

COURT OF APPEAL

McMURDO P
WHITE J
HOLMES J

CA No 154 of 2002

THE QUEEN

v.

MARY ELIZABETH MARTIN

Appellant

BRISBANE

..DATE 06/06/2002

JUDGMENT

THE PRESIDENT: The applicant pleaded guilty on the 19th of April 2002 in the District Court at Maryborough to assault occasioning bodily harm whilst armed.

She was sentenced to 12 months imprisonment, suspended after three months with an operational period of two years. She contends the sentence was manifestly excessive.

Weddings frequently invoke a wide range of emotions but fortunately very few wedding celebrations end as did that of the applicant's son and his bride. At about 1 a.m. on the 20th of October 2001 following the wedding reception at the Hervey Bay Boat Club, the guests went outside to farewell the bride and groom.

The groom's brother, Jason, who somewhat ironically was best man at the wedding, approached the groom and became involved in a physical altercation with him. The applicant at this time came out of the reception area and observed the altercation.

She had words with the groom, Bradley. She was then seen to throw a beer glass towards Bradley. The glass missed Bradley and struck the unfortunate bridesmaid, Miranda Edwards, the bride's 24 year old sister in the forehead resulting in significant lacerations with required multiple sutures and hospital treatment.

We have been referred to photographs of the complainant which were tendered at sentence.

The applicant was interviewed by police the following day. She said she walked outside the club and was distressed to see her two sons fighting. Bradley, the groom, abused her. As he walked away she threw a beer glass at him.

When she threw the glass Bradley was walking towards a group of guests where the complainant had been standing. She conceded that with the benefit of hindsight, it was likely the glass would hit someone other than Bradley.

Her reason for throwing the glass was because she was angry with her son for abusing her and being involved in the altercation at the wedding.

The applicant's counsel at sentence submitted that the two brothers had been in dispute over an incident at the bucks night in the week preceding the wedding. In addition, Bradley's personality had changed since he was a victim of a serious assault two years before and that change in personality caused a deterioration in the relationship between Bradley and his mother and brother Jason.

There was also tension at the wedding over a misunderstanding over which family was to pay for alcohol at the reception. Unsurprisingly, the applicant was affected by liquor at the

time of her actions.

The incident may have faded into colourful family history but for the serious effects upon the complainant detailed in her victim impact statement. She described that the worst laceration to the centre of her forehead was so deep that it exposed her skull and she had other cuts. She was treated by the ambulance and taken to the Hervey Bay Hospital where the area was cleaned. Because of the fear that small pieces of glass may not all be removed, the complainant was operated upon under a general anaesthetic the next morning to remove the remaining glass and to stitch and close the wound. As a result, she spent two nights in hospital before being discharged with 15 stitches to the main laceration. Other small pieces of glass remained embedded in her head and required removal by a plastic surgeon who was also to look at the possibility of reducing her scar. She has been emotionally disturbed, understandably, by the incident and has had time off work and has had to go to considerable expense because of the injury.

The applicant is 55 years old and has no previous convictions. She pleaded guilty at an early stage and her counsel submitted she was very remorseful.

Defence counsel stated at sentence and it was not disputed by the prosecutor, that the offence was one of criminal negligence rather than a deliberate act.

The unusual circumstances of the case involving criminal negligence and a combination of emotional factors which were here fuelled by alcohol, are unlikely to be repeated by this applicant.

The case is distinguishable from those where a glass is deliberately thrust at another person, as is often the case in hotel brawls. In those cases, deterrent sentences involving periods of custody are usually imposed but the peculiar combination of circumstances here do not suggest that offences of this type are prevalent, demanding a custodial sentence.

The applicant has other unfortunate health problems. Since the serious assault on Bradley, her son, she has suffered from panic attacks and is taking antidepressants. She has also had breast cancer which is currently in remission and has had a mastectomy.

Despite these problems, she has been able to do volunteer work at an aged persons home but she has not been able to work in her usual field as a cleaner. She was in straitened circumstances at the time of the sentence and was unable to financially assist the complainant with the costs of remedying the damage caused by her actions.

The applicant was not granted bail pending appeal and has served 48 days in custody.

Unsurprisingly, there are no comparable cases to match the peculiar combination of facts here where the applicant, affected by alcohol, in emotionally tense circumstances involving an altercation at the end of her son's wedding night, impulsively threw a glass in the direction of her bridegroom son who was abusing her; she inadvertently hit and significantly injured the complainant.

The learned sentencing Judge said in his sentencing remarks:
"I think I would be doing less than my duty if I were not to impose a prison sentence, part of which should be served... Courts have to do what they can to deter people in circumstances where there are celebrations, alcohol being taken, from inappropriately utilising glasses and causing people physical damage."

It seems to me that his Honour erred in concluding that an actual prison sentence was mandatory in the unique facts of this case which, combined with the applicant's prior good history and early plea of guilty, warranted a fully suspended sentence.

Compare, for example, R v. Tootoo (2000) 115 A Crim R 90 and R v. Hays ex parte Attorney-General [1999] QCA 443, CA No 271 of 1999, 29 October 1999, which were more serious episodes than this incident and see also R v. Walsh Sayer and Thompson, CA Nos 158, 159 and 160 of 1998, 28 July 1998 and R v. Yanner ex parte Attorney-General [1999] QCA 515, CA Nos 296 and 297 of 1999 delivered 10 December 1999.

I would grant the application and allow the appeal to the

limited extent of ordering that the sentence be fully suspended. I would otherwise confirm the sentence imposed at first instance.

WHITE J: I agree.

HOLMES J: I agree.

THE PRESIDENT: That is the order of the Court.
