



HIGH COURT OF AUSTRALIA

Public Information Officer

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JAMIL YOUSEF KAMLEH v THE QUEEN

The High Court of Australia today dismissed an appeal by Mr Kamleh who claimed evidence was wrongly admitted in his trial for a double murder.

Mr Kamleh, 28, was convicted of murdering 16-year-old prostitute Rhiannon Ellul and her pimp Faraz Rhasti, 22, who were shot dead in their apartment in North Adelaide in April 2000. The South Australian Supreme Court sentenced him to life imprisonment with a non-parole period of 27 years. Co-offender Natale Attilio Zappia, 27, was tried separately and convicted of two counts of manslaughter. Neither man gave evidence at Mr Kamleh's trial, but out-of-court statements by Mr Zappia were admitted as evidence. Both the Supreme Court and the Court of Criminal Appeal held that these were relevant and admissible, not for hearsay purposes but for other purposes.

Mr Kamleh appealed to the High Court on grounds that two conversations between Mr Zappia and Sebastian Kamil Simoniuk and statements Mr Zappia made to police were inadmissible. Mr Simoniuk said Mr Zappia told him about the shootings and mentioned he had turned up the television volume. When cleaners found the bodies the television set was on at full volume. Information about the loud volume was not public so was likely to be known only by someone who had been present at the shootings. The High Court held that such evidence did not contravene the hearsay rule, as the evidence was not tendered to prove the truth of what Mr Zappia said, that the television set had been turned up. Instead the statement disclosed a state of knowledge on Mr Zappia's part which tended to prove he was at the apartment at the time of the killings. Because of other evidence showing that Mr Kamleh and Mr Zappia were together, that was a relevant fact.

Mr Zappia's police record of interview was tendered, not to establish the truth of what he said, but to show that Mr Zappia and Mr Kamleh had concocted a false alibi that they were at a nightclub at the time of the shootings. In fact, they did not arrive at the nightclub until several hours later. The Court held that this evidence was not led for a hearsay purpose but to prove that, acting in concert with Mr Kamleh, Mr Zappia made knowingly false statements out of a consciousness of guilt.

Ten days before the killings, in a car outside a McDonald's restaurant while Mr Kamleh was inside, Mr Zappia allegedly told Mr Simoniuk that he and Mr Kamleh planned to catch up with Mr Rasti. The Court of Criminal Appeal held that this was admissible as evidence of Mr Zappia's intention, which was significant because he and Mr Kamleh were together when the murders occurred.

In the High Court, three Justices held that even if there were error by the Supreme Court and Court of Criminal Appeal in relation to that part of the suspect evidence, other evidence against Mr Kamleh was so overwhelming that no substantial miscarriage of justice occurred and the McDonald's conversation was of minor significance. The mass of evidence included a confession to prison informer Michael Francis Loader, ample material suggesting Mr Kamleh and Mr Zappia were together at all relevant times on the night of the murders, and strong circumstantial evidence including identification evidence, fingerprint and DNA evidence, conduct indicating a consciousness of guilt, Mr Zappia's mention of the loud television, and the disappearance of a mobile phone that Mr Kamleh had lent to Mr Rasti. The Court unanimously dismissed the appeal.

- *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.*