HIGH COURT OF AUSTRALIA

Public Information Officer

13 December 2007

GRAHAM JOHN EVANS v THE QUEEN

The High Court of Australia today ordered a retrial for a man who was convicted of armed robbery after having to dress in court in clothes like those allegedly worn during a hold-up of the Strathfield Municipal Council chambers in Sydney.

On the afternoon of Thursday 28 February 2002 a man entered the council chambers wearing dark blue overalls, a red balaclava and sunglasses and carrying a sawn-off rifle. He took council cash and ordered two members of the public to hand over their money, although he left behind one victim's cash. On 30 December 2003 police searched Mr Evans's home and found blue overalls, a red balaclava and a box of red balaclavas. During his trial in the NSW District Court in November 2004, Mr Evans, 52, of Campbelltown, was asked by the prosecutor to put on the balaclava and overalls and also the prosecutor's sunglasses. He was then required to walk up and down in front of the jury and to say the words "give me the serious cash" and "I want the serious cash". Seven witnesses had given evidence about the robber's gender, voice, walk, height, age, build, skin colour and hair and the jury had also seen security camera footage of the hold-up. A baseball cap was dropped at the scene. DNA taken from the cap matched Mr Evans's DNA profile which was expected to occur in fewer than one in 10 billion people. He denied being the robber and suggested his cap may have been dropped by someone else to implicate him. Mr Evans was convicted of two counts of armed robbery and one count of assault with intent to rob, all while armed with an offensive weapon. He was jailed for seven years with a non-parole period of four-and-a-half years.

Mr Evans appealed to the NSW Court of Criminal Appeal (CCA) which held that he should not have been asked to put on sunglasses that were not in evidence and that evidence Mr Evans wished to call from his father and brother about his work at the brother's Campbelltown car-hire business, 43 kilometres from Strathfield, was wrongly excluded. Their evidence was intended to show that Mr Evans always worked on preparing vehicles on Thursday afternoons. The CCA concluded that neither error was significant and that the evidence properly admitted at the trial proved Mr Evans's guilt beyond reasonable doubt. Therefore the CCA concluded that no miscarriage of justice had occurred and dismissed the appeal. Mr Evans appealed to the High Court.

The Court, by a 3-2 majority, allowed the appeal and ordered a new trial. It held that the CCA should not have concluded that no miscarriage of justice had occurred. Requiring Mr Evans to wear the balaclava and overalls, as well as the sunglasses, and the rejection of alibi evidence from Mr Evans's father and brother were errors. There was no dispute that the robber had worn a balaclava, overalls and sunglasses but having Mr Evans model them did not assist the jury to determine whether he was the robber and dressing him like a robber may have damaged his credibility as a witness. The Court held that the alibi evidence was not tested at trial but could perhaps have raised a reasonable doubt about who had taken Mr Evans's cap to the scene of the robbery. The trial judge on several occasions said she would provide reasons for decisions on disputes over the admissibility of evidence and applications that the jury be discharged without verdict, but no reasons were given for a number of such rulings. The Court held that the errors at trial undermined Mr Evans's defence so that he had not received a fair trial. The CCA could not determine beyond reasonable doubt that Mr Evans was the robber and ought not to have decided that there had not been a substantial miscarriage of justice.

- *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.*

Address: PO Box 6309, Kingston ACT 2604 Telephone: (02) 6270 6998 Fax: (02) 6270 6909
Email: fhamilton@hcourt.gov.au