
TRANSCRIPT OF PROCEEDINGS

SUPREME COURT OF VICTORIA

CRIMINAL JURISDICTION

MELBOURNE

FRIDAY 17 SEPTEMBER 2004

BEFORE THE HONOURABLE JUSTICE TEAGUE

THE QUEEN v. CARL ANTHONY WILLIAMS

Mr Andrews

Mr Thomas

M E N T I O N

MR G. HORGAN QC appeared on behalf of the Crown.

MR P. FARIS QC appeared on behalf of Accused Williams.

MR S. GRANT appeared on behalf of Accused

Mr Andrews

MISS N.M. GOBBO appeared on behalf of Accused

Mr Thomas

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8 MR FARIS: Your Honour, I appear for Mr Williams, would Your
9 Honour hear me unrobed?

10 HIS HONOUR: Yes, I will.

11 MR FARIS: I had a problem about getting back.

12 HIS HONOUR: Mr Grant, you appear for ^{Mr Andrews} , and Miss
13 Gobbo, you appear for ^{Mr Thomas} ?

14 MISS GOBBO: Yes, Your Honour.

15 HIS HONOUR: Can I indicate that we can see you and there seems
16 to be some conversation which suggested that we can also
17 hear you pretty well, do you have any difficulty seeing a
18 picture of the court room?

19 PRISONER: No, we're right - we're right, thank you.

20 HIS HONOUR: If there is any difficulty interrupt, otherwise we
21 will assume that you will simply watch from afar. Yes,
22 where do I start?

23 MR FARIS: Your Honour, I can probably bring Your Honour up to
24 date - - -

25 HIS HONOUR: I understand that you have a potential
26 embarrassment and that that really may take some days to
27 sort out?

28 MR FARIS: Yes Your Honour. My instructor has to withdraw
29 through no fault of his own.

30 HIS HONOUR: Yes.

31 MR FARIS: We saw the client at [REDACTED] yesterday, gave him
32 advice, we expect that over the weekend he will advise us
33 of the new solicitors and on the assumption that they
34 then brief me, we hope that it can be seamless - if it

1 goes well, so that's one issue. The second issue is we
2 wish - as Your Honour knows, to make application for a
3 permanent stay until committals are granted.

4 HIS HONOUR: Yes.

5 MR FARIS: I think the Crown will probably say that it's up to
6 them that they are content with a Basha inquiry, so that
7 will probably be the issue.

8 HIS HONOUR: Yes, I've read a number of authorities but I won't
9 go into that now, but I've at least made myself familiar
10 with some of the material, yes.

11 MR FARIS: We received - in inverted commas, a brief in each of
12 the matters. The brief in my view, falls - because it's
13 not a hand-up brief because there's no committal. The
14 brief in my view, falls considerably short of what we
15 would have got - - -

16 HIS HONOUR: I notice it also had documents yet to be supplied
17 as part of it?

18 MR FARIS: Yes.

19 HIS HONOUR: It's obvious that something more needs to be done
20 and my associate has received an email indicating that
21 that would be the matter of further pressure if I put it
22 that way and that's obviously a matter that needs to be
23 addressed?

24 MR FARIS: Yes, I don't want to make this application until
25 I've got all the relevant documents.

26 HIS HONOUR: Yes, I understand that.

27 MR FARIS: What I propose to do providing I'm in it next week,
28 is subject to any solicitors on Monday or Tuesday,
29 preferably Monday, simply issuing a subpoena, to the
30 Victorian Police returnable Thursday - that's at
31 my learned friend's Mr Horgan's suggestion on Thursday.

1 HIS HONOUR: Yes.

2 MR FARIS: We can resolve the issue of documents. I would
3 imagine sight unseen, that I'd be in a position to make
4 the application within say a week of having received the
5 documents.

6 HIS HONOUR: Yes.

7 MR FARIS: What I intend to do is to make a detailed written
8 submission which will shorten the process in the court.

9 HIS HONOUR: Yes, I must say I've appreciated receiving some
10 dot-points and reference to authorities from Mr Grant, so
11 that's taken the matter further down the track and if you
12 can do likewise that will also help.

13 MR FARIS: That's what I'll be doing but as I said my current
14 advice to my client is we shouldn't proceed until we've
15 got the documents.

16 HIS HONOUR: Yes.

17 MR FARIS: I don't know whether there's going to be - - -

18 HIS HONOUR: Have you communicated those matters that you think
19 the prosecution ought to be providing, because in effect
20 the best way of keeping the pressure on is to send a
21 memorandum to the prosecution saying these are the
22 matters that you want and sending a copy of that
23 memorandum to me, that way I can be kept informed of that
24 which you are pressing for and I can also be copied in
25 through my associate on what the prosecution says so I'll
26 know whether it's being narrowed down, the scope of any
27 differences.

28 MR FARIS: Your Honour, yes, I started on Monday on the Moran-
29 Barbaro matter and I wrote a detailed letter to the
30 prosecution and we've been backwards and forwards dealing
31 with that.

1 HIS HONOUR: Yes.

2 MR FARIS: I've indicated Fleming, which I will do over the
3 weekend, send them a fax in the Marshall matter, but it
4 will be fairly similar and I can certainly send Your
5 Honour copies of that, there are no problems with that.
6 My view is at this stage, I don't think it can be
7 resolved - I'm not satisfied the police are going to
8 provide what we want.

9 HIS HONOUR: Yes, all right, but at least if it can be narrowed
10 down - - -

11 MR FARIS: Yes, absolutely.

12 HIS HONOUR: I can see from the exchange if it's done on an
13 open basis, what the position is.

14 MR FARIS: I have no problem about that.

15 HIS HONOUR: Yes.

16 MR FARIS: I will do that and I will get Your Honour's
17 associate's email and simply forward those documents to
18 Your Honour. So my proposal at the moment, assuming I'm
19 in it, would be we issue a subpoena on Monday. Now, Mr
20 Horgan has suggested we make that returnable on Thursday.
21 I am happy to do that but I just do raise the caution
22 that this is Purana and my experience with subpoenas in
23 Purana is that they come along and say they are not
24 ready. Now, I'm not criticising them for that but that
25 may be the result.

26 HIS HONOUR: Yes. Thank you, Mr Faris. Do you want to add
27 anything more, Mr Grant?

28 MR GRANT: No, other than by Thursday I've had more detailed
29 written submissions emailed to Your Honour's associate.

30 HIS HONOUR: Yes, thank you, Mr Grant. Yes, anything - - -

31 MISS GOBBO: Your Honour, nothing really to add, only that a

1 letter went to the Crown I think yesterday from my
2 instructors and we got a response this morning and
3 further material was served on my instructor yesterday by
4 Purana and there's obviously some submissions that need
5 to come to Your Honour.

6 HIS HONOUR: Yes. Yes, thank you, Miss Gobbo. Yes, Mr Horgan.

7 MR HORGAN: Your Honour, first of all the Crown has never taken
8 and my learned friends I think know that it doesn't take
9 the position that my learned friends aren't entitled to a
10 Basha inquiry. So that's not the argument. It's the
11 Crown's position that these trials should proceed as
12 quickly as possible for a variety of reasons and that's
13 why the course has been taken that's been taken.

14 HIS HONOUR: Yes, and what about the position outlined in
15 relation to further material - - -

16 MR HORGAN: Yes, my learned friend has sought further material.
17 We have responded to that. I have taken instructions, we
18 have responded. My learned friend says that's not good
19 enough in relation to some things. I've responded
20 further to that. We will provide whatever material we
21 can. Some material that is sought for example is subject
22 to the Australian Crime Commission legislation. Now, we
23 can't do anything at this stage about that but we have
24 sought to have the material released for publication.

25 HIS HONOUR: Yes.

26 MR HORGAN: So we are taking all the steps that we can as
27 quickly as possible. I suggested to my learned friend,
28 Mr Faris, that if he issues a subpoena it's a good idea
29 if he does so as soon as possible. Monday would be a
30 good day. If it's made returnable on Thursday we'll be
31 in a position to know where we stand. Can I respectfully

1 suggest then in the circumstances, Your Honour, to keep
2 the pace up that this matter be listed for mention again
3 next Thursday.

4 HIS HONOUR: I say tentatively yes. I am just not sure of what
5 the position will be with respect to other commitments
6 but to the extent that I can help to keep the pressure on
7 everybody all around I'll endeavour to do so, but it
8 won't necessarily be the case that I am going to be
9 available as often as maybe desirable but I will do my
10 best. But let's just at this stage, until I check with
11 my associate - but if we put it on Thursday that, on
12 present indications, is a sensible date to put it there.

13 MR HORGAN: Alright, thank you, Your Honour.

14 Your Honour, there is an unrelated thing. Remember
15 on Tuesday the 14th we were in this court in relation to
16 an unrelated matter.

17 HIS HONOUR: Yes, I drafted out somewhere, in contemplation
18 that the matter might be raised, that I would be prepared
19 to make, subject to there not being anyone who would be
20 opposing it, that I'd make a further order there would be
21 no publication of the name of or any matter identifying
22 directly or indirectly any member of the police force
23 engaged in Witness Protection Act activities in relation
24 to any witness in this proceeding.

25 MR HORGAN: We are grateful for that, Your Honour, and that's
26 what I was going to mention to Your Honour, precisely
27 that, but in a sense the horse has bolted, at least as
28 far as one of the accused parties is concerned.

29 HIS HONOUR: I read that, Mr Horgan, yes.

30 MR HORGAN: And with great concern, I must say, from the
31 parties concerned - - -

1 HIS HONOUR: Yes, well it was just one of things and minds
2 hadn't been turned to it.

3 MR HORGAN: - - - because it creates real difficulties.

4 HIS HONOUR: I would have turned my mind to it if I had really
5 thought that that was - - -

6 MR HORGAN: Well I didn't turn my mind to it either, Your
7 Honour. I just made an assumption. Anyhow, I have drawn
8 it to Your Honour's attention and we are grateful for
9 that further direction.

10 HIS HONOUR: Yes.

11 MR FARIS: Your Honour, is that an application in this matter,
12 because if it is - - -

13 HIS HONOUR: No it's not. Sorry, I shouldn't have taken up
14 your time.

15 MR FARIS: No, it's not my time, it's just that if it's
16 application in this matter I simply say I don't know
17 what's going on.

18 HIS HONOUR: Exactly. No it's not in this matter.

19 MR FARIS; Thank you. That's alright, I have no problem about
20 dealing with other matters.

21 HIS HONOUR: Sorry, Mr Faris.

22 MR FARIS: That's alright.

23 HIS HONOUR: It was just that I'm sitting on the Bench here and
24 I've been in the prison for the last three days, so he's
25 taking an available opportunity.

26 MR FARIS: In prison?

27 HIS HONOUR: Yes, well I won't elaborate. I've been on Parole
28 Board duties, Mr Faris. That's why Mr Horgan is taking
29 an opportunity when he sees me sitting here to raise it
30 in relation to another matter.

31 MR FARIS: I thought Your Honour might have had early release.

1 MR HORGAN: Your Honour, can I just ask that in relation to
2 copies of submissions that Your Honour gets that we
3 haven't received anything from my learned friend,
4 Mr Grant?

5 HIS HONOUR: Yes.

6 MR HORGAN: We'd be grateful if not only is the court
7 addressed, but we are also addressed and we will respond
8 in due course.

9 HIS HONOUR: Yes, well, that can be rectified, can it not,
10 Mr Grant?

11 MR GRANT: Yes, absolutely.

12 MR FARIS: Your Honour, Your Honour's mentioned keeping the
13 pressure on and my learned friend is talking about great
14 haste. We don't - - -

15 HIS HONOUR: It doesn't have to be treated as being
16 something - - -

17 MR FARIS: What is there about this case that required that
18 it's got to be heard yesterday?

19 MR HORGAN: There's not - it's not, and it's a situation where
20 it's much more appropriate that it be done well, than it
21 be done quickly.

22 MR FARIS: Yes, and that's what we are concerned about. The
23 second this is I need a definite date for the subpoena -
24 obviously, a return date for the subpoena. So
25 Thursday - - -

26 HIS HONOUR: Yes, well, that's fine. I've checked with -
27 because I have been out of the jurisdiction - well, not
28 quite out of the jurisdiction, but I haven't been
29 accessible. I found out that Thursday does appear to be
30 suitable for us.

31 MR FARIS: Very well. I'll do - - -

1 HIS HONOUR: But if it's sensible that it be put off to a
2 further time then so be it. Can I indicate, too, for the
3 benefit of your client and others down at [REDACTED] that if
4 it's sensible to have the arrangements made by video link
5 as they are now being made that course is appropriate if
6 it - I've also checked on the video link facilities in
7 other places including at the County Court, but it seems
8 to me that if it can be left at [REDACTED], unless they
9 really do want to be here, or need to be here, then that
10 seems to be a more sensible arrangement.

11 MR FARIS: Mr Williams wants to be here for any legal argument,
12 but he's content for mentions like this not to be here.

13 HIS HONOUR: Yes, well, the sake of 10 minutes the hassles are
14 just too great.

15 MR FARIS: No, that's not worth it; no way. He accepts that;
16 there's no problem there.

17 HIS HONOUR: Yes.

18 MR FARIS: Your Honour, also, my learned friend has said that
19 there are reasons for having - the Crown's got numerous
20 reasons for not having a committal. I don't know what
21 those are and he said that's the case, so the Crown
22 should put in either an affidavit, or submission,
23 immediately so we can deal with that. We don't know why.

24 HIS HONOUR: Well, at least, dot points could be made,
25 Mr Horgan, in relation to that matter. It will just make
26 it easier to have the opposition as open as possible all
27 round.

28 MR HORGAN: Well, I don't want to obstruct my learned friend's
29 understanding of our position in any way, Your Honour.
30 We're quite happy to do that.

31 HIS HONOUR: Yes, thank you. Any other matters?

1 MR HORGAN: No, Your Honour.

2 HIS HONOUR: Yes.

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Teague J.

Per file.

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September 3, 2004

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Supreme Court of Victoria
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IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE

BETWEEN

THE QUEEN

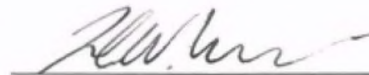
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Mr Andrews

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TRANSCRIPT OF PROCEEDINGS

SUPREME COURT OF VICTORIA

CRIMINAL JURISDICTION

MELBOURNE

TUESDAY 7 DECEMBER 2004

BEFORE THE HONOURABLE MR JUSTICE GILLARD

THE QUEEN v. CARL ANTHONY WILLIAMS

Mr Andrews

Mr Thomas

A P P L I C A T I O N

MR P. COGHLAN QC, with Mr G. HORGAN SC, appeared on behalf of the Crown.

MR C. HELIOTIS QC appeared on behalf of the Accused WILLIAMS.

MR S. GRANT appeared on behalf of the Accused

Mr Andrews

MS. N. GOBBO appeared on behalf of the Accused

Mr Thomas

1 his position in terms of being in custody, although that
2 is not particularly relevant for Your Honour's purposes,
3 but in particular because he is only charged in relation
4 to the Moran/Barbaro matter. It has been said by
5 Mr Coghlan that each of the two sets of murders would be
6 joined in a joint trial. It is most definitely the
7 situation that ^{Mr Thomas} would apply for a separate
8 trial.

9 Your Honour indicated that you had not read the
10 depositions, but that you had read the affidavit which
11 includes the statements of ^{Mr McGrath}

12 HIS HONOUR: I have read his statement closely and also the
13 summaries.

14 MS GOBBO: Your Honour would note the summary in relation to the
15 Moran/Barbaro matter includes one very brief two-line
16 paragraph relating to ^{Mr Thomas}. The only evidence
17 against ^{Mr Thomas} is the anticipated evidence of ^{Mr McGrath}
18 ^{Mr McGrath}, albeit, as vague and non-specific as ^{Mr McGrath}
19 ^{Mr McGrath} himself says in his statement. By that, I mean
20 where he refers to the fact of ^{Mr Thomas} allegedly having
21 had a conversation but then is unable to recall any detail
22 whatsoever in relation to that information which
23 ^{Mr Thomas} has allegedly provided.

24 Your Honour has asked my learned friends how long a
25 committal would take with respect to their clients. In
26 relation to ^{Mr Thomas} the only witness to be
27 cross-examined would be ^{Mr McGrath} I have to concede
28 that it may then be a situation where the informant would
29 be cross-examined by reason of certain matters that would
30 need to be elicited from him with respect to submissions
31 to be made to a magistrate but with respect to ^{Mr McC}

1 Mr McGrath and in particular that which he or we anticipate
2 he might say against Mr Thomas, it would be a situation
3 where cross-examination relevant to the issues alludes to
4 where Mr Thomas is concerned would only take two days.

5 Both my learned friends have dealt with the reasons
6 advanced by the Crown as to this situation being so
7 exceptional as to depart from years and years of history
8 and practice.

9 HIS HONOUR: Ms Gobbo, can I interrupt you for a moment. I just
10 had a very quick look at the summary of the case in
11 relation to the Moran/Barbaro matters and I have noticed
12 the reference to your client. The statements of Mr McGi

13 Mr McGrath themselves, where - the first one is dated 22
14 June 2004, the next one is 13 July 2004; where are the
15 references to your client in those statements?

16 MS GOBBO: I can take Your Honour through a summary of that.

17 HIS HONOUR: Don't worry about the police summary, I was wanting
18 to see where he does - - -

19 MS GOBBO: I am talking about his statement from 13 July 2004.

20 If Your Honour looks at paragraph 17 to 20. He does not
21 mention Mr Thomas but what in fact he does say is that
22 there is a first meeting and a plan is put in place in
23 relation to the murder and that in particular Mr Thomas
24 is not there. The first mention of Mr Thomas is in
25 paragraph 21 where he says that "about two weeks before
26 the murders we met at some shops". There is of course no
27 corroboration other than Mr McGrath being shown a
28 Melways in relation to that meeting having taken place.

29 HIS HONOUR: It goes through to 25, doesn't it?

30 MS GOBBO: It does.

31 HIS HONOUR: It does suggest that your client had some fair

1 knowledge about movements.

2 MS GOBBO: That is what I was referring to earlier where, for
3 example, ^{Mr McGrath} alleges that ^{Mr Thomas} had some
4 information that Mr Moran had the use of a holiday house
5 past Torquay. He is unable to provide any detail as to
6 what it was that ^{Mr Thomas} is alleged to have said or
7 what the details were about any of it. On that point it
8 was common knowledge to anyone who read the Herald Sun
9 that Mr Moran did have access to a holiday house down the
10 coast after Pong Su.

11 HIS HONOUR: Any other references in the ^{Mr McGrath} statements to
12 your client?

13 MS GOBBO: Yes, if you go past paragraph 26, he says at
14 paragraph 28 and paragraph 31, that the week before the
15 murder, they went to the Cross Keys Reserve. Paragraph
16 32, it is alleged by ^{Mr McGrath} that ^{Mr Thomas} was driving
17 a black Holden Astra and Your Honour can read the
18 remainder. Again, uncorroborated. Paragraph 33, or 33
19 through to 35.

20 HIS HONOUR: Yes.

21 MS GOBBO: Again, none of which is corroborated. Paragraph 39
22 is the next mention of ^{Mr Thomas} not specifically but by
23 reason of him being left out and that is where ^{Mr McGrath}
24 ^{Mr McGrath} starts to lead into what occurs in the week
25 prior and then the Tuesday night prior to the Saturday
26 murder. He is specific in that he does not mention
27 ^{Mr Thomas} doing anything, being present anywhere, being
28 met on the day of the murder, telephoned or spoken to
29 after the murder.

30 There isn't, as I indicated, there really is not
31 anything in the entirety of the depositions or the volumes

1 of additional material that were served in the course of
2 the proceedings before Justice Teague that takes the Crown
3 case any further than ^{Mr McGrath} That puts ^{Mr Thomas}
4 in a situation where, without a committal, he is not going
5 to be entitled to the opportunity of making submissions
6 with respect to being discharged and on a second issue, in
7 relation to the costs that would follow that being the
8 case.

9 I think reference was made in the written
10 submissions, and I only use this by way of example, the
11 count of murder against ^{Mr Thomas} in relation to
12 Mr Barbaro must be seen in light of what ^{Mr McGrath} says
13 about that which is that it was basically a situation
14 where Mr Barbaro was in the wrong place at the wrong time
15 and was not part of what was allegedly discussed or agreed
16 in the presence of or assisted by ^{Mr Thomas} If the
17 Crown has its way, Your Honour, in respect of a joint
18 trial, that is without severance of the counts, ^{Mr Thomas}
19 would be in an even more unfair situation, he having
20 nothing at all to do with the murder of Marshall. Your
21 Honour may say that that, of course, is a matter that
22 could be dealt with down the track by way of a separate
23 trial application or ruling by a trial judge.

24 HIS HONOUR: I don't think it is quite relevant to what I have
25 got to decide but of course it underlines your point about
26 losing your opportunity at the committal to make
27 submissions in relation to his involvement in the first
28 one.

29 MS GOBBO: The point that was raised by Mr Heliotis in terms of
30 video link availability, the only point that I wish to add
31 to in relation to both what was said by Mr Grant and

1 MR COGHLAN: I think I can say, as soon as possible. As I
2 understand it from my learned friend, we are looking at
3 mid January at this stage. I think if pushed it could
4 actually be done earlier than that, subject to the
5 availability of the court and so on. I think arraignments
6 are being made to work along those lines. In terms of
7 what I have decided in relation to the matter, if the
8 matter proceeds against ^{Mr McGrath} by way of plea in
9 relation to the Marshall murder, he will otherwise be
10 indemnified. When such indemnities are brought into
11 existence they will be provided to the parties. They are
12 fairly brief submissions but I don't know that I can add
13 much more to what I have put.

14 HIS HONOUR: You did say whether you were bound to give your
15 reasons. You had some doubts about that. I would have
16 thought you were required to indicate the reasons why you
17 proposed to do it in this case and of course you have.

18 MR COGHLAN: In particular, insofar as to indicate it is not
19 done at whim. One of Your Honour's remarks about what the
20 words in Lasuto meant was an interesting remark insofar as
21 what Batt, JA said about it, was this, Your Honour, in
22 referring to that, "And the Director of Public
23 Prosecutions against ... (reads) ... protection of the
24 committal receipt." It is submitted that the only other
25 matter, it is submitted in relation to that passage that
26 Your Honour referred to in the judgment of Justice Steven,
27 that the paragraphs following the paragraph that Your
28 Honour referred to are illustrative in a sense of the
29 extent to which times have changed in relation to the sort
30 of material that is available and then the possible
31 illusory nature of the question of discharge leading then