SUPREME COURT OF QUEENSLAND

CITATION:	*R v Mondon* [2002] QCA 89
PARTIES:	**R** **v** **MONDON, Leonard Francis** (appellant)
FILE NO/S:	CA No 226 of 2001 DC No 15 of 2001
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction and Sentence
ORIGINATING COURT:	District Court at Mackay
DELIVERED ON:	21 March 2002
DELIVERED AT:	Brisbane
HEARING DATE:	4 February 2002
JUDGES:	McMurdo P, Thomas JA, Ambrose J Judgment of the Court
ORDER:	**Appeal against conviction dismissed. Application for leave to appeal against sentence refused.**
CATCHWORDS:	EVIDENCE – AFFIDAVITS AND STATUTORY DECLARATIONS – STATUTORY DECLARATIONS - where appellant signed a declaration under the *Oaths Act* 1867-1988 that he had lost a .22 calibre rifle – where police later found matching .22 calibre rifle in appellant's possession - where appellant convicted under s 194 *Criminal Code* of the offence of making a false declaration – where appellant gave evidence declaration was not made in the presence of a witness CRIMINAL LAW – EVIDENCE – CORROBORATION – WHAT CONSTITUTES CORROBORATION – IN GENERAL - OTHER MATTERS CRIMINAL LAW – EVIDENCE CORROBORATION – DIRECTION OF JURY – ADEQUACY OF WARNING – EVIDENCE CAPABLE OF AMOUNTING TO CORROBORATION - where s 195 *Criminal Code* provides that a person cannot be convicted on the uncorroborated testimony of one witness – where the testimony of witnesses as to the falsity of the statement or declaration is what must be corroborated under s 194 *Criminal Code* – where

prosecution sought to establish the falsity of the declaration not through the testimony of a witness but through the appellant's possession of the gun - where s 195 *Criminal Code* does not apply - whether learned trial judge erred in finding that there was evidence which was sufficient to constitute corroboration – whether the learned trial judge erred by not giving appropriate directions in respect of corroboration

Criminal Code 1899 (Qld), s 194, s 195
Oaths Act 1867-1988 (Qld)

R v Linehan [1921] VLR 582, considered
R v O'Connor [1980] CrimLRev 43, considered
R v Sumner [1935] VLR 197, considered

COUNSEL: The appellant appeared on his own behalf
P Kelly for the respondent

SOLICITORS: The appellant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the respondent

[1] **THE COURT:** The appellant was convicted after a one day trial of the offence of making a false declaration under s 194 *Criminal Code*. He was sentenced to three months imprisonment cumulative upon a sentence already being served. He has appealed against that conviction and sentence although in his oral and written submissions he now indicates that he no longer pursues his appeal against sentence.

[2] On 8 December 1999 police officer Long spoke to the appellant about surrendering a firearm and a weapons licence in respect of a .22 calibre rifle. The appellant returned to the police station later that day and handed police officer Long a statutory declaration in the following terms:

> "I, L F M Mondon of Beach Road, Sarina, in the State of Queensland do solemnly and sincerely declare that, I have lost my gun licence and the .22 gun that I had."

[3] The statutory declaration was signed under the *Oaths Act* 1867-1988 and witnessed by "C Weeks". As the original document was in Brisbane, a copy was tendered without objection from the appellant's counsel. This statutory declaration was the subject of the charge.

[4] On 2 March 2000 police officer Collins executed a warrant upon the appellant's work premises at Sarina and located a .22 calibre rifle underneath other items in a one metre silver box. It was clean, workable and in perfect condition. The serial number on the rifle matched that registered in the police system prior to 8 December 1999, that is, it matched the gun the subject of the declaration.

[5] Ms Weeks, a Clerk of the Court at Sarina and a Commissioner for Declarations, gave evidence that she handed the appellant a statutory declaration form; he filled out the declaration in her presence; she asked him the relevant questions so that the declaration was sworn under the *Oaths Act* 1867-1988, witnessed his signature and

stamped the document. In cross-examination she denied that the declaration had been brought to her by police to sign after it had been signed by the appellant.

[6] The appellant gave evidence that he had been in a de facto relationship with a woman until about March or April 1999 when that relationship broke down acrimoniously. He then owned about 30 weapons which he kept in his home. After visits from police who searched for the weapons, he decided to hide them. He wrapped them up in waterproof material and secluded them at various places around his eight acre bushland property. As the police continued to come to his property and search for the weapons, he decided to put them in his boat and throw them into the sea. He did this on a date which he could not recall but which was before he made the statutory declaration the subject of this charge. After he had discarded the guns, a police officer asked him to fill out a statutory declaration confirming that he had no weapons. He completed the statutory declaration whilst alone, handed it to police, and thought no more about it. Ms Weeks was not present when he made the statutory declaration. Some time subsequently, he found the gun hidden on his property, although he thought he threw it into the sea with the other weapons at the time he made the declaration. He did not tell police he had found the gun as it was not in working order. It was in his possession on 2 March 2000. The tendered photograph of that gun showed there was no bolt in it.

[7] The appellant's grounds of appeal against conviction are:

> "1. The learned Trial Judge erred in law in finding that there was evidence which was sufficient to constitute corroboration.
> 2. The learned Trial Judge erred in law by not giving the appropriate directions in respect of corroboration."

[8] The appellant, who represents himself on this appeal, has not expanded upon those grounds.

[9] Section 194 *Criminal Code* is in the following terms:

> "**False declarations**
> **(1)** A person who makes a declaration that the person knows is false in a material particular, whether or not the person is permitted or required by law to make the declaration, before a person authorised by law to take or receive declarations, commits a misdemeanour.
> Maximum penalty – 3 years imprisonment.
> **(2)** In this section –
> '**declaration**' includes a statement and an affidavit."

[10] The prosecution case was that the false material particular was that the appellant had lost the registered .22 calibre rifle.

[11] Section 195 *Criminal Code* provides that a person cannot be convicted of an offence under s 194 upon the uncorroborated testimony[1] of one witness. Both ss 194[2] and

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[1] "Uncorroborated testimony" is defined in s 1 *Criminal Code* as "testimony which is not corroborated in some material particular by other evidence implicating the accused person". Corroboration with respect to one material particular is sufficient: see *R v McKelvey* [1914] StRQd 42 where this Court held that the use of the word "some" means "one at least" and corroboration is not required with respect to every essential particular. Corroboration may be found in independent evidence or in admissions of the accused person or in inferences properly drawn from his conduct and statements: *Eade v R* (1924) 34 CLR 154, 158 and *Baker v Bulley* (1933) 35 WALR 47; or in the form of circumstantial evidence: *R v Berrill* [1982] QdR 508; *Doney v R* (1990) 171 CLR 207.

195 have been part of the *Criminal Code* since 1901. Section 194 was apparently based on 31 Vic No 12, ss 11, 13 and 16[3] and s 195 on the Common Law.[4] At common law the ancient "two witnesses rule" provided that an accused may only be convicted on the credible testimony of two or more witnesses.[5] From this developed the exceptional rule of evidence in relation to perjury and like offences, of which this is one, that where the prosecution relies on direct oral evidence to prove that an accused's statement is false, there should be an acquittal unless the accused's statement is proved false by two witnesses or by one witness with corroboration: *R v Linehan*.[6] This rule is confined to proof of the falsity of the statement in cases of oath against oath and not where the prosecution relies on other evidence to establish its case.[7] The requirement of corroboration only goes to the issue of falsity and not to prove that the person charged knew what he was saying was false: *R v O'Connor*.[8]

[12] What must be corroborated in s 194 *Criminal Code* is the testimony of witnesses as to the falsity of the statement or declaration, not the making of the declaration or the knowledge that the declaration was false at the time of making it.

[13] At the close of the prosecution case, counsel for the appellant submitted that there was insufficient evidence to leave the case for the jury's deliberation. Although full argument has not been transcribed, it seems the submission was based on the absence of evidence that, when the appellant made the statutory declaration, he had not in fact lost his gun. The learned primary judge rejected that submission, stating that the possession of the gun by the appellant on 2 March 2000 was sufficient evidence to allow the jury to draw the necessary inferences that the statement was knowingly false. We agree with his Honour's conclusion. In the absence of any explanation, the fact that the statutory declaration was made and that within a few months the gun declared under oath to have been lost was found in the possession of the appellant, was sufficient to allow a jury to draw an inference that the declaration was false and that the appellant knew it was false.

[14] The issue of corroboration does not seem to have been raised at this time but in my view s 195 *Criminal Code* has no application as the prosecution case did not seek to establish the falsity of the declaration through the testimony of any witness, but rather through the appellant's possession of the gun on 2 March 2000.

[15] In argument before the commencement of addresses, the issue of corroboration was raised. His Honour found that there was corroboration in this case but did not set it out. His Honour gave no directions to the jury in his summing up as to the need for corroboration and did not explain to the jury the requirement under s 195 *Criminal Code* for corroboration, the evidence capable of being corroborative and that

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2 Section 194 was amended by Act No 3 of 1997, s 19, operational 1 July 1997 but is in substantially the same terms as the original section except that the requirement, that the accused is permitted or required by law to make the statement or declaration, has been omitted.

3 Sir Samuel Griffiths Draft Code of Criminal Law (Qld), Brisbane 1897, s 199 and notes.

4 Ibid, s 200 and notes.

5 See, for example, (UK) Blasphemy and Profanity Suppression Act 1697-98 (repealed).

6 [1921] VLR 582, 588.

7 *R v Linehan*; *R v Sumner* [1935] VLR 197. But cf *R v Townley* (1986) 24 ACrimR 76, where a police officer's statement that the accused made ambiguous admissions as to the falsity of a statement were held to be insufficient to dispense with the need for corroboration.

8 [1980] CrimLRev 43.

whether there was in fact corroboration was a question for the jury.[9] If s 195 *Criminal Code* had application, this would have been an error of law. But s 195 *Criminal Code* did not apply as the prosecution case did not turn on the testimony of one witness' evidence as to the falsity of the declaration but rather on inference from the finding of the weapon in the appellant's custody after the declaration was made. It was a question for the jury whether they were left in doubt as to the proof of any element of the offence.

[16] The learned judge correctly and helpfully explained the issues for the jury: first, was the declaration made before Ms Weeks and, second, was the declaration false, and did the appellant know it to be false. His Honour then refined the question further to assist the jury: was the jury satisfied beyond reasonable doubt that the appellant was not telling the truth when he said he thought he threw the gun into the sea? The jury's verdict indicates that, despite the appellant's explanation, they were so satisfied.

[17] There is nothing in the two grounds of appeal.

[18] The appellant has raised other grievances in a letter to the Court and in his oral submissions which we should also address. He protested his innocence and attempted to expand upon the evidence he gave at trial. As that material does not meet the tests of fresh or new evidence it cannot be received by this Court. He insists that his evidence should have been believed over the evidence of Long, Weeks and Collins who, he claims, were telling blatant lies. The jury had the opportunity to observe the witnesses and their verdict demonstrates their preference for the evidence of the prosecution witnesses over that of the appellant who not only claimed an innocent mistake on his part in making the declaration, but also contended that police officer Long and Ms Weeks lied as to how the declaration was made. There is nothing in the contentions of the appellant which make the jury's verdict in this regard unsafe. The learned trial judge gave careful directions to the jury as to the burden and onus of proof and emphasised that the fact-finding function was theirs and theirs alone. Nor can the appellant take issue with the copy of the statutory declaration which was tendered at trial when his counsel agreed to that course. There is nothing in these additional contentions.

[19] It follows that the appeal against conviction must fail. As noted, the appellant does not persist in his application for leave to appeal against sentence.

[20] We would dismiss the appeal against conviction and refuse the application for leave to appeal against sentence.

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[9] It is for the judge to say whether there is any evidence which can amount to corroboration and it is for the jury to say whether they are satisfied with the evidence that is tendered as corroboration: *Lawson v Lawson* [1955] 1 All ER 341. Whether evidence is capable of being corroborative is a question of law for the judge. If so, it is for the jury to determine whether or not that evidence is in fact corroborative: *R v Farid* (1945) 30 CrimAR 168, 175-176. The jury must be distinctly told that whilst it is for the judge to decide whether evidence is capable of corroborating a witness' evidence, it is for them to decide whether such evidence does in fact amount to corroboration: *R v McInnes* (1990) 90 CrimAR 99.