

36/82**SUPREME COURT OF TASMANIA*****R v MIGLIORINI and ORS*****Cosgrove J****20, 24, 28, 31 July, 3 August 1981****[1981] Tas R 80; (1981) 53 FLR 221; (1981) 4 A Crim R 458; (1981) 38 ALR 356****EVIDENCE – CRIMINAL LAW – TAPE RECORDING OF TELEPHONE CONVERSATION BY APPARATUS FITTED IN RECEIVER – WHETHER TAPES AND TRANSCRIPT OF CONVERSATION ADMISSIBLE: TELECOMMUNICATION (INTERCEPTION) ACT 1979 (CTH) SS6, 7.**

The accused were charged with five counts of blackmail. It was alleged that they demanded the payment of \$20,000 in the course of five separate telephone calls to H. A police officer had affixed a recording apparatus owned by him to his telephone prior to the making of the first of these telephone calls and the conversations were thereby recorded on tape. The Crown sought to tender the relevant parts of the tapes, and also transcripts of the recorded conversations.

HELD:

1. The recording was an unlawful interception of a communication as defined by s6 of the *Telecommunications (Interception) Act 1979* (Cth) (the Act). The illegality stemmed not from the invasion of the privacy of the caller but from the use of equipment not installed by Telecom or its agents.

2. Section 7(6) of the Act permitted the giving to an appropriate court of "information obtained". It followed that the court might receive evidence in the form of limited broadcasting of a record made illegally.

3. The only ground upon which the court might exercise its discretion to exclude evidence was that of public policy. The illegality here was not intentional or reckless and the reception of the evidence did not amount to the condonation or approval of deliberate breaches of the law by the police. The tapes should not be excluded.

Bunning v Cross [1978] HCA 22; (1978) 141 CLR 54; (1978) 19 ALR 641; 52 ALJR 561, applied.

4. Transcripts were not *prima facie* admissible but the courts have, for reasons of convenience and fairness, held that they may be admitted in the exercise of a general inclusory judicial discretion.