SUPREME COURT OF QUEENSLAND

CITATION:	*R v Veljkovic* [2003] QCA 278
PARTIES:	**R** v **VELJKOVIC, Slobodan**
FILE NO/S:	CA No 120 of 2003 DC No 1135 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	8 July 2003
DELIVERED AT:	Brisbane
HEARING DATE:	8 July 2003
JUDGES:	Davies, Williams and Jerrard JJA 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 - CONDUCT OF LEGAL PRACTITIONERS - where appellant convicted of assault and assault occasioning bodily harm whilst armed - where appellant argues that legal representation at trial was inadequate - where complainant vigorously cross-examined by defence counsel about inconsistencies in her evidence - where cross-examination adequately put the appellant's case - whether legal representation inadequate
COUNSEL:	Appellant appeared on his own behalf R G Martin for respondent
SOLICITORS:	Appellant appeared on his own behalf Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: The appellant was charged with two offences, entering the dwelling house of his former wife with intent to commit an offence which was particularised as assault, and

assault occasioning bodily harm whilst armed. He was convicted of both of those offences and he appeals against those convictions.

The complainant and the appellant were married in January 1999. They were married for only four months before they separated. The events the subject of these offences occurred on 29 August 2001. By this time the complainant, according to her evidence, had told the appellant that she was not interested in a reconciliation and not to come over any more.

At about 5 p.m. on the day in question the complainant was watching television with her 13 year old son from a previous marriage. The appellant arrived and let himself in. What happened in the following minutes inside the house was, at the trial, the subject of uncontradicted evidence of the complainant supported in material respects by that of her son. What happened after the appellant and the complainant emerged outside the house was the subject of some conflicting evidence. The appellant himself did not give evidence at the trial and this is the subject of one of his complaints on appeal. Indeed the main complaint which he makes on his appeal.

According to the complainant the appellant, on entering the house, commenced to slap her and then attempted to throttle her. He ordered the complainant's son into his room. He prevented the complainant calling the police and she then

started screaming. He grabbed a baseball bat from near the front door and struck her a number of times to the chest, forearm and elsewhere. She fell and having regained her feet picked up a cricket bat from her son's school bag and struck the complainant in the leg. Whilst this was going on the complainant's son crept out of his room and made for the front door.

I should also add that during this fracas the appellant ripped a gold chain from round the complainant's neck. The appellant then appeared to pursue the complainant's son outside - at the door, still armed with the baseball bat and the complainant followed. Two neighbours, Pejcinovic and Cecez heard the complainant call for the police and Cecez heard her crying and screaming. There was less unanimity as to what occurred after the parties emerged from the house.

One neighbour, Bailes said that she saw the complainant with a cricket bat but she did not see anything in the appellant's hands. She saw the complainant poke the appellant with the bat, she saw him take the bat from her and do the same to her. She saw that the complainant had an injured arm but did not see the appellant hit her. However, the police later found a baseball bat in the appellant's car so he must have had it with him when Bailes saw the parties near the garage.

Pejcinovic saw the appellant was armed with a bat. She described it as a cricket bat, but said it might have been yellow which was the colour of the baseball bat. She also

said it was put in his car. She saw the appellant attempt to hit the complainant but she defended herself with arms and legs.

The complainant was vigorously cross-examined by defence counsel about inconsistencies in her evidence. There does not appear to be any lack of vigour by the appellant's counsel in representing him in this respect.

The sole ground of appeal appears to be inadequate legal representation by defence counsel. The most serious complaint is that defence counsel said to the appellant that if he gave evidence he, counsel, would refuse to represent him. The appellant said he wanted to give evidence and that, if he had, he believes he would not have been convicted.

The genesis of this complaint appears to be the question of the gold chain to which I have referred. In his statement to the police the appellant, when asked, said that he did not take a chain which the complainant said he had ripped from around her neck. He, the appellant, said later, giving instructions, that he did take the chain because he thought it was his chain. That was because in Serbia when there was a break-up of a marriage the husband who had given jewellery - gold jewellery, to his wife was entitled to take it back, but he said that he did not go there for that purpose. At least in this Court he said that he said that.

Mr Wilkin, who was his counsel at the trial, also gave evidence. He said that the appellant said that he did go round there for the purpose of getting the chain. That was a matter of concern to Mr Wilkin on the appellant's behalf, because that would have, as he says correctly, provided the particulars necessary for conviction of an offence of entering a dwelling house with intent to commit an offence, namely stealing.

It was not the particulars which the Crown had provided but as he also said the Crown could have sought and been granted leave to amend their particulars in which case if the appellant gave evidence he would be admitting to the charge, the first charge with which he was charged.

When he informed the appellant of this he said that the appellant said, "Well, I'll say I didn't take it." It was then that Mr Wilkin says he said to the appellant, "If you do that I will not be able to act for you.", if Mr Wilkin's evidence is to be accepted. His action in the circumstances was quite proper.

I have listened to the evidence of Mr Veljkovic and that of Mr Wilkin. Mr Wilkin's evidence, it seems to me, accords more closely to what seems to me to be the reality of the situation at the time and where there is a conflict between the evidence, as there plainly is, I accept the evidence of Mr Wilkin.

The appellant also made the concession that he stood on the phone, prevented his wife from calling the police and agreed that she was calling out for help. There are a number of other complaints made against counsel for the appellant, which in my opinion lack substance.

One which is contained in Mr Veljkovic's written outline is that because counsel objected during the evidence of vital witnesses for the Crown these objections conveyed an appearance of an attempt to hide the truth. The appellant refers to an example which he says supports this. I have read the example and the balance of Mr Wilkin's cross-examination of the witnesses. I do not think any of it conveys that appearance. On the contrary it conveys one of strenuous defence of the allegations made.

Moreover his cross-examination of the complainant, it seems to me, adequately put the appellant's case. Whether some of the objections which Mr Wilkin made to the evidence were sustainable is, in my opinion, irrelevant to that question.

Another complaint by Mr Veljkovic which he makes today is a failure by Mr Wilkin or the solicitor to investigate a complaint which the appellant had about the complainant about a previous drug problem. It is unclear to me how that is relevant to the circumstances of the commission of these offences, but it seems that in any event, according to Mr Wilkin, the appellant was unable to particularise the time when this occurred, the type of drug with which it occurred

and the place with which it occurred. There was then no capacity, Mr Wilkin said, to investigate that complaint any further.

It is also complained by Mr Veljkovic that counsel allowed the jury to be prejudiced by untruthful allegations from the past. These involved alleged previous acts of violence by the appellant against the complainant. In fact the evidence which was given does not appear to have been harmful for the appellant, but in any event in relation to offences of this kind it seems to me that the previous relationship between the parties was plainly relevant including that it involved previous acts of violence, otherwise the appellant's behaviour on this occasion may have seemed inherently incredible.

In summary I do not think there is any substance in the appellant's complaints and I would dismiss the appeal.

WILLIAMS JA: I agree.

JERRARD JA: I agree.

DAVIES JA: The appeal is dismissed.
