

SUPREME COURT OF QUEENSLAND

CITATION: *Millar v Queensland Police Service* [2026] QCA 104

PARTIES: **MILLAR, Andrew John**
(applicant)
v
QUEENSLAND POLICE SERVICE
(respondent)

FILE NO/S: CA No 15 of 2022
DC No 4469 of 2019

DIVISION: Court of Appeal

PROCEEDING: Application for Reopening (Criminal)

ORIGINATING COURT: District Court at Brisbane – [2021] QDC 304 (Dann DCJ)

DELIVERED ON: 9 June 2026

DELIVERED AT: Brisbane

HEARING DATE: 3 June 2026

JUDGES: Bradley JA, Doyle JA, Gotterson AJA

ORDERS: **1. The application filed 12 March 2026 is refused.**
2. The applicant pay the respondent’s costs of the application.

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – FROM DISTRICT COURT – BY LEAVE OF COURT – where the applicant was convicted of one count of unlawful assault in the Magistrates Court – where the applicant unsuccessfully appealed that conviction to the District Court – where the applicant applied for leave to this Court to appeal the decision of the District Court – where this Court refused that application for leave – where the applicant seeks to reopen that appeal by application for leave – where the applicant points to a failure of the respondent to disclose certain photographs to him – whether this Court has jurisdiction to reopen the matter – whether in any event there is good reason to grant leave to appeal

District Court of Queensland Act 1967 (Qld), s 118(3)
Supreme Court of Queensland Act 1991 (Qld), s 30, s 44

Grierson v The King (1938) 60 CLR 431; [1938] HCA 45, applied
Henderson v Andrews [2011] QCA 272, applied
Lowe v The Queen (2015) 249 A Crim R 362; [2015] NSWCCA 46, considered

Matta v The Queen (1995) 126 FLR 127; [1995] WASC 623, applied
Millar v Queensland Police Service [2025] QCA 14, related
Postiglione v The Queen (1997) 189 CLR 295; [1997] HCA 26, distinguished
R v Edwards (No 2) [1931] SASR 376; [1931] SASRp 59, applied
R v Gopurenko [2017] QCA 242, considered
R v Nudd [2007] QCA 40, applied
R v Parenzee (2008) 101 SASR 469; [2008] SASC 245, applied
R v Pettigrew [1997] 1 Qd R 601; [1996] QCA 235, considered
R v Upson (No 2) (2013) 229 A Crim R 275; [2013] QCA 149, applied
Storry v Commissioner of Police [2024] QCA 209, considered
Visser v The King (2023) 68 VR 188; [2023] VSCA 10, applied

COUNSEL: The applicant appeared on his own behalf
 C M Cook for the respondent

SOLICITORS: The applicant appeared on his own behalf
 Director of Public Prosecutions (Queensland) for the respondent

- [1] **BRADLEY JA:** I agree with the reasons of Doyle JA and with the orders proposed by his Honour.
- [2] **DOYLE JA:** On 20 May 2018, a confrontation took place between the applicant (Mr Millar), the complainant and her mother in Newstead (the incident). As a result of that incident Mr Millar was charged with unlawfully assaulting the complainant. Initially, the charge extended to his having thereby caused her bodily harm, though this was amended in May 2019.
- [3] After a trial in July 2019 and in September 2019, Mr Millar was convicted on the count of unlawful assault in the Magistrates Court on 6 December 2019. On 16 January 2022 he was fined \$1,000 and ordered to pay the complainant compensation of \$500, with no conviction recorded.
- [4] Mr Millar appealed that conviction to the District Court and that appeal was heard on 26 October 2020, with reasons delivered dismissing the appeal on 2 December 2021.¹
- [5] Mr Millar then applied for leave to appeal to this Court by application filed 5 January 2022 (an extension of time was granted for the late bringing of that application by an order dated 18 January 2022).
- [6] That application for leave was heard in this Court on 8 July 2024 and dismissed by reasons delivered on 25 February 2025.² The order made refusing that application for leave was perfected that same day.

¹ *Millar v Queensland Police Service* [2021] QDC 304.

² *Millar v Queensland Police Service* [2025] QCA 14 (CA Reasons).

- [7] Over a year later, on 12 March 2026, Mr Millar filed an application which seeks an order that “the appeal CA15/22 be reopened...”. That application has been supported by an affidavit by Mr Millar, dated 5 March 2026, as well as by written submissions.

The Issue of the Photographs

- [8] One of the bases upon which Mr Millar sought to sustain his application for leave and consequent appeal when the matter was last before this Court, was that the prosecution had failed properly to make disclosure to him of certain photographs taken on the day of the incident.
- [9] As matters appear from the CA Reasons:
- (a) The prosecution had disclosed that Police Officer Palmer had taken one photograph of the complainant showing a scratch to her right shoulder, which initially was relied upon to sustain the charge of assault occasioning bodily harm.
 - (b) The prosecution had also disclosed that the complainant had provided Officer Palmer with three, and only three, photographs which she had taken on the day.
 - (c) In the course of the preparation for the hearing of that application for leave to appeal it became apparent that Officer Palmer had received five, not three, photographs from the complainant. That fact was not disclosed by the prosecution to Mr Millar.
 - (d) Officer Palmer affirmed an affidavit,³ which was relied upon before this Court, in which he explained that he had overlooked the other two photographs but that they appeared to him to be close duplicates of other photographs which had been disclosed and accordingly of “no particular evidentiary value”: at [6]. He explained that it was likely that is why they were not disclosed, though he could not then recall: at [6]. Officer Palmer affirmed that he did not intentionally fail to disclose the photos: at [8].
- [10] Further, Officer Palmer affirmed a second affidavit on 8 July 2024 stating that (at [3]):
- “I recall only taking one (1) photo of a scratch on the back of [the complainant] on the 20th of May 2018... I have checked my online photo archive on the police system and confirm there are no additional photos.”
- [11] On the hearing of the application for leave to appeal, Mr Millar sought but was refused leave to cross-examine Officer Palmer on those affidavits. The principal reasons included that the photographs were of “peripheral relevance”: CA Reasons at [16].
- [12] After the hearing of the appeal but before its determination, supplementary submissions were submitted by Mr Millar across various dates. It is relevant to quote one paragraph of the reasons given by this Court for dismissing those further submissions as not material, namely CA Reasons [75] as follows:
- “[75] After the hearing was completed in this Court on 8 July 2024, the applicant made a supplementary submission dated 10 July 2024 on inconsistencies that he asserts can be found in the

³ Affidavit of Brendan James Palmer filed 2 July 2024.

evidence as to **whether Officer Palmer took one or more photographs on the day of the incident** and other assertions about the photos provided by the complainant to Officer Palmer. He asserts there is no corroboration of Officer Palmer's evidence that he took the photo of the complainant in the pink singlet on 20 May 2018. This supplementary submission also repeats a submission made by Mr Millar before this Court that the photo of the complainant in the pink singlet was taken a long time after the photo in the blue and white top. One problem with that submission was that Mr Millar never cross-examined the complainant on the contention he now advances that the photo of her in the blue and white top was taken prior to her leaving the residence that morning to go walking. The photos of the scratch reflect the evidence of what the complainant's boyfriend and Officer Palmer who observed the scratch saw. The complainant's evidence and that of her boyfriend was that she did not have a scratch on her shoulder before the incident. Dr Stanley saw it the next day. **Ultimately, the scratch on the complainant's shoulder was irrelevant to the charge pursued** at the summary trial, except to the extent that it was relevant for Mr Millar to test the complainant's credit. Mr Millar's focus on the photographs does not diminish the effect of the significant evidence of the assault that resulted in the guilty verdict." (emphasis added).

- [13] In his affidavit affirmed 5 March 2026, Mr Millar refers to a document which appears to be part of the Queensland Police Service Court Brief in respect of his charges as initially heard in the Magistrates Court. Mr Millar states this was provided to him at "Court 1 appearance Roma Street". It was confirmed at the hearing that this is a reference to an appearance at a short mention of some kind and initial conviction in the Magistrates Court. His affidavit draws attention to the circumstance that that document records that on the day of the incident "[p]olice observed the shallow cut on her right shoulder blade and took photographs" (expressed in the plural).
- [14] Mr Millar urges that this is the primary document in support of his application to reopen his appeal. He seeks to rely upon the passage just quoted to indicate that Officer Palmer has committed perjury in his second affidavit and that there has not been proper disclosure to him prior to the hearing of the charge or his appeal from his conviction of that charge. This is urged by him to have caused a miscarriage of his first application to the Court of Appeal in this matter.
- [15] To the extent this document is relied upon as identifying that more than one photograph was taken by Officer Palmer, it is a document which has been available to Mr Millar for a very long time (and before his initial conviction in the Magistrates Court). He did not cross-examine Officer Palmer on this aspect either in the Magistrates Court or on his appeal in the District Court.

This Application

- [16] By the CA Reasons on 25 February 2025 this Court finally disposed of Mr Millar's application for leave to appeal from his conviction for common assault, and did so on its merits.

- [17] There are a number of obstacles to Mr Millar being able to now, “reopen” his appeal which I understand to be trying again to obtain leave to appeal the decision of the District Court. There is no other basis advanced for a second Court of Appeal in this case opening up for reconsideration the matters decided by the first Court of Appeal.
- [18] *First*, there is a sound basis for contending there is no jurisdiction for this Court to “reopen” that appeal (in the sense just described). That has been stated in *R v Edwards (No 2)* [1931] SASR 376 and in *Grierson v The King* (1938) 60 CLR 431 at 435 (Dixon J), followed in this Court in *Henderson v Andrews* [2011] QCA 272 at [25] (Philippides J, McMurdo P and White JA agreeing); *R v Nudd* [2007] QCA 40 (Keane JA, de Jersey CJ and Mullins J agreeing).
- [19] There would appear to be some limits to this approach. One, as in *Postiglione v The Queen* (1997) 189 CLR 295 at 300 (per Dawson and Gaudron JJ) and 315 (per McHugh J) where the order of the first Court of Appeal had not been perfected. That is not the present case. Another possible qualification is that identified in *R v Pettigrew* [1997] 1 Qd R 601 at 619, which is the power of the court to correct its mistake where, as Pincus JA put it (Mackenzie J agreeing) “this Court disposes of a matter on the basis of a mistake with respect to the content of orders previously made by the Supreme Court, or indeed any court”. That too is not the present case. That was said to arise because of the power conferred by section 8 of the *Supreme Court of Queensland Act 1991* which conferred on the Court “all jurisdiction that is necessary for the administration of justice in Queensland”: cf *R v Nudd*, supra at pages 2-3.
- [20] However, in some decisions the principle in *Grierson v The King*, supra was held not to apply to a second application for leave to appeal after the refusal of the first application for such leave: see for example *Lowe v The Queen* (2015) 249 A Crim R 362 at [123]. There are obiter statements in *Postiglione*, supra which are to the effect that the Court has the jurisdiction to hear and determine successive applications for leave to appeal: see per Dawson and Gaudron JJ at 305. Neither McHugh J nor Gummow J expressed agreement with that, and Kirby J proceeded on the basis of assuming there was no jurisdictional barrier to a second application (at 333). However, that approach was not adopted in this State and some other States at least where the first application for leave was refused on the merits: *R v Upson (No 2)* (2013) 229 A Crim R 275 at [16], [20], [21] (Fraser JA, Holmes JA and Daubney J agreeing); *Matta v The Queen* (1995) 126 FLR 127; *R v Parenzee* (2008) 101 SASR 469; *Visser v The King* (2023) 68 VR 188 (a five member court). On the other hand, the issue whether a second application for leave to appeal could be made was left open in *R v Gopurenko* [2017] QCA 242 at [31]; and by Bond JA in *Storry v Commissioner of Police* [2024] QCA 209 at [16].
- [21] The issue depends on the proper construction of s 118(3) of the *District Court of Queensland Act 1967*. There is no unrestricted right of appeal. Accordingly, there is no immediate sense in which the right of appeal can be said to have been exhausted by this Court’s decision made 25 February 2025. Rather a party dissatisfied with the District Court’s Order may appeal “with the leave of” the Court of Appeal. The section is, however, intended to operate as a constraint on appeals in proceedings of the nature which fall within its scope. Hopeful litigants, who claim to be dissatisfied, would be encouraged to mount repeated applications for leave if, once having an application disposed of on the merits, they were free to apply again. That in my view would be contrary to the evident purpose of the section. Moreover, it would seem to produce the odd (and it seems unintended) result that in respect of those decisions for

which a right of appeal exists (with the parties entitled to bring their case to this Court) it is clear that right can only be exercised once, while for those for which leave is first required, repeated attempts at success in securing that leave were available to the litigant.

- [22] No doubt other considerations would also intrude to prevent that occurring, including the ability to strike out frivolous or vexatious applications. However, these other considerations, in my view, reflect the same principle, of limiting the ability to appeal, and to achieve finality of proceedings. They do not operate so as to displace the construction I favour of s 118(3).
- [23] The statutory context is also relevant, in two important respects. First, a limited right has been created for a second appeal or attempt to secure leave to appeal by amendments to the *Criminal Code* in Chapter 67 Division 3. These provisions do not apply to any appeal from Mr Millar's conviction. But the fact that it was necessary to explicitly provide for an ability to make application for leave to bring a second application including where the first 'appeal' involved dismissal of an application for leave lends support to the conclusion I have reached as to there being no ability to bring a second application for leave to appeal to the Court.
- [24] Second, in this State applications for leave to appeal are heard by the Court of Appeal (not by a single judge of appeal): see s 30 and s 44 of the *Supreme Court of Queensland Act 1991*.⁴ As a result, the leave application and appeal typically are heard together. In any event, if the leave application is heard and dismissed on its merits by a Court constituted by three judges of appeal, it would, in my view, be unlikely to have been Parliament's intention that it is to be treated as a mere advisory decision or of interim effect only. To construe s 118(3) in that way would mean that an unsuccessful applicant for leave to appeal would enjoy an advantage over a successful applicant for leave, whose appeal is then dismissed even though both are dealt with by a panel of three judges of this Court.
- [25] The unsuccessful party who has failed to obtain leave to appeal, while in one sense dissatisfied with the District Court judgment is, in my view, more appropriately to be described as dissatisfied with this Court's earlier refusal of leave. There is no right of appeal to this Court from that refusal.
- [26] Accordingly, I would construe s 118(3) as not permitting a second application for leave to appeal, at least where the first was dismissed on its merits (and I do not express any view about applications disposed of for other reasons, such as for being out of time, or failing to provide required security, or non-compliance with directions, as to which different considerations may apply).
- [27] *Second*, and in any event, for Mr Millar to succeed, even assuming there is jurisdiction to "reopen" this appeal in the circumstances of this case (in the sense described), he would need to obtain leave to mount any appeal. The following matters are relevant to refusing that leave.
 - (a) More than a year passed after the delivery of the CA Reasons before he made any approach to the Court to reopen the appeal, and there is no proper explanation for that delay.

⁴ Noting, however, that the UCPR (in something of a curiosity) provide that the power to hear applications for leave to appeal in criminal matters can be exercised by 2 or more judges of appeal: R 766(3). It is doubtful if this has ever been exercised.

- (b) He has not sought to demonstrate any properly admissible, new or fresh evidence which would justify this Court exercising a discretion to reopen.
 - (c) The gravamen of his contention is that he could have and would have cross-examined witnesses differently if he had known of the existence of a second or other photographs taken by Officer Palmer and perhaps also once he could see what they showed. But, without accepting there is more than the one photograph taken by Officer Palmer, Mr Millar had the opportunity to cross-examine the Officer in 2019 and again in 2020 and to do so with the benefit of the Queensland Police Service Court Brief document which states that there were photographs taken. He did not do so.
 - (d) He has not addressed why he chose not to cross-examine Officer Palmer by reference to the Queensland Police Service Court Brief when he had that opportunity in the Magistrates Court or again in the District Court.
 - (e) The reference to photographs in the plural in the Queensland Police Service Court Brief may of course just be an error. Page 3 of that same document under the heading “Photographs/Video” refers to “Photograph’s [sic] taken by victim and photograph of victim injury”. This suggests only one photograph taken by someone other than the complainant. Officer Palmer has since affirmed that he only took one photograph and that the police records do not reveal any others.
 - (f) The subject matter of any possible additional photograph is not shown to be material. The evidence given at trial was summarised by this Court in the CA Reasons and the conviction does not appear to have been in any way reliant upon what the photographs taken showed, and accordingly it is difficult to identify the materiality of what other photographs may have shown. Mr Millar accepts there was a confrontation between him and the complainant and her mother on the day as to which he, they and others gave evidence. That evidence was sufficient to support the conviction.
 - (g) No basis has been advanced for a conclusion that any appeal has some prospects of overturning that conviction.
- [28] In my view the circumstances as set out are such that there is no utility in ordering that Mr Millar have leave to reopen the appeal because he would need leave to appeal and that leave should not be granted.
- [29] This conviction arises out of events now some eight years old and where Mr Millar has had an opportunity to be heard in three courts. The issues around this conviction need to be concluded.
- [30] The application expressed to be for leave should be refused. There is no reason why the costs should not follow the event and that Mr Millar pay them.
- [31] Accordingly in my view the appropriate orders are:
1. The application filed 12 March 2026 is refused.
 2. The applicant pay the respondent’s costs of the application.
- [32] **GOTTERSON AJA:** I agree with the orders proposed by Doyle JA and with his Honour’s reasons for them.