

DISTRICT COURT OF QUEENSLAND

CITATION: *Mathews v Commissioner of Police* [2022] QDC 294

PARTIES: **MATHEWS, Russell Gordan Haig**
(Appellant)
v
COMMISSIONER OF POLICE
(Respondent)

FILE NO: 1635/21

DIVISION: Civil

PROCEEDING: Appeal – *Justices Act 1886* (Qld) s 222

ORIGINATING COURT: Magistrates Court at Ipswich

DELIVERED ON: 16 December 2022

DELIVERED AT: Brisbane

HEARING DATE: 23 March 2022

JUDGE: Devereaux SC CJDC

ORDER: **1. Appeal dismissed.**

CATCHWORDS: APPEAL AGAINST CONVICTION – where appellant charged pursuant to section 228(1)(b) of the *Criminal Code* – whether a sign was an object tending to corrupt morals

LEGISLATION: *Criminal Code* s 228
Justices Act 1886 (Qld) s 222

CASES: *Crowe v Graham* [1968] 121 CLR 375.

COUNSEL: J Bishop for the respondent.
Appellant was self-represented.

SOLICITORS: Office of the Director of Public Prosecutions (Qld).
Appellant was self-represented.

Introduction

- [1] The appellant was convicted on a plea of not guilty in the Magistrates Court at Ipswich on 26 March 2021 to one charge pursuant to section 228 of the *Criminal Code*. Namely, he was charged that between 1 February 2019 and 4 February 2019 at Booval he knowingly and without lawful justification or excuse exposed to view, in a place

which the public were permitted to have access, an obscene object tending to corrupt morals. He was fined \$500.00 and a conviction was recorded.

Facts of the offending

- [2] On 3 February 2019 a search warrant was executed by Detective Senior Constable Yarrow at the appellant's address at 119 Brisbane Road, Booval.
- [3] During this search, the sign, which is the subject of the offending and the "object" for the purpose of section 228, was confiscated. The sign was large, described by the two police witnesses as between 3m and 4m wide. The first line of the sign reads in large black letters, "Sixteen-plus YO", smaller less bold letters "school", then in large black letters "boys", then in much larger letters on the second line in red, "free sex". On the third line, in smaller lowercase black writing appears "No Catholics, drugs, cigs, grog." On the fourth and final line, the sign reads "HaigReport.com/16Y".
- [4] The sign was erected out the front of the appellants property. The fact that the sign was erected by the appellant and clearly accessible to the public was not in dispute.
- [5] The appellant neither gave nor called evidence.

Grounds of Appeal

- [6] The appellant is appealing against conviction pursuant to s 222 of the *Justices Act 1886* (Qld).
- [7] Respectfully adopting the grounds as set out in the respondent's outline, the appellant has appealed on the following basis:
 - 1. That the sign displayed on the appellant's house was not an "object" as it was not a "picture, photograph, drawing or model" but rather written words on a sign;
 - 2. The contents of the sign were not "obscene" but were "political discourse" and used to attract attention to the political signs also affixed to the appellant's house;

3. That the appellant was denied natural justice by being denied his “disability aids”; and
4. That the decision of the learned Magistrate was induced or affected by fraud/corruption.

Whether the sign is an “object” (Ground 1)

[8] Section 228(1)(a) and (b) of the *Criminal Code* reads as follows:-

S 228 – Obscene publications and exhibitions

(1) Any person who knowingly, and without lawful justification or excuse—

(a) publicly sells, distributes or exposes for sale any obscene book or other obscene printed or written matter, any obscene computer generated image or any obscene picture, photograph, drawing, or model, or any other object tending to corrupt morals; or

(b) exposes to view in any place to which the public are permitted to have access, whether on payment of a charge for admission or not, any obscene picture, photograph, drawing, or model, or any other object tending to corrupt morals;

....

is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

[9] At first instance, the appellant submitted that the sign did not fall into the categories of “obscene picture, photograph, drawing or model or other object tending to corrupt morals” but was instead “merely a communication of an idea”.¹

[10] The appellant submits on appeal that the sign is “printed or written matter” – a category that appears in section 228(1)(a) but not in section 228(1)(b) of the *Criminal Code*. The argument is that the distinction between subparagraphs 228(1)(a) and 228(1)(b) is in the list of items prohibited. As the items in s. 228(1)(b) are a subset of the items in s. 228(1)(a), the balance of items in s. 228(1)(a) are necessarily not prohibited by s. 228(1)(b). The sign, being written matter, is not therefore prohibited from public exposure by s. 228(1)(b).

¹ Magistrates Court Hearing Transcript 1-75.7.

- [11] The argument notes only one difference between the two paragraphs. The primary difference is that the first proscribes selling, distributing or exposing for sale a list of items. The second proscribes exposing the list of items, in effect, to the public. The third paragraph proscribes an indecent show or performance.
- [12] Of course, the question remains, is the sign an object?
- [13] The respondent submitted that as “object” is not defined within the section or within the *Criminal Code*, the ordinary dictionary definition ought be employed. The definition relied upon by the respondent was “something material that may be perceived by the senses”.²
- [14] Despite the initial attraction of the appellant’s argument, it must be rejected. The sign was an object. If the writing on it, exposed to the public, tended to corrupt morals, the offence would be complete.

The nature of the contents of the sign (Ground 2)

- [15] At trial, the respondent submitted that “obscene” and “tending to corrupt morals” are terms that are interchangeable.³
- [16] The learned magistrate correctly identified the issue: whether the contents of the sign rendered it an obscene object tending to corrupt morals.
- [17] Her honour referred to the test in *Crowe v Graham* (1968) 121 CLR 375:⁴

The question still is - does the publication, by reason of the extent to which and the manner in which it deals with sexual matters, transgress the generally accepted bounds of decency? That is a question to be decided by the tribunal of fact. It is to be answered by reading the publication. Common sense and a sense of decency must supply the answer. The Court has to determine whether the publication before it is obscene having regard to the persons, classes of persons and age groups to whom or amongst whom the matter was published.

² Webster’s Dictionary

³ Transcript 1-66.

⁴ (1968) 121 CLR 375 at 395-396

[18] Taking into account the words on the sign and their impact as whole, as well as the fact the sign was exposed to “*all classes of persons using a busy road, whether on foot, in cars, attending nearby establishments*”⁵, the learned Magistrate ultimately concluded that the appellant’s sign breached accepted contemporary community standards and its content was “*obscene, beyond the bounds of ... decency or expected limits of decency.*”⁶ This finding was made on the basis that the appellant “*is ostensibly, by the erection of this sign, offering to provide free sex to 16 year old schoolboys.*”⁷

[19] In my opinion, the sign may also be read as an invitation to interested persons to arrange, through the website or by attending the house, to have sex with 16 year old schoolboys.

[20] The learned Magistrate rejected the appellant’s submission that the sign was “political discourse” in her decision, stating:

*I find that the sign is not – could not be described in any way as a political statement or a political discourse. It would suggest that there was some discourse in the community about 16 year olds and free sex. That is not the case, and I find without any hesitation that this sign is not – does not constitute political discourse.*⁸

[21] The appellant appealed this finding on the basis that the learned Magistrate erred in her decision to not to classify the sign as political discourse:

APPELLANT: Well, it’s ridiculous to say that it’s not political discourse because whether people talked about it in the community or not. If someone makes a political statement, it stands on its own. And political dis- political discourse doesn’t require dialogue or a two-person exchange.⁹

[22] The appellant further submits that as the sign deals with the “age of consent”, which is contained in legislation, then it is automatically deemed political discourse.¹⁰ The sign itself does not explicitly address the age of consent. When pressed on this point, the

⁵ Decision transcript page 4.

⁶ Decision transcript page 5.

⁷ Decision transcript page 4, line 37.

⁸ Decision transcript page 3, lines 7-11.

⁹ 1-14.15-19.

¹⁰ 1-12.36.

appellant responds with “the whole point was to attract attention to all the signs, which are all political.”¹¹

APPELLANT: Yeah. So look – yeah. So the - it doesn’t have to mention age of consent for it to be age of 16. Sixteen-year-old is the age of consent. So 16-year-old and – male or female, you know, made – a schoolboy would be more – would excite people more than would just male, 16-year-old male. And so it was done there to excite interest or excite anguish or consideration. You know, bad news upsets people more than good news.¹²

- [23] I agree with the learned magistrate’s dismissal of the argument that the object was not obscene because it was part of a political discussion.
- [24] The appeal is by way of re-hearing on the record. The decision under challenge – where the court below has judged something to be obscene - is not an exercise of discretion. It is a judgment, like a finding that driving was dangerous. One can examine the criteria by which the judgment was made but, if the proper test was applied, the judgment should stand. If there was error in the criteria or process, then the decision is to be reviewed.
- [25] Whatever ‘obscene’ means in other parts of the provision or at common law, the description that the object must meet, before the person who displays it is criminally liable under *Code* s. 228(1)(b), is ‘tending to corrupt morals’. This requires the prosecution to articulate the morals the object tended to corrupt.
- [26] Without such assistance, the learned magistrate concluded that the contents of the sign were obscene and, being directed at children, “tends to corrupt morals within the community and tends to corrupt the morals of other vulnerable older persons”. I understand this to mean the sign tended to corrupt the morals of young people and/or other vulnerable people because it encouraged them to engage in sexual activity at the house where the sign was erected.
- [27] The learned magistrate did not lose sight of the essential question – whether the object tended to corrupt morals. One fifth of the way through the 21st century, it is difficult to

¹¹ 1-15.28.

¹² 1-15.42-47.

articulate what moral standard, with respect to consensual sexual activity with people of or above the age of 16 years, applies in the Australian community. The charge is not to offend or insult but to tend to corrupt morals. Nonetheless, the learned magistrate articulated the tendency, the judgment was open to her honour and should not be set aside.

Alleged denial of disability aids (Ground 3)

[28] At first instance, the appellant contended he was unfit to represent himself due to his disabilities – specifically, an acquired brain injury. It was accepted by the respondent that the appellant has some form of acquired brain injury. It is not evident that the appellant could not take part in the hearing below or the appeal. I am not satisfied the appellant was denied a fair trial because of a disability. He ardently represented himself on both occasions.

Whether the learned Magistrate was affected by “fraud/corruption” (Ground 4)

[29] The appellant contends the learned Magistrate’s decision was “induced or affected by fraud.” The basis on which this argument is presented is the appellant’s belief regarding “catholic corruption”. The respondent submits there is no evidence to support a claim of bias or fraud. No evidence was adduced by the appellant at hearing in support of these claims.

[30] The appeal is dismissed.