

35/88

## SUPREME COURT OF VICTORIA — FULL COURT

**R v LAW**

Young CJ, O'Bryan and Tadgell JJ

21 March 1988

**CRIMINAL LAW – COURT SECURITY – FIREARM CARRIED ON "COURT PREMISES" – 30-35 METRES ACROSS ROADWAY FROM COURT BUILDING – WHETHER WITHIN "IMMEDIATE ENVIRONS" OF COURT PREMISES – "PRECINCTS": COURT SECURITY ACT 1980 SS2, 4.**

Section 4 of the *Court Security Act* 1980 ('Act') provides:

"A person who ... has in his possession on court premises a firearm ... is guilty of an indictable offence."

Section 2 of the Act defines "Court premises" as follows:

"'Court premises' means in relation to a court the premises occupied in connection with the operations of the court and the precincts and immediate environs of those premises."

Whilst proceedings were being conducted in the Ballarat Magistrates' Court, L. was found to be in possession of a firearm whilst sitting on a window ledge directly opposite the annexe building, next door to the main court building in Ballarat. L. was 30-35 metres from the annexe building, a footpath and roadway intervening. L. was convicted of a breach of s4 of this Act. Upon appeal—

**HELD: Application for leave to appeal dismissed.**

1. The phrase "court premises" covers the actual building in which the court activities are conducted; "precincts" includes the surrounding land upon which the court building stands; "immediate environs" carries the definition further afield to include the immediate neighbourhood of the building. *Bolton v Glover* (1986) 4 MVR 463, (MC43/1986) 27 August 1986, explained by Tadgell J.

2. In the circumstances, it was open to the jury to find that L. was in possession of a firearm within the immediate environs of the court premises.

**YOUNG CJ:** [with whom O'Bryan and Tadgell JJ, agreed]: [1] The applicant before us, Ian Gordon Law, was charged in the County Court that on 27th October 1986, without lawful excuse he carried or had a firearm in his possession on court premises, namely in the immediate environs of the annexe to the Ballarat Courthouse. That is an offence created by s4 of the *Court Security Act* 1980. That section reads:

"4. A person who without lawful excuse carries or has in his possession on court premises a firearm or an explosive substance or an offensive weapon is guilty of an indictable offence."

The penalty prescribed for that offence is imprisonment for seven years. It is notorious that the Act was passed shortly after there had been shooting both within the precincts of this Court and also within the precincts of the Melbourne Magistrates' Court. The applicant pleaded not guilty to the charge and save for one or two minor matters the evidence was not really in dispute.

[2] On 27th October 1986, proceedings were being conducted in the Ballarat Magistrates' Court in which a number of members of a group known as the Hell's Angels were facing charges concerning the manufacture of and trafficking in a prohibited drug. Committal proceedings were to take place in the annexe building next door to the main court building in Ballarat. The applicant was seen sitting on a window ledge of 10 Camp Street, which is directly opposite the annexe building on the other side of the road. The applicant was 30 to 35 metres from the annexe building. When approached by the police, the applicant said that he was waiting for one of the accused, named Hill, to take his car home. He had a gun in the bag which he was carrying, which was an open bag and not closed, and he said he had that in order to look after himself. He said

further that he had been threatened. On examination it was found that the gun was a black pump action shotgun which had been modified, and it was said to be a Lafranchi slide action shotgun. The police evidence was that the gun was loaded, although that particular fact was denied by the applicant in his unsworn statement to the jury.

At the conclusion of the Crown case it was submitted on the applicant's behalf that there was no case to answer because the point at which the applicant was found to have the gun was not within the court premises as defined in s2 of the *Court Security Act*. That submission was over-ruled. The applicant then gave unsworn evidence in which he did not deny that he had the gun in the open bag with him, but as I have indicated, he said that it was unloaded. The applicant was convicted by the jury and he now seeks leave to appeal to this Court upon two grounds:

- [3] That the learned trial Judge erred in not upholding the no case submission.
2. That the learned trial Judge erred in his charge to the jury on the meaning of 'Court Premises' as defined by the *Court Security Act 1980*."

The argument in support of the appeal against the conviction turned entirely upon the meaning to be given to the definition of "Court premises" in the *Court Security Act*. That definition reads as follows:

"'Court premises' means in relation to a court the premises occupied in connection with the operations of the court and the precincts and immediate environs of those premises."

It was submitted that that definition did not extend to any area where another area intervened between the place where the applicant was found and the place that was associated with court business. In other words, the fact that there was a footpath and a roadway and 30 or 35 metres between the court building and the place where the applicant was, prevented the conclusion that he was in the immediate environs of the court premises.

In argument, Mr Salek suggested that the immediate environs of the Court was not wider than the court precincts, which are also referred to in the definition. I cannot accept that contention. The definition plainly covers the actual building in which the court activities are conducted, and there is added to that the precincts of the court, which would include the surrounding land upon which the court building stands, and then the addition of the words "immediate environs of those premises" is, to my mind, plainly intended to carry the definition further afield. It is not [4] to carry the definition very far afield, for the use of the adjective "immediate" qualifying "environs" restricts the area brought within the definition to the immediate neighbourhood of the building. It was further submitted that the learned Judge had erred in his charge to the jury. His Honour had, in fact, charged the jury in the most elaborate and careful fashion, and in my view, the charge was meticulously correct.

I shall not read the whole of what His Honour said. He told the jury as a matter of law that it would be open to them to find that the applicant was found within the immediate environs of the court premises, but that it was for the jury to say whether it was in fact within those immediate environs. His Honour summarised his charge to the jury on this question in these words:

"... it is not for me to say as a matter of law that that spot over the road is or is not within the immediate environs. All I say as a matter of law is that it is capable of being within the immediate environs, and accordingly it is for a jury to decide whether they are satisfied beyond reasonable doubt that it is."

In my view, His Honour's charge to the jury cannot be criticised, nor can the view that he took of the meaning of the words "immediate environs" in the definition of "Court premises" be criticised. Accordingly, the only grounds of appeal against the conviction should, in my opinion, fail. [*His Honour then dealt with the application seeking leave to appeal against sentence and continued ...*]

[6] Notwithstanding the earnest plea made by Mr Salek on the applicant's behalf, and the generally satisfactory background of the applicant, I find myself unable to say in the circumstances that the sentence imposed by the learned trial Judge was excessive, and accordingly I think that the application for leave to appeal against the sentence should be dismissed.

**O'BRYAN J:** I agree in the reasons of the learned Chief Justice that the application for leave to appeal re conviction and sentence should each be dismissed.

**TADGELL J:** [7] I agree with the conclusions which have been expressed by the learned Chief Justice and with the reasons which His Honour has expressed for reaching them. I am led to add a few sentences of my own simply because an unreported decision of mine was cited during the course of argument in this Court with the suggestion that it supported a conclusion contrary to that which the learned Chief Justice has expressed. The case was that of *Bolton v Glover* (1986) 4 MVR 463, decided on 27th August 1986. The case concerned the application or not of sub-s(10) of s80F of the *Motor Car Act 1958*. That provides:

"Where a sample of breath is required to be furnished within the grounds or precincts of a police station the person operating the breath analysing instrument shall do so in circumstances affording the greatest practicable privacy."

The question was whether the muster room at the Russell Street Police Station was or was not within the precincts of that police station and whether sub-s(10) of s80F applied in circumstances where a breath sample was required to be furnished there. It was no doubt obvious as a matter of ordinary language that a room inside a police station is capable of being described as "within the precincts of a police station". The question was, however, whether the word "precincts" in sub-s(10) had that connotation.

I was moved to say that dictionary definitions of the word were helpful in demonstrating the diversity of meanings of it and that, if it were not already clear, the word "precincts" depends very much for its meaning upon its context. The word "precincts" originally had a meaning in [8] the sense of something girded about or encircled or surrounded. I said then that it is also capable now of conveying much the same meaning as "environs" or "surroundings" whether enclosed or not. Counsel before this Court fastened upon that last sentence and sought to derive from it support for the view that the expression "immediate environs of those premises" in the definition of "Court premises" in s2 of the *Court Security Act* really meant the same thing as "precincts".

I was far from saying in *Bolton v Glover* that "precincts" and "environs" are interchangeable words. "Environs" is no doubt a cognate of "environment". When one finds it in apposition to the word "precincts", as one does in the definition here in question, I think it is very clearly to be read as operating cumulatively upon "precincts" and not concurrently with it. The definition seems to me to designate geographical areas in effect by reference to three concentric circles. The centre point within the smallest of three circles is the court premises, that is to say the premises occupied in connection with the operations of the court. Then, within the next wider circle one has an area designated by reference to the precincts of those premises, and in the third and widest circle one has an area designated by reference to the immediate environs of the premises occupied in connection with the operations of the court.

I agree that the "immediate environs" in the context means the immediate neighbourhood. What is the immediate neighbourhood in the designated sense is very clearly a question of fact involving, as many questions of fact do, matters of degree. [9] In my opinion, the learned trial judge was well justified as a matter of law in leaving to the jury the question whether the place at which the applicant was stationed was within the immediate environs of the Magistrates' Court at Ballarat in all the circumstances which obtained at the time, including, of course, the fact that the Magistrates' Court was, or was shortly to be, in session. I should like also to say that in my view, the charge of the learned Judge to the jury was not only conspicuously clear, but unquestionably correct.

On the matter of sentence, I have been much struck by the fact that the applicant was strategically positioned outside the courthouse which was, as I say, in session, or shortly about to go into session, and he was ready to use a loaded shotgun if the occasion in his opinion arose. The occasion might have arisen, as one gathers it from the facts, out of the very proceedings which the Magistrates' Court was to hear on the day in question. I think the learned Judge was right to regard this as by no means a trifling offence. It was an offence of just the kind that the *Court Security Act 1980* was designed to deter, and if not to deter, to punish. I agree in the orders proposed by the learned Chief Justice.

**YOUNG CJ:** The order of the Court is that the application for leave to appeal against conviction and the application for leave to appeal against sentence are each dismissed.