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SUPREME COURT OF NEW SOUTH WALES — COURT OF CRIMINAL APPEAL

R v LEE

Street CJ, Lusher and Enderby JJ

15 June 1984 — [1984] 13 A Crim R 226

EVIDENCE – RECORD OF INTERVIEW WITH ACCUSED – RECORD READ TO ACCUSED BY OFFICER IN CHARGE OF POLICE STATION - RECORD NOT READ BY ACCUSED – EACH PAGE OF RECORD SIGNED BY ACCUSED – WHETHER RECORD OF INTERVIEW ADMISSIBLE.

A record of interview which was read to an accused but which he did not himself read was properly admitted since the accused adopted it by signing each page. A person who places his mark or his signature upon a document after it has been read to him thereby adopts the document. The document is, in substance, in law and in effect, his document.

***R v Lapuse* [1964] VicRp 7; [1964] VR 43, distinguished.**

STREET CJ: (with whom Lusher and Enderby JJ agreed) *[set out the facts, dealt with the first ground of appeal, and continued]:* ... **[229]** The second ground of appeal is brought forward as of right. The appellant challenges in it the decision of the trial judge to admit into evidence the first record of interview, that which was dated 10 April 1983, and the narrative of the taking of the record of interview given by the police officer concerned. It was signed by the appellant. It is upon the circumstances of the signing that this particular ground of appeal is sought to be founded. I quote from the evidence of the interrogation police officer.

> "I then asked the defendant a number of questions and those questions together with his answers were recorded in type by Detective Nielson as the interview took place. The whole of that interview was recorded by Detective Nielson. I then left the room and had a short conversation with Sergeant First Class Noble, the officer in charge of police. I then handed to Sergeant Noble the original copy of the record of interview. I then returned with him to where the accused was seated and I was then present when Sergeant Noble read each page of the interview aloud to the accused. I then asked the accused a number of further questions and those questions together with his answers were also recorded by Detective Nielson. I then again left the room and returned with Sergeant Noble and Sergeant Noble read aloud those additional questions and answers to the accused. The accused then signed each page of that record of interview and I witnessed his signature."

The document was then tendered and the transcript notes that it was objected to as: "the document was not read by the accused himself but was read over to him". It was submitted that the document could not be admissible even though the appellant signed it. The trial judge ruled that the document was admissible. His Honour directed his attention expressly to the discretionary aspects which would entitle him to exclude it should he consider that in accordance with ordinary principles it should be excluded. At the same time, it was plainly of very direct and important relevance that the jury should have an opportunity of having before it the untrue record of interview to place alongside the subsequent true record of interview; the contents of both of them being, as has already been stated, acknowledged to be accurate records of the questions asked and the answers given.

The challenge that was made in the court below has been presented again in this Court. The challenge is that, as the appellant did not read the document himself but merely listened whilst it was read out to him, it could not be concluded that by signing it, as he did, he thereby adopted the document as a document. In support of this proposition, reference is made to the decision of the Victorian Full Court in *R v Lapuse* [1964] VicRp 7; [1964] VR 43. In *Lapuse's case*, the accused, when being interrogated by the police, indicated that he could not read and write English. The record of his interview was accordingly read over to him. He said that it was correct but refused to sign it. The Full Court said that in those circumstances he could not be regarded as having adopted the record as a document, and it was held that it was wrongly admitted. The clear basis of distinction between *Lapuse's case* and the present case is that here the appellant

did adopt the document by signing each page of it. To suggest that a marksman who executes a document after it has been read over to him does not thereby adopt the document involves an inroad upon a long established evidentiary approach that enables marksmen to execute documents so as to make them, in substance, in law, and in effect, their documents.

Over the decades endless transactions requiring documentary implementation have been effected by marksmen by the process of the contents being read and the marksman executing as a marksman. To suggest that the placing by a marksman of his mark on a document, or the signing, as was done here, after it has been read over to him, does not amount to an adoption of the document as a document flies in the face of the ordinary evidentiary approach. In my view the conclusion was amply open in the present case that the appellant had adopted the document by signing it at the end and on each page. Indeed he, in his unsworn statement, made no issue upon that point. The document was, in my view, technically admissible and I can see no reason to hold that the trial judge erred in the exercise of his discretion in deciding that the course of the trial did not require him to preclude that document from going out to the jury. There is no basis for upholding the second ground of appeal.

[His Honour then dealt with the remaining grounds of appeal].
