SUPREME COURT OF QUEENSLAND

CITATION:	*R v Kidd* [2002] QCA 433
PARTIES:	**R** v **KIDD, Jason Lester** (appellant)
FILE NO/S:	CA No 171 of 2002 SC No 243 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EXTEMPORE ON:	16 October 2002
DELIVERED AT:	Brisbane
HEARING DATE:	16 October 2002
JUDGES:	McMurdo P, Davies JA and Cullinane J Separate reasons for judgment of each member of the Court; each concurring as to the order made
ORDER:	**Appeal against conviction dismissed**
CATCHWORDS:	CRIMINAL LAW - APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION - APPEAL AND NEW TRIAL - PARTICULAR GROUNDS - MISDIRECTION AND NON-DIRECTION - GENERAL MATTERS - CONSIDERATION OF SUMMING UP AS A WHOLE - where appellant convicted of manslaughter - where in the summing-up the learned trial judge referred to community standards in the concept of the standard of proof - whether the learned trial judge misdirected the jury as to the standard of proof *Dawson v The Queen* (1961) 106 CLR 1, considered *R v Irlam; Ex parte Attorney-General* [2002] QCA 235; CA No 157 of 2002 and CA No 173 of 2002, 28 June 2002, considered *R v Punj* [2002] QCA 333; CA No 331 of 2001, 3 September 2002, considered
COUNSEL:	A J Rafter for appellant M J Copley for respondent
SOLICITORS:	Legal Aid Queensland for appellant Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: The appellant was convicted after a trial on

27 April 2002 of manslaughter on or about 17 February 2000. He appeals against that conviction. It is not contended by Mr Rafter on his behalf that it was not open to the jury to infer from the evidence before it the facts sufficient to satisfy them beyond reasonable doubt of the appellant's guilt of that offence. However he contends that there was a miscarriage of justice in consequence of a misdirection by the learned trial judge on the standard of proof. All other grounds of appeal were abandoned.

The case against the appellant was a circumstantial one. It could not have been disputed that the appellant and the deceased had been for some time drinking together in the appellant's flat, the deceased having been a friend of the appellant, working with him at the same place of employment and having a flat in the same building.

Some time after 11 p.m. on the night in question an off-duty police officer who resided in the same block of flats heard a sound similar to a breaking bottle emanating from the direction of the appellant's flat. Another witness who resided in the next door block of flats heard glass smashing and arguing coming from the appellant's flat at about 11.50 p.m. The argument, however, appeared to involve only a male and a female voice. The appellant's de facto wife also resided in the flat with him.

Shortly before midnight the police answered an emergency call, apparently made by the appellant. When they arrived at the

flat the deceased was found on the second floor landing. A witness gave evidence that he had earlier seen the appellant standing on that landing and looking down at something. He then saw him bend down, get up, and go back down the stairs in the direction of his own flat. It seems likely that the deceased was endeavouring to go from the appellant's flat to his own flat when he collapsed on that landing. He had a single stab wound in the upper left side of his chest, close to his breastbone, the stab wound having been made with the appellant's chef's knife. It was this wound which was fatal.

The appellant made a number of inconsistent statements to police. In the first place he said that he had been sharpening his knives (he was a chef) when the deceased grabbed one off the table, ran outside the door and stabbed himself. Later his solicitors gave a different version to the police. This was of a struggle between the appellant and the deceased in which the appellant tried to disarm the deceased. He landed on top of the deceased and discovered that the deceased had become wounded with a knife. The appellant did not give evidence.

The nature of the wound was consistent with the appellant having stabbed the deceased, and somewhat inconsistent with a self-inflicted wound. It was open to the jury to infer that the deceased had attempted to flee from the appellant immediately prior to his collapse and death. The appellant's lies arguably supported the inference that he had inflicted

the wound on the deceased. It was, and Mr Rafter does not dispute this, a strong Crown case.

The sole ground of appeal, as I have indicated, is set at a misdirection as to the standard of proof. It involved criticism of two passages in her Honour's summing-up. The first was in the following terms:

> "The prosecution has not only to satisfy you of his guilt, it must do so beyond reasonable doubt. Before you may find him guilty, you must be satisfied that the prosecution has proved every element of the offence beyond reasonable doubt. That expression means simply what it says. If you have a question about whether a doubt is a reasonable one, that is a matter for you..."

I pause in reciting this passage to make the point that, up to this stage, no criticism is made by Mr Rafter of her Honour's summing-up, nor could any criticism possibly be made of it. It was, up to that point, unexceptional.

However, that last sentence continues:

> "...because, at the end of the day, you are here to represent the community...".

Even up to that point, there could be no serious criticism of her Honour's summing-up. The last statement was superfluous but correct. However the sentence continued

> "...and to apply to this case the standards of the community you represent."

That further statement, though superfluous and unnecessary, did not, in my opinion, constitute a misdirection. What did constitute a misdirection in the cases relied on by the appellant was an attempt by the learned trial judge to define

reasonable doubt. That is a phrase, "used by ordinary people and ... understood well enough by the average man in the community". Dawson v. The Queen (1961) 106 CLR 1 at 18. For that reason it has been said to be unwise to attempt to paraphrase it. See for example R v. Irlam; Ex parte Attorney-General [2002] QCA 235; R v. Punj [2002] QCA 333.

However in the present case the learned trial judge did not, in the passage which I have quoted, attempt to define or paraphrase reasonable doubt. She said no more than it was for the jury determine that question, explaining their role in that task by saying that they apply the standards of the community they represented. I do not think that the passage, read in context, could be construed as inviting the jury to find some standard known as "community standard" which differed from their own view.

The second passage occurred much later in her Honour's summing-up after her Honour had dealt with the law with respect to criminal negligence. Having explained that concept, her Honour went on:

> "As I've said before, you are here as representatives of the community and to apply the standards of the community you represent. Only if you are satisfied beyond reasonable doubt that in all the circumstances there was negligence as grave as I have been describing can you find him guilty of manslaughter on the basis of criminal negligence."

As this Court has said before, for example in Irlam, judges should resist the temptation to add explanatory glosses to the classical formulation of proof beyond reasonable doubt. And

in that context in Irlam this Court queried a trial judge's statement in summing-up to the jury to the following effect,

> "... it is community standards represented by the juror standards which are applied in determining what is reasonable doubt."

Notwithstanding that however, in that case the Court held that that did not invalidate the summing-up. I would make the same comment here.

Moreover, her Honour, in redirections, said this,

> "The first thing I want to make perfectly clear is the standard of proof. It is beyond reasonable doubt. That is a high standard. It is a higher standard than the balance of probabilities. But what is a reasonable doubt is something that is for you to determine."

If there were any possible doubt, and I do not think there were, her Honour, in my view, clarified it there.

I think it is unwise for a trial judge to speak about community standards in the concept of the standard of proof and I think it would have been better had her Honour not referred to the standards of the community in that context. However, when the passages to which I have referred are read in the context of her Honour's summing-up as a whole, it is plain that she was telling the jury that the question of reasonable doubt was a matter solely for them to determine and it was their assessment of reasonable doubt which was determinative.

Accordingly, I do not think that the summing-up, as a whole, amounted to a misdirection, and I would therefore dismiss the appeal.

THE PRESIDENT: I agree.

CULLINANE J: I also agree.

THE PRESIDENT: The order is the appeal is dismissed. Thank you.
