

## **CARR v STATE OF WESTERN AUSTRALIA (P34/2006)**

Court appealed from: Court of Appeal, Supreme Court of Western Australia

Date of grant of special leave: 26 October 2006

On 25 November 2004 the appellant, Michael John Carr, was convicted, after a jury trial, of armed robbery while in company. He was sentenced to six years' imprisonment without parole. The circumstances of the offence were that on 8 April 2003 the appellant and a co-offender drove to the South Perth branch of the Commonwealth Bank in a stolen car, where the appellant went into the bank armed with a handgun which he pointed at a teller and demanded that she fill several bags with money. The appellant then left the bank with the money, a total of \$7,750, and escaped in the stolen car driven by his co-offender.

The appellant was later arrested, his premises were searched, and he was taken to the police station. He was interviewed by the investigating officers, with the interview video-recorded. During the interview he was cautioned by the investigating officer that he was not obliged to speak. He had been cautioned several times earlier, during the search of his premises and while being driven to the police station. At the interview, the appellant declined to answer any questions without the presence of a lawyer, but denied his involvement in the crime. He was then taken to the "lock-up" section of the police station by the same investigating officers. He initiated a conversation with those officers and made several admissions of his involvement in the crime. This conversation was recorded by fixed surveillance cameras and microphones in the lock-up. The Crown tendered the video recording of this conversation at trial, which was admitted over objection.

On appeal, the appellant argued that the trial judge (Wheeler J, as she then was) erred in admitting the video recording of the lock-up conversation, either because it was not an "interview" within the meaning of section 570D of the *Criminal Code* (WA), or because the appellant should have been cautioned again when he initiated the conversation because he was not aware that the conversation was being recorded and accordingly he had not participated voluntarily in the conversation, particularly since the investigating officers encouraged him to continue speaking. The Court of Appeal (Steytler P, McLure and Buss JJA) rejected these arguments and dismissed the applications for an extension of time to seek leave to appeal against conviction and sentence.

At the hearing of the application for special leave to appeal, leave was granted to amend the draft notice of appeal to identify more clearly the point of construction raised by the appeal.

The grounds of appeal include:

- That section 570D of the *Criminal Code* requires that a record of an "interview" is inadmissible where the interviewee is not aware that the conversation is being recorded and therefore cannot be said to have voluntarily participated in the interview.