



HIGH COURT OF AUSTRALIA

30 June 2020

NGUYEN v THE QUEEN
[2020] HCA 23

Today the High Court unanimously allowed an appeal from the Full Court of the Supreme Court of the Northern Territory. The appeal concerned whether, in a criminal trial, the prosecution's obligation to put its case fully and fairly before the jury ordinarily requires it to tender the record of an interview between an accused and police which contains both inculpatory and exculpatory statements ("mixed statements"). The Court held that this obligation does require the prosecution to tender a record of interview containing mixed statements, unless there is good reason not to do so.

The appellant was charged on indictment with one count of unlawfully causing serious harm to another and one count of aggravated assault, contrary to the *Criminal Code* (NT), and stood trial before a jury in the Supreme Court of the Northern Territory. Prior to being charged the appellant had participated in a recorded interview with police about the offences. The interview contained statements in the nature of admissions, together with exculpatory statements which could be taken as a claim of self-defence. The recorded interview was relevant and admissible. The prosecution did not tender it. The interview had been played to a jury as part of the prosecution case in an earlier trial for the same offences, in which the jury had been unable to reach a verdict. Before the appellant's retrial, the prosecution advised the Court that it would not be tendering the interview in the retrial. It conceded that its decision not to do so was a "tactical" one.

The appellant's retrial was stayed whilst two questions were referred to the Full Court, being: (1) whether the recorded interview containing the mixed statements was admissible and (2) whether the prosecution was obliged to tender it. The Court answered the first question yes and the second question no. The Court followed a previous decision of the Court of Criminal Appeal of the Supreme Court of the Northern Territory, constituted by the same judges, in *Singh v The Queen* (2019) 344 FLR 137. In that case, a majority held that there was no general principle that a prosecutor must, as a matter of fairness, tender either exculpatory or mixed out-of-court statements by an accused.

By grant of special leave, the appellant appealed to the High Court in relation to the Full Court's finding on Question 2. Allowing the appeal, the Court explained that the question of the duty of the prosecutor is not to be confused with that of the admissibility of evidence of mixed statements. While it affirmed that it is for the prosecution to decide which witnesses are to be called and what evidence is to be presented in its case, the question in this appeal was resolved by another fundamental principle affecting the conduct of a criminal trial, namely that the prosecution must put its case both fully and fairly before the jury. The Court held that, if this duty is to be met, it is to be expected that a prosecutor will tender a mixed statement, unless there is good reason not to do so. A majority held that the duty of fairness encompasses the presentation of all available, cogent and admissible evidence, and observed that only where the reliability or credibility of evidence is demonstrably lacking would those circumstances warrant a refusal to tender it. In the result, the Court unanimously set aside the Full Court's answer to Question 2 and answered it in the affirmative.

- *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.*