



HIGH COURT OF AUSTRALIA

Public Information Officer

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GRAHAME JAMES GATELY v THE QUEEN

No miscarriage of justice occurred when a jury, without the trial judge or lawyers present, was able to have a second viewing of a video of a child giving her evidence in a sexual offences trial, the High Court of Australia held today.

Mr Gately was convicted in the Queensland District Court in November 2004 of 10 counts of indecent treatment of a girl under 16 who is a lineal descendant and one count of incest. A further charge of attempting to procure a child under 16 to commit an indecent act was withdrawn during the trial. The girl was 14 at the time the offences allegedly occurred between 22 July and 4 August 2002 and 16 by the time of the trial. A pre-recorded video of the girl giving her evidence and being cross-examined was shown to the jury. During deliberations, the jury asked to see the video again. Counsel for both the prosecution and defence agreed that, rather than reconvening the court, the jury could watch the video in the courtroom supervised by the bailiff.

Mr Gately appealed to the Court of Appeal against his convictions. It unanimously dismissed the appeal. He then appealed to the High Court, alleging that there had been a miscarriage of justice because Judge Milton Griffin erred in allowing the jury to watch the video again and he did not direct the jury not to give undue weight to the girl's evidence. Mr Gately also alleged that Judge Griffin erred in permitting the prosecutor to tender the girl's written statement to police when she had already given full pre-recorded evidence.

The High Court, by a 4-1 majority, dismissed the appeal. The Court unanimously held that the way in which the video was replayed to the jury without the Court reconvening was irregular, but the majority held that in the circumstances of the case this had not led to a miscarriage of justice. Mr Gately's counsel's consent to the jury watching the video with the bailiff was significant. Mr Gately did not give evidence or call evidence in his defence and little other evidence was given apart from the girl's pre-recorded testimony. Her evidence was critical to both the prosecution's case and Mr Gately's answer that the prosecution had not proved its case beyond reasonable doubt. Allowing only the girl's evidence to be re-examined by the jury in the circumstances of this case presented no risk of an unbalanced consideration of competing accounts of what allegedly happened. The majority rejected Mr Gately's contention that Judge Griffin should have directed the jury not to give undue weight to the video evidence. No such direction was sought at trial.

The Court unanimously dismissed the third ground of appeal, that the girl's police statement was wrongly received in evidence. It held that the statement was properly admitted under section 93A of the Queensland *Evidence Act* which concerns written statements by children or intellectually impaired persons where they were also available to give evidence at trial.

- *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.*