

# Were 'lies' harmless or deliberate?

9/6/2007

By Bret Christian

The jury in the Walsham trial was wrongly told that some of the accused men had implicated themselves in a murder when they lied to police and gave a false alibi, an appeal by the men was told this week.

Melbourne QC David Grace said that lies by the accused men were put forward by the prosecution as "compelling evidence of the accuseds' guilt".

Some of the initial lies, corrected voluntarily by the men within days, related to the assault on Mr Walsham.

Mr Grace said those lies and others about events 15 minutes before Mr Walsham was found dying could be explained by the fact that the convicted men were ashamed and embarrassed by their actions at that time.

The trial judge had wrongly applied the law, he said.

The lies did not indicate a consciousness of guilt to murder, he said.

The murder trial judge, Justice Eric Heenan, should have ruled that these lies could not have been considered by the jury in reaching its guilty verdict, Mr Grace submitted.

"He (Justice Heenan) gave no indication to the jury about how they could make the ultimate finding," Mr Grace said.

"It was an unsafe, prejudicial and risky route. The judge shouldn't leave the jury in that position."

Lies in such circumstances were significant under the law, only if the truth implicated the accused men in the murder.

"It is our submission that none of the lies could amount to a consciousness of guilt," he said.

"They wanted to distance themselves, not because they were guilty, but because they were not guilty."

Another alleged lie was when one of the accused men forgot to tell the police that he had gone to Odin Road and MacDonald's fast food shop in Tuart Hill before returning home.

"He says he simply forgot. He didn't think it was of any significance," Mr Grace said.

He said the men were young, 18 and 19 at the time, and had had no previous dealings with the police.

Mr McCusker also submitted that it was wrong of the prosecution to have put forward as a false alibi a visit to McDonald's.

The prosecution said that visit happened before Mr Walsham's death.

The defence said it happened afterwards, and its timing removed any possibility that the men had murdered Mr Walsham.

But, Mr McCusker said, the men did not know when first questioned by police what time Mr Walsham had been found dying.

They said they visited McDonald's after the Odin Road meeting, which had come after the assault.

Mr McCusker said: "They did not give the visit as an alibi.

"They simply said that they first went to the Odin Road-Fulmar Street intersection and then to McDonald's."