

Gene Gibson's time for justice over manslaughter 'plea' arrives



Gene Gibson.

- The Australian
- 4 April 2017
- Victoria Laurie

The illiterate Aboriginal man at the centre of a murder case that has put Western Australia's justice system on trial has spoken for the first time about his controversial conviction over the death of white man Josh Warneke.

Some 4 ½ years after being sent to jail for manslaughter, Pintubi man Gene Gibson yesterday revealed he signed court documents he did not understand and pleaded guilty because he was told "if you say 'not guilty', you will get big time".

His conviction stands despite a botched murder investigation that implicated 11 police officers, a contradictory "confession" that was thrown out of court and a Corruption and Crime Commission report that found the pursuit of Gibson revealed "systemic failures". Gibson was giving evidence in the WA Court of Appeal yesterday in an appeal against his conviction for leaving the young man dead by the roadside in February 2010. Warneke's mother, Ingrid Bishop, has expressed her belief in Gibson's innocence.

Through a female interpreter, Gibson was asked why he had told police he killed "the white boy" when they flew to the remote community of Kiwikurra in 2012 to interview him without a trained interpreter. He replied: "The police were showing me

statements (of witnesses) ... They kept asking me over and over again ... That's why I said I did it."

He agreed he had admitted to hitting Warneke with an iron bar.

"I said I hit him but that's not true," he told the court yesterday.

Asked why he said he hit Warneke if he did not, Gibson said through his interpreter: "Because police was not listening to me, and nobody else was listening to me."

In the opening minutes of a case viewed as a test of WA's justice system for Aboriginal people, barrister Sam Vandongen said there had not been a case like Gibson's in Australia. Mr Vandongen told the court that "a perfect storm" had led an illiterate Aboriginal man with "significant cognitive deficits" to plead guilty to a crime he repeatedly claimed not to have committed. He said those deficits rendered him unable to understand the court process in a language he did not understand.

In nine hours of police interviews in 2012, Gibson said he had hit Warneke in a car, later saying he had hit him with a pole. His 2012 videoed confession was thrown out as inadmissible in a court judgment in July 2014, but in October that year he was sentenced to 7½ years in jail after agreeing to a manslaughter plea deal on the advice of his lawyer.

That advice was based on incriminating police statements from two men who said they were passengers in a car that Gibson was driving. They said he got out and struck Warneke, but the men, Tristan Nagomarra and Edwin Mandijarra, later recanted their evidence in police interviews in November 2015. Their most recent statements — that Gibson did not strike Warneke — match what they told police - before officers took Gibson's "confession".

Mr Vandongen said that, in the hours leading up to Gibson changing his plea, he had been placed in a pressured environment in the cells below the Appeals Court in Perth. He said Gibson didn't understand the choices he was making by accepting a plea deal.

Gibson repeated several times that he had signed court documents without understanding them.

Mr Vandongen said the miscarriage of justice was based on three factors: the integrity of Gibson's entered plea; a plea that relied on "false and materially - unreliable" police witness evidence; and nondisclosure by police of other evidence significant to Gibson's defence team.

Mr Vandongen said he would focus on what Gibson was told, and what he understood in the months leading up to agreeing in 2014 to the manslaughter plea.

He said a crucial aspect was the way police had interviewed Mr Nagomarra and his incriminating evidence. "Had that not occurred, there would not have been a prosecution of Mr Gibson," he said.