



HIGH COURT OF AUSTRALIA

Public Information Officer

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STATE OF NEW SOUTH WALES v GEMMA FAHY

The State of New South Wales was not liable in damages for negligence when a police officer was left unassisted with a seriously injured man and later developed post-traumatic stress disorder, the High Court of Australia held today.

Gemma Fahy was 25 and had been a police constable for three-and-a-half years when she and her colleague, Senior Constable Steve Evans, were called to a hold-up at the Edensor Park Shopping Centre in western Sydney on 25 August 1999. The video store proprietor had been stabbed and had walked to a nearby medical centre. Ms Fahy went into the treatment room but Mr Evans did not. The victim was drenched in blood and a doctor was dealing with a stab wound to the chest. She asked what she could do to help and he asked her to check the victim's left side as he was complaining of pain. The victim had a deep laceration from his armpit to his waist and was bleeding profusely. Ms Fahy tried to stop the bleeding by applying medical pads and holding the wound together. At the same time she used her radio to call for an ambulance and to relay descriptions of the two assailants. The victim, who survived the attack, gave her messages for his wife and children and she kept him talking. Ms Fahy then assisted the ambulance officers. The senior officer on the scene, Inspector Alan Whitton, looked in but left immediately and later told her to put hat on as the media were there. She then went to inform the victim's wife, who collapsed, then returned to help secure the scene from contamination until Inspector Whitton ordered her home because he was not going to pay her overtime.

In 2001, Ms Fahy succeeded in an action in the NSW District Court, and was awarded damages for negligence of \$469,893. She claimed she had developed post-traumatic stress disorder due to being unreasonably left in a traumatic situation without the support of a fellow police officer, and her injury was in consequence of a breach of duty by her employer to take reasonable care for her safety. Ms Fahy had attended an unusually high number of fatalities but said she always coped because a partner was with her and they could share the tasks. An appeal by the State to the NSW Court of Appeal failed on liability but succeeded on the question of damages. The Court of Appeal remitted the case back to the District Court to reassess damages in light of Ms Fahy's failure to take prescribed anti-depressants, but the State appealed to the High Court in relation to liability.

The Court, by a 4-3 majority, allowed the appeal. The majority held that Ms Fahy had failed to establish that the State breached its duty of care and that it was not sufficient merely to allege that the State should have instructed police officers working in pairs that they should whenever possible remain together and that they should provide psychological support to each other during traumatic incidents. Many circumstances would require them to separate and the support they could give one another varies with the individuals concerned and the situation. An obligation to stay together would create tension between an officer's duties at a crime scene – which are mandated in the *Police Service Act* – and the need to protect a fellow officer. The majority held that the system of work was not deficient.

- *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.*