

SUPREME COURT OF QUEENSLAND

CITATION: *R v Johnston* [2004] QCA 12

PARTIES: **R**
v
JOHNSTON, Shane Gregory
(applicant)

FILE NO/S: CA No 263 of 2003
DC No 718 of 2003

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 6 February 2004

DELIVERED AT: Brisbane

HEARING DATE: 6 February 2004

JUDGES: McMurdo P and Davies and McPherson JJA
Separate reasons for judgment of each member of the Court,
each concurring as to the order made

ORDER: **Application dismissed**

CATCHWORDS: CRIMINAL LAW – PARTICULAR OFFENCES – OTHER
OFFENCES AGAINST THE PERSON – ACTS INTENDED
TO CAUSE OR CAUSING DANGER TO LIFE OR
BODILY HARM – SENTENCING – where applicant found
guilty after a trial of causing grievous bodily harm by
stabbing the complainant with a large knife – whether
sentence of six years imprisonment within range

R v Bryan [2003] QCA 18; CA No 410 of 2002, 5 February
2003

COUNSEL: S R Lewis for the applicant
S G Bain for the respondent

SOLICITORS: A W Bale & Son for the applicant
Director of Public Prosecutions (Queensland) for the
respondent

McPHERSON JA: The applicant for leave to appeal was sentenced after a trial in the District Court at Brisbane of one count of causing grievous bodily harm. He was sentenced to imprisonment for six years.

On the 3rd of August 2001, the complainant was visiting a friend, Maree Peters, at her home in Alderley. He arrived at the house some time after 9 a.m. and the applicant arrived there some 45 minutes later. A group of people, including the complainant, were seated at a table in an area under the house. After his arrival, the applicant stood on the other side of the table looking intently at the complainant.

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The complainant gave evidence that the applicant suddenly came around to the complainant's side of the table, taking out of his back pocket a large knife with a blade of about 15 centimetres in length that was described as "serrated". He walked towards the complainant and stabbed him in the left part of his chest. There had been no prior provocation or dispute and in fact nothing had been said between them. The applicant then left going down the driveway towards his car, calling out, "the games just began."

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At the trial he did not give any evidence and there is no explanation of this remark or of why he stabbed the complainant or in any way contradicting the complainant's version of events as given at the trial. There was indeed no evidence at the trial from any of the others, apart from the complainant, who were present on this occasion.

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The complainant was taken to a hospital where he underwent emergency surgery. The surgeon who treated him said that the complainant sustained a laceration to his diaphragm, a collapsed lung, a perforated stomach and a lacerated liver.

He lost a substantial quantity of blood. It was likely that he would have died without medical treatment.

The applicant was 24 years old at the time of the offence and 26 when sentenced. He has a de facto wife and three children, ranging in age from 20 months to 8 years. He has a good work history and was working with a floor tiling company at the time of the offence.

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He sustained convictions in 1994 for unlawful use of a motor vehicle and for obscene language, stealing, and once again also for unlawfully using a motor vehicle. In 1997 he was convicted of possession of a dangerous drug. He has no previous convictions for offences involving violence.

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In *R v. Bryan* [2003] QCA 18; CA No 410 of 2002, 5 February 2003, this Court comprising the Chief Justice, Justice Williams and Justice Cullinane allowed an appeal by the Attorney-General by increasing to six years the term of imprisonment imposed on a respondent who had been sentenced to four years imprisonment suspended after 12 months for stabbing the complainant, with whom he had a confrontation in a city street at night.

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The complainant there suffered a chest wound similar to that sustained here, as well as another laceration to his left arm apparently resulting from the same blow. If not treated medically, the complainant would have died in that case. The offender there tried to avoid detection by running off and by

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suborning his girlfriend to provide an alibi for him, but he later confessed and, unlike the applicant here, pleaded guilty to doing grievous bodily harm.

Justice Williams in his reasons said that the offence in that case, involving as it did the life-threatening use of a knife, could have attracted a sentence of up to seven years, perhaps with a serious violent offence declaration in addition, but as it was an Attorney's appeal, the Court would not increase the sentence to that level but exercised the level of moderation which is not unknown in those cases.

R v. Bryan is one of two or more recent decisions of this Court that establish a benchmark in cases of this kind that may be higher or more severe than has been common in the past. True, the offence in *Bryan* took place in a public thoroughfare and not as here in a private home. Drink or drugs were a factor in the offender's behaviour there. Nothing of that kind was suggested here. Indeed, no explanation of any kind was advanced for the attack in the present case, which was deliberate and apparently premeditated. Unlike *Bryan* who, it may be added, was 21 years old, the applicant was not entitled to the benefit that would flow from having pleaded guilty. One suspects he must have had some reason of his own for harming the complainant, but if he had, he did not give evidence of it at the trial and we have no idea of what that reason might have been.

The sentence imposed here was, in my opinion, within the sentencing range established in *R v. Bryan* and there is no indication in the evidence of any mitigating factors at all in the applicant's favour. I would therefore dismiss the application.

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THE PRESIDENT: I agree.

DAVIES JA: I agree.

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THE PRESIDENT: The application for leave to appeal against sentence is dismissed.

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