



HIGH COURT OF AUSTRALIA

Public Information Officer

30 August 2007

LEMALUOFUIFATU ALIPAPA TOFILAU v THE QUEEN
MATTHEW JOSEPH MARKS v THE QUEEN
SHANE JOHN HILL v THE QUEEN
MALCOLM JOSEPH THOMAS CLARKE v THE QUEEN

Confessions to unsolved murders made to Victorian undercover police posing as criminal gangsters were voluntary and admissible as evidence, the High Court of Australia held today.

Mr Tofilau was suspected of strangling his ex-girlfriend, Belinda Loree Romeo, in her unit. Mr Marks was suspected to have beaten his great-aunt, Margaret Mary O'Toole, to death after borrowing large sums of money from her. Mr Hill was suspected of killing his stepbrother, Craig Anthony Reynolds, in the house they shared by fracturing his skull with a blunt object. Mr Clarke was suspected of killing six-year-old Bonnie Melissa Clarke (no relation) in 1982. He had been boarding with Bonnie's mother until three months before. Bonnie had been stabbed in the chest and sexually assaulted. Police had been unable to make a strong enough case against any of the men.

In a technique imported from Canada, each of the four Melbourne men was tricked by undercover police posing as criminals into confessing. They were approached by supposed criminal gangs playing out various crime scenarios over several months. Each was told that in order to be a gang member and to profit from the gang's activities he had to tell the gang boss the truth about his involvement in the murder. Each was told that the boss could make any problems disappear.

In Mr Tofilau's case, typical of all four cases, undercover police staged 16 scenarios in which he participated in or observed what appeared to be serious criminal activity. This was designed to instil confidence that association with the gang would bring financial benefits and protection from police investigation. In March 2002 police served notice on Mr Tofilau that they were applying to the Magistrates Court for permission to take a DNA sample from him. On hearing of this, a gang member exhorted him to tell the truth and Mr Tofilau admitted strangling Ms Romeo. He was taken to a meeting in a hotel room with the gang boss. The boss told him that if he told the truth the boss would make it "go away". Mr Tofilau described how he had killed Ms Romeo with her scarf which he threw into a car at her unit block. He was arrested the next day and later convicted of murder.

In each case the trial judge held that what each man had said to people he believed to be criminal gang members did not constitute a statement to a person in authority. Each trial judge also held that the confession was voluntary. The convictions were upheld by the Court of Appeal. All four men appealed to the High Court which, by a 6-1 majority, dismissed the appeals.

The Court held that the confessions of all four were procured by inducements, but that the people holding out the inducements – police officers posing as criminals – were not persons in authority. The men believed they had been offered inducements, not by police, but by gangsters apparently able to influence certain corrupt police officers. The Court held that, although the confessions were obtained by deception, the wills of the appellants were not overborne, there was no duress or intimidation, and the confessions were voluntary. Mr Clarke also argued that the trial judge should have exercised his discretion to exclude the confession for reasons of unreliability, unfairness and public policy. Those arguments were dismissed by both the Court of Appeal and 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.*