



HIGH COURT OF AUSTRALIA

Public Information Officer

23 October 2007

MICHAEL JOHN CARR v THE STATE OF WESTERN AUSTRALIA

Under Western Australian law, the recording of admissions by surveillance cameras in a police lock-up was admissible as a videotaped police interview, the High Court of Australia held today.

Mr Carr was convicted in 2004 in the WA Supreme Court of the armed robbery of the South Perth branch of the Commonwealth Bank the previous year and sentenced to six years' jail without parole. When arrested in 2003, he took part in a videotaped interview with police at Kensington police station but did not make any substantial admissions. Mr Carr was then taken to the station lock-up where police made entries into databases, returned his property and took DNA samples. He had not been charged in relation to the Commonwealth Bank robbery but was to be returned to prison for violating his parole relating to an earlier conviction. While police carried out their various tasks, Mr Carr made suggestions indicating his involvement in the bank robbery and the officers responded by asking questions, eliciting further information and admissions. As the lock-up had fixed surveillance cameras and microphones, the admissions were recorded. An edited version of the video was admitted into evidence and shown to the jury at the trial. Mr Carr was unaware of the cameras and microphones and claimed the admissions were untrue.

In 2006, the WA Court of Appeal dismissed an application for an extension of time to apply for leave to appeal against conviction and sentence. Mr Carr then appealed to the High Court. He argued that section 570D(2) of the *Criminal Code* barred the receipt of the tape into evidence and that his conviction should be quashed and an acquittal entered. Section 570D(2) provides that when a person is tried for a serious offence, evidence of any admission by the accused shall not be admissible without a videotaped recording of the admission, unless there is a reasonable excuse for there not being a recording, or there are exceptional circumstances which in the interests of justice justify the admission of the evidence. Mr Carr contended that "interview" in section 570(1) of the Code required a degree of formality lacking in the lock-up conversation and that his consent was required for it to be recorded. The State submitted that "interview" encompassed an informal conversation and, in any event, if formality were required, the lock-up conversation had the appropriate degree of formality. It argued that there was no implied requirement for consent before a videotape could be admitted into evidence. It also argued that even if Mr Carr was correct about the meaning of "videotape" and "interview", his admissions were properly admitted as there were "exceptional circumstances", within the meaning of section 570D(2)(c), which centred on the existence of an accurate videotape of Mr Carr's voluntary admissions regarding a serious offence.

The High Court, by a 4-1 majority, dismissed the appeal. It held that "interview" encompassed the conversation in the lock-up. Mr Carr's appreciation that the conversation was being recorded and could be used in evidence against him was not required by the definitions of "interview", "videotape" or "admission", nor by the relevant chapter of the Code. No requirement for consent was implied in section 570D(2). Its express words did not require exclusion of the videotape and no reason had been shown why the videotape should be excluded on discretionary grounds.

- *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.*