



## HIGH COURT OF AUSTRALIA

**Public Information Officer**

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### JEAN ERIC GASSY v THE QUEEN

A direction to a deadlocked jury in Mr Gassy's murder trial was not sufficiently balanced and resulted in a miscarriage of justice requiring a new trial, the High Court of Australia held today.

After an 11-week trial in the South Australian Supreme Court, Mr Gassy was convicted of murdering the State's Director of Mental Health Dr Margaret Tobin as she left a lift to return to her office on the eighth floor of an Adelaide city building after lunch on 14 October 2002. She got into a lift with two men and another woman. One man and the woman alighted at the seventh floor. As Dr Tobin got out of the lift on the eighth floor and walked away she was shot four times. She died soon afterwards without identifying the shooter. Mr Gassy allegedly shot Dr Tobin due to resentment and anger from her part in initiating a process that led to his deregistration as both a medical practitioner and psychiatrist when Dr Tobin was in practice in Sydney. The case against Mr Gassy was circumstantial as other lift passengers could not identify him and no witness could say that he was left alone in the lift with Dr Tobin or that it was he who fired the shots.

The facts as alleged by the prosecution case at trial included the following. Six months before the murder, Mr Gassy, an experienced pistol shooter, booked into a Brisbane motel under a false name and acted suspiciously at a Royal Australian College of Psychiatrists' conference where Dr Tobin was to speak. Just before the killing, he booked into an Adelaide motel under a false name. On each trip hire cars were booked in false names. Gunshot residue of the same brand of ammunition used to kill Dr Tobin was found in the hire car in which Mr Gassy drove to Adelaide. He owned pistols and ammunition of the kind used to kill Dr Tobin. In Brisbane, a man matching Mr Gassy's description bought a part for a Glock 26 pistol at a gunshop, and gave the name Gassy or Gass, his firearms licence number and his sister's mobile phone number as a contact number. A receipt for the purchase was found at his flat. Other receipts were found at the Renmark dump after a man was seen putting a plastic bag in a service station bin.

The SA Court of Criminal Appeal (CCA), by majority, dismissed Mr Gassy's appeal. The High Court, hearing an application for special leave to appeal, dismissed nine grounds of appeal but referred the remaining two grounds (on which Justice Bruce DeBelle would have allowed the appeal to the CCA) to the whole Court to be heard as an appeal. The two issues were Justice Ann Vanstone's rejecting Mr Gassy's request to have counsel represent him only at a pre-trial hearing into the admissibility of evidence while representing himself at the trial, and further directions by Justice Vanstone after the jury indicated they could not reach a verdict. Mr Gassy argued his own case before the High Court, having refused the offer of senior counsel to appear pro bono.

The Court unanimously granted the application and, by a 3-2 majority, allowed the appeal. It ordered a new trial and held that Justice Vanstone's further directions lacked neutrality so causing a substantial miscarriage of justice. The majority held that the directions merely restated the essential elements of the prosecution case, with barely a reference to the defence case. The jury returned its guilty verdict just half an hour later. It had been deadlocked after a day and half's deliberations. The Court unanimously held that Justice Vanstone erred in ruling that Mr Gassy was not entitled to counsel for the voir dire unless counsel was also retained for the trial. The majority held that, because the other ground was resolved in Mr Gassy's favour, it did not need to decide whether a miscarriage of justice had occurred in respect of this ground.

- *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.*