SUPREME COURT OF QUEENSLAND

CITATION:	*R v Arjoc* [2004] QCA 157
PARTIES:	**R** **v** **ARJOC, Ion** (appellant)
FILE NO/S:	CA No 377 of 2003 SC No 304 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	14 May 2004
DELIVERED AT:	Brisbane
HEARING DATE:	13 April 2004
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 dismissed**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS – UNREASONABLE OR INSUPPORTABLE VERDICT – WHERE APPEAL DISMISSED – where appellant convicted of possession of the dangerous drug heroin in a quantity exceeding two grams – where appellant seen by police throwing object behind him – where police conducted search and found heroin – where inconsistencies in police evidence – where search and arrest occurred in darkness – whether inconsistencies in police evidence were such that no reasonable jury could have accepted that evidence
COUNSEL:	M J Griffin SC for the appellant P F Rutledge for the respondent
SOLICITORS:	Callaghan Lawyers for the appellant Director of Public Prosecutions (Queensland) for the respondent

[1] **DAVIES JA:** I agree with the reasons for judgment of Williams JA and with the order he proposes.

[2] **WILLIAMS JA:** The appellant was convicted after a trial of having possession of the dangerous drug heroin, the quantity of which exceeded two grams. He appeals against that conviction on the ground that the "jury returned a verdict that was unreasonable in all the circumstances in that it cannot be supported having regard to the evidence".

[3] At about 7.30pm on 30 January 2003 a number of police officers, including Constables Koy and Newman, were in the vicinity of a group of shops at the intersection of Beaudesert Road and Kameruka Street, Calamvale. The police then observed the appellant, who was previously known to them, standing near a bus stop on Beaudesert Road. Koy and Newman began walking towards the appellant and called out "Stop, police". On becoming aware of the presence of the police the appellant ran across Beaudesert Road. He crossed two lanes of inbound carriageway, a median strip, and two lanes of outbound carriageway which then took him into some bushland. As he crossed Beaudesert Road, particularly the inbound lanes, traffic had to brake suddenly to avoid him; police heard screeching of brakes. On reaching the bushland area the appellant continued running towards what was described as an access road. There he collided with a police vehicle which was travelling extremely slowly.

[4] Koy and Newman chased the appellant as he went across Beaudesert Road and the bushland. Koy had a little torch but Newman did not. Newman on the evidence was variously five to 10 metres behind Koy as they traversed the bushland.

[5] Koy gave evidence that when the appellant made contact with the police vehicle "he was sort of turned around and so he then faced me direct". Koy was about 15 metres away at that time and was shining his torch on the appellant. When Koy said, "Stop, police. Get on the ground", he saw the appellant "place his right hand into his right pocket and sort of backwards flicking motion threw some items from his pocket". According to Koy one object travelled further than the other. The evidence from Koy was that he was four or five paces away from the appellant when he observed the throwing motion.

[6] Koy's evidence-in-chief was that when the appellant made contact with the bonnet of the police vehicle "he came back down and he landed [on] two feet". After seeing him make the backward throwing motion Koy brought the appellant to the ground and he was handcuffed. At about that time Newman arrived on the scene.

[7] Under cross-examination it was put to Koy that at the committal hearing he said that the appellant fell to the ground after making contact with the police vehicle and then "got back up straight on to his feet". When that was put to him, Koy said that he remembered that the appellant did initially fall to the ground. Much was made by the defence of inconsistencies in the police evidence as to the movements of the appellant's body after it made contact with the police vehicle. Apart from that alleged inconsistency in Koy's evidence, Constable Newman initially said that he saw the appellant getting up off the ground and that is when Koy took him down. Under cross-examination it was put to Newman that such a version was inconsistent with what was in his initial statement and in his evidence at committal. There he referred to seeing the appellant bouncing off the stationary police vehicle and getting straight up to his feet again.

[8] It was also contended, both at trial and again on appeal, that the evidence of Koy and Newman was inconsistent with that of Constable Crompton, the driver of the police vehicle. Crompton saw the appellant hit the front of the police vehicle and gave evidence as follows: "that's the last I saw of him until I got out of the vehicle and ran round to the rear and that's when I saw Senior Constable Koy and Newman arresting him." He agreed under cross-examination he never saw the appellant get back up onto his feet, but it is clear that there was a period of time when Crompton was alighting from the vehicle and moving around to the back of it when he would not have had any vision of the appellant. According to the appellant in his evidence-in-chief he remained on the ground after hitting the police car because he had a broken ankle.

[9] Those inconsistencies were said to be relevant because if, as was the appellant's contention, he never got back to his feet he could not have thrown objects away as Koy claimed he did.

[10] Once the appellant was handcuffed he was searched and no drugs were found on his person. Very shortly thereafter Koy, using his torch, located a tissue about a metre away from where the appellant was apprehended. At that point of time Koy was the only police officer with a torch. On the prosecution case that tissue was the lighter of the two objects thrown out by the appellant.

[11] Shortly thereafter other police arrived, including Kelly who was the then senior officer at the scene. According to Koy he told Kelly that he had seen the appellant throw something from his pockets; it was not put to Koy in cross-examination that such statement had not been made.

[12] Kelly then organised a search of the area by a number of police officers who had then arrived at the scene. There was a time lapse before those other police officers arrived, and also a time lapse while torches were obtained. On Kelly's instructions the initial search was along the path believed to have been taken by the appellant from the bus stop to where he was apprehended. That search did not reveal anything of significance. Subsequently there was an emu parade conducted in an area where it was thought the object had been thrown by the appellant. Again that search revealed nothing. Subsequently Koy positioned himself where he had seen the appellant throw objects taken from his pocket and commenced a search based on that. He then located, about eight metres from where the appellant had been apprehended, a plastic bag which on analysis was found to contain 27.879 grams of powder of which 25.6% was pure heroin. Under cross-examination Koy agreed it was about 50 minutes after the chase that he found the package.

[13] In his evidence-in-chief Koy had said that the appellant had thrown the objects in a "sort of backwards flicking motion." That statement was the subject of detailed cross-examination. When asked to be more precise about the direction the object was tossed he said: "It was – it was away from his body. It wasn't directly behind him. It was just away from his body . . . so it wasn't to the side and it wasn't directly behind." He was then asked to assume he was standing in the middle of a clock facing six o'clock and asked to give the direction of the throw; he responded by saying: "In the vicinity of 11 o'clock."

[14] The search was carried out at night with torches. Further, the critical events (the appellant hitting the car, falling away from the car, regaining his feet to some extent,

throwing away objects, being wrestled to the ground by Koy) all occurred in a very short space of time in the dark and with a degree of confusion. In those circumstances one can appreciate there might have been some difficulty in locating an object thrown away by the appellant. A slight miscalculation of relevant angles could well have resulted in the search being conducted in the wrong area.

[15] Senior counsel for the appellant produced a diagram based on some of the evidence purporting to demonstrate that, given the evidence of Koy as to the throwing motion and direction of throw, the appellant could not have thrown the package to where it was found. The problem with that submission is that it is based on a very precise interpretation of statements made by Koy. It is obvious, as was said by Koy himself, that given all the surrounding considerations (darkness, movements of various participants, angle of view, general confusion) direction or angle of throw could only be approximated. One only needs to vary the data relied on to prepare the diagram by small margins to show it was clearly possible for the appellant to have thrown the package to where it was found.

[16] Whilst the facts that an emu parade search was conducted in the wrong area, and a rather belated search by Koy (the person with most relevant information) located the package, provided grounds for concern about the credibility of and weight to be attached to the police evidence, ultimately it was a question of fact for the jury whether or not they believed Koy, the most critical prosecution witness. The inconsistencies in the police evidence were not such that no reasonable jury could have accepted the general thrust of that evidence.

[17] The appellant denied that he ever possessed the package found by the police, and gave an explanation as to why he ran when he became aware of the police presence. It is not necessary to go into that explanation in detail; it is sufficient to say it was before the jury and they were clearly entitled to reject it. Once that explanation was rejected the jury was entitled to conclude that the appellant was attempting to evade the police because he had heroin in his possession.

[18] The summing up was extremely fair and no complaint was made about it on the hearing of the appeal.

[19] Ultimately the issue on which the appellant's guilt depended was one of fact for the jury. Though there were aspects of the police evidence which called for careful consideration the jury was clearly entitled to accept the evidence of Koy and to conclude that the plastic bag containing the heroin had been in the appellant's possession and was thrown away by him very shortly after he collided with the police vehicle while attempting to evade the police.

[20] In all the circumstances it cannot be said that the jury verdict was unreasonable.

[21] The appeal should be dismissed.

[22] **JERRARD JA:** I have read and respectfully agree with the reasons for judgment and order proposed by Williams JA.