

SINGH v THE QUEEN (D16/2019)

Court appealed from: Supreme Court of the Northern Territory, Court of Criminal Appeal [2019] NTCCA 8

Date of judgment: 25 March 2019

Special leave granted: 16 August 2019

The appellant was charged with armed robbery of a taxi driver whilst in company of other passengers pursuant to section 211(1) and (2) of the *Criminal Code* (NT).

On 15 May 2017, the appellant had ordered a taxi to drive him and three boys, one of whom was his nephew, to Ryland Road. The three boys and the appellant entered the taxi and the appellant sat behind the taxi driver's left shoulder. Once the taxi driver arrived at Ryland Road, the appellant told the taxi driver to stop. At this point, the boy seated directly behind the taxi driver pulled out a knife and held it to the throat of the victim. The taxi driver then heard a number of voices say "Give me the money. Give me the money." The taxi driver told them to take whatever they wanted. One of the boys took money from the front console of the car and from the pocket of the taxi driver's shirt, in the sum of \$400.

The Crown case was that while the appellant was not holding the knife or demanding the money, he had engaged in an arrangement to commit the offence and was equally involved in the offending, either by being a party to a common purpose to rob the taxi or by aiding the other offenders to do so.

The robbery was partially captured on the taxi video camera. The appellant participated in an electronically recorded interview with the police in which he admitted his presence in the taxi but explained that he was not part of an agreement to rob the driver or aid and abet the co-offenders. The Defence argued that this was a contention open on the video footage. The appellant did not give evidence at the trial. Therefore, there was no additional evidence to support the contention that he did not participate in the robbery.

At trial, defence counsel informed the Court that the Crown would not be tendering the appellant's interview with the police. Defence counsel submitted that the record of interview should be tendered as part of the prosecutor's duty to put all relevant and admissible material before a jury. The defence also sought a ruling as to whether the interview could be tendered by the defence pursuant to section 81 of the *Evidence (National Uniform Legislation) Act 2011* (NT) ("*ENULA*"). The trial Judge noted that a prosecutor could not be compelled to tender a record of interview and further ruled that the defence could not adduce the record of interview through cross-examination. The jury returned a verdict of guilty, and the appellant was sentenced to 3 years' imprisonment, suspended after 1 year.

The appellant appealed to the Supreme Court of the Northern Territory, Court of Criminal Appeal. Kelly and Barr JJ held that there was no general obligation on a prosecutor to tender a record of interview that was both exculpatory and inculpatory, ("a mixed statement") as part of the Crown's case. Further, that in the circumstances of the case there was no relevant unfairness. Blokland J dissented. She held that, in

the circumstances of the case, the prosecutor's discretion miscarried and there was not a full presentation of the evidence, constituting a miscarriage of justice.

The appellant has appealed to the High Court. He argues that there is a divergence in the development of the common law across Australia regarding the obligations of a prosecutor to adduce evidence of mixed statements.

The ground of appeal is:

- That the Court of Criminal Appeal erred in not holding that the Crown, in choosing not to adduce the appellant's record of interview of 8 June 2017, deprived the appellant of a reasonable chance of acquittal.

The North Australian Aboriginal Justice Agency and the Director of Public Prosecutions for Western Australia have both filed submissions seeking leave to intervene in the appeal.