DISTRICT COURT OF QUEENSLAND

CITATION:	*Jorgensen v Attorney-General for the State of Queensland* [2020] QDC 6
PARTIES:	**ALAN BRADLEY JORGENSEN** (appellant) **v** **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (respondent)
FILE NO:	Appeal No: 3054 of 2018
DIVISION:	Appellate
PROCEEDING:	Appeal
ORIGINATING COURT:	Magistrates Court, Cairns
DELIVERED ON:	17 February 2020
DELIVERED AT:	Brisbane
HEARING DATE:	8 March 2019
JUDGE:	Sheridan DCJ
ORDER:	**1. The appeal against conviction is allowed.** **2. The conviction for contempt is set aside.** **3. The appellant file any submissions on costs, including any affidavit in support of any claim for costs, by 4:00pm, Monday 2 March 2020.** **4. The respondent file any submissions in reply by 4:00pm, Monday 9 March 2020.** **5. Costs otherwise reserved.**
CATCHWORDS:	MAGISTRATES – APPEAL AND REVIEW – QUEENSLAND – APPEAL – where the appeal was brought pursuant to s 222 of the *Justices Act* 1886 (Qld) – where the appellant was charged summarily with wilfully insulting a Magistrate during his sitting under s 40(1)(a) *Justices Act* 1886 (Qld) and was sentenced to three months' imprisonment suspended for two years after serving six weeks – whether it can be established beyond reasonable doubt that appellant's words amount to a wilful insult to a judicial officer – whether

appellant was afforded procedural fairness and natural justice – whether Magistrate afforded the appellant sufficient time to answer the charge of contempt – whether sentence manifestly excessive.

Criminal Code Act 1899 (Qld), s 408C(1)(h)
Justices Act 1886 (Qld), s 40(1), s 43, s 222, s 223(1), s 224(1)(a), s 227

Allesch v Maunz (2000) 203 CLR 172, cited
Bradshaw v Attorney-General [2000] 2 Qd R 7, considered
Coward v Stapleton (1953) 90 CLR 573, considered
Dow v Attorney-General [1980] Qd R 58, considered
Lewis v Ogden (1984) 153 CLR 682, followed
MacGroarty v Clauson (1989) 167 CLR 251, followed
R v Fletcher; Ex parte Kisch (1935) 52 CLR 248, cited
R v Ogawa [2011] 2 Qd R 350, considered
Teelow v Commissioner of Police [2009] QCA 84, cited
The Queen v Shane Christian Graham [1996] QCA 301, considered

COUNSEL: A. Jorgensen (Self-Represented)
K. Ashen for the Respondent

SOLICITORS: Crown Law for the Respondent

[1] On 5 June 2018, there was a finding made by Magistrate Pinder that the appellant (Mr Jorgensen) was guilty of contempt in the face of court, arising from a proceeding before the Cairns Magistrates Court on that day.

[2] The appellant now appeals his conviction for contempt, and against the sentence, delivered on 8 June 2018, of three months' imprisonment, suspended for two years after serving six weeks.

Background

[3] The appellant, Mr Jorgensen, was charged with two offences of Fraud pursuant to s 408C(1)(h) of the *Criminal Code Act* 1899 (Qld). The charges related to Mr Jorgensen, on two occasions, dishonestly making off, knowing that payment on the spot was required for car parking lawfully at the Cairns Airport.

[4] The trial in relation to both offences, which were joined pursuant to s 43 of the *Justices Act* 1886 (Qld) (**Justices Act**), commenced in the Cairns Magistrates Court on 23 November 2017, before Magistrate Pinder. Mr Jorgensen was self-represented.

[5] After the first day of the trial, the matter was adjourned part heard until 19 February 2018. The trial in fact did not resume until 4 June 2018.

The Case against the Appellant

[6] During proceedings on 5 June 2018, the prosecution sought to resist a summons which was served by Mr Jorgensen on Senior Sergeant Brian Platt. Following this request, the learned Magistrate and Mr Jorgensen engaged in a lengthy exchange as to the admissibility of the evidence, where, during Mr Jorgensen's submissions, the learned Magistrate informed Mr Jorgensen that he would be charged with contempt. The exchange is detailed in the following extract from the transcript of proceedings:[1]

> "BENCH: No, no, sir. You've said he's your star witness. I don't need to – what evidence will he give relevant to the issues in the proceedings before me?
> DEFENDANT: My belief – he will say that if he was involved in the loop, which he is as the crimes manager, he would not have issued a charge of fraud.
> BENCH: Excellent sir. Okay, thanks. Sir, in relation to that issue, he can't give that evidence. It's opinion evidence. The issue in respect of his opinion as to whether or not the discretion to prosecute has been properly exercised isn't a relevant issue in the proceedings before me. I've – that's been determined - - -
> DEFENDANT: Why is that your Honour?
> BENCH: It's been determined previously, sir, because he can't give that evidence, sir. So is there anything else, sir? Otherwise - - -
> DEFENDANT: Yes, your Honour. There's probably another five points, and I can't understand why the court is so adamant to try to throw his evidence out - - -
> BENCH: Because it's not relevant, sir.
> DEFENDANT: **- - - like the prosecutor because he knows he'll sink the case, and you're trying to protect the case, in my view, your Honour**.
> BENCH: Okay, sir. Sir, you're going to be charged with contempt. That's an outrageous suggestion to make in these proceedings. You're asserting that I'm corrupt, sir. So - - -
> DEFENDANT: No, I'm not.
> BENCH: I'm going to direct the officers, sir, behind me now to detain you. And you're going to be arrested and taken into custody. And you, sir, will be produced at a later time and charged with contempt. What you can't do, sir, is come along to courts, notwithstanding you have a feeble, inappropriate argument which you have been allowed for more than 40 minutes to seek to articulate to assert that someone is acting, effectively, corruptly, sir. So you will be detained and taken into custody, sir, and produced at some time later in the day and be charged with contempt, sir. Do you understand that?
> DEFENDANT: I want some words to say - - -
> BENCH: Thank you very much, sir. You're arrested - - -
> DEFENDANT: I didn't use the word corruptly. You used the word corruptly.

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1 Transcript Tuesday 5 June 2018 (**T**)2-18 l6 – T2-19 l3. Emphasis added.

BENCH: Thanks, sir."

[7] After this exchange, the matter was immediately adjourned and did not resume again for approximately five hours.

[8] Upon the court being resumed, the learned Magistrate detailed to Mr Jorgensen that he had been charged with "wilfully insult[ing] Magistrate Pinder during his sitting as a magistrate",[2] by using words that:

> "…to a reasonably fair-minded observer, imply that the presiding judicial officer was acting unlawfully, corruptly or in the abuse of office.[3]"

[9] On 8 June 2018, the learned Magistrate sentenced Mr Jorgensen to three months' imprisonment, suspended for two years after serving six weeks.

[10] On 25 June 2018, Mr Jorgensen filed a Notice of Appeal to a District Court Judge.

Mode of Appeal

Section 222

[11] Mr Jorgensen appeals pursuant to s 222 of the *Justices Act*. Section 222(1) relevantly provides:

> "If a person feels aggrieved as complainant, defendant or otherwise by an order made by justices or a justice in a summary way on a complaint for an offence or breach of duty, the person may appeal within 1 month after the date of the order to a District Court judge."

[12] It is accepted that Mr Jorgensen is a person 'aggrieved' as a defendant to the charge dealt with summarily of contempt of court.

Section 223

[13] Pursuant to s 223 of the *Justices Act*, an appeal under s 222 is by way of rehearing on the original evidence, and any new evidence adduced by leave. Section 223 provides:

> "(1) An appeal under section 222 is by way of rehearing on the evidence (original evidence) given in the proceeding before the justices.
> (2) However, the District Court may give leave to adduce fresh, additional or substituted evidence (new evidence) if the court is satisfied there are special grounds for giving leave.
> (3) If the court gives leave under subsection (2), the appeal is—
> (a) by way of rehearing on the original evidence; and
> (b) on the new evidence adduced."

[14] For an appeal by way of rehearing "the powers of the appellate court are exercisable only where the appellant can demonstrate that, having regard to all the evidence now before the

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2 T2-19 ll32-33.
3 T2-19 ll36-38.

appellate court, the order that is the subject of the appeal is the result of some legal, factual or discretionary error."[4]

[15] The rehearing requires this court to conduct a real review of the evidence before it (rather than a complete fresh hearing), and make up its own mind about the case.[5]

[16] Its function is to consider each of the grounds of appeal having regard to the evidence and determine for itself the facts of the case and the legal consequences that follow from such findings. In doing so it ought to pay due regard to the advantage that the magistrate had in observing the appellant's tone and demeanour, and attach a good deal of weight to the magistrate's view.[6]

Self-Representation

[17] In approaching its task, it is often difficult for judicial officers to ensure the integrity of proceedings which involve a litigant appearing in person. This is all the more challenging when ignorance of procedural matters is overlayed with emotional reaction. The High Court in *Neil v Nott*[7] said:

> "A frequent consequence of self-representation is that the court must assume the burden of endeavouring to ascertain the rights of the parties which are obstructed by their own advocacy."

[18] In these circumstances, the lack of legal knowledge is undoubtedly a misfortune for any lay litigant appearing in person, but it should not be seen as a privilege.[8]

Grounds of Appeal

[19] Mr Jorgensen appeals against the conviction and sentence in reliance on the grounds of appeal provided in the Notice of Appeal, which can be categorised as follows:

1. The learned Magistrate erred manifestly in determining the appellant asserted that the learned Magistrate was corrupt;
2. The learned Magistrate erred in denying the appellant procedural fairness and natural justice;
3. The learned Magistrate erred in refusing the appellant bail;
4. The learned Magistrate erred in proceeding with the determination of the charge of contempt without affording the appellant sufficient time to prepare his defence, answer the charge and obtain proper legal advice; and
5. The learned Magistrate erred in refusing to recuse himself from the proceedings relating to the charge of contempt.

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4 *Allesch v Maunz* (2000) 203 CLR 172, [23] followed in *Teelow v Commissioner of Police* [2009] QCA 84, [4].

5 *Fox v Percy* (2003) 214 CLR 118; *Warren v Coombes* (1979) 142 CLR 531; *Dwyer v Calco Timbers* (2008) 234 CLR 124; applied in *Forrest v Commissioner of Police* [2017] QCA 132, 5 and *McDonald v Queensland Police Service* [2017] QCA 255, [47].

6 *White v Commissioner of Police* [2014] QCA 12, [5]-[8]; *Forrest v Commissioner of Police* [2017] QCA 132, 5 & 6; *McDonald v Queensland Police Service* [2017] QCA 255, [47].

7 *Neil v Nott* (1994) 121 ALR 148, [150] per Brennan, Deane, Toohey, Gaudron and McHugh JJ.

8 *Gallo v Dawson* (1990) 93 ALR 479, [481] per McHugh J.

Appeal against conviction

[20] There are two key issues for consideration in the appeal against conviction:

1. Whether it can be established beyond reasonable doubt that the words used by the appellant meet the threshold of "wilfully insulting a judicial officer", within the meaning of s 40(1)(a) of the Justices Act; and
2. Whether the appellant was afforded both procedural fairness and natural justice.

Contempt of Court

[21] Mr Jorgensen was charged that on 5 June 2018, contrary to s 40 of the *Justices Act* in the Magistrates Court at Cairns, he wilfully insulted Magistrate Joseph Pinder during his sitting as a magistrate.

[22] The relevant section of the *Justices Act* relied upon by the learned Magistrate provides as follows:

> "**40 Penalty for insulting or interrupting justices**
> (1) A person who—
> (a) wilfully insults a justice or a witness or an officer of the court during his or her sitting as, or, as the case may be, attendance in a Magistrates Court or during his or her sitting or, as the case may be, attendance in any examination of witnesses in relation to an indictable offence or who is on his or her way to or from any such court or examination; …
> … may by oral order of such court or justice, be excluded from such court or examination and, whether the person is so excluded or not, may be summarily convicted by such court or justice of contempt.
> (2) A person convicted under subsection (1) is liable to a maximum penalty of 84 penalty units or imprisonment for 1 year."

[23] The learned Magistrate determined Mr Jorgensen was liable to be proceeded against for contempt under this section, for using insulting language consisting of the words "you're trying to protect the case, in my view, your Honour."

[24] In determining the appeal against conviction, the court will need to be satisfied beyond reasonable doubt that these words amount to a "wilful insult".

Wilful Insult

[25] In deciding whether the words used by Mr Jorgensen amounted to contempt, it is necessary to consider not only whether the words were insulting, but also whether they were wilfully insulting.

[26] As to the meaning of "wilful" in this context, the High Court in *Lewis v Ogden* (1984) 153 CLR 682 at 688 to 689 said:[9]

> "... the word 'wilfully' means 'intentionally' or 'deliberately', in the sense that what is said or done is intended as an insult, threat etc. Its presence does more than negative the notion of 'inadvertently' or 'unconsciously'. The mere voluntary utterance of words is not enough. 'Wilfully' imports the notion of purpose.
>
> …A person who wilfully insults a judge in the course of proceedings in court does something which necessarily interferes, or tends to interfere, with the course of justice."

[27] It is plain from a reading of the transcript of proceedings that Mr Jorgensen has not met this threshold.

[28] Mr Jorgensen in no way intended to insult the learned Magistrate. So much is clear from Mr Jorgensen's immediate denial that he was inferring that the learned Magistrate was corrupt:

> "BENCH: Okay, sir. Sir, you're going to be charged with contempt. That's an outrageous suggestion to make in these proceedings. You're asserting that I'm corrupt, sir. So - - -
> DEFENDANT: No, I'm not.[10]
> …
> DEFENDANT: I didn't use the word corruptly. You used the word corruptly."[11]

[29] Further, when the court resumed after an approximate five hour adjournment immediately after the charge of contempt, Mr Jorgensen apologised to the learned Magistrate for any misinterpretation of his words and provided an explanation of what he meant when he used the words which particularised the charge of contempt:[12]

> "DEFENDANT: Only what I've said several times, and that is, as far as I'm concerned, **it wasn't designed or aimed at being contempt. It was a discussion as to why I wasn't able to get the witness – a police witness in when the other – when the prosecution had, perhaps, 10 police in without any problem.** As soon as I call one in, who's – resides down the – works down the road, it was shaping up like it was going to be refused. And I said that I – my words, as I understand it, I said that your Honour's trying to stop me calling a witness - - -
> BENCH: No, sir. Your words were "you're trying to protect the case", that is, the prosecution case that was part heard before me.

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9 In relation to the word "wilfully" where it appeared in a relevantly equivalent provision, s 54A of the *County Court Act* 1958 (Vic).

10 T2-18 ll30-34.

11 T2-19 l1.

12 T2-32 l41 – T2-33 l9, T2-32 l19 – T2-34 l3, T2-34 ll13-29. Emphasis added.

DEFENDANT: Well, I'm not sure that context of the case is there. It's probably ambiguous, but, certainly, **I was only talking about referring to the matter of not being able to call a police witness.** And I referred to him as a star witness because it would've amounted to – our next move was then to say there was no case to answer because – but it relied on the prime – sorry, the crime manager of the Cairns police - - -

…

BENCH: There was an application to set aside the summons, sir; it's in the course of hearing you in respect of that that **you uttered the words which, in my view, potentially, are wilfully insulting and constitute the offence of contempt.**

DEFENDANT: **Well, I'm sorry if it – you – if took it the wrong way, your Honour, but - - -**

BENCH: Not me, sir.

DEFENDANT: - - - courtroom - - -

BENCH: Not me, sir. I have nothing to do with it. It's a court, sir.

DEFENDANT: No, I'm saying that you construed my words - - -

BENCH: No, no, sir. I just took the words that - - -

DEFENDANT: - - - to be insulting to you.

BENCH: - - - you – I just took the words that you said and gave them their plain meaning, sir.

DEFENDANT: Well, we've already discussed about whether you're saying the case meant the whole case, or whether interlocutory application to strike out my witness summons, as I'm saying, is - - -

BENCH: In either case, sir, you – it seems to be lost upon you, sir, that what you cannot do in the context of arguing a matter is to, as you've done, assert that the presiding judicial officer is in some way seeking to advantage or, as you said, sir, protect the prosecution case. That is a wilful insult, sir. A reasonable, fair-minded observer would imply from that comment that the judicial officer was acting unlawfully, corruptly or in an abuse of office.

…

BENCH: Is there anything else you wanted to say about the contempt charge, sir?

DEFENDANT: Well, it seems to be, from the conduct of – since I've been before you, there's obviously been – we hadn't been seeing eye to eye, but I believe I was entitled to stand up for my rights, which – a lot of them had been denied. So on this case there, when I just wanted to call one police witness who resides just down the road, that – it seemed extraordinary that I would be – **well, I thought I said blocked or stopped from calling him. And that's what I referred to as "case".** And given that, as I said, criminal definition requires beyond reasonable doubt, and no one could really say that you – you're saying that the case – **when I said "case", if I did say "case", it was referring to the whole case, and I'm saying**

> **no, of course we were arguing about the interlocutory action at the time, so, therefore, that was "case" – I – it – I meant to say, and I think I did, was referring to the case of striking out that motion.** So, therefore, my [indistinct] point of view, that is not beyond reasonable doubt. So your Honour should not be trying to conclude there that the word "case" was used in the context of the whole case, when it was only referring to the interlocutory application of calling Sergeant Platts."

[30] From the above exchange it is clear that the language used by Mr Jorgensen was not intended to be an insult to the learned Magistrate.

[31] While the learned Magistrate may not necessarily be in error in determining whether a reasonable person would find the words "you're trying to protect the case" to be insulting, whether in the context of the entire case or in relation to the interlocutory application, it cannot be said that Mr Jorgensen did more than "inadvertently" or "unconsciously" assert that the presiding judicial officer was in some way seeking to advantage or protect the interests of the prosecution.[13] This, without more, cannot amount to wilful insult.[14]

[32] For these reasons I am not satisfied beyond reasonable doubt that Mr Jorgensen wilfully insulted a judicial officer within the meaning of s 40(1)(a) of the *Justices Act*.

Procedural Fairness and Natural Justice

[33] This court must also reach a decision on whether Mr Jorgensen was afforded both procedural fairness and natural justice in the course of the proceedings for contempt.

[34] Importantly, there are two procedural requirements for a charge of contempt pursuant to a statutory power, namely that the charging judicial officer: [15]

1. Sufficiently articulates the charge of contempt; and
2. Gives the alleged contemnor a reasonable opportunity to be heard in relation to the charge.

Sufficiently articulates charge

[35] To sufficiently articulate the charge of contempt, the judicial officer must identify both the particular statutory offence with which the alleged contemnor is charged and the conduct which is said to have given rise to that offence.[16]

[36] In the present matter, a review of the transcript makes it clear that the learned Magistrate has sufficiently articulated the charge of contempt. On several occasions the learned Magistrate identified the specific words used by Mr Jorgensen that gave rise to the offence,[17] and

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13 *Bell v Stewart* (1920) 28 CLR 419 at 427.
14 *Lewis v Ogden* (1984) 153 CLR 682 at 688 to 689.
15 *MacGroarty v Clauson* (1989) 167 CLR 251 at 255 to 256; *Barmettler v Greer & Timms* [2007] QCA 170 at [29].
16 *Lewis v Ogden* (1984) 153 CLR 682 at 693.
17 T2-19 ll33-35, T2-20 ll3-5, ll21-22, l44.

specified to Mr Jorgensen that he was charged with contempt contrary to s 40 of the *Justices Act*.[18]

Reasonable opportunity to be heard

[37] After the charge of contempt has been made sufficiently explicit, the accused must then be afforded a reasonable opportunity to be heard in his own defence. This must occur before a finding of contempt is made, as opposed to simply in relation to penalty.[19] What is a 'reasonable opportunity' is a matter of fact and degree which will inevitably depend on the circumstances.

[38] The court in *Coward v Stapleton* described this requirement in the following terms:

> "…the person accused must … be allowed a reasonable opportunity of being heard in his own defence, that is to say a reasonable opportunity of placing before the court any explanation or amplification of his evidence, and any submissions of fact or law which he may wish the court to consider as bearing either upon the charge itself or upon the question of punishment.
>
> Resting as it does on notions of elementary justice, this principle must be rigorously insisted upon.
>
> …
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> The court, especially when it has itself preferred the charge, must be alert to see that it withholds judgement on the issue until it has considered everything which the witness may fairly wish to urge in his defence." [20]

[39] In the present matter, it is evident that the learned Magistrate did not afford Mr Jorgensen a reasonable opportunity to be heard in relation to the charge before a finding of contempt was made.

[40] The learned Magistrate informed Mr Jorgensen at approximately 10:05 am that he was to be charged with contempt and Mr Jorgensen was taken into custody. Immediately upon the court being resumed at approximately 2:52 pm Mr Jorgensen was informed of the particulars of the charge against him and was asked if he had anything he wished to say in relation to the charge.

[41] The significant events that transpired between this point and the point at which the learned Magistrate convicted Mr Jorgensen of contempt are as follows:

(a) Mr Jorgensen on several occasions indicated that he would need to be provided with a copy of the transcript in order to adequately respond to the charge.[21] Mr Jorgensen was not provided with a copy of the transcript, nor was

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18 T2-19 ll31-33, T2-20 ll7- 8, T2-21 ll25-33, ll38-39. The learned Magistrate's reference generally to s 40 of the *Justices Act*, and use of the wording of s 40(1)(a) in charging Mr Jorgensen is sufficient to particularise the charge, as required by *MacGroarty*. See *R v Ogawa* [2011] 2 Qd R 350 at [185].

19 *Director of Public Prosecutions v Green* [2013] VSCA 78 at [73].

20 *Coward v Stapleton* (1953) 90 CLR 573 at 580.

21 T2-20 l19, ll32-33, T2-24 l40, T2-26 ll19-20, T2-35 ll12-14.

he permitted to listen to the recording of the proceeding, before the conviction was imposed.

(b) Mr Jorgensen also, on a number of occasions mentioned that he was having trouble hearing the learned Magistrate from his position in the dock and requested to permission to make his submissions from the bar table.[22] This request was refused.[23]

(c) Mr Jorgensen informed the learned Magistrate that he had not been able to, nor was he offered the opportunity to, seek legal advice during the five hour adjournment, and as such he was unable to "comment as to the implications unless [he] got some legal advice".[24] The learned Magistrate adjourned the court for 22 minutes to allow Mr Jorgensen to make a phone call to obtain legal advice. When court resumed Mr Jorgensen advised that, while he was able to get through to Legal Aid, they were unable to assist without the appropriate paperwork. The learned Magistrate made no further adjournments and proceeded to convict Mr Jorgensen.

[42] In the circumstances, in my view, the learned Magistrate denied to Mr Jorgensen procedural fairness and natural justice.

[43] It is clear Mr Jorgensen, in the course of proceedings on 5 June 2018 had both insufficient resources and time to prepare a response to the charge, to obtain legal advice or to retain and instruct a lawyer to respond to the charge on his behalf.

[44] Further, there is no apparent reason for the learned Magistrate's haste in determining the matter. In matters of contempt of court, immediate action is only required where it is "urgent and imperative to act immediately"[25] and "the authority of the court needs to be asserted promptly and decisively to preserve the proceedings from progressive deterioration or dissolution".[26] In the present case there was no urgency which necessitated that Mr Jorgensen to be required to defend himself immediately, rather than the next morning, or on another suitable occasion.

[45] In fact, case authority has indicated that it is generally desirable to allow a "cooling down period" of adjournment, as this is more likely to lead to a temperate conclusion.[27]

[46] The power to proceed summarily to punish for contempt is one to be exercised sparingly, with great caution[28] and scrupulous care,[29] and only in serious cases.[30] This is not least because the judge may be both the witness and the victim of the contempt,[31] as well as then the prosecutor and the judge.[32] As such, a summary remedy of a fine or imprisonment for

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22 T2-19 l40, T2-30 ll17-18, ll22-23, T2-31 l25.
23 T2-30 l29.
24 T2-21 ll43-45.
25 *Balogh v St Albans Crown Court* [1975] QB 73 at 85, referred to by Pincus JA in *Bradshaw v Attorney General* [2000] 2 Qd R 7 at 10.
26 *Bradshaw v Attorney General* [2000] 2 Qd R 7 at 17 per Thomas JA.
27 *Bradshaw v Attorney General* [2000] 2 Qd R 7 at 14 per Thomas JA.
28 *Bradshaw v Attorney General* [2000] 2 Qd R 7 at 11 per Davies JA.
29 *Balogh v St Albans Crown Court* [1975] QB 73 at 85.
30 *Lewis v Ogden* (1984) 153 CLR 682 at 693.
31 *Bradshaw v Attorney General* [2000] 2 Qd R 7 at 11 per Davies JA. See also *Director of Public Prosecutions v Green* [2013] VSCA 78 at [52]; and *Wilkinson v S* [2003] 1 WLR 1254 at 1263.
32 *The Queen v Allen* [2013] VSCA 44 at [70].

contempt of court is applied only where the court is satisfied that it is necessary in the interests of the administration of justice to do so and where the attacks subject of the contempt charge are so unwarrantable that punishment is required.[33]

[47] In the circumstances, there is no compelling reason why the learned Magistrate afforded Mr Jorgensen such a short adjournment within which to get legal advice, or in any event why the learned Magistrate did not further adjourn the court when Mr Jorgensen advised that he was unable to obtain legal advice.

[48] In light of the above, the learned Magistrate has failed to provide Mr Jorgensen with a reasonable opportunity to be heard in his own defence and has therefore denied Mr Jorgensen procedural fairness and natural justice.

[49] Further, it is also clear that Mr Jorgensen was denied natural justice in the hearing of his application for bail, and the learned Magistrate erred in his consideration of s 16 of the *Bail Act* 1980 (Qld) in refusing to grant bail. In the circumstances, it is unlikely that there was an unacceptable risk that Mr Jorgensen, if released on bail, would fail to appear and surrender into custody, commit an offence, endanger the safety or welfare of others or otherwise obstruct the course of justice. The learned Magistrate had no evidence before him to suggest that Mr Jorgensen would do any of those things. The learned Magistrate was in error by failing to properly consider Mr Jorgensen's personal circumstances, in particular his commitments as a caregiver. In making submissions for bail, Mr Jorgensen informed the learned Magistrate that he was the full-time caregiver to his elderly mother, who was ill at the time of the proceedings. Mr Jorgensen also stressed that his 13 year old son was in his care that week and would be waiting for him to pick him up from school that afternoon.

[50] The finding of the learned Magistrate cannot stand and the appeal against the conviction must be allowed.

Appeal against Sentence

[51] Even in the event that this court found that the conviction imposed by the learned Magistrate was justified, it is evident that, as was conceded in the submissions of the respondent, the sentence imposed on Mr Jorgensen by the learned Magistrate was manifestly excessive in the circumstances.

Manifestly Excessive

[52] The learned Magistrate in his sentencing remarks considered three key authorities: *R v Ogawa* [2009] QCA 307 (**Ogawa**), *Dow v Attorney-General* [1980] Qd R 58 (**Dow**) and *The Queen v Shane Christian Graham* [1996] QCA 301 (**Graham**). In respect of those authorities the learned Magistrate commented:[34]

> "…I must confess there are few comparable decisions in respect of contempt. In my view, with the exception of Ogawa, which was a conviction for contempt for disruption, as opposed to a wilful insult – that is, the two decisions of Dow and the decision of Graham have conduct which is less serious than yours. The conduct was rude and inappropriate. It was not as

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33 *R v Fletcher; Ex parte Kisch* (1935) 52 CLR 248 at 257.

34 Transcript 8 June 2019 (**T1**) 3 ll12-20.

> serious as yours, and that is a direct assertion, effectively, of unlawful – of conduct by a judicial officer that was unlawful or corrupt. In that regard, sir, the nature of your contempt, in my view, is so serious because it strikes at the heart of public confidence in the administration of justice and the Courts."

[53] The learned Magistrate has erred in his characterisation of Mr Jorgensen's conduct including that the circumstances of Mr Jorgensen's alleged offending was "more serious" than that of the considered authorities. In *Dow* and *Graham* the respective contemnor's conduct was prolonged, angry, threatening and was severely disruptive to the court proceedings and the sentences imposed in those matters ranged from seven weeks to three months' imprisonment. This is to be contrasted with the conduct of Mr Jorgensen, which consisted of an alleged assertion of corruption, which Mr Jorgensen immediately denied, sought to clarify and later apologised for.

[54] The sentencing discretion was miscarried and the sentence imposed was manifestly excessive. Even though the words uttered could have been construed as an accusation of corruption, in the circumstances, no further punishment should have been imposed.

Order

[55] For these reasons, I make the following orders:

1. The appeal against conviction is allowed.
2. The conviction for contempt is set aside.
3. The appellant file any submissions on costs, including any affidavit in support of any claim for costs, by 4:00pm, Monday 2 March 2020.
4. The respondent file any submissions in reply by 4:00pm, Monday 9 March 2020.
5. Costs otherwise reserved.