Queensland Government

QUEENSLAND COURTS AND TRIBUNALS

TRANSCRIPT OF PROCEEDINGS

MAGISTRATES COURT

S. BYRNE, Acting Magistrate

[redacted]

POLICE **Complainant**

and

[redacted] **Defendant**

PROSERPINE

[redacted]

DAY 1

DECISION

Any rulings in this transcript may be extracted and revised by the presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is the hand-up committal for [redacted]. Did I pronounce your name correct?

DEFENDANT: [redacted], your Honour.

HIS HONOUR: [redacted]. Sorry. I am not very good on some – on names. Mr McMillan has appeared without any cross-examination submitting a no case. That, of course, is resisted by [redacted]. We have – sorry, the – [redacted] and Mr McMillan and I have viewed some CCT versions. The quality of some of them is much better than others. And some body-worn – particularly the body-worn of [redacted]. The first lot of CCTV, which is a view from behind the bar towards the participants, is the clearest. That does indicate the co-accused, [redacted], more than likely headbutting the victim. Following that, the victim pursues [redacted], seemingly forcing him backwards while throwing quite a number of punches at him. The defendant before me today leaves the bar in pursuit of his friend, [redacted] and the victim.

In the next CCTV, which is track 15, the defendant is seen to throw a punch, which does seem to connect with the victim. However, the punch is thrown following what seems like [redacted] being on his knees or sitting on the floor and the victim is standing and is clearly pursuing – well, seems to be pursuing [redacted]. But what is crystal clear is that the victim throws a punch at [redacted], which is a straight right, which misses [redacted]. And in response to that, the defendant throws a punch which strikes the victim in the region of the – in the region of his left eye.

Now, leaping forward, in relation to the defendant striking the left hand eye region of the victim, [redacted] has his body-worn footage which indicates the defendant having two grazed knuckles – it is difficult to say to what extent they are grazed – or they had blood on them. He provides an explanation to police that he punched a wall at an earlier establishment when attempting to punch a punching bag. [redacted], in his statement, says that the grazes are dripping blood. That was not terribly obvious from the body-worn, I must confess. There could be a number of explanations for that, one of which is that that part of the victim's face was already bleeding and the defendant obtained the blood from his face, or perhaps the defendant's explanation. It is unclear.

It is disappointing that the police did not obtain eyewitness versions. They probably could have obtained 30 of them. No two of them may have lined up, but those versions by eyewitnesses, and preferably those who are more sober than others, may well have assisted my role today and the role of a jury if the matter were heard and determined by a jury. It is disappointing that those statements were not obtained and that reliance was simply placed upon the CCTV, which to some extent raises more questions than answers. The footage from camera 14 is particularly poor quality. However, it confirms the victim forcing [redacted] back by throwing punches at him. It is not clear – certainly was not clear to me where the defendant may have been at this particular time. There seems to have been a third party involved who, on my

viewing of the footage – and I believe Mr McMillan agreed with me, and perhaps [redacted], I am just not sure – but this third party seems to be throwing punches at either the victim or [redacted] or both.

The thrust of Mr McMillan's submission is that the Prosecution have not negatived self-defence under section 273. It cannot – I do not believe it is Mr McMillan's submission that the defendant acted in self-defence of himself, but of his friend, [redacted]. I am – I think there is clearly something in this argument, and I accept that the police have not negatived the section 273 self-defence of another defence. In this hearing today, my role is to look for a prima facie case or sufficient evidence to warrant the defendant being put on trial or that the evidence raises a probable presumption of guilt. My role has been mentioned by many jurists over the years, and probably will continue to be mentioned, but some of the catchphrases are, "Could any reasonable jury, properly instructed, return the verdict of guilt on the evidence before me?" Notwithstanding that the evidence may be tenuous, inherently weak or vague, it should still be left to a jury for its decision.

However – sorry, I should not say however. Additionally, the Prosecution's evidence must be taken at its highest as credible and reliable, but that a person should not be committed to stand trial if there is insufficient evidence to prove an essential element of the offence. The section 273 self-defence raised by Mr McMillan for the defendant is very relevant and very compelling. I am not satisfied that the Prosecution have negatived that self-defence in the material that is before me, and in the circumstances, I find that there is no case to answer.

MR McMILLAN: May it please, your Honour.

HIS HONOUR: Now, [redacted] do I have to make any other findings?

[redacted]: None for all of the Court today, your Honour.

HIS HONOUR: Okay. Thank you, Mr McMillan.

MR McMILLAN: That is all I have, your Honour. May I withdraw from this Court?

HIS HONOUR: Yes.

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