# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Attorney-General for the State of Queensland v Stanbrook* [2013] QSC 29 |
| PARTIES: | **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**<br>**(applicant)**<br>**v**<br>**PAUL ANDREW STANBROOK**<br>**(respondent)** |
| FILE NO: | BS1067 of 2013 |
| DIVISION: | Trial Division |
| PROCEEDING: | Originating application |
| DELIVERED ON: | 25 February 2013 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 14 February 2013 |
| JUDGE: | Mullins J |
| ORDER: | **THE COURT being satisfied that there are reasonable grounds for believing the respondent, Paul Andrew Stanbrook, is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous' Prisoners (Sexual Offenders') Act* 2003 (the Act),**<br>**ORDERS THAT:**<br>**1. The application for a Division 3 Order be set for hearing on 17 June 2013.**<br>**2. Pursuant to s 8(2)(a) of the Act, the respondent undergo examinations by two psychiatrists, being Professor Barry Nurcombe and Dr Michael Beech who are to prepare independent reports, in accordance with s 11 of the Act.**<br>**3. Liberty to apply granted.** |
| CATCHWORDS: | CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – application pursuant to s 8 of the *Dangerous Prisoner (Sexual Offenders) Act* 2003 – where the respondent stupefied his victim in order to commit the sexual assaults – whether the respondent is a prisoner for the purposes of the Act – whether administration of a stupefying drug means that the sexual assaults involved violence – whether there are reasonable grounds for believing the respondent is a serious danger to the community in the |

absence of a division 3 order

*Dangerous Prisoners (Sexual Offenders) Act* 2003, s 5, s 8

*Attorney-General for the State of Queensland v Phineasa* [2012] QCA 184, followed
*Tilbrook v Attorney-General for the State of Queensland* [2012] QCA 279, considered

COUNSEL: M A Maloney for the applicant
M A Green for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

[1] On the preliminary hearing under s 8 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (the Act), the respondent disputed that he was a prisoner for the purpose of the Act.

[2] The respondent is serving a period of imprisonment of five years with a full term release date of 22 July 2013. He was convicted after trial by a jury of one count of stupefying in order to commit an indictable offence (count 1) for which he was sentenced to five years' imprisonment and five counts of sexual assault for which he was sentenced to concurrent sentences. For each of counts 2 and 3 on the indictment he was sentenced to 12 months' imprisonment and for each of counts 4 to 6, he was sentenced to 18 months' imprisonment.

**Who is a prisoner?**

[3] Under s 5(6) of the Act, a prisoner is defined as:

> "***prisoner*** means a prisoner detained in custody who is serving a period of imprisonment for a serious sexual offence, or serving a period of imprisonment that includes a term of imprisonment for a serious sexual offence, whether the person was sentenced to the term or period of imprisonment before or after the commencement of this section."

[4] Where a sexual offence is not committed against a child, the relevant definition of "serious sexual offence" in the schedule to the Act is "an offence of a sexual nature, whether committed in Queensland or outside Queensland … involving violence." "Violence" is defined as including intimidation or threats.

[5] The respondent contends he is not serving a period of imprisonment for a serious sexual offence, because the circumstances in which he committed the sexual offences did not involve violence.

[6] The meaning of "involving violence" in the definition of "serious sexual offence" in the Act was the subject of *Attorney-General for the State of Queensland v Phineasa* [2012] QCA 184. The Attorney-General in that case had contended that any assault of one person by another which fell within the definition of s 245 of the *Criminal Code* 1899 involved violence. That approach was rejected by the Court of Appeal on the basis of construing the language of the Act in the circumstances in which the regime under the Act applied to persons "who have committed no crime for which

they have not undergone just punishment" (at [31]). Muir JA (with whom the other members of the court agreed) at [36] agreed with Margaret Wilson J's conclusion in *Attorney-General for the State of Queensland v Tilbrook* [2012] QSC 128 at [42] that to constitute "violence" something more than mere physical contact was required, but also expressed the view "that 'violence', for present purposes, does not equate to the application of force, however limited, irrespective of the harm caused or likely to be caused to the person to whom it was applied." Muir JA expressed a preference for the definition of "violent" in *The New Shorter Oxford English Dictionary* (at [37] and [10]) and then stated:

> "[38] As I trust emerges from earlier discussion, the 'violence' referred to in the definition of serious sexual offence is force significantly greater in degree than mere physical contact or even, at least as a general proposition, acts such as pawing, grasping, groping or stroking. The language of sections 8 and 13, in particular, is inconsistent with the application of the Act to sexual offences other than of a very serious kind where offending against adults is concerned. Those sections are addressing conduct of such a nature, that the risk that a prisoner, assumed to be a member of a particular class, might engage in it and harm a member or members of the public if released from custody or if released without a supervision order, is regarded as unacceptable. Consequently, the 'violence' contemplated by the Act (excluding for present purposes threats and intimidation) would normally involve the use of force against a person to facilitate the 'rape' of that person within the meaning of s 349 of the *Criminal Code* or which caused (or in the case of predicted conduct would be likely to cause) that person significant physical injury or significant psychological harm.
>
> [39] It is unnecessary for present purposes to explore the question whether and to what extent there may be 'violence' for the purposes of the Act not involving intimidation, threats or the application of physical force to a person. Nor is it desirable or appropriate to attempt any greater degree of definition of the meaning of 'violent'. It will always be necessary to determine whether conduct involves 'violence' by reference to the particular facts and circumstances of the case under consideration. However, rape, involving as it does the violation of the victim's body would normally, if not invariably, involve 'violence'." (*footnote omitted*)

[7] In *Phineasa* the relevant sexual offences for which Mr Phineasa was serving the period of imprisonment at the time the application was made under the Act included indecent assault on a female when he entered the complainant's bedroom where she was sleeping and touched her buttocks, pulling her underpants to one side; committing an indecent act when he approached a woman shop assistant, exposed himself and then masturbated in front of her until he ejaculated on the floor of the shop and touched her on the bottom as he left the shop; and committing an indecent act when he sat beside a woman at a fast food restaurant and grabbed and rubbed her several times on the bottom while he was rubbing his crotch. Muir JA

concluded at [54] that none of these offences involved force sufficient to constitute "violence" within the meaning of the Act.

[8] The approach in *Phineasa* was applied in *Tilbrook v Attorney-General for the State of Queensland* [2012] QCA 279. Mr Tilbrook was serving a period of imprisonment for three sexual offences which had been found at first instance to be serious sexual offences for the purpose of the Act. On appeal Muir JA (with whom the other members of the court agreed) stated at [20]:

> "[20] As discussed in *Attorney-General for the State of Queensland v Phineasa*, the structure and language of the Act is inconsistent with its application, where minors are not concerned, to sexual offences which are not very serious in nature. Plainly, as the primary judge found, 'violence' means more than any unlawful or unwarranted application of force. It is not to be supposed that, despite the language of the Act, which focuses on adequate protection against a serious danger to the community posed by an offender, the Act's drastic interference with rights and freedoms was intended even in respect of relatively minor sexual offending against adults." (*footnote omitted*)

[9] The first of the offences involved Mr Tilbrook walking behind the complainant in a carpark when he grabbed her breasts (through her clothes) from behind, squeezed tightly and caused pain. The attack was brief in duration and the complainant obtained psychiatric assistance for feelings of sickness and hypervigilance which settled and it was not suggested she suffered from any lasting psychiatric condition. The second offence involved Mr Tilbrook following another complainant into a carpark where he lifted her skirt and squeezed her buttock which event was brief in duration and was not said to have caused pain or discomfort. The third offence occurred in daylight after the complainant had left some female toilets in a shopping centre and was walking towards the shops when Mr Tilbrook pulled her dress up from behind, touched her stomach and back area in an attempt to pull her underwear down and rubbed his hand on her vaginal area over the top of her leotards. The court concluded at [26] that Mr Tilbrook's reprehensible conduct for each offence fell short of that necessary to constitute a serious sexual offence.

**The circumstances of the respondent's sexual offending**

[10] Mr Green of counsel on behalf of the respondent concedes that the characterisation of the respondent's sexual offending for the purpose of applying the definition of "prisoner" is determined by taking into account the circumstances of the related offence of stupefying in order to commit an indictable offence as part of the circumstances of the sexual assaults.

[11] The victim who was 23 years old and much younger than the respondent who was then 42 years old had been acquainted with the respondent and his wife for a couple of years through their association with a club. They ran into each other on 21 July 2008 and exchanged mobile numbers. That evening the respondent and his wife picked up the victim so she could go back to their place for drinks and to watch a DVD. The respondent made drinks while his wife and the victim watched television. The drink which appeared to be alcohol and milk also contained Amitriptyline which is an anti-depressant medication sold under the name Endep and was put in the drink by the respondent. The victim sipped about half her first

drink over a period of two hours. It was refilled by the respondent and the victim took a couple of sips. She began to feel nauseous and fell asleep on the lounge. Medical evidence was given at the trial that a combination of alcohol and Amitriptyline (which are both sedatives) impairs psychomotor control.

[12] The victim woke, but was unable to open her eyes, and yet was aware of what the respondent and his wife were doing. The respondent began rubbing her back on the outside of her clothes before placing his hand under her clothes and pulling at her nipples which the victim said hurt.

[13] The victim recalled that an attempt was made to remove the belt from her jeans and she grabbed her jeans, but the respondent and his wife tried to move her hands away from her jeans and then "it stopped". The respondent then slid his hands down the front of her jeans to the pubic bone area. Counts 2 and 3 covered the sexual assaults committed by the respondent in the lounge room.

[14] The respondent then carried her into the bedroom and put her on the bed when she noticed that her jeans were undone. The victim was still unable to open her eyes. The respondent and his wife climbed into the bed on either side of the victim. The respondent was behind the victim and put his arms around her waist, touching her body. He tried to put his hands down the back of her jeans, rubbed his fingers down the back of her jeans onto her skin and then rubbed his hands on the outside of her jeans in an up and down motion. The respondent touched the victim's breast under her clothing. The victim could feel the respondent's penis near her bottom.

[15] The victim recalled that the respondent and his wife then left the room and she could hear them talking outside. They returned and there was more touching which the victim thought lasted about 30 minutes. During that period the respondent touched her on the breast and he moved his hands in an up and down motion on the outside of her jeans trying to get in between her legs, but did not. The touching stopped when the respondent fell asleep and the victim was able to get up from the bed and went out into the lounge room, where she used her mobile telephone to text a friend and found her belt on a table in the lounge room. Counts 4 to 6 covered the sexual assaults committed by the respondent in the bedroom. Although the respondent's wife was present and participated in some of the touching of the victim, the victim's evidence attributed a greater role in the touching to the respondent than to his wife.

[16] The sentencing judge in his sentencing remarks recorded that the impact of the offending on the victim had been "very significant", as she was fragile before the offending and she was more vulnerable than she ever was, as a result of the offending. The relationship that she was in at the time of the offending ended, and she did not trust other people, had become overprotective of her children and had been unable to form any lasting relationship. After the offending she suffered from bouts of depression and anxiety for which she was prescribed anti-depressants which she was still taking at the time of the trial. The sentencing judge noted that the effect of the commission of the stupefying charge was that the victim was unable to defend herself "against the predatory conduct of the person who has rendered them stupefied."

**Did administration of a stupefying drug by the respondent in order to commit the sexual assaults mean that the sexual assaults involved violence?**

[17] It is contended on behalf of the applicant that the respondent by administering the antidepressant drug unknowingly to the victim in conjunction with alcohol that rendered her defenceless against the respondent meant that the sexual assaults then committed by the respondent on the victim involved violence for the purpose of the Act. It is contended on behalf of the respondent, however, that use of the drug to render the victim defenceless was different to using physical force to control the victim and did not mean that the sexual assaults involved violence for the purpose of the Act.

[18] As the survey of dictionary definitions and relevant cases in *Phineasa* shows, the predominant definition of "violence" is the use of physical force, but "violence" is not exclusively defined as the exercise of physical force. In fact, the definition of "violence" in the Act extends to intimidation or threats. Muir JA in *Phineasa* at [39] found it unnecessary for the purpose of that case to explore the question of whether, and to what extent, there may be "violence" for the purposes of the Act not involving the application of physical force to a person. This matter, however, requires that question to be explored. It may be in some circumstances the exercise of power achieves the same outcome as physical force. Applying the approach in *Phineasa* at [38] that violence normally involves the use of force against a person to facilitate the sexual assault of that person, it is arguable that administering a drug in order to put the victim in a state where she could not resist sexual assaults inflicted by the respondent on her involved violence.

[19] The approach to the construction of the Act must have regard to the potential restriction on the liberties of a prisoner who has completed the sentence imposed for a serious sexual offence, but becomes subject to the regime under the Act.

[20] As indicated in *Phineasa* at [39], it is necessary to determine whether conduct involves "violence" by reference to the facts and circumstances of the case. It was argued on behalf of the respondent that if it were found that the administration of a stupefying drug in order to commit a sexual assault amounted to violence, it would follow that whenever a sexual assault was committed after the administration of a drug to facilitate the assault, the sexual assault must be found to have involved violence. (A similar argument could be mounted where a sexual assault was committed after the commission of an assault occasioning bodily harm in order to facilitate the sexual assault.) In accordance with *Phineasa*, it is not a matter of concluding that the sexual assault involved violence merely from the commission of the related offending of administering a stupefying drug to facilitate that sexual assault. It is a matter of determining on the facts and circumstances of the particular case whether the sexual offence that was committed involved violence.

[21] The respondent was devious in drugging the victim, so that he was able to sexually assault her without resistance from her. The sexual offending was committed by the respondent over a period of up to an hour when the victim was confined by the respondent, distressed at her own helplessness, and unable to resist the sexual touching by the respondent that comprised each of the five offences of sexual assault. The nature of the assaults are distinguishable from the offending in *Phineasa* and *Tilbrook* in that they were not opportunistic and transitory touching or groping on the outside of the relevant victim's clothes. Although the victim did not sustain a lasting physical injury, she suffered psychological or emotional harm that was primarily attributable to the respondent's conduct and was still persisting by the time of the trial that took place 21 months after the commission of the offences.

The exercise of power by the respondent over the victim with the same effect as physical force to confine her physically to his presence, quell resistance and facilitate sexual offending may properly be characterised as violence for the purpose of the Act. In the circumstances of this case, the administration of a drug by the respondent to put the victim in a state where she could not resist his planned sexual assaults meant those sexual assaults involved violence.

[22] The respondent is a prisoner for the purpose of the Act.

**Are there reasonable grounds for believing the respondent is a serious danger to the community in the absence of a division 3 order under the Act?**

[23] The court cannot make an order under s 8 of the Act, unless it is satisfied there are reasonable grounds for believing the respondent is a serious danger to the community in the absence of a division 3 order. The applicant relies on the respondent's criminal history and the report of psychiatrist Dr Sundin. Counsel on behalf of the respondent did not dispute that if it were determined the respondent was a prisoner for the purpose of the Act, the proposed orders should be made under s 8 of the Act for the examination of the respondent by two psychiatrists nominated by the applicant and the listing of the application for hearing. It is still necessary to consider, however, whether there are reasonable grounds for believing the respondent is a serious danger to the community in the absence of a division 3 order.

[24] Apart from the offences for which the respondent is currently imprisoned, he has a relevant entry in his criminal history. He pleaded guilty to one count of aggravated rape and one count of attempted murder committed in Victoria on 25 November 1991. His victim was a 17 year old school girl who was unknown to him. She was walking home from school, when he followed her, grabbed her from behind and took her to a secluded spot where he raped her and used a small knife to cut her throat, but she survived. The effective sentence that was imposed on him was a head sentence of 12 years' imprisonment with a minimum of 10 years' imprisonment to be served.

[25] The respondent has had an alcohol problem since he was a teenager. Within weeks after his release from prison in 2002, he resumed drinking alcohol that was primarily social drinking with a binge every two to three weeks.

[26] The respondent underwent the Getting Started: Preparatory Program between 11 April and 22 June 2011, but missed several sessions of the 12 sessions and, according to the facilitators, the respondent did not appear keen to address his offending behaviour. As a result of assessments undertaken in the prison of the respondent's risk of sexual reoffending, it was recommended that he participate in the High Intensity Sexual Offending Program (HISOP). The respondent has declined placement in this program on two occasions. On a subsequent review of this recommendation, it was recommended that the respondent participate in a Moderate Intensity Sexual Offending Program (MISOP). On 6 December 2012 the respondent declined an offer to participate in MISOP.

[27] Dr Sundin interviewed the respondent for almost three hours on 14 June 2012 for the purpose of assessing the respondent's risk of sexual recidivism in relation to a possible application pursuant to the Act.

[28] Dr Sundin administered a number of formal risk assessment instruments which tended to support a conclusion that Mr Stanbrook's risk of future sexual offending is moderate to high. In conjunction with the information that Dr Sundin obtained from the prison files and the interview, she diagnosed the respondent with alcohol abuse/dependence, in sustained remission whilst in prison, and that he meets the criteria for personality disorder not otherwise specified, as he shows a range of avoidant and anti-social personality traits, but there is no evidence of any psychotic disorder or a paraphilia. Although Dr Sundin appears to have mistakenly recorded that the respondent dropped out of a HISOP, her observation that the respondent has not actively engaged in therapy accords with the prison records. Dr Sundin's ultimate conclusion is that the respondent represents an unacceptable risk to the community of sexual reoffending and that he should be managed under a supervision order on release. Dr Sundin emphasises the importance of abstinence from alcohol and illicit drugs to reduce the risk of sexual reoffending by the respondent.

[29] On the basis of the respondent's criminal history relating to sexual offending, his lack of meaningful engagement in sexual offender treatment programs within the prison, and the opinion of Dr Sundin, I am satisfied that there are reasonable grounds for believing that the respondent is a serious danger to the community in the absence of a division 3 order.

**Orders**

[30] The orders which should be made are:

THE COURT being satisfied that there are reasonable grounds for believing the respondent, Paul Andrew Stanbrook, is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (the Act),

ORDERS THAT:

1. The application for a Division 3 Order be set for hearing on 17 June 2013.
2. Pursuant to s 8(2)(a) of the Act, the respondent undergo examinations by two psychiatrists, being Professor Barry Nurcombe and Dr Michael Beech who are to prepare independent reports, in accordance with s 11 of the Act.
3. Liberty to apply granted.