SUPREME COURT OF QUEENSLAND

CITATION:	*R v Hunter* [2003] QCA 384
PARTIES:	**R** **v** **HUNTER, Aaron Stuart** (applicant/appellant)
FILE NO/S:	CA No 67 of 2003 DC No 133 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	District Court at Townsville
DELIVERED ON:	5 September 2003
DELIVERED AT:	Brisbane
HEARING DATE:	8 August 2003
JUDGES:	Williams JA and Muir and Holmes JJ Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Appeal against conviction dismissed** **2. Application for leave to appeal against sentence refused**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS – MISDIRECTION AND NON-DIRECTION – GENERAL MATTERS – CONSIDERATION OF SUMMING UP AS A WHOLE – where appellant convicted on unlawful wounding and assault occasioning bodily harm – where learned trial judge quoted extensively from the evidence of the witnesses in the course of summing up – where learned trial judge gave directions as to inconsistencies in evidence – whether the summing up was balanced and fairly presented both prosecution and defence cases 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 raised defences of self-defence and provocation – whether it was unreasonable for the jury to reject these defences
COUNSEL:	The appellant appeared on his own behalf

L J Clare for the respondent

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

[1] **WILLIAMS JA:** The appellant was convicted in the District Court at Townsville of one count of unlawful wounding and one count of assault occasioning bodily harm arising out of events which occurred on 26 March 2002. He was sentenced to two and a half years imprisonment on the wounding charge and to a concurrent sentence of three months on the assault charge. Those sentences were made cumulative on the activation of a three month suspended sentence. The appellant, who appeared on his own behalf, raised a number of arguments in support of his appeal against conviction, and he also sought leave to appeal against the sentence on the ground it was manifestly excessive.

[2] In the Notice of Appeal the appellant alleged that the verdicts were "unreasonable or cannot be supported having regard to the evidence adduced and the inconsistencies in the complainants' evidence". He also alleged that the impact of the summing up weighed unfairly against him in the eyes of the jury because the learned trial judge:

(a) summed up evidence-in-chief of Crown witnesses from the transcript;

(b) placed uneven weight on the Crown's evidence as against that of the appellant;

(c) failed to refer to inconsistencies of Crown witnesses when summing up to the jury;

(d) referred to inconsistent evidence of the appellant when directing the jury.

[3] Other grounds alleged were that the learned trial judge erred in failing to direct the jury as to prior to inconsistent statements of Crown witnesses, and erred in directing the jury on self-defence.

[4] The appellant and the complainant, Belinda Spinks, had previously been friends for some time, and the visit by the appellant to her place of residence on the day in question was motivated by his desire to recover some property he had left there and a fob watch which was then in her mother's possession. Particulars of the offence of assault occasioning bodily harm to Belinda Spinks involved the appellant squeezing her throat and applying force to her upper body. The appellant essentially denied any such assault and also relied in the alternative on defences of provocation and self-defence.

[5] The charge of unlawful wounding arose out of events which followed closely upon the alleged initial assault on Belinda Spinks. Her partner, Shane Bowman, came to her assistance. Whilst there was confusion in the evidence as to the precise sequence of events, after some scuffling between the two men Bowman was stabbed in the abdomen. There was no disputing that the knife was in the appellant's hand at the time the injury was sustained. There was also a formal admission that the injury constituted a wounding. The defences raised by the appellant were self-defence and accident.

[6] The appellant gave evidence before the jury; that meant that there were accounts from Spinks, Bowman and the appellant as to critical events. The appellant had also given investigating police a version of events which was recorded on tape. Not surprisingly there were inconsistencies as between the versions given by those three witnesses, and also internal inconsistencies. There were significant inconsistencies between the version given by the appellant to the police and his evidence at trial.

[7] The jury also had evidence as to the behaviour of and statements made by the appellant both shortly before and after the critical events. Angela Spinks, the mother of Belinda Spinks, gave evidence that on the day in question the appellant came to the motel which she was managing with her partner (King) and asserted that she had a watch which belonged to him. Her evidence was that his demeanour was "somewhat intimidating, aggressive"; she said he was "quite agitated." The appellant asserted that he had given a watch to Belinda Spinks, which in turn she had given to her mother, and he wanted it back as it belonged to him. Angela Spinks informed the appellant that she had the watch, but that as her daughter had paid him for it she would not hand it over. Relevantly her evidence was that thereafter the appellant said that he would "go down and sort her out. He had mates that could fix the problem." That was obviously a reference to Belinda Spinks. The appellant also told Angela Spinks that "he had some heavies that would get the watch returned to him." The appellant admitted going to see Angela Spinks in order to recover the watch but denied acting in an aggressive manner and denied making the statements involving threats to Belinda Spinks. When the appellant left the motel he went directly to the residence of Belinda Spinks.

[8] King gave evidence of hearing "a fairly heated argument about a fob watch" and in consequence he escorted the appellant from the premises. The appellant's evidence was that King aggressively removed him from the premises.

[9] C J Duff, a service station manager, gave evidence of a conversation with the appellant on 27 March, the day after the events in question; the appellant had already given a taped interview to the police in which he admitted the stabbing but claimed it was either accidental or he was acting in self-defence. Duff knew the appellant from previous visits to the service station. The appellant picked up a copy of the Townsville Bulletin, and pointing to an article in the paper, said: "See this, this is me. . . . I should have killed the cunt." According to Duff he then said "I knifed him like that . . .", and at the same time the appellant made a movement with his right hand. The appellant also said, "Well, what was I supposed to do? He attacked me." The security video from the service station was tendered in evidence. On it being played one can hear the appellant saying some of the things attributed to him by Duff in his evidence. It also shows the appellant demonstrating with his right arm how Bowman was stabbed. The jury would have been entitled to have regard to that when evaluating the appellant's evidence whilst in the witness box as to how Bowman came to be stabbed.

[10] R L Graham, a housemate of the appellant, gave evidence that he was the owner of the knife used in the stabbing. He described it as a large pocket knife, about six inches long. The appellant borrowed the knife from him several days prior to the incident in question. According to Graham, the appellant wanted to use it for fixing mobile phones. After the events with Spinks and Bowman, the appellant returned to the house and said words to Graham to the effect that "I think he had stabbed him".

The knife was given back to Graham who then put it in a drawer; it was subsequently handed to police.

[11] Belinda Spinks gave evidence that she was standing in what could be described as a driveway area outside her flat when the appellant arrived. He said he wanted his fob watch back, and she asserted that she had paid him for it and given it to her mother. She said they were "yelling at each other" and then the appellant grabbed her around the neck. She said she couldn't breathe and she was forced to the ground. Photographs of the neck and arms of Belinda Spinks showed bruises and what appeared to be scratches. She said that when she was grabbed she called out for help and Bowman intervened. Her evidence was that Bowman "[j]umped on his back" and "[t]hey got into a scuffle." She went on to say: "They've fell to the ground. There was no conversation. It was just a wrestle. … There was punches thrown by both". She then said that she saw what appeared to be a punch to the stomach of Bowman and shortly afterwards she saw "blood squirting out of Shane Bowman's stomach." She then saw that the appellant was holding a knife. She said he then ran to his bag and then "[j]umped into the stormwater drain" and ran from the scene.

[12] Under cross-examination Belinda Spinks admitted that a couple of nights earlier the appellant had left a suitcase at their flat; it had been "left out the back in a little alleyway behind our flat." She appeared to admit that at some stage the appellant went and had a look at that suitcase, but it is unclear when that occurred in relation to the other events. In cross-examination it was put to her that there were inconsistencies between her evidence and her original statement; for example, it was put to her that in her original statement she said she fell to the ground, whereas her evidence was that she was forced to the ground. She denied that the appellant also ended up on the ground; she asserted he was "standing over me". She reiterated under cross-examination that when Bowman came to her aid he jumped on the back of the appellant. She denied that prior to that happening the appellant had commenced to run away. She said he did appear to be moving towards a bag which he had brought with him.

[13] Her cross-examination also established that during the scuffling Bowman and the accused moved to a point near some road barriers at the front of the residential building. At some stage Belinda Spinks saw the appellant pull a mobile phone out of his bag. After the stabbing the appellant moved towards the drain. According to Belinda Spinks she "didn't try to restrain him, no, but I pushed – pushed the barricade into the drain after him." She said that she couldn't lift the barricade but she did push it over. A photograph showed one of the barricades down.

[14] In oral submissions the appellant made much of the following passage in the cross-examination of Belinda Spinks:

> "You picked up one of those yellow A frames didn't you, and you went to have a go at Mr Hunter?-- After I realised Shane was stabbed, yes.
>
> Now, that's the first time – that's the first time you've indicated you've picked up one of those A frames, isn't it?-- I – I mentioned it to the police the day of my – I guess the day it happened, yes.

> Did you? Did you put it in your statement, did you?-- I'm not sure if it was in my statement or not.
>
> HIS HONOUR: But did you pick it up or did you try to pick it up?-- I tried to pick it up.
>
> MS CROSLAND: You tried to pick it up. You picked it up and you actually threatened my client with it, didn't you?-- Oh, I didn't threaten him with it, no. I pushed it towards him into the drain."

[15] The appellant submitted to this court that there was in that passage an admission by Belinda Spinks that she actually picked up the A-frame, presumably with the intent of striking the appellant with it.

[16] It was also put to Belinda Spinks in cross-examination that the only reason the appellant grabbed her by the shoulders was to get her off the appellant because she was attacking him; she denied that proposition. She also specifically denied that she had taken hold of the A-frame and "had a go at Mr Hunter".

[17] Bowman's evidence was that initially he was standing near the doorway to their unit and from there noted that the appellant was "very agitated and very wound up" when speaking to Belinda Spinks. When he arrived the appellant was carrying a black bag "just like school bag". He saw the appellant grab Belinda Spinks around the throat area; according to him she was "throwing arms and stuff around trying to push him off." He came forward and pushed the appellant. That broke the appellant away from Belinda Spinks. Bowman kept walking towards the appellant who was "walking backwards". Bowman said he pushed him twice and then there was some yelling and abuse exchanged. Bowman said that it wasn't until after he chased the appellant into the drain area that he was aware he had been stabbed. He did say that in the course of the scuffling he "felt a soft punch in the chest." Bowman said throughout the scuffling the appellant was holding onto his black bag. Bowman also said that when the appellant ran into the drain area he bumped into one of the barricades but he was unable to say whether it was then knocked over. Under cross-examination he was asked precisely what he did in order to get Belinda Spinks and the appellant apart. He said: "I just come over and just sort of pushed Aaron away, sort of just pulled it apart sort of thing. … I sort of come from behind over – like and come over and just sort of – over from behind Belinda." He specifically denied jumping on the appellant's back. Whilst Bowman admitted scuffling he did not admit to actually punching the appellant. He maintained that the appellant had the black bag in his hand throughout the scuffling.

[18] Bowman denied that at any stage Belinda Spinks had hold of one of the A-frames. There followed another passage in cross-examination to which the appellant made specific mention in oral evidence. Bowman's attention was drawn to his evidence at committal where he had said Belinda Spinks wasn't trying to hit anyone with the A-frame but she might have had a hand on it. It was put to him he there said "I can't remember, but she had it in her hands." When that was put to him in cross-examination at the trial he replied: "I don't remember her picking it up though. I remember her having something, like holding on to it, but I don't remember it being …".

[19] Bowman's evidence was that he didn't recall touching the A-frame and he specifically denied striking the appellant with it.

[20] As already noted the taped interview between the police and the appellant was before the jury. Of particular significance was the fact that in that interview he said the knife was in his pocket: "It's got like a clip-on thing, yeah, that clips onto your pocket". The video rather graphically displays the appellant pulling up his shirt and demonstrating to the police officers how the knife was attached to his pocket, and how he took it from there at the material time. There is also a rather graphic demonstration of how the appellant then said he held a knife out in front of him, pointing it in the direction of Bowman.

[21] The appellant's evidence was that he got the knife from Graham a couple of days before the date of the incident for the purpose of using it in repairing mobile phones. He said that it was in the black bag along with several parts for mobile phones.

[22] His evidence was that when he went to the residence of Belinda Spinks he wanted to sort out the position with the fob watch, and also to retrieve the "big black suitcase" containing property of himself and his girlfriend. According to his evidence Belinda Spinks said: "Your gear's not here. You're bag's there, but your gear is not here". He said that he then went to walk down the alleyway and "as I've turned around and started to walk, I just chucked me bag over me shoulder and I started walking down and someone has jumped on me. I didn't know whether it was him or her. Then I just started wrestling a bit."

[23] According to him there followed some conversation about him calling the police. Then he said:

> "She just jumped on me and just grabbed me. … I didn't know to start with, but when I sort of – as soon as I grabbed onto her arm and went to pull it around, it was a woman's arm. That's when I knew it was her. … I grabbed her and I went to put her on the ground and she was kicking and screaming a bit. Anyway, she was trying to get up. Shane came over and grabbed her and then he sort of like moved her away."

[24] According to the appellant he then kept walking down the driveway. His evidence went on:

> "She has come and grabbed me again and he's at the same time grabbing me and fighting more, sort of not so much punching, but more – she was sort of more hitting, but he was wrestling and this sort of happened around – in between where the garage is and the start of that little walkway…".

[25] His evidence was then that he turned and grabbed his bag and started walking down "pretty quickly and he's come and grabbed me again." There was then some wrestling. The appellant said that he had grabbed his bag but he "dropped me bag at that stage and started wrestling with him." He then said that he grabbed the phone out of his bag and called the police. It was at that point that according to the appellant Bowman "grabbed one of those A-framed things." The appellant went on: "when he's done that I just sort of – and it's now and I – I pulled out me knife…". It is clear from his evidence that he got the knife from his bag. He then said that Bowman hit him on the back with the A-frame though he conceded it did not cause any injury. It was "[w]hen he went to swing the A-frame at me" that the appellant opened the knife. His evidence-in-chief was:

> "Waved the knife at – like, you know, I – I was going to put the knife down and just start punching into him, but he didn't drop the A-frame so I didn't drop the knife. And then he's gone – he's gone just swinging again and I – I've just, sort of, ducked it and I punched him – and I punched him in the stomach and it, sort of, kept going on, like, I didn't know I'd stabbed him and he didn't know he'd been stabbed. He just thought it was a punch and he kept going for a bit and then Belinda started carrying on…".

[26] Under cross-examination the appellant asserted that: "I don't put a knife on my side like you see people do." He reiterated that the knife was in the bottom of the black bag before he took it out. When asked about getting it out he said: "Just put your hand in and feel around for the knife, you know. That's what I did." Under cross-examination he specifically denied that the knife was in his pocket.

[27] The following questions asked by the learned trial judge during the appellant's cross-examination are also relevant:

> "In the record of interview [you] seem to suggest that you had the knife in your hand and he jumped on your back, and you turned around and that's how he got stabbed. Is that how it happened?-- More or less. We were wrestling when – we were wrestling when he got stabbed.
>
> But did he jump on your back and you turned around with the knife in your hand?-- I got whacked and then I got grabbed from behind and then we were wrestling, yeah."

[28] In his evidence before the jury the appellant does not clearly allege that Bowman jumped on his back in the course of the scuffling or wrestling. In the police interview there is reference to Bowman jumping on his back.

[29] Under further cross-examination he denied grabbing Belinda Spinks around the throat.

[30] In re-examination the following exchange occurred:

> "Mr Hunter, you said you knew the knife was in your hand when you went to punch Mr Bowman. When you went to – to hit Mr Bowman with your hand did you intend to use the knife on him?-- No, I went to punch him with my fists.
>
> Okay. And how was – how did you intend to do that?-- I – I had the knife in my hand, the knife was coming out here …
>
> So, you had – the knife was coming out to the left-hand side of your hand, you were using your right hand?-- Yes.
>
> Is that what you're saying? Yes?-- I went to punch him. He – he swung the A-frame at me, I've ducked and went underneath him and punched him.
>
> … And – and from that – is that – did you only do that once?-- Yes, I did.

…

Throughout this – this incident, was it ever your intention to stab Mr Bowman?-- No."

[31] The defence of provocation to the charge of assaulting Belinda Spinks was based on her yelling at him and striking him. As already noted the appellant also relied on self-defence; what he did in grabbing Belinda Spinks was by way of self-defence to her assault on him. As already noted the appellant also denied at any time grabbing Belinda Spinks around the throat.

[32] So far as the stabbing was concerned the defence of self-defence was dependent upon acceptance of the appellant's version of events, namely that Bowman struck him with the A-frame and what he did was in response to that. The alternative defence was that of accident; his intention was merely to punch Bowman and in the heat of the moment he did not realise (or forgot) that the open knife was in his hand.

[33] One of the appellant's grounds of appeal was that the learned trial judge erred in directing the jury on self-defence. In the course of the summing-up self-defence was explained in simple language directed to a large extent to the actual events in question. It could not be said, in my view, that the direction was inadequate or that the jury were in any way misled as to what was involved in the defence. There is no substance in that ground of appeal.

[34] It is true that in outlining both the prosecution and defence cases the learned trial judge quoted primarily from evidence-in-chief of the witnesses, particularly the Crown witnesses. He did so against the background of directing the jury that they had to reach their verdict on the whole of the evidence, and emphasising that he was only drawing their attention to some parts of the relevant evidence.

[35] In view of the fact that the appellant admitted having the knife in his hand when Bowman was injured, it was understandable that there would be somewhat more concentration upon the appellant's evidence. In the summing-up the learned trial judge quoted reasonably extensive passages from both the examination-in-chief and cross-examination of the appellant.

[36] At the end of the day the passages quoted from the various witnesses would have given the jury a good overview of the competing versions. I am not persuaded that the summing-up was unbalanced because of the way in which passages from the evidence of various witnesses was read to the jury. It is not established, in my view, that uneven weight was placed on the Crown evidence as against that of the appellant in the course of the summing-up.

[37] The learned trial judge at an early stage in the summing-up gave a direction in usual form indicating to the jury how they were to approach inconsistencies in the evidence. Amongst other things they were told they should look for some explanation for any change in story, and it was emphasised that the jury, being the sole judges of fact, had to determine the importance, if any, of any inconsistency. That direction in its terms clearly applied to an inconsistency whether in the evidence of a particular witness or as between witnesses; it applied both to prosecution and defence witnesses.

[38] It is fair comment to say that the learned trial judge in his summing-up did not make much of inconsistencies in the evidence of Belinda Spinks and Bowman. But at

least some inconsistencies in that evidence would have been immediately obvious to the jury from hearing the passages read from the evidence of each of those witnesses.

[39] Again, given the nature of the defence case, one important inconsistency for the jury to consider was that between the appellant's statement to the police and his sworn evidence as to how he came to have the knife in his hand. It is not surprising that the learned trial judge did refer to that inconsistency in the course of his summing-up.

[40] In his oral submissions to this court the appellant highlighted what he claimed to be a major inconsistency in the evidence of Belinda Spinks as to the extent to which she handled an A-frame in the course of the incident. The relevant passages have been quoted above. They are not entirely clear, and it is difficult to see how any such inconsistency was of material significance when the jury was considering the defences of self-defence and accident. The appellant never alleged that he was actually struck with the A-frame whilst it was in the hands of Belinda Spinks. His assertion was that Bowman struck him with the A-frame. That was denied, and there was no injury to the appellant's back tending to support his case.

[41] After reviewing the whole of the evidence, and reading the summing-up, I am not persuaded that the learned trial judge made any significant error in directing the jury with respect to inconsistencies, particularly inconsistencies in the evidence of prosecution witnesses. Of course one can always say that specific reference should have been made to some other part of the evidence, but the real question must be whether or not the summing-up was balanced and fairly presented both the prosecution and defence cases. In my view that test was satisfied here.

[42] Given the injury to the general area of the neck sustained by Belinda Spinks it is not surprising that the jury rejected the appellant's contention that he did not assault her. Given the lead up to the appellant's visit to the residence of Belinda Spinks, and the evidence from Belinda Spinks, Bowman and the appellant as to what occurred there, it could not be said that the jury acted unreasonably in rejecting the defence of provocation to the assault on Belinda Spinks.

[43] Given the whole of the evidence it is not surprising that the jury rejected the defence of accident to the charge of wounding Bowman. So far as self-defence to that charge was concerned, the real issue for the jury was a credibility one. If the jury was satisfied that Bowman struck the appellant with the A-frame, or if they could not reject beyond reasonable doubt the evidence supporting that contention, there was a basis for the jury considering self-defence. If the jury reached that stage, then it would be necessary for them to consider the reasonableness of the appellant's response. The jury may have had regard to the evidence of Duff and what was shown on the security video when considering such issues. Again, given the totality of the evidence and the directions given as to self-defence, it cannot be said that the jury were unreasonable in rejecting it.

[44] In the course of oral submissions to this court some reference was made to questions asked of witnesses, particularly the accused, by the learned trial judge. Having read the whole of the evidence I am not persuaded that the interventions by the learned trial judge exceeded proper bounds. It is true that during the evidence of the appellant the learned trial judge questioned the truthfulness of the evidence that he

had the knife to use as a tool when repairing mobile phones. He returned to that in the course of his summing-up where he said:

> "You might ask yourselves this question, members of the jury. Why was the accused carrying a knife on this occasion, and you might think that is a very important question. You might think that the knife had nothing to do with fixing up mobile phones, but that is a matter for you. You are the sole judges of the facts."

[45] It was correct, and proper, for the learned trial judge to tell the jury that one of the questions they should consider was why was the appellant carrying a knife. If the matter had been left there, no objection could be taken to the statement. The observation that some might think the knife had nothing to do with repairing mobile phones was more controversial, but it was qualified immediately by the statement that the matter was one for the jury, being the judges of the facts. It would have been better if the learned trial judge had not made in the course of the trial that type of observation. But I am not persuaded that in the overall context of the trial such interventions and observations transgressed the acceptable limit. (*Mawson* [1967] VR 205 at 207 and *R v Thompson* (2002) A Crim R 24 at [41] and [43]).

[46] The appeal against conviction should be dismissed.

[47] No specific submissions were addressed by the appellant with regard to the sentence, other than asserting that it was manifestly excessive.

[48] The appellant is a 33 year old man with prior convictions for property and drug related offences. He had no prior convictions for offences involving violence. The evidence established that both victims were unarmed, and the jury negatived provocation and self-defence.

[49] In all the circumstances the sentence imposed was an appropriate one and leave to appeal should be refused.

[50] The orders of the court should therefore be:

1. Appeal against conviction dismissed.

2. Leave to appeal against sentence refused.

[51] **MUIR J:** I agree with the reasons of Williams JA and with his proposed orders.

[52] **HOLMES J:** Williams JA has given a comprehensive account of the evidence in his judgment for which I am grateful. While I am in agreement with the result at which he arrives, I depart in some respects from his view of the way the trial was conducted. There were judicial interventions in the trial – for example, intervening during cross-examination of the complainant Bowman about the events to ask him how long he had off work after the stabbing and whether he had required a general anaesthetic when the wound was operated on, and questioning the appellant during his examination in chief about how long it was since he had last worked – the justification for which is hard to fathom. They were not, however, of sufficient number to render the trial as a whole unfair.

[53] There were also, in my view, matters of concern in the summing up. The reading of passages only from the evidence in chief of the Crown witnesses, as opposed to passages from both evidence in chief and cross-examination of the appellant, was, I

consider, undesirable. The flavour of evidence given in chief is necessarily rather different from that of evidence given under cross-examination, in the course of which questions tend to take a rather more strident and disbelieving tone and answers a more defensive one. It is also of concern that there were discrepancies between the versions of the two principal Crown witnesses, Ms Spinks and Mr Bowman which became more apparent in cross-examination, of which the jury was not reminded, either by reference to or reading of their evidence in cross-examination. Those discrepancies were of relevance for the obvious reason that the Crown case depended on their evidence, but also because Ms Spinks' version, which entailed Mr Bowman jumping on the appellant's back, something Mr Bowman denied, gave some support to a version given by the appellant in his interview with police officers. However, the version in the police interview was not advanced by the appellant at trial or relied on as explaining the course of events leading to the stabbing. In consequence, I do not think it can be said that the appellant was deprived of a chance of acquittal by the failure to refer to this area of the evidence.

[54] Another unhappy aspect of the summing up was the learned trial judge's invitation to the jury to consider the question of why the accused was carrying a knife on the occasion in question and his suggestion that they 'might think that the knife had nothing to do with fixing up mobile phones'. That suggestion was not squarely put to the appellant at any stage, and the way in which the direction was framed was likely to suggest the trial judge's own incredulity as to the appellant's stated reason for having a knife.

[55] However, the defects I have adverted to were not such as could be regarded as fundamental. My conclusion, on a consideration of the whole of the evidence, including the supporting evidence of the physical injuries to the complainants, and the varying explanations given by the appellant, is that his conviction was inevitable regardless of them. I concur, therefore, with Williams JA in concluding that the appeal against conviction should be dismissed. No basis was shown for interference with the sentence imposed, and the application for leave to appeal against sentence must similarly be dismissed.