SUPREME COURT OF QUEENSLAND

CITATION:	*R v East* [2008] QCA 325
PARTIES:	**R** **v** **EAST, Neil Frank** (appellant)
FILE NOS:	CA No 3 of 2008 DC No 185 of 2007
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	District Court at Maroochydore
DELIVERED ON:	17 October 2008
DELIVERED AT:	Brisbane
HEARING DATE:	23 September 2008
JUDGES:	Fraser JA, Mackenzie AJA and Daubney J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal dismissed**
CATCHWORDS:	APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS – UNREASONABLE OR INSUPPORTABLE VERDICT – WHERE APPEAL DISMISSED – where Australian Federal Police officers attended at the appellants work address – where appellant asked the officers to leave, then locked the door to the premises – where appellant convicted of two counts of obstructing a Commonwealth public official and two counts of unlawfully detaining a person – whether it was open to the jury to find that the officers had been unlawfully detained against their will APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS – IMPROPER ADMISSION OR REJECTION OF EVIDENCE – GENERAL PRINCIPLES – where, prior to attending the appellant's work address, the Australian Federal Police officers served a restraining order under s 17 of the *Proceeds of Crime Act* 2002 (Cth) at the appellant's home address – where the officers made a tape recording of abusive remarks by the appellant – where admission of the tape recording was objected to on the basis that it was irrelevant and prejudicial – whether the learned

	trial judge erred in admitting the tape recording
	Criminal Code Act 1899 (Qld), s 355
	O'Leary v The King (1946) 73 CLR 566; [1946] HCA 44, considered *R v Awang* (2004) 2 Qd R 672; [2004] QCA 152, applied *R v Bond* [1906] 2 KB 389, applied *R v O'Malley* [1964] Qd R 226, cited *R v O'Regan* [1961] Qd R 78, cited
COUNSEL:	D T Locantro (solicitor) for the appellant M O Plunkett for the respondent
SOLICITORS:	Locantro Lawyers for the appellant Commonwealth Department of Public Prosecution for the respondent

[1] **FRASER JA:** I agree with the order proposed by Daubney J and with his Honour's reasons for the order.

[2] **MACKENZIE AJA:** I agree that the appeal should be dismissed for the reasons given by Daubney J.

[3] **DAUBNEY J:** On 6 December 2007 the appellant was found guilty after trial by jury of:

(a) Two counts of obstructing a Commonwealth public official; and

(b) Two counts of unlawfully confining a person.

[4] The appellant was convicted and sentenced to three months' imprisonment on each count, the sentences to be served concurrently with each other and with another sentence being served by the appellant.

[5] The appellant has appealed against the convictions, contending they were unsafe. An application for leave to appeal against sentence was not pursued, the appellant having served the term by the time of the hearing of the appeal.

Background

[6] On 24 November 2004, a restraining order under s 17 of the *Proceeds of Crime Act* 2002 (Cth) was issued by a District Court Judge against the appellant, one Gail Louise Currie and Permagold Pty Ltd. Two officers of the Australian Federal Police, Mr Shipton and Mr Kourloufas, were instructed by the Commonwealth Director of Public Prosecutions to serve the order on the appellant and the other parties affected by the order.

[7] The order had the effect of restraining the named parties from dealing with a particular property at Twin Waters on the Sunshine Coast.

[8] At about 6.40 am on 25 November 2004, Shipton and Kourloufas went to the Twin Waters property and served the restraining order on the appellant and Currie, who were living there. In the course of effecting service, the officers were subjected to a barrage of verbal abuse and threats by the appellant, including statements by the appellant to Kourloufas that the appellant was going to 'teach [him] a lesson', that Kourloufas had 'picked on ... the wrong person this time', that Kourloufas' job 'is at an end', and that it was people like Kourloufas 'who need to be taken out'. This conversation was recorded by Kourloufas on a hand-held tape recorder.

[9] Shipton and Kourloufas then went to the Mountain Creek home of Mr Lance Reinhardt, a director of Permagold Pty Ltd, for the purpose of serving the restraining order on the company. They spoke with Mr Reinhardt's wife, who told them that he was at his work address, the premises of E-banc Trade Pty Ltd at 2 Production Avenue, Warana. This was a company controlled by the appellant.

[10] Shipton and Kourloufas then went to the Production Avenue premises, arriving there at about 8.40 am. They entered the office at the front of these premises through sliding glass doors into a reception area. They identified themselves to the receptionist as Australian Federal Police, and asked to speak to Mr Reinhardt. On their version, the receptionist said that she would get him for them, and then went into the back of the property. The receptionist said in evidence that she did not leave the reception area, but telephoned Mr Reinhardt's personal assistant.

[11] In any event, shortly after Shipton and Kourloufas had asked to speak with Reinhardt, the appellant came into the reception area from the rear warehouse part of the premises. He was in an agitated state, and ordered the officers to leave the premises. Kourloufas told him that they were there on official business, namely to serve the papers on Reinhardt. The appellant told him that Reinhardt was not on the premises, and continued to tell them to leave the property. The appellant then made a call on his mobile phone. He left through the sliding glass doors, which he then secured from the outside with a chain and padlock. Kourloufas was able to slide the door open a fraction, and called out to the appellant to open the door. The appellant ignored him, and remained standing outside the property.

[12] Shipton and Kourloufas remained in the reception area. Obviously, they could not leave through the front sliding doors. They did not know of any other exit from the premises, and were unwilling to explore the rear of the property for a possible exit because they did not know who or what was in the rear part of the property.

[13] About 15 minutes later, Queensland police officers arrived at the scene. The appellant had called them on his mobile phone. Shipton and Kourloufas were still in the reception area, behind the locked sliding doors. A number of other people, including the receptionist, were in the reception area with them. When the Queensland police officers arrived, the appellant said to them words to the effect:

> 'I've got them. I'll have them detained. I want them charged with trespassing.'

[14] The appellant then unlocked the front sliding doors. Shipton and Kourloufas identified themselves to the Queensland police officers, stating the purpose of their visit to the property and the events which had occurred.

[15] Whilst there were differences between the witnesses as to the fine detail of what had occurred at the Production Avenue premises, there was no doubt that the appellant, knowing who Shipton and Kourloufas were, had deliberately locked them in the property. So much is clear from the following passage in the appellant's evidence-in-chief at the trial:

> "Why did you lock the front door? – Because I was continuing what I thought was the correct procedure. I believed I had two officers on my premises that were not acting accordingly. They'd gone beyond their bounds of the law and they were not acting in an official manner. I'd warned them that – I told them that Reinhardt wasn't there. I warned them that if they – you know, to leave the premises and I warned them if they didn't leave the premises I would call the police and I felt that the next procedure was for me to get outside to assist the State police when they arrived to direct them, to secure part of the premises and to distance myself from them. And I thought that was the correct procedure.
>
> To distance yourself from the Federal police? – Correct.
>
> Why did you want to distance yourself from the Federal police? – Because I had enough of them, I suppose. I had nothing to say to them, everything had been said and all I wanted was the State police now to come and do their duty.
>
> What were you hoping to achieve by locking the front door? – Okay. By delaying them so that if they wanted to leave they couldn't just leave one minute before the police arrived. They'd have to go through the premises, you know, and it would be more of a hassle for them and they might be caught on the premises, I guess, by the police – be more likely to be caught on the premises.
>
> Did you put much thought into your decision to lock ------? – No.
>
> ------- the front door? – No, none at all. Obviously, it's why we're here now.
>
> Now, once the front door was locked, did you have any communication ------? -- No.
>
> ----- with the Federal police inside? -- No, I did not."

The appeal

[16] The appellant raised two arguments on appeal in support of the contention that the convictions were unsafe:

(a) That the learned trial judge erred in allowing the tape recording of the earlier discussion at the appellant's home to be put into evidence;

(b) That as a matter of law, the conduct of the appellant did not contravene s 355 of the *Criminal Code* (Qld).

[17] The admission of the tape recording was objected to before the learned trial judge on the basis that it was irrelevant and prejudicial. His Honour rejected those submissions, and held that the evidence could be led.

[18] The following statement of Kennedy J in *R v Bond*[1] has long been applied as the law in Queensland:[2]

> "Evidence is necessarily admissible as to acts which are so closely and inextricably mixed up with the history of the guilty act itself as to form part of one chain of relevant circumstances, and so could not be excluded in the presentment of the case before the jury without the evidence being thereby rendered unintelligible."

[19] In *O'Leary v The King*[3] the appellant and other employees at a timber camp took part in a drunken orgy which commenced on a Saturday morning and continued until late on the Saturday night. The appellant was found guilty of the murder of one of the other participants. At the trial, evidence was admitted to the effect that the appellant had, at various times during the orgy, violently assaulted other employees. Some of these assaults were unprovoked, and all consisted of brutal blows at the head. The majority, comprising Latham CJ, Rich, Starke, Dixon and Williams JJ, held this evidence was admissible. In the course of his reasons for judgment, Latham CJ said:[4]

> "But there is another ground on which, in my opinion, the evidence was admissible. All the assaults in question were incidents of a drunken orgy on the same day, begun at Penola, continued at Kalangadoo and at the camp where the man lived. Evidence that the accused had been drinking during the day and evening of 6th July and early hours of 7th July was admissible to show the probability that he would attack another man in a fit of drunken fury. Evidence that, on the day and the night of the killing of Ballard, he actually attacked particular fellow employees without cause is also evidence which goes to show the probability that he would attack some other fellow employee. Such evidence puts the act of attacking Ballard in a setting which makes it possible for the jury to obtain a real appreciation of the events of the day and the night. It is evidence of 'facts and matters which form constituent parts or ingredients of the

---

1 [1906] 2 KB 389 at 400.
2 *R v O'Regan* [1961] Qd R 78; *R v O'Malley* [1964] Qd R 226.
3 (1946) 73 CLR 566; [1946] HCA 44.
4 At 575.

> transaction itself or explain or make intelligible the course of conduct pursued.' – per Dixon J in *Martin v Osborne* (1). Upon this ground I am of opinion that the evidence was admissible."

[20] Dixon J said:[5]

> "The evidence disclosed that, under the influence of the beer and wine he had drunk and continued to drink he engaged in repeated acts of violence which might be regarded as amounting to a connected course of conduct. Without evidence of what, during that time, was done by those men who took any significant part in the matter and especially evidence of the behaviour of the prisoner, the transaction of which the alleged murder formed an integral part could not be truly understood and, isolated from it, could only be presented as an unreal and not very intelligible event. The prisoner's generally violent and hostile conduct might well serve to explain his mind and attitude and, therefore, to implicate him in the resulting homicide."

[21] In the present case, it seems to me that the learned trial judge was manifestly correct in admitting the tape recording of the earlier conversation which had occurred at the appellant's home only a couple of hours prior to the events at Production Avenue. When one has regard even to the appellant's own explanation of the events which occurred at Production Avenue (as set out in the evidence quoted above at [13]), it is clear that evidence of the statements made by the appellant to Shipton and Kourloufas was relevant to enabling the jury to have a true and full understanding of the appellant's conduct in locking the officers into the reception area. To exclude this evidence from the jury would, in my view, have yielded a state of evidence before the jury under which the conduct of the appellant at the Production Avenue premises was less than intelligible. On the contrary, by admitting the evidence of the verbal confrontation, which clearly occurred in a context which was closely connected in time and substance to the events at Production Avenue, the evidence of what occurred at Production Avenue was rendered more completely intelligible for the jury.

[22] Accordingly, I do not consider there was any error on the part of the trial judge in admitting this evidence.

[23] By his second argument, the appellant sought to contend that his conduct had not amounted to an unlawful detention of the officers in the Production Avenue premises. Section 355 of the *Criminal Code* provides:

> "**355 Deprivation of liberty**
>
> Any person who unlawfully confines or detains another in any place against the other person's will, or otherwise unlawfully deprives another of the other person's personal liberty, is guilty of a misdemeanour, and is liable to imprisonment for 3 years."

---

5 At 577-578.

[24] The interpretation and application of this section was extensively considered by Williams JA, with whom McMurdo P and McPherson JA agreed, in *R v Awang*.[6] In the course of his reasons for judgment, Williams JA said:

> "[19] There is little authority as to what in law constitutes deprivation of liberty for purposes of s. 355 of the *Criminal Code*. There was no such offence at common law; the common law recognised offences of kidnapping and false imprisonment (the latter being both a crime and a tort). The original Griffith Code provided for offences of kidnapping and deprivation of liberty, though kidnapping initially was defined differently. In the original Code kidnapping was limited to the circumstance where a person was forcibly taken or detained with intent to compel the person detained to work against his will. In the light of that it could be said that the offence of deprivation of liberty was complementary to the offence of kidnapping; the latter involving a specific intent whereas the former did not.
>
> [20] Regardless of that history it is the language of s. 355 which must define the elements of the offence. Relevantly the section is in these terms:
>
> > 'Any person who unlawfully confines or detains another in any place against the other person's will, or otherwise unlawfully deprives another of the other person's personal liberty, is guilty of a misdemeanour ...'
>
> [21] The terms "confines", "detains", "deprives" and "liberty" should each be given their ordinary and natural meaning. The most apposite meaning of "liberty" found in the Oxford English Dictionary is: "The condition of being able to act in any desired way without restraint; power to do as one likes." Again one finds in the dictionary "deprive" defined as including the denial of enjoyment of something, and "detain" has a variety of meanings including "keep in confinement", "hold back, delay, stop".
>
> [22] Essentially it will always be a question of fact for the jury whether there has been conduct on the part of an accused person which deprives another of that person's liberty. It is not possible to provide a simple, all-inclusive definition of the offence. Words of the Court of Appeal (Stephenson and Orr L.JJ. and Caulfield J.) in a somewhat different context are apposite here. In *R. v. Inwood* [1973] 1 W.L.R. 647 the court was concerned with the question whether or not a person had been arrested by police, that is had he been deprived of his liberty so that he was no longer a free man. In that context the court said at 652-653:

---

[6] (2004) 2 Qd R 672; [2004] QCA 152.

> 'It all depends on the circumstances of any particular case whether in fact it has been shown that a man has been arrested, and the court considers it unwise to say that there should be any particular formula followed. No formula will suit every case and it may well be that different procedures might have to be followed with different persons depending on their age, ethnic origin, knowledge of English, intellectual qualities, physical or mental disabilities. There is no magic formula; only the obligation to make it plain to the suspect by what is said and done that he is no longer a free man. However, what we think is clear is that it is a question of fact, not of law, and it must be left to the jury to decide whether a person has been arrested or not, at least where there is a real dispute as to the question whether the defendant understood that he was being arrested.'

> [23] As I have said that statement is apposite to the offence of deprivation of liberty. The factors as mentioned in that quoted passage could also be relevant in determining as a fact whether a particular person was deprived of liberty. Here the complainant was not so bound that she could not, for example, walk around. Her hands were bound together tightly and that did severely limit her freedom of movement. Further, the appellant exercised control over the relevant doors and windows."

[25] It was, in my view, clearly open to the jury on the facts of this case to conclude that Shipton and Kourloufas had been unlawfully detained in the reception area against their wills. To adapt the wording of Williams JA, the essential question of fact for the jury was whether there was conduct on the part of the appellant which deprived each of Shipton and Kourloufas of his liberty. It is not to the point that the time during which they were detained was of relatively brief duration – the clear fact is that each was detained. Nor is it to the point that Shipton and Kourloufas may, had they explored further into the rear of the premises, discovered another exit. What was relevant in this case was the conduct of the appellant, which was specifically directed, as he affirmed in his evidence-in-chief, to securing that part of the premises in which the officers were situated and to distance himself from them.

[26] In my view, no basis has been shown for impugning the jury's decision in this regard.

[27] Accordingly, I would order that the appeal be dismissed.