

NEWS RELEASE

The Scottish Criminal Cases Review Commission ('the Commission') has today referred the case of James Carroll Paul Kinsella to the High Court of Justiciary.

In accordance with the Commission's statutory obligations, a statement of reasons for its decision has been sent to the High Court, Mr. Kinsella and Crown Office. The Commission has no power under its founding statute to make copies of its statements of reasons available to the public. Brief summaries of the background of the case, the grounds the Commission rejected and the Commission's reasons for referral are given below. These summaries are for information purposes only and the content of this news release should not be treated as forming part of the Commission's statement of reasons.

1.0 Background

1.1 On 7 June 2005, at the High Court at Perth, Mr. Kinsella appeared on an indictment which narrated two charges: (1) on 1 April 2004, at a post office in Brechin, Angus, he assaulted a customer by placing his arms around her neck and holding a knife against her neck, and he did attempt to rob the sub-postmaster there; and (2) on 8 April 2004, he assaulted an individual by striking him on the head with a glass to his severe injury and permanent disfigurement. Mr. Kinsella pled guilty to the second charge, but proceeded to trial in respect of the charge of assault and attempted robbery, he having lodged a special defence of alibi stating that he was in Dundee at the time of the alleged offence.

1.2 On 9 June 2005, the jury, by a majority verdict, found Mr. Kinsella guilty of the charge of assault and attempted robbery. He was sentenced to an extended sentence of nine and half years, comprising four years' imprisonment on charge 1, a consecutive period of four and half years' imprisonment on charge 2 and an extension period of one year. Mr. Kinsella was refused leave to appeal against his conviction and sentence.

2.0 Grounds the Commission Rejected

2.1 Mr. Kinsella stated that the sentence imposed on charge 2 was excessive, which ground the Commission rejected.

3.0 Reasons for Referral

3.1 Mr. Kinsella raised three grounds of review in relation to his conviction on the assault and attempted robbery charge: his legal representative failed to prepare

adequately his defence; the police failed to investigate his defence of alibi; and there were shortcomings in the identification process.

3.2 Firstly, the Commission considers that the failure of the defence agents to recover certain evidence and material in support of Mr Kinsella's special defence of alibi amounts to defective representation, because that failure deprived Mr Kinsella of a fair trial and may have led to a miscarriage of justice. The Commission considers also that Tayside Police failed to investigate fully Mr Kinsella's alibi and to secure the same evidence and materials. Secondly, the Crown did not disclose to the defence certain information in relation to the identification of Mr. Kinsella which was in their control or in the control of Tayside Police. In light of the decisions of the Judicial Committee of the Privy Council in *Holland v HMA* 2005 SCCR 417 and *Sinclair v HMA* 2005 SCCR 446 and the decisions of the High Court in *Gair v HMA* 2006 SCCR 419 and *Mason & McDougall v HMA* 2008 SLT 656, the Commission considers that the failure by the Crown to provide the defence with this information infringed Mr. Kinsella's rights to a fair trial under article 6 of the European Convention of Human Rights and may have led to a miscarriage of justice.

4.0 Notes for Editors

4.1 The Scottish Criminal Cases Review Commission was established as an independent body on 1 April 1999 to review alleged miscarriages of justice in Scottish convictions and/or sentences. Under section 194A–L of the Criminal Procedure (Scotland) Act 1995, as inserted by section 25 of the Crime and Punishment (Scotland) Act 1997, the Commission may refer a case to the High Court if it believes that a miscarriage of justice may have occurred and that it is in the interests of justice that a reference should be made. Once the Commission refers a case to the High Court, the case will proceed as a normal appeal.

4.2 The Commission operates with a Board of seven Members (one of whom is the Chairperson), a Chief Executive, a Director of Corporate Services, two Senior Legal Officers, six Legal Officers and administrative support staff.

4.3 The Commission has reviewed its policy on disclosure and, from 1 April 2008, it has or will disclose the fact that a case has been referred to the High Court, and has or will provide a short summary of the reasons for this. However, as the Commission operates under statutory non-disclosure provisions, it is not considered appropriate for the Commission to disclose any additional information about such cases. The Commission will not release any information about cases in which no referral has been made or in respect of cases under review.

4.4 For any further general information about the Commission, please contact Mr. Chris Reddick, Director of Corporate Services, SCCRC, 5th Floor, Portland House, 17 Renfield Street, Glasgow; telephone: 0141 270 7030; e-mail: creddick@sccrc.org.uk; or visit the Commission's website at www.sccrc.org.uk