

SUPREME COURT OF QUEENSLAND

CITATION: *Barlow v Queensland Police Service* [2014] QCA 176

PARTIES: **BARLOW, Geoffrey James**
(applicant)
v
QUEENSLAND POLICE SERVICE
(respondent)

FILE NO/S: CA No 89 of 2014
DC No 217 of 2013

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time s 118 DCA (Criminal)

ORIGINATING COURT: District Court at Southport

DELIVERED ON: 29 July 2014

DELIVERED AT: Brisbane

HEARING DATE: 21 July 2014

JUDGES: Muir and Morrison JJA and Peter Lyons J
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **1. The application for extension of time within which to file a notice of application for leave to appeal be granted.**
2. The application for leave to appeal be refused.

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – MISCARRIAGE OF JUSTICE – GENERALLY – where the applicant was convicted in the Magistrates Court of unlawfully stalking the complainant – where the applicant was placed on probation for two years and ordered to perform 200 hours of community service – where a conviction was recorded – where the applicant’s appeal against his conviction was dismissed by the District Court – where the applicant filed a notice of intention to seek leave pursuant to s 118 of the *District Court of Queensland Act 1967* (Qld) to appeal against the District Court order – whether the District Court judge gave careful consideration to the facts – whether an error of fact or law has been disclosed, causing substantial injustice

CRIMINAL LAW – APPEAL AND NEW TRIAL – PROCEDURE – NOTICES OF APPEAL – TIME FOR APPEAL AND EXTENSION THEREOF – where the applicant made an application for extension of time within

which to seek leave to appeal – where the application was not opposed – whether the application for extension of time should be granted

District Court of Queensland Act 1967 (Qld), s 118

Barlow v Queensland Police Service [2014] QDC 32, cited

COUNSEL: The applicant appeared on his own behalf
B J Merrin for the respondent

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

- [1] **MUIR JA:** The applicant was convicted in the Magistrates Court on 20 May 2013 of unlawfully stalking the complainant. He was placed on probation for two years and ordered to perform 200 hours of unpaid community service. A conviction was recorded. The applicant's appeal against his conviction was dismissed by a judge of the District Court on 7 February 2014.¹ On 16 April 2014, the applicant filed a notice of intention to seek leave pursuant to s 118 of the *District Court of Queensland Act 1967 (Qld)* to appeal against the District Court order. He also made application for an extension of time within which to seek leave to appeal. The application for an extension of time was not opposed.
- [2] The evidence before the magistrate was to this effect. The complainant, a 22 year old female, advertised for rental a spare room in a house in Southport which she occupied. On 7 December 2011, the applicant came to the dwelling in response to the advertisement. When shown over the premises by the complainant, he behaved in an inappropriately familiar manner. In what was described as the kitchen area, the applicant examined the jewellery, clothing and personal effects of the complainant on a table and asked questions about them. The complainant then sat on a couch. The applicant sat on its other end before lying down on it and speaking of sex and his sexual experiences. The complainant tried unsuccessfully to change the subject matter of the conversation.
- [3] The applicant grasped the complainant's foot and offered her a massage. She rejected the offer. The applicant then requested access to her iPad. The complainant, who had become quite concerned by the applicant's conduct, acceded to the request and telephoned a male friend requesting that he come to the house. At some stage, the applicant invited the complainant to call at his house that evening to be entertained.
- [4] The complainant's male friend arrived and the applicant remained at the house for about half an hour after his arrival.
- [5] The following day, the applicant made three telephone calls to the complainant which she left unanswered. The applicant then sent a text message to the complainant querying why his calls had not been answered. The complainant replied by SMS stating that the plan to rent the room had been abandoned. There was a further text message and telephone call to the complainant from the applicant.

¹ *Barlow v Queensland Police Service* [2014] QDC 32.

- [6] The complainant was away from her house for a few hours on 8 December. When she returned home at 6.00 pm, she had a conversation with a neighbour and, as a result of the conversation, felt concern for her safety and contacted the police. She was sufficiently concerned about the applicant's conduct to feel insecure and to live away from the house for a week.
- [7] The complainant's neighbour gave evidence to the effect that the applicant had parked his car adjacent to the complainant's house between 2.30 and 3.00 pm on 8 December. She said that the applicant had got out of the car, looked through the mailbox and moved around the property.
- [8] The applicant gave evidence which the magistrate found "at worst evasive, but at best for him, followed the pattern of being unable to remember or couldn't recall".² The magistrate found that no weight could be given to the applicant's evidence.
- [9] The ground provided in support of the application for leave to appeal was:
- "At the hearing of the appeal I was not given the opportunity to substantiate my case despite His Honour saying I would be able to do so. Refer to transcript 20140207, paragraph 25. At the end of the hearing His Honour asked the respondent if she had anything further to say but I was not given that opportunity.
- I reiterate my original defence in that I engaged in reasonable conduct to obtain or give information that a person has a legitimate interest in obtaining or giving."
- [10] The remainder of the notice of application for leave to appeal consisted of: a brief recounting by the applicant of his contact with the complainant and subsequently with the complainant and her male friend; some assertions about the nature of that contact; and an allegation that the magistrate and the District Court judge gave too much weight to the prosecution's "selective choosing and emphasis on the psychological references when those statements took up about five minutes of the approximately one and half hours" the applicant was with the complainant and her friend. The applicant's outline of argument contains a more detailed version of the applicant's account of relevant events and of factual matters of no relevance.
- [11] Perusal of the transcript of the proceedings before the District Court judge on 7 February 2014 reveals that after considering and adjourning Appeal No 159 of 2013, the judge embarked on the hearing of the subject appeal. The applicant, after being invited by the judge to do so, made oral submissions. His submissions made no effective challenge to the evidence led by the prosecution before the magistrate. Nor did they advance any cogent reasons why the magistrate erred in accepting the complainant's evidence and in concluding that no weight should be given to the applicant's evidence.
- [12] The applicant asserted that "my document here sort of lists everything that happened during that day". This appears to be a reference to the applicant's outline of argument and/or his notice of appeal. He criticised the conduct of police officers in bringing him to the police station in handcuffs and stated that he had been "going through anxiety and shock ever since being charged". He then went on to discuss

² Transcript of Proceedings, Magistrates Court, 20 May 2013 at 5.

how he had fared in performing community service. The judge enquired whether the applicant had anything else to say. The applicant said “I think it’s all listed in my documents” and continued to complain about the conduct of police officers. He then referred to having written letters to the Crime and Misconduct Commission (CMC) and said that he was “still waiting, or (sic) something, from the CMC” and that he “might write some further submissions”.

- [13] The judge then asked the respondent’s representative if she had any submissions additional to those contained in her written outline of argument. She said that she did not and stated merely that many of the issues raised in the applicant’s oral submissions were not raised as issues on the appeal.
- [14] The applicant then said, “I do have another little thing”. He went on to make some unsworn assertions about matters which he said had been discussed between him and the complainant at her house on 7 December 2011. When the applicant finished speaking, the judge gave his reasons and ordered that the appeal be dismissed. He then asked the respondent’s legal representative if she had anything further. She replied, “No”. The Court was then adjourned.
- [15] Plainly, the judge was not inviting the respondent’s representative to make further submissions. His query was directed at ensuring that there were no loose ends in respect of the subject appeal or the preceding appeal.
- [16] The applicant, who had shown in the subject appeal and in the previous one, no reticence in interjecting and putting forward his submissions and point of view, remained silent. He was given a courteous, even indulgent, hearing and it may reasonably be inferred that he had no further submissions to make. He did not complain that he was misled into thinking that the matter would be adjourned pending receipt by him of replies to letters he claimed to have written to the CMC. Nor was there anything before the judge or this Court which suggested that any information that could be provided by the CMC would have any bearing on the outcome of the applicant’s appeal to the District Court.
- [17] The judge gave careful consideration to the facts and to whether the facts supported the applicant’s conviction. No error of fact or law has been disclosed and no injustice, substantial or otherwise, is in need of correction.
- [18] For these reasons I would order that:
1. The application for extension of time within which to file a notice of application for leave to appeal be granted.
 2. The application for leave to appeal be refused.
- [19] **MORRISON JA:** I have read the reasons of Muir JA and agree with those reasons and the orders his Honour proposes.
- [20] **PETER LYONS J:** I have had the advantage of reading in draft the reasons of Muir JA, with which I agree. I also agree with the orders proposed by his Honour.