answer given by a witness – in this case Mr Davis – to a question relating only to credibility or some other collateral matter is final and cannot be rebutted. The High Court held that the evidence could have been admitted to establish his possible bias or corruption. But because no detail of the conversation had been put in cross-examination so that Mr Davis had an opportunity to deal with the claims this ground of appeal failed. This was Mr Nicholls's sole ground and the Court unanimously dismissed his appeal.

- *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.*