

DISTRICT COURT OF QUEENSLAND

CITATION: *R v Richardson* [2020] QDC 129

PARTIES: **R**

v

Kelly Anne Richardson

(Defendant)

FILE NO/S: 453/19

DIVISION: Criminal

PROCEEDING: Trial

ORIGINATING
COURT: District Court at Ipswich

DELIVERED ON: 22 June 2020

DELIVERED AT: Ipswich

HEARING DATE: 15 June 2020

JUDGE: Lynch QC DCJ

VERDICT: **Not guilty**

ORDER: **1. Kelly Anne Richardson is formally discharged in respect of indictment number 453 of 2019.**

CATCHWORDS: CRIMINAL LAW – TRIAL HAD BEFORE JUDGE WITHOUT JURY – where the defendant is charged with one count of assault occasioning bodily harm – where a no jury order was made – where the trial proceeded before a judge alone – whether the Crown has proved beyond reasonable doubt that the defendant unlawfully assaulted the complainant

Legislation

Criminal Code 1899 (Qld) ss 269, 270, 271, 339, 615B, 615C, 644

COUNSEL: C Wallis for the Crown

N Edridge for the Defendant

SOLICITORS: Office of the Director of Public Prosecutions for the Crown
Bouchier Khan Lawyers for the Defendant

Proceedings

- [1] Kelly Anne Richardson is charged before the District Court at Ipswich on indictment number 453 of 2019, with the following offence:

That on the seventeenth day of April, 2018 at Leichardt in the State of Queensland, Kelly Anne Richardson unlawfully assaulted Cherelle Ellen Hanrahan and did her bodily harm.

- [2] On 23 April 2020, a no jury order was made in respect of this charge. When arraigned before me on 15 June 2020, the defendant entered a plea of not guilty. As a consequence, the trial has proceeded before me sitting without a jury.
- [3] Pursuant to s 615B of the *Code*, in conducting the trial I am required to apply, so far as is practicable, the same principles of law and procedure as would apply in a trial before a jury. This includes my taking account of any warning or instruction that would be required to be given to a jury. Pursuant to s 615C of the *Code*, I am required to identify in my judgement the principles of law I have applied, and the findings of fact upon which I have relied, in coming to my decision.
- [4] For the reasons that follow, I have reached the conclusion that the defendant should be found not guilty.

Evidence

- [5] In all, 7 witnesses, including the defendant, gave oral evidence. In addition, the following were admitted as exhibits:

1. Aerial photograph of Crosshill Street, Leichardt
2. Map of Crosshill Street, Leichardt
3. Photograph of Toongarra Road, Leichardt
4. Photograph of front of Police Beat on Toongarra Road, Leichardt
5. 11 photographs of Cherelle Hanrahan
6. Defendant's notebook
7. Defendant's lanyard

- [6] Pursuant to s 644 of the *Code*, the parties made the following admission of fact:

Ms Cherelle Hanrahan was seen by Dr Redoblado at the Riverlink Medical Centre at 13.54 on 17 April 2018.

- [7] The oral evidence included the following.

Cherelle Ellen Hanrahan

- [8] Cherelle Hanrahan is the complainant. Ms Hanrahan gave evidence that as at 17 April 2018, she was living 21 Crosshill Street, Leichardt with her partner Adam Garrington. She said she had never seen or met the defendant, although she had heard of her and knew she lived in the same street at number 31. That morning, a neighbourhood friend Ashley Jacobs, came to Ms Hanrahan's residence and told her the defendant had been at the front of her house taking photographs. Ms Hanrahan acknowledged she did not see that happen. Ms Hanrahan said she saw the defendant was at the front of her own residence so Ms Hanrahan walked down the street, stood outside the defendant's house, pointed her phone at the defendant and took a number of photographs. Ms Hanrahan said to the defendant "If you want to take photos of me I can take photos of you." Ms Hanrahan then returned to her residence.
- [9] Ms Hanrahan said later that day she heard a male and females yelling outside her house. By this time Mr Garrington was also at home. Ms Hanrahan said she went outside and was met by her neighbours Catherine Jacobs and Ashley Jacobs, who told her the defendant had been at her front door "bashing and yelling and screaming, yelling threats towards myself, to them, and she continued to threaten their safety and my safety". Ms Hanrahan acknowledged she did not herself hear any threat.
- [10] Ms Hanrahan said she and Mr Garrington decided to go to the Yamanto Police Station because of concerns for their daughter's safety. Ms Hanrahan said the four of them then got into their car. Ms Hanrahan said Mr Garrington was driving, she sat in the front passenger's seat, Catherine Jacobs was behind her, and Ashley Jacobs was behind the driver. She said they drove down Crosshill Street, into Birrell Street and turned into Toongarra Road.
- [11] Ms Hanrahan said when they turned the corner, she saw the defendant on the footpath, and Catherine and Ashley Jacobs identified her. Ms Hanrahan then told Mr Garrington to stop the car and he did so. She said when stopped, the car was partially blocking the left hand lane of traffic. Ms Hanrahan yelled out to the defendant, asking "what her fucking problem was". Ms Hanrahan said the defendant replied Ms Hanrahan didn't know who she knew and Ms Hanrahan yelled back. Ms Hanrahan said the defendant then ran to the car and struck her to the left eye with "pretty hard force" and she felt immediate pain. Ms Hanrahan also said she was grabbed and scratched on her upper right chest area by the defendant.
- [12] Ms Hanrahan said "then I got in defence mode" and got out of the car. Ms Hanrahan said there were then two physical altercations between her and the defendant but "I can't remember who started it first". She described both altercations involved pushing, shoving and punches being thrown by each of them. Ms Hanrahan could not say where her punches struck the defendant but said she herself was struck to the jaw. Asked whether she was struck to the eye in the first altercation, Ms Hanrahan replied "Not that I'm aware of, no." She acknowledged she was struck on the left side of her face in the second altercation and hit by at least a couple of punches to the head. Ms Hanrahan acknowledged the possibility of her being scratched on the chest in the altercations. Ms Hanrahan said the defendant threatened to blow up her house. Ms Hanrahan said Mr Garrington separated them and she got into the car and they drove

away. Ms Hanrahan said because of the threat, they drove past their property on the way to the police station. Ms Hanrahan said at the police station she was advised to first seek medical treatment and she did so before returning to the police station.

- [13] Ms Hanrahan identified photographs, taken that same day at the police station, which showed bruising to her left eye, a scratch on her upper chest, and bruising on her knuckles (Exhibit 5). Ms Hanrahan said she suffered pain to her left eye for days and also pain from the scratch to her chest that caused her discomfort.
- [14] Ms Hanrahan said she knew the defendant's ex-partner as someone who lived nearby in Birrell Street, and who was friends with Mr Garrington. Ms Hanrahan also acknowledged that at the time of these events she knew the defendant was living with a different male. Ms Hanrahan acknowledged she knew of an allegation the ex-partner of the defendant was a paedophile but denied saying that to the defendant when taking photographs of her. Ms Hanrahan admitted she may have said that during the later altercation. Ms Hanrahan admitted yelling at the defendant when taking photographs of her in the street. Ms Hanrahan said she was told which direction the defendant had walked before they got into the car but denied she and the others went looking for the defendant. Ms Hanrahan acknowledged they could have simply kept driving to the police station and said the reason she told Mr Garrington to stop was to ask the defendant about taking photographs. Ms Hanrahan admitted she was acting very aggressively when they pulled up. Ms Hanrahan denied the propositions that she was not struck at all when in the car, and that she initiated the fight by attacking the defendant.
- [15] Ms Hanrahan said she recalled the defendant had a notebook with her and also a lanyard. Ms Hanrahan initially denied choking the defendant with the lanyard or bringing her to the ground but later said she could not remember whether she had choked the defendant with the lanyard. Ms Hanrahan denied speaking to other persons in the vehicle about what to tell police. Ms Hanrahan initially denied laughing at the defendant when they left in the car, but later admitted she had said that in her police statement, and that it was true. Ms Hanrahan said the reason she got out of the car was because she felt safer doing so. Ms Hanrahan admitted that Mr Garrington removed a piece of paper from the book the defendant was holding while at the roadside. She denied ever reading what was contained on the page or discussing it with Mr Garrington. She claimed she had no idea why Mr Garrington took the piece of paper.

Adam John Garrington

- [16] Adam Garrington is the partner of Ms Hanrahan. He knew the defendant but his interactions with her were through police complaints and he acknowledged he did not have a good relationship with her. Shortly after he arrived home on 17 April 2018, he and Ms Hanrahan decided to go to Yamanto Police Station. He said their neighbours, Catherine and Ashley Jacobs, also came in his car. He said when they turned into Toongarra Road someone alerted him to the defendant on the footpath and Ms Hanrahan told the defendant to stay away from their house. Mr Garrington said he then had to stop the car to avoid hitting the defendant who ran out towards them. He said he stopped on the roadway. Mr Garrington said the defendant then punched Ms Hanrahan, while the car was still rolling, and while Ms Hanrahan was still in the front

passenger seat. Mr Garrington did not see the punch but heard it. He said the defendant was then grabbing at the seat belt of Ms Hanrahan. He said Ms Hanrahan then got out of the car.

- [17] Mr Garrington said there was then an altercation on the footpath involving Ms Hanrahan and the defendant in which both were pushing, shoving and punching. He said he twice separated them; the first altercation being for a couple of minutes, the second for a few seconds. Mr Garrington said he saw one or two blows struck to Ms Hanrahan's face; one to her chin the other to her neck area. Mr Garrington said the defendant had possession of a book and "I think I might've ripped a page when I was separating them." He said they then went to the Yamanto Police Station.
- [18] Mr Garrington denied ever hearing, before giving evidence, of any allegation the former partner of the defendant was a paedophile. Mr Garrington denied the group in the car went looking for the defendant because of concern she would complain to police. Mr Garrington identified the notebook the defendant had during the altercation (Ex 6). Mr Garrington admitted he'd ripped the page in the book that was partly torn, but denied ever reading what was on the part he'd torn out. He said that occurred by accident when he was trying to break up the fight. He said he probably threw the page in the bin but could not explain why he kept it. Mr Garrington denied deliberately tearing out that part of the page that contained detail of the defendant's intended complaint to police.
- [19] Mr Garrington denied the proposition that Ms Hanrahan was not struck when in the car but had attacked the defendant upon getting out of the car. Mr Garrington denied that Ms Hanrahan choked the defendant with a lanyard or at all. Mr Garrington did identify the lanyard the defendant was wearing (Ex 7). Mr Garrington denied going home before driving to Yamanto Police Station. Mr Garrington denied hearing Ms Hanrahan yell out that the defendant's ex-partner was a paedophile.

Catherine Mary Jacobs

- [20] Catherine Jacobs lived across the street from Ms Hanrahan and Mr Garrington. She knew the defendant by sight only as someone who also lived in the street. Ms Jacobs said on the morning of 17 April 2018, she was told by her son Ashley Jacobs, who was then aged about 24, the defendant was taking photographs of Ms Hanrahan's house. She acknowledged she did not herself see that occur but she told Ms Hanrahan of it. Ms Jacobs said Ms Hanrahan then wanted to go to the police so Ms Hanrahan, Ms Jacobs, Ashley Jacobs and Mr Garrington left in Mr Garrington's car.
- [21] Ms Jacobs said when they came to turn into Toongarra Road they saw the defendant on the footpath. She said Ms Hanrahan asked Mr Garrington to pull over and he stopped the car in the slip lane, off the main road. Ms Jacobs said Ms Hanrahan yelled out to the defendant "What's your problem? Why are you taking photos of my house?" Ms Jacobs said Ms Hanrahan and the defendant yelled things at each other before she saw a fist come through the window and hit Ms Hanrahan in the face. Ms Jacobs said Ms Hanrahan then got out of the car and engaged in a scuffle with the defendant in which she saw a couple of punches by Ms Hanrahan to the defendant's ribs and heard swearing. Ms Jacobs said Mr Garrington separated the women. Ms

Jacobs said her son also got out but remained at the back of the car. Ms Jacobs said Ms Hanrahan and Mr Garrington got back in the car and they drove to the police station. Ms Jacobs said her son did not go with them because Ms Hanrahan and Mr Garrington had forgotten to lock their house and her son walked home to do so.

- [22] Ms Jacobs acknowledged she'd heard an allegation the former partner of the defendant was a paedophile but denied hearing that yelled out that morning in the street or during the later altercation. Ms Jacobs denied the proposition the defendant did not touch Ms Hanrahan when in the car. Ms Jacobs said she did not recall seeing Ms Hanrahan choke the defendant with a lanyard but said she was distracted while looking for her phone when the fight was occurring. When asked to describe what she had seen, Ms Jacobs said she saw Ms Hanrahan execute her "signature move where she will throw a punch and follow through with an elbow". Ms Jacobs had previously seen Ms Hanrahan do this to her partner and heard Ms Hanrahan boast of it being "her move".
- [23] Ms Jacobs said at the time of the altercation, the defendant had possession of paper and either Ms Hanrahan or Mr Garrington "tore up a couple of pages". Asked to describe what she saw, Ms Jacobs said "I don't know whether it was both of them trying to grab it out of their hand or whether one did. ... But I did see paper get torn." Ms Jacobs denied hearing any discussion about what was on the paper and conceded it was possible it was deliberately torn by Mr Garrington. Ms Jacobs denied the group in the car were looking for the defendant. Ms Jacobs denied returning to Ms Hanrahan's house before driving to the police station. Ms Jacobs also denied any discussion about what should be said to police.

Sandra Catherine Green

- [24] Sandra Green was driving along Toongarra Road on 17 April 2018, and saw an altercation occurring on the footpath. Ms Green stopped her car at a bus stop, about 20 metres from the altercation, and called triple 0 to report events. Ms Green said she saw a white car, parked with the front on footpath and the rear on the roadway, protruding into the traffic lane. Ms Green saw a male person standing at the open driver's door and two women up against a nearby fence. Ms Green saw the smaller of the two women was bent backwards over the fence and the larger woman with her hands on the throat of the smaller woman, pushing her over the fence. Ms Green recalled the larger woman had something wrapped around the smaller woman's throat. Ms Green said that after a minute or two, the larger woman threw the smaller woman to the ground and then entered the vehicle which drove away. Ms Green said she did not see the male approach the two women. Ms Green spoke with the smaller woman after the car left and saw she had some red marks on her throat.

Jasmin Cooper

- [25] Jasmin Cooper is a Senior Constable of Police, presently stationed at Ipswich. On 17 April 2018, she was working and attended at Toongarra Road at Leichhardt. There she spoke with the defendant. She did not observe any injury to Ms Richardson. She transported Ms Richardson to the police station and commenced taking a statement from her, which was completed the following day. S/C Cooper said the defendant

gave her a lanyard and a notebook. S/C Cooper identified Exhibit 6 as the notebook given to her by the defendant and which contained S/C Cooper's handwriting. S/C Cooper said the defendant was co-operative with police and wished to make a complaint of assault.

Timothy James Proud

- [26] Timothy Proud is an acting Senior Constable of Police, now stationed at Eromanga. By consent, Officer Proud gave evidence via telephone. On 17 April 2018, he was stationed at Yamanto. On that day he spoke to Ms Hanrahan at the Yamanto Police Station and took a statement from her. Acting S/C Proud also arranged for photographs of Ms Hanrahan and her injuries to be taken that day. Acting S/C Proud said he spoke with Catherine Jacobs, Adam Garrington, and Ashley Jacobs. Acting S/C Proud said he was unable, despite a number of attempts, to obtain a statement from Ashley Jacobs. Acting S/C Proud also spoke with the defendant on 23 June 2018, and she provided a version of events to him.

Kelly Anne Richardson

- [27] Kelly Richardson is the defendant. Ms Richardson is in receipt of a disability support pension due to a birth defect. Ms Richardson confirmed that as at 17 April 2018, she lived at 31 Crosshill Street, Leichhardt. At that time she resided with her partner; her ex-partner lived nearby at 2 Birrell Street. Initially, Ms Richardson said that day, Cherelle Hanrahan twice came to her house; the first time she was taking photographs, and the second time she was yelling out that Ms Richardson's ex-partner is a paedophile. Later, Ms Richardson said Ms Hanrahan only came to her house on one occasion. Ms Richardson said as a result she rang Policelink and was advised to write down detail of what occurred and to come to the police station. Ms Richardson said she did write details of what occurred in her notebook. Ms Richardson said she then left home to walk to the bus stop to go to the police station. She said when she passed Cherelle Hanrahan's house she wrote her house number in the notebook. At this time she was confronted in an aggressive way by Ashley Jacobs but she kept walking. Ms Richardson denied taking any photographs of Cherelle Hanrahan's house.
- [28] Ms Richardson said she walked to Toongarra Road and saw Cherelle Hanrahan's group drive to her ex-partner's house in Birrell Street, and then drive to Toongarra Road. She said she saw Cherelle Hanrahan looking both ways at the intersection. Ms Richardson said at this time she felt scared and her "stomach was in knots". Ms Richardson said the car drove towards her, slammed on the brakes, and Ms Hanrahan was banging on the side of the car and yelling at her, including that her ex-partner is a paedophile. Ms Richardson said she was upset at this time because of what was said and was thinking "Leave me alone. Go away." Ms Richardson said Ms Hanrahan then got out of the car and commenced strangling her with her lanyard. She said others also got out of the car. Ms Richardson denied punching Ms Hanrahan at any time. Ms Richardson said Mr Garrington came up to where she was and Ashley Jacobs was also there. Ms Richardson said Mr Garrington said "I'll take that thank you" and took her notebook, which was folded open where she'd made notes. Ms Richardson said her notes were no more than two paragraphs and included her describing Ms Hanrahan

taking photos of her house, Ms Hanrahan going to her ex-partner's house, and Ms Hanrahan's house number.

- [29] Ms Richardson said when Ms Hanrahan was strangling her she tried to "release her hand off the lanyard". Ms Richardson then demonstrated how Ms Hanrahan's hands were at Ms Richardson's throat, and Ms Richardson used one of her own hands to attempt to pull one of Ms Hanrahan's hands away. Ms Richardson said she was backed against the fence. Ms Richardson said she had trouble breathing and fell to the ground. Ms Richardson said Ms Hanrahan told her "You're fucked. You're dead" and laughed at her and then got back into the car. Ms Richardson denied that Mr Garrington ever tried to separate them. Ms Richardson denied she was angry at any time. Ms Richardson said her phone was in her bag and she couldn't call for help and that she froze. Ms Richardson denied punching Ms Hanrahan through the car window or grabbing at or scratching her chest. Ms Richardson denied fighting with Ms Hanrahan or throwing punches at her in the scuffle. Ms Richardson admitted she had previously done some martial arts training.

General principles

- [30] The prosecution bears the onus of proving each element of the charge beyond reasonable doubt. The elements of the offence are as set out below. The defendant has no onus of proof and is presumed to be innocent. In this case the defendant elected to give evidence herself. The fact the defendant gave evidence does not result in any change to the burden of proof. The defendant did not assume a responsibility to prove anything, let alone that she is innocent. I must have regard to the whole of the evidence in order to determine whether the prosecution has proved guilt beyond reasonable doubt.
- [31] Because the defendant chose to give evidence, three possibilities arise. The first is that I find the defendant's evidence credible and reliable and as providing a satisfying answer to the prosecution case. In that event I should find the defendant not guilty. The second is that the defendant's evidence, although not necessarily accepted, causes me to have a reasonable doubt as to the true position. In that event I should find the defendant not guilty. The third possibility is that I conclude the defendant's evidence should not be accepted. In that event I should put the defendant's evidence to one side and instead consider whether the remainder of the evidence satisfies me beyond reasonable doubt the elements of the offence are proved.

Elements of offence and particulars

- [32] It is the elements of the offence that the prosecution must prove beyond reasonable doubt. The elements of the offence of assault occasioning bodily harm, as charged here, are:
1. The defendant assaulted Chernelle Ellen Hanrahan. Assault is relevantly defined as follows: Any person who strikes, touches, or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without the other person's consent, is said to assault that other person.

2. The assault was unlawful. This means that it was not authorised, justified or excused by law.
3. The assault caused Cherelle Ellen Hanrahan bodily harm. This means any bodily injury which interfered with her health or comfort.

[33] In this case the prosecution particularised the defendant's punching of Ms Hanrahan to the left eye and/or scratching of Ms Hanrahan's chest as the act or acts relied upon as constituting the alleged assault. The prosecution also particularised bruising and swelling to the left eye and/or a scratch to the upper chest as the bodily harm suffered by Ms Hanrahan.

[34] The acts of the defendant relied upon as the basis of the assault were therefore the alleged punch to the left eye area of Ms Hanrahan and the grabbing or scratching at the chest of Ms Hanrahan. If proved to have occurred, each or both of those acts would be an application of force to the person of Ms Hanrahan. It would also be necessary to prove the acts occurred without the consent of Ms Hanrahan in order for either to amount to an assault.

[35] If an assault is proved, it remains in issue whether the assault was unlawful. In this case the prosecution conceded that possible defences of provocation (s 269), prevention of repetition of insult (s 270), and self-defence (s 271) were raised on the evidence. The prosecution argued that each defence was excluded beyond reasonable doubt. However, the prosecution conceded that unless the assault, by punching to the left eye and/or scratching to the chest, whilst Ms Hanrahan was seated in the car, was proved beyond reasonable doubt, it was unnecessary to consider whether the assault was unlawful.

[36] The evidence showed that Ms Hanrahan suffered injuries namely bruising to her left eye and a scratch to her chest. It was not disputed these injuries amounted to bodily harm. It remains in issue as to how these injuries were occasioned.

Consideration

[37] The prosecution case relies upon proof of the allegation the defendant punched Ms Hanrahan to the left eye and scratched her chest whilst Ms Hanrahan was seated in the vehicle. The prosecution contends that is the unlawful assault perpetrated by Ms Richardson and which caused bodily harm to Ms Hanrahan. Whilst it is clear Ms Hanrahan suffered the injuries relied upon as constituting bodily harm, there is dispute in the evidence as to whether Ms Richardson struck or scratched Ms Hanrahan whilst she was seated in the car.

[38] The prosecution conceded the real issue in the case concerned the credit of the various participants. The prosecution accepted that a number of possible defences were raised on the evidence and the prosecution needed to exclude their operation in order to prove guilt. However, the prosecution accepted that unless the allegation the defendant punched Ms Hanrahan and/or scratched her chest whilst Ms Hanrahan was seated in the car, was proved beyond reasonable doubt, the prosecution case must fail.

- [39] The evidence of Ms Hanrahan, Mr Garrington, and Ms Jacobs is to like effect, namely that the defendant in fact punched and/or scratched Ms Hanrahan whilst she was seated in the car. However, there are a number of features of the evidence which undermine the creditability and reliability of each of these three witnesses. In the result, I conclude I am not satisfied beyond reasonable doubt those accounts are true.
- [40] There is conflict as to who initiated the violence, i.e. whether Ms Richardson by carrying out the alleged assault, or Ms Hanrahan by leaving the car and attacking the defendant. Ms Hanrahan said that although she did not see the defendant take any photographs of her house, she approached the defendant's house and took photographs of her whilst yelling at her. Ms Hanrahan also said that although she did not see or hear the defendant make any threats, upon seeing the defendant on the footpath she yelled abuse and was swearing at her very aggressively. Ms Hanrahan said when she got out of the car she engaged in fighting with the defendant, including by pushing and throwing punches. Other evidence shows Ms Hanrahan also choked the defendant with her lanyard. Ms Hanrahan said that after the confrontation she laughed at the defendant before leaving. All of this conduct, most of which Ms Hanrahan admitted, is consistent with Ms Hanrahan being the person who was acting aggressively throughout, including before the confrontation on the footpath.
- [41] Ms Hanrahan claimed the reason she was going to the police station was that she was told by Catherine and Ashley Jacobs the defendant had threatened both Ms Hanrahan and Ms Jacobs. Yet Ms Jacobs' evidence was only that she had been told by her son the defendant took photographs of Ms Hanrahan's house. Ms Jacobs did not say she heard, or was told, of any threat by the defendant. Ms Jacobs' evidence was that Ms Hanrahan was upset because the defendant took photos of her house, not as a result of any threats. This casts doubt upon Ms Hanrahan's claim to have been motivated by alleged threats.
- [42] Ms Hanrahan admitted knowledge of an allegation that the ex-partner of the defendant, someone friendly with Mr Garrington, was a paedophile. Ms Hanrahan denied using that allegation in her abuse of the defendant in the street, but admitted to doing so in the later confrontation. Ms Jacobs admitted knowledge of the allegation but denied hearing that said during the altercation. By contrast, Mr Garrington denied any knowledge of this allegation whatsoever, claiming he heard it for the first time in cross-examination. This is surprising seeing as it concerned someone with whom he was said to be friendly, and was something known to Ms Hanrahan and Ms Jacobs. The versions of what was said during the altercation differ and are consistent with an attempt by all three to paint Ms Hanrahan in the most favourable light.
- [43] Divergent accounts were also given as to why and where the car was stopped. Mr Garrington claimed he stopped the car in order to avoid running over the defendant who rushed out in front of them. Yet Ms Hanrahan and Ms Jacobs both said Ms Hanrahan told Mr Garrington to stop upon seeing the defendant on the footpath. Ms Hanrahan and Mr Garrington claimed they stopped next to the curb and Ms Jacobs said they stopped in the slip lane. Ms Green, an independent passer-by, described the vehicle stopped with its front on the footpath and rear in the traffic lane. Driving onto the footpath next to Ms Richardson is consistent with the intention of the occupants

being to stop the defendant's progress and confront her, rather than as claimed by Ms Hanrahan, simply wishing to ask her a question.

- [44] Ms Hanrahan admitted punching and pushing the defendant. Ms Jacobs observed her execute her "signature move" by following up a punch with an elbow. Ms Green described Ms Hanrahan choking the defendant, presumably with the lanyard. Although Ms Hanrahan ultimately did not deny choking the defendant (she said she could not recall doing so), Ms Jacobs and Mr Garrington denied seeing her do so. These descriptions show Ms Hanrahan was the aggressor once out of the car, but also demonstrate an attempt by all three to colour their description of events to best suit Ms Hanrahan.
- [45] It is clear that Mr Garrington tore a page from Ms Richardson's notebook during the altercation. He claimed he did so while trying to separate the fighting women. It is not easy to understand how that happened in the circumstances and Mr Garrington's description did little to aid in explanation. Ms Hanrahan, by contrast, did not suggest it occurred by accident. Ms Jacobs could not recall which of the others tore the page, but agreed it may have been deliberate. Mr Garrington could not explain how he retained possession of, and later disposed of, the torn page. Like Mr Garrington, Ms Hanrahan denied any knowledge of the contents of the page. The defendant says the page deliberately torn out contained the notes she was taking to police, including the street number of Ms Hanrahan she had written down when she was confronted by Ashley Jacob. Accepting that account would show the real purpose of those in the car was the pursuit of Ms Richardson.
- [46] The prosecution assert the tearing of the page is of no consequence and submitted I should reject the claim Ms Richardson made any notes. To the contrary, I conclude this evidence points very clearly as to which is the truthful account of events. If Ms Richardson's version is truthful, the claim the page was torn accidentally is simply fanciful; i.e. it was pure coincidence that, shortly after Ms Richardson took note of Ms Hanrahan's address so as to report it to police, and was challenged by a neighbour for doing so, Ms Richardson was set upon by those she was reporting, yet only the page on which she made notes was unintentionally torn out and taken by Ms Hanrahan's partner. Alternatively, if Ms Richardson's version is fabricated, it would mean she took advantage of the accidental tearing of a page, in a conflict she started by assaulting Ms Hanrahan, by inventing the claim she made notes on the page that was torn, and then providing the torn notebook to police officer Cooper, all shortly after the incident. Such a possibility seems most unlikely and, consistent with my conclusions as detailed below, I am satisfied Ms Richardson was not capable of such a deception. I accept Ms Richardson's evidence as to these events.
- [47] Ms Hanrahan, Mr Garrington, and Ms Jacobs denied they went in the vehicle looking for the defendant; all claimed they were going to the police station to report her. Ms Hanrahan's claimed motivation was the threats made by Ms Richardson, but none of Ms Hanrahan, Mr Garrington or Ms Jacobs saw or heard any such threat. (As noted above, Ms Jacobs only believed they were reporting the defendant for taking photographs.) This explanation seems dubious at best. Rather than going to the police station, the car was stopped where Ms Richardson was found, and according to Ms Jacobs, Ashley Jacobs was sent back to Ms Hanrahan's house after the fight because

they had forgotten to lock it up. This is consistent with the decision to attend the police station being made after the confrontation and because by then it was expected police would be involved. I am satisfied the real purpose of the group was the pursuit of the defendant.

- [48] Further inconsistency exists. Mr Garrington claimed the vehicle was still moving at the time Ms Hanrahan was assaulted whereas Ms Hanrahan and Ms Jacobs described it was stopped. Also, Ms Hanrahan claimed that after the confrontation they drove past her house to check that it was safe in light of the defendant's threat to blow it up. That claim is nonsensical given they had just left the defendant on the footpath. In contrast, both Ms Jacobs and Mr Garrington claimed they drove directly to the police station. Also, all of Ms Hanrahan, Mr Garrington, and Ms Jacobs claimed Mr Garrington separated Ms Hanrahan and the defendant who were both engaged in fighting. Ms Green, who saw only the latter part of the confrontation, did not describe Mr Garrington as separating the women, but said the event ended when the defendant was thrown to the ground.
- [49] In contrast to these witnesses, I found the defendant's evidence convincing. It is clear to me the defendant is someone with limited intellectual ability and vocabulary. The way she answered questions and the order in which she described events seemed due to those limitations. However, Ms Richardson's account was largely consistent and provided a coherent and logical narrative of events. The only inconsistency of any significance was as to whether Ms Hanrahan came to her house once or twice that day. Ultimately, she said Ms Hanrahan did so once, but Ms Richardson described two things Ms Hanrahan did; namely, take photographs and yell abuse. I do not consider this a basis to doubt her credibility or reliability.
- [50] Ms Richardson said, in effect, that after being abused by Ms Hanrahan she called police who advised her to write down what had happened, and go to the police station to report it. Ms Richardson said that was what she was doing when she wrote Ms Hanrahan's street number in her notebook and proceeded to the nearby bus stop. She said she was challenged by Ashley Jacobs when she stopped to record the street number. Thereafter, she walked to the corner and saw the group in the car first drive to her ex-partner's, nearby house. She described seeing Ms Hanrahan looking each way at the intersection before the vehicle came after her. She described being scared and apprehensive. She denied striking Ms Hanrahan when the car pulled up, but said Ms Hanrahan was aggressive and threatening and attacked her, choking her by use of the lanyard. She described resisting by trying to pull Ms Hanrahan's hand away and that she was backed against the fence. She also described Mr Garrington ripping the page from her notebook. Ms Richardson denied punching or pushing Ms Hanrahan.
- [51] Significantly, the account of Ms Richardson contains detail not essential to her claim she was attacked by Ms Hanrahan; e.g. writing notes, being challenged by Ashley Jacobs, seeing the car go to her ex-partner's house, feeling scared, Mr Garrington's words when he took her notes. The level of detail in Ms Richardson's evidence adds a ring of truth to that account. I consider Ms Richardson lacks the sophistication necessary to have invented those aspects of her version. In addition, Ms Richardson's evidence that she was choked by the lanyard, backed against the fence, that Mr

Garrington did not separate them, and that she did not fight back, is supported by the independent observations of Ms Green.

[52] The principal contention of the prosecution was to the effect that the defendant's evidence should be rejected because it did not account for the injuries that Ms Hanrahan undoubtedly suffered. It was submitted the only evidence which explained how Ms Hanrahan was injured was that of the prosecution witnesses. In particular, the prosecution submitted that since Ms Richardson categorically denied punching or pushing Ms Hanrahan, yet Ms Hanrahan suffered bruising to her eye and a scratch to her chest, the only logical conclusion was that the defendant was untruthful. I do not accept this submission.

[53] I accept that Ms Hanrahan suffered the injuries relied upon as constituting bodily harm in the course of this confrontation. And, as is obvious, the defendant denied punching or pushing Ms Hanrahan during those events. But it does not follow that, accepting the defendant's account, there is simply no explanation as to how Ms Hanrahan was injured. Ms Richardson said she was attacked by Ms Hanrahan and was choked with her lanyard. She demonstrated how Ms Hanrahan's hands were close to her throat and she attempted to pull Ms Hanrahan's hand away. By that description, the two were in close physical proximity. It seems to me inevitable that in the course of that struggle, incidental contact between them would occur. It may easily have occurred that Ms Hanrahan was contacted by an elbow or hand, or scratched on the chest, in the course of Ms Richardson's efforts to release her hold. If so, that might readily have gone unnoticed by Ms Richardson, who then described having difficulty breathing. It also remains possible that in the course of resisting, Ms Richardson simply lashed out but has no memory of doing so. If dishonest, it would have been easy for Ms Richardson to have said she punched Ms Hanrahan in the course of being choked. That Ms Richardson was unable to explain how Ms Hanrahan was injured does not diminish her credibility or reliability.

[54] The result is that I do not accept the evidence of Ms Hanrahan, Mr Garrington and Ms Jacobs, that the defendant attacked Ms Hanrahan by punching and/or scratching her whilst she was seated in the car. Rather, I accept the evidence of Ms Richardson that she did not do so. I conclude Ms Hanrahan was the aggressor and the group went looking for Ms Richardson, believing she was going to report Ms Hanrahan's conduct to police. That explains why Mr Garrington tore the page from Ms Richardson's notebook. I conclude that Ms Hanrahan was injured in the course of the altercation that she initiated.

[55] It follows that I am not satisfied beyond reasonable doubt the assault, particularised as having been committed by Ms Richardson, actually occurred. Consistent with the submissions of the prosecution, I therefore do not have to consider the lawfulness of that assault. Ms Richardson is entitled to be found not guilty.

Verdict

[56] In relation to the charge of assault occasioning bodily harm, I find Kelly Anne Richardson not guilty.

Order

[57] I make the following order:

1. Kelly Anne Richardson is formally discharged in respect of indictment number 453 of 2019.