

***Deacon v The Queen* [2019] NTCCA 21 (11 October 2019) – Northern Territory Court of Criminal Appeal**

‘Admissibility of admissions’ – ‘Mr big operation’ – ‘Murder’ – ‘Whether admissions made to undercover police influenced by "oppressive conduct"’

Charges: Murder x 1.

Case type: Application for leave to appeal against conviction.

Facts: The applicant man pleaded not guilty to an ex officio indictment charging him with the murder of his female de facto partner (the deceased). Prior to the jury trial, a voir dire was conducted to determine the admissibility of admissions made to undercover police and in a police interview. The trial judge ruled these admissions admissible. The applicant was later found guilty of murder by majority verdict and sentenced to life imprisonment with a 21 year and 6 month non-parole period.

A key issue on appeal related to the evidence in relation to the undercover police operation. The Court detailed how undercover police established a fake criminal operation and used various tactics to gain the applicant’s trust. The applicant had participated in various tasks or scenarios, none of which were illegal. These scenarios were designed to make the applicant believe that the group had power, by virtue of its links, to corrupt law enforcement officers, and to destroy incriminating evidence. The applicant then met with a fictitious crime boss. The ‘boss’ utilised the interview technique of ‘minimization’, by which he sought to devalue the deceased and other women in order to create a bond of misogyny to gain the applicant’s trust. The applicant eventually admitted to killing the deceased by punching her to the head and then choking her, and led the operatives to the site of the remains. He subsequently gave evidence at trial that he had killed her under provocation.

Issue: The appellant sought leave to appeal against the conviction on the grounds that:

- > the trial judge erred in assessing the conduct of the undercover operatives only in terms of its bearing and effect on the applicant, rather than by reference to the fact that it was oppressive conduct because it involved deception, subverted the right to silence, and was directed solely to obtaining a confession;
- > the covert operatives were exercising the authority of the state during the time they placed pressure on and offered inducements to the applicant;
- > the trial judge misdirected himself as to the meaning of oppressive conduct.

Held: The application for leave to appeal was refused. The trial judge observed that there was no evidence that the scenarios in which the applicant participated involved violence and held that the undercover police did not engage in oppressive conduct. His Honour had contrasted that position with the scenarios in some of the Mr Big operations in Canada which employed violence to create an impression that the fictitious criminal organisation tolerated and was prepared to use violence. The Canadian approach did not assist the applicant as there was no issue that the applicant made a false or unreliable confession.