

SUPREME COURT OF QUEENSLAND

CITATION: *The Queen v Stanley Stanley Jnr* [2015] QSC 327

PARTIES: **THE QUEEN**
(Respondent)

V

STANLEY STANLEY JNR
(Applicant)

FILE NO/S:

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court Rockhampton

DELIVERED ON: Ex Tempore

DELIVERED AT: Rockhampton

HEARING DATE: 13 November 2015

JUDGE: McMeekin J

ORDER: **1. By 9 am on Monday 16 November 2015 Detective Sergeant Scott Ingram make disclosure:**

- a) of all records of conviction of the witnesses that the prosecution intends to call and of the deceased person Allan Robert Mitchell;**
- b) of the QP 9 relating to Mr Mitchell and the matter that came before the District Court;**
- c) of the QP9 in relation to the offence which came before the Rockhampton Magistrates Court on the 30th of June 2005.**

CATCHWORDS: CRIMINAL LAW – PROCEDURE – DISCLOSURE OBLIGATIONS – where the applicant applies for full disclosure of the criminal histories of the deceased man and of the prosecution witnesses – where the prosecution has not fully disclosed the criminal history of the deceased man – where the convictions that have not been disclosed have become “spent offences” that is, outside the rehabilitation period, within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986* – whether disclosure of convictions outside the rehabilitation period is unlawful or against the public interest

Criminal Code 1899 (Qld), s 590AB

Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld), s 3, s 4(1)

R v Brown (Winston) [1998] AC 367

R v Keane [1994] 2 All ER 478

R v Lipton (2011) 82 NSWLR 123

COUNSEL: J Godbolt for the Applicant

J Phillips for the Respondent

SOLICITORS: Fisher Dore Lawyers for the Applicant

Office of the Director of Public Prosecutions for the Respondent

McMeekin J:

Explanatory Addendum

- [1] The following is an ex tempore decision given on the eve of trial of Mr Stanley Stanley Jnr. Contrary to the usual practise concerning ex tempore decisions it is published as counsel advised that there is no decision yet on the matter and it may be of interest to the profession. The transcript of the decision has been amended where necessary to make the decision comprehensible for the purposes of publication.

The Decision

- [2] This is an application brought by Mr Stanley Stanley Junior. Mr Stanley has been charged with murder. The indictment reads “that on the 15th day of May 2013 at Rockhampton in the State of Queensland, [he] murdered Allan Robert Mitchell”. The application concerns the disclosure obligations of the prosecutor. The trial is to commence on Monday, today being the Friday prior.

- [3] The application concerns the disclosure of the criminal histories of the deceased man and of the prosecution witnesses.
- [4] The prosecution have disclosed a history of the deceased which is clearly a partial criminal history. So much is evident because the history refers to a suspended sentence and the judge ordering that the deceased man, Mr Mitchell, serve that suspended sentence, but the charge the subject of the suspended sentence is not revealed. Indeed, the defence have obtained the sentencing remarks of Judge Britton, who was the judge involved in that conviction, and the nature of the charge doesn't really emerge. So the defence are aware that the history must be a partial one.
- [5] For the purposes of this application, Mr Phillips, who appears for the Director, has tendered the complete criminal history of the deceased, and the entry that has been revealed to the defence is the last entry on that history. The history is a three-page history, and there is quite a deal of history there of which the defence are presently unaware. I am not made aware of the position in relation to the various witnesses for the prosecution but it might well be that they too have criminal histories.
- [6] Mr Godbolt, who appears for the applicant, has told me that the practice has developed over the years whereby once upon a time, the prosecution would make available all or full histories of all witnesses and of a deceased person in a murder trial so that the defence was fully armed in relation to those histories. What has happened over the years, though, is that a view has been taken as to how much of the histories are required to be revealed. Mr Phillips, who appears for the prosecution, tells me that the view that is being taken is that where offences have

become “spent offences” within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986* – that is, that they have become aged so in relation to indictable offences more than 10 years before and summary offences five years before – those offences are not revealed on the basis that the legislation that I just referred to makes it unlawful to reveal such offences.¹

[7] Mr Phillips has referred me to section 590AB of the Criminal Code which reads in subsection (2) that without limiting the scope of the obligation on the prosecution to ensure criminal proceedings are conducted fairly, in relation to disclosure in a relevant proceeding, the obligation includes an ongoing obligation for the prosecution to give an accused person full and early disclosure of the evidence the prosecution propose to rely on in the proceeding and “(b) all things in the possession of the prosecution *other than things the disclosure of which would be unlawful* or contrary to the public interest but would tend to help the case for the accused person”.

[8] So the view has been taken that one Act makes the disclosure unlawful and this is caught up in the provision of the Criminal Code that the disclosure obligation is therefore limited in that regard.

[9] The disclosure obligation that section 590AB deals with did not come into being when that section was introduced into the Criminal Code. There was a very longstanding rule that the prosecution are obliged to conduct matters fairly, that all convictions should be obtained only by fair means, and that there has been an obligation on the prosecution to disclose documents which are material to the case

¹ See the definition of “rehabilitation period”, *Criminal Law (Rehabilitation of Offenders) Act 1986*, s 3.

and that, of course, does not simply mean material to the prosecution's interest in the case.

[10] I have been taken to a number of authorities, perhaps the most helpful of which is the New South Wales decision of *R v Lipton* (2011) 82 NSWLR 123. There is a reference there to many of the cases that have examined the history of the prosecutor's obligation. What is very clear is that there is an obligation on the prosecution and has been for a very long time to disclose to the defence documents that may be helpful to the defence. There's a reference at paragraph 77 of that judgment to the decision of the Court of Appeal in England in *R v Keane* [1994] 2 All ER 478 that, "subject to the public interest, the prosecution must disclose documents which are material and documents are material if they can be seen on a sensible appraisal by the prosecution (a) to be relevant or possibly relevant to an issue in the case, (b) to raise or possibly raise a new issue the existence of which is not apparent from the prosecution case, or (c) to hold out a real (as opposed to fanciful) prospect of providing the lead on evidence going to either (a) or (b)."

[11] The passage goes on "this view was approved by the House of Lords in *R v Brown (Winston)* [1998] AC 367 at 376-7 with the comment that an issue in the case must be given a broad interpretation". "Category (c)", it is said, "makes it clear that the duty is not limited to matters that would be admissible in evidence".

[12] So the obligation is very broad. The defence are entitled to have possession of documents that may assist on an issue even though those documents themselves would not be admissible or they may not go directly to the issues that interest the Crown.

[13] I should also say that I am told that there has been no decision made, so far as counsel can find, in which these provisions have been examined or the obligation of the prosecution has been examined against the background of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

[14] Mr Godbolt has drawn my attention to section 4, subsection (1) of that Act which provides under the heading “Construction of Act”:

“This Act shall be construed so as not to prejudice any provision of law or rule of legal practice that requires or is to be construed to require disclosure of the criminal history of any person.”

[15] In my view, that is a complete answer to the apparent view that has been taken by the police and the prosecutorial authorities. There has been a very longstanding tradition that the criminal histories of witnesses on which the Crown intends to rely, and of deceased persons where there is a murder charge, be revealed to the defence. The notion of unlawfulness introduced by the *Criminal Law (Rehabilitation of Offenders) Act 1986*, in my view, is not caught or intended to be caught up by section 590AB, given the express provisions of section 4, subsection (1). That longstanding obligation was not intended to be interfered with by this Act and in my view, section 590AB shouldn't be construed that way.

[16] Indeed, it is apparent that there is a tension between the aims of the Acts. That is, the *Criminal Law (Rehabilitation of Offenders) Act* and the *Criminal Code* in this obligation on the prosecution. While it is a laudable aim that criminals are given the chance to rehabilitate and take their place in society again without old offences being brought up, where what is in question is the liberty of a citizen, particularly

when facing the most serious charge in the criminal calendar, it seems to me that one must give way to the other. Here, in my view, there is simply no doubt at all as to what interests must be favoured.

[17] It may be embarrassing to witnesses to have offences from long ago brought up, but if that provides a reasonable ground on which the defence can demonstrate to a jury that a prosecution case is not fairly based or that they should have some reasonable doubt, then that must override any other principle. It is almost unthinkable that a man might go to gaol for a crime that he might be able to persuade 12 of his fellow citizens that he's not guilty of because of the effect of the *Criminal Law (Rehabilitation of Offenders) Act*. There's even less concern, of course, to be worried about the reputation of a deceased human being. It's fundamental that you can't defame a deceased person and their interest in their reputation is gone.

[18] Mr Phillips has been good enough to tender the deceased's criminal history so I can get some idea of the context. Mr Mitchell has been active in breaching the criminal law for a very long time. The principal interest, of course, that the defence would have is in any acts of violence that he may have committed and there are, apparently, at least convictions for such acts or at least one in the criminal history that the defence are yet to see.

[19] The other peculiarity here, as I've mentioned to Mr Phillips in the course of submissions, is that the date on which the trial comes on might, under the approach taken by the prosecutorial authorities, determine just how much they have to disclose, which seems to be an odd result.

[20] The application in its terms seeks a stay. I decline to order a stay. I do so on the basis that Mr Phillips has told me that there will be no difficulty with the compliance with the direction that I might give as to the disclosure of material of the type that the defence seeks. I propose then to order that by 9 am Monday 16 November 2015 the Director of Public Prosecutions make disclosure of all records of conviction of the witnesses that the prosecution intends to call and of the deceased person Allan Robert Mitchell.

[21] I order that the QP 9 relating to Mr Mitchell and the matter that came before the District Court be disclosed, again by that time and date that I mentioned.

[22] I further order that the QP9 in relation to the offence which came before the Rockhampton Magistrates Court on the 30th of June 2005 also be disclosed.

...

[23] At the request of Mr Phillips I amend the orders by deleting the reference to “the Director of Public Prosecutions” and by inserting a reference to the arresting officer that is “Detective Sergeant Scott Ingram”.