THE QUEEN v. WOODS

In the Supreme Court of the Northern Territory of Australia

Nader J.

18, 19 and 25 March 1991 at Darwin.

CRIMINAL LAW - evidence - admissibility - confessional statement - voluntariness - inducement.

Counsel for the accused:	A. Rogerson
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No 97 of 1990

THE QUEEN

AND

PHILLIP REUBEN ADEN WOODS

CORAM: NADER J

REASONS FOR JUDGMENT

(Delivered 25 March 1991)

I conducted an examination on the *voir dire* to determine the admissibility of a confessional statement, in the form of a typed record of interview, alleged to have been made by the accused, Phillip Reuben Aden Woods, who was charged before me on two counts in an indictment. The proceedings were without a jury pursuant to section 26L of the Evidence Act. At the conclusion of the hearing on the *voir dire*, I adjudged the confessional statement to be inadmissible. I found that it had not been shown on the balance of probabilities to have been made in the exercise of a free choice to speak or to remain silent, i.e., it had not been shown to have been a voluntary statement. There was, on the evidence, a real possibility that the accused chose to speak by reason of a

threat by Detective Sergeant Dyer. I now publish short reasons for that decision.

On Thursday 4 January 1990, Detective Sergeant Anthony Leonard Dyer (Dyer), Constable Brooks (Brooks) and perhaps other police visited the place at Acacia where the accused was living. The accused was not there, but a young woman named Wren Geaghen (Geaghen), the de facto wife of the accused, was there. Dyer asked Geaghen to inform the accused that he was wanted at Berrimah Police Station and that if he did not go of his own accord he would be arrested and taken there. Geaghen passed the message to the accused.

On 5 January 1990, the accused was driven by Geaghen to the Berrimah Police Station, arriving at about 10 am. The accused was to start a new job at noon that day. They went to the front desk where the accused asked to see Dyer. Dyer arrived at the reception desk and escorted the accused and Geaghen upstairs to the drug squad office. The accused and Geaghen were placed in separate interview rooms. Brooks told Geaghen that she had to lock her in. Geaghen was left alone in the interview room. In the meantime, the accused was asked a number of questions in another interview room. A formal interrogation of the accused commenced at 10.45, about three quarters of an hour after he had been taken to the drug squad office. The court was not told very much of what was said by police to the accused or by the accused to police during the 45 minutes before the formal questions commenced because

neither Dyer nor Brooks made any notes of what was said during that period. It was clear that they had little or no specific recollection of the occasion. However, there are some matters which it is possible to say may have occurred during that 45 minute period leading up to the formal interrogation. It is possible that Dyer told the accused that, if he did not agree to take part in a recorded interview, he would lock up both the accused and Geaghen, adding words like: "and being pregnant she doesn't need that, does she?" As a result of that alleged threat, it is possible that the accused agreed to cooperate with Dyer, and Dyer sent Brooks to release Geaghen. The real possibility that such a threat was made was critical to the outcome of this *voir dire*. I noted that Dyer denied the allegation of threatening to lock up Geaghen. He said he resented the suggestion. However, in all the surrounding circumstances the accused's version is at least as cogent as that of Dyer and Brooks.

At approximately 10.30, Brooks went to Geaghen's interview room and told her that she was free to leave, that the accused had admitted to the cannabis crop down the track and was signing statements to say Geaghen had nothing to do with it, or words to that effect. Geaghen was escorted downstairs and allowed to leave.

The accused said he was also told by Dyer that, if he cooperated, he would be released in time to start his new job, a matter about which the accused was somewhat anxious. This

may have acted as an additional inducement to the accused to talk.

It is worth noting here that the admitted conduct of Dyer and Brooks on this occasion was in stark contrast with the conduct of detectives in my general experience in the Northern Territory. For some considerable time now, in general, a record of interview relating to significant crime has either been itself recorded or a readback of it recorded electronically. In many cases, the record of interview has been video-taped or audio-taped. It is not uncommon (and as I write these remarks I have a number of cases in mind) for police to record on a hand-held recorder preliminary conversations with an accused prior to the accused being formally interrogated. The day has long passed when it is permissible for a judge to accept the evidence of a police officer against that of an accused person for no other reason than that he is a police officer. A judge must have a more rational basis for preferring the evidence of a police officer where it is in conflict with that of another person. In this case, the rational indicators point to the substantial truth of the evidence of the accused and Geaghen. If I am wrong, the officers concerned should reflect upon the fact that they could have insured themselves against this finding by emulating their colleagues and using modern policing methods.

In situations like this, where a suspect is to be interviewed concerning the commission of a serious crime, one

commonly finds that some electronic record is made, either sound or video or both, of what transpired between the police and the accused during the informal conversation that often precedes a more formal interrogation. At the very least, some notes of the conversation are made in an official notebook. (The significance of the official notebook is that, because the pages are numbered and the entries made sequentially, it is difficult to insert an entry at a later date without it being apparent). Electronic recording is the best safeguard for both police and suspect. I could cite a number of recent cases in this court where tape recordings have been used with great benefit to the prosecution. They have prevented false allegations against police being effectively made and they have operated powerfully to remove any unease from the jury's minds that there may have been some fabrication of evidence. In this case, not only was no electronic recording made, but no notes were made. I can barely remember a case where at least some sketchy notes were not made of conversation preliminary to the conduct of the record of interview. In aggravation of that situation, it was obvious that neither Dyer nor Brooks had any real memory of what was said during the 45 minutes immediately preceding the formal interrogation. Neither Dyer nor Brooks remembered that Geaghen was upstairs at the drug squad, yet it is clear upon the evidence that she was there.

This case is, in my experience, an unfortunate aberration and I hope that it has the effect of confirming in

the minds of investigators generally the great value of the practice now commonly adopted of electronic recording wherever practicable. I know that there will always be cases where important admissions are made in circumstances where, by reason of their having been made unexpectedly or made in a place or at a time where the facilities for recording do not exist, it would be unreasonable to expect the admission to be electronically recorded. This was not such a case.