

BOOK REVIEW

A SECOND CHANCE FOR JUSTICE: THE PROSECUTIONS OF GABE WATSON FOR THE DEATH OF TINA THOMAS

BY ASHER FLYNN AND KATE FITZ-GIBBON

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The Watson case has attracted international attention and controversy. On 22 October 2003, Gabe Watson and Tina Thomas, who were on their honeymoon, were scuba diving on the *Yongala*, a wreck off the Queensland coast. Tina died, and Gabe was subsequently prosecuted for her murder in both Queensland, where he plead guilty to manslaughter, and subsequently in Alabama, where the judge dismissed the case without allowing it to go to the jury. *A Second Chance for Justice* by Asher Flynn and Kate Fitz-Gibbon¹ is

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¹ Asher Flynn and Kate Fitz-Gibbon, *A Second Chance for Justice: The Prosecutions of Gabe Watson for the Death of Tina Thomas* (Cambridge Scholars Publishing, 2013).

an ambitious examination of the Watson case. As a former prosecutor and long-time scuba diver, I approached the book with great interest.

The authors frame their analysis of the case around the question of ‘justice’, which they divide into subjective, procedural and substantive concepts of justice. The central argument of the book is that a just outcome in the Watson case would have been a jury trial for murder in Queensland. This was prevented due to the decision of the Office of the Director of Public Prosecutions (‘ODPP’) to accept a plea bargain, a choice that the authors attribute to lack of financial resources. They suggest that the Alabama trial was unable to deliver justice because additional elements had to be proved in that jurisdiction, because some witnesses were not available due to cost, and, they suggest, because some of the law of Alabama was less favourable to the prosecution than that of Queensland.

Part I, titled ‘Justice in Queensland’ examines how the Queensland criminal justice system responded to Tina’s death. Chapter one examines the police investigation and the officers’ basis for forming the conclusion that this was a case of intentional killing. Chapter two reviews the coroner’s inquest into Thomas’s death, the decision of the coroner to commit Watson to stand trial for murder under the *Coroner’s Act 1958* (Qld), and the transfer of the matter to the Queensland ODPP, which indicted Watson for murder. Chapters three and four examine the decision by the ODPP to accept a plea bargain under which the murder charge was dropped and Watson pleaded guilty to manslaughter under section 290 of the *Queensland Criminal Code*.² On the basis of the plea and an agreed statement of facts, Watson was sentenced by the court to four and a half years in custody, suspended after 12 months.³ On appeal, the sentence was altered so as to be suspended after 18 months.⁴

On 22 October 2010, Watson was indicted in Alabama for capital murder. Part II (‘Justice in Alabama’) examines the process followed in the Alabama criminal justice system. Chapter five examines the decision to prosecute Watson in Alabama, the principle of double jeopardy and the motives underlying the prosecution, and returns to the theme of resource constraints. The trial was heard before a jury, but at the conclusion of the prosecution’s case the Judge directed an acquittal. Chapter six (which concerns evidence of financial motive) and seven (which concerns the dive) discuss the evidence heard in the Alabama murder trial, some potential evidence not called due to witness constraints, and evidence excluded by the judge as inadmissible. The Alabama trial is contrasted to a hypothetical Queensland trial for murder,

² *R v Watson* [2009] QCA 279.

³ *Ibid* [1].

⁴ *Ibid* [48]–[49].

particularly in relation to the availability of witnesses and the admissibility of evidence. For example, the authors suggest that a video of a police re-enactment conducted at the dive site would have been admissible in Queensland. Chapter eight discusses the question of character evidence and Watson's post-offence conduct.

Part III ('Achieving Justice') considers the acquittal of Watson and participants' reflections on the case. Chapter nine considers the acquittal itself, including the reactions of the Thomas family and the defence team to the judge's decision. Chapter ten examines the impact of the proceedings on the Watson and Thomas families, and the subjective desire of some participants for a jury trial on a charge of murder. Chapter eleven concludes by summarising the authors' argument that the plea bargain and the Alabama trial were incapable of providing justice.

The book works well as an examination of contrasting views on a polarising case. This is particularly the case when it considers the impact of the prosecutions on both the Watson and Thomas families. The emotional devastation of all participants is palpable, as is the ongoing distress of the civilians as a result of the prolonged court proceedings on two continents. The interviews with the investigating officers also demonstrate their frustrations and perceptions of a breakdown in relations with the ODPP over the plea bargain to manslaughter. Unfortunately the ODPP declined to be interviewed for the book, citing the policy of the Office on providing public reasons for the exercise of prosecutorial discretion. This would have added an interesting further dimension to the analysis. It is clear that many of the participants in the case are profoundly dissatisfied with the process and the outcome, albeit on varying grounds.

A Second Chance for Justice provides an interesting discussion of the financial constraints suffered by the Queensland criminal justice system while the Watson case was ongoing. Although there is no direct evidence that this factor influenced the ODPP's decision-making process, the argument that the system was under pressure is compelling.⁵ A discussion of factors which may influence accused persons to plead guilty is also well presented.⁶

Issues going to procedural and substantive justice are raised but ultimately not reconciled by the authors, who suggest that readers can draw their own conclusions on these matters. The authors take no position on the guilt or innocence of Gabe Watson, although many of the interview subjects do. The book does not purport to be a legal analysis, nor does it critically consider the

⁵ See Flynn and Fitz-Gibbon, above n 1, 63–8.

⁶ Ibid 77–84.

evidence from a diving perspective. On the latter point, scuba diving is a specialised area. The evidence going to ascents, a key aspect of the case, involves issues of physics, in particular buoyancy and its effect on the vertical movement of divers. Issues of physiology are also pertinent, such as risks of lung injury on ascent. Without a diving background it would be difficult for the reader to critically analyse some of the evidence.⁷ Although the interviews with participants are one of the strengths of the book, some of the subjects engage in questionable theorising about the diving evidence which would benefit from critical examination by the authors. However, a full discussion of these issues is beyond the scope of this review.

As Flynn and Fitz-Gibbon note, the Watson case continues to provoke controversy. *A Second Chance for Justice* is an engaging read, and provides new perspectives on some of the key participants in the case.

⁷ A diving analysis of the evidence of the case can be found in Carl Edmonds, 'Case Report: A Forensic Diving Medicine Examination of a Highly Publicised Scuba Diving Fatality' (2012) 42(4) *Diving and Hyperbaric Medicine* 224.