SUPREME COURT OF QUEENSLAND

CITATION:	*Theo v Commissioner of Police* [2012] QCA 133
PARTIES:	**THEO, Athina** (applicant) **v** **COMMISSIONER OF POLICE** (respondent)
FILE NO/S:	CA No 297 of 2011 DC No 1009 of 2011
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Criminal)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	22 May 2012
DELIVERED AT:	Brisbane
HEARING DATE:	9 May 2012
JUDGES:	Muir and White JJA and Martin J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application refused**
CATCHWORDS:	PROCEDURE – INFERIOR COURTS – QUEENSLAND – DISTRICT COURTS – CRIMINAL JURISDICTION – APPEAL TO SUPREME COURT – FROM WHAT DECISIONS AND ON WHAT GROUNDS – where the applicant was convicted after a five day trial of driving a defective trailer and of using an unregistered trailer – where the applicant was fined $260 for both offences and ordered to pay $77 in costs of court – where the applicant appealed this order to the District Court – where the appeal was dismissed – where the applicant submitted that the primary judge varied the initial order – where the applicant provided the primary judge with written submissions that were 117 pages in length – where the applicant alleged that the primary judge failed to consider her extensive written submissions – where the applicant submitted the prosecution failed to prove its case beyond reasonable doubt – whether leave to appeal under s 118 of the *District Court of Queensland Act* should be granted *District Court of Queensland Act* 1967 (Qld), s 118 *Justices Act* 1886 (Qld), s 222 *Australian Securities and Investments Commission v Hellicar* [2012] HCA 17, cited

Jones v Dunkel (1959) 101 CLR 298; [1959] HCA 8, considered
McKenzie v McKenzie [1970] 3 WLR 472; [1970] 3 All ER 1034, cited
Pickering v McArthur [2005] QCA 294, cited

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

[1] **MUIR JA:** After a five day trial, the applicant was convicted on 11 March 2011 of driving a defective trailer and of using a trailer which was unregistered on Deception Bay Road. The presiding magistrate imposed a fine of $260 for both offences and ordered that the applicant pay $77 costs of court.

[2] The applicant's appeal to the District court pursuant to s 222 of the *Justices Act* 1886 was dismissed on 13 October 2011. She now seeks leave to appeal to this Court under s 118 of the *District Court of Queensland Act* 1967.

[3] The facts involved in the proceeding at first instance were straightforward. Constable Wilkinson and Constable Feyaerts gave evidence that on 14 October 2009, when patrolling in a police car, they observed a white van towing an old box trailer on Deception Bay Road which turned off the road into a driveway. As it turned, they observed that neither brake lights nor indicators on the trailer were activated. They followed the van and trailer and after leaving their vehicle, noticed that the trailer had no registration plates. The police officers spoke to the applicant who was in the driver's seat. The applicant's husband was also in the van.

[4] The applicant did not dispute that the trailer was unregistered or defective. Her defence was that she had not driven the vehicle with the trailer attached on the road. She said to the police officers that she had been manoeuvring the van and trailer within her own property and had not taken the vehicles off the property.

[5] The magistrate's reasons show that he gave careful consideration to the issues before him and, in particular, to the central question of credibility. He pointed out, in effect, that for the applicant's evidence to be preferred to that of the police officers, it would have been necessary for him to accept that "for some unexplained reason, while on patrol, the two police officers stopped their police vehicle outside the [applicant's] home, went over to the gate, demanded entry" and wrote false infringement notices. He pointed out that there was nothing in any of the evidence to explain such conduct.

[6] I now turn to a consideration of the grounds upon which the applicant seeks leave to appeal. They also appear to be the grounds on which the applicant would rely in the event that her application succeeded.

The judge erred in imposing a fine of $260 and ordering the payment of costs in the sum of $77 for each offence

[7] The applicant did not appeal to the District Court against penalty and, accordingly, the judge did not consider the question of penalty. The judge's order was "appeal

dismissed". The District Court order contained a statement or recital of the penalty imposed in the Magistrates Court. It was ambiguously worded and, on one possible construction, it stated that a fine of $260 had been imposed and a costs order made in respect of each offence rather than both. However, it is abundantly plain that the District Court order does not purport to vary the orders made in the Magistrate's Court. This ground, therefore, has no merit.

The primary judge failed to consider the applicant's extensive written submissions

[8] The above heading is an interpretation of one of the grounds stated in the Notice of Application for Leave to Appeal. It states:

> "• At the hearing of the appeal (which lasted two and a half minutes), the said honourable Judge scolded the Appellant for having submitted voluminous submissions (117 pages). His such approach in my opinion insinuates that he did not consider them hence the prosecutor had extensively erred eg.:
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> d) By failing to prove beyond reasonable doubt his case which was also overlooked by the Hon. Judge Everson DCJ
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> e) On the 17.10.2011 M/s Jade the Hon. Judge's associate was phoned… And drew the Hon. Judge's attention (via his associate) for the oversight, but nothing was done about it"

[9] At the hearing of the District Court appeal, the judge drew the applicant's attention to the requirements of the Practice Direction in respect of appeals to the District Court. He pointed out that the applicant's 117 page submission was not an outline of argument contemplated by the Practice Direction. The judge then invited the applicant to explain her case orally. He said he wanted to be told what the case was "really about". The judge's approach was understandable and, with respect, sensible. The applicant's 117 page document was not readily digestible and the judge would have been justified in refusing to consider it. Its length was oppressive. It lacked clarity and failed to address the grounds of appeal in any lucid or comprehensible manner.

[10] Nevertheless, the judge did consider it before delivering his reasons, in which he stated that he had read the document "in its entirety". Accordingly, this ground was not made out.

The judge failed to conclude that the prosecution had not proved its case beyond reasonable doubt

[11] The judge approached his task with appropriate care. It appears from his reasons that he reviewed the transcript of the trial as well as the applicant's submissions. He noted, as was the case, that the applicant "made numerous unfounded allegations which wasted considerable time". His Honour addressed the crux of the applicant's problem with credibility: the objective improbability of the two police officers conspiring to concoct a false story to support convictions for minor traffic offences in respect of a trailer being used on private property without any apparent motive

for any such conduct. The judge and the magistrate could have referred also to the applicant's failure to call her husband to give evidence. He was present throughout the subject incident and the magistrate would have been entitled to infer from the fact that he was not called to give evidence, despite his presence at court, that his evidence would not have assisted the applicant's case.[1]

[12] Despite the extent of the applicant's submissions, the issues raised for determination in the proceeding at first instance and then on appeal to the District Court were straightforward. Both the magistrate and the judge treated them as such. The magistrate, in particular, extended a great deal of latitude to the applicant. That this is so is evidenced by the length of the hearing at first instance.

[13] The magistrate, as the judge rightly concluded, was entitled to prefer the evidence of the police officers over that of the applicant. Each police officer's version of events was corroborated by that of the other. The fact that there were discrepancies in their respective accounts tended to show the absence of collusion, but the discrepancies were not such as to cast significant doubt on their respective accounts.

Conclusion

[14] Before this Court, the applicant relied on a 17 page typed outline of argument. This document raised a great many matters which were not within the grounds specified in her application, e.g. the general approach of the magistrate to the trial including alleged "uneven handed action", confusion of witnesses by the magistrate and his making a "False and unfounded statement". The document is similar in approach to that taken in the lengthy submission placed before the District Court judge in that it conducts a running criticism of the evidence and of the conduct of the trial by reference to passages in the transcript.

[15] Pages 14 – 17 of the outline on appeal deal expressly with the appeal to the District Court. It is asserted that there was a virtual "rubber stamping" by the judge of the magistrate's approach of accepting "the policemen's version over an ordinary citizen's statement". As I have explained, it is readily understandable why the magistrate and the judge accepted the prosecution's evidence over that of the applicant. The outline then deals with the contention, addressed above, in relation to the alleged failure of the judge to read the 117 page outline.

[16] The applicant complained that the District Court hearing lasted only five minutes. Although the duration of the hearing was short, the applicant was given every opportunity to state her case orally. Of course, the applicant had placed before the judge voluminous written submissions.

[17] The outline of argument resurrected an argument advanced on appeal to the District Court that, for some unexplained reason, a change of the venue of part of the hearing from Redcliffe to Sandgate with the consent of the parties caused the proceeding to miscarry. These allegations, including an assertion that the applicant's husband, who acted as her *McKenzie Friend*,[2] had no authority to agree to any change of venue, were dealt with by the magistrate and the judge. They were not raised in the grounds in support of the application before this Court. The

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1 *Jones v Dunkel* (1959) 101 CLR 298; and see also *Australian Securities and Investments Commission v Hellicar* [2012] HCA 17 at [232].

2 See *McKenzie v McKenzie* [1970] All ER 1034.

reasons given by the magistrate and the judge in this regard appear unexceptionable and I see no good reason why the applicant should be permitted to stray outside the grounds of her application.

[18] In her oral argument in this Court, the applicant gave her version of events on 11 March 2011. But this Court is obliged to determine this application on the evidence before the court appealed from except in circumstances which do not apply here. That evidence included the evidence of the two police officers which the magistrate and the judge both found persuasive. They were not shown to have erred in this or in any other respect.

[19] The applicant requires leave to appeal under s 118(3) of the *District Court of Queensland Act*. Such leave is granted normally "only where an appeal is necessary to correct a substantial injustice to the applicant, and there is a reasonable argument that there is an error to be corrected".[3] The applicant has demonstrated no injustice, substantial or otherwise. She was granted considerable indulgence by the magistrate, so that a matter perfectly capable of being dealt with in the course of one, or perhaps two days, took five days to hear. The applicant made no attempt to comply with the Practice Direction in relation to appeals to the District Court, inflicting a 117 page submission on the District Court judge and the respondent. Her arguments have already been carefully considered by two courts and justice does not require that she be permitted a second appeal. Accordingly, I would refuse the application.

[20] **WHITE JA:** I have read the reasons for judgment of Muir JA and agree with his Honour's reasons and the order which he proposes.

[21] **MARTIN J:** I agree with the orders proposed by Muir JA and with his Honour's reasons for them.

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[3] *Pickering v McArthur* [2005] QCA 294.