

CITATION: *Police v Guiseppe Cutrale [2004] NTMC 052*

PARTIES: ROBERT ROLAND BURGOYNE

v

GUISEPPE CUTRALE

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Summary Jurisdiction – Alice Springs

FILE NO(s): 20326083

DELIVERED ON: 15 June 2004

DELIVERED AT: Alice Springs

HEARING DATE(s): 6 – 7 May 2004

JUDGMENT OF: M Ward

CATCHWORDS:

REPRESENTATION:

Counsel:

Prosecution: J Dominguez

Defendant: M Preston

Solicitors:

Prosecution: Police Prosecution

Defendant: M Preston

Judgment category classification:

Judgment ID number: [2004] NTMC 052

Number of paragraphs: 36

IN THE COURT OF SUMMARY JURISDICTION
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20326083

BETWEEN:

ROBERT ROLAND BURGOYNE
Police

AND:

GUISEPPE CUTRALE
Defendant

REASONS FOR JUDGMENT

(Delivered 15 June 2004)

Mr M WARD SM:

1. The defendant was charged on information with 3 counts of assaulting Samantha Willcocks and on complaint with 2 counts of threatening, abusive or objectionable behaviour towards the same lady.
2. The incidents were alleged to have occurred on 3 occasions on the 19th of September 2003; sometime between the 21st of September 2003 and the 28th of September 2003; and on the 14th of November 2003.
3. The defendant consented to summary disposal of the information, and the Court elected to deal with the information in a summary manner. Thus, by consent, all matters were heard together.
4. The defendant is the brother-in-law (almost) of the alleged victim. That is to say, he lives in a de facto situation with Samantha's sister Zoe Willcocks.
5. Samantha is a 16 year old young woman and it is obvious that she had a troubled background. She was running out of options for places to live. She had been living with her father in Queensland, and had a falling-out with him. She returned

to Alice Springs to live with her mother, and had a falling-out with her after only a few days. Her sister and the defendant then took her in. (To round this out: she lasted only a few days with the defendant and her sister before she had a monumental falling-out, particularly with the defendant, leading to these allegations. She also had a falling out with her fellow students at school. Clearly we are dealing with a troubled and vulnerable young lady).

6. Relationships with her brother-in-law (and to a lesser extent, her sister) began to deteriorate not long after Samantha moved in with them.
7. It culminated on the 19th of September 2004 in the afternoon when an argument erupted in Woolworths during a purchasing expedition. She and the defendant engaged in a slanging match. A temporary truce was declared, and the parties moved to the Bilo store. It had been agreed that Samantha would purchase her own supplies. She went on her way within Bilo, and the defendant and Zoe went their way, making their food purchases. After some time, Samantha met up with them, empty handed except for a carton of ice-coffee. This prompted a query from the defendant:

“Is that all the shopping you need?”

To which Samantha replied:

“Yes, I’m going to move in with friends.”

This was news to the defendant and her sister. The defendant wanted to argue the toss with her about this.

8. It is worth noting at this stage, that on only the limited observation available from a Court case, both the defendant and Samantha have a very short fuse. Samantha clearly resented some of the questions she was asked when giving her evidence, and the defendant displayed a significant temper at times while in the witness box, raising his voice and attempting to talk over the questioner.
9. What seemed like an ordinary, everyday (if somewhat sad) situation quickly escalated into a full-blown public argument in the aisles of Bilo. It culminated with the appearance of the security guard, leading Samantha out of the store. In

normal circumstances, this ought to have been the end of the matter, but unfortunately, Samantha's school bag was still in the defendant's car, and she made her way to the car park, meeting up with the defendant and her sister on the way.

10. The loud argument re-commenced. Samantha says that the defendant was "standing over her". She says she reacted by pushing him away. "He kept coming up to me, standing over me. I pulled his hat over his eyes. He was getting angry. I wanted my bag out of his car. He wouldn't let me get my bag out of the car. He kept pushing me. He kept grabbing me by my wrists. I threw my ice-coffee over him. I threw it at him. It might have hit my niece".
11. Indeed, it did hit the defendant's baby, and the defendant reacted by taking hold of Samantha's wrists, swinging her round and dumping her backside first onto the ground. There are four different versions of this incident, not really dissimilar to each other. Samantha's version includes an allegation as follows:

"I see his hand come up to me. I felt a punch in the face. I fall to the ground. My nose was bleeding.

I didn't see a fist. I remember a hand coming up to me. I'm not sure if it was open, or a fist. I fell on my arse."

12. Zoe Willcocks is Samantha's sister and the defendant's de-facto wife. It is obvious that her sympathy lies with the defendant. Nevertheless, one did not get the impression that she was deliberately slanting her evidence in his favour, but was doing her best to say what happened. She says that:

"She went to hit him. Joe grabbed her hands. Then they spun and she went down. When she got up her nose was bleeding."

13. The obvious difference in the 2 versions is that Samantha says the defendant threw what looked like a punch at her, while the defendant and his wife say she threw a punch at the defendant. Both agree that, before any punch was thrown, Samantha threw a carton of ice-coffee at the defendant, which missed him, and hit

the baby. I am not satisfied beyond reasonable doubt that the defendant threw a punch at Samantha.

14. On Samantha's version alone, there was provocation (the throwing of the carton of ice-coffee, and it hitting the baby). I cannot be satisfied beyond reasonable doubt that a reasonable person similarly circumstanced would not have reacted as Samantha alleges the defendant reacted (absent the punch). I therefore find the defendant not guilty of this offence.
15. The next episode happened a few days later. Samantha had taken herself to a refuge on the north side of town (not far from the defendant's house). She had left her belongings at the defendant's house. She was contacted at school by telephone, either by Zoe or directly by the defendant. She was then told that her belongings were still at the defendant's house and that, if she did not pick them up immediately, they would be "kerosened". By that, she understood that the defendant was threatening to burn them. This upset her. She contacted a teacher, Tracey Oates and explained the situation. Ms Oates agreed to drive her to the defendant's and Zoe's house. When they got there, they found that Samantha's goods had been dumped on the footpath. Samantha had a part time job at Hungry Jacks and was scheduled to work that night. She needed her uniform for this and could not immediately see it among the dumped belongings. The teacher volunteered to go inside and make inquiries about it.
16. She went to open the gate of the yard and as she did so, the defendant came out of the house and began being rude and aggressive towards her. Mature woman, as she was, Ms Oates was frightened by his aggressive approach.
17. She suggested to Samantha and her friend that they get back into the car, and remain there. They took this advice, getting into the car without incident. She began talking to the defendant and he appeared to calm down towards her. However, from the car: "Samantha did start to argue with him again. He went to the car and I think he put his hands on her shoulders and I think he shook her – I'm not really sure. I got hold of his arm and he jumped back, and I calmed him down. He responded to that and I said: "Let me take her away", and he responded by going back into the house".

18. As will be apparent from the recital, this was Ms Oates' version. She was a pretty good witness, and appeared to bear no malice or ill will towards the defendant. It is apparent from her version that she thinks the defendant assaulted Samantha by laying hands on her and shaking her, but she is really not sure.
19. Samantha's version is significantly different.
20. She said that she began picking up her things and putting them in the car. At one stage she said she had a black lock in her hand, and the defendant said "Are you going to hit me with that?" She then chucked it on the ground.

"He grabbed me by the wrists and forced me to the car. We then left."

21. This was the presentation of the prosecution case. No particulars were sought or given, but the victim herself says that the assault consisted of the grabbing hold of her wrists by the defendant, and she being forced into the car.
22. Both Zoe and the defendant deny any contact at all between the defendant and Samantha on this occasion.
23. I am certainly not satisfied beyond reasonable doubt that Samantha's version of this second incident is true. It conflicts in a very significant way with Ms Oates' version.
24. One cannot be satisfied on Ms Oates' version that any assault took place at all.
25. I find the defendant not guilty of Counts 2 and 4.
26. The final incident is alleged to have occurred some seven weeks later not far from the defendant's home. By this time Samantha was living in a refuge, on the north side, not far from where the defendant lives. From time to time she visited the north side shops and would ride her bike past the defendant's home when she did so.
27. On the 14th of November 2003, Samantha had been to the shop with her friend Danielle Simpson. As they left the shops and rode off down the service road of the Stuart Highway past the defendant's house, the defendant was in the driveway

adjacent to his motor vehicle. Different versions were given of this incident. It is necessary to outline each of the versions.

28. Samantha's version

I found her a little difficult to understand at times. My notes of her evidence on this are as follows:

Examination: “Danielle Simpson and me rode our bikes to the shops. We bought ice-coffee. We were riding back to the refuge, on the service road. I saw Joe’s car on the same road. He was not travelling fast. A bit faster than us. He was behind my bike. We looked around and seen him coming up behind us. He began driving into my bike, and revving it up and calling me a stupid bitch. My wheel went under his car. He stopped and got out and grabbed my wrists. Then he got into the car and drove up to my bike and began yelling and got out and grabbed my by the wrist. Some council workers came and told him to leave us alone. We then rode off.”

Cross-examination: “Q. When the car came up to you did it knock your wheel?
A. My wheel just started going under his car.”

“Q. How? A. He kept coming up to me. I stopped. He kept coming up to me. I turned the bike around and my wheel started going under his car. He started driving into my tyre. I stopped. His car was coming for me. He could have gone past me, instead he came towards my bike.”

“Q. After he got out of the car, there was an argument?
A. Yes. He came up to me and started calling me a smart arse bitch.”

“Q. Did you stop before the collision? A. I don’t know. He was driving into the front of my tyre.”

“Q. Did you give him the finger as you rode past (his place)?
A. No.”

“Q. After this incident you both rode off? A. Yes.”

“Q. There was a yelling match just before you rode off?
A. Yes. Council workers came up when he took hold of my wrists.”

“Q. When Joe got out of his car, it started going backwards?
A. Yes, he ran (after it) got into the car, drove it back up, and started yelling at me again.”

29. All-in-all, her version was jerky and difficult to understand. Her friend Danielle’s version was clearer:

Examination: “On our way back (from Foodland) we rode past Joe’s place. As we were riding, he reversed out of the driveway and began yelling at us through the window. We both stopped. Then he got his (car) caught in Samantha’s bike and he kept revving it. He (got out) and caught Samantha by the wrists. The car rolled back, he (chased it) jumped back in and drove back to where we were (standing with our bikes). (He got out again) and grabbed her by the wrists and began yelling at her. Two guys from the council saw us and yelled out: “What’s going on?” He then took off.”

30. By way of preamble, the defendant said that, since the clothes incident, Samantha and her friend had “rocked” his house (more than once) and that Samantha often rode her bike past and would yell out some derogatory phrase such as “fucking wog”. On the day in question, she rode past, yelled out and gave him the finger.

“I thought: “I’ve had enough of this”. So I drove up to her. They had already stopped. I stopped to confront her about why she got Sasha to (smash our window). I said, “The glass

nearly got your niece”. She said, “I don’t really give a fuck”.”

31. He denied either driving his car into her bike, or revving it up.

“I did at one stage get out of the car. There was contact at one stage between her bike and my car. She said I don’t know why Zoe is wasting her fucking time with you. Q. Were you swearing? A. Probably I was pretty pissed off when she said she didn’t care a fuck for her own niece.

Once her bike hit my car, I jumped out straightaway. As I got out, it started reversing. I caught up with it, jumped in, and stopped it, and returned (to the girls).

The girls were already riding off. I didn’t stop a second time. I didn’t see any council workers.”

32. On a consideration of all of this evidence of this episode, I am satisfied beyond reasonable doubt that when he jumped out of his vehicle after rescuing it from rolling away, he grabbed Samantha by the wrist. He did this because he was angry and frustrated. He regarded the very fact that Samantha chose daily to ride past his house as a calculated insult. I have no doubt that on some of these occasions, Samantha would yell an insult and gave him the finger. This had been going on for a number of weeks.
33. According to Samantha, the defendant had a habit of wrist grabbing. It seems to be some sort of mechanism whereby the defendant attempts to gain control of an adverse situation. He probably does it with females so he can be heard – a form of control mechanism. He would be well advised to cease this habit. However, it may not always be done with hostile intent, with intent to apply force, rather than an intent merely to be heard.
34. In any event, in the circumstances of this case, I cannot be satisfied that (a) there was an intended application of force without consent, (b) that if there was, an

ordinary person similarly circumstanced would not have reacted in the same way, given the provocation.

35. I therefore find the defendant not guilty of the various charges. Guilt or innocence on counts 4 and 5 seems to me to follow guilt or innocence on the assault charges.
36. Costs will be reserved. Normally costs follow the event. This being a legal aid referral, I expect the parties to agree costs, or to already have in place an agreement with regard to cost.

Dated this 15th day of June 2004.

M Ward
DEPUTY CHIEF MAGISTRATE