

CITATION: *Police v Bird* [2009] NTMC 045

PARTIES: POLICE

v

BRETT BIRD

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Court of Summary Jurisdiction

FILE NO(s): 20908386

DELIVERED ON: 12 October 2009

DELIVERED AT: Darwin

HEARING DATE(s): 3 June, 18 June, 20 July, 27 July, 10 August,
11 September 2009

JUDGMENT OF: Melanie Little SM

CATCHWORDS:

Criminal Law – Charge of Assault Police – Sentencing – Proof of prior Court matters

Evidence Act (NT) s 32 considered

Williams v Hammersley 20 ALR 233 followed

REPRESENTATION:

Counsel:

Complainant: Mr Dalrymple
Defendant: In Person

Solicitors:

Complainant: Summary Prosecutions
Defendant: In Person

Judgment category classification: C

Judgment ID number: [2009] NTMC 045

Number of paragraphs: 15

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

No. 20908386

[2009] NTMC 045

BETWEEN:

POLICE
Complainant

AND:

BRETT BIRD
Defendant

REASONS FOR JUDGMENT

(Delivered 12 October 2009)

Ms Melanie Little SM:

1. The defendant is charged with resisting a member of the police force in the execution of their duty pursuant to s 158 of the *Police Administration Act* and unlawfully assaulting a police officer force, namely Constable Sean Holmes whilst in the execution of his duty contrary to s 189A of the Criminal Code. The defendant pleaded not guilty and a hearing was conducted. The defendant was found guilty of both counts and sentencing submissions commenced. The defendant objected to the commencement of sentencing submissions on the basis that he was appealing a decision with respect to an earlier charge and the hearing of that appeal was pending in the Supreme Court. The court was told that the both the finding of guilt and the sentence was being appealed and the outcome of the appeal may affect any prior matters alleged in this case. The matter being appealed included charges which were directly relevant to this case and in particular, charges of assault police. The defendant also advised that he had previously

challenged the admissibility of prior Court matters and that this issue would be agitated on appeal. I adjourned the case pending the outcome of the appeal.

2. The defendant's appeal was unsuccessful. A decision of Chief Justice Martin was delivered on 17 July 2009 (*Bird v Littman* [2009] NTSC 33). That decision upheld the findings of guilt with respect to a series of offences dated 12 April 2008. Charges from that date included two counts of assault police, resisting police and other summary offences. It is apparent from the decision of the Chief Justice that the issues with respect to the admissibility of the certificates of conviction were not agitated on appeal. The convictions and sentence stand.
3. In the proceedings before me, Prosecution provided the court with a copy of a transcript of Court of Summary Jurisdiction proceedings relating to the offences of 12 April 2008, heard on 5 August 2008, where the defendant agitated the question of what constituted proof as to any alleged prior court matters. In the earlier case, Prosecutions sought to tender a bundle of certificates pursuant to s 32 of the *Evidence Act*. The Defendant objected to the tender. A ruling was made that the certificates were admissible and constituted proof that the defendant had the specified convictions. He was sentenced to a period of 8 months imprisonment from 10 April 2008.
4. The defendant does not dispute that he was the person who was the subject of the decision of the Chief Justice on 17 July 2009, which was an appeal from the decisions made on 5 August 2008, and indeed he had expressly requested that this matter be adjourned pending finalisation of his appeal.
5. Prior to sentencing submissions continuing in the matter before this Court, a decision must be made as to whether two sets of documents will be exhibited and taken into account in the sentencing process. MFIP4 is a bundle of certificates of conviction prepared by the Clerk of Court dated 7 July 2009. MFIP5 is a bundle of certificates of conviction which were

before the Magistrate sentencing on 5 August 2008 (the sentence which was then appealed). The defendant objects to the tender of this material. These certificates of proceedings are not all directly relevant in this case, as some are certificates set out that charges were withdrawn and dismissed.

6. The usual procedure is for an Information for Courts document to be tendered by consent. Counsel will admit that the contents of the document sought to be tendered relate to their client, or a defendant in person will admit the contents. If there are any issues as to the entirety of the document, or certain entries of a document, the matter is stood down for checking and discussions. This is not always resolved on the day. Enquiries and checks are made. For example there may be photographs of the person arrested or charged, the investigating officers may know the defendant personally or fingerprints checks may be undertaken to ascertain the veracity of the document which is sought to be tendered. This is not to limit the forms of proof of the document. Sometimes there are contested hearings on the admissibility of Information for Courts, or parts of the document.
7. In this case, Prosecution have not sought to tender Information for Courts and so these possible modes of proof have not been considered. Prosecutions have previously been advised that the defendant objects to such to the tender of Information for Courts documentation. There was no application for an adjournment to seek to prove Information for Courts by way of fingerprint or other evidence.
8. The certificates of proceedings which were sought to be tendered by Prosecution each set out that the defendant's name is Brett Bird, a male born 11 May 1969 (save and except one document with respect to a charge from 1991, which does not set out a date of birth). The name and date of birth on the certificates of proceedings are the same name and date of birth as on the information and complaint before the court in this case. While that may well be seen as a relevant co-incidence whatever approach is taken must be

same as if the Defendant's name was John Smith, Jane Brown, or indeed any other name, common or uncommon.

9. Prosecution are relying on s 32 of the *Evidence Act* which sets out as follows:

32 Findings of guilt, acquittals and other criminal proceedings

- (1) Where it is necessary to prove any of the following facts:
- (a) The finding of guilt or acquittal before or by any Court of any person charged with any offence; or
 - (b) That any person was sentenced to any punishment or pecuniary fine by any Court; or
 - (c) That any person was ordered by any Court to pay any sum of money; or
 - (d) The pendency or existence at any time before any Court of any criminal trial, proceeding, inquiry, charge or matter,

evidence of such fact may be given by the production of a certificate under the hand of a Judge or officer of the Court, showing the fact, or purporting to contain the substance, omitting the formal parts, of the record, indictment, finding of guilt, acquittal, sentence, or order, or of the trial, proceeding, inquiry, charge or matter in question and stating the time and place of the finding of guilt, conviction, acquittal, sentence or order, or of the trial, proceeding, inquiry, charge or matter, with the title of the Court or the name of the Judge before or by whom it was had, or passed, or made, or pending or existing.

- (2) Any such certificate which states that the person signing it ordinarily has the custody of the records, or documents, or proceedings, or minutes referred to therein, shall be evidence of that fact.
- (3) Any such certificate showing the finding of guilt, conviction, acquittal, sentence or order shall be evidence of the offence or matter in respect of which the finding of guilt, conviction, acquittal, sentence or order was had, or passed, or made, if stated in the certificate.

- (4) Any such certificate showing the pendency or existence of any trial, proceeding, inquiry, charge, or matter shall also be evidence of the particular nature and occasion or ground and cause thereof, if stated in the certificate.
- (5) Any such certificate purporting to contain the substance, omitting the formal parts, of any record, indictment, finding of guilt, conviction, acquittal, sentence, or order, or of any proceeding, inquiry, charge or matter, shall also be evidence of the matters stated in the certificate.
- (6) Until the contrary is shown, every finding of guilt summarily made referred to in any such certificate shall be presumed not to have been appealed from.

10. As far as I am aware, this section has only been directly decided upon in the Supreme Court in the decision of *Williams v Hammersley* 20 ALR at page 223. In *Hammersley*, a charge of driving whilst disqualified was before the court and Prosecution was seeking to prove that the defendant had been the person who had previously been before the court and been suspended from driving. This was a contested hearing and the Magistrate declined to allow the tender of the certificate for that purpose. On appeal, Chief Justice Forster found as follows:

“Once the conviction had been properly proved by the tender of the certificate, I agree with the learned magistrate that it was necessary to prove that the Dennis Williams whose name appeared on the certificate was the same Dennis Williams as was charged before him. This may be, and frequently is, done by an admission tendered by or on behalf of the defendant and, failing this, evidence of identity may be given by someone who was present in the court on the first occasion, or, identity may sometimes be proved by fingerprint evidence. These methods of proving identity are probably not exhaustive”.

11. Whilst it is acknowledged that the case of *Williams v Hammersley* related to evidence in a contested hearing, it is my view that the principles set out in *Williams v Hammersley* are relevant to this case and that Prosecution must prove that the person named on the certificates is the same person as the person who is before the court. That has not been done in this case.

Prosecution have submitted that as these certificates were tendered in a previous case, that this Court should now accept the tender them. With respect, I do not regard myself as bound by the previous decision.

12. The certificates in MFIP4 and MFIP5 are in accordance with s 32(1) of the *Evidence Act*. The certificates in MFIP4 and MFIP5 can be used to prove there are convictions against the person named in the certificate of proceedings. Nevertheless, they do not, without further proof, prove the link between the person named in the certificates of proceedings and the defendant before this court. If they are tendered without any further proof, they will lie before the Court with no evidential value. Arguably their prejudicial effect will out weigh their probative value. The certificates in MFIP4 and MFIP5 are not admitted as against this defendant in these proceedings.
13. The convictions and sentences from the charges the subject of the appeal are before the defendant and the details of those matters will be taken into account in sentencing. The information with respect to those charges is contained in the Supreme Court decision and the Court of Summary Jurisdiction transcript which are both before the Court. I sentence the defendant on the basis that he has the following prior court matters and sentences:

Offence date 12 April 2008 – Sentence 5 August 2008 – Darwin Court of Summary Jurisdiction – aggregate penalty of 2 months imprisonment on count 1 (resist member of police), count 2 (disorderly behaviour), count 5 (disorderly behaviour in police station) and count 7 (offensive behaviour) aggregate penalty of 2 months imprisonment. Count 3 (assault police officer Seears - six months imprisonment concurrent with the previous sentence. Count 6 (assault police officer, Constable Millar) convicted and imprisoned 8 months concurrent with previous sentences. Total effective sentence of 8 months imprisonment.

14. The findings of guilt with respect to counts 3 and 6 from the offences dated 12 April 2008 mean that s 78BA of the *Sentencing Act* (NT) comes into play with respect to the charge of assault police in this matter.
15. I will now proceed to hear submissions and sentence the defendant based on these findings.

Dated this 12th day of October 2009

Melanie Little
STIPENDIARY MAGISTRATE