

PARTIES: THE QUEEN
v
SIANG PIN FOO

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY exercising
TERRITORY JURISDICTION

FILE NO: 113/96 (9512728)

DELIVERED: 23 July 1998

HEARING DATES: 21 April – 20 May 1997

JUDGMENT OF: THOMAS J

CATCHWORDS:

Criminal law – evidence – judicial discretion to admit or exclude evidence – listening device – meaning of “authorised official” in s 219D Customs Act 1901 – evidence admissible

Customs Act 1901 (Cth), s 219A, s 219B(7) and s 219D
Evidence Act 1939 (NT), s 26L

REPRESENTATION:

Counsel:

Crown: E. Fullerton and S. Sievers
Defendant: J. Tippett

Solicitors:

Crown: Australian Government Solicitor
Defendant: NTLAC

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tho98016
IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. 113/96 (9512728)

BETWEEN:

THE QUEEN

AND:

SIANG PIN FOO

CORAM: THOMAS J

REASONS FOR RULING

(Delivered 23 July 1998)

This is an application pursuant to the provisions of s26L of the *Evidence Act* challenging the admissibility of evidence obtained by way of a listening device from premises described as Room 1427, Plaza Hotel, 32 Mitchell Street, Darwin on 5 and 6 June 1995.

On 15 May 1997 I ruled that the evidence obtained from such listening device that the Crown seek to put before a jury is admissible as evidence on the trial of the accused. I stated I would publish my reasons for such ruling which I now do.

On 5 June 1995 John Davies, a Judge of the Federal Court, issued a warrant under the provisions of s219B(7) of the *Customs Act* 1901 for the

installation, use and removal of a listening device in respect of premises described as Room 1427 Plaza Hotel, 32 Mitchell Street, Darwin.

The essence of the defence submission is that Constable Stuart Daniel McDonagh and Constable Greggs, who installed the listening device were not authorised officers within the meaning of s219D of the *Customs Act*. Accordingly, the installation of the listening device was unlawful and this Court should refuse to allow evidence obtained by means of such listening device to go before a jury on the trial of the accused.

Section 219D of the *Customs Act* provides as follows:

“(1) The authority conferred by a warrant issued to a Commonwealth law enforcement agency under section 219B shall be exercised only by the chief officer of the agency or by other officials of the agency approved, for the purposes of that warrant or of warrants issued under that section, by the chief officer or by an authorised official of the agency.

(2) In subsection (1), a reference to an authorised official of a Commonwealth law enforcement agency is a reference to an official of the agency appointed by the chief officer of the agency, by writing, to be an authorised official of the agency for the purposes of this section.”

Application for the warrant (Exhibit P26) was made by Guy Clifford Slater a member of the Australian Federal Police.

Sergeant White and Sergeant Taylor were officials of the Australian Federal Police as defined in s219A of the *Customs Act*.

On 8 December 1994, Michael John Palmer, Commissioner of Police, appointed Bede Richard Curtis, a member of the Australian Federal Police for the purposes of s219D of the *Customs Act*, to approve members of the Australian Federal Police, by a warrant or of warrants issued under s219B of the said Act (Exhibit P28).

On 5 June 1995, Mr Curtis approved certain officials of the Australian Federal Police whose names appear in the schedule as officials who may exercise the authority conferred by warrant issued on 5 June 1995 under the provisions of s219B of the Act in respect of the use of a listening device for the purpose of listening to or recording words spoken by, or, to any person in premises situated at Room 1427 Plaza Hotel, 32 Mitchell Street, Darwin in the Northern Territory (Exhibit P27). Included in the names of the persons listed in the schedule are Robert William Taylor and Gregory Roy White.

Neither Constable McDonagh nor Constable Greggs were included in the schedule. Neither Constable McDonagh or Constable Greggs listened to or recorded conversations on the listening device.

The defence submission is that the exercise of power under the warrant to install the listening device was unlawful as the persons who installed the device were not authorised for the purposes of that warrant to install the device. The subsequent listening to and the recording of information produced by the device was unlawful for the reason that the listening post

had not been installed pursuant to the required authorisation. In the submission of counsel for the Defence, the consequence of this is that the material obtained by the use of the listening device was therefore unlawfully obtained and should not be admitted into evidence.

I do not accept this submission.

On my reading of the provisions of s219D of the *Customs Act* those who installed the device were not exercising any authority conferred by the warrant as they were not using the device for the purposes of listening to or recording words spoken. Accordingly, they were not required to have an authority conferred on them under s219D.

Constable McDonagh and Constable Greggs were directed by Sergeant Taylor to install the listening device. Sergeant Taylor did hold the requisite authorisation under s219D. Sergeant Taylor required the technical expertise of other persons to install the device. It is Sergeant Taylor who is accountable for the actions of those who physically installed the device and who, for the purpose of the legislation, had the authorisation to install the listening device for the purpose of listening to or recording words spoken.

Accordingly, I ruled that the evidence obtained by means of the listening device was admissible on the trial of Mr Foo.
