

## Case Study

C



*R v Watson; ex parte A-G (Qld) [2009] QCA 279*

**Facts:** In October 2003, 26-year-old Tina, and her new husband Gabe Watson, both from the American state of Alabama, were on the 12th day of their honeymoon in Australia. Both were diving on the Great Barrier Reef when she died. Gabe Watson was an experienced diver and a certified rescue diver. According to Gabe, his wife, a novice diver, experienced difficulty with her breathing apparatus on the day she died. He testified that his wife got caught in a current and panicked. He said he went to help but she tried to rip his mask off, and that he was unable to bring her to the surface. She sank to the bottom of the ocean. Video footage and photographs taken by other divers on the trip show her holding out her arms for him to help her. Gabe Watson argued that instead of going to her aid he thought it better to return to the surface to seek assistance from others. Another diver went to the ocean floor and brought up her body but she could not be resuscitated.

**Procedure:** After an inquest in 2007, the Queensland Coroner determined there was enough evidence to charge Watson with murder. This was because there were inconsistencies in his story – a total of 16 – and because of eyewitness evidence that he held his wife in a bear hug for a short period before she sank in an uncontrolled manner. Thus it was possible that Gabe Watson cut off Tina’s air supply from her oxygen cylinder during that time, bear-hugged her until she suffocated, then turned back on the oxygen before he let go of her. This allowed him to surface whilst she sank to the bottom of ocean. He argued he panicked rather than intentionally killing his new wife. Before the honeymoon, Gabe Watson had asked Tina to increase her life insurance payout to the maximum and name him as the sole beneficiary for her work insurance policy. This was seen as a possible motive for killing his wife, and he did contact the insurance company shortly after her death to have the insurance money paid to him. He then re-married. The Coroner committed Gabe Watson to stand trial for his wife’s murder. Watson was in the United States at the time but voluntarily returned to Australia in 2009 for his murder trial.

**Decision:** At his trial, Watson surprised many in the courtroom by pleading not guilty to murder but guilty to the manslaughter of his wife. The court accepted his guilty plea on the basis of criminal negligence. Section 290 QCC arose because the respondent, an experienced diver, had undertaken to act as the ‘dive buddy’ of his wife, who was inexperienced and he had failed to perform his duty towards her, thereby contributing to her death. The judge said:

“The Crown alleges against you that you failed to carry out your duty to her in a number of significant ways. I accept that you failed to do so in the following respects: you failed to ensure that when the deceased had encountered difficulties she had a supply of oxygen available to her, and, in particular you failed to share your oxygen supply with her; having released the deceased to recover your face mask and oxygen supply, you did not then take hold of her again or stay with her, or follow her as she sank; you did not attempt at any time to inflate her buoyancy control device or remove the weights which divers often carry to assist them to descend. ... you failed to make any reasonable attempt to take the deceased to the surface. I therefore accept that you are guilty of the very serious departure from the standard of care which was incumbent upon you with the result that your conduct is deserving of criminal punishment.”

Gabe Watson was initially sentenced to four-and-a-half years’ jail in June 2009, to be suspended (allowing his release from prison) after 12 months.

Tina’s family and many in the community were concerned that Watson would serve only a year in prison. The leniency of the sentence for the unlawful killing of his wife was appealed by the Attorney-General of Queensland and was increased to 18 months. The issues involved in sentencing are found in Chapter 10.5 Sentencing options.

1. What is the duty of care that Watson breached? [K]
2. How did Watson breach this duty? [I]
3. In your opinion should Watson have had a jury trial for murder as recommended by the Coroner? Take into account legal and social issues in considering this question. [I] [E]



**Ch 9.3**  
Rights of citizens and powers of police



**Ch 10.5**  
Sentencing options

1. Decide if the following acts would be considered to be murder or manslaughter. [I]

- a. John holds up a bank. As the teller is putting all the money in a bag, John fires a warning shot which kills a customer.
- b. A man leaves drain cleaner in his fridge. His eight year old son is thirsty. He goes to the fridge and drinks some of the liquid. He dies as a result.
- c. Diane is doing a science experiment to test eye reaction times. She holds a pen close to Mary's eye and then moves it forward to see how long it takes for her to blink. Diane trips and stabs Mary in the eye who later dies from a brain haemorrhage.
- d. Richard wants to inherit his father's estate immediately, so he puts a large dose of arsenic poison in his father's black coffee. The father dies shortly after drinking the coffee.
- e. Clare wants to sneak out of the boarding house one night. To ensure the boarding house mistress sleeps soundly, Clare puts six sleeping tablets in her nightly cup of cocoa. Clare is most upset to learn the next morning that the mistress died of an overdose.
- f. A man's six pit bull dogs break out of his fenced back yard and attack the neighbour's ten year old son. The boy dies from the injuries.
- g. A bouncer at a nightclub has difficulty evicting a drunken patron. In the process he pushes the patron to the ground. When the patron retaliates by calling him 'brainless', 'a no-hoper' and a 'thug' the bouncer kicks the patron in the face repeatedly. The patron has major facial injuries and dies two weeks later from a massive brain haemorrhage.

2. You are on the jury and are presented with the following facts:

Bill, who knows he has the AIDS virus, stabs another man with a hypodermic syringe, which Bill had just used to inject himself. The victim is not seriously injured by the stabbing. Six months later, the victim must undergo surgery for a liver condition unconnected with the attack. The victim dies on the operating table as a result of the surgery.

- a. Is Bill guilty of murder or manslaughter? Why or why not? [I]
- b. Would your answer be any different if the victim did not have any surgery but died of AIDS exactly one year after the attack? Why or why not? [I]



► RESEARCH

There are many newspaper reports where murder and manslaughter cases are described. Find one of these and answer the following. [K]

- a. Who has been charged with committing the homicide?
- b. What is the accused alleged to have done?
- c. What facts were significant in charging the accused with this offence?
- d. In which court will the matter be heard? If this is not in your newspaper report, determine this from the earlier chapters.
- e. Who will determine the guilt of the accused – a judge or a jury?



## VOIR DIRE

Since the trial judge decides all questions of law, **the jury will be asked to leave the courtroom if legal matters need to be argued.** This commonly happens in criminal trials and can occur a number of times during the course of a trial. An example is the question of admissibility of certain evidence such as confessions made by the accused. The jury is excluded because it is possible that, if it hears this evidence, it may affect its decision and this would be wrong if the judge rules that the evidence is not admissible. In the absence of the jury, the Crown prosecutor and defence counsel make submissions to the judge on whether the evidence should be admissible.

The judge then makes a ruling. This trial within a trial is called a *voir dire*.

## H

### Hypothetical

You are a judge. An attempt is made to introduce an audio recording into evidence.

The recording of a telephone call that was made illegally by 'tapping' the accused's phone.

1. Would you allow the jury to know of the existence of this tape? Why or why not? [I]
2. Would you admit the recording into evidence? [I]
3. What factors would be important in coming to your decision? [I]

## ?

### ▶ WHAT DO YOU THINK?

1. Should the antecedents of an accused be read earlier in a trial before the jury gives a verdict?
2. If the antecedents of Robert Long ( who, in 2002, was convicted by a jury of murder and arson in the Childers Hostel fire case) had been read out in court, the jury would have known of his previous history of lighting fires. Would that have been prejudicial or useful information that a jury should have?

Having looked at the different parts of the process of going to trial, we will now go step by step through the trial process for one of Queensland's well known figures and convicted criminal – Gordon Nuttall.

**THE PERSON:** From 1996 –2006 Gordon Nuttall was a member of the Queensland Parliament (the Legislative Assembly). In 2001 he became a Minister of Industrial Relations and later Health Minister in the Queensland Government.



Ch 9.3

**WHAT HAPPENED:** The state's Crime and Misconduct Commission began an investigation into a series of suspicious monthly payments of \$8333 that Nuttall received over a three year period (2002 - 2005) from a Queensland mining magnate. In total these amounted to \$300,000. There was also an investigation into a 'secret commission' of \$60,000 which Nuttall had received, and not declared, from another businessman in the mining sector.

Ch 9.5  
Ch 7.3

**THE CHARGES: January 2007.** Gordon Nuttall is charged with 34 counts of receiving a secret commission as an agent (in the case of the monthly payments) and one further count for the one-off payment of \$60,000.

Ch 9.4

**BAIL: January 2007.** Bail is granted until the trial.

Ch 9.7

**THE COMMITTAL: In December 2008.** Gordon Nuttall appears in the Brisbane Magistrates Court. Witnesses give evidence. He pleads not guilty and reserves his defence.

The Magistrate committed Nuttall to stand trial for corruption and soliciting a secret commission - s 442B (QCC).



**JURY TRIAL IN THE DISTRICT COURT. June - July 2009.** Gordon Nuttall pleads not guilty to all charges. Chief Judge Patsy Wolfe tells the jury that Nuttall's guilt or innocence hinged on what he believed these two men wanted when they gave him \$360,000 between 2002 and 2005. Nuttall would have had acted corruptly if he received the money, believing the mining executives wanted him to influence government decisions. Evidence is given to show that the Minister had given approvals to the mining magnate's company and had committed government funding for infrastructure projects which directly benefited the company. Premiers Anna Bligh and Peter Beattie give evidence at the corruption trial.

Ch 9.2  
Ch 9.6

**15 July 2009.** The jury is unanimous in its guilty verdict on all 36 counts.

**SENTENCING: 17 July 2009.** Gordon Nuttall is sentenced to seven years' imprisonment with a non-parole period of two and a half years.

Ch 10.5

**APPEAL: February 2010.** Nuttall brings an appeal to the Court of Appeal against both his conviction and sentence. He argues the trial judge erred in allowing some evidence and gave an unfair and misleading summing up to the jury, which led to a substantial miscarriage of justice. His appeal against conviction is unanimously dismissed, and his application for leave to appeal against sentence is unanimously refused.

Ch 9.10

**July 2010,** pursuant to the *Criminal Proceeds Confiscation Act 2002*, Supreme Court Justice Peter Applegarth orders Nuttall to repay \$454,000 deemed to be 'proceeds of crime' to the state of Queensland and the Government's legal costs of \$42,000.

**FURTHER CHARGES: 2010 January.** More charges of official corruption, five of perjury and five of corruptly receiving or soliciting valuable considerations are brought against Nuttall. These are based on evidence from businessman Brendan McKennarney that Nuttall corruptly took almost \$150,000 in kickbacks, when as a Government Minister he arranged government contracts for the businessman between 2001 and 2006. The perjury was for lying to the Crime and Misconduct Commission (CMC). Nuttall agrees to forgo a committal and go straight to trial on these charges.

Ch 9.7

**SECOND TRIAL IN DISTRICT COURT: October 2010.** The trial is conducted by Judge Kerry O'Brien. The jury finds Nuttall guilty of all 10 charges.

Ch 9.6

**SENTENCING:** At his sentencing Nuttall reads a statement apologising to the public for what had happened and asks the judge to consider the pain and humiliation he and his family has suffered. He is sentenced to an additional five years in jail for official corruption and perjury, taking his jail term up to 12 years.

Ch 10.5

**APPEAL: May 2011.** The Queensland Government appeals that the sentence was inadequate. The Attorney-General argues that the 12 year jail sentence should be increased to 14 years with parole eligibility after seven years. Several weeks later the Court of Appeal increases his sentence to 14 years.

Ch 9.9

**APPEARS BEFORE BAR OF PARLIAMENT: May 2011.** Queensland Parliament's Integrity, Ethics and Parliamentary Privileges Committee recommends that Nuttall be fined \$2000 for every payment he received that was not revealed in the Register of Interests. He attends Parliament in order to address these issues. MPs vote to find him guilty of contempt of Parliament. He is fined \$82,000.

Ch 3

Speaker of the House of Parliament declares no appeal is possible.

**POSTSCRIPT:** What of those who made the payments? One of the businessmen who made payments to the Minister was separately charged with the offence of making corrupt payments and was convicted and sentenced to prison for 15 months. One was tragically killed in a plane crash, before standing trial. The third businessman has not been charged.