SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Lawrence* [2011] QSC 26
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **LAWRENCE** (respondent)
FILE NO/S:	SC No 7468 of 2007
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	16 March 2011
DELIVERED AT:	Supreme Court, Brisbane
HEARING DATE:	2 December 2010; 3 February 2011
JUDGE:	Peter Lyons J
ORDER:	**1. Further leave granted to applicant to re-open case;** **2. Determine that the evidence of Witness A about the events of September 2007 is not accepted.**
CATCHWORDS:	CRIMINAL LAW – EVIDENCE – CREDIBILITY – GENERALLY – where respondent detained in custody for an indefinite term – where annual review required under s 27 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where the conduct of the respondent while in prison may be relevant to the annual review – whether evidence of a witness regarding the conduct of the respondent should be accepted *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), s 13; s 27 *Pollitt v The Queen* (1993) 174 CLR 558; [1992] HCA 35, cited
COUNSEL:	J B Rolls for the applicant P E Smith for the respondent
SOLICITORS:	Crown Law for the applicant Legal Aid Queensland for the respondent

[1] **Peter LYONS J:** On 3 October 2008, Fryberg J made an order that the respondent be detained in custody for an indefinite term for control under s 13 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) (*DPSOA*). In the course of the annual review required by s 27 of the DPSOA, it was realised that prison records

indicated that the respondent may have engaged in conduct which was potentially of considerable significance for the review. The parties have requested that I make findings in relation to the evidence dealing with this conduct.

Background

[2] The respondent is 49 years of age. In his teenage years he was convicted on several occasions of offences of aggravated assault on children, resulting in the imposition of what may be regarded, in the present context, as relatively minor penalties. When aged 21, he committed the offence of unlawfully killing a female person, his conviction for manslaughter being a consequence of a defence of diminished responsibility. The offence was associated with a fantasy about raping and killing the victim.

[3] In 1999 (when aged 38) the respondent committed the offences of rape and sexual assault. Fryberg J's order was the outcome of a hearing which commenced prior to the end of the respondent's sentence for these offences.

[4] The respondent has a small number of convictions for other offences, considerably less relevant for present purposes.

[5] In addition to his time in prison, the respondent has on a number of occasions been treated as an inpatient in a mental health institution. Indeed, the victim of the unlawful killing was a fellow patient of such an institution.

[6] The annual review required by s 27 of the DPSOA commenced before me on 9 April 2010. At that time, the psychiatric reports provided some basis for considering whether the respondent might be released subject to a supervision order under s 13 of the DPSOA. After the applicant had closed his case, and the respondent's psychiatrist had given evidence-in-chief, the matter was adjourned. Counsel for the applicant then became aware of the matter referred to at the commencement of these reasons. Ultimately I granted the applicant leave to reopen his case. That led to the calling of additional evidence by both parties. After the conclusion of that hearing, the applicant again sought leave to re-open his case, to rely on a further affidavit of a psychologist. Since this was not opposed, I have granted the leave sought.

Further evidence

[7] The starting point for the consideration of the further evidence is a handwritten document dated 20 September 2007. Other evidence before me provides a basis for thinking that its date is approximately correct. It became Exhibit 1 in the present hearing.

[8] I shall refer to the author of Exhibit 1 as Witness A. Exhibit 1 records that Witness A was then a fellow inmate of a correctional centre with the respondent. It records that they had become friendly, and were residing in the same unit. It states that on many occasions, the respondent told Witness A about "some horrific crimes he had committed, and never got convicted on". It then refers to a "dramatic change" in the conduct of the respondent, said to have occurred a short time earlier, when the respondent was said to have given "detailed plans for his next lot of victims". They included the rape of 13 and 14-year-old girls and boys. When Witness A made a

comment to the effect that people of this age were rather young, the respondent is said to have replied, "Old enough to bleed, old enough to breed".

[9] Exhibit 1 then records that on the night of 6 September 2007, Witness A mentioned to the respondent that he had spoken to the female psychologist, in relation to Witness A's parole application. According to Exhibit 1, that resulted in the respondent becoming enraged, and stating that the psychologist would be his first victim. Some details of the respondent's intentions were set out in Exhibit 1.

[10] Witness A gave oral evidence that the psychologist, whose role it was to help sex offenders in the prison, hated all sex offenders, and all sex offenders hated her. Witness A said that he and the respondent were sitting in a room one night when the respondent said that he was going to kill the psychologist. He gave details of the respondent's intentions, in terms somewhat different to those found in Exhibit 1. When asked whether the applicant had indicated his intentions about other people, he initially said, "I just can't remember"; and after some prompting, he said that the respondent's main concern was the psychologist. He was then asked whether the respondent had ever spoken about children, to which he replied that the respondent had said that two children (either the children of his sister or of his brother) "have got to die". When asked whether the respondent had said anything about what he intended to do to the children, Witness A said, "I can't remember".

[11] Witness A subsequently swore to the truth of the contents of Exhibit 1.

[12] Witness A also said that he remained friendly with the respondent after the conversation regarding the psychologist, though a few days later the respondent was transferred to secure custody.

[13] In cross-examination, it emerged that Witness A had asked for payment of $1,000 to give evidence in these proceedings. He also gave evidence of convictions for forgery and uttering, as well as for his involvement in what appears to have been an extensive and relatively sophisticated and systematic burglary operation. He had been released on parole in 1996, and was obviously familiar with the parole system.

[14] On 30 March 2007, Witness A pleaded guilty to trafficking in dangerous drugs, in respect of which a head sentence of seven years imprisonment was imposed, but his parole eligibility date was set at 15 June 2007. While he admitted pleading guilty to these charges, he suggested that he might nevertheless not have been guilty of them. He also understood that if he had not cooperated with the police at this time, he might have been subject to a declaration that he was a serious violent offender.

[15] Witness A gave evidence of cooperation with the police over a substantial period, but denied giving evidence in support of a particular prosecution case. He said that the police who were investigating the case wanted him falsely to identify one of the accused, and said that they "tried to manipulate the system to benefit them to get a conviction". Witness A admitted to himself being quite a manipulative person; and to having strong motives for trying to obtain parole in 2007, related (at least in part) to wishing to be with his family. As at 20 September 2007, Witness A had made a parole application, but had not been formally provided with a determination. It would seem that by this time, the Board had reached a preliminary view not to grant the application; but that this was not communicated to him until 24 September 2007.

[16] On 8 October 2007, Witness A wrote to the Parole Board. His letter pointed out that he had been given an early parole eligibility date because he had provided assistance to police, and was prepared to give evidence in court, no doubt to confirm information which he had provided.

[17] On 9 January 2008, Witness A wrote to the general manager of the correctional centre to seek assistance with his parole application. He referred to his identification of problems within the prison, and in particular to his written statement relating to the respondent, said to have been requested by the person to whom he wrote. On 23 January 2008 he again wrote to the general manager of the correctional centre, about some disciplinary punishment to which he had been subject, and his parole application. He relied upon the information he had previously given about the respondent in that letter.

[18] In addition, Witness A indicated that he had expressed some reluctance to give evidence in these proceedings; and admitted he may have lied to the applicant's solicitors about whether he had taken legal advice about giving such evidence.

[19] In cross-examination it was suggested to Witness A that when he and the respondent were in prison together, he had access to the respondent's documents relevant to what was described as an indefinite sentence application. The point of the cross-examination seems to have been to show that Witness A could have learnt some facts which provided him with a basis for matters set out in Exhibit 1 from those documents. Witness A at first said he did not recall seeing the documents, and later denied reading them.

[20] I should add that the psychologist made on the respondent's prison file an entry dated 6 September 2007, referring to an approach by an unnamed prisoner. It seems likely that this was Witness A, and I propose to proceed on that basis. This person reported to the psychologist that the respondent had made sexual advances to him and that the respondent intended, when released from prison, to find a woman whom he would sexually assault and "cut". The note contains no suggestion that the psychologist herself was the intended victim; nor is there a reference to a planned attack on a child; nor to any plan to kill any person.

[21] The respondent gave evidence. In essence, he denied the evidence of Witness A about the events of September 2007. Under cross-examination, there appeared to be some inconsistencies in his answers about whether he currently has fantasies involving rape and killing. At times he denied such fantasies; on other occasions he said that something might trigger such a thought but that he had mechanisms which he used to distract himself. He denied any hostility toward the psychologist referred to in the evidence of Witness A. He said that in September 2007, he was friendly with Witness A and trusted him. The respondent also gave evidence of having undergone a number of programs, including the High Intensity Sexual Offenders Program (*HISOP)*, which he apparently commenced in 2006 and completed in 2007.

[22] The respondent gave evidence that, at the time he had dealings with Witness A in prison in 2007, he had received documents relating to his indefinite detention, and that Witness A was helping him to read through the documents.

[23] There was brief evidence from another witness who had also been a prisoner with the respondent and Witness A, in September 2007. He confirmed the evidence of the respondent, to the effect that the respondent had received documents relating to his indefinite detention, and that Witness A was helping him to read through the documents.

[24] As mentioned, after the adjourned hearing had concluded, the applicant sought leave to file and read an affidavit of the psychologist, sworn on 24 February 2011. That was not opposed and the deponent was not required for cross-examination. That affidavit describes the note made by the psychologist on 6 September 2007 as "brief". The psychologist explained this, on the basis that she expected a more complete written document from Witness A setting out his concerns.

[25] The psychologist's affidavit referred to her earlier affidavit (in fact sworn on 3 June 2010 but wrongly referred to in the later affidavit as an affidavit sworn on 10 June 2010), dealing with her conversations with Witness A. In the earlier affidavit, she recorded the approach by Witness A to her in September 2007. Her account of what Witness A said to her at that time, as set out in the affidavit of 3 June 2010, is not materially different to the entry which she made on the respondent's prison file, referred to previously.

Submissions

[26] In essence, the applicant submits that I should accept the evidence of Witness A; and in particular that he had no motive to be untruthful. The fact that the respondent at that time trusted Witness A was said to explain his willingness to speak frankly to Witness A about his intentions. It was also submitted that the respondent had often been evasive and inconsistent in answering questions about his fantasies.

[27] For the respondent, reliance was placed upon statements made by McHugh J in *Pollitt v The Queen*[1] as to the unreliability of prisoner informers. It was submitted that the evidence of Witness A should be rejected by reference to that statement; by reason of what his criminal history revealed about his character; because he had a motive in September 2007 to attempt to curry favour with authorities (and subsequently relied upon his reporting in relation to the respondent in support of his parole application); and because of inconsistencies in his position and evidence.

Finding

[28] There are, in my view, significant difficulties with the evidence of Witness A. There are significant differences between the account which he gave in his oral evidence, and what appears in Exhibit 1. Against that background, the record made by the psychologist in September 2007, and her evidence in the affidavit sworn in June 2010, of what was told to her by Witness A, is also important. The differences in the accounts, in my view, raise serious doubts about the evidence of Witness A.

[29] Beyond that, Witness A had a strong motive in September 2007 to attempt to win favour with persons in authority. It is by no means impossible that he would make untrue statements for this purpose. His character is such as to provide little

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1 (1993) 174 CLR 558, 614.

confidence in the reliability of his evidence. At times he appeared somewhat aggressive in the witness box, and did not convey the impression of a person who was doing no more than attempting to answer questions truthfully.

[30] It is obvious that the respondent has a strong motive not to tell the truth about the events of September 2007 if they occurred as described in the evidence of Witness A. It is also correct to say that there were inconsistencies in his evidence relating to his fantasies. Nevertheless, it should be noted that he appeared to be a person of limited education and intelligence; and I formed the impression that he was attempting to convey that fantasies involving rape and killing were significantly less frequent in recent years than they have been earlier in his life; and that when they occurred, he dealt with them in the manner described in his evidence. He was quite frank about his behaviour in his early life. He also gave evidence, which appeared not to be challenged, about attempts he has made at different times over the years to deal with his conduct. He seemed to me to be a more credible witness than Witness A.

Conclusion

[31] I do not accept the evidence of Witness A about the events of September 2007.