

R v Collett [2011] NTSC 87

PARTIES: **The Queen**

v

Collett, Glenn

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
TERRITORY EXERCISING
TERRITORY JURISDICTION

FILE NO: 21014612

DELIVERED: 21 OCTOBER 2011

HEARING DATES: 17 AND 18 OCTOBER 2011

JUDGMENT OF: KELLY J

REPRESENTATION:

Counsel:

Plaintiff: P Usher
Defendant: L Bennett

Solicitors:

Plaintiff: Office of the Director of Public
Prosecutions
Defendant: Northern Territory Legal Aid
Commission

Judgment category classification: C

Judgment ID Number: KEL11024

Number of pages: 13

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

R v Collett [2011] NTSC 87
No. 21014612

BETWEEN:

THE QUEEN
Plaintiff

AND:

GLENN COLLETT
Defendant

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 21 October 2011)

- [1] The accused, Mr Collett, has been charged with the attempted murder of his son in law. There is evidence that in the early hours of the morning of 1 May 2010, Mr Collett lured his son in law into the Yates Pavilion at the Darwin Showgrounds and shot him in the back of the chest. One of the major issues in the case is likely to be intention.
- [2] Mr Collett was arrested at around 6.45 am on the morning of Saturday 1 May 2010. He was taken to the Darwin Watch House and held under the provisions of s 137 of the *Police Administration Act*. Just before 3.00 pm on Sunday 2 May 2010, police requested Mr Collett to participate in an electronically recorded interview, but he declined.

[3] At about 5:00 pm a pre-text telephone call was conducted by Mr Collett's daughter (the wife of the son in law who had been shot) at the Darwin Watch House during which Mr Collett stated, among other things:

"I'm terribly terribly sorry;

I should never done what I done;

I should never have interfered. You told me to stay out of it.

It's night time nearly.

I am so sorry (to ruin your weekend).

I didn't do what you've been told I done.

I can't tell you where the gun is – the phone is probably hooked up to everybody else.

I can guarantee the gun is not in the house or on the showground.

All he wants to do is walk away from you.

I can't tell you the facts;

The solicitor knows where the gun is.

I did not mean to kill him, I was standing looking at him with not a yard between us, if I had wanted to kill him I wouldn't have shot him in the bloody foot or the arm, I'd have shot him in the forehead or the heart.

It went in his back somewhere as he turned around."

- [4] Following this recorded telephone conversation, at around 6.00 pm on Sunday 2 May, Mr Collett was charged with a number of offences including attempted murder.
- [5] The officer in charge of the investigation, Det Sgt Annette Cooper, told Mr Collett that she was refusing him bail and asked him if he wanted to apply to a magistrate for bail review. Mr Collett said that he did not.
- [6] Thereafter, nothing happened till the morning of Tuesday 4 May. Monday 3 May was a public holiday and Mr Collett remained in custody in a cell at the Darwin Watch House.
- [7] On the morning of Tuesday 4 May, at around 9.30 am, Mr Collett asked Police Auxiliary Ferdinand Cheam if he could make a phone call to the same daughter. Mr Cheam sought and obtained permission from the officer in charge, Det Sgt Cooper, for Mr Collett to make the phone call. The process of obtaining permission and arranging facilities to make the call took some time and at around 10:52 am he was taken into a room at the Watch House where he was left alone to make a telephone call to his daughter. That call was not recorded. During that call, Mr Collett is said to have made a number of admissions concerning his intention at the time of the shooting.
- [8] After the telephone call, the daughter phoned Det Sgt Cooper and told her that her father wanted to talk to police and confess everything. Det Sgt Cooper went to the cells in the Court House to see Mr Collett, but Mr Collett said he did not want to talk to her; he wanted to talk to his lawyer.

[9] That afternoon, the daughter made a statement to Det Sgt Cooper in which she said that the telephone conversation with her father had been in the following terms:

“I [ie the daughter] said, ‘Who’s this?’

He said, ‘It’s dad. I’ve had a think about this. I’ve spent two years telling the girls not to tell lies and I had to tell you some lies the other day. You and I don’t tell lies to each other and you were at the Police Station and I didn’t know if it was being recorded.’”

He asked me then if it was being recorded and I said I didn’t know.

He said ‘You can bet your life it would have been’.

He said, ‘I’ve really messed it up. Where am I going to go? I told the solicitor a lot of lies and I’m going to talk to her this morning and I want you to be there if you can. Can you come?’

I said, ‘No, I need to give a statement before I can see you’.

He said, ‘I’m going to tell her the truth and gaol won’t be that bad. They can look after me. I need to know that you’re going to talk to me. That’s important to me that you’re going to still talk to me. And come and visit me if you can. And talking to me would be good.’

I said, ‘Yes dad, I will still talk to you. And I’m glad you’ve decided to tell the truth. Honesty is the best policy and it’s all you can do from now on. I just don’t understand what good you thought would come of this.’

He said, ‘You know I meant to kill him don’t you?’

I said, ‘Yes I know.’

He said, 'The gun accidentally went off as I went to point it to his head. I was supposed to blow his head off. I had two days to clean the blood up before the Show Grounds opened again. I could have done him in bed love. You know I woke him up and took him down to the shed.'

I said, 'Yes I know. I did wonder about that.'

He said, 'But I thought you still had to sleep there so I lured him down to the shed out of the way.'

I said, 'The pain you have caused me would have been ten times worse had you been successful. How could you have done this to the girls?'

He said, 'He treated you so badly and in a week or so you all would have been over it and you'd all be better off in the long run, without him interfering in anything.'

He then asked me if I planned to hang around and help Lance and I said, 'Yes'.

He said, 'See, I've messed it up for you. What am I going to do, love? You can't look after me and if I tell them what I was really planning on doing and what should have happened, then at least I might go to gaol where I'll be looked after. I've already made a friend and it can't be that bad. The solicitor has said I'll probably get off with what I've told her but it's all lies. And I have to be honest. I've spent years telling the kids that they don't tell lies. And I have to do that at least for them.'

[10] The Crown intends to adduce evidence from the daughter as to the contents of this telephone conversation.

[11] The Defence has objected to the admission of this evidence on two grounds. First they say the Crown has failed to prove that the admissions in the

telephone conversation were voluntary. In the alternative the Defence asserts that it would be unfair to admit that evidence.

- [12] The onus is on the Crown to establish, on the balance of probabilities that the admissions in the telephone conversation were made voluntarily.¹ If they do that the onus is on the Defence to prove that it would be unfair to admit that evidence.²

Voluntariness

- [13] The facts surrounding the making of the telephone call are set out above. Mr Collett sought and obtained permission to telephone his daughter and he was left alone in a room to make the call. Defence counsel said that she was not contending that the content of the telephone conversation was not voluntary, only that in the circumstances, it has not been established that the making of the call was voluntary.

- [14] In *McDermott v The King*³ Dixon J said (at 511):

“At common law a confessional statement made out of court by an accused person may not be admitted in evidence against him upon his trial for the crime to which it relates unless it is shown to have been voluntarily made. This means substantially that it has been made in the exercise of his free choice. If he speaks because he is overborne, his confessional statement cannot be received in evidence and it does not matter by what means he has been overborne. If his statement is the result of duress, intimidation, persistent importunity, or sustained or undue insistence or pressure, it cannot be voluntary if it is

¹ *McPherson v R* (1981) 147 CLR 512 at 522.

² *Cleland v R* (1982) 151 CLR 1 at 19–20.

³ (1948) 76 CLR 501.

preceded by an inducement held out by a person in authority and the inducement has not been removed before the statement is made.”

[15] I can see nothing whatsoever on the circumstances to suggest that the making of the telephone call was not an entirely voluntary act on the part of Mr Collett. He asked permission to make the call. It was entirely his own idea. I am satisfied that his will was not overborne by any means and that no inducements were offered to him.

Fairness

[16] The defence also contends that the daughter’s evidence about the content of this telephone conversation should be rejected on discretionary grounds because it would be unfair to the accused. In relation to this submission, the question is not whether the accused was treated unfairly; it is whether the reception of evidence of the confession would be unfair to him.⁴

[17] The Defence submits that the admissions should be excluded because the circumstances in which they were made render them unreliable.

Unreliability was said to arise from the following facts and circumstances:

[18] In the daughter’s first statement to police,⁵ made before she had had any conversation with her father in relation to his intention, she said that she believed that her father should go to prison for life. She later co-operated with police to tape a telephone conversation with her father, in which he did not make any admissions about his intention, in fact he said he had not

⁴ *R v Lee* (1950) 82 CLR, at pp 150-151; *Cleland v R* at 18.

⁵ Exhibit D1.

intended to kill the son in law. Later, she claimed that in the second phone call he admitted that he had intended to kill the victim. Defence counsel submitted that this showed not just a willingness to assist police, but that the daughter had a pre-formed opinion about her father's guilt. Although not expressed, the inference sought to be drawn by the Defence appears to be that the daughter may have a motive to misrepresent what was said to her by her father in the conversation in question.

[19] This is a submission about the potential unreliability of the daughter's evidence about what Mr Collett said, not a submission about the potential unreliability of what Mr Collett said to his daughter in the telephone conversation – assuming he said it. The former – ie assessing the reliability of the daughter - is a matter for the jury. To enliven the discretion to exclude confessional evidence on the ground of unfairness arising out of unreliability, the focus must be on “whether it would be unfair to the accused to admit the evidence because of unreliability arising from the means by which, or the circumstances in which, it was procured”.⁶

[20] Other circumstances relied on by the defence as casting doubt on the reliability of the admissions, are that Mr Collett is said to have given three different versions of events to his daughter on three different occasions, the original taped conversation, the telephone conversation from the Watch House on 4 May 2010 here under consideration, and a later conversation in prison. This submission does focus on the reliability of what Mr Collett

⁶ *Cleland v R* per Dawson J at p 36.

said in the telephone conversation (assuming he said it) rather than the reliability of the daughter's evidence about what was said. However, in my view this too is properly a matter for the jury. In my view there is nothing in the context or circumstances of this particular telephone conversation that would cast doubt about the reliability of anything Mr Collett said during the conversation. In those circumstances, it seems to me that it is proper for the jury to hear evidence of all the relevant conversations and make their own judgment about the reliability of the evidence.

[21] The Crown submitted that doubt could be cast on the reliability of the admissions said to have been made by Mr Collett to his daughter by the fact that he had been in the Watch House since Saturday morning and had nowhere else to go, it being clear to him that he could no longer live with his daughter. In those circumstances, it was suggested that there was a risk he might make a false confessional statement not to get out of prison, but to get into prison. The conversation with the daughter contained statements such as "... gaol won't be that bad. They can look after me."

[22] I have great difficulty following the logic of this submission. Mr Collett had been arrested and charged with attempted murder and the arresting officer had refused to grant him bail. If he wanted to remain in custody, all he had to do was refrain from making a bail application. There would seem to be no need to, and very little point in, phoning his daughter shortly before his first court appearance and making a false confession. If he was motivated to make a false confession to ensure himself a place in prison, he

was ideally placed in the Watch House to make that false confession to a person in authority, yet he chose to exercise his right to remain silent when asked to participate in a record of interview on Sunday afternoon.

[23] Another reason why it was submitted it would be unfair to admit the evidence of the confession made to the daughter, is that it was contended that he was in unlawful detention at the time, and it would be unfair to accept his confession into evidence in those circumstances. I do not accept that his detention at the Watch House on the morning of Monday 4 May was unlawful.

[24] There is no dispute that Mr Collett was lawfully taken into custody under s 123 of the *Police Administration Act* (“PAA”) early on the morning of Saturday 1 May. PAA s 137 (1) imposes a duty on the police to bring a person taken into lawful custody before a justice or a court of competent jurisdiction as soon as is practicable after the person is taken into custody, unless he or she is sooner granted bail under the *Bail Act* or is released from custody. That duty is expressed to be subject to sub-section 137(2) which empowers a member of the Police Force to continue to hold such a person in custody for a reasonable period to enable the person to be questioned or investigations to be carried out.

[25] No challenge has been made to the lawfulness of Mr Collett’s continued detention for these purposes up until the time a decision was made to charge him at around 6.00 pm on the night of Sunday 2 May. Thereafter, Ms

Bennett for the Defence contends that Mr Collett's detention was in contravention of s 137(1), and hence unlawful, for two reasons.

[26] First, she says that it was not sufficient for Det Sgt Cooper to tell Mr Collett that she refused him bail and ask him if he wanted to apply to a magistrate for a bail review.⁷ She says the police were obliged, by PAA s 137(1), to contact a magistrate by telephone in any event, even if Mr Collett indicated he did not want to make application to a magistrate for bail. No authority was advanced for this proposition, and when asked, counsel could not indicate what purpose this would serve, or what the magistrate would have been able to do on the weekend other than hear a bail application, which Mr Collett did not want to make. Accordingly, I do not agree that the obligation under s 137(1) to bring a person taken into lawful custody before a justice or a court of competent jurisdiction as soon as is practicable after that person is taken into custody, includes a duty to telephone a magistrate if the person is advised that he has a right to apply to a magistrate for bail and says he does not want to do so.

[27] The second reason why it was said that Mr Collett's detention was unlawful at the time when he made the telephone call in question, is that the defence

⁷ The authority for a police officer who holds the rank of Sergeant or higher to grant bail is found in s 16 (5) of the *Bail Act*. Sub-section 16(2) provides that a police officer entitled to grant bail must determine whether bail should be granted as soon as practicable after a person becomes entitled to apply for bail. Sub-section 16(1) provides that as an alternative to bringing a person the officer has arrested before a justice or a court of competent jurisdiction as required under s 137(1) of the *Police Administration Act*, the officer may (within the same time frame) inform the person charged of the person's right to apply for bail and, as far as practicable, ensure that the person charged is able to communicate with a legal practitioner or someone of the person's choosing in connection with an application for bail.

contends he ought to have been taken to the Court House at Nichols Place before 10.00 am to wait in the cells there to be taken before a magistrate. I do not accept that submission. Mr Collett was taken to the Court House in time to appear before a magistrate during the sittings on Tuesday morning. Given the public holiday on Monday, and Mr Collett's own request to be permitted to phone his daughter before going to court, in my view that was "as soon as practicable". Allowing him to make the phone call to his daughter was not unlawful, and did not render his otherwise lawful detention unlawful.

[28] Even if Mr Collett's detention had been unlawful that would not necessarily have meant that the admissions must be excluded. The fact that a confessional statement is made whilst an accused is in unlawful custody, does not of itself require the conclusion that it must be excluded on discretionary grounds.⁸ It has been said that little is ordinarily required to persuade a trial judge that it would be unfair to the accused to admit in evidence against him a confession obtained whilst an accused is in unlawful custody⁹. However, where the accused was not improperly treated other than by being unlawfully detained, there is no suggestion that the unlawful detention of the accused in any way affected him in making any admissions or placed pressure on him to confess, it may well be appropriate not to

⁸ *Cleland v R* per Dawson J at p 35; *Ibrahim v The King* (1914) AC 599, *R v Lee* (1950) 82 CLR 133; *Wendo v The Queen* (1963) 109 CLR 559; *R v Banner* (1970) VR 240; *R v Amad* (1962) VR 545.

⁹ *Cleland v R* per Dawson J at p 36.

exclude evidence of admissions made while an accused is unlawfully detained,¹⁰ especially if the unlawfulness of the detention was of a minor nature. In my view those factors apply here, or would if the detention had been unlawful. In addition, in this case the confessional statements sought to be relied on were not made to police, but to the accused's daughter in a phone call to her made at his own request. In those circumstances, even if it had been shown that Mr Collett's detention in custody had become unlawful at some time after he was charged, I would not have exercised a discretion to exclude those statements.

[29] For the above reasons I will admit the evidence of Mr Collett's daughter as to the contents of the telephone conversation she had with Mr Collett on the morning of Tuesday 4 May 2010 in which he is said to have made the admissions set out in paragraph [9] above.

¹⁰ *Cleland v R* per Dawson J at p 35.