

Supreme Court Notes

Reporter's for this month's Supreme Court Notes are David Ward and Roger Bednall.

**CRIMINAL LAW:
DETERMINATION OF ADMISSIBILITY OF CONFES-
SIONAL EVIDENCE BEFORE
JURY EMPANELLED**

The Queen v Eric Gumbinyarra

Judgment of Thomas J Delivered 28 September 1995

Application pursuant to s 26L of the *Evidence Act* to determine the admissibility or otherwise of certain confessional evidence.

The defence challenged the admissibility of the record of interview made by the accused relating to charges of unlawful carnal knowledge. The defence contentions were that the record of interview was not voluntary because the caution was not adequately administered or, alternatively, the accused was disadvantaged because no attempt was

made by police to have the prisoner's friend explain to the accused what was happening, nor to explain to the prisoner's friend his role in the proceedings so as to enhance the accused's ability to choose freely whether to speak or to be silent.

The accused is an Aboriginal man who has lived all his life in relatively remote areas of the Northern Territory. He has had limited education. At the time of participating in the record of interview, the accused was a known petrol sniffer and had been so for some years. There was also evidence that he had suffered head injuries at some earlier time. These factors, the court found, had affected his mental faculties at the time the record of interview was conducted.

Held that on the balance of probabilities the confession was not voluntary in the sense that the accused exercised a free choice whether to speak or remain silent. The record

of interview was, accordingly, not admissible on the trial of the accused.

In reaching her decision, Her Honour found that the administration of the caution on previous occasions in respect of different alleged offences did not necessarily mean the accused understood the caution administered to him in respect of this offence. Her Honour also found that in the circumstances there was inadequate compliance with the Anunga Rules and the Police General Orders relating to a prisoner's friend.

C Delaney, instructed by I Rowbottom of DPP for the crown.

R Davies, instructed by NAALAS for the defendant.

DW

SENTENCING APPEAL

***Darren James Keelan v Robin Laurence Trenerry
Darren James Keelan v
Gottlieb Thomas Svikart***

Reasons for decision, Judgment of Kearney J delivered 21 July 1995.

The appellant appealed against the severity of eight sentences, being:

1. Three months imprisonment for each of:

- Two counts of interfering with a motor vehicle

Four months imprisonment for:

- One count of theft of a money belt To be served concurrently, and

2. Three months imprisonment for each of the following.

- Two counts of interfering or tampering with a motor vehicle

- Two counts of unlawfully damaging property (a motor vehicle)

Two months imprisonment for:

- Possession of property reasonably suspected of having been stolen or unlawfully obtained (a fishing net and mini car tyre compressor). To be served concurrently.

The appeal was based on six grounds:

The Learned magistrate erred in

1. Failing to give sufficient weight to the appellants youth:

2. Failing to give sufficient weight to the appellants co-operation with

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the authorities

3. Imposing a manifestly excessive sentence
4. Not giving sufficient consideration to a community service work order
5. Gave undue weight to the appellants prior record, and
6. The disparity between the appellant sentence and the sentences of his co-offenders.

Grounds 1 and 2 of the appeal failed because His Honour decided that sufficient weight had been given to these matters.

In considering ground 3 of the appeal His Honour found that the sentence was not "manifestly unjust", and therefore this ground of appeal failed.

His Honour decided that ground 4 of the appeal "must fail" and that "It is presumed that a Court in exercising its sentencing discretion will

keep the alternative dispositions in mind" (*Wanabi v Thompson*, unreported, 12 December 1994).

Ground 5 of the appeal failed because His Honour found that His Worship had only concluded that the appellant's previous record militated against leniency, and that the appellants previous records was relevant and could be taken into account. His Honour also found that His Worship had not taken into account 'without conviction' offence.

On the question of ground 6 of the appeal His Honour allowed the appeal in relation to possession of stolen goods.

He quashed the sentence and substituted a fine of \$100 with a victim assistance levy of \$20. The individual sentences in relation to the other offences were affirmed.

G Dooley for the appellant.

I Glasgow for the respondent.

RB

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The dinner will be held at the Plaza Hotel on Thursday 16th November 1995. Tickets at a cost of \$35 per person (drinks additional) can be purchased by contacting Tania Fleming at the ASC's regional office on 430906. Group bookings can also be arranged for firms. Numbers are limited and bookings close Tuesday 14 November 1995

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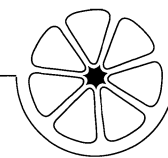
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