SUPREME COURT OF QUEENSLAND

CITATION:	*R v Bussey* [2003] QCA 197
PARTIES:	**R** **v** **BUSSEY, Brett John** (applicant)
FILE NO/S:	CA No 82 of 2003 DC No 17 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Mackay
DELIVERED EX TEMPORE ON:	12 May 2003
DELIVERED AT:	Brisbane
HEARING DATE:	12 May 2003
JUDGES:	de Jersey CJ, Williams JA and Wilson J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for leave to appeal against sentence refused**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – CIRCUMSTANCES OF OFFENCE – where applicant convicted on own plea of one count of dangerous operation of a motor vehicle causing grievous bodily harm – where sentenced to two years' imprisonment to be suspended after six months with an operational period of two years and disqualified from holding or obtaining a driver's license for two years – where the appellant seeks leave to appeal against sentence – whether the sentence imposed was manifestly excessive *R v Conquest; ex parte Attorney-General* [1995] QCA 567, considered *R v Hardes* [2003] QCA 47, considered *R v Pollock* [2003] QCA 119, considered *R v Theuerkauf and Theuerkauf; ex parte Attorney-General* [2003] QCA 94, considered
COUNSEL:	The applicant appeared on his own behalf M J Copley for the respondent

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

WILSON J: This is an application for leave to appeal against sentence.

The applicant pleaded guilty to the dangerous operation of a motor vehicle causing grievous bodily harm. He was sentenced to two years' imprisonment to be suspended after six months with an operational period of two years. I note that the maximum which might have been imposed was seven years' imprisonment. He was also disqualified from holding or obtaining a driver's licence for two years.

The appeal is on the ground that the sentence was excessive in all of the circumstances.

The applicant was born on 2 December 1964. The offence was committed on 6 July 2002 when he was aged 37. He had no criminal history. He had a traffic history consisting of three speeding offences in 2001 to 2002 and one failure to wear a seatbelt in 1992. He was a carpenter by trade with his own building company. He had been married for 14 years to 1996 and there were four children of the marriage. At the sentence he was in a relationship of five years' standing.

The complainant and the applicant were not previously acquainted. They had both attended a business party associated with the opening of a new legalised brothel in Mackay. A verbal altercation took place between the applicant and one of the complainant's friends. The applicant was asked to leave. He drove away in his Toyota Landcruiser. There was a passenger travelling with him. Shortly after the applicant left, the complainant and his two friends left by taxi. At some point they observed the applicant in the Landcruiser following the taxi at a relatively close distance and flashing its headlights. The complainant and his friends alighted from the taxi at the Souths Leagues Club. The Landcruiser parked in the parking area of the club. The complainant's two friends walked towards the Landcruiser, a short distance ahead of the complainant.

The applicant said, "Fuck them, let's go," and started to drive home. Then he said, "Fuck them, let's put the shits up them." He did a U-turn and headed back in the direction of the complainant's friends. He veered on the incorrect side of the road and drove up the footpath. The complainant's friends got out of the way. The Landcruiser approached the complainant who turned to run across the road. It veered back on to the road following the complainant, and the left side of the complainant's body was hit by the front bullbar. The passenger said to the applicant, "I think you just drove over someone's leg. What did you do that for?". The reply was, "I don't know. I just fucked up." The applicant did not stop. He continued

down the road. Later, when he was interviewed by police he denied any knowledge of driving over the complainant. There is no allegation that he was driving under the influence of alcohol or drugs.

The complainant was then a 27 year old man, a diesel fitter by occupation. He had to be hospitalised for four days. He had a broken left shoulder blade and by the time of the sentence he had not regained full use of the left arm. He also had a bruised left lung, severe back pain, burst blood vessels in his left eye and abrasions. By the time of the sentence he had still not been able to return to work.

At the sentence there was a concession that the applicant had inflicted grievous bodily harm. Fortuitously for him it was not a severe case of grievous bodily harm. He had been charged with attempted murder. At the committal the Crown had indicated it would proceed with the lesser charge. There was then a hand-up committal and a plea of guilty was indicated. The sentencing Judge rightly treated the plea as an early one, a factor in the applicant's favour in sentencing.

On this application for leave to appeal the Crown has put a number of comparable cases before the Court.

The first is R v. Conquest, a decision of the Court of Appeal of 19 December 1995. There the appellant was charged with dangerous driving causing the death of one and grievous bodily harm to two others. He was sentenced to two years'

imprisonment with a licence disqualification of five years. The Attorney-General appealed. The sentence was increased to three years, the Court noting that it would have been higher but for the conduct of the prosecutor in seeking two and a half years.

There the appellant was aged 17. At the time of the offence he was an unlicensed driver on a good behaviour bond. He was skylarking in a stolen vehicle on the wrong side of Browns Plains Road at night-time when he failed to see people walking there until it was too late. He deliberately drove on the wrong side of the road, not aware of the presence of people there. There was no suggestion of alcohol or drugs. He pleaded guilty to the unlawful use of the motor vehicle. Further, he was convicted by a jury of dangerous driving. He pleaded guilty to other offences committed before and after this offence.

The significant factor in that case was his youth and the prospects of rehabilitation. Justices McPherson and Thomas outlined a number of factors which would lead to a sentence towards the higher end of the range. They were these: the seriousness of the driving; callousness, which they described as a murky area between recklessness and deliberate harm; the period for which the dangerous driving was sustained; the seriousness of the consequences to the victim; the seriousness of the appellant's criminal record with particular emphasis on his driving history and attitude to fellow citizens; and the prospects of rehabilitation.

The next case put before the Court was Theuerkauf [2003] QCA 94. That involved sentence appeals by two brothers, both of whom had pleaded guilty. The first brother, Clint, was aged 20. He pleaded guilty to two counts of dangerous driving. The other brother, Jason, aged 24, pleaded guilty to one count of dangerous driving in conjunction with Clint with circumstances of aggravation - namely, that he had two prior convictions for driving under the influence of liquor. They were both given 12 months' intensive correction orders. There was an appeal by the Attorney-General when the sentences were increased - in Clint's case to two and a half years' imprisonment suspended after 12 months with an operational period of three years and in Jason's case to two years suspended after nine months with an operational period of three years. By the time the appeal came on for hearing they had completed three months of the intensive correction order. Below, the prosecutor had sought 12 months' imprisonment suspended in whole or in part.

These were the factors which seemed to influence the Court of Appeal. In Clint's case, there had been the deliberate use of a motor vehicle against an elderly man who had admonished him for his driving. He had deliberately driven at the complainant twice, injuring him, and had ceased only when a bystander intervened. In the case of the other offence, in which they were both involved, the police had been at the complainant's rural property when they saw the appellant's vehicle drive past. Jason was driving; Clint and another were passengers. There was a chase. Clint shone a spotlight into the police vehicle to blind the

driver more than once. The vehicle was deliberately driven dangerously to avoid apprehension at a time when the driver knew it had no operable brakes. It was deliberately driven at a police vehicle over an appreciable distance until it outran the police.

The next case was Pollock [2003] QCA 119. An appeal against conviction was dismissed and the sentence that had been imposed below was not discussed on appeal. It was a case of dangerous driving causing grievous bodily harm where the appellant was sentenced to five years' imprisonment with a lifetime disqualification. He was a member of a kerb and channel construction gang. He had a disagreement with the complainant and drove an eight tonne company truck over the complainant's legs either deliberately or carelessly. He had shown no remorse at all.

The last case, Hardes [2003] QCA 47 involved pleas of guilty to charges of dangerous driving causing death, failing to remain at the scene of an accident and showing callous disregard and disqualified driving. For the dangerous driving causing death a sentence of three years' imprisonment was imposed and sentences of one year and six months on the other offences intended to be cumulative. There was a recommendation for parole after a third of the sentence.

What happened there was that the driver had been driving at less than 60 kilometres per hour when he cut a corner and struck a cyclist more or less in the middle of a lane down

an incline. The cyclist was on his correct side of the road but the driver was on the wrong side. It was not a case of momentary inattention but of prolonged dangerous driving. The major offence was aggravated by the disqualification and leaving the scene. There the appellant was aged 42. He had a bad traffic history including disqualification only four weeks before this incident. He also had a criminal history including grievous bodily harm, unlawful use of a motor vehicle and escaping from custody. The Court noted that three years was at the bottom of the range and having regard to the totality of the criminality did not disturb the appeal.

Turning to the present case, it was in my view rightly characterised by the sentencing Judge as a very serious instance of dangerous driving. The applicant deliberately drove the Landcruiser at the complainant's friends and then at the complainant in a sustained attack on them. He then left the scene. Subsequently, he denied running over the complainant although obviously he was aware that he had done so. It was truly irresponsible behaviour, especially for one of the age of 37 at the time. His recent traffic history was indicative of a lack of concern for the potential harm to be wrought by non-adherence to safe driving practices.

Having considered the comparable cases put before the Court by the Crown, I am of the view that the conduct of the applicant may well have warranted a harsher penalty had the consequences for the complainant been more severe. In all

the circumstances, I think the sentence imposed was a fair one, and I would dismiss the application for leave to appeal.

THE CHIEF JUSTICE: I agree.

WILLIAMS JA: I agree.

THE CHIEF JUSTICE: The application for leave to appeal against sentence is refused.