VIQ SOLUTIONS AUSTRALIA PTY LTD
ACN 008 711 877

T: 1800 AUSCRIPT (1800 287 274)
W: www.auscript.com.au
E: clientservices@auscript.com.au

TRANSCRIPT OF PROCEEDINGS

MAGISTRATES COURT

C.J. CALLAGHAN, Magistrate

[redacted]

POLICE **Complainant**

and

[redacted]

Defendant

GYMPIE

[redacted]

DECISION

Any Rulings that may be included in this transcript, may be extracted and subject to revision 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.

[redacted]

HIS HONOUR: Yes. In this matter, [redacted] are charged with the same offence. That offence is that on the 18th day of September 2021, at Gympie in the State of Queensland, they, with intent to do some grievous bodily harm to [redacted], unlawfully did grievous bodily harm to [redacted]. It is not alleged that they are the actual perpetrators of the unlawful – well, grievous bodily harm to [redacted]. What is alleged is that their father, [redacted] – I presume he is the father – did the acts which have constituted the grievous bodily harm to [redacted], and that [redacted] did those acts with intent to do grievous bodily harm to [redacted].

They have been charged as parties to the offences under sections 7(1)(b) and (c) of the Criminal Code which is when an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence and may be charged with actually committing it. That is to say:

> *(b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence, and (c) every person who aids another person in committing the offence.*

They have also been charged under section 8 of the Criminal Code, which says:

> *When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and the – sorry, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.*

Here, it was alleged by the Prosecution that they and each one of them formed a common purpose – a common intention with [redacted] to prosecute an unlawful purpose, and that was the assault of [redacted], in conjunction with one another. And in the prosecution of such a purpose, an offence was committed, that offence being – the Prosecution alleged it is – grievous bodily harm with intent to do grievous bodily harm. And each of them is deemed to have committed the offence. The intent to do grievous bodily harm must be proven to be the intention of [redacted].

The general circumstances of the matter that [redacted] and the victim, [redacted] exchanged some text messages with each other which indicates to anyone reading it that they were in dispute over some reason or another. And [redacted] and the two persons here, [redacted] and [redacted], as well as two others, went around to [redacted] place. [redacted] is seen to enter the property first. He is followed by [redacted] who was not armed. [redacted] is also there in attendance and comes to the gate. He is wielding what looks to be a sword and a – something looking like a machete; two long-edged weapons. [redacted] is not seen with any weapon on him at the [indistinct] the first instance of it all.

[redacted]

He then goes – [redacted] then has words with [redacted]. They throw punches – or, at least, [redacted] throws a punch; maybe [redacted] threw a punch too – and then [redacted] produces a knife from his shorts – a short knife – chases [redacted] around. [redacted] is seen to be – what a jury could infer as – trying to stop his father doing anything further, and someone, a male voice, is heard to yell, "Don't do it." The – then it seems that [redacted] delivers the blows that cause a wounding to [redacted], a heavy laceration to his head, and another wounding to – or two to his torso. It is not in dispute that he suffered grievous bodily harm; we do not need to concern ourselves with the definition of that.

What this committal gets down to: Mr McMillan, who is representing [redacted] and [redacted], has submitted that there is no evidence upon which they should be committed for trial of the charge that they are currently charged with, that is, acts intended to cause grievous bodily harm, because there is no evidence of (A) their intention or (B) their knowledge of their – of [redacted] intention to do the same, and that there is no evidence from which a properly instructed jury could come to that view, that they had some knowledge of the intention or that it was a probable consequence of going around there that [redacted] would form the intention to cause grievous bodily harm and then do grievous bodily harm.

There is no evidence of what discussions took place in the car. It is obvious that [redacted] was aware; he had his two weapons. There is no evidence of any of their knowledge that [redacted] had a knife on him. It may well be inferred, I suppose, or able to be inferred by a jury that there was some knowledge of [redacted] possessing a knife. There is no evidence after the event of them which could be taken to assist anyone in forming the view that they had knowledge of [redacted] intentions or any evidence from which they could have formed the knowledge of [redacted] intentions.

I had read some cases over lunch: [redacted] case adopting that of [redacted]. That decision in [redacted] which seemed to indicate that if a principal offender is to be convicted of an offence of murder, then the accomplices cannot be convicted of anything but murder, they – for instance, they cannot be convicted of manslaughter if the intention to do grievous bodily harm or killing is – or their knowledge of it or it being probable consequence is not – is not formed. The High Court ruled against the Queensland Court of Appeal on that, and, in fact, the government subsequent to that case with [redacted] in the High Court enacted section 10A which says:

> *Under section 7, a person's criminal responsibility extends to any offence that, on the evidence admissible against him or her, is either the offence proved against the person who did the act or made the omission that constitutes that offence or any statutory or other alternative to that offence.*

Subsection (2) says:

[redacted]

Under section 8 , a person's criminal responsibility extends to any offence that, on the evidence admissible against him or her, is a probable consequence of the prosecution of a common intention to prosecute an unlawful purpose, regardless of what offence is proved against any other party to the common intention.

I think that the majority in the High Court in [redacted] case gave an indication where if some nefarious person, who wasn't the principal offender but was the section 8 party to the offence, could be found guilty of murder and the principal offender only of manslaughter. In any event, I tend to agree with the submissions made by Mr McMillan that there is simply no evidence of – from which a properly instructed jury could possibly form a view that these two, [redacted] and [redacted] had the requisite knowledge to – for a jury to form a view that the – it was a probably consequence that is [redacted] would have the intention to do grievous bodily harm, as well as doing grievous bodily harm.

I am of the view, though, that they should be, nevertheless, committed for trial and committed for trial on grievous bodily harm because that is a probable consequence of going around to beat someone up. Even if they were there to aid him only as a – as defence if things got out of hand, going around there – it is a probable consequence that grievous bodily harm would be formed.

So I am going to commit them for trial on the charge of grievous bodily harm rather than acts intended to cause grievous bodily harm and charge – so each of you, stand up thanks. [redacted] and [redacted] are – having considered the evidence, I am of the view that you should both be committed for trial and I will now address you in terms of section 104 of the Justices Act after charging you. The charge is that on the 18th day of September 2021, at Gympie in the State of Queensland, each of you unlawfully did grievous bodily harm to [redacted]. Now you will have an opportunity to give evidence in oath before me, and to call witnesses, but first I am going to ask you: do you wish to say anything in answer to the charge? You need not say anything unless you wish to do so, and you are not obliged to during pleading. You have nothing to hope from any promise, nothing to fear from any threat of note being held out to you to induce you to make any admission or confession of guilt. Anything you do say, though, will be taken down and may be given as evidence in the trial, so [redacted], is there anything you wish to say in answer to the charge?

MR McMILLAN: Your Honour, can I answer on behalf of my clients?

HIS HONOUR: Yes.

MR McMILLAN: [redacted] wishes to enter a plea of guilty and be committed for sentence to the District Court on a date to be fixed.

HIS HONOUR: That is so. [redacted]. Yes.

[redacted]

DEFENDANT [redacted]: Yep. Yes.

HIS HONOUR: Thank you, and [redacted]

MR McMILLAN: Your Honour can I answer on behalf of my client?

HIS HONOUR: Yes.

MR McMILLAN: My client instructed me that he wishes to enter a plea of guilty and be committed for sentence to the District Court on a date to be fixed.

HIS HONOUR: All right. Will each be committed to the criminal sittings – for sentence to the criminal sittings in the District Court to be held at Gympie on a date to be notified by the Director of Public Prosecutions.

...

HIS HONOUR: I, in this matter, have bail applications sent in by both [redacted] and [redacted]. Section 9 of the Bail Act provides that where a person's held in custody and they are charged with an offence, for which the person has not been convicted it appears or is brought before a Court empowered by section 8 to grant bail to the person in relation to that offence, the Court shall, pursuant to this Act, grant bail to that person or enlarge or vary bail already granted to that person in relation to the offence. So there is a prima facie entitlement to bail, however that entitlement is displaced by section 16, subsection (3) of the Bail Act, which says relevantly, where a defendant is charged with an – with an indictable offence in the course of committing, in which the defendant has alleged to used or threatened to use a firearm for an offensive weapon or an explosive substance.

In this particular matter it seems [redacted] was alleged to have used the weapons he was holding as some sort of deterrent. [redacted] is not alleged, however, they are parties to an offence in which [redacted] was – did use an offensive weapon, and I am going to proceed on this bail application on the basis that each defendant is alleged to have used the weapon. So that provides that the Court or the Court shall refuse to grant bail unless the defendant shows why the defendant's detention in custody is not justified. Mr McMillian attempts to show that on their behalf by saying well, they have served enough time now. They have both entered pleas of guilty today to doing grievous bodily harm. They are parties to the offence. Mr McMillan has produced three roughly comparable decisions, which indicate persons of around the same age, but with previous convictions. These two have none.

They received head sentences which saw them either immediately released or released after serving one or two months imprisonment. These fellas have each served six months and he says it should follow that their further detention in custody is not justifiable because if – if an indictment is to be presented against them as it no

[redacted]

doubtedly will, and a sentence date is set up, that sentence date will take at least six or seven months more for a sentence will occur. By that stage they would have served 12 or 13 months, which would be too long for young fellows with no previous convictions. As against that, [redacted] talks about the decision of the Court of Appeal in Seeka. Seeka, of course, was charged with triple murders, but it is not a comparable decision but the – the statements by the Court there, adopting statements made by the New South Wales Court of Appeal, in their equivalent section should be taken into account, and indeed they are taken into account.

That is to say that this – these defendants have – has to show why their further detention in custody is not justified. Yes, there is a strong Crown case against them, but they are the pleas of guilty today. But at the end of the day, I think six months may well be enough time. So if it is – if they are to serve more time upon the sentence, then the District Court can sentence to them to that and they will have to go back to jail. But I think on these conditions, that I am going to impose that they are not unacceptable risks of committing further offences. As I said, they have got no previous, they are not unacceptable risks of failing to appear, they have got ties to the area, their family is in the area. They live only live with their grandfather in -in Bundaberg. So they will be granted bail.

The conditions are they must live at [redacted]. If they want to live anywhere else, they have got to get the written consent of the Director of Public Prosecutions, they must report in person to the officer in charge of Bundaberg Police Station, between 9 am and 4 pm Monday, Wednesday and Friday of each week. That commences tomorrow. Any changes to reporting days must first be approved in writing by the DPP. They must not contact or approach or have someone else contact or approach, except when appearing in Court, any Crown witnesses, statements tendered in the committal today or [redacted]. They must not go to the area which is defined by the Gympie Regional Council unless either attending personally at Court or whilst on the Bruce Highway travelling through the area.

That means you can drive through Gympie if you stay on the highway, otherwise you do not come within this area. You do not come south of where ever the Gympie Regional Council is and you do not – yes. I am not going to put a curfew on them, I do not think that is needed. Is there anything else?

MR McMILLAN: No, your Honour.

HIS HONOUR: You will have to leave straight away. Once you are released here this afternoon, you – straight out, otherwise you will be in breach of your bail. You understand me?

UNIDENTIFIED SPEAKER: Yes, [indistinct]

[redacted]

HIS HONOUR: You cannot go to a party around here or anything like that to celebrate your release. Thank you, Mr McMillan. Thank you, Inspector, for your assistance in the matter.

A/INSPECTOR RAISON: Thank you, your Honour. I have other matters still before the court.

HIS HONOUR: Yes. Sounds like I do too.