

Criminal Law - Brisbane - Police Investigations

by Paul Byrne

We do not have one criminal law client who would not like their whole matter *to just go away*.

So often when a person - a potential defendant, is approached by police, the person through either desire or self-delusion, forms the view that granting an interview to police as requested, **might make the whole thing go away**.

Police will make a request something along the lines of:-

"We wish to interview you - you may be able to assist us in finalising our enquiries."

Please understand that in this article we are not advising that one should immovably hold the view that you do not speak with police if requested.

However, someone who has no experience in the police investigation or criminal law field, and who is being asked to answer a whole series of carefully planned questions, is probably not on a level playing field to a professional police investigator who asks questions for a living.

Sometimes, and for reasons that often have nothing to do with money, the accused person does not consult a lawyer and finds himself or herself persuaded to give an interview to police. ***It's almost as if the fact of involving a lawyer would be to admit that there is a big problem - and that, in the suspects mind, is not consistent with the idea of making the whole thing GO AWAY quickly.***

But there are all sorts of risks. Most people reading this article would not have gone through any of the following experiences:

- Being apprehended by police;
- Being escorted by police in a police vehicle;
- Being taken to a police station;
- Being left in an interview room on your own for a period; and then
- Being questioned by a professional investigator about a criminal allegation.

Imagine experiencing ALL of these things in the space of a few hours. And then, imagine doing it when you may have been further off-guard due to intoxication, or fear (even if the fear, in the case of young people, is due only to the consequences of their parents' being made aware of the allegations or problem).

People under pressure and stress and anxiety can, at worst, say the exact opposite of what they mean to say. Take the simple question, ***"You don't like her do you?"***

If the person's reply is yes, then:-

Is the person really saying ***"Yes"***, that proposition is correct ***"I don't like her!"***; or

Is ***"Yes"*** being said to indicate that the personal actually ***does like her; as in, "Yes I do like her!"***

98% of criminal investigations involve a complainant saying one thing and a defendant saying the reverse. **So by giving an interview to police, you are not going to solve the case for the police**. However, by giving an interview to police you do run the real risk of putting yourself in a position wherein you are significantly worse off.

If an accused person does not give an interview and there are allegations against them which they dispute then, the failure to give an interview **simply will make the case fall squarely into the classic mould of two diametrically opposing versions**. By contrast, if an accused person does give an interview, they will invariably provide an account of events quite different to the allegations of the complainant. The difference, in most cases, will not see the police refrain from laying charges. Except, that after the interview, the accused person quickly becomes a prisoner of what they have said and the slightest variation to the account given in the interview, can see the accused cross-examined in court for days on the issue.

A purist ethicist might say, *“Well, isn’t that appropriate. Say what you want to - say what you mean to say, and face the consequences.”* In answer to such a view, we make the following observations.

The English language itself is full of tricks and twists that have brought people undone in the past. A case where the English language may have been responsible for one of the last hangings in England was *The Queen -v- Bentley and Craig*. A movie has been made about this case, and it took its name from the critical utterance in that case - *“Let him have it.”*

In that case it was alleged by the Crown Prosecutor that a police sergeant had asked one of two co-offenders who had been apprehended by police, to give him the gun. It was not in dispute in evidence that the criminal’s accomplice then yelled out, from some distance away, *“Let him have it!”*

The jury found, as a matter of fact, that the phrase was not said by the defendant to his accomplice for purposes of persuading him to hand over the gun to the requesting police officer. Rather, it was accepted by the jury that the phrase was to be construed in its *colloquial sense*. And that *“Let him have it!”* was an instruction to shoot the police officer. The adult male who uttered those words was hanged.

If you are ever approached by police, who put an allegation to you, you should demand to speak with a criminal lawyer. This is so much entrenched in the legal process now, that the police are legislatively obliged to give you time to and to even help you find a lawyer before you give an interview to police.

The decision on whether or not to give an interview should be made between you and your lawyer after your rights, the circumstances of the case, and other issues such as evidentiary ramifications of giving an interview, have been fully discussed and understood.

In Queensland, if you so wish, you are legally entitled to do your own dental work that is, at least, if you restrict your work to your own teeth. However, most people would use the services of a dentist. Why then, when it comes to situations where reputation, career and liberty can be at stake, do people foolishly assume the misplaced confidence to think that they can go through the **criminal justice maze** on their own and dispense with the services of an experienced lawyer?

The unconsidered giving of an interview to police can be the very factor that causes the legal costs in a case to soar. After a poor interview, the lawyer may have to then try to repair and, if possible, undo the damage, sometimes irreparable, that has been done by a self-acting accused person.

Before a criminal case is heard, a copy of the record of interview will arrive at our office and we have all often asked ourselves, *“Why on Earth did he say that?”* or, *“Why on Earth did she answer that question that way?”* In answer to that question from me, the reply a client might give is:- *“I’d just come home from a footy farewell and I’d been drinking - I wasn’t thinking clearly and I was caught off-guard when the police arrived.”*

Here’s an example of a bad interview I have read. My client came to me after the interview had been given to police.

Question: An allegation of gross sexual misconduct was put to the defendant who had been a dormitory supervisor for juveniles.:-

Answer: *“Oh its all a long time ago - I don’t think I would’ve done that.”*

But then after another 10 minutes of accurately recalling rooms, doorways, the time of year, the day of the week, and the weather;- all thirty years ago, the accused was asked a very pertinent and uncomfortable question and proceeded to reply:-

“Oh it’s so long back I don’t think I could remember that. I don’t think I would have ever done anything like that.”

HOW WILL THIS SOUND TO A JURY? THE DEFENDANT CAN REMEMBER EVERYTHING EXCEPT THE CRIMINAL ACT BEING ALLEGED!

Another example I would like to mention is simply misuse of a colloquial cliché.

I'm sure that just about everyone, after hearing a ridiculous proposition, has used the phrase (or at least has heard the phrase), "*I don't think so!*"

It's fairly modern usage of language and clearly, it is designed to be sarcastic. We all know upon hearing that phrase delivered, that the maker of the statement is really saying:- "Definitely not - that is rubbish!" However, sometime you should have a good look at that phrase when it is reduced to writing in a transcript of a record of interview and being considered by a jury in circumstances where it is in answer to the 50th question about alleged sexual misconduct:-

Example

Question 47: Do you agree with the complainant that it was a rainy night?

Answer: Well, to be honest I'm just not sure about the weather. This whole thing has come as a shock to me and I just can't remember everything the way I would like to.

Question 48: Do you agree that you moved over to where the girl was seated reading the book?

Answer: I may have; I can't remember.

Question 49: Do you agree you were wearing a red shirt with short sleeves?

Answer: No, I don't think that is right. I have a red shirt but I did not own one until last Christmas when it was given to me.

Question 50: You reached over and touched Mary Jones inappropriately didn't you?

Answer: I don't think so!

THIS ANSWER IS TERRIBLE. IT LOOKS LIKE THE ACCUSED PERSON BEING QUESTIONED IS NOT SURE!