DISTRICT COURT OF QUEENSLAND

CITATION:	*Wells v Commissioner of Police* [2023] QDC 120
PARTIES:	**STUART TIMOTHY WELLS** (appellant) **v** **COMMISSIONER OF POLICE** (respondent)
FILE NO:	APPEAL NO: 31/22
DIVISION:	Appellate
PROCEEDING:	Appeal
ORIGINATING COURT:	Magistrates Court, Cairns
DELIVERED ON:	Orders made 16 June 2023
DELIVERED AT:	Cairns
HEARING DATE:	6 June 2023
JUDGE:	Morzone KC, DCJ
ORDER:	**1. Appeal allowed.** **2. The decision and order made in the Magistrates Court held in Cairns on 22 February 2022 are set aside, and in lieu it is ordered that the respondent will pay the appellant's costs of the proceeding in the Magistrates Court in Cairns in the amount of $2,025.87 within 90 days.**
CATCHWORDS:	CRIMINAL LAW - appeal pursuant to s 222 Justices Act 1886 – whether proper to make an order for costs – consideration of whether good faith in bringing the proceeding, whether appropriate investigation and proceeding to prosecution, conduct of the investigation, the basis for the order of dismissal, whether the defendant declined opportunity to explain or provide exonerating evidence, whether unreasonable prolongation of the proceeding – assessment of just and reasonable costs.
LEGISLATION:	*Justices Act 1886* (Qld) ss 222, 223(1) & 227 *District Court of Queensland Act 1976* (Qld), s.113
CASES:	*Dwyer v Calco Timbers* (2008) 234 CLR 124; applied in *Forrest v Commissioner of Police* [2017] QCA 132 *Fox v Percy* (2003) 214 CLR 118 *Latoudis v Casey* (1990) 170 CLR 534

Madden v Commissioner of Police [2023] QCA 31
McDonald v Queensland Police Service [2017] QCA 255 at
Warren v Coombes (1979) 142 CLR 531
White v Commissioner of Police [2014] QCA 12

SOLICITORS: Fisher Dore solicitors for the Appellant.
Queensland Police Service Legal Unit for the respondent.

Summary

[1] On 21 February 2022, the Magistrates Court held in Cairns refused the appellant's application for costs in the wake of a failed prosecution of one charge of a contravention of a domestic violence after the prosecution offered no evidence.

[2] The appellant grounds his appeal as follows:

1. The learned magistrate erred by failing to properly consider and apply the considerations in s 158A(2) of the *Justices Act*, particularly, whether the proceeding was brought in good faith, and whether the investigation into the offence was conducted in an appropriate way.

2. The learned magistrate erred in the exercise of the discretion by deciding it was not proper to make an order for costs pursuant to s 158(1) of *the Justices Act*.

[3] In this regard, the appellant argues that the learned magistrate: erred by relying on his mere exercise of the right to silence as a circumstance justifying the refusal of costs; overlooked relevant evidence or failed to give consideration to, and by barely concluding that, the investigation was conducted fairly and properly; and took into account an irrelevant consideration of whether the appellant was likely guilty.

[4] The appeal is opposed. The respondent argues that the learned magistrate's decision was supported by reasoned consideration and analysis of the pertinent and overlapping circumstances, including: that the appellant's unreasonable decline to explain himself during the police field interview (as distinct from his right to silence); that the police investigation and prosecution were conducted appropriately; and that the proceeding was finalised at the earliest opportunity.

[5] On my review, I respectfully opine that the learned magistrate misdirected herself by conflating the consideration of s 158(2)(f) with the appellant's right to silence, which resulted in a miscarriage of the proper exercise of discretion. It seems to me that the appellant did not unreasonably decline an opportunity to explain or produce evidence of an alibi on 10 October 2022, instead, despite the inadequate police investigation, the defendant reasonably explained a complete defence both at the field interview and later by his solicitor's correspondence of 10 January 2022.

[6] Furthermore, although I cannot definitively determine whether the case was initiated and pursued in good faith, I am persuaded that both the investigation and prosecution were inadequate. The police investigation was flawed from the beginning, as they inaccurately portrayed the presence and extent of eyewitness testimony as of 10 October 2022, and they neglected to properly examine the appellant's access to and association with the vehicle at the critical time. The

persistence of the proceeding subjected the appellant to expense, delay, and inconvenience until the police finally capitulated by offering no evidence at the trial. Ultimately, the appellant achieved complete success, and it is fair and proper that he be reimbursed for reasonable costs.

[7] On 16 June 2023, I allowed the appeal and I ordered the respondent pay the appellant's costs assessed at $2,025.87, these are my reasons.

Appeal

[8] The appellant appeals pursuant to s 222 of the *Justices Act 1886* (Qld). There is no issue about the timing and appellability of the order.[1]

[9] Pursuant to s 223 the appeal is by way of rehearing on the original evidence, and any new evidence adduced by leave if there are special grounds for giving leave. 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.[2] 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.[3] In doing so it ought pay due regard to the advantage that the magistrate had in seeing the witnesses give evidence, and attach a good deal of weight to the magistrate's view.[4]

[10] "Special grounds" are required before fresh, additional or substituted evidence (new evidence) may be admitted on appeal.[5] With the parties' agreement, I admitted the bodycam footage being the best evidence of the exchange between the appellant and the police on 10 October 2021 and I'm aided by the partial transcription extracted by the appellant.

[11] This court must dispose of the appeal in accordance with s 225 *Justices Act 1886* (Qld) exercising the same powers as the Court of Appeal on an appeal.[6]

Did the Magistrate err in the exercise of the discretion as to the properness to make an order for costs pursuant to section 158(1) of *the Justices Act?*

[12] The magistrate had power to deal with costs pursuant to s 158(1) of the *Justices Act*, as follows:

> "When justices instead of convicting or making an order dismiss the complaint, they may by their order of dismissal order that the complainant shall pay to the defendant such costs as to them seem just and reasonable."

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1 *Madden v Commissioner of Police* [2023] QCA 31

2 *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 at [47].

3 *White v Commissioner of Police* [2014] QCA 12 at [5]-[8].

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

5 *Justices Act* 1886, s 223(2).

6 *District Court of Queensland Act 1976* (Qld), s.113

[13] Pursuant to s 158A the court must take into account all relevant circumstances to be satisfied that it is proper that an order for costs should be made. Section 158A provides:

158A Exercise of discretion in relation to an award of costs

(1) Despite section 158(1), justices who dismiss a complaint may make an order for costs in favour of a defendant against a complainant who is a police officer or public officer only if the justices are satisfied that it is proper that the order for costs should be made.

(2) In deciding whether it is proper to make the order for costs, the justices must take into account all relevant circumstances, including, for example—

(a) whether the proceeding was brought and continued in good faith; and

(b) whether there was a failure to take appropriate steps to investigate a matter coming to, or within, the knowledge of a person responsible for bringing or continuing the proceeding; and

(c) whether the investigation into the offence was conducted in an appropriate way; and

(d) whether the order of dismissal was made on technical grounds and not on a finding that there was insufficient evidence to convict or make an order against the defendant; and

(e) whether the defendant brought suspicion on himself or herself by conduct engaged in after the events constituting the commission of the offence; and

(f) whether the defendant unreasonably declined an opportunity before a charge was laid—

(i) to explain the defendant's version of the events; or

(ii) to produce evidence likely to exonerate the defendant;

and the explanation or evidence could have avoided a prosecution; and

(g) whether there was a failure to comply with a direction given under section 83A; and

(h) whether the defendant conducted the defence in a way that prolonged the proceeding unreasonably; and

(i) whether the defendant was acquitted on a charge, but convicted on another.

(3) If an order for costs under section 158 is made against a complainant who is a police officer or public officer (within the meaning of this subsection), the clerk of the court is to give to the defendant a certificate signed by the clerk showing the amount of costs awarded.

(4) Subject to subsection (5), the defendant is entitled to be paid by the State the amount shown in the certificate within 2 months after payment is claimed.

(5) If an appeal against an order for costs is made under section 222—

(a) payment of the amount shown in the certificate is stayed until the appeal is decided; and

(b) payment is to be made of the amount (if any) ordered or confirmed by further order made on the appeal.

(6) In subsection (3)—

public officer does not include—

(a) an officer or employee of the public service of the Commonwealth; or

(b) an officer or employee of a statutory body that represents the Crown in right of the Commonwealth; or

(c) an officer or employee of a local government.

[14] The factors are not exhaustive, and ought be considered as far as relevant, the appellant particularly relies upon the facts in s 158A(2)(a) and (c) to argue that the proceeding was not brought in good faith and that the investigation into the offence was conducted in an inappropriate way. Other factors are also relevant including that the appellant's conduct in s 158A(2)(f), which was the focus of the learned magistrate.

[15] The appellant argues that the learned magistrate: erred in finding that the appellant's mere exercise of the right to silence was a circumstance justifying the refusal of costs, and thereby overwhelmed proper consideration of whether the investigation was conducted fairly and properly. The respondent argues that learned magistrate gave reasoned consideration and analysis to the pertinent and overlapping circumstances, including the appellant's unreasonable lack of explanation during the

police field interview, contact (as distinct from his right to silence), the appropriateness of the police investigation and the discontinuance at the earliest opportunity.

Was the investigation into the offence was conducted in an appropriate way?

[16] The complaint was made at the Smithfield Police Station on 27 August 2021.

[17] The complainant alleged that at midday two days earlier on 25 August 2021 while she was working on roadworks on the Captain Cook Highway, she heard someone yell - "*You're a fucking whore Suzie, you're a fucking whore*" - from a passing car. She asserted was in hearing of her team leader, and everyone around her. Although she did not see the person, she recognised it as the defendant's voice and his older Landcruiser single cab with Victorian number plates.

[18] The police first spoke with the appellant at his home about a month and a half later in the evening of 10 October 2021. That field interview was recorded by the police body-worn camera.

[19] Immediately after police gave the bare nature of the complaint, the appellant rejected the foundation of the complaint as being impossible, saying that "it's fucking bullshit" and that "she's a lying slag". Later in the exchange, especially in response to the officers' apparently false assertion of having statements of other corroborative eyewitnesses, the appellant against asserts that the complaint was baseless saying: "*someone else is going to come to court … based on nothing*".

[20] As the police officers continued to provoke the appellant's version, they misrepresented, with persistent importunity, the existence and probative force of corroborative statements from other independent witnesses. They did so by variously asserting that:

> *"This is a chance for us to get your side of the story - there's two sides to every story... I'm just trying to get your side of the story...*
>
> *We've actually got some statements off other people as well …"*
>
> *It's not just her, mate, the other people have heard it… Workers who have got nothing to do with her .... They heard someone yell out the window 'Suzie, you're a fuckin 'whore'... She's saying it's your voice and they're saying they heard it, so it's a bit of a coincidence, isn't it? …*
>
> *We've got other witnesses with statements and that's enough evidence for us to put you before the court and a Magistrate can decide … "*
>
> *If it was just her word alone there probably wouldn't be enough evidence, but we've got independent witnesses that are willing to give us statements and come to court to give their testimony ... if they come to court and give a false testimony, that's a prisonable (sic) offence. …*

> *The other witnesses will go to court, they'll say what they heard ... they'll corroborate [the complainant]. ...*
>
> *I can't see someone that's completely not related or not involved with [the complainant] ... putting their life and their reputation on the line and their criminal history on the line by perjuring themselves in court ... I can't see that happening. ...*
>
> *You could be getting taken into the watchhouse ... but if you're going to be okay about it, I can give you a notice to go to court instead.*
>
> *I'm trying to be as fair as I can with you ...”*

[21] The field interview concluded with the appellant declining to participate in a formal interview and the police giving him a Notice to Appear for 29 October 2021.

[22] Far from being fair, it seems to me that the officer's reference to the existence, force and effect of statements from other “*people*” and “*witnesses*” was unfairly inaccurate, inappropriate and contrary to guidelines.[7] Police did not have any other witness statements as of 10 October 2021 when they spoke to the appellant. It was not until 10 days later on 20 October 2021 (being almost two months after the alleged incident) that police first obtained one other witness statement, from the complainant's team leader. That witness recalled midday on 25 August 2021. He heard a male yelling loudly - "*You fucking fuck*" - and when he turned around he saw an off-white, older model Toyota Landcruiser Ute, which he was "*pretty sure*" was a single cab with a tray back. He recalled that the Ute took off with a big puff of smoke coming out the exhaust.

[23] The final state of the police evidence was certified in the QP9 signed on 20 October 2021, albeit still perpetuating the unsubstantiated assertion that “*many others ... witnessed the verbal tirade*".

[24] The applicant duly appeared in the Magistrates Court at Cairns on 29 October 2021 where he indicated that the matter was contested. He was admitted to bail. The matter was again mentioned on 17 November 2021 when orders were made for disclosure and listing for further review on 5 January 2022 and for trial on 15 February 2022.

[25] On 9 December 2021 police obtained an addendum statement from the complainant regarding the recognition of the appellant's voice and car. The brief of evidence was disclosed on 14 December 2021.

[26] On 30 December 2021, the appellant's solicitor emailed the police prosecution office as follows:

> “*It seems that the prosecution case relies upon voice recognition rather than visual identification, and that the voice recognition is buttressed by the aggrieved recognising a “Toyota*

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[7] Queensland Police Service Operational Procedures Manual, s 2.5.14, "Investigative Interviewing". See also, “*Investigative interviewing: THE LITERATURE*”, Mary Schollum, Office of the Commissioner of Police, New Zealand, September 2005, pp. 44-47.

> *Landcruiser single cab utility" with "Victorian plates on it" as belonging to the defendant (although, apparently, registered in the name of the defendant's sister.*
>
> *We wonder whether your office might have access to a Registration and Plates Listing (or the Victorian equivalent) to prove the existence of a vehicle matching the description given?*
>
> *Our enquiries in Queensland have only been able to reveal the registration of a boat, boat trailer, jet ski and Land Rover.*"

[27] The email was not met with any response explicable by the time year and trial prosecutor's absence on vacation. The trial remained on course as at the court review on 5 January 2022.

[28] On 10 January 2022. the appellant's solicitor emailed the Acting Officer-in-Charge of the Cairns prosecution office the following:

> *Given that Oldfield is on leave, would you be able to discuss this matter with me?*
>
> *It is somewhat urgent because Mr Wells seems to have an alibi, and apart from that he does not seem to have access to an operational "Toyota Landcruiser single cab utility" with "Victoria plates on it".*

[29] Later the same day on 10 January 2022, having learned that the Acting Officer-in-Charge of the Cairns police prosecution was also away, the appellant's solicitor emailed with apparent frustration that:

> *I understand that you were on a day off today, so I thought I would just email instead.*
>
> *On the offence date, Mr Wells was paid for work as a farmhand/machinery operator by JPK Farming Pty Ltd - an enterprise located at Mutchilba. If he was in Mutchilba, he could not have been at Smithfield.*
>
> *And, as previously advised, Mr Wells apparently has no access to an operational "Toyota Landcruiser single cab utility" with "Victorian plates on it". No such vehicle is registered to him in Queensland. There is an unregistered (and unable to be re-registered) statutory write off Landcruiser in his yard (VIN: JTELC71 J600004795) which is in such a state of disrepair that it simply cannot be driven (it has been this way since about 2018). The Landcruiser t h a t the complainant learnt to drive in (she refers to such in her statement) was sold approximately 13 years ago. It is astonishing that the charge was brought without the investigator having made any effort to discover the whereabouts of a "Toyota Landcruiser single cab utility" with "Victorian plates on it" which is registered to the defendant's sister.*

> *And, the statement of the complainant is otherwise baloney, and her corroborator doesn't actually corroborate her.*
>
> *We would invite you to give prompt consideration to discontinuing the prosecution of the charge.*

[30] On 18 January 2022, the trial prosecutor emailed the appellant's solicitor advising that the prosecution would be offering no evidence to the charge and inquiring of any application for costs. In a detailed email response that day, the appellant's solicitor confirmed appellant's intent and grounds to apply for costs. Accordingly, the proceeding was dismissed after police offered no evidence at the trial on 15 February 2022, and the question of costs was adjourned for a later date, when the application for costs was dismissed.

[31] The learned magistrate identified this issue as relevant to the consideration of costs but concluded that the investigations were "conducted fairly and properly." However, I am unable to discern why. It seems to me that instead of considering the investigative conduct relevant to the issue, the learned magistrate undertook a merits review of the evidence to assess whether it made out a prima facie case of domestic violence and found that it did, as well as finding that the appellant unreasonably declined to disclose an alibi (which I will address later).

[32] On my review, it seems to me that police investigation was not conducted in an appropriate way. At the outset officers unfairly and inaccurately portrayed the existence, nature and extent of other witness testimony. The appellant unequivocally conveyed the impossibility of engaging in the alleged offending conduct due to the complete absence of any contact with the complainant during that time. This highlighted the necessity for the investigation to prioritise the appellant's identification as the central focus. But, apart from the complainant addendum statement, the investigation remained wanting as to the appellant's identification to be inferred from his whereabouts, access to and association with the identified Landcruiser Ute at the critical time. And despite receiving additional and timely notice from the appellant's solicitor, this investigative inadequacy persisted until the police ultimately yielded and offered no evidence at the trial.

[33] In my respectful opinion, inadequacy of the police investigation supports a costs order in the appellant's favour.

Was there a failure to take appropriate steps to investigate a matter coming to, or within, the knowledge of a person responsible for bringing or continuing the proceeding?

[34] Consideration this issue was also conflated with the merits review of a prima facie case, as just discussed, at the hearing and decision below.

[35] The case critically depended upon the circumstantial evidence going to the identification of the man who yelled obscenities at the complainant. In particular, the veracity, reliability and correctness of the complainant's aural identification of the appellant, and well as indirect evidence implicating the appellant whereabouts, access to and association with the identified Landcruiser Ute at the critical time.

[36] Both aspects came to the police notice from the outset.

[37] The earliest was by the appellant exclamations at the field interview in his driveway on the evening of 10 October 2023. Subsequently, his solicitor's email correspondence of 30 December 2023 further emphasised the weak reliance on voice recognition and the absence of inferential evidence linking the appellant to the car. Upon receiving no response, the solicitor sent a second email on 10 January 2022 reiterating the lack of association with the car and providing information regarding the appellant location at the relevant time.

[38] And despite receiving additional and timely notice from the appellant's solicitor, this investigative inadequacy persisted until the police ultimately yielded and offered no evidence at the trial. Even with the complainant addendum statement, the investigation remained wanting as to the appellant's identification to be inferred from his whereabouts, access to and association with the identified Landcruiser Ute at the critical time.

[39] This continuing investigative inadequacy, despite being put on notice by the appellant to both those who brought the proceeding and continued to prosecute it, supports a costs order in his favour.

Was the proceeding brought and continued in good faith?

[40] Whilst, I have been critical of the flawed interviewing method, investigation inadequacies, and ongoing prosecution, I cannot definitively determine whether the case was initiated and pursued in good faith.

[41] In order to start a proceeding, the arresting officer must be satisfied on reasonable grounds that a defendant committed the offence.[8] Nor is a prima facie case enough; rather, it requires an evaluative merit assessment of a defendant being found guilty of the offence.[9] It seems to me that me that the identification evidence fell far short of that test at the time of service of the notice to appear and his later appearance, and the evidence proved to be insufficient to support a decision to prosecute in the public interest.[10]

[42] Suffice it to say, upon the trial prosecutor's return from vacation and subsequent assessment, he acted properly and diligently towards the timely resolution.

Did the defendant brought suspicion on himself by conduct engaged in after the events constituting the commission of the offence?

[43] There is no evidence that the appellant's post event conduct was suspicious.

Did the defendant unreasonably declined an opportunity before a charge was laid to explain the defendant's version of the events or to produce evidence likely to exonerate the defendant, and the explanation or evidence could have avoided a prosecution?

[44] Whilst not a platform of the appellant's application for costs, the learned magistrate properly raised the appellant's failure to explain of his alibi at first instance as a relevant consideration, and in her reasons, Her Honour said:

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8 Queensland Police Service Operational Procedures Manual, s 3.4.2.
9 Queensland Police Service Operational Procedures Manual, s 3.4.3.
10 Queensland Police Service Operational Procedures Manual, s 3.4.1.

> *"Subsection (f) I will consider further later, whether the defendant unreasonably declined an opportunity before a charge was laid to explain the defendant's version of the offence - events or, under subsection (f) subsection (2), to produce evidence likely to exonerate the defendant and the explanation or evidence could have avoided a prosecution. That, in my view, is particularly relevant, 158A, subsection (f). The - it has later been said that the defendant may have had an alibi for the day in question and didn't have any access to a vehicle as described.*
>
> > *Now, that is relevant, because if indeed that is the fact, his failure to - refusing to answer any questions on that day to explain his version of events and produce The appellant argues that the learned magistrate erred in finding that the Appellant's mere exercise of the right to silence was a circumstance justifying the refusal of costs. evidence likely to exonerate him is, in my view, relevant. Mr Finch says it was 8 pm at night. But, in my view, he easily could have produced that evidence that night or the next day or prior to the next mention. Instead, he declined to answer any questions, other than denying the matter.*
> >
> > *Mr Finch argues that the proceeding was not brought and continued in good faith and that there was a failure to take appropriate steps to investigate the matter, in part because of the alibi and car issues. But I do note that very soon after those matters were brought to the attention of the police via a submission, eight days later, the prosecution was discontinued. Had that been done at the time that they were attempting to question him, it may be that that proceeding would not - the charges wouldn't have continued. And that, in my view, is - well, I do consider it to be unreasonable that he declined an opportunity in those circumstances.*
> >
> > *... As I say, under section 158A(f), it is, of course, relevant that he did not provide a record of interview as I have discussed.*
> >
> > *... The applicant was approached by police, given the opportunity to answer questions and, apart from a blanket denial, he declined to answer any questions in particular. He did not tell police he had an alibi, nor that he had no access to a white ute."*

[45] The appellant argues that the learned magistrate erred by effectively finding that the appellant's mere exercise of the right to silence was a circumstance justifying the refusal of costs.[11] Whereas the respondent argues that the learned magistrate does not impinge on that right to not self-incriminate himself, but properly considered the factor in the context of whether it was "unreasonable" to decline the opportunity to provide his version, particularly in respect of his alibi evidence.

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[11] Cf. *Junek v Busuttil* [2004] VSC 115 at [37] & *Redl v Toppin* [1993] VSC 159 at [8]

[46] In *Latoudis v Casey*,[12] Toohey J explained the distinction between the matters subject of s 158A(2)(f) and the right to silence this way:

> "Now, in a particular case there may be good reasons connected with the prosecution such that it would not be unjust or unreasonable that the successful defendant should bear his or her own costs or, at any rate, a proportion of them. To return to the examples given earlier in this judgment, if a defendant has been given the opportunity of explaining his or her version of events before a charge is laid and refuses the opportunity, and it later appears that an explanation could have avoided a prosecution, it may well be just and reasonable to refuse costs: see, by way of illustration, *Reg. v. Dainer; Ex parte Milevich*. This has nothing to do with the right to silence in criminal matters. A defendant or prospective defendant is entitled to refuse an explanation to the police. But if an explanation is refused, the successful defendant can hardly complain if the court refuses an award of costs, when an explanation might have avoided the prosecution." (my underling and emphasis)

[47] It is evident that the appellant did not unreasonably decline an opportunity to explain or present evidence on 10 October 2022.

[48] On the contrary, on my reckoning, the appellant took the earliest opportunity to explain his position to the best of his ability, considering the interview was unfair, inappropriate, and provocative. Given the circumstances, the appellant could not reasonably be expected to calmly and meticulously analyse the allegations to provide a more temporally exacting and comprehensive alibi. Instead, he did his best in that moment to explain, before any charges were laid, that the alleged conduct was impossible as he had no contact or interaction with the complainant, rendering the complaint baseless and motivated by ill will.

[49] The defendant provided a reasonable and complete defence at the earliest opportunity during the initial field interview and subsequently through his solicitor's correspondence. If this had been promptly investigated and accepted, he would have been exonerated and spared from prosecution.

[50] When considered alongside other relevant considerations, this factor also supports an order for costs in his favour.

Did the defendant conduct the defence in a way that prolonged the proceeding unreasonably?

[51] This is also a relevant matter, which garnered little attention at the hearing and decision below.

Was the order of dismissal made on technical grounds and not on a finding that there was insufficient evidence to convict or make an order against the defendant?

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[12] *Latoudis v Casey* (1990) 170 CLR 534 at 565.

[52] The learned magistrate dismissed the proceeding, not on technical grounds, but inferentially on a finding that there was insufficient evidence to convict, as the prosecution capitulated by offering no evidence at the trial, as foreshadowed with the appellant's solicitor.

[53] In my respectful view, the relevant considerations favour the appellant's application for costs. The persistence of the proceeding subjected him to expense, delay, and inconvenience until the police finally capitulated by offering no evidence at the trial. Ultimately, the appellant achieved complete success on the merits, and I think it is fair and proper that he be reimbursed for reasonable costs.

What are the just and reasonable costs?

[54] Under section 158B of the *Justices Act* 1886 (Qld), the court is constrained by the scale of costs outlined in Schedule 2 of the Justices Regulation 2014 (Qld) when determining what costs are considered "just and reasonable". Schedule 2 of the *Justices Regulation* 2014 (Qld) allows for a maximum amount of $1,500.00 for instructions and preparation for the hearing, including attendance on the first day of the hearing, and up to $250.00 for court attendance, excluding the hearing of the complaint. It also permits reasonable disbursements.

[55] The appellant is claiming a total costs sum of $2,025.87, which includes $1,000 for taking instructions and preparing for the hearing, $500 for appearing at two mentions, $250 for attending the review of the summary hearing, $25.87 for transcript preparation of the field interview, and $250 for an additional adjournment on 15 February 2022.

[56] Considering the circumstances of the case, these amounts and the overall costs claimed are both just and reasonable.

Order

[57] For these reasons, I made the following orders on 16 June 2023:

1. Appeal allowed.

2. The decision and order made in the Magistrates Court held in Cairns on 22 February 2022 are set aside, and in lieu, it is ordered that the respondent will pay the appellant's costs of the proceeding in the Magistrates Court in Cairns in the amount of $2,025.87 within 90 days.

Judge DP Morzone KC