

HILL v THE QUEEN (M146/2006)

Court appealed from: Court of Appeal, Supreme Court of Victoria

Date of judgment: 21 April 2006

Date special leave granted: 10 November 2006

The appellant was convicted on 6 August 2004 of murdering his step-brother, Craig Reynolds. At the time of his death, the victim was sharing a house with the appellant. They were both heroin users. The appellant claimed that he arrived home at 9.00 pm on 17 February 2002 to find Reynolds lying on his back on the lounge room floor, covered in blood. Reynolds died in hospital 5 days later from multiple skull fractures and traumatic brain damage. The appellant's brother told police that the appellant had confessed to him that he killed Reynolds by repeatedly striking him with a house brick.

In June 2002 the police set up "Operation Exode" which involved a series of 19 "scenarios" in which undercover operatives, posing as members of an organised criminal gang, approached the appellant and induced him to believe that they wanted him to join the gang. The process included emphasis being placed on a supposed code of truth, honesty and loyalty between all gang members, and the necessity for full disclosure of any past crimes which the police might still be investigating. He was also told that declaring any criminal activity would enable the boss of the gang to use corrupt contacts within the police force to "fix" any police investigations. Ultimately, on 6 August 2002, a meeting took place between the appellant and "the boss" of the gang, who obtained admissions from him regarding the death of Reynolds.

Three days later the appellant was arrested and interviewed. He said he and Reynolds had an argument and he lost his temper. He couldn't remember anything that had occurred, but when he "snapped out of it" he saw Reynolds on the floor with blood all over his head, and a house brick lying next to him. At his trial, the appellant's counsel submitted that admissions he made to "the boss" and other undercover police, which contradicted his assertion that he couldn't remember hitting Reynolds with the brick, should be excluded. The trial judge (Bongiorno J) rejected that submission.

The appellant appealed against his conviction to the Court of Appeal (Callaway, Buchanan and Vincent JJA), on the grounds that the trial judge erred in failing to exclude the admissions as involuntary, as unreliable, or as contrary to the general discretion. The Court found that the operatives to whom the admissions were made were not "persons in authority" for the purposes of the exclusionary rule. The appellant contended that his statements were inadmissible as they were involuntary in a basal sense, that is, that his will was overborne by a combination of promises and tactics of bullying, haranguing and cajoling. The Court of Appeal found the trial judge's conclusion that at all times the conversations between the appellant and the

police operatives were voluntary and made by him in a free exercise of his will to speak or not speak, was well supported by the evidence.

The grounds of appeal are:

- the Court below erred in failing to determine that the learned trial judge had erred in failing to find that both covert police operative "Pat Austinn" and covert police operative "Mark Butcher" were persons in authority;
- the Court below erred in failing to determine that the learned trial judge had erred in:
 - (a) not ruling as inadmissible on the basis of involuntariness the evidence of that which the Crown asserted were confessional statements made by the appellant to -
 - (i) covert police operative "Pat Austinn" on 6 August 2002;
 - (ii) covert police operative "Mark Butcher" on 6 August 2002.
 - (b) not ruling as inadmissible
 - (i) the evidence of that portion of the record of interview conducted with the appellant on 9 August 2002 concerning what the Crown asserted were confessional statements; and
 - (ii) the evidence of the covert police operatives carrying out the various (19) "scenarios" with the appellant between 18 June 2002 and 6 August 2002 and the conversations with the appellant whilst carrying out these scenarios.

