SUPREME COURT OF QUEENSLAND

CITATION:	*R v Humphreys* [2022] QSCPR 17
PARTIES:	**THE KING** (respondent) **v** **PAULA HUMPHREYS** (applicant)
FILE NO/S:	Indictment No 109 of 2021
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Toowoomba
DELIVERED ON:	4 November 2022
DELIVERED AT:	Brisbane
HEARING DATE:	30 May 2022
JUDGE:	Burns J
ORDER:	**The conversation between the applicant and police at her place of residence on 9 October 2020, any evidence derived from an analysis of the applicant's mobile telephone seized by police on the same day and the record of interview between the applicant and police at the Dalby Police Station on 16 October 2020 be excluded from the evidence to be led at the applicant's trial.**
CATCHWORDS:	CRIMINAL LAW – PROCEDURE – WARRANTS, ARREST, SEARCH, SEIZURE AND INCIDENTAL POWERS – SEARCH AND SEIZURE – where the applicant was charged on indictment with trafficking in dangerous drugs – where the applicant's residence was searched pursuant to a warrant issued under s 151(a)(i) of the *Police Powers and Responsibilities Act* 2000 (Qld) – where the applicant asserted that questioning of her by police during the search was done in contravention of the *Police Powers and Responsibilities Act* 2000 (Qld) and Schedule 9 to the *Police Powers and Responsibilities Regulation* 2012 (Qld) (*Police Responsibilities Code*) – where the applicant sought an order that her answers to questions asked of her by police during the search and subsequently in a formal record of interview be excluded from evidence at her trial – whether the police gave the applicant a warning in compliance with s 418(1) of the *Police Powers and Responsibilities Act* 2000 (Qld) – whether the police gave the applicant a warning in substantial compliance with s 23 of the *Police Responsibilities Code* – whether the police gave the applicant a direction beyond the

power conferred by the warrant – whether the various statements made by the applicant in connection with the search and certain evidence obtained from the search should be excluded from evidence at her trial

CRIMINAL LAW – EVIDENCE – JUDICIAL DISCRETION TO ADMIT OR EXCLUDE EVIDENCE – where the applicant was charged on indictment with trafficking in dangerous drugs – where the applicant's residence was searched pursuant to a warrant issued under s 151(a)(i) of the *Police Powers and Responsibilities Act* 2000 (Qld) – where the applicant sought an order that her answers to questions asked of her by police during the search and subsequently in a formal record of interview be excluded from evidence at her trial – whether, if questioning of the applicant by police during the search was done in contravention of the *Police Powers and Responsibilities Act* 2000 (Qld) and Schedule 9 to the *Police Powers and Responsibilities Regulation 2012 (Qld) (Police Responsibilities Code)*, the various statements made by her in connection with the search and evidence otherwise obtained during the search should be excluded in the exercise of the court's discretion

Criminal Code 1899 (Qld), s 590AA
Police Powers and Responsibilities Act 2000 (Qld), s 5, s 151, s 154, s 158, s 418
Police Powers and Responsibilities Regulation 2012 (Qld), sch 9, s 23

Bunning v Cross (1978) 141 CLR 54, cited
Cleland v The Queen (1982) 151 CLR 1, cited
MacPherson v The Queen (1981) 147 CLR 512, cited
R v Bossley [2012] QSC 292, cited
R v Ford [2017] QSC 205, cited
R v Ireland (1970) 126 CLR 321
R v LR [2006] 1 Qd R 435, followed
R v Milos [2014] QCA 314, cited
R v Swaffield (1998) 192 CLR 159, followed
R v Swayne [2021] 7 QR 781, cited
Ridgeway v The Queen (1995) 184 CLR 19, cited
Van Der Meer v The Queen (1988) 62 ALJR 656, cited

COUNSEL: S Lynch for the applicant
S Petrie for the respondent

SOLICITORS: Bouchier Khan Lawyers for the applicant
Director of Public Prosecutions (Qld) for the respondent

[1] The applicant, Paula Humphreys, faces an indictment charging her with one count of trafficking in methylamphetamine and one count of aggravated possession of the same drug. It is alleged that she trafficked at a street level to end users over a period

of about 12 months.

[2] By this application pursuant to s 590AA of the *Criminal Code* (Qld), the applicant seeks to exclude the following categories of evidence from the evidence at her trial: (1) a conversation with police during the execution of a search warrant at her residence in Dalby on 9 October 2020; (2) evidence derived from an analysis of data stored on a mobile telephone belonging to her that was seized by police during the execution of the warrant; and (3) a formal record of interview conducted seven days later (16 October 2020).

The search

[3] The search warrant was issued by a justice of the peace on 8 October 2020 pursuant to s 151(a)(i) of the *Police Powers and Responsibilities Act* 2000 (Qld). It authorised police to search the applicant's residence (along with all other structures on the land) and to seize, relevantly, "[m]obile telephones and SIM cards used in the commission of … drug offences". The warrant did not authorise the police to require the applicant to provide access to digital devices such as mobile telephones or to supply access information for any such devices, and nor could it have done so because such a power can only be incorporated if the warrant is issued by a magistrate or a judge.[1]

[4] Several police officers attended at the applicant's residence at approximately 2.15 pm on the following day to execute the warrant. Three of the officers[2] were equipped with body-worn cameras to capture sound and vision of the subsequent interaction with the applicant and others.

[5] The applicant was located with two men outside a shed at the rear of the property. The officer to whom the warrant was primarily issued, Constable Matthew Herbert, addressed the group. He introduced himself, informed them that he had a search warrant and then detained them for the purposes of the search. He then said, "Do you understand?", to which the applicant responded by nodding her head.

[6] There was then this exchange:

> "CON HERBERT: Okay, so if any of you guys attempt to interfere with the search or attempt to obstruct any police officer, you can be arrested, alright, you understand?
>
> APPLICANT: Yep.
>
> CON HERBERT: Cool. I must warn you that you have the right to remain silent and this means you don't have to say anything, answer any questions or make any statements unless you wish to do so. However if you do say something or make any statements, it may be later used as evidence. Do you understand this warning?"

[7] The applicant does not appear to have responded to this question.[3] She is seen on

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1 *Police Powers and Responsibilities Act*, s 154(1).

2 Officers Herbert, Millar and Gibson.

3 The applicant's counsel submitted in writing that the applicant "indicated that she understood" this warning but having closely watched and listened to the body-worn camera footage from Officers Herbert, Millar and Gibson (Exhibits 1, 3 and 6), I could discern no such indication.

the footage standing to one side wiping her nose and mouth with her hand. Instead of pursuing a response from the applicant, Constable Herbert asked one of the men present whether he understood the warning and then engaged in a short conversation with this man. Constable Herbert then continued, addressing the group:

> "Look, if it is necessary to question you, you have the right to contact a friend or relative or a lawyer and have them present during questioning. Do you understand that?"

[8] No one responded to that question.

[9] Next, Constable Herbert provided the applicant with a copy of the search warrant and a statement summarising the applicant's rights and obligations under the warrant.[4]

[10] During the ensuing search, the applicant was inside the shed with Constable Melissa Gibson and Senior Constable Digby Ford. She was answering questions about various items (such as drugs and drug paraphernalia) as they were located by the police when Senior Constable Ford asked, "Where's your mobile 'phone?". The applicant replied, "Um, it should be on my desk", indicating a desk situated behind where Constable Gibson had been standing. When the telephone was retrieved by Constable Gibson, she turned it on before holding it up in one hand towards the applicant while asking, "Have you got a PIN for the 'phone?". Before the applicant answered, Senior Constable Ford joined in, saying, "Just tell us what the PIN number is". The applicant replied, "I use my thumb". Constable Gibson then presented the telephone to the applicant so that she could apply her thumb to its face. The applicant did so and, with that, the telephone was unlocked, allowing Constable Gibson to commence a preliminary examination of its contents. Later during the search, and no doubt with the benefit of that examination, Constable Gibson announced that there was a "PIN set up on" the telephone "as well". Senior Constable Ford asked the applicant for the "PIN" and the applicant duly provided the four-digit code to access the telephone. The telephone was seized pursuant to the power to do so conferred by the warrant.

[11] Just prior to enquiring about the mobile telephone, the applicant was questioned about what appeared to the police officers at least to be a "tick sheet". At that point, the applicant said that she was "stressed", "really freaked out with what's going on", that her "brain has just stopped" and that she "cannot think". Earlier, the applicant revealed that she had smoked methylamphetamine that morning.

[12] The applicant also gave evidence at the hearing of this application and was cross-examined. She was 44 years of age when the warrant was executed, had no criminal history and had never before come to the adverse attention of the authorities. She said that she understood the warning from Constable Herbert not to obstruct police during the course of the search to mean that she could not impede them, that she should not do anything to "hold them up" and that she should "stay out of their way". Equally, she acknowledged that she understood the further warning to the effect that she did not have to answer any questions as meaning that she had the right to "stay silent". She confirmed that she consumed "around half a point to one

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[4] Pursuant to s 158(1)(a) of the *Police Powers and Responsibilities Act*. The document is entitled, "Statement to Occupier".

point" of methylamphetamine that morning but agreed that she was a daily user of that drug and had "clarity at the time the police were there" but added that she felt "very stressed". When asked to provide access to her mobile telephone, she "thought [she] had to" and agreed with her counsel that she did not think that she had any choice when the police demanded access.

[13] The applicant agreed that she read the Statement to Occupier before any request was made for access to her mobile telephone. In cross-examination, she accepted that she could have exercised her right to silence but nonetheless answered questions, however she asserted that she was overwhelmed, stressed and scared and she said that she would not have fully appreciated at the time when she answered questions that she could have remained silent. The applicant accepted that she had the presence of mind to enquire as to "school pickup" for her children later that afternoon and that she had, despite consuming methylamphetamine, responded to police "in a clear fashion" and in a way that was "quite articulate". She also agreed that the police were "quite polite" to her and did not "force her" to answer questions. However, she maintained that:

> "[I]t would have been a case of not actually wanting to answer their questions but feeling I had to and didn't want to say the wrong thing. … And in that moment it would have slipped my mind. I would not have realised that I could say I do not wish to answer questions."

The record of interview

[14] The applicant was not immediately charged with trafficking. Rather, after the data on the seized telephone was analysed, an appointment was made for the applicant to attend at the Dalby Police Station on 16 October 2020. This she did in the company of her lawyer, Mr Cole. She agreed to take part in an hour-long record of interview during which she was questioned about the text messages on her telephone.

The arguments for exclusion

[15] The justification for excluding the categories of evidence earlier identified (at [2]) was put on two bases. First, it was argued that there had been non-compliance with Schedule 9 to the *Police Powers and Responsibilities Regulation* 2012 (Qld), being the *Police Responsibilities Code*. Second, it was contended that the applicant's consent to the provision of access to her mobile telephone had been unfairly (or unlawfully) obtained.[5] As to the record of interview conducted on 16 October 2020, it was submitted that it should be excluded because it was largely based on an analysis of her mobile telephone to which access had been wrongly obtained.

[16] Section 418 of the *Police Powers and Responsibilities Act* is in the following terms:

> "**418 Right to communicate with friend, relative or lawyer**
>
> (1) Before a police officer starts to question a relevant person for an indictable offence, the police officer must inform the person he or she

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[5] A third basis was effectively abandoned at the hearing – that the answers the applicant gave to questions asked of her during the search should be excluded because she was adversely affected by methylamphetamine at the time when those questions were asked. There was no substance to that claim.

may—

(a) telephone or speak to a friend or relative to inform the person of his or her whereabouts and ask the person to be present during questioning; and

(b) telephone or speak to a lawyer of the person's choice and arrange, or attempt to arrange, for the lawyer to be present during the questioning.

(2) The police officer must delay the questioning for a reasonable time to allow the person to telephone or speak to a person mentioned in subsection (1).

(3) If the person arranges for someone to be present, the police officer must delay the questioning for a reasonable time to allow the other person to arrive.

(4) What is a reasonable time to delay questioning to allow a friend, relative or lawyer to arrive at the place of questioning will depend on the particular circumstances, including, for example—

(a) how far the person has to travel to the place; and

(b) when the person indicated he or she would arrive at the place.

(5) What is a reasonable time to delay questioning to allow the relevant person to speak to a friend, relative or lawyer will depend on the particular circumstances, including, for example, the number and complexity of the matters under investigation.

(6) Unless special circumstances exist, a delay of more than 2 hours may be unreasonable."

[17] The relevant provision of the *Police Responsibilities Code* is as follows:

"**23 Right to communicate with friend, relative or lawyer**

(1) If a police officer is required to inform a relevant person of the matters mentioned in section 418(1)(a) or (b) of the Act, the police officer must inform the person in a way substantially complying with the following—

'You have the right to telephone or speak to a friend or relative to inform that person where you are and to ask him or her to be present during questioning.

You also have the right to telephone or speak to a lawyer of your choice to inform the lawyer where you are and to arrange or attempt to arrange for the lawyer to be present during questioning.

If you want to telephone or speak to any of these people, questioning will be delayed for a reasonable time for that purpose.

Is there anyone you wish to telephone or speak to?'.

> (2) If the police officer reasonably suspects the relevant person does not understand the information, the police officer may ask the relevant person to explain the meaning of the information in the person's own words.
>
> (3) If necessary, the police officer must further explain the information.
>
> (4) If the relevant person wants to speak to a lawyer, the police officer must, without unreasonable delay, make available to the person—
>
> (a) if the police officer has available a list of lawyers for the region and the person has not asked to speak to a particular lawyer—the list; or
>
> (b) a telephone directory for the region.
>
> (5) A police officer must not do or say anything with the intention of—
>
> (a) dissuading the relevant person from obtaining legal advice; or
>
> (b) persuading a relevant person to arrange for a particular lawyer to be present." [Emphasis added]

[18] For the applicant, it was argued that although Constable Herbert informed her that she had the "right to contact a friend or relative or a lawyer and have them present during questioning", he failed to inform her that questioning could be delayed for a reasonable time to enable that to occur. He also failed to ask her whether there was anyone she wished to telephone or speak to. Expressed by reference to the governing provisions, although Constable Herbert may be said to have complied (in a compound way) with the requirements of s 418(1) of the *Police Powers and Responsibilities Act*, he omitted the information emphasised in the extract from the *Police Responsibilities Code* set out above.

[19] In *R v LR*,[6] Keane JA (with whom McPherson JA and Douglas J agreed) observed by reference to the Explanatory Memorandum for the *Police Powers and Responsibilities Bill* 2000 (Qld) and s 5 of the *Police Powers and Responsibilities Act* as passed, that the statute was not only intended to provide powers necessary for effective modern policing and law enforcement, it was intended to "ensure fairness to, and protect the rights of, persons against whom police officers exercise [those] powers".[7] His Honour then observed that the Act contained a number of safeguards in order to ensure fairness to persons who are being questioned in relation to indictable offences. Relevantly to this case, his Honour considered earlier incarnations of the right conferred on persons such as the applicant to consult with a friend, relative or lawyer by s 418(1) of the *Police Powers and Responsibilities Act* and s 23 of the *Police Responsibilities Code*.[8] In the course of doing so, his Honour said:

> "These provisions exist to ensure that a suspect is able to obtain advice about what should be said to the police. In other words, the purpose of these

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6 [2006] 1 Qd R 435.

7 *R v LR* [2006] 1 Qd R 435, [41].

8 The earlier versions are materially the same as the provisions in operation at the time of the search in this case.

> provisions is to ensure that a suspect is aware of, and in a position to exercise, the right to silence in the face of police questioning."[9]

[20] On the facts in *R v LR*, the appellant had been informed that he had a right to see a solicitor but he was not asked whether or not he wished to contact one. Otherwise, the advice given to the appellant about his right to consult a lawyer differed substantially from that recommended by the *Police Responsibilities Code*. As to these deficiencies, Keane JA said:

> "What is clear is that it was never squarely put to the appellant whether or not he wished to contact a lawyer as he was entitled to do and that the questioning would be delayed for a reasonable time for that purpose. It remains unclear whether or not the appellant understood either that this right existed or that he was entitled to exercise it. It is true that the investigating officer had no responsibility to determine whether or not the appellant required legal representation. That was a decision for the appellant. It was the responsibility of the interviewing officer however, pursuant to [the earlier equivalent of s 418(1) of the *Police Powers and Responsibilities Act*], to ensure that the appellant understood that there was an important decision to be made and that that decision needed to be made decisively one way or the other.
>
> …
>
> It was the statutory responsibility of the officer to determine … whether or not the appellant wished to contact a solicitor. That was not done."[10]

[21] A similar position obtains in this case. When warning the applicant, Constable Herbert failed to tell her that questioning could be delayed for a reasonable time to enable her to telephone or speak to a friend, relative or lawyer. He also failed to ask her whether she wished to telephone or speak to any such person. He was obliged to ensure that the applicant understood that she had a right to consult, relevantly, a lawyer and that she would be given time to do so if that is what she decided. Because he did not do so, Constable Herbert failed to discharge that statutory obligation.

[22] At this point, mention must be made of the documents provided to the applicant immediately after she was warned by Constable Herbert. As earlier stated (at [9]), these consisted of a copy of the search warrant together with a statement summarising the applicant's rights and obligations under the warrant which was entitled, "Statement to Occupier". The police were obliged to provide these documents to the applicant by s 158(1) of the *Police Powers and Responsibilities Act* and that provision further requires the Statement to Occupier must be in the "approved form". When being cross-examined at the hearing, the applicant agreed that she read both documents and that she did her best to read them "properly" but added that she did not know how much of it she "retained" or "understood". There is, in any event, nothing in either document to communicate the advice which Constable Herbert failed to include in his warning.

[23] The warrant authorised the seizure of "mobile telephones and SIM cards used in the commission of … drug offences" but of course contains no power to compel the

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9 *R v LR* [2006] 1 Qd R 435, [46].
10 *R v LR* [2006] 1 Qd R 435, [48]-[49].

owner of such a device to give the police access to it. That much, at least, is clear.

[24] What is not so clear, however, is the Statement to Occupier. Although the version provided to the applicant appears to have complied with the approved form, it is utterly confusing. In what no doubt was an attempt to promulgate a "catch-all" form, the part of the form summarising the powers conferred by the warrant has five sections. Each section commences with a small box. The intent seems to be that the box should be crossed if the relevant section applies to the warrant being executed, that is to say, if the powers conferred by the warrant coincide with the powers summarised in the relevant section. Here, one box was crossed on the first page of the statement but none of the boxes that followed on the next page were crossed. The last section is in these terms:

> "☐ This search warrant orders the person in possession of access information for a digital device in the person's possession or to which the person has access at the relevant place –
>
> to give a police officer access to the digital devices and the access information for the device any assistance necessary for the police officer to gain access to device information from the device; and
>
> to allow a police officer to –
>
> use access information to gain access to the device information from the device;
>
> examine device information from the device to find out whether the information may be relevant evidence;
>
> make a copy of device information from the device that may be relevant evidence, including by using another digital device;
>
> convert device information from the device that may be relevant evidence into documentary form, or another form, that enables the information to be understood by police officer.
>
> (The search warrant must be issued by a magistrate or a judge.) Failure, without reasonable excuse to comply with this order may be dealt with under the Criminal Code, section 205."

[25] Although the box preceding this section was not crossed, to my mind it is asking too much of the recipient of such a statement to detect the difference between that section where the commencing box was not crossed and the section on the first page where the box was crossed. This is especially so given that the recipient in this case had only moments before been confronted by the unannounced presence of several police officers at her residence intent on executing a search warrant. It would be far better had that section been struck through (along with all other sections beyond the power of the warrant). Then, there could be no room for confusion.

[26] Of course, the applicant did not say when giving evidence that she was misled by the Statement to Occupier into believing that the police were empowered to demand the provision of the PIN for her mobile telephone, but that is not the point. Rather, the significance of this part of the evidence that there was nothing in that document to cure the deficiency in Constable Herbert's warning and what was in that

document was apt to confuse regarding the powers actually conferred by the warrant.

[27] Turning then to the demand for access to the applicant's mobile telephone, the questions asked of the applicant as to its location and the PIN for it were, like all questions asked during the search, affected by the failure on the part of the police to advise her of her right to consult a lawyer and, more than that, to ensure that she understood that she had such a right and that she would be given time to exercise that right should she choose to do so. But, even more than that, when Constable Gibson asked the applicant, "Have you got a PIN for the phone?", Senior Constable Ford almost immediately stated, "Just tell us what the PIN number is." That was not a question; it was a demand. Then, when the applicant replied, "I use my thumb", Constable Gibson presented the telephone to the applicant to apply her thumb to its face, which she did. Again, that was not a question; it was a demand.

[28] Both demands need to be seen in context. After Constable Herbert introduced himself to the applicant and the others present and informed them that he had a search warrant to execute, he detained them. Then he said that if they "attempt to interfere with the search or attempt to obstruct any police officer" they can be arrested. That part of his warning was acknowledged by the applicant and, as I am satisfied that she made plain when giving evidence at the hearing, the applicant provided access to her mobile telephone because she "thought [she] had to". Put another way, she complied with the demands made of her for the provision of the access information because those demands were made when she was detained and after having been warned that she could be arrested if she attempted to obstruct any police officer.

[29] As I have said a number of times now, there was no power under the warrant to demand the provision of access information to the applicant's telephone. The police officers who did so must be taken to have known that was the case. Of course, there would be nothing wrong with a police officer asking a suspect to provide that information regardless of whether there was a power conferred under the warrant to demand it, but the lawfulness (and fairness) of any such question would depend on whether the important rights conferred on suspects by the *Police Powers and Responsibilities Act* had not already been undermined by non-compliance with its provisions. Furthermore, any contention to the effect that the applicant provided her consent to her telephone being accessed falls away in circumstances such as these where her "consent" must be taken to have been vitiated by the failings I have identified.[11]

[30] As to that non-compliance, it does not follow that the challenged evidence should be automatically excluded from evidence at the applicant's trial because the court may nonetheless exercise its discretion against exclusion.[12] In this regard, the decision of the High Court in *R v Swaffield*,[13] and in particular the joint judgment of Toohey, Gaudron and Gummow JJ,[14] requires that the discretion to exclude confessional evidence should be exercised, where voluntariness is not in issue, by reference to

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11 See *R v Ford* [2017] QSC 205, [50]. Cf *R v Bossley* [2012] QSC 292, [17].

12 *R v Ireland* (1970) 126 CLR 321, 335; *Bunning v Cross* (1978) 141 CLR 54, 72, 78-80; *R v Milos* [2014] QCA 314, [93]; *R v Swayne* [2021] 7 QR 781, [29]-[31].

13 (1998) 192 CLR 159.

14 *R v Swaffield* (1998) 192 CLR 159, 193-198.

considerations of reliability and respect for the right of an accused to stay silent. As their Honours said:

> "… the purpose of that discretion is the protection of the rights and privileges of the accused. Those rights include procedural rights. There may be occasions when, because of some impropriety, a confessional statement is made which, if admitted, would result in the accused being disadvantaged in the conduct of his defence."[15]

[31] Here, the non-compliance went right to the heart of applicant's right to remain silent and the disadvantage to her by reason of that breach was real. Had the police ensured as they were obliged to do that the applicant understood that she had a right to consult a lawyer and that she would be given time to do so if that is what she decided, she may very well have done so. Quite apart from anything else, any confusion about whether she had to comply with demands to provide access information to her telephone would have been removed. After all, s 418(1) of the *Police Powers and Responsibilities Act* and s 23 of the *Police Responsibilities Code* are designed, not merely to ensure the reliability of what an accused may say against his or her own interest, but also to ensure the free exercise of the right of the accused to stay silent.[16] That being so, this is not an appropriate case for the exercise of the discretion against exclusion.

[32] To the above I add these additional observations. Not only were the demands made of the applicant beyond the power conferred by the warrant and the information conveyed to the applicant about her rights deficient, what was conveyed was delivered in a rapid-fire manner. Although the applicant made several concessions when giving evidence at the hearing regarding the extent to which she comprehended the warnings that were given, I was unpersuaded that she truly understood at the time when Constable Herbert spoke to her that it was open to her to refuse to answer questions, let alone to refuse demands for access to her telephone. Perhaps more to the point, I was left in doubt whether the answers she subsequently gave to the questions that were asked of her or her compliance with the demands were the product of "a free choice to speak or be silent".[17] If they were not, her answers as well as the provision of the access information will not have been voluntary and could not for that reason be admissible[18] but, even if they were voluntary, the circumstances under which the answers and information were extracted as I have detailed above would render it unfair[19] to use her answers and the data on her telephone against her.

[33] For these reasons, the conversation between the applicant and police at her place of residence on 9 October 2020, any evidence derived from an analysis of the applicant's mobile telephone seized by police on the same day and the record of interview between the applicant and police at the Dalby Police Station on 16 October 2020[20] will be excluded from the evidence to be led at the applicant's trial.

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15 *R v Swaffield* (1998) 192 CLR 159, 197.
16 *R v LR* [2006] 1 Qd R 435, [54].
17 *Cleland v The Queen* (1982) 151 CLR 1, 5.
18 *Van Der Meer v The Queen* (1988) 62 ALJR 656, 659.
19 As to which, see *MacPherson v The Queen* (1981) 147 CLR 512, 519-520, 532-533.
20 It was accepted by the Crown that, if the data on the applicant's telephone was wrongly or unfairly obtained, the record of interview (based as it substantially was on that data) should also be excluded. See *Ridgeway v The Queen* (1995) 184 CLR 19, 31-32.