



## HIGH COURT OF AUSTRALIA

Public Information Officer

10 March 2004

### SHANE LESLIE KELLY v THE QUEEN

The High Court of Australia today unanimously dismissed an appeal from a Tasmanian man who had argued that an alleged confession was inadmissible at his trial for murder.

Mr Kelly was convicted in 2001 along with Michael John Marlow of murdering Tony George Tanner, who had admitted to police his involvement in a robbery and implicated Mr Marlow. A third man was acquitted of the murder. Mr Tanner disappeared in November 1990 after his girlfriend heard him on the telephone arranging to meet "Ned" (Mr Kelly). In November 1999 Mr Kelly allegedly told police that he and Mr Marlow had murdered Mr Tanner and asked about indemnity in return for his cooperation. Mr Tanner's body was found in March 2000 with shotgun wounds in a hole dug in the Tasmanian Central Highlands by a skilled excavator operator, which Mr Kelly was. He was arrested and in a video-taped police interview he retracted his confession, giving various explanations for having made it. Sometime later, while police were taking him to Launceston General Hospital for blood and hair samples to be taken, Mr Kelly allegedly said: "Sorry about the interview – no hard feelings, I was just playing the game."

The Supreme Court trial judge ruled this statement to be admissible as it was not made in the course of official questioning, with the result that section 8 of the Criminal Law (Detention and Interrogation) Act did not apply. The Court of Criminal Appeal, by majority, upheld the trial judge's reasoning. The minority judge disagreed but also dismissed Mr Kelly's appeal on the ground that no substantial miscarriage of justice had occurred.

The primary issue for the High Court was whether the impugned statement was made in the course of official questioning. Under section 8, no confession made by a person suspected by police of having committed an offence was admissible if made in the course of official questioning unless video-taped (subject to some exceptions).

Three members of the Court held that the statement was not made in the course of official questioning so section 8 did not apply, as the course of official questioning ended when police ceased to ask questions. They also held that even if the Court of Criminal Appeal majority had erred no miscarriage of justice had occurred. Two members of the High Court held that the confession was inadmissible as it was made within the course of official questioning but not video-taped, but agreed that other evidence against Mr Kelly was so overwhelming that no miscarriage of justice had occurred.

- *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.*