

SUPREME COURT OF QUEENSLAND

CITATION: *R v Kyles* [2004] QCA 292

PARTIES: **R**
v
KYLES, Leanne Faye
(appellant)

FILE NO/S: CA No 97 of 2004
DC No 14 of 2004

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: District Court at Cairns

DELIVERED EX TEMPORE ON: 6 August 2004

DELIVERED AT: Brisbane

HEARING DATE: 6 August 2004

JUDGES: McMurdo P, Davies JA and Helman J
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 – appellant convicted of assault occasioning bodily harm – assault against police officer – appellant complains that jury accepted evidence of police officers and not defence witness and that weapon was not examined for presence of blood – appellant further complains about conduct of counsel and solicitor at trial – whether conviction is unsafe and unsatisfactory

COUNSEL: The applicant appeared on her own behalf
D L Meredith for the respondent

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

HELMAN J: On 2 February 2004 the appellant came before the District Court in Cairns to answer a charge that on 13 September 2002 at Cairns she unlawfully assaulted Matthew Michael Mayo and did him bodily harm. A circumstance of aggravation was alleged: that she was armed with an offensive weapon. To that charge she pleaded not guilty, a jury was empanelled, and a trial proceeded until the following day when she was found guilty. The learned presiding judge sentenced her to imprisonment for twelve months and declared three days she had spent in pre-sentence custody to be time already served under the sentence. She has appealed against her conviction only, giving no grounds in the ordinary way, but her notice of appeal was accompanied by a letter setting out various complaints about the trial.

The difficulties for the Crown and the Court in dealing with a case in which the issues on appeal have not been properly formulated should not be minimized, but in order to determine the matter some discussion of the complaints made by the appellant without resort to technicality is called for.

The Crown called three witnesses, all police officers: Sergeant Peter Cochran, and Constables Matthew Mayo and Antony Henman. Each officer gave his account of the events in question. The accounts were in essence the same with some variation on unimportant matters of detail. In what follows I shall summarize their evidence. At about 7.30 p.m. on 13 September 2002 they were called to deal with a disturbance at the residence of Mrs Julianne Young, a flat in Kidston

Street, Bungalow. Mrs Young is the appellant's mother. She came to the door of the flat when the police officers arrived and asked them to come in. The appellant was creating a disturbance. By the time the police officers arrived, the appellant was screaming obscene abuse into the telephone. They tried to induce her to calm down, but she failed to respond. She was asked to put the telephone receiver down. She was, however, aggressive to the police officers. She lost her balance and fell. Two of the officers assisted her to her feet. Constable Mayo took hold of her and told her he was detaining her. She went to the kitchen area, seizing a knife. As Constable Mayo moved towards her, she stabbed him on the right thumb, inflicting a small laceration which can be seen in the photographs which were admitted as exhibit 5 at the trial. She was eventually subdued, after Constable Mayo drew his service revolver, with capsicum spray.

Approximately a week later, the appellant came to the Cairns Police Station and apologized to Sergeant Cochran for what she had done, saying that her mother had told her what happened but she could not remember the events in question. She said she had been affected by medicine and alcohol. She gave Sergeant Cochran a bunch of flowers. On her behalf, no challenge was made to Sergeant Cochran's evidence concerning the conversation.

The appellant did not give evidence at the trial. The only witness called on her behalf was Mrs Young. Mrs Young said she had found the appellant extremely drunk in a hotel in the

late afternoon of the day in question. She had blood on her face and had wet herself. Mrs Young took her to the flat where the incidents which gave rise to the charge against the appellant took place. Mrs Young's evidence concerning the events related by the police officers was to the effect that although her daughter had taken up a knife, she did so in the kitchen before any police officer had entered it. It was only after the appellant had been sprayed with capsicum and put the knife down that the police officers entered the kitchen. According to Mrs Young's evidence, then, there had been no opportunity for the appellant to stab Constable Mayo.

From the letter, it appears that the appellant's chief complaint is that the jury rejected Mrs Young's evidence and accepted that of the police officers. It was clearly open for them to do so, and the record reveals no error in his Honour's directions on that subject.

Another complaint is that the knife was not examined for the presence of blood. The knife was not tested for the presence of blood, but the evidence of the absence of such testing was before the jury and no doubt was taken into account in their deliberations. There is no substance in that complaint.

The appellant also complains, without providing sworn evidence, that her solicitor was not in Court to argue against her counsel of whose efforts she is critical. The case was straightforward and the absence of the solicitor, if he was not present, was of little moment, particularly as there was,

according to the appellant, a solicitor's employee present to instruct counsel during the trial.

Other complaints about the conduct of her very experienced counsel and solicitor and concerning the jury are similarly of no weight and unsupported by sworn evidence. The record reveals her counsel conducted her case with appropriate thoroughness and competence and in accordance with the version of events sworn to by Mrs Young. The record shows that at the beginning of the second day of the trial, his Honour mentioned that a juror had told the bailiff that the juror recognized Mrs Young "from somewhere - can't remember where" but that would not affect the juror's ability to act impartially. His Honour said he did not propose to take the matter any further and the appellant's counsel did not seek to pursue it either.

In the result, I conclude that there is no reason for this Court to intervene in this matter and to set aside the appellant's conviction. The appeal should be dismissed.

THE PRESIDENT: I agree.

DAVIES JA: I agree.

THE PRESIDENT: That is the order of the Court. Thank you.
