

SUPREME COURT OF QUEENSLAND

CITATION: *R v Rayner* [2008] QCA 306

PARTIES: **R**
v
RAYNER, John Charles
(appellant)

FILE NO/S: CA No 175 of 2008
SC No 551 of 2008

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 3 October 2008

DELIVERED AT: Brisbane

HEARING DATE: 25 September 2008

JUDGES: Mackenzie AJA, Jones and Daubney JJ
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 – MISDIRECTION AND NON-DIRECTION – where the appellant was convicted after trial of unlawfully doing grievous bodily harm – where the indictment charged the appellant with attempted murder and, in the alternative, doing grievous bodily harm with intent to do grievous bodily harm – where a verdict of doing grievous bodily harm was also open – where the learned trial judge, in her summing up, directed the jury on self defence in relation to each alternative count – where the jury requested a redirection on the interaction between self defence and doing grievous bodily harm with intent – where the learned trial judge delivered a redirection in those terms – whether the learned trial judge erred in not giving a further redirection on self defence in relation to the charge of doing grievous bodily harm

COUNSEL: C Reid for the appellant
T Carmody SC for the respondent

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

- [1] **MACKENZIE AJA:** The appellant was convicted after trial of unlawfully doing grievous bodily harm. He went to trial on attempted murder and, in the alternative, doing grievous bodily harm with intent to do grievous bodily harm. On the alternative count, a verdict of doing grievous bodily harm was also open.
- [2] The ground of appeal argued was that the learned trial judge erred in not giving a direction on self defence to the jury in relation to the charge of grievous bodily harm when the jury requested a redirection on the interaction between self defence and doing grievous bodily harm with intent. The grounds that the learned trial judge had misdirected the jury as to self defence in the summing up and that the verdict of guilty of doing grievous bodily harm was inconsistent with the acquittal of doing grievous bodily harm with intent were conceded to have no substance and were not pursued.
- [3] The principal issue raised by the defence at trial was that the appellant had acted in self defence. That involved resolving conflicting evidence concerning the way in which the incident developed and the degree of force permissible, depending on the view the jury took of the facts. Apart from identifying what intent, if any, the appellant had, there was no other substantial issue in the trial for the jury to deal with.
- [4] It is not necessary to analyse in detail the various versions of events to resolve the limited issues involved in the appeal. By way of overview, there is no dispute that the appellant stabbed the complainant. The complainant had travelled from Kempsey for the purpose of visiting his daughter who lived with her mother, with whom he had had a relationship. His former partner's mother lived in the same cul-de-sac as the appellant and on occasions the complainant had socialised with him. The relationship between the complainant and the appellant deteriorated over time and one of the consequences was that the appellant believed that the complainant was responsible for phone calls which accused him of being a paedophile and "rock spider".
- [5] On the day before the incident, there had been shouted unpleasanties between them when the complainant visited the mother of his former partner. On the day of the incident, the complainant again went to the cul-de-sac, to pick up his daughter. There were different versions of what occurred but, subject to that, there is no doubt that the complainant was stabbed on the footpath outside the house he was visiting in a confrontation that occurred after the appellant had come from his house and approached the complainant. After the complainant was stabbed, he ran towards his car which was in the yard. While he was opening the boot he was stabbed again. There was a third stab wound but the appellant did not remember inflicting it. The complainant said that it was also inflicted in the fracas near the car.
- [6] In the version that the appellant gave to the police, he said that he had armed himself with a knife for protection on the morning of the incident because he believed there was going to be trouble. When the complainant arrived in the neighbourhood there was a verbal exchange as a result of which, the appellant said, he walked over "to find out whether he'd stopped making prank calls and why he was telling people I was a paedophile". There is a conflict as to whether the complainant or the appellant aimed the first blow. The complainant said that he feared he was going to be king hit, so he braced himself. He demonstrated his stance in the witness box by bending over slightly and standing with clenched fists

by his side. He said he was then stabbed with a knife produced by the appellant. The appellant said that the complainant had thrown one punch which missed and was about to throw a second when he struck him with the knife. That evidentiary conflict was for the jury to resolve.

- [7] There was no dispute that the complainant then went to his vehicle and was followed by the appellant. The complainant said he was trying to get a towel to stop the bleeding. The appellant said that, because he thought that the complainant was going to get a weapon from his car, he followed him and struck him again with the knife to stop him from doing so. It was against that background that the trial proceeded.
- [8] In her directions in the summing up, the learned trial judge explicitly told the jury, separately and sequentially in respect of attempted murder, doing grievous bodily harm with intent to do grievous bodily harm, and doing grievous bodily harm, that they could not find the appellant guilty unless they were satisfied that he was not acting in self defence. She gave directions, about which there is no complaint, about both provoked and unprovoked self defence. No redirections were asked for at the conclusion of the summing up.
- [9] After some time, the jury requested a redirection in the following terms:
“Clarification of the law is sought. One interpretation is if there is an element of self defence then GBH with intent is not possible. Another interpretation is that GBH with intent can exist with self defence.”
- [10] The redirection given commenced by identifying the question as referring to the relationship between grievous bodily harm with intent and self defence. A direction was then given that if the jury was satisfied beyond reasonable doubt that the appellant did grievous bodily harm to the complainant, intending to do him harm of that type, they had to consider whether he did so unlawfully. She told them that it was not unlawful to do grievous bodily harm with intent if it was done in self defence which had to be excluded by the prosecution beyond reasonable doubt. She summarised it by saying:
“If you are satisfied beyond reasonable doubt that the defendant did grievous bodily harm with intent, if you are left in reasonable doubt that he did so in self defence then you must find him not guilty of grievous bodily harm with intent.”
- [11] She then inquired of the jury whether anyone was in doubt as to the answer to the question. No one indicated any doubt.
- [12] The direction originally given in the summing up directly and explicitly told the jury that they could not convict of the offence of doing grievous bodily harm unless they were satisfied that self defence had been excluded. The question asked by the jury, while expressed in layman’s language, was clear enough. The jury wanted clarification as to whether, if self defence was not excluded, a verdict of doing grievous bodily harm with intent could or could not be returned. The redirection responded to that question. It was not contrary to the direction previously given with regard to need to exclude self defence before convicting of the offence of doing grievous bodily harm. Even if the jury’s question suggested that one or more of their number were unsure about the need to exclude self defence before a

conviction could be entered where intent to do grievous bodily harm existed, it is difficult to imagine that a jury, having been told that self defence had to be excluded in relation to the offence involving intention, would have treated the lesser alternative offence differently. There is no demonstrated reason why the learned trial judge erred in not giving a further direction about the offence of doing grievous bodily harm.

- [13] For the reasons given, I would order that the appeal against conviction be dismissed.
- [14] **JONES J:** I agree with the reasons of Mackenzie AJA and with the order he proposes.
- [15] **DAUBNEY J:** I respectfully agree with the reasons of Mackenzie AJA, and with the order he proposes.