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NORTHERN TERRITORY OF AUSTRALIA

COURT OF SUMMARY JURISDICTION

EXTRACT

No 20626867

POLICE

and

JAMES ANTHONY GRIGOR

DR J. LOWNDES, SM

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON WEDNESDAY 5 MARCH 2007

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Grigor

HIS HONOUR: Just before we start, there's just something I'm going to do just to clarify my reasons which I gave the other day. They were quite lengthy and I was working from pure notes not a written decision. So it occurred to me after the event that something may not have been clear and indeed I had intended to add something to my reasons but given the hour it took me to give my decision, I overlooked something in the process. So I'd better do that now before we embark upon the process.

I just want to make it clear, and again I'm working from pure memory, but during my reasons for decision I had interpreted the record of interview to mean this: that the defendant was saying he wasn't the person but if he happened to be the person that had been seen by the two girls, he says he didn't do what they said he did. Now, basically it was my view that he was having an each way bet in the record of interview and I'll just elaborate upon that.

In the record of interview, the allegation was put to him and he denied it but he proffered an explanation for what he was doing and he attempted to explain his conduct as if he were the person the two girls had observed one or two seats away from him and what I was trying to get across was that you can infer from the attempted explanation and the context in which he was giving that explanation, that he was the person the two girls saw seated near him and in my view, that inference was strengthened by the suggestion that what they saw was his hand and not his penis. In fact, he suggested that it was his hand and not his penis. It was then later in the record of interview that he says he was in the back rows and one can infer from that that he was not the person the two girls saw.

So it's in that context that I was of the view that he was having the each way bet that I had referred to. What I didn't do and I had intended to do this, I overlooked this. I should have added that there is another interpretation of the record of interview though one which I don't believe is tenable when one closely examines the record of interview, and that interpretation involves the defendant at all times sitting up in the back rows and scratching himself in the groin area. Now, even if that interpretation was reasonably open on the record of interview, I think it can be safe to reject it.

I do recall referring in my decision to the unlikelihood of there being two males meeting the same general description in the cinema at the same time engaging in activity in the groin and genital area. Furthermore, if in fact, and I think I referred to this, if in fact the defendant was up the back of the theatre, why attempt to give a fanciful explanation of his conduct when there's simply no need to explain his conduct away? If he wasn't the person that had been seen by the two girls, then he could not have done what it was alleged to have been done. He wasn't guilty of anything, and furthermore why attempt to lie about the explanation that he proffered.

So I think that's important for me to add that to my reasons and furthermore, and I don't know why I overlooked this but I'm now addressing it, there was the evidence given by the manager and it might be recalled that the manager entered the picture theatre to do a head check so as to speak and he had observed a male with a shiny shirt in the middle of the cinema but, however, when he returned shortly later he noticed that person had moved from that position towards the front of the cinema.

In my view, that evidence does not exclude the fact that the defendant was, at an earlier time, sitting in the front row in row D next to the two girls. What that evidence does show is that the person who was observed by the manager and assuming that person is one and the same person as the defendant, and I think that's a fairly safe assumption on the description of the shirt he was wearing, what it shows is that that person was mobile within the cinema and indeed the defendant also during his record of interview indicated that he had left the theatre on a couple of occasions to go to the toilet and one can, I think, quite reasonably infer from that that he may have moved seats within the theatre during the screening of the film.

So in my view, and no doubt the defence - although I don't think that there was explicit reliance upon that piece of evidence - I can see that the defence might latch upon that in order to show that the defendant was not in row D but in fact was elsewhere in the theatre. But that evidence in my view doesn't really show that the defendant wasn't at an earlier time seated in row D. In fact, I think it supports it given the mobility of that person that was observed by the manager.

That's all I wish to add and I will again order a transcript of that part of my reasons for decision to be consolidated with my earlier oral reasons and again it will be made available to the parties at no cost.
