[2016] QSC 318

QUEENSLAND SUPREME COURT

APPLEGARTH J

SC 1046 of 2015

R **Respondent**

v

VINCENT O'DEMPSEY **Applicant**

BRISBANE

TUESDAY, 11 OCTOBER 2016

JUDGMENT (EX TEMPORE)

[1] I am dealing with an application by Mr O'Dempsey to exclude evidence of Mr White who in 1975 was a detective of police and who is to give evidence about an interview that he conducted with Mr O'Dempsey at the Consorting Squad in Sydney on 17 April 1975. The present matter simply concerns the legal issue of whether the admissibility of those statements, which on one view might be taken to constitute an admission made by a relevant person, are governed by the provisions of the *Police Powers and Responsibilities Act* 2000. A parallel legal issue arises in relation to certain applications made by Mr Dubois and it has been convenient to hear the legal argument from both applicants.

[2] The application contends that the notes that Mr White took did not comply with the provisions of the *Police Powers and Responsibilities Act*. It goes without saying that the interview was not electronically recorded and there is no evidence that after Mr White made the record, he read the matter in English to Mr O'Dempsey and gave him a copy of the record.

[3] The applicant's argument depends upon the provisions of division 7, chapter 15 of the *Police Powers and Responsibilities Act* applying to events in 1975. It is acknowledged that if it does then I have a discretion under s 439(2) to admit the evidence if I was satisfied in special circumstances of the case admission of the evidence would be in the interests of justice.

[4] Presently I am concerned with the threshold issue of whether the *Police Powers and Responsibilities Act* 2000 applies to the questioning which Mr White undertook on 17 April 1975. I am concerned, in essence, with a question of statutory interpretation.

[5] The Crown responds to this application and to the parallel applications made by Mr Dubois about an interview that was conducted long before the commencement of the *Police Powers and Responsibilities Act* 2000. The Crown submits that the admissibility of this evidence depends upon common law principles and matters governing the admissibility of such statements.

[6] In reply, counsel for Mr O'Dempsey, submits that s 437 of the *Police Powers and Responsibilities Act* 2000 is applicable to the admission of the interview although the legislation was passed long after the interview took place. Reference is made to statements of general principle governing provisions which are procedural in nature and which operate retrospectively. These include the well-known statements in *Maxwell v Murphy* (1957) 96 CLR 262 at 267.

[7] Reference is also made to the Explanatory Notes to the 2000 Bill in which it was said clause 227 (which is now s 437) stipulates the procedure to be followed if an interview is written and requires that it be read onto an electronic recording made in the presence of the subject. It is submitted that s 436 of the *Police Powers and Responsibilities Act* is procedural and has retrospective effect because it affects the mode by which evidence is admitted in the trial.

[8] The issue is one of statutory interpretation and in accordance with the principles of statutory interpretation the prohibition on admissibility contained in s 436(3) needs to be seen in its context. The context is that in passing the *Police Powers and Responsibilities Act* 2000 and one might say in passing earlier provisions in earlier forms of the *Police Powers and Responsibilities Act*, the Parliament was governing the conduct of

questioning of relevant persons by police. The Act stated the requirements that had to be followed for good reason. The reasons why these provisions were enacted have been stated in various places, including by Justice Mackenzie in *R v Duong* (2002) 1 Qd R 502.

[9] The issue is essentially this: did the Queensland Parliament in enacting the 2000 Act intend the requirements for electronic recording in s 436 and the requirements in relation to written records in s 437 to apply to statements made years – perhaps decades – earlier? I frame the question that way because the prohibition on admissibility in s 436(3) is a prohibition on the admissibility in evidence against a person in a proceeding and depends upon whether the confession or admission is recorded "as required by subsection 436(4) or 437". So the provision governing admissibility which the applicant contends is a procedural matter is linked to the substantive requirement.

[10] It seems to me improbable that the Queensland Parliament intended these requirements to apply to statements made years – perhaps decades – earlier. It seems improbable because if that was the case then, subject to the possibly narrow discretion that exists in s 439, confessions or admissions which were lawfully obtained and recorded in accordance with the law and what was regarded as best practice at the time or appropriate practice at the time would be rendered inadmissible.

[11] That would have significant consequences upon securing the conviction of a person who had fully and frankly admitted to guilt without any promise or inducement or improper police conduct. It seems improbable that the Queensland Parliament intended the securing of convictions against guilty individuals to be so jeopardised, subject to the exercise of a discretion.

[12] And if the Queensland Parliament intended to retrospectively impose requirements on police, such that the police could be said to have breached requirements of which they were then unaware, one would expect such an intent to be apparent from the words of the statute or to be apparent from extrinsic material. No such intent is apparent.

[13] It is improbable, it seems to me, that the Parliament intended that, to take an example, a fully typed record of interview which someone read through and signed would be rendered admissible if that confession was given in, say, 1975 or 1980 or 1985. One

would expect the Parliament to have indicated that the requirements had that retrospective effect.

[14] The presumption of prospectivity or the presumption against retrospectivity are simply presumptions. Ultimately, one must turn to the language the statute used having regard to its purpose, aided by those presumptions. Here, the language of the statute does not contain any language of retrospectivity. On the contrary, insofar as it applies to questioning of a relevant person it would, in accordance with the presumption of prospectivity, apply to questioning of a relevant person after the 2000 Act became law.

[15] It seems to me highly improbable that the provisions were intended to have a retrospective effect and there is nothing in the Act or any extrinsic material to indicate that they did. This does not mean that persons who had been questioned before the Act came into existence are not protected. The admissibility of alleged statements that were made by them would be governed by established principles governing the admissibility of confessional statements whether signed or unsigned.

[16] In all the circumstances I decline to accept the point of interpretation contended for by Mr Dubois and I decline to accept the point of interpretation contended for by Mr O'Dempsey. I will, however, return to the admissibility of these statements because the Crown accepts that the admissibility of the evidence depends upon other principles governing the admissibility of confessions and admissions. So the only ruling that I have made is on the point of statutory interpretation