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**IN THE YOUTH COURT  
AT AUCKLAND**

**CRN: 17204000042  
[2017] NZYC 375**

**NEW ZEALAND POLICE**  
Prosecutor

v

**H C**  
Young Person

Hearing: 1 May 2017

Appearances: Mr Simpson for the Prosecutor  
Ms Winterstein for the Young Person

Judgment: 25 May 2017

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**RESERVED JUDGMENT OF JUDGE A J FITZGERALD  
[Admissibility of a DVD interview]**

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## **Introduction**

[1] HC faces three charges of aggravated robbery and one charge of burglary. That offending is alleged to have occurred on [date deleted] September 2016 at which time H was 14 ½ years old; she is now 15.

[2] It is alleged that H was involved with three children and one other young person in relation to the aggravated robberies and two of the same children in relation to the burglary.

[3] H and those two children were arrested at the scene of the alleged burglary at about 7.30pm and taken to the Auckland Central Police Station arriving at about 8.20pm. H underwent an evidential interview recorded on DVD (“the interview”) starting at 11.06pm.

[4] H has denied the offending and an application made by the police to have the interview admitted as evidence at a Judge alone trial is opposed on the following grounds:

- (i) H was not able to effect her right to have her mother present as her nominated person during the interview;
- (ii) H’s rights were not adequately explained to her, particularly in relation to her right to have her nominated person, or a lawyer, or both present;
- (iii) The conduct of the interview was unfair because it began with discussions regarding the burglary charge before then turning to the more serious aggravated robbery charges;
- (iv) There was undue delay between H’s arrest and the interview;
- (v) The Justice of the Peace (“JP”) who was called in by the police to act as the nominated person did not discharge his duties adequately.

[5] Before turning to consider each of those grounds it is necessary to set out in more detail the background to the interview.

## **Background**

[6] The allegations are that H and the four others involved in the offending were in the Auckland CBD on [date deleted] September 2016.

- (a) In relation to the first two charges of aggravated robbery; at about 4.30pm they made an unprovoked attack on the first two complainants delivering multiple punches and kicks before taking a Macbook laptop off one and a camera off the other. (One charge relates to the taking of the laptop and the other the camera). One complainant retreated to a building for safety but was pursued by the group who continued their attack. When the other complainant attempted to retrieve the property from the group he was subjected to a further attack too.
- (b) In relation to the third aggravated robbery charge; at about 5pm the group was in [location deleted] and approached two more complainants. One was pushed with enough force that she fell to the ground and then was assaulted by members of the group in a frenzied attack involving numerous punches and kicks to the body before then taking one complainant's handbag which contained an iphone.
- (c) In relation to the burglary; H and two of the children went to a restaurant nearby and into the toilet area where they found a cupboard containing the belongings of staff. They rummaged through some bags and took money and other property before being confronted by management. They then fled to another restaurant nearby where members of the public managed to apprehend them until the police arrived and arrested them at about 7.30pm.

[7] [Constable 1] was one of the attending officers who then transported H and the two children back to Auckland Central Police Station where they arrived at about

8.20pm. The other child and young person allegedly involved in the aggravated robberies were already there.

[8] Upon arrival at the station (at about 8.20pm) [Constable 1] says he gave H and the two children advice of their “Juvenile Bill of Rights” using the card he keeps in his notebook. In relation to H he says he explained each of the rights to her in an interview room away from the others and got her to repeat each one back to him in her own words until he was satisfied she understood each one.

[9] Meanwhile, shortly after 8.20pm, [Constable 2] tried to call H’s mother without success. He tried the phone number that was recorded in the police National Intelligence Application (“NIA”) which was incorrect. H, who gave evidence, says she asked [Constable 1] to call her mother a few times. He does not recall that but acknowledges it is possible. H also says she gave him her mother’s number. H also says that [Constable 2] did not tell her that her mother’s number did not work and did not ask if there was anyone else she wanted them to try and contact. [Constable 1] could not remember which officer had tried to call H’s mother but did recall that the number that was tried was “dead”.

[10] [Constable 2] says he did ask H for her mother’s phone number but she could not provide it. He also says he did tell H he was unable to contact her mother and that he gave her the opportunity to nominate someone else but she could not do so. At this point he then says he wanted to interview H without delay.

[11] H’s mother says an officer phoned her at about 12.20 or 12.30am (ie, early the next morning) told her what H was charged with, and asked if she could come and collect H from the police station. She says she could not do so because she had other children there asleep and so the police said they would drop her home. H’s mother says that if she had been contacted earlier she would have gone to the station to be H’s nominated person. She says her phone number has been the same for four years and she has been contacted on it previously by police regarding H.

[12] [Constable 2] says it would not have been possible to send officers to H’s mother’s address earlier (ie; the night before after the unsuccessful attempt to contact

H's mother by phone) because it would have been a stretch for their resources to get a police car out there. There were four police staff dealing with the matter and to send two officers out in a car was not viable.

[13] It was not until 11.06pm that the DVD interview with H began. During the approximately three hour gap between H arriving at the station and the interview starting, the police say they were busy getting caregiver details from all five members of the group, then attempting to contact the caregivers without success and then trying the duty roster of JPs. [Constable 2]'s evidence on that issue included;

“...we have to go through 5 to ten to actually get one that's available to come into the station to conduct the interview. Here they had five to interview including H – whose interview was second to last. Three before and one after.”

[14] [The JP] was the JP who was called in and he sat in on all five interviews. He was contacted by the police at about 6pm and arrived at the station at about 7pm. That was because the child and the young person allegedly involved in the aggravated robberies (but not the burglary) had been arrested and taken to the station earlier.

[15] [The JP] spoke to H for about five minutes before the interview began. That was after having been briefed by [Constable 2] regarding the allegations. [The JP] had the form provided to nominated persons which he filled out (POL 388A) which summarises the rights of children and young people, what a nominated person needs to know and what the role requires.

[16] The only things [Constable 2] recorded in his notebook that evening were H's name, address and date of birth. Those were also the only details he entered on the Youth Justice Checklist form. There was nothing recorded about such things as the attempt to contact H's mother, talking to H about that afterwards or giving her advice about her right to consult a lawyer as well as a nominated person. [Constable 2] interviewed H and 2 others before taking H home.

[17] H says she believed she would only be able to go home after she gave a statement. Both officers deny saying that to H.

## The interview: advice of rights

[18] The following is from that portion of the transcript of the interview that deals with the advice H was given about her rights;

C: That's video, okay? So what I'll do now is I'll just give you your rights, okay? So once I've kind of explained one part of it to you, what I'll get you to do is just explain it back to me and that just lets me know that you understand it. If you don't just tell me and I'll kind of go into a bit more detail, okay?

H: Yeah.

C: So the reason I'm talking to you today is about the incident that happened down on [Restaurant details deleted], okay? Where a woman's um bag was taken, okay? So you have the right to remain silent. What does that mean?

H: Um say nothing.

C: Yup so if you don't wanna talk you don't have to. You do not have to make any statement or answer any questions. What does that mean?

H: Um. Don't have to ...

C: ... Yup so if I ask you question ..

H: Answer ...

C: ... and you don't wanna answer it.

H: (INAUDIBLE).

C: You don't have to. Cool. If you agree to make a statement or answer any questions you can change your mind and stop at any time. Do you want me to explain a bit?

H: Yeah.

C: So if you're talking to me and then you all of a sudden think I don't wanna talk to you, just say I don't wanna talk anymore.

H: Oh yeah.

C: and you can just stop, okay? So anything you say to me, it will be recorded on the audio and the video. (*Demonstrates*) And you may be given in evidence in court. Okay? So this means that if this goes to court, what you say to me may be retold to a judge.

H: Yeah.

C Okay?

H: (*Nods head*)

C: So you have the right the right to speak with a lawyer and or any person nominated by you without delay and in private before deciding whether to make any statement or answer any questions. So if you wanna talk to a lawyer, that's someone that specialises in the law and giving advice on the law, you can talk to one of those and um you can do that before giving a statement. Yeah?

C: And you have the right to have your lawyer and or nominated person with you while you make a statement or answer any questions. Yeah? And Police have a list of lawyers you may speak to for free. So we've got a bunch of free lawyers if you wanna talk to them, it's all good. Okay?

H: (*Nods head*)

C: Do you understand all that?

H: Yup.

C: Okay cool. So H um what I want you to do um just in your own words just explain to me what happened today.

[19] [Constable 2] accepts he did not follow up the advice about the right to have a nominated person and/or lawyer present by asking H whether she wanted a lawyer there because he believed that was the duty of the nominated person.

[20] Under cross-examination at the hearing, H was again taken through the same questions about rights as set out above, and whether she agreed that she understood them and her answer again was "yeah" to virtually every one.

[21] However when I then asked her to explain in her own words what she understood the Constable's words to mean, in relation to the following rights, she could not do so. The evidence was;

Q: "You have the right to speak with a lawyer and/or any nominated person by you without delay and in private before deciding whether to make any statement or answer any questions." So could you tell me in your own words what that means...?"

A: You can – oh, I don't know.

Q: Okay, well the next one is, "So if you want to talk to a lawyer that's someone that specialises in the law and giving advice on the law, you can talk to one of those and, um, you can do that before giving a statement." Just tell me in your own words what that means?

A: You can talk to the lawyer, I don't know.

Q: What would you talk to the lawyer about do you think?

A: Um, what happened.

Q: And what would your understanding of talking to the lawyer be about what happened, what do you understand that talk would be for?

A: Um, I don't know.

Q: The next question is this, "You have the right to have your lawyer and/or a nominated person with you while you make a statement or answer any questions." So what does that mean?

A: Um, you can them there while you're answering questions.

Q: Have who there?

A: Your lawyer or nominated person.

Q: And what does it mean when, what did I mean when I said that you have the right to have your lawyer and/or your nominated person with you while you make the statement?

A: I don't know.

### **The rest of the interview:**

[22] The total length of the interview was about 13 minutes with the portion up to this point taking just over four. In the remaining nine minutes [Constable 2] asks H questions firstly about the alleged burglary before then turning to the aggravated robberies.

[23] In relation to the burglary nothing clear emerges with H making minimal responses which are largely "yeah", "um" or "no/nah". Questioning then turns to the aggravated robbery allegations. H makes an admission that the group gave someone a hiding and thinks she also hit someone in [location deleted]. She denies taking anything from anyone or knowing who did.

[24] [The JP] did not speak at any stage of the interview.

## **Law**

### **Statutory provisions**



[25] Firstly and importantly s 208(h) of the Children Young Persons and their Families Act 1989 (“the Act”) provides:

**S 208 Principles**

Subject to [section 5](#), any court which, or person who, exercises any powers conferred by or under this Part or [Part 5](#) or [sections 351 to 360](#) shall be guided by the following principles:

...

(h)

the principle that the vulnerability of children and young persons entitles a child or young person to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person.

[26] Section 215 of the Act, so far as it is relevant here provides:

**215 Child or young person to be informed of rights before questioned by enforcement officer**

(1) Subject to [sections 233](#) and [244](#), every enforcement officer shall, before questioning any child or young person whom there are reasonable grounds to suspect of having committed an offence, or before asking any child or young person any question intended to obtain an admission of an offence, explain to that child or young person—

(a) ...

(b) ...

(c) that the child or young person is under no obligation to make or give any statement; and

(d) that if the child or young person consents to make or give a statement, the child or young person may withdraw that consent at any time; and

(e) that any statement made or given may be used in evidence in any proceedings; and

(f) that the child or young person is entitled to consult with, and make or give any statement in the presence of, a barrister or solicitor and any person nominated by the child or young person in accordance with [section 222](#).

(2) ...

(3) ...

[27] Section 215A requires an officer to explain any of the matters covered in s 215 to the young person if the young person makes an enquiry about such matters.

[28] Section 216 requires officers to explain rights to a young person who is to be charged and so does not apply here but s217 does; it requires rights to be explained to a young person who is arrested.

[29] Section 218 requires explanations of rights to be given in a manner and language that is appropriate to the age and level of understanding of the young person.

[30] Section 221 provides:

### **221 Admissibility of statements made by children and young persons**

(1) This section applies to—

(a) every child or young person who is being questioned by an enforcement officer in relation to the commission or possible commission of an offence by that child or young person:

(b) every child or young person—

(i) who has been arrested pursuant to [section 214](#); or

(ii) whom any enforcement officer has made up his or her mind to charge with the commission of an offence; or

(iii) who has been detained in the custody of an enforcement officer following arrest pursuant to [section 214](#).

(2) Subject to [sections 223 to 225](#) and [sections 233](#) and [244](#), no oral or written statement made or given to any enforcement officer by a child or young person to whom this section applies is admissible in evidence in any proceedings against that child or young person for an offence unless—

(a) before the statement was made or given, the enforcement officer has explained in a manner and in language that is appropriate to the age and level of understanding of the child or young person,—

(i) except where subsection (1)(b)(i) or (iii) applies, the matters specified in paragraphs (a) and (b) of [section 215\(1\)](#); and

(ii) the matters specified in paragraphs (c) to (f) of [section 215\(1\)](#); and

(b) where the child or young person wishes to consult with a barrister or solicitor and any person nominated by that child or young person in accordance with [section 222](#), or either of those persons, before making or giving the statement, the child or young person consults with those persons or, as the case requires, that person; and

(c) the child or young person makes or gives the statement in the presence of 1 or more of the following persons:

(i) a barrister or solicitor:

(ii) any person nominated by the child or young person in accordance with [section 222](#):

(iii) where the child or young person refuses or fails to nominate any person in accordance with [section 222](#),—

(A) any person referred to in paragraph (a) or paragraph (b) of [section 222\(1\)](#); or

(B) any other adult (not being an enforcement officer).

[31] Section 222 provides;

**222 Persons who may be nominated for the purposes of section 221(2)(b) or (c)**

(1) Subject to subsection (2), a child or young person may nominate one of the following persons for the purposes of [section 221\(2\)\(b\)](#) or (c):

(a) a parent or guardian of the child or young person:

(b) an adult member of the family, whanau, or family group of the child or young person:

(c) any other adult selected by the child or young person:

(d) if the child or young person refuses or fails to nominate any person referred to in any of paragraphs (a) to (c), any adult (not being an enforcement officer) nominated for the purpose by an enforcement officer.

(2) Where an enforcement officer believes, on reasonable grounds, that any person nominated by a child or young person pursuant to subsection (1)(a) or (b) or (c),—

(a) if permitted to consult with the child or young person pursuant to [section 221\(2\)\(b\)](#), would attempt, or would be likely to attempt, to pervert the course of justice; or

(b) cannot with reasonable diligence be located, or will not be available within a period of time that is reasonable in the circumstances,—

that enforcement officer may refuse to allow the child or young person to consult with that person.

(3) Where, pursuant to subsection (2), a child or young person is not permitted to consult with a person nominated by that child or young person pursuant to subsection (1), that child or young person shall, subject to subsection (2), be permitted to consult with any other person nominated by that child or young person pursuant to subsection (1).

(4) It is the duty of any person nominated pursuant to subsection (1)—

(a) to take reasonable steps to ensure that the child or young person understands the matters explained to the child or young person under [section 221\(2\)\(a\)](#); and

(b) to support the child or young person—

(i) before and during any questioning; and

(ii) if the child or young person agrees to make or give any statement, during the making or giving of the statement.

[32] Section 224 provides that reasonable compliance can be sufficient to enable a statement to be admissible.

### **Case law**

[33] The special protection afforded by s 208(h) not only requires the use of language appropriate to a young person's age and level of understanding, but also that questioning be, as far as possible, at age appropriate times and in age appropriate conditions.<sup>1</sup>

[34] Police officers need to explain rights to a young person in a manner that ensures that the particular young person understands the various rights and how to exercise them.<sup>2</sup>

[35] The Act is drafted on the assumption that most young people will have little or no understanding or experience of what a lawyer is, how to instruct one and what

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<sup>1</sup> *R v Z* [2008] NZCA 246 at [33]

<sup>2</sup> *Supra* at [35]

functions the lawyer will perform.<sup>3</sup> The Court of Appeal later recorded its general concern that the young person in that case,

[92] ...was facing questioning over such a serious charge without having had the benefit of legal advice. There must be a real issue, given the duty to offer special protection under s 208(h), as to whether more ought to be done to try and ensure that a child or young person in Z's situation takes legal advice.

[93] The Canadian approach is to do just that. The brochure given to parents and guardians ... positively encourages parents and guardians to ensure that legal advice is obtained for their children. It also tells parents not to urge their children to "confess" straightaway as this will rarely be in their best interests.

[36] Although the Court of Appeal in *Z* then went on to refer with approval to the Canadian approach of providing a brochure encouraging the taking of legal advice, it then said later in *Riley Campbell v R*<sup>4</sup> that those comments did not go so far as to impose a positive obligation on a police officer to take that step.

[37] In *R v Z* attention is drawn to the use of the term "explain" in s215 of the Act as opposed to "inform" which is used in s23 of the Bill of Rights Act 1990. In addition, the Court observes that merely informing a young person of the right to a lawyer, even in age appropriate language, would not meet the requirements of s218 because it would not be dealing with the level of understanding of the particular young person.

[38] However, again in *Campbell*, the Court of Appeal pointed out that it is not part of the statutory scheme that the role of a lawyer be explained to a young person but then goes on to say that it is "...highly desirable this occur since the obligation under [the Act] is to explain the rights to the young person."<sup>5</sup>

[39] The presence of a nominated person does not diminish the responsibility on police officers to explain the rights in language that is appropriate to the age and level of understanding of the young person.<sup>6</sup>

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<sup>3</sup> [37]

<sup>4</sup> [2014] NZCA 376 at [27].

<sup>5</sup> *Supra* at [41].

<sup>6</sup> *Rv Z* at [39]

[40] However, in the later *Riley Campbell v R*<sup>7</sup> decision the Court of Appeal explained that although it is good practice for a police officer to ask a suspect whether they wish to have a lawyer (after being given advice as to their right to have one) that is not prescribed practice.<sup>8</sup>

[41] In that case the Court of Appeal also commented on the use of the language “and/or” in connection with the right to a lawyer and a nominated person. They encouraged the use of simpler language which makes clear that these are additional and not alternative rights.<sup>9</sup>

[42] Also in *R v Z* the Court notes that the role of the nominated person includes taking reasonable steps to ensure the young person understands the rights explained to them and provide support during the interview. The Court said the nominated person is not merely a cipher; to carry out their role they need to know the jeopardy faced by the young person they are asked to support.<sup>10</sup>

[43] In relation to the involvement of a nominated person, the Court of Appeal in *Campbell* noted that, in contrast to *R v Z*, the police officers allowed Mr Campbell and his father an extended period to confer before commencing the interview. The Court also noted that the statutory duty on a nominated person under s 222(4)(a) of the Act is to take reasonable steps to ensure that the young person understands the matters set out in s 221(2)(a).

[44] The Court in *Campbell* also made it very clear that the question as to whether the explanation of rights given was adequate is always a fact-specific enquiry.

[45] In *R v Z* the Court said that a bare statement of rights is not likely to be sufficient to meet the requirements of s 215 of the Act. If there is a failure to meet those explanations, then, absent reasonable compliance under s 224, the statement is inadmissible under s 221(2).<sup>11</sup>

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<sup>7</sup> [2015] NZCA 452

<sup>8</sup> *Supra* at [43]

<sup>9</sup> *Supra* at [46]

<sup>10</sup> *Supra* at [87].

<sup>11</sup> *Supra* [41]

## **Findings and analysis**

### *Access to nominated person*

[46] In relation to this and some of the other grounds referred to below, the lack of any note taking by the police officers (apart from the very bare basics), plus failure to complete the checklist, is concerning especially because some parts of their evidence do not seem to add up correctly which may be because they were trying to work from memory.

[47] [Constable 2] was the officer who tried to call H's mother using a phone number in NIA which was incorrect. One digit was wrong. When he made that attempt, just after 8.20pm, [Constable 1] was speaking to H in another room. H told [Constable 1] that she wanted to speak to her mother and I am satisfied that if [Constable 2] had asked her for the number she would have been able to provide the correct one; I find she was not given that opportunity. [Constable 2]'s evidence, that he wanted to go ahead with the interview without delay and therefore used the JP as nominated person, does not add up because the interview did not take place until about three hours later and, as explained below, the explanations for that delay also do not quite add up.

[48] Given the evidence that the number called was "dead" some effort should have been made to get another number off H. If that effort had been made the correct number would have been provided. Someone did manage to call H's mother after the interview and so clearly it was possible to get the correct number from somewhere.

[49] I do accept [Constable 2]'s evidence that resources available to the police that night could not be stretched so far as to justify sending a patrol car out with two officers to H's mother's home especially given that there were five in the group they were dealing with and a total of four officers available.

### *Advice as to rights*

[50] Having told H that he would get her to explain back to him what each of the rights he gave her meant, [Constable 2] did then not do so. He simply asked her whether she understood what he was saying and she replied “yeah” in most instances. The same thing was done under cross-examination at the hearing. However when H was asked to explain in her own words what the rights to a lawyer and/or nominated person were she was unable to do so. She also did not seem to know what the reason for talking to a lawyer, and having one present in the interview, would be.

[51] The requirement to explain those rights to H in a manner and in a language appropriate to her age and level of understanding was not satisfied. In coming to that view I have regard to H’s age at the time (14 ½ years) the time of the interview (after 11pm) and the lack of adequate support from the nominated person as explained below.

[52] I do not accept [Constable 1]’s evidence that when he spoke to H at 8.20pm and explained her rights to her she was able to repeat each one back to him in her own words given that she was unable to do that in the hearing. She was unable to do that when asked at the hearing.

[53] Having given H advice about her right to a lawyer and/or nominated person [Constable 2] did not then ask her whether she wished to have a lawyer present. He says he did not think it was his duty to do so but was the nominated person’s duty instead. As the Court of Appeal in *Campbell* explained, although it is good practice for an officer to do so it is not prescribed practice.

[54] The POL 388A form setting out the duties of a nominated person does include the need to check whether the young person wants a lawyer present. In this case [the JP] did not say anything when this issue arose during the interview. It is not known what he discussed with H during their five minute talk before the interview but the failure to check when the issue came up during the interview is concerning especially because it does not seem she was aware what help it was a lawyer could provide. It is also not clear at all that she knew she could have a lawyer there as well as her nominated person.



[55] There was also the issue raised about H believing she was not free to leave until she had made a statement. Although I do not find that she was told that, I find it likely she could have had that impression and is an example of one of the many issues having proper access to legal advice would have addressed.

*Conduct of the interview*

[56] I do not find it to have been unfair or unreasonable of [Constable 2] to begin by asking H questions about the alleged burglary offending before then moving on to the aggravated robbery charges. It was a rather brief interview which does not include any clear admissions regarding the burglary and probably insufficient to support aggravated robbery charges, absent other admissible evidence.

*Delay between arrest and the interview*

[57] [Constable 2]'s evidence was that the nearly three hour delay between H arriving at the police station and the interview commencing was taken up with trying to contact caregivers for all five children and young people and, when that was unsuccessful, attempting to contact JPs.

[58] However that is not correct. [The JP] was already at the station when H and the two children arrived. Presumably that was because unsuccessful attempts had been made to contact the caregivers for the two allegedly involved in the aggravated robberies.

[59] The unsuccessful attempt to contact H's mother was made at about 8.20pm. I do not find that such attempts continued much past then. Therefore, at the most, the only things that were done in the three hour gap were attempts to contact caregivers for the two children allegedly involved in the burglary and to conduct three interviews before H's. It may be that those were long interviews taking up close to three hours but there was no evidence about that. I only know that H's interview lasted for 13 minutes. That leaves me concerned about the amount of time taken before H was interviewed and the late hour when it occurred.

*The nominated person's discharge of his duties.*

[60] I do not believe that five minutes would have been sufficient for the JP to adequately go through all of the things he needed to with H before the interview began especially given her age and the fact that she did not seem to know about issues such as her right to a lawyer as well as the nominated person and why she would want to have a lawyer present.

[61] In *Campbell* there is reference to the nominated person (the father) having “and extended period” to confer with the young person (who was a 16 year old boy) before commencing the interview. That was certainly not the case here. To adequately go through all of the things that are set out on the POL 388A form with a young person would take far longer than five minutes.

[62] As well as that brief meeting, there is the fact that the JP then remained silent throughout the entire interview. At no time did he interrupt to check if H understood the rights that were being given to her by the Constable particularly because when she was not given the opportunity to explain things back in her own words. Nor did he intervene to ask H whether she wanted a lawyer present as well as him.

**Conclusion**

[63] For the reasons given above I find that there were inadequate attempts made to contact H's mother (her nominated person) and to explain H's rights to her and allow her to demonstrate she understood them. The fact that she was facing serious charges, was not interviewed until after 11pm and that the JP present did not adequately discharge his duties as nominated person compound those concerns. If not individually, then certainly collectively those factors amount to a significant breach of her rights and are incapable of being saved on the grounds of reasonable compliance under s224 of the Act.

[64] In *R v Z* the Court of Appeal assumed that s30 of the Evidence Act 2006 did not apply to evidence ruled inadmissible under s221(2) of the Act and the same view was taken by the Court in *Elia v R*.<sup>12</sup>

[65] Although I therefore also adopt that approach, if s30 of the Evidence Act did apply I would have exercised my discretion in favour of excluding the interview on the basis that the rights breached are important especially having regard to the principle in s208(h) of the Act. Although I have expressed some concerns about the accuracy of the officers evidence I do not find the impropriety to be deliberate nor in bad faith but the Act sets a high standard that needs to be met and it was not in this case. I do take into account the serious nature of the alleged offending but also the brevity and inconclusiveness of the interview in some respects. I would still find exclusion of the interview to be proportionate to the impropriety if it was necessary to do so.

[66] For those reasons the application is declined; the interview is ruled inadmissible.

A J FitzGerald  
**Youth Court Judge**

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<sup>12</sup> [2012] NZCA 243