

## Allegations

- The prosecution may allege that Danny contravened the *Summary Offences Act* 1988 s10A, by defacing the telephone that was in proximity to where he was found, as well as s10B, for being in possession of the spray paint with the intention of spraying graffiti onto the telephone and the vandalism of the telephone.
- The prosecution may also allege that Danny contravened s11, being a minor who was found consuming alcohol in a public place.
- It may also be alleged that Danny was involved in the rape that occurred the same night.

## Defacing the telephone and possession of spray paint

- The prosecution will need to provide evidence that he was in possession of the spray paint as well as his intent in using the spray paint to cause damage, which may be satisfied if it is proved that he in fact defaced the telephone.

## Possession of liquor

- Danny would be guilty of possession of liquor by a minor unless he had a reasonable excuse for possessing or consuming the liquor (he was not under supervision of a responsible adult).
- However, by *Summary Offences Act* s11(5), he may not be arrested, except to allow the police to caution him about it.

## Request for contact details

- If Smith reasonably suspects that Danny has committed the offence of being possession of alcohol as a minor, then he may request that Danny state his full name and residential address: *Summary Offences Act* s11(5A).
- It is then an offence for Danny to refuse to reveal his name and his residential address (which presumably is the address of his parents): s11(5B).

## Search

- If Smith reasonably believes that Danny was in possession of a knife, and assuming that the police station is a public place, he may request that Danny submit to a search, which may include the examination of his bag: *Summary Offences Act* s28A(1). From the facts, however, it appears that he may have searched the bag unilaterally.
- Because Smith was patrolling the area and performing bag searches, it may indicate that the area has a high incidence of violent crime, which may support the view that Smith was entitled to a bag search: s28A(3). However, Smith may have wanted to view the contents of the bag to search for spray paint cans.

## Arrest Procedure

- In general, the police may arrest Danny after his alleged summary offences as defined in the *Summary Offences Act: Crimes Act 1900* s352. s354 permits detention

after arrest to allow the police to perform an investigation, despite the common law position.

- However, by s356M, the arresting officer is required to caution Danny, and provide a summary of the provisions of section 10A, which was not performed. This could result in any evidence being excluded by the *Evidence Act* 1995 s138(1)(a), which discusses evidence that was obtained improperly. Danny would argue that the mitigating factor of desirability of admitting the evidence is neutralised as per the minority judgement of White J in *R v S and J* (1983) 32 SASR 174 where the policy argument of fair process over indicting young offenders was raised.
- There are several issues here, first of which is whether Danny was properly arrested, or whether he was an “invitee”, accompanying Smith to answer questions voluntarily.
- With reference to *R v Conley* per King CJ as quoted in *R v S and J* (1983) 32 SASR 174, the act of grabbing Danny by the arm suggests to a reasonable person in Danny’s position would feel that he is under arrest and “not free to refuse to accompany him”.
- In *Williams v R*, it was held that police cannot arrest someone just so that they could question them.
- In the *Intoxicated Persons Act* (as discussed in Findlay, *Problems in the Criminal Law*), arrest for a drunken person is replaced by the ability to remove them from the scene for their safety. However, although Danny was in possession of alcohol at the time of his arrest, there is no evidence to suggest that he was drunk at the time of his apprehension by Smith; in fact, he seemed rather coherent.

- As noted by P Goodrich in *Reading the Law* as extracted in Brown et al (s3.2.0), behaviour and demeanour are important factors in influencing the actions of people involved in the criminal law, including the police as in this case.
- In particular, as noted in Brown et al (s.3.2.5) is the fact that police tend to target excessively those in the younger generations, drawing on stereotypes in their assessment of suspects.

## Admissibility of Evidence

- The *Children (Criminal Proceedings) Act 1987* s13(1)(a) states that there must be a person satisfying one of four categories present during the time when any confessions were made or given. No such person was present when Danny offered the information that he had attempted to steal money from the telephone, and that he did not spray graffiti on the telephone.
- However, by s13(1)(b), the prosecution may argue that because Danny's parents were not readily available, that would suffice in demonstrating that there was a "proper and sufficient reasons" for such an adult being absent. However, there was no reason why another person or legal representative could not be present. If that were the case, Danny's words may not be admissible evidence in future prosecution.
- Furthermore, *Evidence Act 1995* s84(1) could affect the admissibility of Danny's confession. His admission as to the damaging of the telephone, it appears, was made right after Smith's threat that he would be implicated in rape allegations, which being of a serious nature may classify as oppressive behaviour, provided that Danny raises the issue in the proceedings: s84(2).

- S90 may also act in Danny's favour if it would be unfair to Danny to use such evidence; given that, *prima facie*, he confessed while under pressure to confess, this would be a reasonable presumption.
- By the *Evidence Act 1995 s139*, and assuming that he was in fact under arrest, the investigating official, Smith, must have cautioned Danny before any questioning may begin. If that did not occur, then the evidence has been obtained improperly, rendering it inadmissible.

## Conclusion

- Because due process was not followed, especially in relation to the arrest and the gathering of his admissions, and the fact that there is a power imbalance between the police and the young person, it is likely that Danny would be acquitted of any charges.