SUPREME COURT OF QUEENSLAND

CITATION:	*R v Morrell* [2005] QCA 441
PARTIES:	**R** **v** **MORRELL, Wayne John** (appellant)
FILE NO/S:	CA No 105 of 2005 DC No 3142 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	1 December 2005
DELIVERED AT:	Brisbane
HEARING DATE:	1 December 2005
JUDGES:	McPherson JA, Mackenzie and Chesterman JJ Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**1. Application for adjournment refused** **2. Appeal against conviction dismissed**
CATCHWORDS:	CRIMINAL LAW – PARTICULAR OFFENCES – PROPERTY OFFENCES – ROBBERY – where appellant convicted of armed robbery in company – where DNA evidence on balaclava located at crime scene identified appellant – where appellant contends that learned trial failed to give *McKinney* direction – where appeal record book reveals that such a direction was given by the learned trial judge – whether appellant has established any grounds to appeal against conviction
COUNSEL:	The appellant appeared in person M J Copley for the respondent
SOLICITORS:	The appellant appeared in person Director of Public Prosecutions (Queensland) for the respondent

McPHERSON JA: After a trial lasting five days in the District Court in March 1995, the appellant was convicted of armed robbery committed at a hotel in September 1995.

On 29 April 2005, he appealed against his conviction. No grounds of appeal were provided in the notice of appeal or at any time after that.

The appeal was allotted a hearing date of 26 August 2005. On 15 August 2005, the appellant applied for and was granted an adjournment of the appeal. He said he had only just received the two volume record book and, with no knowledge of legal process, he needed time to prepare.

The next hearing date was 5 October 2005. On 4 October 2005, the appellant asked for an adjournment, again citing the size of the appeal record books and asking for an adjournment until November as he was representing himself. He was given an adjournment and a new hearing date of 1 December 2005 was arranged for, when he was told he would be required to argue his appeal.

On 29 November he sought an extension of the hearing date due to the size of the appeal book and asked that the appeal be passed over until next year.

The appeal was listed for hearing on 5 October 2005. It was as I have said, adjourned at the appellant's request, this time to today, which is the last day on which this particular

Court will be sitting this year. Needless to say, a day or so ago on 29 November, the appellant wrote advising the Deputy Registrar, who, he says, "probably has no expertise in the Supreme Court Appeal arguments", and who denied him, he says, "natural justice" by saying the appeal would come before the Court on the appointed day, 30 November 2006.

This he submits in his letter to the Court denies him natural justice. What is perhaps in some ways more important, in his latest letter, the appellant now claims to withdraw his appeal and will "apply at a later stage for an extension for leave to appeal".

He says, correctly, that the law is "You can only have one chance in the Supreme Court for an appeal". And he needs to "make sure that [his] case is properly argued". There is provision in the Criminal Practice Rules for filing a notice of abandonment of an appeal, but none at all for withdrawing a notice of appeal. This is now the third appeal hearing date that has been allocated to the appellant since his conviction and his appeal against it in April this year.

In my view he has had ample time to read the record books and to identify some kind of argument or ground of appeal on which to present his case to this Court. We have yet to receive from him any inkling of what it is that he might say is wrong with his conviction.

We therefore propose to refuse the adjournment that he now asks for and invite the appellant to advance any reason why the hearing should not be proceeded with at once, and why, in short, we should not consider the correctness of the verdict or complaints that may be made against it or the conduct of the trial.

...

McPHERSON JA: At about 1.20 a.m. on 10 September 1995, two men entered the bar of the Salisbury Hotel which was in the process of closing for the night. They were dressed in trench coats and gloves, wearing black balaclavas and carrying sawn-off shotguns or rifles. They menaced the staff with them and other people there as well, ordering them to lie on the floor and requiring the manager, Mr Hey, to open the safe. They took $19,315.25 in notes and coins, the latter in plastic bags and the notes in calico bags marked ANZ or Westpac.

The police began keeping watch on the appellant and his wife. On 16 September 1995, they detained them at a service station and took them to the police station. Before searching the house which they were occupying at 14 Duncan Street, Sheldon, the police asked the appellant what they might expect to find there.

The appellant said there were three firearms, two sawn-off shotguns and a .22. When the house was searched, police found a sawn-off rifle and two sawn-off shotguns as well as

ammunition that fitted them. They also found trench coats resembling those identified as being worn by the robbers at the hotel robbery, gloves, walkie-talkies, a scanner tuned to the police frequency and coins in plastic bags like those used at the hotel. The coins added up to $139.29.

The equipment found at the Duncan Street house strongly suggested that it was being or had been used in a robbery. So did the large number of coins found there. The police also found a black balaclava at the house. Another such balaclava had been found at the hotel car park later in the morning of the day of the robbery on 10 September 1995. The balaclavas resembled one another in that they had been altered by sewing up the mouth holes.

This was something that some of the witnesses at the hotel had noticed about the balaclavas worn by the men who carried out the robbery. Examination of the pieces of thread used to sew up each of the mouth holes suggested that it had a common origin, or that those pieces of thread had a common origin.

Despite this evidence, there was not, it was thought at the time, sufficient to link the appellant with the robbery. Then in August 2003, further tests conducted at the John Tonge Centre on the balaclava that was found at the hotel site matched it to the appellant's DNA. The correspondence was such, according to the evidence, that save for an identical twin, statistically no other person would have the same DNA profile.

It should be added that there was other evidence connecting the appellant or his wife with a house at 460 Orange Grove Road, Salisbury, which was a few hundred metres from the hotel. It was owned by a Mrs Latham, who on 17th August 1995 had agreed to let it to a couple calling themselves Michael and Carron Millard. She and two men were seen at the premises but by 1 September 1995, the house had been vacated by the tenants. The landlady's daughter later identified Mrs Millard from a photoboard. She was also identified from the photoboard by a Mrs Ryan, who on 29 August had let the house at 14 Duncan Street to Mr and Mrs Millard.

I interpose to say that it was the place at which the three firearms were found on 16 September 1995.

A few weeks after 29 August 1995, Mrs Millard told Mr Ryan that her name was not Carron Millard but Colleen Morrell. She said her husband had been arrested and that they could no longer afford to rent the house. Mr Ryan failed to identify the appellant from a photoboard, but he did identify a man named Robert Rowe. It was a vehicle registered in Rowe's name that was seen being driven by the appellant with Mrs Morrell as passenger, to the house at 14 Duncan Street shortly before they were detained by police at the service station and the house was searched on 16 September 1995.

The appellant was brought to trial in the District Court in March 2005. He was represented at the trial by experienced counsel, but, after a trial lasting five days, he was found

guilty of armed robbery in company. At that time he was already serving a lengthy sentence for another offence or offences.

The learned Judge imposed a cumulative sentence of imprisonment of a further four and a half years.

This is his appeal against conviction. We have invited him to say on what grounds the verdict of the jury could properly be upset in this Court. He has not said anything in that regard except that the Judge failed to give the *McKinney* direction as required by law. In my view there is no substance in that submission or argument. Such a direction was given by the Judge in his summing-up at pages 320 to 322 of the record, and no complaint can fairly be made about it.

Apart from that, Mr Morrell's general complaints are that the legal system is corrupt, that there is no justice in the State, and so on. Those are not sufficiently precise allegations to enable us to give any effect to them on appeal.

I would therefore dismiss the appeal against conviction.

MACKENZIE J: I agree. I would only add that contrary to what the appellant asserted, an appropriate *McKinney* direction and a discussion of issues raised by counsel in connection with the unrecorded statements sworn to by the police was given at pages 320 to 325 of the record.

CHESTERMAN J: I agree that the appeal should be dismissed for the reasons given.

McPHERSON JA: The order of the Court is that the appeal is dismissed.
