IN THE COURT OF APPEAL [1992] QCA 089

SUPREME COURT OF QUEENSLAND C.A. No. 313 of 1991

In the Court of Appeal

The President
Mr. Justice Davies
Mr. Justice Williams

T H E Q U E E N

v.

MICHAEL RAYMOND FARLEY

JUDGMENT OF THE COURT

Delivered the 28th day of April 1992

On 30 October 1991 the appellant was convicted in the Supreme Court at Brisbane of attempted murder. Against that conviction he appeals to this Court on three grounds. They are:

1. The trial judge erred in directing the jury as to the use in their deliberations of the out of court statements of the accused.
2. The trial judge erred in directing the jury as to assessment of witnesses.
3. The verdict of the jury was unsafe and unsatisfactory because, although the evidence could establish an attempted discharge of the firearm and a later discharge of the firearm, it could not establish an attempt to murder.

Although the other grounds were not formally abandoned, only the first ground was argued.

A number of the events surrounding the commission of the alleged offence were either common ground between the Crown and the defence or clearly established, namely:

(a) on 22 November 1990 the appellant, when the car in which he was travelling was stopped by police, ran off;

(b) he was pursued on foot into a dark area by Constable McErlean, closely followed by Constable Harbison;

(c) a firearm was discharged (this was supported by two independent persons);

(d) later the same day police found the appellant in possession of a revolver, together with ammunition modified to be used in that weapon;

(e) when questioned by police, on tape, the appellant denied having the revolver with him when initially pursued by police and made no mention of a shot having been fired.

In addition, Constable McErlean gave evidence that the appellant pointed a revolver at him from a distance of about 2 metres, that there were three distinctive clicking sounds, that he jumped to his left and that, as he did so, he heard a loud gunshot.

The statements referred to in ground 1 were alleged to have been made to the interviewing detective immediately before that taped interview began. They were, "I never pointed a gun at anyone" followed later by "I never tried to shoot anyone. I never tried to shoot anyone."

In summing up the trial judge invited the jury to consider "whether there was any significance in the fact that before there was any suggestion of shooting he made the statement 'I never tried to shoot anyone'." The implication was that the statement might have indicated guilt. However, that was not the only possible connotation. It would have been more appropriate to point out to the jury the possible significance of the statement as indicative of either guilt or innocence, and to emphasise that it was of questionable value against the appellant.

However, as the appellant's counsel conceded, the defence counsel did not seek a redirection on this point. Further, the trial judge instructed the jury that, if it did not accept Constable McErlean's evidence beyond a reasonable doubt, the appellant must be found not guilty. In all the circumstances, including the strength of the case against the appellant, no miscarriage of justice can be shown.

In the circumstances there is no substance in the appeal and it should therefore be dismissed.

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C.A. No. 313 of 1991

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v.

MICHAEL RAYMOND FARLEY

(Appellant)

THE PRESIDENT
DAVIES JA
WILLIAMS J

Reasons of the Court delivered on the 28th day of April 1992

"APPEAL DISMISSED"

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MINUTE OF ORDER: *Appeal dismissed*

CATCHWORDS: **CRIMINAL LAW - VERDICTS - UNSAFE - appellant convicted of attempted murder - whether judge erred in directing jury as to use of out of court statement - whether given strength of case against appellant and failure of counsel to seek re-direction verdict unsafe or unsatisfactory**

Counsel:S. Herbert for the Appellant
M. Byrne for the Respondent

Solicitors:Legal Aid Office for the Appellant
Director of Prosecutions for the Respondent

Date(s):3 April 1992