

DISTRICT COURT OF QUEENSLAND

CITATION: *Hills v Queensland Police Service* [2020] QDC 137

PARTIES: **NARDINE JANE HILLS**
Appellant
v
QUEENSLAND POLICE SERVICE
Respondent

FILE NO/S: D216/19

DIVISION: Appellate

PROCEEDING: Appeal against conviction pursuant to Section 222 of the *Justices Act (Qld)* 1886

ORIGINATING COURT: Magistrates Court Southport

DELIVERED ON: 23 June 2020

DELIVERED AT: Southport

HEARING DATE: 22 June 2020

JUDGE: McGinness DCJ

ORDER: **1. The appeal against conviction is dismissed.**

CATCHWORDS: CRIMINAL LAW – APPEAL AGAINST CONVICTION – failing to wear bicycle helmet - failing to stop at red light – obstructing police officer – whether the learned Magistrate made an error in law or fact - whether the conviction should be set aside.

LEGISLATION *Justices Act 1886* (Qld), Sections 222, 223
Police Service Administration Act 1990 (Qld), Section 790(1)(B)
Transport Operations (Road Use Management) Regulation 2009 (Qld), Sections 256(1), 56(1)(b)(i), 256(4), 256(5).

CASES *Forrest v Commissioner of Police* [2017] QCA 132
Fox v Percy (2003) 241 CLR
Rowe v Kemper [2008] QCA 175

COUNSEL: Appellant self-represented
D. Darwen (sol)

SOLICITORS: Appellant self-represented

Office of the Director of Public Prosecution for the
Respondent

Introduction

- [1] The appellant was charged with the five offences allegedly committed on 28 April 2019. On 23 July 2019, the matter proceeded to hearing. The prosecution offered no evidence on charge 4. The remaining charges were:

Charge 1: Failure to wear an approved bicycle helmet: s256(1) *Transport Operations (Road Use Management) Regulation 2009* (Qld) (*TORUM*)

Charge 2: Failure to stop at a red traffic light – bicycle: s56(1) *TORUM*

Charge 3: Failure to stop at a red traffic light – bicycle: s56(1) *TORUM*

Charge 5: Obstructing a police officer: s790(1) *Police Powers and Responsibilities Act 2000* (Qld) (*PPRA*)

- [2] The appellant was unrepresented. The charges were read out to the appellant. It is not entirely clear from the transcript as to whether the appellant was pleading guilty or not guilty to the first two charges. The appellant pleaded not guilty to charges 3 and 4. The Magistrate exercised caution and proceeded to decide on the evidence whether the prosecution had proved each of the four charges beyond reasonable doubt. The Magistrate found the appellant guilty of each offence.

- [3] The Magistrate sentenced the appellant for the four offences. She imposed a global fine of \$300 which was referred to SPER. Convictions were recorded for the traffic offences. No conviction was recorded for the offence of obstruct a police officer.

- [4] The appellant appeals against her convictions. I intend to proceed on the same basis, in fairness to the appellant, and determine the appeal as if she had pleaded not guilty to each offence.

Grounds for appeal

- [5] The Notice of Appeal filed by the appellant on 20 August 2019 states that “nothing was handed by Police proof [sic] cameras/filming of myself”.¹ In her outline of submissions, the appellant further submitted that Constable Harrison captured

¹ Notice of Appeal, filed 20 August 2019.

footage of the events which were not shown during the hearing.² The appellant has not filed an outline of submissions that clearly addresses the grounds upon which she appeals against her convictions.

Law on appeals

- [6] This appeal is pursuant to section 222 of the *Justices Act (Qld)* 1886. The appeal is by way of rehearing on the original evidence given in the Magistrates Court unless the court is satisfied there are special grounds to grant leave to adduce new evidence.³
- [7] In her submissions, the appellant refers to a lack of photographic or video evidence of the appellant riding her bicycle through the red lights. However, no leave was sought by the appellant to adduce such evidence. Therefore, the rehearing before this court proceeds on the original evidence before the Magistrates Court.
- [8] The Court is required to review the evidence from the original decision and to draw its own conclusions, bearing in mind the decision of the original court and any advantage the Magistrate has had in seeing and hearing the witnesses giving evidence.⁴
- [9] Recently, McMurdo JA in *Bode v Commissioner of Police*⁵ reiterated the court's duties. He stated:

“The task of a court conducting an appeal by way of rehearing is described by the High Court in *Robinson Helicopter Company Inc v McDermott* as follows:

‘A court of appeal conducting an appeal by way of rehearing is bound to conduct a ‘real review’ of the evidence given at first instance and of the judge’s reasons for judgment to determine whether the judge has erred in fact or law.’” (Footnotes omitted.)

² Appellant’s Outline of Submissions, filed 28 October 2019.

³ *Justices Act 1886* (Qld) s 223.

⁴ *Fox v Percy* (2003) 241 CLR at [25]; *Rowe v Kemper* [2008] QCA 175 at [5]; *Forrest v Commissioner of Police* [2017] QCA 132.

⁵ [2018] QCA 186.

Prosecution Case

Constable Michael Luke Harrison

- [10] Constable Harrison gave evidence that on 28 April 2019 he was on a bike patrol on Scarborough St, Southport with Senior Constable (SC) William Davies. At approximately 10am, he witnessed the appellant riding a bicycle without a helmet.⁶ Prior to intercepting the appellant, Constable Harrison witnessed the appellant ride her bicycle directly through a red light at the intersection of Scarborough Street and Nerang Street, Southport.⁷ The lights were in operational order as Constable Harrison had observed them functioning properly earlier that morning on his patrol.⁸
- [11] Constable Harrison subsequently witnessed the appellant ride her bicycle directly through another red light at the intersection of Scarborough Street and Hinze Street, Southport.⁹ This set of lights was also in operational order.¹⁰ Constable Harrison and SC Davies intercepted the appellant on the corner of Scarborough Street and Hinze Street.¹¹ Constable Harrison activated his body camera to record the conversation with the appellant. A recording of the footage from the body camera was tendered and played.¹² The footage shows the appellant was not wearing a helmet.¹³ The appellant admitted to riding through a red traffic light in order to avoid pollution from buses.¹⁴ The appellant told Constable Harrison her name was ‘Nardine Jane Wilson’.¹⁵ Constable Harrison was unable to find the appellant in the police system so he asked her to accompany him to the station in order to confirm her identity.¹⁶
- [12] After the appellant refused to enter the police station voluntarily, and following a warning from police, she was placed under arrest. Constable Harrison then placed his hands on her and forced her through the entry to the station. The appellant

⁶ T8 ll. 14-19.

⁷ T8 ll. 21-25.

⁸ T9 ll. 31-35.

⁹ T8 ll. 26-29.

¹⁰ T10 ll. 21-25.

¹¹ T8 l. 31.

¹² Exhibit 1 ‘Disc Constable Harrison BWCF’.

¹³ Exhibit 1 ‘Disc Constable Harrison BWCF’ video 1 at 1.05.

¹⁴ Exhibit 1 ‘Disc Constable Harrison BWCF’ video 1 at 2.27.

¹⁵ T8 l. 34.

¹⁶ T13 ll. 16-22.

resisted the arrest by tensing her body and grabbing onto the bench of the police station front desk and door frame.¹⁷

- [13] Under cross-examination, Constable Harrison confirmed he was riding his bicycle behind SC Davies and positioned across the road from the appellant on Scarborough Street when he first saw her. He denied he used a device to contact any other police officers when he was outside the police station with the appellant. He also confirmed there was an unknown female present when the appellant was forced through the entrance of the police station.¹⁸

Constable Jake Henderson

- [14] Constable Henderson gave evidence that at approximately 10am on 28 April 2019, he was in the middle of a shift at the Southport Police Station when he heard a female yelling. He approached the front counter of the station and observed Constable Harrison struggling with the appellant. The appellant at that stage was quiet but appeared to be actively resisting arrest. Constable Henderson assisted Constable Harrison by grabbing the appellant by the forearm and upper arm, and leading her to the offender management section of the station. He confirmed that the appellant was tensing up her body.¹⁹ Constable Henderson said that following this he did not have anything further to do with the matter.²⁰

Defence evidence

- [15] The appellant gave evidence that she was intercepted by the police officers at the intersection of Scarborough Street and Hinze Street where the police station was.²¹ She pulled up at the white line beneath the traffic light that had turned red, therefore she had not gone through the intersection unlawfully.²² At the police station, she was set upon by four or five officers. She repeatedly told them she suffered spinal injuries but they ignored her.²³
- [16] Under cross-examination, the appellant gave evidence that she was stopped by SC Davies outside of the police station and Constable Harrison followed shortly after,

¹⁷ T13 ll. 9-13; Exhibit 1 'Disc Constable Harrison BWCF' video 2 at 0:28 – 1:51.

¹⁸ T16 ll. 27-29.

¹⁹ T21 l. 34.

²⁰ T21 ll. 12-29.

²¹ T24 ll. 36-44.

²² T25 ll. 1-2.

²³ T25 ll. 21-25

out of breath. She admitted to not wearing a helmet while she was riding her bike on Scarborough St on the day of the incident. She said this was because she has sciatica of the spine which means that when she wears a helmet, she has to turn her head more and this causes her problems.²⁴ The appellant also admitted to riding through the intersection of Scarborough Street and Nerang Street whilst the traffic light was red.²⁵ She rode her bike through a green light at the intersection where there was a pub on the corner, but she did not give the name of the pub. Following this, she went past the buses and came to a stop at the traffic lights where she was subsequently intercepted by police. The appellant thought she only ran through one red light, which was the red light after the bus stop, as she was trying to avoid the fuel that buses emit when they take off.²⁶

- [17] The appellant resisted arrest because she feared for her safety. It was put to her that she resisted arrest by tensing up and the appellant denied this, saying that she laid her arms out and was grabbed.²⁷ She did not grab the doors because they were glass.²⁸ She was pushed up against the bench and it was then that she grabbed the wall of the bench in order to push herself away because her spine was being pressed against the bench.²⁹

Magistrate's decision

- [18] The Magistrate considered the oral and physical evidence, and convicted the appellant on all charges.
- [19] In relation to the first offence, failure to wear a bicycle helmet, the Magistrate had regard to the appellant's admissions, as well as the camera footage tendered which showed the appellant not wearing a helmet.
- [20] In relation to the second and third offences of failing to stop at a red light, the Magistrate considered the evidence of Constable Harrison, as well as the appellant's own admission that she rode through the first set of red lights at the intersection of Scarborough Street and Nerang Street. The Magistrate also considered the appellant's statements to police on the body worn camera footage amounted to

²⁴ T28 ll. 6-12.

²⁵ T28 ll. 30-33.

²⁶ T30 ll. 5-11.

²⁷ T31 ll. 7-12.

²⁸ T31 ll. 26-28.

²⁹ T32 ll. 13-14.

admissions that she rode through the second red light in order to avoid bus pollution.³⁰

- [21] In relation to the fourth offence, obstructing a police officer, the Magistrate had regard to the body worn camera footage tendered which showed the appellant resisting the officer as he led her into the police station, and was satisfied of the appellant's guilt. The Magistrate was satisfied that the arrest of the appellant was lawful and that the appellant had resisted the arrest, making it difficult for the police officers to perform their duties.

Appellant's submissions

- [22] The appellant did not file an outline of submissions; however, from what I can best glean from the document she submitted, it appears that the appellant submits that there was no video or photographic evidence tendered during the hearing which shows that the appellant rode through the red lights. She complains that SC Davies was not present for the hearing and should have been called as a witness. SC Davies was overseas on the date of the hearing. She states that Constable Harrison activated his body worn camera device to record the events; however, they were not shown in court. She notes that the cameras run constantly.³¹

Respondent's submissions

- [23] The respondent submits that the Magistrate found the prosecution to have proved the elements of the offences beyond reasonable doubt, and that the Magistrate did not make any errors of fact or law in finding the appellant guilty of the offences.
- [24] The respondent submits that during the hearing, Constable Harrison gave evidence that he saw the appellant ride through the two red lights, and that the Magistrate was entitled to find Constable Harrison to be a credible and reliable witness. The respondent also submits that the appellant was "equivocal" during evidence regarding whether she rode through the second red light or not.³²

³⁰ T38 II. 27-29.

³¹ Appellant's Outline of Submissions, filed 28 October 2019.

³² Respondent's Outline of Submissions, filed 28 October 2019 (page 3).

- [25] With respect to the first offence, failure to wear a bicycle helmet, the respondent submits that the appellant did not raise a defence under section 256(4) or 256(5) of the *TORUM*.
- [26] With respect to the offence of obstructing a police officer, the respondent submits that the Magistrate had regard to the body worn camera footage tendered which showed the appellant's resistance to arrest, and was satisfied beyond reasonable doubt that the appellant obstructed the police officers.³³ The respondent noted that the appellant did not tender any evidence during the hearing that would support a defence of extraordinary emergency under section 25 of the *Criminal Code (Qld)* 1899.

Consideration

- [27] I have conducted a rehearing on the evidence and find that the appellant's grounds of appeal are without merit and that the Magistrate did not err in her decision. The trial was conducted in a fair and proper manner. The appellant's complaint that no CCTV footage or video footage was shown of the traffic lights or area of the offences is without merit. There was ample evidence before the Magistrate of the appellant's guilt in the form of her admissions to police recorded on the body worn camera (see below). In her reasons, the Magistrate stated that the onus was on the Prosecution to prove the charges beyond a reasonable doubt. She had regard to the evidence tendered by the Prosecution, including the testimony of Constable Harrison and Constable Henderson, and the body worn camera footage. I find no error in the Magistrate's decision to accept the evidence of the Prosecution's witnesses as credible and reliable. There were no material inconsistencies in their evidence. Their evidence was corroborated by the body worn camera footage. The Magistrate had regard to the evidence given by the appellant, and drew no inference from the fact that the appellant did not call any witnesses to give evidence on her behalf.³⁴ The Magistrate took into account that SC Davies, a material witness, was not available to give evidence and be cross-examined at trial, and that the prosecution decided not to seek an adjournment to have him present.³⁵ The Magistrate was entitled to accept the evidence of Constable Harrison and I find no

³³ Respondent's Outline of Submissions, filed 28 October 2019 (page 4).

³⁴ T38 ll. 10-11.

³⁵ T23 ll. 28-46.

error in her conclusion that his evidence was reliable, credible and materially consistent.

[28] I have reviewed the appellant's evidence and what she said on the body worn camera footage.

[29] With respect to charge 1, failure to wear a bicycle helmet, the appellant admitted in evidence and at the scene, on the body worn camera footage, that she was not wearing a helmet. The appellant's explanation that she had sciatica does not amount to a defence under section 256(4) of the *TORUM*. The appellant tendered a number of medical documents during the hearing; however, none of those documents could be classed as doctor's certificates under section 257(4) *TORUM regulations*.

[30] With respect to charge 2, going through a red light at the corner of Scarborough and Nerang Streets, the appellant changed her evidence on a number of occasions as to whether she did or did not go through the red light. At one stage in her evidence, the appellant admitted going through a red light at the intersection of Scarborough and Nerang Streets, then later changed her evidence and said the light was green and it was a red pedestrian light she went through. The appellant clearly admitted to police on the body worn camera footage to going through the red light at the corner of Scarborough and Nerang Streets because there was no one or "nothing there". The appellant's evidence and her admissions recorded on the body worn camera are corroborated by Constable Harrison's evidence.

[31] With respect to charge 3, failure to stop at a traffic light at Scarborough and Hinze Streets, I have had regard to the testimony of Constable Harrison and the body worn camera footage, as well as the evidence given by the appellant. On the body worn camera footage from the incident, when asked by SC Davies why the appellant had been stopped by police, she said "*Yeah because I came through the road there because I was trying to avoid the buses*" because she was an asthmatic. When asked what colour the light was, the respondent replied "*well it was red*".³⁶ The only rational conclusion, having regard to the whole conversation recorded on the footage, is that the appellant was referring to the set of traffic lights at Scarborough

³⁶ Exhibit 1 'Disc Constable Harrison BWCF' video 1.

and Hinze Streets. I am satisfied beyond reasonable doubt that this was the intersection the appellant was referring to in the body worn camera footage.

[32] When the appellant gave evidence, she initially denied going through the red light at Scarborough and Hinze Streets, but then later gave evidence that she went through the second red light to avoid the buses (the buses stop just before the intersection of Scarborough and Hinze Streets).

[33] I accept Constable Harrison's evidence as credible and reliable, and corroborated by the body worn camera footage. In contrast, the appellant's evidence was materially inconsistent and not credible.

[34] With respect to charge 5, the fourth offence, obstructing a police officer, I have had regard to the evidence of Constable Harrison as well as the footage from the body worn camera tendered as evidence. The recording shows the appellant was asked to provide identifying particulars. She failed to provide evidence of her identity. Constable Harrison told her she was under arrest for contravening a requirement. The appellant gave police an incorrect name.

[35] Section 790(1) of the *PPRA* relevantly provides: "A person must not assault or obstruct a police officer in the performance of the officer's duties." It goes on to provide for a penalty. Subsection (3) provides that in this section: "Obstruct includes hinder, resist and attempt to obstruct."

[36] Section 365(1) of the *PPRA* relevantly provides: It is lawful for a police officer, without warrant, to arrest an adult the police officer reasonably suspects has committed an offence to make inquiries to establish the person's identity.³⁷

[37] I am satisfied the police reasonably suspected the appellant had committed a number of offences. They were lawfully performing their duties when they required the appellant accompany them into the police station to confirm her identity.

[38] The appellant gave evidence admitting she resisted arrest, but said she did so because she feared for her safety. She admitted to putting her arms out. The footage clearly shows the appellant resisting arrest by grabbing onto the police station front desk and then the door frame as she was taken through the police

³⁷ *Police Powers and Responsibilities Act 2000* (Qld) s 365(1)(b).

station. It is clear from the footage that her behaviour hindered Constable Harrison as he tried to move her through the police station. I am satisfied beyond reasonable doubt that the appellant obstructed police by resisting Constable Harrison and Senior Constable Davies. I consider the Magistrate was correct to conclude that the appellant obstructed police.

Conclusion

[39] I am satisfied beyond reasonable doubt, on the evidence that was before the Magistrate, including the appellant's admissions on the body worn camera footage, the testimony of Constable Harrison, and the testimony of Constable Henderson, that the appellant is guilty of each offence. The appellant has failed to establish any error by the Magistrate.

Orders

[40] The appeal against conviction is dismissed.