

39/76

## SUPREME COURT OF QUEENSLAND

*R v WALL*

Andrews J

5 February 1975

**EVIDENCE – CHILD CHARGED WITH SERIOUS OFFENCE – CIRCUMSTANCES OF INTERROGATION OF CHILD OVERPOWERING – PARENTS NOT REQUESTED TO BE IN ATTENDANCE DURING CONFESSION – WHETHER CONFESSORIAL EVIDENCE SHOULD BE EXCLUDED.**

**HELD:** Confessional evidence excluded.

Where a child was being interrogated as to his complicity in a very serious offence a conviction for which could have resulted in very serious consequences for him, all reasonable steps should have been taken to avoid, or at least to minimize, the risk of his being overborne by the situation and, in particular, the situation of dominance of police officers albeit acting in good faith. Such reasonable steps were readily available in the present case in procuring the presence of the accused's parents which would have tended to reassure him and perhaps be of assistance in bringing some balance of the situation to him in the sense of avoiding the risk referred to. It cannot be doubted that police officers as a matter of common knowledge are very busy, but that having regard to the advantage to be gained by the loss of perhaps of two hours in this case was not a circumstance which would have justified their not having taken the precaution of having the boy questioned in the presence of his parents.

**ANDREWS J:** The facts as I deem them to be material here, sufficient for my purpose in any event, were that in August 1974 when the accused was aged 14½ years he was questioned during a period of approximately 3½ hours by two police officers and, at times, in the presence of a third police officer — I am speaking of the Sergeant of Police from the Red Hill Police Station, Sergeant Brennan. He says here before me that he was scared. He has given evidence before me on some of the matters. I am not particularly impressed on the issue of credibility, but one must always make allowances when dealing with testimony from a child that the witness is a child. I am, however, prepared to deal with the matter on the basis that he was, as he described it, scared, not by any means as a result of any conduct by the investigating police officers, but by the fact that they were police officers and by the situation generally.

At the outset it was, I think, quite reasonable to have expected either of the police officers, or some other police officer to attempt to contact the parents of the accused before there was any questioning. There would, I think, have been no difficulty in the matter, and having regard to the accused's background and accessibility, and having regard also to the unlikelihood that he would not have been available at a later time, the questioning should not have been commenced before the parents came home.

I have said I do not think that there was anything positive in the conduct of the police that could be said to have oppressed the boy, but circumstances themselves, of course, can be overpowering and the police do have an authority of their own which could be frightening for a child.

It has been said and, with respect, I agree unquestioningly, that the police are not to be unduly hampered in their investigations by too rigid application of rules regulating methods of investigation. However, the courts are always concerned with the overall question of fairness which has, of course, a very flexible meaning, depending upon all the circumstances that are relevant in an investigation which elicits confessional evidence from a suspected or an accused person. There are, of course, rules for the guidance of police officers who are questioning such persons; they are not binding rules and their application, as I have said, must vary considerably.

Where a child is being interrogated as to his complicity in a very serious offence a conviction for which could result in very serious consequences for him, all reasonable steps should be taken to

avoid, or at least to minimize, the risk of his being overborne by the situation and, in particular, the situation of dominance of police officers albeit acting in good faith. Such reasonable steps were readily available here in procuring the presence of the accused's parents which would have tended to reassure him and perhaps be of assistance in bringing some balance of the situation to him in the sense of avoiding the risk to which I have referred. It cannot be doubted, of course, that police officers as a matter of common knowledge are very busy, but that, I think, having regard to the advantage to be gained by the loss of perhaps of two hours in this case is not a circumstance which would, I think, justify their not having taken the precaution of having the boy questioned in the presence of his parents.

It will not be in every case that this can be done practically, but in the circumstances of this case, in my view it ought to have been done. I cannot think of one reason – and I am having particular reference to the case on which Mr Lohe (the Crown Prosecutor) referred me – for not having taken these steps. That case, of course, was *R v Roberts* a note of which appears in (1970) CLR at p484. Mr Connolly (Counsel for the accused) referred me to the case of *R v Pratt, Baker and White* (1965) 83 WN (Pt.1) NSW 358. I listened attentively to his questions from the judgment of Mr Justice Macfarlan and it seemed to me they were particularly apposite here. It may well be that in all the circumstances one could come to the view that the boy has not finally given untruthful confessional evidence against himself, but having regard to the statement in that case I think it is proper to say that the statement ought to be deemed to be unreliable having regard to all the circumstances and the relatively tender years of the accused when the questioning was carried out.

Courts, as I have already said, are concerned to ensure as nearly as possible that when an accused person implicates himself by confessional evidence that that evidence is true. It is the fact, and I have no trouble in accepting this evidence, that a conversation was held between Constable Dickson and the accused's father when the accused's father rang and spoke to him on the telephone at, as I find, about ten to six – perhaps a quarter to six. I think it is probable what the father was told that he could come along to the police station, but I think that falls a long way short of taking reasonable steps to ensure that one or both parents were there, as I have said, to balance up the situation. It was not done.

I think I should exclude the confessional evidence. It must be clearly understood, of course, that almost the sole influence upon me in this case is the age of the person who was under interrogation. In any event that is how I rule, and in the exercise of my discretion which I think is called for properly, in the circumstances I would withhold the confessional evidence from the jury.

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