

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Woods* [2003] QCA 352

PARTIES: **R**  
**v**  
**WOODS, Paul James**  
(appellant)

FILE NO/S: CA No 155 of 2003  
SC No 497 of 2002

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 12 August 2003

DELIVERED AT: Brisbane

HEARING DATE: 12 August 2003

JUDGES: Williams and Jerrard JJA and Muir J  
Separate reasons for judgment of each member of the Court,  
each concurring as to the order made

ORDER: **Appeal dismissed**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS – UNREASONABLE OR INSUPPORTABLE VERDICT – WHERE APPEAL DISMISSED – where appellant convicted of attempted murder among other offences – where appellant was a passenger in a stolen vehicle being pursued by police – where appellant fired shotgun at police car and injured driver – where no positive evidence given at trial of any intent other than to kill – whether it was open to a reasonable jury to exclude all other hypotheses – whether jury could be satisfied beyond reasonable doubt that the appellant had the intention to kill the police officer

*R v Palmer & Hite* [2002] QCA 346; CA No 21 of 2002, CA No 122 of 2002, CA No 26 of 2002 and CA No 115 of 2002, 6 September 2002, followed

COUNSEL: K M McGinness for the appellant  
C W Heaton for the respondent

SOLICITORS: Legal Aid Queensland for the appellant  
Director of Public Prosecutions (Queensland) for the respondent

WILLIAMS JA: As a result of events which occurred on or about 6 July 2001 the appellant was charged with a number of offences. He pleaded guilty to a charge of unlawful use of a motor vehicle, a charge of burglary with circumstances of aggravation being armed and with threats of violence, to one count of robbery whilst armed in company and another count of unlawful use of a motor vehicle.

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He pleaded not guilty to a charge of attempted murder but guilty to the alternative count of unlawfully striking with intent. The prosecution did not accept that plea and the matter proceeded to trial on the charge of attempted murder with the alternative count being available to the jury.

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The relevant facts were not significantly in dispute.

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The appellant and a co-offender entered premises in Hale Street, Paddington armed with a shotgun and other weapons and, as a result of those actions, drove off in a black Porsche. It is of some significance to note that the Porsche was a left-hand drive vehicle. That meant that the appellant was seated in the passenger seat on the right-hand side of that vehicle.

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Police were notified of the events which had occurred at Hale Street and were on the lookout for the black Porsche. It was noticed in the Mitchelton area and thereafter a police pursuit ensued through the suburbs of Mitchelton and Ferny Grove to an area in Samford Road near a building known as the Woolshed.

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At that point the Porsche rapidly decelerated from its speed during the pursuit, which had been estimated on occasions at significantly in excess of 100 kilometres an hour. As it decelerated the immediately following police vehicle had to take evasive action to avoid a collision but the two vehicles did come into contact - the left-hand side of the police vehicle coming into contact with the right-hand side of the Porsche.

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At that point it was agreed that the driver of the police vehicle, Constable Maher, was approximately 2.5 metres from the passenger side window of the Porsche. Other police officers saw what appeared to be a gun protrude from that window of the Porsche and heard a shot. It was clearly established that a shot had been fired from a sawn-off 12 gauge Harrington and Richardson shotgun.

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The pellets from it pierced the windscreen of the police vehicle almost in front of the passenger. That, of course, was on a trajectory from the window of the Porsche to the driver of the police vehicle. A number of pellets hit the grille immediately in front of the windscreen and the dashboard and it was probably ricochets from there which entered the face of Constable Maher. Quite a number of pellets were subsequently removed from his face. It is also to be noted that at least one pellet struck the glasses he was wearing, damaging the glass.

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Immediately after that the Porsche drove off and the two occupants were not apprehended until the following day.

The learned trial Judge in a very careful summing-up emphasised on a number of occasions that, in order to return a verdict of guilty of attempted murder, the jury had to be satisfied beyond reasonable doubt that the appellant had an intention to kill. She pointed out that no other intention would suffice and that the jury had to reject all other intentions before they could convict of attempted murder. That meant that they had to reject the hypothesis, advanced by the defence, that the appellant's intention at the time he discharged the firearm was to facilitate his escape from the pursuing police. It is clear that unless the jury could reject that hypothesis a verdict of guilty of attempted murder was not open.

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The appellant did not give evidence at the trial and that meant that there was no positive evidence as to an alternative intent and the issue of intent had to be determined by the drawing of inferences.

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In the case of Palmer and Hite [2002] QCA 346, in a joint judgment of Justice Davies and myself, it was said:

"In the absence of any other evidence as to intention, a reasonable juror would ordinarily draw the inference that the discharge of a gun aimed at a person some 20 to 25 metres away carried with it an intent to kill."

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I see no reason to depart from the statement there made.

In this case, the distance between the gun and the driver of the police car was much less, it was only 2.5 metres.

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Whilst it is true that there was no evidence of animosity between the appellant and Constable Maher, in my view it was open to a reasonable jury to exclude all the other hypotheses and to be satisfied beyond reasonable doubt that at the time he fired the gun, the appellant had the intention to kill the police officer in the pursuing vehicle.

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As I have already said, the summing-up was exemplary. No complaint was made as to its contents and in the circumstances I can see no basis for concluding that the jury's verdict was so unreasonable that it should be set aside.

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In the circumstances, the appeal against conviction should be dismissed.

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JERRARD JA: I agree that in the circumstances of the careful summing-up given in this case, in which all issues were clearly identified for the jury, it was open to that jury to find beyond reasonable doubt that Mr Woods intended to kill police officer Maher when he fired a shotgun at that police officer from a distance of 2.5 metres or thereabouts in the circumstances described in the judgment of Williams JA.

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MUIR J: I agree. The obvious features of the incident which support the jury's verdict are the rapid drop in speed of the Porsche, the close proximity of the muzzle of the shotgun to

the injured police officer, the evidence as to the angle of  
the gun barrel at and immediately prior to the time of firing  
and the fact that the weapon was a shotgun.

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WILLIAMS JA: In the circumstances, the appeal is dismissed.

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