



## HIGH COURT OF AUSTRALIA

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### SOPHEAR EM v THE QUEEN

The use of a secretly recorded conversation with detectives investigating Mr Em in relation to two home invasions did not make his trial unfair, the High Court of Australia held today.

The prosecution case was that Mr Em, armed with a pistol, and another man, carrying an AK47 assault rifle, held up the Logozzo family in Cecil Hills in south-western Sydney on 7 January 2002 just as Joseph and Marianne Logozzo arrived home. During a struggle, Mr Logozzo was fatally shot in the chest with the pistol. Mrs Logozzo ran to his aid and was shot in the hand. The intruders fled. Ten nights later, three men, armed with a pistol, a rifle and a knife, forced their way into a house at nearby West Hoxton and tied up Michael and Beverly Kress, their teenage children Jonathon and Alyson and Alyson's boyfriend Ramzi Tamer. Numerous items were stolen.

On 24 April 2002, police discovered that SIM cards registered to two people living in a Bass Hill unit had been used in a mobile phone stolen from the Kresses. When they searched the unit, where Mr Em was staying, they found a bag filled with black clothing, a balaclava, ski goggles, cable ties, gloves, grey duct tape and a sheath knife. He admitted the bag was his. He had not previously been linked to either home invasion. At the police station, Mr Em refused to have his interview recorded on video or audio tape or in writing, but allegedly made admissions about the Kress home invasion, including possessing the pistol used there. He refused to say anything about the Logozzo home invasion. Detectives transcribed the interview from memory. In May 2002, the Supreme Court issued warrants authorising detectives to wear covert recording devices. On 15 May, the detectives took Mr Em to a park to talk about the home invasions. He identified from photographs the gun used in the shooting but denied involvement in the Logozzo home invasion. On page 25 of the 40-page transcript, one detective is recorded telling Mr Em that he might feel better if he told them what happened and that "it's not as though we're going to slap the handcuffs on you and take you away, otherwise we'd be at the police station if we were gunna do that, wouldn't we?" Mr Em proceeded to give a detailed account of what occurred at the Logozzo house. Justice Bruce James excluded part of the evidence of that account but admitted some of it.

At a voir dire in an earlier Supreme Court trial in 2003, Justice Jeff Shaw had excluded the entire 15 May conversation, but the Court of Criminal Appeal overturned that order. In 2004 Mr Em was convicted of murdering Mr Logozzo, assaulting him with intent to rob while armed with a dangerous weapon, and firing a firearm with disregard for Mrs Logozzo's safety. In 2005, he was sentenced to 25 years' jail with a non-parole period of 16 years for the first offence, 10 years' jail for the second, and two years' jail, backdated to May 2002, for the third. During the trial he pleaded guilty to five counts of robbery with a dangerous weapon for the Kress home invasion and received five concurrent sentences of 12 years' jail, backdated to May 2003. The 10-year and 25-year sentences commence in 2013. The Court of Criminal Appeal dismissed an appeal and Mr Em appealed to the High Court, arguing that Justice James erred in allowing the first part of the 15 May conversation to be admitted into evidence and that the jury should have been warned about the unreliability of any confessions.

The Court, by a 4-1 majority, dismissed the appeal and held that neither the use of the first part of the 15 May 2002 conversation nor the absence of a specific warning was unfair to Mr Em. Section 90 of the *Evidence Act* provides that a court may refuse to admit evidence of an admission if, having regard to the circumstances in which it was made, it would be unfair to a defendant to use the evidence. However, the Court held that the way in which the conversation took place did not make the first part of it unfair to Mr Em. It held that the police did not reinforce or contribute to his mistaken assumption that whatever he said could not be used against him. Mr Em knew he was speaking to detectives investigating two home invasions. The Court held that in the circumstances of the conversation no particular warning to the jury was required and that Justice James's directions adequately explained the issues that jurors were to consider.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*