

CITATION: *Stuart Davis v Dagg, Lightfoot & Quall* [2008] NTMC 072

PARTIES: STUART DAVIS

v

BENJAMIN THOMAS LEITH DAGG
BIANCA LIGHTFOOT
JENNA QUALL

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Justices Act

FILE NO(s): 20628613, 20628618, 20628612

DELIVERED ON: 10 November 2008

DELIVERED AT: Darwin

HEARING DATE(s): 27 and 28 October 2008

JUDGMENT OF: Ms Fong Lim RSM

CATCHWORDS:

Aggravated assault – deceased witness statement – co-offenders

REPRESENTATION:

Counsel:

Plaintiff:	Mr Jones
First and Second Defendant:	Mr Maley
Third Defendant:	Mr Norris

Solicitors:

Plaintiff:	Summary Prosecutions
First and Second Defendant:	Maleys
Third Defendant:	NAAJA

Judgment category classification:	C
Judgment ID number:	[2008] NTMC 072
Number of paragraphs:	38

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

No. 20628613, 20628618, 20628612

[2008] NTMC 072

BETWEEN:

STUART DAVIS
Plaintiff

AND:

BENJAMIN THOMAS LEITH DAGG
1st Defendant

BIANCA LIGHTFOOT
2nd Defendant

JENNA QUALL
3rd Defendant

REASONS FOR DECISION

(Delivered 10 November 2008)

Ms FONG LIM RSM:

1. The defendants are charged with a breach of s 188 of the *Criminal Code* that they unlawfully assaulted the victim, Zoltan Csiki (“Csiki”), with the aggravating circumstance that Csiki suffered bodily harm. It is conceded by the defendants that they were involved, to varying degrees, in an altercation with Csiki on the night in question and that he suffered bodily harm.
2. It is agreed that Csiki, picked up the defendants, Dagg, Lightfoot, Quall and another (who will be tried separately) in his taxi at the Shell Service Station, Daly Street Bridge. The defendants had been out on the town and all had been drinking alcohol. It was about 5:00am on the morning of 28 May 2006. An argument ensued between Csiki and the defendants while they were

driving from town to the northern suburbs, about an alleged advance of \$20.00 Dagg had paid to Csiki for a fare sometime before which Dagg says Csiki did not honour, Csiki claimed that the \$20.00 had been a tip. Csiki then decided to pull into the Mobil Service Station on Bagot Road to terminate the fare. It is conceded by the defendants that there was a verbal and physical altercation between Csiki and some of them which ended in the defendants walking away from the Service Station at the end of the altercation leaving the injured Csiki.

3. The form of the argument in the taxi and the circumstances of the altercation at the Service Station are in dispute.
4. The Court heard evidence from Csiki, Mr Blundell the console operator, Mr Fitzgerald another taxi driver present at the Station, and Constable Bolton. The Court also received into evidence the statement of Mr Standley, another taxi driver, who has since died. Mr Standley's statement was tendered by consent. There was also video footage from the security cameras at the Service Station. The electronic record of interview of Quall was also tendered. Defendants Dagg and Lightfoot also gave evidence.
5. The evidence of all witnesses must be viewed in light of the fact that the incident occurred some two and half years ago, so some allowance should be made for the fading memory of all witnesses.
6. Mr Csiki gave evidence in a quiet and subdued manner, he gave evidence of having an argument with Dagg about paying the fare, but denied any issue regarding a previous fare. He stated that Dagg was getting more and more aggressive, swearing and pushing his chair, so he decided to terminate the fare. He drove into the Mobil Service Station and pulled up right next to the front door because he wanted to get into the shop to call for help. He states that is when the white male, Dagg, and his partner, Lightfoot, stopped him from entering the shop and started attacking him. He remembers that the female, Lightfoot, kicked out at his groin and he attempted to avoid that

blow by turning his body to the side and putting his arm out to push her away and that is when the white male, Dagg, attacked him. Csiki then remembers being on the ground and being kicked, with full force, and punched but did not see by whom because he had his hands over his head trying to protect himself. He does not remember what happened after the assault ceased, just that the next thing he knew he was inside on a chair being tended to by ambulance officers and answering police questions. In cross-examination it was put to Csiki that he pulled Dagg from the car because he was refusing to leave until he was paid his \$20.00 back and he manhandled him to place him up against the car, Csiki denied this happening and stated that he was trying to remain calm because he was scared. It was also put to him that Lightfoot then tried to separate him and Dagg and that is when Csiki shoved her in the face. This was denied by Csiki as he says he remained calm at all times and that all he was saying to them was to leave and get another taxi. Csiki also claimed in his evidence that he has some problems with short term memory loss since the incident.

7. The evidence of Mr Blundell was that he has just finished serving a customer when Csiki's taxi pulled up in front of the front door. He recognised the driver because he had been a regular customer at the Service Station over the years. He saw the vehicle stop and all of the passengers get out yelling and screaming at Csiki, although he couldn't hear the words, he could tell by their gestures and faces they were being aggressive. Mr Blundell says he saw a female with a white skirt and strapless top grab at Csiki's groin at which stage Csiki attempted to push her away and that is when the four people got him on the ground and "bashed" him. Mr Blundell saw the white male kick Csiki with full force while he was on the ground and saw both males punching and kicking Csiki. He says he saw at least two full kicks from the white guy. He gave evidence that the attack took about a minute and then the attackers just stopped and walked away.

8. Mr Blundell states that at the end of the incident he then helped Csiki into the shop where he called the police and ambulance because he was worried that Csiki was concussed because he didn't seem to know where he was. When asked if Csiki had one of the male passengers up against the car, Mr Blundell says he didn't see that. He agreed in cross-examination that Csiki did push one of the females in the face after she grabbed at him, but did not see her fall or get up. Mr Blundell was adamant that he saw the whole incident because he was intent on watching what was happening. He did accept he may have missed something at the beginning because he had just finished serving a customer. Mr Blundell did give evidence of hearing the white male say "don't hit my wife" when the doors opened to the shop at one stage.
9. Mr Fitzpatrick was at the bowsers refuelling his taxi when he observed another taxi drive in "at pace". He could hear that there was an argument going on inside the taxi because there was yelling and swearing and it sounded to him that it was a dispute about paying the fare. He saw the back passenger door open and then the driver pull a male passenger out of the car. He then saw a young lady get between the passenger and the driver and saw her being knocked over, he wasn't sure how she was knocked over. In cross-examination Mr Fitzpatrick became confused about who he actually saw hit Csiki when on the ground, but his general impression was that there was one male and one female who were involved in kicking Csiki. He at first thought that the original male was involved in the kicking but then in cross-examination stated he was not. Mr Fitzpatrick stated that he may be confused about what he saw, particularly when he originally thought there were three males involved.
10. The statement of Mr Standley describes him waiting for his passenger when he saw a taxi pull up fairly quickly and stop. He saw the driver and four passengers alight from the taxi almost at the same time. He saw the driver appear to try and turn one of the passengers around by the shoulders but

stated he did not seem to be trying to hurt him. Mr Standley then saw a female approach the driver and immediately start punching and kicking him, at which time the driver tried to fend her off. At this stage he then saw the first male wrestle with the driver and a second male join in the wrestling. The driver and the first male and female were then seen to fall to the ground and that is when Mr Standley sees the second male kick the driver several times. Mr Standley then says that the incident broke up and the driver was on the ground. He got up and then the first male approached him with a bin lid which he dropped after someone else yelled something. Mr Standley stated he didn't see what the second female was doing and gave a description of her which clearly did not match either of the women passengers that night. He described her as "Caucasian, larger girl, dark hair" both females involved in this incident were part Aboriginal and of slight build.

11. The video evidence taken from the Service Station security cameras is of some assistance. The DVD was played in real time and also at a slower speed to eliminate slight jumps in the recording. The video shows Mr Fitzpatrick at his taxi using the bowser when Mr Csiki's vehicle pulls into the station and stops right in front of the shop. The camera angle is such that the viewer is unable to see the altercation between the driver and his passengers. What is seen is that as soon as the car stops, Ms Quall and her partner get out of the vehicle, Ms Quall from the rear passenger side and her partner from the front passenger seat. No other person gets out from that side of the vehicle. Ms Quall walks off to one side and her partner walks immediately around the rear of the vehicle to where the incident took place. The viewer then sees Mr Dagg leave off to the left of the screen looking back and then Ms Quall and her partner doing the same. Just before that the driver of the second taxi parked at the bowsers walks past the rear of Csiki's vehicle looking towards the area where the altercation took place, however there is no evidence called from that taxi driver.

12. Csiki is then seen to be walking over to and leaning up against the bonnet of the second taxi at the bowsers and then staggering back to his own taxi to lean up against it. Csiki at this stage is shirtless. Another unidentified person is then seen to walk around the taxi, look at Csiki and follow him back towards the shop entrance. There is no evidence about who that person is.
13. The video was played at normal speed and then slowed down because the record jumped some frames at normal speed. At the slower speed you can see Mr Fitzpatrick try and assist Csiki as he walks toward the second taxi, but Csiki does not avail himself of that assistance. This evidence is clearly not helpful regarding the actual assault, however it is helpful in showing where people were at times during the incident.
14. The final piece of evidence tendered by the prosecution was the electronic record of interview of Quall (also known as Jenna McCoy). In that interview Quall denies any involvement in the assault and states that she only approached the others to try and stop the assault from happening and that is when Csiki grabbed her leg and tried to pull her down. She makes statements about the other defendants' involvement in the assault, however those statements must be disregarded as against those defendants as hearsay and I take no account of them in my deliberations.
15. Both Dagg and Lightfoot gave evidence in their defence. Their evidence is strikingly similar and at one time while giving his evidence, Dagg tried to refer to his partner while she was sitting in Court as to where she was at the time he got out of the vehicle.
16. Dagg states that when he got into the taxi he recognised the driver almost immediately as the one who had "ripped him off". Dagg alleged that a couple of weeks prior he had given Csiki \$20:00 to return and pick him and his partner up from the nightclub and Csiki did not honour that agreement. Dagg was certain it was the same driver because of the taxi number and he

recognised Csiki as a former teacher of his. When Csiki claimed he was mistaken, Dagg says he was amused because it was funny. Dagg gave evidence that he remained calm and was laughing at Csiki's constant denial. He states that Csiki became aggressive when Dagg told him that he was not going to pay the fare until he was credited with the \$20:00 from the time before. Dagg says that Lightfoot returned the aggression to Csiki but that he, Dagg, remained calm.

17. When Csiki pulled the taxi into the Service Station and told them all to get out, Dagg says he told Csiki that he was not moving until he was paid or credited the \$20.00. Dagg says that all of the other three passengers had got out of the taxi by that stage. It was then Dagg says Csiki dragged him out of the car and "kicked me up the arse" after that Lightfoot became involved and Csiki "palmed her away" and she fell to the ground. That is when Dagg says he tried to "defend the both of us". He says he had a scuffle with Csiki at which time Csiki had a hold of his shirt and when Csiki fell over, he fell with him. It was then Dagg says he kicked and kneed Csiki so that he would let him go. All this time Dagg says Lightfoot was yelling and screaming and pushing Csiki to get him to let Dagg go. Dagg corroborates Quall's record of interview that she came over saying "stop stop" and that is when Csiki grabbed her leg. Dagg says that McCoy punched Csiki a couple of times and that was the end of it.
18. Photos were tendered of a small mark on Dagg's neck and a scratch and small bruise on Lightfoot's right cheek. Dagg also gave evidence of a bruised tailbone arising out of the kick he received from Csiki, but no corresponding photo.
19. In cross-examination Dagg insisted that he remained calm the whole time until Csiki "palmed" Lightfoot away. He maintained that Csiki was never in the foetal position and that he lifted the rubbish bin lid only because he

thought Csiki was going to have another go at him. Dagg did concede however that Csiki was clearly injured after the altercation on the ground.

20. Lightfoot also gave evidence and her evidence corroborated Dagg's evidence. She seemed to be confused however about how and when she got out of the car, first saying she got out of "Jenna's door" and then when it was pointed out that did not correlate with the footage, changed her mind, saying she got out from the same door as Dagg. She says she didn't see any physical contact between Dagg and Csiki until the "kick up the arse", although she did say earlier in her evidence that "I jumped out of the other side after he (Csiki) grabbed Ben out of the car". Lightfoot says her pushed Csiki on the shoulders to get him to release her partner and she states that Csiki fell over the kerb and that is when he had Dagg by the shirt. She suggested that Dagg "pushed" Csiki away with his foot. That is when she says Quall came closer and was grabbed by the leg by Csiki and when Mccoy then punched Csiki once. After that Lightfoot says they all walked away.
21. No evidence was called by Quall.
22. I remind myself that I must be satisfied beyond a reasonable doubt of all of the elements of the offence against each of the defendants. Further if I am satisfied that the defendants have discharged the evidential burden to raise positive defences to the offence, then I must be satisfied beyond reasonable doubt that the prosecution has negatived that defence and that the evidence does not support any other reasonable explanation consistent with innocence.
23. It is clear and uncontroverted that all of the defendants were involved in an incident with Csiki. The defendants Dagg and Lightfoot have raised the defence of defensive conduct and consent to fight. The defendant Quall claims she was not involved in any of the physical attack upon Csiki. The defendants concede that Csiki suffered bodily harm in the incident.

24. Dealing with Ms Quall first. The only witness that states positively that she was involved in the physical attack upon Csiki is Mr Blundell. He is adamant that he saw all four passengers punching Csiki and when pressed in cross-examination, confirmed that is what he saw. The evidence of the victim is that he didn't see if Ms Quall was involved in the attack, but he thought she may have been the one behind him who pulled him over. The other two independent witnesses, Mr Fitzpatrick and Mr Standley, had the second female standing away from the area where the assault took place. Mr Fitzpatrick did become confused in cross-examination about who might have been involved in the physical attack upon Csiki and readily accepted his memory of who did what to whom, was not totally reliable. Mr Standley's evidence was not tested in cross-examination and should be viewed with caution, however he too had the second female standing away from the attack. Mr Standley's view of what the second female might have been doing should be considered in the light of the fact that he describes her as a "larger Caucasian with long dark hair". Clearly that is not an accurate description of Quall, who is in fact a slight woman of Aboriginal descent.
25. Mr Blundell was clear in his evidence and gave his evidence in a straightforward and direct manner, his view was unobstructed but he could not hear what was being said. Defence counsel would have me totally discount Mr Blundell's evidence because he is not in agreement with other witnesses as to some of the actions of the parties. It is my view that while Mr Blundell's evidence is clearly his interpretation of what he saw and what he believes to have happened, he could be mistaken to some degree, however the whole of his evidence should not be discounted. The incident took place over a short space of time and given the number of people involved, it is possible that he is mistaken as to Quall's involvement. Considering she does accept that after standing away from the incident she came closer to try and stop the others and that is when she was grabbed by the ankle by Csiki. It is possible that Blundell mistook that action for an

attempt to kick Csiki. I should also note that both Dagg and Lightfoot corroborate Quall's statement that she was standing aside at first and her yelling "stop it stop it". Given the evidence before the Court, I cannot be satisfied beyond a reasonable doubt that Quall was involved in any physical attack upon Csiki and therefore she must be found not guilty.

26. The defendants Dagg and Lightfoot pose a more difficult proposition for the Court. Their evidence raises the defences of consent and defensive conduct on their behalf. Their counsel submits that Csiki consented to the fight by dragging Dagg from the vehicle and attempting to frisk him. There is no evidence however of Csiki challenging Dagg to a fight, or any evidence from the independent witnesses that he kicked Dagg as claimed by Dagg and Lightfoot.
27. Both Dagg and Lightfoot say that their actions towards Csiki were in defence of each other. Lightfoot says she was pushing him on the shoulders to separate him from Dagg and then says when Csiki palmed Lightfoot away, he got into a scuffle with Csiki to defend both of us. To discount the defendants' claim of defensive action, I must find them to be unreliable witnesses and be satisfied that the prosecution has negated that defence beyond a reasonable doubt. I also have to be satisfied beyond a reasonable doubt that the defendants' actions were not a reasonable response to the actions of Csiki.
28. Where the evidence of Fitzpatrick and Standley conflicts with that of Csiki, Dagg and Lightfoot, I give more weight to their evidence even taking into account Fitzpatrick's failing memory and the fact that Standley's evidence was not subject to cross-examination. They have no vested interest in the outcome of the proceedings and must be seen as totally independent witnesses.
29. I cannot accept Csiki's recollection of events as totally accurate because of his own evidence - he has short term memory loss and he also has a hazy

memory of what happened once the physical altercation started. The independent witnesses also corroborate the defendants' evidence that Csiki did remove Dagg from the car and it was after that Lightfoot got in between them to separate them. Given the evidence of Fitzpatrick and Standley corroborate Dagg and Lightfoot's evidence that Csiki had pulled Dagg from the vehicle. Nonetheless, neither Fitzpatrick nor Standley could give evidence of the words spoken by the parties concerned.

30. I cannot be satisfied beyond a reasonable doubt that Csiki remained calm and reasonable throughout the whole encounter, as he states he was. He had been accused of "ripping the defendant's shirt off" and he was seen to drag Dagg from the car. I am satisfied that Csiki did pull Dagg out of the vehicle and I accept Dagg's evidence about that.
31. The balance of Dagg's evidence must also be viewed with caution. It is clear to me that he has attempted to sanitize his involvement in the argument with Csiki in the car. He states that during the whole argument with Csiki regarding the fare he remained calm and amused and it was only when Csiki pushed his partner away he got a bit annoyed. He states that his words to Csiki were that he wasn't going to leave the taxi until he got his \$20.00 back. Those words are not consistent with someone who is calm. Those words also corroborate Csiki's evidence that he had demanded that they get out his taxi. It is unbelievable that Dagg remained calm the whole time with his partner becoming aggressive and his obvious view that he was in the right about the \$20.00. It is also unbelievable that he did not engage with Csiki in an aggressive manner before he was dragged out of the taxi. His evidence regarding those matters is rejected.
32. Lightfoot's evidence must also be viewed with caution as she clearly gave evidence in the same terms as her partner, however when pressed in cross-examination, became confused about facts such as where and when she got out of the car and whether he was kicked with a tap or a full kick "up the

arse”. She too attempts to sanitise her actions on the night. It is clear from the evidence of the independent witnesses that she was being more aggressive than she would have the Court believe, even her partner suggested she was more aggressive than he was in this altercation. Lightfoot also admitted in cross-examination that she was very protective of her partner and would do anything for him.

33. The attempt by Dagg, while he was in the witness stand, to get confirmation from Lightfoot in Court about some of his evidence indicates that they had colluded about their evidence and were trying to make sure they said the same things. They have had two and half years to discuss their evidence.
34. The statement by Dagg that he had bruises on his tailbone from the kick by Csiki smacks of recent invention, particularly as the defendant’s produced photos of a minor scratch on Dagg’s neck and yet no photos of the alleged bruise on his tailbone. Significantly none of the independent witnesses corroborate that evidence. I find that both Dagg and Lightfoot’s evidence as to there physical altercation with Csiki to be unreliable and not to be believed. Furthermore the injuries sustained by Csiki support more than a couple of punches, a prod with a foot and a push as the defendants would have the Court believe.
35. While Dagg says that he only pushed Csiki away with his foot and kned him because Csiki has held him by the shirt and he was going to pull him over, I am satisfied beyond a reasonable doubt that he is not telling the truth.
36. It is clear from the evidence of the independent witnesses that while Csiki was on the ground he was kicked with “full force” by one of the male defendants and the evidence of Dagg is that the other male did not kick Csiki, so by process of elimination it had to be Dagg himself. I am satisfied beyond a reasonable doubt that Dagg did kick Csiki. I am also satisfied beyond a reasonable doubt that Lightfoot did more than push Csiki and that

on the evidence of the independent witnesses, she “laid into” Csiki with punches when he was on the ground unable to defend himself.

37. Even if the evidence of Dagg and Lightfoot can be accepted in relation to their state of mind, that is they were defending each other from an aggressive Csiki, their reaction and actions must be a reasonable response to the “threat” and I am satisfied beyond a reasonable doubt that their attack upon Csiki while he was on the ground of at least one kick from Dagg and several punches from both Dagg and Lightfoot, was not a reasonable response to him pulling Dagg out of the car and pushing Lightfoot away. It is also trite to say that if Csiki consented to a fight, he did not consent to being kicked and punched by two people while on the ground.
38. Dagg and Lightfoot are therefore both found guilty of aggravated assault upon Csiki. I will hear counsel on sentencing.

Dated this 10th day of November 2008

Tanya Fong Lim
RELIEVING STIPENDIARY MAGISTRATE