

CITATION: *Police v Carleton* [2008] NTMC 010

PARTIES: POLICE

v

BRIAN TIMOTHY CARLETON

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Court of Summary Jurisdiction

FILE NO(s): 20725685

DELIVERED ON: 29<sup>th</sup> February 2008

DELIVERED AT: Darwin

HEARING DATE(s): 20<sup>th</sup> February 2008

JUDGMENT OF: Relieving Magistrate Fong Lim

**CATCHWORDS:**

Criminal Law - Alibi Defence – reliability of witnesses

**REPRESENTATION:**

*Counsel:*

Plaintiff: Mr T Smith

Defendant: Mr M Johnson

*Solicitors:*

Plaintiff: Summary Prosecutions

Defendant: Northern Territory Legal Aid

Judgment category classification: C

Judgment ID number: [2008] NTMC 010

Number of paragraphs: 24

IN THE COURT OF SUMMARY JURISDICTION  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 20725685

*[2008] NTMC 010*

BETWEEN:

**POLICE**

Plaintiff

AND:

**BRIAN TIMOTHY CARLETON**

Defendant

**REASONS FOR DECISION**

(Delivered 29<sup>th</sup> February 2008)

Ms FONG LIM RSM:

1. The Defendant is charged with five charges, Drive in a disorderly fashion, Failure to comply with restraining order, Driving without licence and driving a car that was unregistered and uninsured. The restraining order relates to Lolita Bradley, the mother of the Defendant's ex partner Debbie Ann Crabbe. In the circumstances of the case, the Defendant will either be found guilty of all charges or none at all.
2. The allegation is that on the day in question, Bradley had travelled to Palmerston from her home in Jingili to pick up her daughter, Crabbe and her granddaughter Jade Thiew, with the plan of dropping Jade off to school before taking Crabbe to the Magistrates Courts. Just after picking Crabbe and Jade up, they were followed by the Defendant in his vehicle down the road tailgating them. It is alleged that the Defendant then pulled out to drive side by side with them and attempted to get them to pull over. It is further alleged that the Defendant only desisted in this behaviour once Bradley and Crabbe indicated to him that they had their mobile phones and were going to call the Police. Bradley then drove straight to the Palmerston Police Station and reported the incident.
3. The Defendant was interviewed by the Police some 6 days later, in which he denied being involved in the incident, claiming he was at home with

his children all day because he was waiting for Crabbe to return to his place with some things that she had taken from him. He also claimed that Crabbe had been at his home the night before and had left sometime in the early hours of the morning.

4. The evidence presented by the Prosecution came from Bradley, Crabbe and 11 year old Thiew. The evidence from these three witnesses as to what happened on the day in question was consistent with the complaint made to the Police. They were only inconsistent in the positioning of the three children in the Defendant's car and given the circumstances of the incident, that would be understandable. Counsel for the Defendant suggested there was also an inconsistency about the attendance at the Police Station as to whether Crabbe and Jade waited "outside" or in the waiting room. This inconsistency, if there is one, can be easily explained by the way different people express themselves, "outside" could have meant "outside in the waiting room", however the inconsistency is of no real consequence.
5. The electronic record of interview was also tendered which showed the Defendant denying any involvement in the incident after the statements of Bradley and Crabbe were put to him.
6. The evidence presented by the Defence consisted of the Defendant, Amanda McGrath (ex partner of the Defendant) and Ravanna Lowe (girlfriend of the Defendant's son). The Defendant claimed he was home at the time of the alleged incident and for most of that time, in the company of McGrath. He claims at home with him were his son's Kyle, Jessie, Frankie and Sonny and Kyle's girlfriend Ravanna. Both Amanda and Ravanna confirm in their evidence that the Defendant was at home with them from about 6:30am to about 11:00am.
7. The Prosecution correctly submits that to find the Defendant guilty, I must disbelieve the Defendant and the witnesses who appeared for him to

establish his alibi. I must be reasonably satisfied beyond a reasonable doubt that the Defendant was not at home at the time of the incident and that he committed the offences as alleged. The issue is the reliability of the witnesses and their evidence.

8. It is not disputed that there was a current Domestic Violence Order in favour of Bradley against the Defendant at the time of the alleged offence. It is not disputed that the Defendant was unlicensed or that the car the Defendant usually drove was unregistered and uninsured at the time of the alleged incident.
9. It is accepted by all parties that there was a lot of ill feeling between Bradley and the Defendant and that ill feeling continues. It is also accepted by both the Defendant and Crabbe that they had a tumultuous on again off again relationship right up to recently. There are presently reciprocal Domestic Violence Orders between them. It is clear from the evidence of Bradley that she holds a lot of spite towards the Defendant and from the evidence of the Defendant, that he has a lot of bitterness towards Bradley because she interfered in his relationship with Crabbe. There is also a current Domestic Violence Order against Crabbe in favour of McGrath and even though McGrath accepts that there hasn't been any trouble between the two since the issue of that order, clearly there were some jealousy issues on Crabbe's behalf.
10. It is against this background I have to assess the credibility of the witnesses. The most impressive witness I received evidence from in this matter was the 11 year old daughter of Crabbe, Jade Thiew. Jade gave her evidence honestly and without dramatic embellishment of her grandmother and the questionable character of her mother. She was very clear on what happened on that day and was not shaken at all in cross examination. Jade gave her evidence with the honesty of a child. Jade's description of when the Defendant's car came up beside the car driven by

her grandmother was inconsistent with her grandmother's and her mother's description in that she gave evidence that didn't happen until they were on Temple Terrace while the others suggested it was when they were on Kafcaloudes Circuit. Her description of the children in the car and their reaction to what was going on was entirely believable. She says that the other children were reacting as if it was a game and given the age of the children, that is also entirely believable. I must however direct myself as to the possible influence that a mother and grandmother have on an 11 year old and consider the evidence of the child with caution. Her reference to the Defendant as "Brian" in her evidence when she usually referred to him as "Timmy" is puzzling. She didn't show any discomfort or fear of being in the same room as the Defendant either. It might be expected that a child having been through such an experience might be wary of the Defendant, however that did not seem to be the case with Jade.

11. Bradley on the other hand gave evidence with the gusto of a person who clearly wanted to get revenge on the Defendant, not only for the incident in question but for all her perceived hurt he had inflicted upon her family. However she was not shaken in cross examination and her evidence was consistent with the complaint she made to the Police. Her reaction to the incident is also believable as are the inconsistencies of her evidence about where the three children were in the car. She made the proper concessions about her estimates of time.
12. Crabbe was the least impressive of the prosecution witnesses, while she gave her evidence in a forthright manner and was not shaken in cross examination as to the details of the alleged offence, her credibility came into issue when cross examined. In particular, she was cross examined about a note she allegedly left with the Defendant in the early hours of the same morning. She first seemed to recognise it as an old note and then when asked about the handwriting, denied it was written by her. She has

also signed three statutory declarations about the incident. The first given to the Police a couple of days after the incident confirming what her mother had said, the second on the 2<sup>nd</sup> of October 2007 recanting the first and then a third on the 11<sup>th</sup> of December 2007 which recanted the second statement. She recants the second statement on the basis that she claims she was under duress by the Defendant. Her oral evidence of course accords with her original statement. Crabbe also attempted to embellish her evidence with reference to the children in the Defendant's car having no seatbelts on but then had to later accept that she could not possibly know that.

13. Defence counsel submitted that there was an air of collusion in the evidence of Bradley and Crabbe because their accounts of the incident were so similar. I cannot be reasonably satisfied that there was collusion because of that consistency, it is just as likely that this incident was so traumatic to them that the true detail just stuck in their minds.
14. The evidence of the Defendant was given in an unusual manner he displayed no emotion when giving his evidence, he expressed no outrage at being brought to the court on the alleged lies of his ex partner and her mother and daughter yet he was totally different in his record of interview where he was clearly agitated and vehement about the lies that Bradley and Crabbe had told before about him. Nevertheless he too was not shaken in cross examination even though he was required to explain why he didn't mention the presence of Ms McGrath and Ms Lowe, his two alibi witnesses, at his place on that day when interviewed by the police. His explanation was that he didn't mention them because "he didn't think it would get this far". He wasn't asked to explain what he meant by this. The Defendant claimed in his oral evidence that Crabbe had come to his place in the middle of the night or early hours of the morning of the 19<sup>th</sup> September 2007 to ask him if he wanted help with the children. He told her to leave as she was breaching the Domestic Violence Order and then

he went to comfort one of the young children who had woken up, leaving Crabbe outside. The Defendant said just prior to going to attend his son that he had hidden some money he had saved for a bond in the laundry between some towels to keep it safe. The Defendant then says he fell asleep and awoke the next morning about 6:30am and found that Crabbe had taken the money and left him a note saying that if he did the right thing, he would get it back. He produced the note which is the note Crabbe denies is written by her.

15. The Defendant was asked to explain why he didn't report Crabbe to the Police for breach of the Restraining Order and his answer was "don't know", when asked why he didn't go to Court, he stated that he forgot to come in because he was stressed.
16. When asked why he thought to check for the money, the Defendant gave inconsistent answers. At first he says he checked because of the note and then later in his evidence he says he checked because when he woke up, he realised he had fallen asleep while Crabbe was there and she had stolen from him before. I find the Defendant's explanation of Crabbe's attendance at his residence that night and the subsequent "stealing" of his money by Crabbe to be unbelievable. If he had cause to be cautious about Crabbe's stealing habits then he would have taken the money with him when leaving Crabbe unattended in his home. There is no evidence that Crabbe had searched for the money and if the Defendant had hidden it the way he said he had, it would be expected that there would be evidence of a search by Crabbe to find the money. The evidence of the note can be given little weight, as there is no verification that it was written by Crabbe. I note the differences between the writing on the note and the second declaration made by her, and there is also a question of when that note was actually written. The evidence of Crabbe and the Defendant confirm she has written similar notes to him before.

17. The reliability of the Defendant's evidence must be questioned, he is a person who convinced the Court he needed a Domestic Violence Order against Crabbe, yet he did not immediately report her breach to the Police. In fact he admitted to creating situations where he put her in breach, eg taking food to her on a regular basis. It is also clear that the Defendant drives the car in question regularly even though he admits he does not have a licence and therefore seems to have little regard for the law.
18. The Prosecution argued that the Defendant should not be believed because the alibi smacked of recent invention. The Defendant certainly mentioned the "stolen money" in the record of interview, so in my view, the issue of the money is less likely to be recent invention as that record of interview was taken only 6 days after the incident. What is telling however is that the Defendant did not mention his alibi witness McGrath except when answering a question of where he was on that day when the Police came around. Originally the Defendant told the Police that he had been home all day and then when asked why he remembered that particular day, he stated it was because he was waiting for Crabbe to return with his money. Then when he was challenged with the fact that no-one was home when the Police came around, he suggested that he may have been out shopping. The Defendant stated that he usually caught a taxi to go shopping and "sometimes Amanda picks me up". This was his opportunity to mention that Amanda was there with him that morning and he did not. His explanation that he didn't mention her presence that morning in his record of interview is because "he didn't think it would go this far" is unsatisfactory and is not to be believed.
19. It is clear that neither Crabbe nor the Defendant knew what they wanted out of their relationship and that their interaction over time has been out of the ordinary to say the least. Their behaviour toward one another on either version is bizarre and not what one would expect of the ordinary person. On their evidence alone, I cannot accept either version or believe



either one beyond a reasonable doubt.

20. The contest is really between the evidence of Jade, Ms McGrath and Ms Lowe who out of all of the witnesses should be the most objective. I have already assessed the reliability of Jade's evidence.
21. The evidence of Ms McGrath was not shaken in cross-examination. She gave evidence that she went to the Defendant's place on the day in question so that they could have their regular Wednesday time together and when she got there, he was upset about the missing money. She claimed he was so upset they didn't end up going anywhere and they spent most of the morning from approximately 8:00am to 10:45pm at his unit. She gave evidence that she and the Defendant had very recently broken up and she was clearly uncomfortable and upset while giving her evidence. Counsel for the Defendant argued I should accept her as a truthful witness who, because she was no longer the Defendant's girlfriend, had no reason to lie for him. Of course Ms McGrath was asked whether she would lie for the Defendant, which of course she gave the expected answer, no. That line of questioning takes the issue no further. There may be many reasons why Ms McGrath might lie for the Defendant, she may lie to get back into his favour, she might lie to get Crabbe into more trouble and she might lie because she doesn't like Bradley and so on. However, except for the fact that I have not accepted the evidence of the Defendant, there is no evidence which directly attacks the credibility of Ms McGrath.
22. Ms Lowe's evidence was that she got up in the morning and she saw the Defendant straight away, she then watched TV all morning and she saw McGrath arrive at about 8:30 and both she and the Defendant spent most of the morning in the Defendant's bedroom. Ms Lowe thought the Defendant was fine and not upset at all, which is contrary to Ms McGrath's evidence and stated she didn't give a statement to the Police before now because she didn't want to get involved at the time because

she was due to have a baby. Ms Lowe's evidence is not as certain as that of Ms McGrath in that she didn't really know when she awoke except that it was daylight and that she always awoke at about 5:30am. Given the time of year it is more likely she woke later than 5:30am on that day if it were daylight when she woke. It is of interest that she couldn't remember the time she awoke yet remembered fairly precisely when Ms McGrath arrived, however again there is no evidence or any significant inconsistency in Ms Lowe's evidence which shows her to be an unreliable witness. The inconsistency of her observations about the Defendant's mood with Ms McGrath's observations could be explained because they spent most of the time in the Defendant's bedroom and not in the lounge with her.

23. Given the evidence before me I suspect that the truth lies somewhere in between the prosecution witnesses' version of events and the Defendant's version of events. The lateness of the production of the alibi evidence does suggest recent invention, however I cannot be satisfied beyond a reasonable doubt that Ms McGrath and Ms Lowe are telling untruths about the Defendant's whereabouts that morning and therefore, the alibi defence has not been negated by the Prosecution.
24. The Defendant must in those circumstances be found not guilty on all charges.

Dated this 29<sup>th</sup> day of February 2008.

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**ya Fong Lim**

**RELIEVING  
MAGISTRATE**