SUPREME COURT OF QUEENSLAND

CITATION:	*R v Coombes* [2003] QCA 388
PARTIES:	**R** **v** **COOMBES, Briony June** (appellant)
FILE NO/S:	CA No 148 of 2003 DC No 11 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Application for leave to appeal against sentence Appeal against conviction
ORIGINATING COURT:	District Court at Innisfail
DELIVERED EX TEMPORE ON:	3 September 2003
DELIVERED AT:	Brisbane
HEARING DATE:	3 September 2003
JUDGES:	McMurdo P, Dutney J and Philippides J Separate reasons for judgment of each member of the court, each concurring as to the orders made.
ORDER:	**Appeal against conviction dismissed.** **Leave to appeal against sentence refused.**
CATCHWORDS:	CRIMINAL LAW – PARTICULAR OFFENCES – Where appellant convicted of one count of attempted fraud and one count of perjury – where appellant sentenced to 18 months imprisonment and 2 ½ years imprisonment respectively, to be served concurrently and suspended after 10 months with an operational period of 4 years – whether sentence manifestly excessive CRIMINAL LAW – EVIDENCE – MATTERS RELATING TO PROOF – whether evidence presented at trial was sufficient to prove the appellant's guilt beyond a reasonable doubt
COUNSEL:	The applicant appeared on her own behalf C Heaton for the respondent
SOLICITORS:	The applicant appeared on her own behalf Director of Public Prosecutions (Qld) for the respondent

PHILIPPIDES J: The appellant was found guilty after trial of one count of attempted fraud in respect of which she was sentenced to 18 months imprisonment, and one count of perjury in respect of which she was sentenced to two and a half years imprisonment. The sentences were imposed concurrently to be suspended after 10 months for an operational period of four years.

The appellant appeals against her conviction and also seeks leave to appeal against sentence. The circumstances of the offences are as follows. On 25 September 2000 the appellant complained to police that her house had been broken into and that a number of items had been stolen. Police officers Steele and Hayes attended the appellant's house at 8 Bello Drive, Belvedere, Innisfail and were told that about $85 in loose change had been taken from a container, and that a cigarette lighter and a packet of cigarettes had also been stolen.

The police noticed a kitchen window that was ajar and that may have served as a point of entry. Near the kitchen window on the kitchen bench the police noticed four gold rings which were clearly visible, and mentioned to the appellant that she was lucky that the rings had not also been taken. She agreed, according to their evidence, and said that they were valued at about $4,000. Officer Steele completed a Criminal Offence Report stating that $85 in coins, a cigarette lighter, and a packet of cigarettes had been stolen, but noting that "jewellery left on table, valued at $4,000, was untouched".

On 7 October 2000 a person called Jahmal Davis was arrested and charged in relation to a number of similar break-ins that had occurred in the general area of the appellant's house. He was interviewed by police officers Thiry and McCallum, and admitted that he was responsible for the break-in at the appellant's house. Davis admitted to breaking into the appellant's house and stealing the items, being the $85 in change, the cigarette lighter and the packet of cigarettes.

Officer Thiry, contacted the appellant, according to his evidence, on the same day and advised the appellant that a person had been apprehended in relation to the break-in at her house, and that he had admitted to stealing the items I have mentioned.

His evidence was that the appellant then told him that the rings were also stolen, and that she must have been broken into twice and that the rings were worth over $4,000. Officer Thiry's evidence was that that was the first occasion on which he became aware that the rings had been stolen. Davis was further interviewed by Thiry and McCallum, but denied stealing any rings.

On 6 November 2000 Officer McCallum obtained a signed statement from the appellant in which she stated that she had got home at about 6.15 p.m. on 25 September 2000, having been given a lift home by Alison Willis, and that shortly thereafter she noticed that a container of loose change had

gone missing, prompting her to phone the police. In the statement it was also stated that while waiting for the police, she had another look around the house and then noticed that the rings that had been left on the kitchen bench that morning were also missing.

The appellant provided to her insurer a completed claim form dated 18 October 2000 which included in the schedule of losses reference to four rings, although there was a deletion dated 11 November 2000 in respect of one ring which was noted as being found on that date. The claim was received by the insurer on 17 November 2000.

On 27 November 2000 Davis came before the Magistrates Court for committal mention in relation to the break-in of the appellant's premises and other premises in respect of which he had made admissions. As a result of discussions between the police officer, Ralph Laksa, and the legal representatives for Davis, an offer was made in relation to the speedy resolution of the charges against Davis. However, Davis continued to deny having stolen the jewellery. He later gave evidence to that effect at the appellant's trial.

The offer made by Davis's legal representatives to the prosecution did not include an allegation that the appellant's jewellery had been stolen. The Prosecutor then contacted the appellant to see if she was willing to accept that resolution, and to ask whether she had any material that might support her allegation relating to the stolen jewellery. The appellant

maintained her assertion that the jewellery had been stolen. She gave the Prosecutor some photographs showing her wearing the rings to support her claim. The Prosecutor's evidence was that there was mention of four rings.

Eventually Davis simply pleaded guilty to all the charges alleged against him so that he could finalise his matters.

On 15 March 2001 he pleaded guilty to stealing the rings and to the other offences and was sentenced to three years' imprisonment to be suspended after 15 months for an operational period of four years.

On 19 May 2001 police executed a search warrant at the appellant's house and located four rings inside a velvet purse in a jewellery box in the lounge room. There was evidence identifying those rings as being the same rings that were the subject of the claim on the appellant's insurer and there was evidence concerning admissions by the appellant to that effect to the police. This led to the appellant being charged and convicted of attempted fraud, namely that she had attempted to obtain a sum of money from her insurers by a false claim for loss not suffered and of a further count of perjury, namely that she had provided a sworn statement to the police in respect of the rings alleged to have been stolen. The appellant's statement was tendered at the hand-up committal of Davis.

At the appellant's trial the appellant did not give evidence or call evidence.

On 14 November 2001 Davis was resentenced and a sentence of two years' imprisonment, suspended after 12 months for an operational period of three years was imposed.
As regards the appeal against conviction, ground 1 raises a number of matters in relation to the evidence of McCallum. I do not consider there is anything of substance raised by those allegations that would cause the conviction to be in jeopardy.

Complaint is made as to the failure to produce the original handwritten version of the appellant's statement of 6 November 2000 taken by Constable McCallum. At the committal, McCallum's evidence was that he had recorded in long hand the record of interview in his notebook. At the trial he explained that he had subsequently looked for that notebook and realised that he had been mistaken in his evidence at the committal. He said that he had in fact recorded the statement in long hand on A4 foolscap from a foolscap pad, which he had taken with him to the appellant's workplace to obtain her statement, the appellant being unable to attend at the police station. He said that he had disposed of that version after the typed-up version had been signed by the appellant.

The appellant maintained that, without the original record of interview, the typed-up version was the sole source of evidence of perjury and that the appellant was unable to demonstrate without the original record that there was a difference between the record of interview initially taken and the typed-up statement. In this regard, the appellant argues

that her contentions are supported by the fact that there are numerous mistakes in the statement prepared by McCallum as signed by her.

At the trial the learned trial Judge properly summarised the defence case. The appellant's case, she explained, was that the appellant was in a hurry when she signed the statement and did not carefully read it. Her Honour also made reference to the defence case that the statement, although signed, contained mistakes and referred specifically to the incorrect date noted in the statement. That is, the date of 6 October 2000 instead of 6 November as the date the statement was made. All of those matters, of course, were matters for the jury to take into account and to consider. I do not consider that there is any substance in respect of these matters.

Before us, the appellant raised an additional matter. She said that the statement was seriously incorrect in that it should have recorded that the jewellery was "not missing" rather than recording a statement that the jewellery was "also" missing. That matter was not put to McCallum as it could have been, even without the original long-hand version of the interview. That ground must also fail.

In ground 2 of the notice of appeal the appellant also raised matters going to the evidence given by Willis. The evidence of Willis was to the effect that, when she went over to the appellant's house on the afternoon of 25 September 2000, she arrived shortly after 6 p.m. and was told by the appellant

that she had been broken into and that the police had been around. Willis gave evidence that the appellant also told her at the time that the rings had been stolen.

Willis' evidence did not sit with the evidence of the police officers Steele and Hayes to the effect that they arrived at 8.10 p.m., or thereabouts, and that the appellant did not complain to them that the rings had been stolen when they attended. However, as the Crown submitted, such inconsistencies were purely a matter for the jury to resolve and the evidence as to the inconsistencies in the evidence was fully before them.

There is one aspect in which the appellant claims evidence was not before the jury with respect to these inconsistencies in relation to the evidence of Willis. The appellant says that she now has evidence concerning a phone call she made, which casts doubt on Willis' evidence as to the timing of her visit. That material, in my view, does not raise any issue which render the jury's verdict in jeopardy. I do not consider that it raises any matter of sufficient weight which shows there has been a miscarriage of justice, particularly given the very strong Crown case.

In ground 2, the appellant also raises a matter in relation to Laksa's evidence that the appellant came before the Court bringing photographs with her. I do not consider that there is anything of substance in this ground. The appellant

contends that the impression is that the appellant was in the body of the Court.

In ground 3 of the notice of appeal, the appellant raises arguments concerning the description and identification of the rings. There was photographic evidence of the rings said to be the subject of the insurance claim and the charge resulting in the conviction of Davis. In addition, there was evidence from a number of witnesses. The appellant says that there was inconsistency in relation to this evidence. The inconsistencies were all matters of cross-examination and, to the extent that they were not, could have been. The matter was before the jury and, in my view, there is nothing in this ground which causes the jury's verdict to be questioned.

The appellant also raises in ground 3 the fact that her statement dated 6 November 2000 does not accuse Davis of any action. However, the Crown allegation was that the statement was made by the appellant and was made knowingly to be false. It was not necessary for any specific allegation against Davis to be made in that statement. The evidence was - and the jury were entitled to take the view - that the appellant knew that her statement was being used for the purpose of prosecuting the offender who had broken into her house and indeed when contacted by the police prosecutor she maintained her allegation and provided photographs to support her allegation when it was questioned. Again, I do not consider that there is anything in this ground of appeal.

In ground 4 the appellant asserts that the evidence of Officer Thiry that he had no knowledge of the missing rings prior to speaking to the appellant was incorrect. This ground goes towards the appellant's contention that she did not act in a knowingly false manner and that she was merely mistaken as to how the jewellery went missing and that she only connected the missing jewellery with Davis's break-in because of Thiry's suggestion and information.

At trial, Thiry was challenged about his knowledge of the inconsistencies that emerged during the investigation - in particular, the CRISP report which initially recorded that the jewellery had not been taken. The matter was one for the jury to assess. It is to be noted that Thiry's contention that he did not know of the claim that the rings had been taken until the appellant mentioned it to him is supported by the evidence of McCallum in the sense that McCallum's evidence was that Davis was re-interviewed about the rings after Thiry had spoken to the appellant (although McCallum was not privy to that particular telephone conversation of course).

Before us the appellant raised a further argument in support of her contention at trial that she was merely mistaken as to how the jewellery went missing and that she only connected the lost jewellery with the break-in at Thiry's suggestion and information. At its highest, the evidence which relates to certain audio tapes, which were not before the jury, is said to show that Thiry in fact raised the matter of the theft of the jewellery with Davis in the interview independently of any

complaint by the appellant that the jewellery had been taken. In addition, there is said to be a field tape of the search warrant, which was executed at the appellant's house which shows that when the jewellery was found the appellant said, "What have I done?".

Both of these audio tapes are relied upon to support the appellant's innocence of the charges and to show that the jury's conviction must be taken as being in jeopardy. However, I am unable to accept that that proposition has been made out. Even accepting the appellant's contentions as to the nature of those audio tapes at its very highest, regard must be had to the fact that the jury was entitled to take the view that it was implausible that Davis would have been charged on the basis of the CRISP report, which clearly stated that the jewellery had not been taken unless the appellant had in fact complained that the jewellery had been taken. In addition, the jury were entitled to have regard to the fact that the appellant's claim that she merely thought the jewellery had gone missing and did not connect the loss of the jewellery with Davis's break-in was inconsistent with the fact that the jewellery had been put away in a jewellery box. As her Honour said in summarising the prosecution case, "The only person who could have done that was the appellant," and as the prosecution maintained, it was implausible that the appellant would have put the jewellery in the jewellery box and not have been able to recall that the jewellery was there or even have looked inside it, given that she claimed to have searched the premises a number of times for the rings. In my view the jury

were entitled to accept the prosecution's case in respect of these matters and to reject the submissions put forward by the defence. The additional material now relied upon by the appellant does not change that matter in my view.

In ground 5 the appellant raised the issue of the failure by Willis to provide a diary referred to by her at the committal and also by the failure by McCallum to produce the notebook which he had referred to at the committal proceedings. These matters were not pursued at trial and in any event as regards McCallum there was an explanation given for the absence of the notebook. These matters do not raise anything of substance which brings the jury's verdict into question.

Ground 6 raises a complaint that Alisa Day, a jeweller from Innisfail, was not called to give evidence. Evidence relating to valuation appraisal given by Alisa Day was given by Officer Thiry. The documents relating to the appraisal and valuation were tendered before the jury. The valuation of the rings was marginally relevant in relation to what the appellant told the police concerning the value of the items stolen and in addition could be said to go to the question of identification of the rings, the subject of the claim that the rings had been stolen.

However, as the Crown submitted, there was substantial evidence of the identification of the rings not the least an acknowledgement which the jury were entitled to have regard to made by the appellant that the rings founds were the rings the

subject of the insurance claim. It is important to note that there was no application for the Crown to call Alisa Day and of course she could have been called by the appellant. I do not consider that the matter raises anything of substance.

There were a number of other matters raised under the heading “Other Complaints” in the initial outline of argument which are also the subject of the present amended outline of argument. I do not think that anything raised under that heading raises any matter of substance. In my view, the appeal against conviction should be dismissed.

As regards the question of sentence, the learned sentencing Judge had regard to a number of matters in imposing sentence. Her Honour had regard to the fact that perjury is a very serious offence and that deterrence was an important sentencing factor. Her Honour also had regard to the fact that the appellant's perjury had put an innocent person in danger of serving 12 months imprisonment, that she had some involvement in the justice system in her work, and that she knew full well the implications of making the false statement. Her Honour also had regard to the fact that there had been no indication of any remorse.

In the appellant's favour, her Honour took into account the fact that the appellant had an excellent work history, the positions of responsibility the appellant held with the Department of Families, the lack of prior criminal history,

and the appellant's health difficulties, and the fact that, as her Honour said, the offences were totally out of character.

The applicant complains that the sentence imposed was manifestly excessive and that it was based on an assumption concerning the material relating to the sentencing of Davis which was incorrect and also that the sentence was imposed on the basis of inappropriate comparatives.

The Crown submitted that the general sentencing trend evidenced in the schedules tendered before this Court supported the contention that the sentences imposed were within the appropriate range.

Complaint was made by the appellant that the sentencing Judge did not have before her the transcript of the submissions on the re-opening of the sentence and the sentencing remarks on the re-opening of the sentence imposed on Davis. Whilst that is true, her Honour was clearly correct in her conclusion that the effect of the appellant's false evidence was to expose Davis to penalty greater than that which was otherwise appropriate in that the head sentence imposed was longer by 12 months and the period of imprisonment to be served before the sentence was suspended was 15 months instead of 12 months. In addition, the operational period initially imposed was 12 months longer. All of that is apparent from the sentencing remarks in respect of the re-opening of the sentence which are now before the Court.

Her Honour was entitled to conclude that the applicant had not demonstrated remorse. Indeed, it was a matter which was conceded by the applicant's counsel. The Crown pointed to the aggravating features of this case, which included that the appellant maintained her false assertion even though she was queried in the context of Davis's appearance at Court at the committal mention. The appellant took the effort to go to the Prosecutor with photographic evidence to support her claim that her claim was a genuine one.

As regards the cases put before the learned sentencing Judge as comparatives, it is often the case that comparatives are put forward that are not truly on all fours with the case before the Court. It is often difficult to find cases that are on all fours with the case before the Court. That, of course, is taken into account in the sentencing process and was a matter that was recognised by both counsel below in their submissions.

The Crown submitted at sentence that the comparatives indicated that the appropriate range was one of two to three years, allowing for a suspension of part of the period. The sentence imposed was within the range contended for by the applicant's own counsel of two to two and a half years given the suspension imposed by the learned sentencing Judge.

Given the schedule of comparative cases provided by the Crown, I consider that the sentence imposed was within the sentencing discretion and did take into account all relevant matters

including matters of mitigation. I would therefore refuse leave to appeal against sentence.

THE PRESIDENT: I agree. As Justice Philippides has demonstrated, the case against the appellant was a strong one and there is nothing in any of the grounds of appeal against conviction raised by her. The appellant did not give or call evidence. The defence contentions were fully and fairly before the jury in the trial Judge's summing-up. The convictions were well open on the evidence. The appeal against conviction should be dismissed.

As to sentence, offences of this type are difficult to detect. Perjury strikes at the essence of the criminal justice system and the public's confidence in it. Here, an offender was subjected to the risk of a longer period of loss of liberty because of the applicant's perjury. The applicant, who represented herself in these matters, still seems to have little insight into this concerning consequence of her dishonest behaviour. A salutary deterrent sentence was required despite her previous good record as an employee and mother. The applicant did not have the benefit of an early plea of guilty. The mitigating circumstances, such as they were, were adequately reflected in the early suspension.

The application for leave to appeal against sentence should be refused.

DUTNEY J: I agree with the orders proposed and with the reasons given. In relation to the application for leave to appeal against sentence, I wish to add the following.

The sentence of two and a-half years' imprisonment for the offence of perjury for a person with the antecedents of the applicant appears severe in comparison with other cases to which we have been referred. In this case, there is, however, the particular aggravating feature that the person wrongly charged with stealing the property, the subject of the attempted fraud, in fact received an extended custodial sentence because of the offending conduct of the applicant. This is borne out by the reduction in sentence at the resentencing after the attempted fraud and the perjury were uncovered.

In the light of this feature, it cannot be said that the sentence is so severe as to take it outside the range of a sound sentencing discretion. Even if it were thought to be so severe, there is not, in my view, any basis for the applicant complaining about the suspension of the sentence after 10 months where there is no plea of guilty or apparent remorse.

THE PRESIDENT: The orders are as outlined.