

Bullfry cooks up a storm

By Lee Aitken

‘Your Honour, we see this as a ‘link in the chain’ not a ‘strand of the rope’ case – so a *Shepherd* direction is called for’.

‘I have never quite got to grips with that distinction, Mr Bullfry, and the Benchbook is of little assistance’.

Was it wise on the part of the disposing powers to let his Honour Judge Snowdrop SC descend from the lofty heights of complex commercial litigation to Hades, and the criminal calendar? Running a two week drug trial was not the same as relieving a lessee against forfeiture! The judge was more than satisfactory with a slip and fall on a dropped chip, or a rear-ender in Erskineville – but a drug lab in Leura? Long ago, *pace* Lord Ackner, Bullfry had, on occasion, lived on the proceeds of armed robberies. He wondered inwardly whether ‘crystal meth’ represented an improvement.

‘We say that Mr Xinoda was not the ‘cook’, nor even a ‘bottle washer’. His presence was adventitious, and the case against him is entirely circumstantial’.

‘But Mr Bullfry, just consider. He is found 250 metres from the scene of the explosion, in a dazed condition, wearing an apron (among other things!), his hair is on fire, and 80 packets of Codral® (bought at a discount) are in a knapsack at his feet – what strand of the ‘rope’ is missing?’

‘Well, happily for him, Mr Xinoda, as well-advised, has made no admissions whatsoever. He gave a perfectly good explanation for his presence at the scene. He may under advisement tell the jury that imbued with a sudden nostalgia he was visiting the lookout where he had first contemplated proposing to his late wife. The sun was setting and as he approached what appeared to be a deserted cottage, he was rendered unconscious by an explosion. He will

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add further that he cannot abide Hello Kitty, the Japanese cartoon character, and he would never own a knapsack with that image on its cover. As to the apron, and other garments he was wearing, that has an innocent explanation which will excite both the jury’s curiosity, and pity’.

‘But what about the telephone intercepts, Mr Bullfry?’

‘First of all, your Honour, the intercepts all appear to be in the Lower Dalmatian dialect. There is no clear admission contained in any of them. On one view the interlocutors are discussing how to make a well-known, and delicious, Adriatic version of minestrone. It is a mere unfortunate coincidence that he spent two happy years in that region as an exchange student in his youth, and that the lessee of the cottage was the son of his former host’.

‘What about the Crown’s expert, Dr Pengloss? I would have thought that her evidence (based on her doctoral studies, and the focus of her forthcoming TV documentary and book) that ‘drug cooks’ have a particular psychological attraction to Japanese fantasy exemplified by Hello Kitty, and the *anime* cartoon world generally, would carry a lot of weight with the jury’.

‘Your Honour admitted her evidence over objection and despite my references to *Murphy, Smith, Tang* and *Honeysett*. It seemed to involve large problems of hearsay, lack of expertise, and the ‘ultimate question’.

‘What do you say requires a ‘link’ direction?’

‘Your Honour, we would submit that Mr Xinoda’s obvious lack of skill as cook of any description leads irresistibly to the inference that he cannot have played any active role in the concoction of the illicit substance. It follows, in our submission, that your Honour should direct the members of the jury that, unless they can be satisfied beyond reasonable doubt that the accused knows more about cooking than how to boil an egg in a saucepan of water, he must be acquitted’.

‘But the Crown has already led credible evidence that Mr Xinoda is well-known in the street where he lives for his superb sponge cakes’.

‘That is just the point, your Honour, as I objected at the time. *Rowton* tells us that you can only lead evidence of general character. In Lord Cockburn’s famous words (which have on occasion been applied to me personally) – “that his character is that of a man capable of the grossest indecency and the most flagrant immorality”. You could attempt to show that he is by general repute a good short-order cook, but you cannot then delve into the minutiae of his recipes’.

‘I am afraid you are showing your age, Mr Bullfry – it may be time for another CLE – *Rowton* was overtaken by section 413, and section 110 of the new Act, in its turn, has now overtaken them both’.

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Honour – that the new Act appears to be a late work of the committee that designed the camel'.

'Be that as it may – I am disinclined to give any *Shepherd* direction – *Hillier*, I think, tells us that not every piece of the menu, so to speak, needs to be accorded equal weight if it is clear from the congeries of events that the accused is involved somewhere in the 'kitchen' – whether as cook, bottle washer, or waiter'.

'Well, your Honour, that may be a matter, with respect, that I will need to test in another place, depending on how matters play out'.

'The exception is noted, Mr Bullfry. Is the defence going into evidence? Are you intending to call the accused?'

Bullfry hesitated. This was always a crucial matter. He thought back to *R v Bywaters and Thomson* – would Edith have survived if the letters of her homicidal lover had not been read back to her, selectively, and to the jury? On the other hand, in the *Green Bicycle Case*, Ronald Light had saved his neck by giving evidence that he had not shot Bella Wright, even though he owned the relevant green bicycle. In *Brighton Trunk Murder (No 2)* Mancini had survived the charge of murdering Violet Kaye by candidly admitting to a series of offences, none of which involved violence. Lawrence QC in *R v Bodkin Adams* had wisely called no evidence from the accused doctor in a nasty capital case ('easing the passing') and achieved an acquittal.

How would Xinoda shape up under cross-examination? What would the jury make of his undoubted fluency in Dalmatian, and his relationship to the lessee of the cottage? Or, his unlikely responses when taxed with his choice of clothing, and his Facebook membership of the Friends of Anime?

'Given the time, your Honour, might I consider that overnight?'

'All rise!'

POETRY

I am for the Crown ...

I am for the Crown in my wig and my gown, as I stand here pressing for justice

As does my foe, at the end of the row, so persuasive she could be Augustus

She says, 'I'm for the good, believe me, you should, that man there did not do this deed'

We both seek to persuade, only one makes the grade, as we each do our best to succeed

Evidence led, memories of things that were said, accusations, violations, it's true

'I don't remember it all, but what I recall, is what I said I saw him do

Believe me or not, my word's all I've got, what I've told you is what I did see

It's in my mind's eye, to you I won't lie, there's no reason you can't believe me'

When the Crown case is over, is it weed, grass or clover, the accused has sewn in your lap

Chasing reasonable doubt, it's what he needs to get out, is he honest or just full of crap

It's a game of a kind, as he plays with your mind; it's a challenge, something like chess

Is it fact or just fiction, to avoid a conviction, this story he seeks to progress

The evidence ended, the Crown case still splendid, my address it is balanced, exact

I romance the jury, my opponent feigns fury, her retort a mish-mash of fact

The judge gives directions, most learned injections, the jury retreat, then return

Their verdict announced, his displeasure pronounced, and we rise, and then we adjourn

By PWK