

CRIMINAL LAW (FORENSIC PROCEDURES) BILL

22 February 2007

Adjourned debate on second reading.

(Continued from 20 February. Page 1441.)

The Hon. D.G.E. HOOD: I indicate Family First's support for the second reading of this bill. I am sure it comes to no surprise to members in this chamber that Family First will be strong supporters of this legislation—in principle, any way. The bill gives police extended powers with respect to collecting and using DNA samples; Family First has been a supporter of this method of fighting crime for some time and we actually believe that this bill is somewhat overdue.

The bill addresses deficiencies in the current complicated and lacking system, problems highlighted by the Kapunda Road Royal Commission and the decision of Her Honour Judge Shaw in *R v Dean*.

I will go through some of the facts of the case because, frankly, I think that members of the public were quite right to be outraged at the decision, and, certainly, Family First was. This is not a reflection on Judge Shaw as such but, rather, a reflection on our poor forensic laws. The accused (*Dean*, in this case) had a DNA profile on the police database as a result of an arrest on 28 December 2003 on charges of assaulting a family member. On 22 April 2004, the charges were discontinued. Technically, at that stage the DNA profile should have been removed from the database and the DNA samples destroyed. I point out that charges of assaulting family members are regularly discontinued. Under the protection of parliamentary privilege, I can say openly that many of the people who have had these charges against them discontinued may well be guilty.

Section 44C of the Criminal Law (Forensic Procedures) Act 1998 directs the Commissioner of Police to destroy forensic material, including the results of any

analysis, as soon as practicable after the discontinuance of the charge. The forensic material from the accused was not destroyed in this case and his DNA profile was not removed from the database until December 2005. In this case, the defendant was arrested in July 2006 after his DNA profile matched with an offensive aggravated robbery allegedly committed at a Bi-Lo supermarket on 15 March 2004. The lawyer for the accused applied for exclusion of the evidence of his client's DNA profile given that, at the time of his arrest, the profile should have been destroyed. His arrest was apparently unlawful because the police had contravened sections 44C(1) and 46C of the act.

On 9 March 2006, Judge Shaw agreed with the argument and held that the arrest and charges were invalid because the DNA profile of the accused should have been destroyed and removed from the database as soon as practicable after 22 April 2004; hence, the need for this legislation. This case was seen as an outrage by many members of the public, and Family First certainly shares that view in relation to the outcome of that case. As a result, our laws must be changed.

Here we have a case where we know that the defendant was at the Bi-Lo supermarket. I will not say that he is guilty because that is a matter for the courts, but the evidence against him appears to be significant. We can be sure that he would have faced a long term of imprisonment, except for this technicality—and it is nothing more than a legal technicality that saw this individual escape prison. I will put it this way: if the police had matched up the DNA samples before the assault charges were dropped, the defendant probably would be in prison right now. If he had not convinced his partner to drop the assault charges against him, again he would probably be in prison. Had he been found guilty on fingerprint evidence, rather than DNA evidence (this is a crucial point), he would probably be in prison now because there is no clear obligation to destroy fingerprint samples if a defendant is later found to be not guilty. Yet, currently, as we know, there is an obligation to destroy DNA evidence.

Another issue, which has been raised by the Hon. Mark Parnell and which deserves discussion and consideration in reaching a conclusion on the way one should vote on this bill is that of civil liberties, which are challenged under this bill. The so-called 'destruction' model is the norm across Australia. Only Western Australia and the Northern Territory have the retention models that this bill seeks to introduce. A valid question, and one that has just been highlighted by the Hon Mark Parnell, is: why should the DNA sample of someone who is found not guilty (incorrectly charged, say, due to a case of mistaken identity) not be destroyed at a later date? Family First has certainly considered this and has had discussions at length about the implications of this aspect of the bill. On balance, we believe that some civil liberties need to be surrendered at some level, at least, to ensure public safety. For that reason, we will not be opposing the bill or its most controversial aspect, namely, the one I have just outlined.

I am told that there are also practical problems with the current retention model, and this also persuades Family First to support the bill. Indeed, we are informed that a current staff of some 15 full-time officers patrol the justice system to locate cases where charges are dropped or people receive non-custodial sentences (or even suspended prison sentences) to ensure that any samples on their file are destroyed. This is a gross waste of resources and, under this bill, such waste would cease immediately.

A couple of other aspects of this bill are worthy of mention. The first is that DNA testing, except for intrusive testing, no longer needs to be videotaped under this bill. Police are currently storing some 36 000 videotapes of forensic procedures, and this bill will help solve their storage problems. I am convinced that there is little need to tape these procedures, given that tests can be repeated if the validity of the charges is challenged. Hence, this bill improves that rather cumbersome and onerous situation the police are currently faced with.

Secondly, the list of offenders who can be swabbed is vastly broadened. Now all offenders who are reasonably suspected of minor indictable offences or an offence that carries a term of imprisonment can be tested. There is now even a list of driving offences which will result in a DNA swab being taken. Driving

whilst disqualified carries with it a possible term of imprisonment, as does driving whilst under the influence, per section 47 of the Road Traffic Act. I am sure these drivers will be somewhat shocked to discover that they have to give a DNA sample but, again, Family First believes that nonetheless the pendulum in this case falls in favour of protecting public safety.

Thirdly, the current system of interim orders being ordered by a magistrate is overhauled and becomes much simpler. Police inspectors now have increased powers to authorise testing and, again, Family First supports this move. Overall, Family First is strongly supportive of new DNA technology. Our police are opening and solving old files all the time. Criminals, including sexual offenders, are regularly being caught and convicted on the strength of DNA evidence and hence the need to support this important legislation. I ought to mention the bill which was introduced some years ago by my colleague the Hon. Andrew Evans and which became law. It removed the statute of limitations on sexual offences and, as a result of that, many old unsolved sexual crimes can now be solved by broadened DNA forensic laws. Family First certainly welcomes that as well.

During the consultation period for this bill Family First had the opportunity to consult with Police Commissioner Mal Hyde some months ago. During that meeting he actually asked me to support these laws as they were then proposed in order to fix what he saw as a very burdensome and cumbersome system for police so that, in his words, the police could get on with their job. I committed to him that Family First would certainly support that principle at this stage, and I am happy to say, as I have said, that we will do so with this bill. I should also mention with thanks the briefing which was provided by Assistant Commissioner Tony Harrison and which was one of the best and most informative briefings my office has had to date.

The main aspect of this bill that compels Family First to support it in the end is that, if we did not pass it or if we watered it down to the point where it became largely ineffectual, then the implications of one rapist or one serious offender—whatever the offence may be—getting away on another technicality would be

too high a price to pay for not enacting this legislation. So, Family First wholeheartedly supports this bill.