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HIGH COURT OF AUSTRALIA

GORDON v R**Gibbs CJ, Mason, Murphy, Aickin and Brennan JJ****14 May 1982 – Canberra — [1982] 41 ALR 64**

EVIDENCE – CONFESSION – WEIGHT – ADMISSIBILITY OF ALL FACTORS RELEVANT TO EVIDENCE – EXPERT – PHYSICAL DISABILITIES – STATEMENTS TO EXPERT WITNESS BEING FOUNDATION OF OPINION – WEIGHT OF OPINION IF STATEMENTS NOT CONFIRMED IN EVIDENCE – EXPERT – PSYCHIATRIC EVIDENCE – STATEMENTS TO PSYCHIATRIST ORIGINAL EVIDENCE.

GIBBS CJ, MASON, MURPHY, AICKIN and BRENNAN JJ:

This case involves the consideration of two principles. The first, stated in *Jackson v R* [1962] HCA 49; (1962) 108 CLR 591; 36 ALJR 198 is that where a question arises as to the weight to be given by a tribunal of fact to a confession of guilt all the circumstances surrounding the making of it which tend to show either that it can safely be relied upon or that it would be unwise to rely upon it are admissible.

The second, discussed in relation to expert evidence as to physical, rather than psychiatric, disabilities, in *Ramsay v Watson* [1961] HCA 65; (1961) 108 CLR 642 at 648-9; 35 ALJR 301 is that statements made to an expert witness are admissible if they are the foundation, or part of the foundation, of the expert opinion to which he testifies but that if such statements, being hearsay, are not confirmed in evidence, the expert testimony based on them is of little or no value.

In the case of psychiatric evidence, statements made to the psychiatrist may be themselves original evidence, in which case they need no confirmation in the witness box. In the present case, however, the statements made to the psychiatrist and upon which he relied, but which were not proved in evidence, were not of that character.

The judgment of the Court of Criminal Appeal should be read in the light of these principles as it does not appear to give expression to them. However, there is no ground to conclude that a miscarriage of justice has occurred in the present case and nothing that calls for the grant of special leave to appeal.

The court would accordingly refuse the application for special leave to appeal.
