# SUPREME COURT OF QUEENSLAND

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| CITATION: | *R v Bryant* [2005] QCA 19 |
| PARTIES: | **R**<br>**v**<br>**BRYANT, Shannon Joel**<br>(applicant) |
| FILE NO/S: | CA No 369 of 2004<br>DC No 2316 of 2004 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | Sentence Application |
| ORIGINATING COURT: | District Court at Brisbane |
| DELIVERED EX TEMPORE ON: | 10 February 2005 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 10 February 2005 |
| JUDGES: | McPherson and Williams JJA and Chesterman J<br>Separate reasons for judgment of each member of the Court, each concurring as to the orders made |
| ORDER: | **Application for leave to appeal against sentence dismissed** |
| CATCHWORDS: | CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – PURPOSE OF SENTENCE – RELEVANT PRINCIPLES – whether a conviction should have been recorded<br><br>CRIMINAL LAW – PARTICULAR OFFENCES – PROPERTY OFFENCES – LARCENY OR STEALING – PARTICULAR MODES – LARCENY BY CLERK OR SERVANT – employee loss prevention officer stole property from employer – conspiracy with co-employee<br><br>*R v Harch* [2004] QCA 113; CA No 45 of 2004, 14 April 2004, considered |
| COUNSEL: | The applicant appeared on her own behalf<br>MJ Copley for the respondent |
| SOLICITORS: | The applicant appeared on her own behalf<br>Director of Public Prosecutions (Queensland) for the respondent |

McPHERSON JA: The applicant, Ms Shannon Joel Bryant, pleaded guilty to one count of stealing as a servant. On 27 September 2004 she was sentenced in the District Court in Brisbane to perform 200 hours of community service and undergo 18 months of probation. A conviction was recorded.

At the time of the offences Ms Bryant was employed on a full-time basis as a loss prevention officer in a major store. On two separate occasions she removed property belonging to her employer and placed it on the loading dock. Another, but only casual and part-time employee, Ms Moyra Booth, was in league with her in this venture and she had previously selected the property in question, put it into bags, and left it at a prearranged location in the store. The applicant's role was to move the property to the loading dock from which it was later collected and taken away. Their joint purpose was, of course, to remove the property without paying for it.

Some of the applicant's activities in carrying out this offence were reported by means of a hidden camera. Stolen property to the value of some $3,920 was later recovered from the residence which she shared with Ms Booth. This property consisted of two digital video cameras valued at nearly $1300 each, a digital camera, seven DVDs and six items of ladies' clothing. This property was later returned to the complainant company so that, as far as one can see, in the result they did not suffer any loss of the items taken. That, however, it

must be said was due to the employer's vigilance rather than any remorse on the part of the applicant and her co-offender.

Ms Bryant is 23 years old. She was 22 at the time she committed this offence. She has no previous criminal record. She pleaded guilty to an ex officio indictment and fully cooperated with the police once her offending role was discovered.

The Crown submits that this is a moderate sentence and not outside the range available to the sentencing judge. Although it was a first offence on her part, it involved a degree of premeditation and a conspiracy with a fellow employee to deprive their employer of its property.

Ms Bryant left school at age 15, and has since worked at a number of jobs of a similar kind, including a debt collection agency and as a waitress at a restaurant or food outlet. She has also been undertaking a course in interior design and drafting. She has addressed us here in a way which attracts my sympathy, but against this it has to be said that, for obvious reasons, stealing by a servant is treated as a serious offence because it involves a breach of fidelity, as well as the use or abuse in defrauding the employer as in this case of opportunities and information which the employment inevitably affords.

The applicant has been treated more leniently than was the accused in *R v Harch* [2004] QCA 113. The Queensland Court of

Appeal in that case dismissed an appeal against a sentence of six months' imprisonment for the offence of entering premises with intent and stealing as a servant.

Harch was a security guard for the pharmacy which he broke and entered and from which he stole as a servant. He deliberately left a safe unlocked before closing time and a security door unsecured so that he could return later to steal the sum of $5,049 in cash, as well as some cheques and receipts. He then attempted to divert inquiries from himself by suggesting that someone else had carried out the offence.

He was only 20 years old, a little younger than the present applicant, and again with no previous convictions. Like the applicant, he pleaded guilty. In his case, only the sum of $2,330 out of the $5,000 taken was recovered; but what went solidly against him was that he was employed to protect the property stolen, just as the applicant was in the case before us now. She was employed in the store as a loss prevention officer.

The difference between the two cases is really so slight that, having regard to the much lesser punishment here, it is unlikely in the extreme that any Court would upset the sentence imposed.

I say this because the applicant has asked us for an adjournment so that she can raise money, which she is in the process of doing, to pay for legal representation before the

Court. The simple fact is, however, that such an adjournment and the process and cost of engaging legal representation would in a case like this, I am persuaded, simply amount to throwing good money away. There is no prospect that the sentence would be upset simply in order to remove the recording of the conviction, which it is a matter for the individual judge to decide on. There is no basis I can see on which this application could succeed if an adjournment were granted.

Directing that a conviction be recorded was a matter within the judicial discretion of the judge concerned and there is nothing in what he said or did that would provide the basis for an argument that it was not proper to record the conviction in this case.

It is the recording of the conviction that is the applicant's real concern because it may put her at a disadvantage in applying for future employment of this or other kinds. But I consider that prospective employers are entitled to know about such matters and to make up their own minds about the risks involved in employing persons who have committed offences of this kind. It is no part of or function of judges to conceal such information from them. Indeed, the probabilities are that, in one way or another, they would find out that such a charge had gone before the Court even if the conviction itself were not recorded.

I am therefore of opinion that no ground for adjourning this matter has been shown and that there is no substance in or merit in the appeal such that we could give effect to it or that some other Court might take a different view of the matter. In my opinion the application for leave to appeal against sentence should be dismissed.

WILLIAMS JA: I agree.

CHESTERMAN J: For the reasons given by Mr Justice McPherson, I agree that the proposed challenge to the sentence imposed on the applicant is without substance and without merit. The recording of the conviction is, however, a matter of importance to the applicant and I would, if the application for adjournment were persisted in, grant the adjournment for a few days to allow the applicant to retain solicitors to argue the matter, although I agree with what has been said about its prospects.

McPHERSON JA: The application for leave to appeal against sentence is therefore dismissed. I hope, Ms Bryant, you have better fortune in the future. There is nothing that we can do to help you.

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