

Retrial over doctor's killing

Michael Pelly
Pia Akerman

A FORMER psychiatrist convicted of killing South Australia's director of mental health has won a retrial after acting as his own lawyer and convincing the High Court a judge's advice to a deadlocked jury led them "only to a verdict of guilty".

In a 3-2 verdict, the High Court said Jean Eric Gassy, who was sentenced to life for the execution-style shooting of Margaret Tobin in 2004, was the victim of a "substantial miscarriage of justice".

Mr Gassy allegedly shot Dr Tobin due to resentment and anger over her part in his de-registration as a medical practitioner and psychiatrist when she practised in Sydney in the 1990s.

The majority said Supreme Court judge Ann Vanstone had merely restated the essential elements of the prosecution case, with barely a reference to the defence case. After being deadlocked for a day and a half, the jury returned its guilty verdict 30 minutes later.

High Court judge Michael Kirby, who sided with judges Bill Gummow and Ken Hayne, said there was "powerful evidence" of Gassy's guilt. Justice Kirby said this made it a "borderline case" for a retrial. "Definitely, it is at the cusp" Justice Kirby said.

Mr Gassy will have to apply for bail if he wants to leave Yatala prison before the new trial, expected to be held next year.

Don Scott, Tobin's widower, said the decision hurt.

"I was hoping more than anything else that this would be the last thing, it would be knocked on the head and that would be that," Mr Scott said. "But reality said that was not to be and you try again I guess."

"I hurt. Of course I hurt, but you've got to deal with reality. The process goes on, and that's what we've got, isn't it."

The crown said Mr Gassy had stalked and killed Tobin. Six months before the murder, he allegedly booked into a Brisbane motel under a false name and acted suspiciously at a Royal Australian College of Psychiatrists' conference featuring Tobin. He later drove to Adelaide, where he allegedly shot Tobin four times as she left a lift to return to her office on the eighth floor of an Adelaide city building after lunch in October 2002.

Mr Gassy represented himself at the trial and argued his own case before the High Court, having refused the offer of senior counsel to appear pro bono. He alleged ill errors by Justice Vanstone, but was only granted leave to appeal on two grounds. The case against him was circumstantial as other lift passengers could not identify him and no witness could say that he was left alone in the lift with Tobin.

Justice Kirby said there was evidence Mr Gassy had travelled



Hurting: Don Scott at his Adelaide home after hearing that Jean Eric Gassy, the man previously convicted of killing his wife, had been granted a retrial

Picture: Kelly Barnes

Widower to relive 'longest day'

Andrew McGarry
Pia Akerman

to Brisbane and Adelaide by hire car and other testimony that went to motive, opportunity and Mr Gassy's ownership of firearms.

Justices Gummow and Hayne said Justice Vanstone's direction "restated the essential elements of the circumstantial case upon which the prosecution relied in proof of guilt".

"The 'way forward' which the judge suggested was along a single path leading only to a verdict of guilty," they said.

They added there were two telling indications: an effort by the prosecution to get the judge to supplement her advice and the speed with which the jury returned a verdict.

"The prosecution argued that the applicant went to Brisbane 'for a non-innocent purpose relating to Dr Tobin' and that he 'must have gone' to Adelaide for the same reason," the judges said. "The evidence which was led at trial permitted the jury to draw these conclusions, but the evidence did not compel them."

Justice Susan Crennan and Susan Kiefel, ruled against Mr Gassy on the basis that Justice Vanstone did not instruct the jury make particular findings.

DON Scott clearly remembers Thursday, September 23, 2004, as the longest day of his life. He spent it outside an Adelaide courtroom, waiting to hear if a jury would convict the man accused of killing his wife, Margaret Tobin, former South Australian mental health chief.

"It was pretty harrowing waiting, and much relief when it was over," Mr Scott said yesterday, recalling the trial that ran for 11 weeks before a jury convicted Jean Eric Gassy of murder.

Nearly four years later, Mr Scott faces another long wait. The High Court yesterday ordered a fresh trial for Mr Gassy after accepting his appeal.

Mr Scott still thinks of the plans the two had made for retirement once Tobin left the South Australian health service. She still wanted to help people, and intended to lecture at universities about mental health.

"She achieved the maximum she could in the lifespan she

had," Mr Scott said. "What happened to my wife was a terrible waste."

Tobin's murder on October 14, 2002, shocked Adelaide, coming on the heels of the Bali bombing and the opening of the Snowtown murder trial. She was gunned down while leaving a lift on the eighth floor of Adelaide's City-Centre building.

Hit by four shots, she died without identifying her attacker. A month later, police had a suspect: Mr Gassy, a deregistered psychiatrist from NSW.

Mr Gassy worked under Tobin in the 1990s at St George Hospital in NSW. The first trial was told a series of events led to him being deregistered as a psychiatrist and struck off the NSW medical register. These events allegedly triggered resentment against Tobin and others he blamed for ending his medical career.

The prosecution said Mr Gassy went to great lengths to hunt down his former boss.

The Crown case was that Mr Gassy had travelled from Sydney to Brisbane in April 2002,

six months before the murder.

He had allegedly hired a car and booked into a Brisbane motel under assumed names; witnesses identified him as acting "suspiciously" at the Brisbane Convention Centre, where Tobin was due to address a conference. The prosecution case said evidence suggested Mr Gassy "must have been" carrying a pistol.

Prosecutors alleged he travelled to Adelaide the weekend before Tobin's murder, again booking into a motel under a false name. Traces of firearms residue matching the ammunition used in the shooting were found in the car allegedly hired by Mr Gassy to go to Adelaide.

Mr Gassy always insisted his innocence, claiming it was a case of mistaken identity.

The prosecution had no witness who could place Mr Gassy at the murder scene. However, evidence found in his home included pistols and ammunition of the same type used to kill Tobin.

Two slides from his Glock pistols were found, but they had been polished, making it impos-

ible to tell if either was the murder weapon.

Also found were "persons of interest lists", containing names and details of doctors and psychiatrists Mr Gassy had dealt with, although Tobin's name did not appear.

Mr Gassy defended himself, having taught himself law through correspondence while in custody in Adelaide's Yatala Prison.

He did a remarkable job in his first case, arguing difficult points of law before the court.

Mr Gassy, a pistol shooter, argued the spread of shots on Tobin's body suggested a less experienced marksman.

The jury remained deadlocked for 1½ days before judge Ann Vanstone gave further directions.

She summarised the main points of the case, focusing largely on the prosecution case while referring only once to Mr Gassy's defence.

The jury returned half an hour later with a guilty verdict.

Olympian snared in Games 'soap opera'

Nicole Jeffery

THE selection of the Olympic kayaking team has been thrown into turmoil for a fourth consecutive Games, leaving one of Australia's greatest Olympians, 1992 gold medalist Clint Robinson, in danger of missing a Beijing swansong.

Fellow kayaker Luke Michael won his appeal against his exclusion from the K4 team, before the Court of Arbitration for Sport (CAS) on Tuesday night.

Arbitrator Roger Gyles ruled the Australian Canoeing selectors were biased and dismissed the selection panel, insisting that a new panel be convened to select the team.

The kayaking team was to be officially announced on Monday, before departing for World Cup competition in Europe next week, but these events will significantly delay the process.

Four-time Olympian Robinson, 35, was named in the K4 team by the previous selection panel under an "extenuating circumstances" clause, despite missing the last selection trial with illness.

Michael argued successfully that he was not afforded the same benefit, after his trials performance was affected by a hand injury.

Mr Gyles, who will also serve on the three-man panel that will hear swimmer Nick D'Arcy's appeal against his ejection from the Olympic team later this month, instructed Canoeing Australia to go back to the drawing board.

He also said that any athlete who was excluded from the team by the new selection panel had the same rights of appeal that



Robinson

Michael

Michael had used. Michael's lawyer confirmed that, if he was excluded by the new panel, he would appeal again to the CAS.

The sport now faces another protracted selection wrangle, which may not be resolved until the month before the Games begin on August 8.

History suggests the longer the selection dispute rages, the less chance the athletes involved in it have of winning a medal at the Games.

A dismayed Robinson said the selection process had become a "soap opera" and the ongoing uncertainty was hurting everyone involved.

"It's not helping the sport as a whole, it's not doing our results any good," Robinson said.

"The only ones who are benefiting are the lawyers. This has been going for over six weeks now and we still don't know who's in the team."

Australian Olympic Committee sports director Fiona De Jong said Australian Canoeing seemed prone to selection disputes because it was "both an individual and a team sport".

If the team selection is not resolved in the next week, Michael will join Robinson and the other men contending for places in the K4 on the European tour, a potentially explosive situation that will stretch the management skills of the team officials.

Txt msg lingo defended

Lauren Wilson

DA lingo ppl use 2 txt n msg is not n fact bad 4 da lngwij skilz of 2dayz teens. Quite the opposite, say two Canadian linguists who argue the language teenagers use to instant message (IM) one another represents "an expansive new linguistic renaissance."

The findings, to be published in the Spring 2008 issue of *American Speech*, suggest that, far from being detrimental to a teenager's language skills, these new forms of speech allow today's youth to showcase what they can do with language.

Sali Tagliamonte and Derek Denis from the University of Toronto have analysed more than a million words used in IM communications.

The linguists argue that technological advancements including instant messaging and text messaging allow teenagers to use

a "robust mix" of colloquial and formal language.

Australian children's language expert and author of *Kidspeak* June Factor urged the less text-savvy to stop looking at the lingo of messaging in a simple and pejorative manner.

"It is always counter-productive to pour scorn, abuse and contempt on a language particular to a subgroup," Dr Factor said.

Rather, she said, it would be beneficial for teachers to examine IM communications in the classroom and compare and contrast it to other language forms.

"The dilemma arises when kids see it as a whole language system and are using it to replace the more complex and nuanced forms to writing," she said.

When used in context, the increasingly fashionable lingo was a legitimate form of abbreviated language. FYI.

Sloths get a move on in wild

Lewis Smith

SLOTHS may make slow-motion replays look positively nippy but their reputation has been wildly exaggerated, scientists have found.

The South American mammal, with its sleepy-eyed face and apparently laid-back approach to life, spends far less time asleep and inactive than has been presumed.

Although it has become a byword for laziness, researchers now argue that the sloth has been unfairly maligned.

Miniaturised electroencephalogram tags fitted to wild sloths showed that instead of sleeping for almost 16 in every 24 hours they actually dozed off for just over 9½ hours. They still moved around the forest canopy extremely slowly but they were active for at least six hours more than expected.

The tags allowed scientists to monitor the sleep patterns of sloths in their natural environment for the first time.

Sleeping time had previously been measured using captive sloths which, the researchers now realise, gave an inaccurate picture of their wakefulness in the wild.

"Our results suggest that sleep in the wild may be markedly different from that in captivity," the international research team reported in the journal *Biology Letters*.

Niels Rattenborg, of the Max Planck Institute for Ornithology in Germany, said the discovery was expected to lead to fresh insights into the importance of sleep for a variety of animals, including people.

"We are fascinated that some species sleep far longer than others," Dr Rattenborg said. "If we can determine the reasons for variations in sleep patterns, we will gain insight into the function of sleep in mammals, including humans."

The Times

The grown-up Goot loosens up

Georgina Safe
Fashion editor

JOSH Goot has grown up. Goot is known as Australia's king of cling for his unforgiving and ultra-short designs best reserved for the very young and very slim.

But the Sydney designer yesterday revealed a new, more mature approach to the market when he presented a softer, looser and ultimately more wearable collection to 100 fashion media and buyers in the inner-Sydney suburb of Alexandria.

Inspired by the changing colours of the sky, the spring-summer range of fluid silk dresses and separates featured five prints representing sunrise, overcast, storm, blue sky and sunset.

The garments' construction referenced changing weather patterns, through clever twisting and draping aimed at evoking cloud formations and a sense of weightlessness.

"It's a less fitted, easier silhouette," Goot said. "You'd like to think it's more wearable."

Boxy cropped jackets and tapered trousers rounded out the pretty collection of silk viscose dresses.

"It's a feeling of being light, of flying or perhaps having wings,"



Sky colours: Models show Goot's spring-summer range Picture Lindsay Moller

Goot said. "To me, the sky is one of the most beautiful things you can look at, we wanted to capture that in the clothes."

The looseness is a significant shift for Goot, who began making body-hugging designs in 2005. His signature colour-blocked tank tops and leggings were there with loose sleeveless jackets and circle skirts.

A floor-length lilac silk trench dress

unfortunately resembled a dressing gown, but in black or white would be a chic option for evening.

The trench dress was one of a number of longer options Goot presented, including gowns with hemlines hovering above the ankle.

Despite his radical change in aesthetic, the 28-year-old said the core mindset of his customer remained the same.

Crib investigated after baby dies

Pdraic Murphy

FEDERAL health authorities are urgently investigating a widely used emergency humidicrib after the evacuation of a premature baby in far north Queensland was abandoned because a ventilator failed and the infant later died.

The baby was born in Mossman on April 22 and was being taken to a waiting helicopter to be transferred to the Cairns Base Hospital when a problem emerged with the ventilator attached to the emergency transfer humidicrib. The baby, which was 17 weeks premature, was rushed back to the Mossman Hospital, but could not be revived.

Distressed Queensland Health staff have contacted *The Australian* saying that there have long been problems with both the German-made ventilator and the Toowoomba-made Mansell Neo-cot it was attached to.

The Australian understands both pieces of equipment have been the subject of fault reports, including concerns over faulty switches and fuses. Queensland Health estimates there are about 40 of the units operating in Australia. They are used in the transport of seriously ill newborn babies.

The Queensland Coroner will not investigate the death. "Advice from Queensland Health medical officers, including a neonatal specialist, indicated that the baby was suffering from several severe complications of premature birth, each of which was incompatible with life," said a spokesman for Queensland's northern Coroner, Kevin Priestly.

A spokesman for the Therapeutic Goods Administration, a regulatory body operating under the auspices of the federal Government, said the administration had launched an urgent investigation into the incident.

"This includes contacting the dis-

tributor of the affected device to gather all relevant information," he said. "The TGA will take necessary regulatory action according to the results of this investigation."

A Queensland Health spokesman confirmed the death, and said an alert had been issued to other Queensland hospitals in Townsville, Brisbane and Toowoomba warning of the potential problems.

"The situation was a highly unusual case which exposed a potential issue when operating this piece of equipment," said a spokesman for Queensland Health.

The spokesman said the manufacture of both the neonatal crib and the ventilator had been notified, while health workers have also been issued with new operating instructions.

The manufacturer of the humidicrib, which was developed with a \$28,000 state government grant, did not return phone calls yesterday.

ADVERTISEMENT

PALESTINIANS HURT TOO.

- For 60 years, the Palestinians have had to struggle for their right to exist in their own land.
- For 60 years, the Palestinians have suffered the violent uprooting of their society, dispossession, displacement, exile, occupation, discrimination, degradation and deprivation.
- For 60 years, Palestinian pleas to return home, and for justice and compassion have been ignored.
- For 60 years, international law, human rights conventions and United Nations resolutions have been transgressed to deny the Palestinians their rights.
- For 60 years, Palestinian refugees have yearned to return home.
- For 60 years, the Palestinians have waited to hear the word 'SORRY'.
- For 60 years the world has been silent.

PALESTINE

60 YEARS OF DISPOSSESSION

AUSTRALIA HAS YET TO SHOW IT CARES.

- Our Government apologised for the suffering caused to indigenous people of our land.
- Our Government acknowledged the suffering caused by others to the Jewish people in the Holocaust.
- Our Government has yet to acknowledge the suffering of the Palestinians. Their suffering is no less tragic, no less worthy of being championed, and what is more, their suffering is increasing daily.
- Our Government and the Opposition have yet to respond to our request for a bipartisan motion acknowledging that suffering, thus balancing the motion they moved celebrating Israel's independence - the cause of 60 years of Palestinian suffering.

That would be a fair go for Palestine.

WRITE TO THE PRIME MINISTER AND SAY THAT YOU CARE.

Palestine Support Groups

www.1948.com.au