[2003] QSC 371

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Date: 29 October, 2003

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

BYRNE J

No 4527 of 2003

PAUL MALCOLM GRINTER	Applicant
and	
MR C OWENS, MAGISTRATE	Decision-maker
and	
CONSTABLE CHRISTIAN TELFORD	Respondent

BRISBANE

..DATE 24/10/2003

JUDGMENT

4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Telephone: (07) 3247 4360 Fax: (07) 3247 5532

HIS HONOUR: The applicant challenges in several ways by this application for judicial review two decisions of a Magistrate in connection with the applicant's conviction on 7 November 2002 of an offence against section 24(2)(b) of the Crimes (Aviation) Act 1990 which provides that a person must not make a statement ... being a statement ... that he or she knows to be false to the effect or from which it can reasonably be inferred that there has been or is to be a ... threat to destroy, damage or endanger the safety of ... a division 3 aircraft.

On 7 November, through the duty lawyer then acting as his solicitor, the applicant pleaded guilty to a charge that the previous day in Brisbane he had made a statement, namely, "It's a bomb", being a statement that he knew to be false "from which it can be reasonably inferred that there is a threat to destroy, damage or endanger the safety of a division 3 aircraft", whereupon the Magistrate invited the Prosecutor to proceed with his submissions on sentence.

The Prosecutor's account included this information. On 6 November, the applicant boarded Qantas Flight 1622 at the Brisbane domestic airport. The flight was bound for Rockhampton. The applicant had taken his seat and the aircraft was taxiing towards the runway for takeoff when a flight attendant, Sally Cartell, saw what she thought was a small bag between the applicant's legs. "What's that?" she asked him, pointing at the object. "It's a bomb," he replied. Ms Cartell "became concerned about the safety of the aircraft"

and its passengers. The pilot was informed of the incident and the aircraft returned. The applicant disembarked. He was interviewed by the police, and told them that, when he sat down in the plane, he placed a pillow between his legs. He admitted to the police that he had told the flight attendant that the thing was a bomb and realised that his statement would have caused concern to aircraft staff.

In his turn, the duty lawyer informed the Magistrate that the applicant agreed with the Prosecutor's account, that he had "no intention to cause general alarm", but that he accepted that "the matter did cause concern and disruption".

At the conclusion of the applicant's lawyer's submissions, the Magistrate invited the applicant to stand and proceeded to give his reasons for sentencing him to a fine of $7,500.

As it happens, the amount of the fine exceeded the maximum prescribed for the offence when dealt with summarily, as it had been on the applicant's election.

The Prosecutor thereafter applied to reopen the sentence pursuant to section 188 of the Penalties and Sentences Act 1992. That application was first dealt with on 6 December. It was not opposed and was eventually adjourned until 23 April, when the Magistrate also refused the applicant's application to set aside his conviction and grant him leave to withdraw his guilty plea.

Holding that, having convicted the applicant, it was beyond the Magistrate's power to entertain the application for leave to withdraw the plea, the Magistrate refused it. He considered himself functus officio, on the authority of Kimlin v. Wilson Ex Parte Kimlin [1966] QdR 237.

The Magistrate, on the reopening of the sentence, resentenced the applicant to a lesser fine.

Two of the Magistrates' decisions are now challenged by way of judicial review - (i) to accept the guilty plea on 7 November; and (ii) to dismiss the later application for leave to withdraw the plea.

The challenge to the second decision can only succeed if Kimlin no longer correctly states the law, as Mr Richards concedes. Mr Richards is also content to acknowledge that, as Kimlin is not inconsistent with any subsequent decision of the Full Court, the Court of Appeal or the High Court, it bound the Magistrate to refuse the application for leave to withdraw the plea, and binds me.

In these circumstances, it suffices for me to record the contention that Kimlin was wrongly decided and to pass to the challenge to the earlier decision.

Mr Richards contends that the Magistrate, once apprised of the facts related and submissions advanced during the sentencing phase of the proceedings on 7 November, ought to have taken

steps to encourage the applicant to withdraw his plea or, as I gather it is also said, ought to have acted on his own motion to enter a plea of not guilty.

The suggested factual foundation for the submission is that things said to the Magistrate by the Prosecutor and by the duty lawyer in the sentencing phase ought to have led the Magistrate to entertain such reservations about whether an element of the offence - namely, that which related to a reasonable inference of the existence of a relevant threat - was made out as to have prompted his own intervention to reject the plea or else to persuade the applicant to withdraw it.

This is not the occasion to essay the circumstances in which a Court's acceptance of a guilty plea might be held to have resulted in a miscarriage of justice or to involve pertinent judicial error when the plea represents the voluntary act of a legally represented person: of, generally, Moxham (2000) 112 ACrimR 152, especially at 144-145. Here, the contention is not that the Magistrate ought to have acceded to an application for leave to withdraw the plea. Rather it is that, despite the applicant's legal representative having informed the Magistrate that the applicant agreed to the version of events relayed by the Prosecutor, the Magistrate should nonetheless have intervened, in one way or another, to have substituted a plea of not guilty.

There was, however, no reason for such intervention; for there was an adequate basis upon which the Magistrate was entitled to consider that, in the circumstances, it could reasonably have been inferred from the applicant's statement that the pillow was a bomb that there was a relevant threat.

It was not suggested, for example, that the flight attendant believed that the object could not have been a bomb. Nor was it suggested that no other passenger could have heard the statement or considered that it was palpably false, if it had been heard. And that the applicant had no intention "to cause general alarm" is scarcely a fact inconsistent with guilt. In short, on such facts as were placed before the Magistrate, there was no error in his omitting to intervene in the ways suggested.

This conclusion makes it unnecessary to consider the several other points raised in opposition to the application.

The application is dismissed.

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HIS HONOUR: I consider that the costs should follow the event.

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HIS HONOUR: The order for costs therefore will be order that the applicant pay the second respondent's costs of and incidental to the application fixed in the sum of $4,520.
