

CITATION: *Police v Adams [2010] NTMC 015*

PARTIES: ERICA ANN SIMMS

v

KATE ADAMS

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Criminal

FILE NO(s): 20826515

DELIVERED ON: 10th March 2010

DELIVERED AT: Darwin

HEARING DATE(s): 8th October 2009 and 29th January 2010
Submissions 23rd February 2010

JUDGMENT OF: Ms Fong Lim SM

CATCHWORDS:

Crime – aggravated assault – Transit Officers – power to arrest - discretion to arrest
–unlawful arrest –improper arrest - *Public Transport (Passenger Safety) Act* sections
3, 11, & 27

Bunning v Cross [1978] 141 CLR 54 - applied

Fleet v District Court and Ors [1999] NSWCA 363 -considered

REPRESENTATION:

Counsel:

Complainant: Ms Horvatt

Defendant: Ms Bennett

Solicitors:

Complainant: Director of Public Prosecutions

Defendant: Northern Territory Legal Aid Commission

Judgment category classification: C

Judgment ID number: [2010] NTMC 015

Number of paragraphs: 54

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

No. 20826515

[2010] NTMC 015

BETWEEN:

ERICA ANN SIMMS
Complainant

AND:

KATE ADAMS
Defendant

REASONS FOR DECISION

(Delivered 10th March 2010)

Ms FONG LIM RSM:

1. Kate Adams faces four charges, one count of disorderly conduct in a public place and three counts of assault on Transit Officers. Two of those assaults are alleged to have resulted in the Transit Officers suffering harm.
2. On the first occasion this matter came before me, Adams pleaded not guilty to the charge of disorderly conduct, however after leave was granted to amend the charge on the second hearing day on 28 January 2010, she then pleaded guilty to that charge. The assault charges remain in contest.
3. On 26 September 2008 Transit Officers McCorkell, Newport and Mussak were called to attend a bus stop at Coles in Palmerston to attend to an intoxicated male. They arrived and attended to the drunken man when McCorkell noticed Adams approaching the bus stop with a full shopping

trolley. Adams had a current Trespass Notice to stay away from bus stops and the public buses.

4. McCorkell and Adams had a discussion about her intention or otherwise to get onto a bus, that discussion became heated with Adams verbally abusing the Transit Officers in general and McCorkell in particular. Who started the conversation and what was said before the argument became heated is disputed.
5. Adams is then alleged to have assaulted McCorkell at which point Adams was arrested and restrained by the Transit Officers. The disorderly conduct charge is particularised as Adams' bad language in her abuse of the Officers. The assaults particularised as the flicking of a cigarette at and the punching of McCorkell and the biting, scratching and kicking of Newport and biting of Mussak.
6. Prosecution must prove beyond a reasonable doubt all of the elements of each offence and negative any positive defence put forward by Adams beyond a reasonable doubt.
7. To find Adams guilty of the assault charges, I must be satisfied beyond a reasonable doubt that she applied direct or indirect force upon McCorkell, Newport and Mussak, they did not consent to that application of force and it was while they were in the execution of their duties. I must also be satisfied that Adams caused harm to Newport and Mussak and she has no positive defence to the charges.
8. Evidence was taken from all three Transit Officers, a bystander Mr Stewart, Police Officer Ranford and Ms Rogan for the prosecution. Adams also gave evidence.
9. In her evidence Adams claims she was minding her own business when she was antagonised by McCorkell and unfairly arrested. She denies

assaulting any of the Officers, although accepts that she was struggling under arrest because she was fearful of her own safety.

10. Adams' evidence raised the defence of self defence. It also raises questions about her original arrest and whether the Transit Officers were in the execution of their duties at the time of the described incident.
11. Two threshold issues are whether Adams committed an offence which enlivened the Transit Officers' power of arrest (was there an "offence warranting arrest") and if there was such an offence, where was it committed.
12. If I cannot be satisfied beyond a reasonable doubt on both of those matters, then I must find the arrest to be unlawful.
13. If the arrest is unlawful, I then must decide if I should exercise my discretion in favour of receiving evidence of what occurred after that arrest considering the principles in *Bunning v Cross* [1978] 141 CLR 54.
14. If I disallow the evidence, then there will be no evidence to support the charges of assault on Newport and Mussak and the defendant must be found not guilty of those charges.
15. **Powers of arrest by Transit Officers:** The power of arrest of Transit Officers is set out in s 27 of the *Public Transport (Passenger Safety) Act*. A duly authorised Transit Officer can arrest a person who he believes on reasonable grounds has committed an offence warranting arrest. "Offences warranting arrest" are defined in s 4 of the Act as including offences of assault under the *Criminal Code* (NT) and any offence under s 5, 7 or 8 of the *Trespass Act* if committed on a bus or a bus station.

16. The powers of a Transit Officer can be exercised on or within the vicinity of a bus or at or within the vicinity of a bus station (s 23 *Public Transport (Passenger Safety) Act*). Bus station includes a bus stop.
17. Therefore a Transit Officer has the power to arrest on or within the vicinity of a bus station if they have reasonable grounds to suspect that an offence warranting arrest has been committed on a bus or at a bus stop.
18. In the present case McCorkell formed the opinion that Adams had committed the offence of assault upon himself and as assault is an offence warranting arrest, then he had the power to arrest her.
19. McCorkell states he made the decision to arrest Adams when she assaulted him by flicking the lit cigarette at him and then punching him in the stomach while bending over to pick up the cigarette.
20. **Was there an assault on McCorkell?** The assault on McCorkell is particularised as Adams flicking a cigarette at McCorkell and also pushing or punching him in the midsection when bending down to retrieve the cigarette.
21. McCorkell, Newport, Mussak and Stewart all state that Adams had a cigarette in her hand when having the discussion with McCorkell and that she flicked that cigarette at him striking somewhere on his upper body. Only McCorkell and Stewart were sure that the cigarette was lit at the time. Of course the act of flicking the cigarette lit or unlit is an act of the application of indirect force upon McCorkell and fits within the definition of assault under s 188 of the *Criminal Code*.
22. The evidence of the three Transit Officers and Stewart also support a finding that Adams contacted with the midsection of McCorkell with her arm when retrieving the cigarette from the ground. All witnesses observed the contact to be deliberate, some describe it as a punch and

others a push. McCorkell describes the move as a punch connecting with his belt.

23. In his oral evidence McCorkell alleged Adams shouted and abused him from 20 metres away and said that caused him to go over to Adams and warned her not to get onto the bus. None of the other witnesses corroborate his evidence nor did he mention this in his statement given to the police. Stewart saw Adams approach the bus stop and McCorkell approach her and spoke with her before she started yelling and abusing McCorkell. Newport did not hear any abuse until after he observed McCorkell talking to Adams. Mussak saw Adams approach but didn't hear any abuse until later.
24. McCorkell did not make any such allegation in his statement to police which was made a short while after the incident. McCorkell is either mistaken or embellishing his evidence regarding this issue and the balance of his evidence must be viewed with caution.
25. Adams claims it was McCorkell who was aggressive towards her in their conversation and who flicked the cigarette out of her mouth or hand. She also denies she punched him when she went to retrieve the cigarette. There are internal inconsistencies in Adams' evidence. In her evidence in chief, Adams stated the cigarette was flicked from her mouth by McCorkell and in cross-examination at one stage says the cigarette was flicked from her hand. It is also of note that McCorkell was asked in cross-examination about attempting to stomp on Adams' hand when she went to retrieve the cigarette, yet she made no mention of that in her evidence. Adams' claim that McCorkell was verbally aggressive towards her is not corroborated by other witnesses.
26. Stewart's evidence must be given due weight as he was a bystander and concerned, as a trained security guard, to ensure that the Transit Officers were doing the right thing. He was sure the cigarette was lit because he

describes Adams' action as taking a draw back on the cigarette before flicking it. He took particular note of the interaction between McCorkell and Adams and he saw her flick the lit cigarette and push McCorkell when she went to retrieve it.

27. I find that Adams' version of these initial events cannot be believed given the internal inconsistencies in her evidence and the evidence of the independent witness.
28. Even exercising caution in relation to McCorkell's evidence, I find I can be satisfied beyond a reasonable doubt that Adams flicked a lit cigarette at McCorkell and then pushed him to the stomach as she lent down to retrieve the cigarette. Those actions all constitute an assault.
29. **Where did the assault on McCorkell take place?** It is clear from the operation of s 4 and 27 of the *Public Transport (Passenger Safety) Act* that Transit Officers have the power to arrest someone who has committed the offence of assault "on a bus or at a bus stop". To find that the arrest of Adams was lawful, then I must be satisfied beyond a reasonable doubt that the assault occurred "at a bus stop". If I am satisfied the offence occurred at a bus stop, then it is clear that the Transit Officers could exercise the power of arrest within the vicinity of the bus stop.
30. I am satisfied the arrest took place within the vicinity or at the bus stop, however where the actual assault took place is a little more problematic.
31. It is clear from the evidence that McCorkell and Adams had a conversation about her intention or otherwise of getting onto a bus in contravention to her Trespass Notice. That conversation took place while McCorkell was standing in the garden bed next to the bus stop and Adams was standing on the kerb of the car park.

32. McCorkell gave evidence that he and his fellow Officers were attending the bus stop when he noticed Adams coming toward the bus stop with a trolley load of groceries. When Adams got nearer to the bus stop, about 1 - 2 metres away from the edge of the bus stop, he challenged her about getting on the bus. She continued to abuse him and after he warned her that she would be issued an infringement notice if she continued the behaviour.
33. McCorkell says he advised Adams she could be arrested if she continued in her behaviour and it is then she lit a cigarette and flicked it at him. She then lent over and punched him in the belt area after having advanced on him. That is when he says he arrested her for assault. A scuffle occurred and they all ended up closer to the back of the bus stop by the time Adams had been restrained.
34. Adams' evidence was that she was at all times about 2 metres into the car park and at one stage, standing under a shady tree a little way away from the bus stop until she was dragged to the bus stop by the Transit Officers arresting her. Her evidence was internally inconsistent in this aspect. She could not have been in both places when approached by McCorkell. She could either be under the tree or standing in the car park near the bus stop not both.
35. The evidence of McCorkell of how they came to be at the bus stop is corroborated by Newport and Stewart and placing the appropriate weight on the evidence of Stewart, I find that beyond a reasonable doubt that the conversation took place at the edge of the bus stop and car park and moved to the back of the bus stop during the scuffle.
36. McCorkell's evidence is that the assault took place when Adams was on the edge of the car park adjacent to the garden bed which in turn was adjacent to the bus stop. He was on the garden bed and Adams was standing in the car park. The punch to his middle was after Adams had

advanced upon him. At the end of the scuffle, they all ended up to the rear of the bus stop.

37. Newport seemed a little defensive and uneasy in cross-examination, he was evasive at times particularly when discussing the details of the arrest of Adams. However his evidence is clear that Adams was standing in the car park when she flicked the cigarette and then she advanced on McCorkell.
38. The bystander Stewart observed the conversation, the flicking of the cigarette and the initial contact to McCorkell's middle to take place at the edge of the car park.
39. Given that none of the witnesses including McCorkell place Adams actually at the bus stop when she initially assaulted McCorkell, then I cannot be satisfied beyond a reasonable doubt that the initial assault upon McCorkell took place "at a bus stop". There is no evidence of the boundaries of the bus stop and even if I accept that the bus stop boundary abuts the garden bed, McCorkell is not clear in his evidence whether he was standing at the edge of that garden bed at the time of contact or off the garden bed. I therefore cannot be satisfied beyond a reasonable doubt that the offence took place "at a bus stop". Consequently the arrest of Adams was unlawful on the basis that at that point, McCorkell's powers of arrest were not enlivened.
40. **Should evidence of events after the unlawful arrest be excluded?** This is a clear case of the unlawful arrest being the cause of the escalating behaviour of Adams. Her reaction to her arrest and her behaviour subsequent to that arrest was appalling and clearly actions of a hysterical woman who was overreacting to the initial challenge made of her by McCorkell. Adams cannot be believed in her evidence that she was quietly minding her own business when she was provoked by McCorkell

nor can her denials of biting and attempting to bite the Officers as that was clearly witnessed by Stewart and Rogan.

41. In the witness box she attempted to represent herself as a vulnerable scared woman, however that does not accord with her aggressive interjections while McCorkell and Newport were giving evidence nor was it consistent with her demeanour in cross-examination and the angry denials of biting the Officers saying with a sneer that she “wouldn’t bite that” referring to Newport. The offensive language used by Adams before she assaulted McCorkell is also an indication that prior to her arrest she was already angry and aggressive far from the actions of a vulnerable scared woman.
42. I find Adams to be a totally unreliable witness, however her unreliability does not assist the Crown in this instance.
43. The competing public policy issues here are the protection of Transit Officers, public servants, while they go about their duties and the individual’s right to defend themselves from a wrongful arrest.
44. The power of arrest is the ultimate power placed in the hands of the authorities. Even if an arrest had a lawful basis, that power should also be exercised properly. The power of arrest should not be used indiscriminately and any person who is empowered by legislation should not exercise that power unless the situation warranted it (see *Fleet v District Court and Ors* [1999] NSWCA 363).
45. Even if I am wrong about the unlawfulness of the arrest, whether the choice made by McCorkell to arrest Adams was a proper use of the arrest power must be considered. The assaults upon McCorkell caused him no pain or distress, he says he arrested Adams because she “was quite wild” by the time she assaulted him and he felt if he didn’t arrest, she would continue to offend. This observation describes a situation where the

power to arrest could have been properly employed, however other witnesses attest that Adams, while clearly verbally abusing the Transit Officers, did not become out of control until McCorkell and Newport placed her under arrest.

46. It is unlikely that matters would have escalated as they did if McCorkell had chosen not to arrest Adams.
47. I cannot be satisfied that Adams would have continued to offend in a violent manner had she not been placed under arrest. She may have continued to hurl verbal abuse, but that in itself would not have warranted arrest in circumstances where it was clear the Officers knew who Adams was and the matter could have been dealt with by way of complaint to the police.
48. In all of the circumstances, I am of the view that any evidence of offending arising out of that unlawful arrest ought to be excluded.
49. **Assault on Newport and Mussak** –Without the evidence of what occurred after the arrest, the charges against Adams relating to assaults on Newport and Mussak must fail.
50. If I had not excluded that evidence it is my view that the evidence of all of the Transit Officers and Stewart establish beyond a reasonable doubt that Adams, once placed under arrest, struggled, scratched, bit and swore at them. Newport suffered scratches and bruising on his arms and legs and Mussak bruising on his leg and both suffered pain from those injuries. They both attended Stuart Park Surgery and medical records from that Surgery confirmed those injuries. Harm is defined in the *Criminal Code* as including pain.
51. By the time she was arrested, Adams had clearly lost control of herself and had lashed out at whoever was nearby. Her partner and son were also yelling and swearing adding to the disturbance and the heat of the

moment. They thought she was being wrongfully arrested and were physically and verbally agitated.

52. Ms Rogan was driving past and heard Adams crying out for help when she stopped and ran to her assistance she saw Adams being restrained by the Transit Officers in a way she thought was not necessary for a woman. She says Adams was on the ground with both her arms being held by the Transit Officers with force. She told the Officers to release Adams so she could try and calm her down. She believes that they then loosened their holds on Adams at which stage Adams then went “stupid” or “schitzo” scratching out at the Officers and trying to bite them “like a dog”. The Officers then restrained her again with a little more force.
53. **Defence of justification, excuse, self defence?** There is no evidence that supports a claim of self defence by Adams in relation to the initial assault of McCorkell.
54. **Conclusion:**
 1. The arrest of Adams was unlawful and if not unlawful improper.
 2. The evidence of the assaults on Newport and Mussak is excluded on public policy grounds and therefore, Adams must be found not guilty on those charges.
 3. Adams is found guilty of the assault on McCorkell, including the circumstance of aggravation that he was a member of the public service and in the execution of his duty.

Dated this 10th day of March 2010.

Tanya Fong Lim
STIPENDIARY MAGISTRATE