SUPREME COURT OF QUEENSLAND

CITATION:	*R v Dorrick* [2002] QCA 154
PARTIES:	**R** **v** **DORRICK, Emily Joan Elisha** (appellant)
FILE NO/S:	CA No 370 of 2001 SC No 344 of 2000
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Cairns
DELIVERED ON:	3 May 2002
DELIVERED AT:	Brisbane
HEARING DATE:	19 April 2002
JUDGES:	Davies and Williams JJA and Fryberg J Separate reasons for judgment of each member of the Court, each concurring as to the order made.
ORDER:	**Appeal against conviction dismissed.**
CATCHWORDS:	CRIMINAL LAW – PARTICULAR OFFENCES – OFFENCES AGAINST THE PERSON – HOMICIDE – MURDER – PRACTICE AND PROCEDURE – ALTERNATIVE VERDICTS – GENERALLY – where the appellant convicted of the murder of her 4 year old daughter - where fatal blow delivered by co-accused – where the appellant encouraged the co-accused and actively took part in the assault on the deceased - whether on the evidence the jury could have been satisfied beyond reasonable doubt that at the material time the appellant must have known that the co-accused intended to cause grievous bodily harm – appeal dismissed
COUNSEL:	P Callaghan for the appellant R Martin for the respondent
SOLICITORS:	Legal Aid Queensland for the appellant Director of Public Prosecutions (Queensland) for the respondent

[1] **DAVIES JA:** I agree with the reasons for judgment of Williams JA and with the order he proposes.

[2] **WILLIAMS JA:** The appellant, along with her de facto husband, Chevathen, was convicted by the jury of the murder of her 4 year old daughter. Grounds of appeal stated in the notice of appeal were abandoned, and the only point argued was the question whether on the evidence the jury could have been satisfied beyond reasonable doubt that at the material time the appellant must have known that Chevathen intended to cause the child grievous bodily harm. It follows that if the appeal was successful a verdict of manslaughter would have to be substituted for that of murder.

[3] The evidence disclosed that on a number of occasions prior to 6 August 1999 Chevathen and the appellant had severely beaten the child, purportedly by way of chastisement. On the evening prior to the death, in circumstances which will be more fully outlined later, Chevathen struck the child a number of blows with his fists to the head, knocking her off a stool, and the appellant delivered a number of blows to the deceased's body with an electric cord. The trial proceeded on the basis that one of the blows (or perhaps a combination of blows) delivered by Chevathen was the cause of death. The prosecution case against the appellant was that on that occasion Chevathen assaulted the child intending to cause grievous bodily harm, and that the appellant aided him in that enterprise, knowing that was his intention, by her encouragement and by her active involvement in assaulting the child.

[4] Neither Chevathen nor the appellant gave evidence. Medical evidence, and photographs of the deceased, clearly established that the child had been severely assaulted prior to 5 August (the presence of old injuries) and had sustained a variety of injuries, including injuries to the brain, in consequence of assaults on or about 5 August.

[5] The critical evidence against the appellant had to be found in her record of interview with the police. In that she admitted to being involved in a series of assaults upon the deceased. On each occasion she gave particulars of a severe assault by Chevathen on the child in her presence and admitted that on most occasions she herself also assaulted the child. She admitted an assault by Chevathen on 5 August, which she described as "brutal", and also admitted to striking the child with the electric cord on that occasion.

[6] As it was put to the jury by the learned trial judge in his summing-up, the issue for the jury was whether or not they could draw the inference beyond reasonable doubt from statements made in the record of interview that the appellant knew on 5 August that Chevathen intended to cause grievous bodily harm to the child and that she aided him in that enterprise.

[7] The prosecution case, maintained on appeal, was that the jury was entitled to have regard to the evidence of the history of assaults on the child recounted by the appellant in her interview with the police when considering whether that inference could be drawn. Counsel for the appellant conceded that that was a valid approach.

[8] During the record of interview the appellant appears from time to time to blur the distinction between various episodes of violence directed towards the deceased. However, with a careful reading, one can discern the specific instances to which reference is made.

[9] The earliest episode of violence referred to, though no date is given, occurred on the occasion when Chevathen reacted to what he alleged to be a false allegation made by the deceased of sexual abuse on his part. Speaking of that incident in her record of interview the appellant said she could hear Chevathen belting the deceased and went to him and said: "I have to stop you from doing it." She described Chevathen as "just hitting her, smacking her around. . . . Probably a couple of fists hit her face."

[10] The next incident the appellant referred to occurred because it was alleged the deceased had done some "rude things" to her little brother. That was about 3 or 4 weeks prior to the death. The appellant smacked the child with a spatula and then "Trevor smacked her after". The appellant hit her about seven times with the spatula. According to the appellant's account a little while later Chevathen "just lost it" and "he went in the room and he belted her". She heard him say "Don't you do that again to your little brother you little bitch." The appellant went into the room and said, "Stop it." She apparently did that because when Chevathen "loses his temper he goes out of rage."

[11] It seems that on that occasion the assault by Chevathen left the deceased with black eyes. There seems to have been some discussion about taking her to the hospital but it was decided to wait until the "wounds go down". In the course of that particular assault it appears that the deceased fell and bumped her head on the floor. In the record of interview the appellant said that "it wasn't punishment at all . . . it was brute".

[12] It is not entirely clear whether the assault just detailed was part of the assault which was identified as taking place on 12 July 1999, about 3-4 weeks before the death. In the record of interview the appellant gave more detail of an assault on that date. Chevathen sat the deceased on a stool and they took turns in hitting her. Chevathen was using a closed fist. He punched her with such force that the child fell back off the stool and hit her head on the concrete slab. Chevathen told her to get back up again and sit back on the stool. The appellant then struck a backhanded blow across her daughter's face. Chevathen then took a piece of wood and smacked her with that on the back. The appellant "told him to do no more". The appellant said that on this occasion she was "frightened" for her daughter.

[13] The last observation is of particular significance. Essentially it amounts to a recognition that the assault might occasion the child some serious injury.

[14] What is even of more significance is that a little later on in the episode the appellant struck the deceased with the same piece of wood that had been used earlier by Chevathen.

[15] There was another episode on the Sunday before the child's death. On that occasion Chevathen hit her and the appellant hit the child with the electric cord. According to the record of interview the appellant said that "we hit her about 10 to 12 times that night" most were "shots to the head". She claimed that she used open hands whereas Chevathen used closed hands. When asked what effect did Chevathen's blows have on the child she responded: "It had – it had a knock out effect on her . . . like she was – after he hit her she was walking zig zaggy, wiggly wooggily way." She then told the police officers that "the punishment she got that night was abuse". She went on: "I tried talk to – talk to Trev about it and he just said, 'oh, its

not – we're not abusing her, we're just disciplining her'." That particular episode came to an end when a neighbour arrived at the house for some domestic purpose.

[16] As a result of some or all of those assaults by the night before her death the deceased had a number of visible injuries. On that last night a relative of Chevathen visited the house and the deceased was sent to her room so that the marks on her face would not be seen. Apparently the deceased wanted to go to the toilet whilst that visitor was there and came out of her room. Chevathen ordered her back into the room. According to the appellant's record of interview Chevathen said: "I don't care if you shit in your pants . . . you meant to stay in the room." After the visitor left Chevathen called her out of the room and "we both smacked her". Apparently the deceased sat on the stool and Chevathen "knocked her back off the chair". The appellant's description of the assault goes on: "He backhand her and she – she fell face down and then he hit her again. He told her to get up on the stool and he hit her again and he busted her mouth about here . . . the bottom I think and up here . . . closed fist to the mouth". Apparently Chevathen then turned around to the appellant and said, "well do something about it", to which she responded, "well what you want me to do?". He said "well hit her", and "so I hit her and I told her 'you – that – that was naughty of you to come out like that'." The appellant said that on that occasion she used a closed fist to the eye and it made the eye swell.

[17] Then in the record of interview the appellant said that she was "frightened" because she felt sorry for her daughter and was apparently frightened "to go to gaol". She admitted that she and Chevathen hit the child about 15 times that day. She did say that at some time she tried to tell Chevathen to stop, but that appears to have brought the response from Chevathen, "do something Ellie, this kids – this kid is doing everything deliberately." It was then the appellant went to the kitchen and obtained the electric cord and "belted her with the jug cord". She struck blows across the child's abdomen with that cord.

[18] It is not necessary to record more of the sickening assaults on the young girl. The battered body depicted in photographs taken at the time of the post-mortem amply demonstrates the force that was used against her.

[19] Against that background the jury was entitled to draw the inference beyond reasonable doubt that on the night before her death, when Chevathen called the deceased out of her room to be disciplined, the appellant knew that he intended to seriously assault her to the extent of his actions being likely to endanger her life or cause permanent injury to her health. With the knowledge that Chevathen had such an intention the appellant, at Chevathen's behest, joined in the assault. When it must have been obvious that the child was seriously injured, or at least was likely to be seriously injured if the assault continued, the appellant did nothing to prevent further assaults by Chevathen on the child; indeed to the contrary she again assaulted the child with the electric cord. The jury was clearly entitled to be satisfied beyond reasonable doubt that, with knowledge of Chevathen's intention, she aided him in causing serious permanent harm to the child.

[20] In the circumstances the appeal against conviction should be dismissed.

[21] **FRYBERG J:** I agree with Williams JA that, for the reasons which he has given, it was open to the jury on the whole of the evidence to be satisfied of the appellant's guilt beyond reasonable doubt.

[22] The appeal should be dismissed.