

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
CRIMINAL DIVISION

SUPREME COURT OF NEW SOUTH WALES  
FILE COPY OF JUDGMENT  
TO REMAIN ON COURT FILE

MATHEWS J

Thursday 27 August 1992

70162/90 - REGINA v IAN STUART JONES

JUDGMENT: (On admissibility of evidence from page 200 of the transcript).

HER HONOUR: During the evidence in chief of a Crown witness, Kerrie Anne Stanton, a question arose as to the admissibility of evidence sought to be adduced from her.

Without going into details of the background of the matter, Ms Stanton had had a long association with the accused before 1989 and at times had lived with him. There is already evidence before the jury that the accused at the relevant time, namely in May 1989, was a heroin addict. Ms Stanton was with him between the evening of 3 May and morning of 5 May at Bathurst. He then left her company, and remained away for approximately twenty four hours returning on the morning of 6 May. The disputed evidence is to the effect that before the departure on 5 May he appeared to be suffering from heroin withdrawal and when he returned the next day, he appeared to be much better, the inference being that he had obtained heroin in the meantime. It is apparently within that twenty four hour period that the

killing of the deceased took place.

There is also evidence before the jury that the deceased, who lived in Sydney, regularly kept heroin at his unit although none was found by police after his death.

The primary objection to the evidence related to its relevance. It is also urged that its prejudicial effect outweighs its value.

The relevance of the evidence is, in my view, slight. It is considerably enhanced by the terms of the record of interview held with the accused on 30 April 1990. In question 218 the accused was asked, "Has Kerrie ever seen you in withdrawal from heroin?" and he answered that she had. In question 207 it was put to him:

"Q. I have been informed that in this period in which you were to have gone missing immediately prior to going missing you were displaying symptoms of heroin withdrawal, what do you say about that?

A. I could have been".

He then went on to say that he had a source of supply of heroin in and Orange. The latter comment, as to his source of supply, considerably reduced the value of the proposed evidence. However, the fact that it was put to the accused (on the basis presumably of Ms Stanton's statement to the police) and adopted by him as a possibility, that he was in withdrawal prior to his departure on 5 May, makes it in my view a relevant and admissible matter to be proved by the

Crown, if for no other reason than to support that series of questions which forms part of the totality of the record of interview.

Accordingly, I would find that the evidence is relevant. As to its prejudicial effect, it seems to me that this is commensurate with its value, there already being evidence before the jury that the accused was a heroin addict at the time. Subject to its technical admissibility I would thus allow it.

On the matter of technical admissibility, a voir dire examination was held of Ms Stanton which showed that she has known the accused for very many years, She first observed him taking heroin in 1988. She lived with him for some time in an endeavour to assist him in beating his drug habit, Accordingly, she is able to give evidence from her own observation that when withdrawing from heroin he normally exhibits particular symptoms and evidence as to the effect of the taking of heroin upon these symptoms. In my view this back ground evidence from Ms Stanton together with her observation as to how he appeared before he left on 5 May and after he returned the next day is admissible in form.

Accordingly, both in form and in terms of relevance, I consider that the evidence is admissible and should be permitted to be put to the jury.

I certify that this and the 2 preceding pages are a true copy of the reasons for judgment herein of The Hon. Justice Mathews

*Pauline Thomas*

Associate

16 October 1992