

SUPREME COURT OF QUEENSLAND

CITATION: *R v Mauric* [2018] QCA 143

PARTIES: **R**
v
MAURIC, Peter
(appellant)

FILE NO/S: CA No 45 of 2018
DC No 408 of 2016

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: District Court at Southport – Date of Conviction: 2 February 2018 (McGinness DCJ)

DELIVERED ON: 29 June 2018

DELIVERED AT: Brisbane

HEARING DATE: 21 March 2018

JUDGES: Gotterson and Morrison JJA and Boddice J

ORDER: **Appeal dismissed.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the appellant was found guilty of perjury – where, at a Crime and Misconduct Commission (“CMC”) hearing and a summary trial in the Magistrates Court, the appellant made two statements on oath, one of which was irreconcilably in conflict with the other – where Counsel Assisting at the CMC hearing prefaced a question by referring to “the guy that Jacques had the confrontation with” – where, at the CMC hearing, the appellant denied that he knew “the guy” – where, on the prosecution case, “the guy” was Jason Trouchet – where, in the Magistrates Court, the appellant described Trouchet as “a very good friend” that he had known for over 20 years – where, at trial, the defence argued the appellant did not understand the preface to Counsel Assisting’s question at the CMC to be a reference to Trouchet – where, on appeal, the appellant argued the jury could not, on the evidence, have been satisfied that Counsel Assisting at the CMC hearing was asking him about Trouchet – whether the verdict was unreasonable and insupportable having regard to the whole of the evidence

COUNSEL: T S Corish for the appellant
D R Meredith for the respondent

SOLICITORS: Zali Burrows Lawyers for the appellant
Director of Public Prosecutions (Queensland) for the
respondent

- [1] **GOTTERSON JA:** On 2 February 2018, the appellant, Peter Mauric, was found guilty by special decision of perjury pursuant to s 123A of the *Criminal Code* (Qld). The verdict was given at the conclusion of a trial of three days in the District Court at Southport.
- [2] The count on which the appellant was tried alleged that between 23 October 2013 and 15 May 2015 at Southport and elsewhere, in judicial proceedings, namely a Crime and Misconduct Commission (“CMC”) hearing and a summary trial in the Magistrates Court at Southport, he had made two statements on oath, one of which is irreconcilably in conflict with the other; and made one of the statements knowing it to be false; and the false testimony touched upon a matter which was material to a question then depending in the proceedings. When the verdict was delivered, the speaker confirmed that the jury had made a special finding to the effect that they were unable to say which of the two statements was falsely made.
- [3] The appellant filed a notice of appeal against conviction on 2 March 2018.¹ Three days later, on 5 March 2018, he was sentenced to imprisonment for a term of 18 months, suspended after 9 months with an operational period of two years. The appeal was heard on 21 March 2018.

Circumstances of the alleged offending and evidence led at trial

- [4] **The Aura Bar incident:** The appellant was a member of the Nomads chapter of the Bandido Motorcycle Club. On the evening of 27 September 2013, he and some 20 or so of his Bandido Club colleagues, including Jacques Teamo, entered the Aura Bar at Broadbeach.
- [5] The bar area was fitted out with a CCTV recording device linked to several cameras. The system was operational at the time. It recorded visual images but not sound.
- [6] Both the entry into and departure from the bar, of the appellant and his colleagues, as well as the interactions between themselves and with certain patrons, were recorded. A disc containing the recording, exhibit 2, was tendered at the beginning of the trial. It was played to the jury.²
- [7] It is sufficient for present purposes for me to narrate the sequence of events that led to a riot outside the bar as they are shown on the recording. In the course of considering the ground of appeal, I shall refer in more detail to particular aspects of the conduct of the appellant and others as recorded.
- [8] The recording shows that the appellant was the third of the Bandido Club members to enter the bar.³ The group approached a table towards to the rear of it. Jason

¹ AB1-3.

² AB96 Tr2-15 ll15-36.

³ The appellant was identified as wearing dark jeans and a jumper with a Bandido club vest over it, with his hair tied in a ponytail: AB87 Tr2-6 ll3-10.

Trouchet⁴ was seated at the table facing into the bar area with his back to the rear wall. Trouchet was not a member of that or any other motorcycle club. Another male was seated at the table facing Trouchet.

- [9] Teamo⁵ addressed Trouchet who rose to his feet. They faced each other. A brief, but apparently direct, verbal altercation took place between the two of them.
- [10] Evidently, the Bandido Club members, Trouchet and his companion decided to go outside. Teamo left ahead of Trouchet who was the second last to exit the door of the bar onto the footpath. The appellant was the last to leave. As the appellant exited, a physical fight broke out between a number of individuals on the footpath area. Punches were thrown.
- [11] The police arrived. The appellant and others were arrested. On 16 October 2013, the appellant was charged with offending against s 61 of the *Code* by rioting.
- [12] **The CMC hearing:** While the riot charge was pending, the appellant was compelled to attend the CMC to answer questions on oath relating, in part, to the incident at the Aura Bar. He was interviewed on 24 October 2013 before a Presiding Officer. He was examined by Counsel Assisting.
- [13] The examination was recorded. A disc containing two extracts from the hearing together with transcripts of the same were tendered.⁶ The former was played to the jury. In the transcripts, the appellant is identified as “W”, the Presiding Officer as “PO” and Counsel Assisting as “CA”.
- [14] At the outset, the appellant was warned that untruthfulness amounted to perjury. He was told that, generally speaking, the CMC was interested in offences of violence involving three named bikie groups over the preceding 18 months.
- [15] In due course, the questioning turned to the Aura Bar incident. The following extract from the transcript of the hearing relates to that incident:⁷

“CA As has been suggested, there are a couple of different scenarios that I want to ask you about and I’d like you to comment on them so far as you can.

W Yeah.

CA I mean, a number of different theories about what went on-

W Okay.

CA -have been floating around. Even just in the media there have been a few different versions which have been put forward about what went on. One of them is this theory about the love triangle-

W Okay.

CA -with Jacques?

⁴ Trouchet was identified as wearing a black t-shirt and blue jeans and sneakers: Ibid 1128-29.

⁵ Teamo was identified as wearing a blue tracksuit with a white stripe on each sleeve: AB86 Tr2-5 1138-39.

⁶ Exhibit 3: AB189-198.

⁷ AB197-198.

- W Right.
- CA You're aware of that one?
- W Yes. This is what I've just mentioned, I've read it in the paper.
- CA That there was this dispute between Jacques and the guy he had the fight with?
- W Mmm hmm.
- CA And that that's what led to this confrontation on that night. You haven't spoken to Jacques since then?
- W Not once.
- CA Was it your understanding that Jacques was looking for that guy that night?
- W Not at all. Not at all.
- CA The guy that Jacques had the confrontation with, do you know who he was?
- W No, I don't. Never seen him in my life until that night.
- PO Were you aware that Jacques was there when you arrived?
- W I was standing next to Jacques when it happened. I was standing next to him and I remember saying, "Who is this guy?", and I thought it was a Fink, he looked like a Fink, you know, and I thought well, maybe, this could be serious, like, you know, and-
- PO So-
- W And he didn't answer me. All he did was nod as far as, no, he's not a Fink and I thought okay, that's good."

[16] The appellant was not shown the CCTV footage, or any stills from it, at the hearing.⁸ Thus no individual or incident was identified by reference to what could be seen on the footage.

[17] **The Magistrate Court hearing:** The appellant was tried summarily on the riot charge in the Magistrates Court at Southport in May 2015. He testified in his defence on the morning of Thursday 14 May. His counsel adduced the following evidence from him:⁹

"Now, I want to take you through your recollection of the evidence of the 27th of September 2013. At that time, were you a member of a motorcycle club?---Yes.

What was the name of it?---Bandidos.

And, at that time, did you belong to any particular chapter?---Nomad chapter.

⁸ AB110 Tr2-29 ll41-45.

⁹ AB200 l25 – AB201 l29.

Right. What does that mean?---The Nomad chapter's designed for – I was going to leave a few years ago, you know, getting a bit older and the rest of the crew's getting a bit younger. I'd been around not quite long enough to be a life member, but around long enough for this, in-between, sort of, position of Nomad, which means over 10 years, not quite enough – not quite long enough to be a life member and it's more or less designed for members like myself who do actually enjoy the riding side of the club and the partying and the girls, but – but don't really want to be any part of any decision-making or – or being told what to do. So Nomads usually live on the fringes, you know, there's only a few Nomads in each state and it is bound by state borders. We do have to answer to only our superiors, not to anybody else. No one can tell me what to do, nor can I tell anyone else what to do.

And as at September 2013, were you living in New South Wales or in Queensland?---I was a New – I was New South Wales nomad, the most northern one.

And in terms of then - - -?---And can I just finish off by saying, as well, to verify that I'm a Nomad, in the footage, you will see my bottom rocker doesn't say Australia like everybody else's, it says "Nomad", clearly large letters.

And in terms of any obligations or duties toward the Queensland chapters - - -?---Yes.

Did you have any?--- Not at all. They – they can't – they don't – I'm not on the – I'm not on the mailing list, you could put it. They – no. By – no, they can't tell me to - they can't me to do anything in Queensland.

Now, on the 27th of September 2013, you ended up, eventually, at Broadbeach?---Yes, correct.

* * * * *

And do you recall passing the Aura?---Yes, I do. I – until now, I don't bother remembering the restaurants' names unless I go there myself, but I do recall passing Aura and seeing a bunch of girls in there, no boyfriends, also a table or two spare. I also thought I saw Jason Trouchet sitting there, but I wasn't sure at the time.

Uh-huh. And – now, Mr Trouchet: you say you thought you saw him. Did – as at September '13, did you know him?---Yes, of course I did. He's a very good friend of mine. I've known him for 20 years – over 20 years, actually. We – we used to – let's be honest – we used to bed the same girls together. One week I'd have her, next week he would. That's the fact of the matter. That's how close we are.

When was the last time you saw him?---Actually, I had dinner with him last night in his home."

A recording of this evidence was played to the jury. Both the disc and a transcript of this evidence were tendered in the prosecution case.¹⁰

[18] **The recorded conversations between the appellant and Trouchet:** Some four telephone conversations between the appellant and Trouchet were intercepted by police and recorded. They took place in the late afternoon and evening of Wednesday 13 May 2015, the day before the appellant gave evidence in his Magistrates Court trial. The first conversation was timed as beginning at 17:35AEST, and the last at 21:58AEST. A recording of the telephone conversations was played to the jury and transcripts of the conversations themselves were also tendered.¹¹

[19] The first conversation was initiated by the appellant. He introduced himself as “Hooker’s mate”. He reminded Trouchet of an association they may have had in the past and which Trouchet did not initially remember.¹² In the second conversation, the appellant expressed regret that he did not “nip (the incident) in the bud”, telling Trouchet:¹³

“Yeah yeah nah but even on the night I’m thinkin’ if I if I only had clicked. I could’ve gone Jack [Teamo] what the fuck are you doin’ cunt I didn’t know fuckin’ you got a problem with this bloke fuck off Jack, get the fuck outside I wanna talk t’ this bloke if only I had of fuckin’ clicked I could of averted the whole situation meself I’m fuckin’ dirty on meself”.

[20] During the first two telephone conversations, the appellant and Trouchet agreed to meet that evening at Trouchet’s residence in Goolagong Court, Carrara. Police had installed an electronic surveillance device in the residence. A recording of conversations between the appellant and Trouchet at that house that evening was also played to the jury and an edited transcript of it was admitted into evidence.¹⁴

[21] In these conversations, the appellant told Trouchet:

“I didn’t recognise you, I truly didn’t”.¹⁵

The appellant was seeking some assistance from Trouchet for his case although the type of assistance being sought is not clear. Another subject of discussion between them was the evidence that the appellant would give on the following day when his barrister asked him “about Trouchet”.¹⁶ In the event, Trouchet did not give evidence at the summary trial.

[22] The latter two telephone conversations took place after the meeting.

[23] **Oral testimony:** The prosecution called one witness, Detective Senior Constable M Guida. He was the investigating officer for the Aura Bar incident. The electronically recorded and documentary evidence to which I have referred was tendered during the course of his testimony. He identified for the jury the appellant,

¹⁰ Exhibit 4: AB199-201.

¹¹ Exhibit 6: Transcript: AB203-220.

¹² AB218-219.

¹³ AB214.

¹⁴ Exhibit 7: Transcript: AB221-223.

¹⁵ AB222.

¹⁶ AB221. The appellant obviously knew that the person he was meeting with was Trouchet.

Teamo and Trouchet as they were shown from different camera angles on the CCTV footage.

- [24] The appellant neither testified nor adduced evidence at the trial.
- [25] **The respective cases at trial:** The prosecution case concerning the CMC hearing centred upon the question asked by Counsel Assisting prefaced with the reference to “the guy that Jacques had the confrontation with”. It was submitted to the jury that the question in context, informed by what they could see on the CCTV recording, clearly indicated that the “guy” was Trouchet and that the confrontation was the verbal altercation between Teamo and him at the table at the rear of the bar. The appellant must have understood that at the time. The “confrontation” was not the fight on the footpath; and the “guy” was not a male with whom Teamo might have exchanged punches.
- [26] Thus, the appellant understood the question that followed, “do you know who he was?” to have been referenced to Trouchet. Further, the appellant understood that by his answer, he was denying that he knew Trouchet and asserting that he had never seen him before that evening.
- [27] Turning to the evidence given by the appellant in the Magistrates Court, the prosecution case was that by his answer, “I also thought I saw Jason Trouchet sitting there”, the appellant signalled that, at the time he passed the Aura Bar that evening, he was, at least, acquainted with Trouchet. That was positively affirmed by the answer which followed in which the appellant described Trouchet as being “a very good friend” whom he had known for over 20 years.
- [28] On the prosecution case, the appellant had made two statements on oath which were irreconcilably in conflict with each other. They both concerned whether the appellant knew Trouchet at the time of the Aura Bar incident. In the CMC hearing, he denied that he knew Trouchet at that time; but in the Magistrates Court hearing he asserted that he knew Trouchet then as a very good friend.
- [29] On the prosecution case, the appellant must have known that one of the statements was false when he made it. Thus, the prerequisites for a special finding set out in s 123A of *Code*, namely, that the jury could not say which statement was falsely made, existed. Once a special finding was made, the jury could then find the appellant guilty of perjury pursuant to that provision.
- [30] The defence case was that the jury could not be satisfied beyond reasonable doubt that at the CMC hearing, the appellant understood that the preface to Counsel Assisting’s question was referenced to the verbal altercation at the table in the bar, as the “confrontation”; and to Trouchet, as the “guy”. To the contrary, he must have understood it to be referenced to the fight on the footpath and to an unidentified male (not Trouchet), with whom Teamo had exchanged punches at that locality.
- [31] In developing this submission, defence counsel reminded the jury that in an earlier question, Counsel Assisting had referred to “the guy Teamo had the fight with”. The fight and the confrontation must have been the same event. Further, the appellant had not been shown the CCTV footage when questioned at the hearing despite evidence that it was within the CMC’s possession at the time. Reference to the footage could have clarified the questions.

The ground of appeal

- [32] There is one ground of appeal. It is that the verdict is unreasonable and cannot be supported having regard to the whole of the evidence. The appellant seeks relief by way of a quashing of his conviction and the entry of a verdict of acquittal.¹⁷

Appellant's submissions

- [33] The appellant submitted that on its own assessment of the evidence, this Court should conclude that it was not open to the jury to have been satisfied beyond reasonable doubt of guilt on the appellant's part. There are two reasons why the jury should have entertained a reasonable doubt.

- [34] The first reason is that the jury could not, on the evidence, have been satisfied that Counsel Assisting at the CMC hearing was, in fact, asking the appellant about Trouchet. The following factors, it was contended, support that conclusion:¹⁸

- a. The questioning was vague. No effort was made to specifically draw the appellant's attention to the events inside the bar as compared with the 'brawl' outside the Aura Bar.
- b. The appellant was not asked to focus on any particular time or any particular location in the Aura Bar. No effort was made in the questioning to partition the appellant's focus away from the large physical brawl outside. There was no limitation on the detail of the questions Counsel Assisting could have chosen to ask.
- c. The person Jason Trouchet was never named by Counsel Assisting.
- d. The appellant's attention was never drawn to any CCTV or still photographs of who Counsel Assisting was actually referring to. The CCTV shows there was a large number of people in the restaurant who could have been the subject of the questions by the Counsel's (sic) Assisting.
- e. Jason Trouchet was not sitting at his table by himself. Another male was sitting with him, closest to the direction of approach of those who entered the Aura Bar, as shown on the CCTV. There [are] many other people in the restaurant and in close proximity.
- f. There was no evidence as to the identity of any person that Jacques Teamo engaged in any physical altercation with outside the Aura Bar.
- g. There was no follow-up questioning by Counsel Assisting regarding what the appellant meant by 'it' when he said he was standing right next to Jacques '*when it happened*'. It cannot be excluded that the appellant was at the time, and before, referring to the multi-person physical altercation outside the bar."

¹⁷ Appellant's Outline of Argument ("AOA") at [42].

¹⁸ AOA at [35].

In relation to g., it was suggested in oral submissions that the appellant meant that he was standing next to Teamo on the footpath¹⁹ and that on the footage he was never standing next to Teamo in the bar area.²⁰

- [35] Counsel for the appellant argued that where, in particular, the appellant was not asked by Counsel Assisting about Trouchet by his name or by identifying him in the CCTV footage, it could not be excluded as a reasonable possibility that his client thought that the reference to a “confrontation” was a reference to the fight on the footpath, given that the “riot” was the subject of the inquiry and the appellant was subject to a riot charge.²¹
- [36] The second reason concerns the issue of knowledge. It could not be excluded, counsel submitted, that the appellant may have unintentionally given a wrong answer at the hearing – Counsel Assisting meant Trouchet, whereas the appellant thought that he meant a combatant on the footpath. Afterwards, the appellant realised the possibility that he may have been mistaken and in the Magistrates Court gave a true account of his acquaintance with Trouchet.²²

Respondent’s submissions

- [37] As to the appellant’s first reason, the respondent submitted that certain features that the jury saw on the CCTV footage taken with the sequence of questions and answers at the CMC hearing, made it clear that Counsel Assisting was asking about the verbal altercation between Teamo and Trouchet inside the bar. The appellant’s answer to both the question whether he knew the “guy” Teamo confronted and the question that followed showed that he understood that to be the case. Reference was made to the following:²³
- a. As seen in the footage, the appellant walked into the bar with Teamo and was present beside him when the latter was speaking to Trouchet.
 - b. To the question, “were you aware that Jacques (Teamo) was there when you arrived?”, the appellant replied “I was standing next to Jacques when it happened”, thereby linking the “confrontation” with the arrival at the bar, rather than the departure from it.
 - c. The appellant then recounted a conversation as he was standing next to Teamo in which he asked Teamo if he knew who “this guy” was, thereby indicating that both he and Teamo had a common understanding as to the identity of the male to whom the appellant was referring.
 - d. That indication was affirmed by the appellant’s question to Teamo whether “this guy” was a Fink and Teamo’s intimation that he was not.
 - e. The appellant did not stand next to, or converse with Teamo on the footpath before the fight began.
- [38] In respect of the second reason, the respondent submitted that the appellant’s evidence at the hearing could not have been unintentionally wrong. The evidential features relied on in countering the appellant’s first reason, demonstrate that he

¹⁹ Appeal Transcript (“AT”) 1-7 ll18-21.

²⁰ AT1-14 l38 – AT1-15 l30.

²¹ AOA at [36], [40].

²² Ibid at [37].

²³ Respondent’s Outline of Argument (“ROA”) at [14]-[16].

knew that Counsel Assisting's question referred to Trouchet and that, by his answer, he was stating that he had never seen Trouchet in his life until that night.

Discussion

- [39] The task for this Court is to assess whether on the whole of the evidence before them, it was open to the jury to have been satisfied beyond reasonable doubt of the appellant's guilt.²⁴ In this case, the task does not involve allowance for assessment by the jury of the credibility or reliability of any witness based on demeanour.
- [40] Here, the assessment by this Court is centred upon the evidence of the statements on oath made by the appellant at the CMC hearing and at his trial in Magistrates Court respectively. It is demonstrably clear from the transcript of the latter that the appellant knew that he was being asked about his knowledge of Trouchet at the time of the Aura Bar incident and that he understood that when he said that "he" was a "very good friend" whom he (the appellant) had known for over 20 years, he was speaking of Trouchet.
- [41] Allowing for that, the focus of the assessment is narrowed to the evidence given at the CMC hearing. The transcript of that hearing records Counsel Assisting referring to a newspaper report of a love triangle involving Teamo that was behind the Aura Bar incident. The appellant said that he had read of it. Counsel Assisting then put that there was a "dispute" between Teamo and "the guy he had the fight with" and that that had led to "this confrontation" on that night. The appellant did not respond directly to what was put. That was followed by a question whether the appellant had spoken to Teamo since the incident which the appellant answered in the negative. He also denied that it was his understanding then that Teamo was looking for "that guy" that night.
- [42] Counsel Assisting's question whether the appellant knew "the guy that (Teamo) had the confrontation with", followed. The appellant said that he had never seen him in his life until that night. Next, the appellant was asked whether he was aware that Teamo was at the Aura Bar when he arrived. The answer that the appellant gave was that he was standing next to Teamo when "it" happened. By the word "it", the appellant must have been referring to the event that Counsel Assisting had described as "the confrontation". The appellant said that he asked Teamo "who is this guy?" and that he himself was thinking that that "guy" might have been a Fink. He interpreted a nod from Teamo to mean that "this guy" was not a Fink.
- [43] The appellant therefore understood the confrontation to which Counsel Assisting was referring to have been an event that had occurred immediately before, or was still occurring when, he was standing next to Teamo, asked the question and received the response by way of the nod. When the appellant referred to "this guy" he must have meant the male with whom Teamo had just, or was still having, the confrontation.
- [44] Counsel for the appellant submitted that the jury could not exclude as a reasonable hypothesis that the appellant understood Counsel Assisting's reference to a confrontation to be a reference to the physical exchange of punches on the footpath. Indeed, in oral argument it was submitted that that hypothesis was the only one that was reasonably open.²⁵ In other words, it was not reasonable to hypothesise that the

²⁴ *M v The Queen* (1994) 181 CLR 487 per Mason CJ, Deane, Dawson and Toohey JJ at 493, approved in *SKA v The Queen* (2011) 243 CLR 400 at 405; [2011] HCA 13 per French CJ, Gummow and Kiefel JJ.

²⁵ AT1-15 ll24-30.

appellant thought that the reference to the confrontation was a reference to the verbal altercation between Teamo and Trouchet at the table at the rear of the bar.

- [45] I have gained much assistance in evaluating these submissions for the appellant by viewing the CCTV footage trial exhibit. I have viewed it several times. The following is my summary of pertinent events recorded in the exhibit. It is expressed in the present tense for effect.
- [46] Teamo enters the Aura Bar first. He waits near the door until the appellant enters. In all, about 20 males enter the bar with them. The group goes towards the table at which Trouchet is seated. Initially, the appellant is to the rear of the group. He is looking around and about.
- [47] Once the group is at the table, Trouchet stands. The appellant then walks around the rear of the group and then forward. He moves towards Teamo and stops next, or very near, to him. A face-off and verbal altercation between Teamo and Trouchet take place.
- [48] Next, Trouchet, Teamo and others file out of the bar. The appellant is at the rear. Once Teamo and Trouchet are on the footpath outside, a physical fight breaks out between them and others. The fight begins while the appellant is still walking towards the door and just before he exits the bar. The recording ends at that point.
- [49] I observe from the footage that there was a period of time in which the appellant was standing next, or very near to, Teamo when the latter was engaged in the verbal altercation with Trouchet. The period of time was sufficiently long for the appellant to have asked Teamo who the “guy” he was speaking with was and for Teamo to have responded. By contrast, there was no period of time in which the appellant was standing next to Teamo after the latter had exited the bar immediately before the physical fight began. As I have noted, the appellant was still walking towards the door at that point. It is plain to me, as it must have been to the jury, that the appellant, while standing, did not ask Teamo a question at or near the door or on the footpath just before the fight began.
- [50] I draw from this that the sequence of questions and answers at the hearing and the sequence of events as shown on the CCTV footage illustrate conclusively that the reference by Counsel Assisting to the confrontation was meant by Counsel Assisting to refer to the verbal altercation between Teamo and Trouchet at the table and that his question enquired whether the appellant then knew Trouchet. That is so notwithstanding that the appellant was not shown the footage and that Trouchet was not named by Counsel Assisting.
- [51] I also conclude from the same material that the appellant understood Counsel Assisting’s question to be referenced to the verbal altercation (as the “confrontation”) and to the male (Trouchet) with whom Teamo had the altercation (as the “guy”). He understood that he was being asked whether he knew who that guy (Trouchet) was and answered the question on that basis.
- [52] Accordingly, I reject both reasons advanced on behalf of the appellant in support of the ground of appeal. It was well open to the jury to have been satisfied beyond reasonable doubt that the answer that the appellant gave at the CMC hearing was understood by him to relate to his knowledge of Trouchet at the time of the incident and to state that he had never seen him before.
- [53] I would add that the jury’s special decision demonstrated a careful attention on their part to the evidence. Despite being addressed by the prosecutor to the effect that the

evidence given by the appellant in the Magistrates Court was the truth, the intercepted communications would suggest that whilst there had been some acquaintance between the appellant and Trouchet before the Aura Bar incident, it had not been a close, long-term friendship. The jury were right to be satisfied beyond reasonable doubt of irreconcilable conflict in the two statements on oath, and that one of them was made knowing it to be false. They were also right not to specify which statement was made knowing it to be false. It was unnecessary for them to have done so in order to find the appellant guilty.

Disposition

- [54] The appellant's sole ground of appeal has not succeeded. The appeal must therefore be dismissed.

Order

- [55] I would propose the following order:

1. Appeal dismissed.

- [56] **MORRISON JA:** I agree with the reasons of Gotterson JA. I also note that my own viewing of the video evidence led to the same conclusions as to what it signified. I agree with the order proposed.

- [57] **BODDICE J:** I agree with Gotterson JA.