

CITATION: *Police v Garrawarra* [2010] NTMC 024

PARTIES: JOSEF KEITH HART

v

EDWARD YIRRIPANGA GARRAWARRA

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Justices Act (NT); Criminal Code (NT)

FILE NO(s): 20911339

DELIVERED ON: 8 April 2010

DELIVERED AT: Nhulunbuy

HEARING DATE(s): 3 & 4 March 2010

JUDGMENT OF: Jenny Blokland CM, delivered by Mr
Cavanagh SM, Nhulunbuy 8 April 2010

CATCHWORDS:

REPRESENTATION:

Counsel:

Informant: Mr Ledek
Defendant: Mr Grimes

Solicitors:

Informant: Summary Prosecutions
Defendant: NAAJA

Judgment category classification: C
Judgment ID number: [2010] NTMC 024
Number of paragraphs: 15

IN THE COURT OF SUMMARY JURISDICTION
AT GALIWINK'U IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20911339

BETWEEN:

JOSEF KEITH HART
Informant

AND:

EDWARD YIRRIPANGA GARRAWARRA
Defendant

REASONS FOR JUDGMENT

(Delivered 8 April 2010)
by Mr Cavanagh SM

JENNY BLOKLAND CM:

Introduction

1. The Defendant pleaded not guilty to three counts of assault police, alleged to have occurred at Galiwink'u Community, Elcho Island. The three police officers alleged to be assaulted are Aboriginal Community Police Officer "ACPO" Betina Danganbarr, Constable Kellie Logan and Constable Matthew Unwin. A further count of consume liquor in a prescribed community was stood aside.

Summary of Evidence

2. The evidence clearly discloses the police officers concerned were responding to a report that people were drinking *home brew* at Lot No 342 Galiwink'u community.
3. The evidence clearly shows that during the course of that investigation, the Defendant's brother (Terry Garrawarra) poured home brew from a jerry can

onto ACPO Danganbarr and pushed the jerry can into the left side of her cheek. Officers Logan and Unwin attempted to effect an arrest on Terry Garrawarra. It is clear he resisted; there was a wrestle between him and police and Terry Garrawarra attempted to punch and kick police – some of the blows and a kick to Officer Unwin connected. A large group of people formed and were calling out in Yolngu Matha. At one point of the struggle, police had their hands around Terry Garrawarra’s neck. Part of the wrestle occurred on the stairs of the house and all parties tumbled or stumbled to some degree down the stairs. Officer Unwin at one point landed on Terry Garrawarra. At various times all police had some physical contact with him.

4. Terry Garrawarra was brought to the back of a police vehicle. Edward Garrawarra, (“the Defendant”), then appeared on the verandah of the house holding a long object, initially described by police as a “hunting boomerang”. Officer Unwin observed the Defendant come down from the verandah and take up a stance in a lunge position with the “hunting boomerang” which Officer Unwin, for all intents and purposes, treated as a weapon.
5. Officer Unwin described the Defendant in this lunge stance with the “hunting boomerang” raised above his shoulder or cocked above his shoulder pointing at him and at ACPO Danganbarr and Officer Logan who were further away near the police vehicle. Officer Unwin told the Defendant twice to drop the weapon. Officer Unwin said the Defendant appeared very aggressive and was looking at him. Officer Unwin believed the Defendant was going to throw the weapon. As Officer Unwin believed the Defendant would throw the weapon, he drew his firearm and pointed it at the Defendant. He returned the gun to his holster when the Defendant lowered the weapon.

6. As the evidence unfolded, it became clear the “hunting boomerang” (Exhibit P1) was more appropriately considered a ceremonial stick, used in dancing and known in Yolngu Martha as “Gali Gali”.
7. After the initial altercation when the Defendant’s brother poured home brew over her and pushed the jerry can into her cheek, ACPO Danganbarr was also involved in his arrest. ACPO Danganbarr said she was keeping the crowd under control and calm. She was near the police vehicle when she saw the Defendant pointing what she thought was a machete at her. (She accepted that it was not in fact a machete but a “ceremonial boomerang”). She thought he was going to hit them with it. She said he was pointing “at us” in a threatening way. She said he was moving like he was doing a dance, something like a “war dance”, his arms were like a bird’s arms and he was squatting up and down. Officer Logan was also involved in the arrest of the Defendant’s brother and the Defendant, but did not see the stance taken by the Defendant.
8. The Defendant gave evidence he came outside of the house and saw two police holding his brother and struggling; his brother was on the ground, face down. He said police were trying to hold his brother’s neck and arms and dragged him and put him in the cage. He said ACPO Danganbarr slapped people who were gathered around. He said he thought his brother would run out of breath, become unconscious or would be killed. He said his brother was weak having come from Nhulunbuy hospital a month before because of his arm. There was evidence from police the Defendant’s arm was in a cast. Given what he saw, the Defendant said he stood up, grabbed the stick (meaning the ceremonial boomerang) and started doing a ceremonial dance, the *catfish* dance, a dance he indicated was performed during confrontations and to give him confidence. He said the catfish dance was performed at ceremonies and involved imitating the *catfish*. He described moving the stick from a position extended out from his body to moving it across his body from side to side. He said he did this to try to

stop the activity going on with his brother; he said he didn't assault police; he was just holding the stick, he didn't mean to harm anyone. The Defendant agreed he wanted to stop the police and that he was half drunk. He had drunk around four cups of home brew.

9. The Defendant's father, Richard Garrawarra gave evidence that the stick or boomerang before the Court was called "Gali Gali"; that it was for dancing; that the catfish dance was used to show respect and was a way of asking for respect. It involves up and down movements and movements across the body; the "Gali Gali" is not held cocked above or behind the head. The dance is to protect property in the family area and to show that an area is significant or sacred and has a protective or safety purpose.

Discussion of the Evidence

10. I found the police evidence persuasive. There was obvious apprehension on the part of Officer Unwin, both that the Gali Gali might be thrown at him and at Officer Logan and ACPO Danganbarr who were near the police vehicle at the time.
11. It is entirely possible the Defendant had in mind the catfish dance when he first picked up the Gali Gali, but in my view, he used it in a manner to threaten police as described by Officers Unwin and ACPO Danganbarr to achieve his purpose to stop police activity with his brother. I accept as well as holding the Gali Gali in the manner described by Officer Unwin, he also made the criss-cross movements and up and down movements described by ACPO Danganbarr. The Defendant's recollections about the incident must also be seen from the point of view that he was moderately intoxicated. This does detract from having confidence in the accuracy of his recollections.
12. In my view, the actions of the Defendant in holding the Gali Gali in a threatening manner pointed in the direction of Officer Unwin and ACPO

Danganbarr amounts to a threatened application of force pursuant to s 187(b) *Criminal Code* (NT) where the Defendant had “an actual or apparent present ability to effect his purpose and the purpose is evidenced by bodily movement or threatening words”. In my view, this is a classic threatened force case. The Defendant says he was not intending to throw the Gali Gali at police. It is not necessary for the prosecution to prove he was intending to throw it. The circumstances of the incident all point to the Defendant threatening police. Two of the alleged victims, ACPO Danganbarr and Officer Unwin perceived the threat, Officer Logan did not and it is consequentially unclear on whether the count concerning her has been made out. Objectively she may have been under the same level of threat as ACPO Danganbarr near the police vehicle and there is a view that an assault may be made out on this basis, however, without Officer Logan confirming the state of her knowledge of the Defendant’s actions, I am unable to conclude that there was an “apparent present ability” to carry out his purpose with respect to her. I have concluded beyond reasonable doubt the Defendant threatened the application of force in respect of Officer Unwin and ACPO Danganbarr.

13. There remains the issue of *defensive conduct* with particular reference to s 29(5) *Criminal Code* (NT):

(5) A person does not engage in defensive conduct if:

(a) he or she is responding to the lawful conduct of another person; and

(b) he or she knows that the other person's conduct is lawful.

14. It was submitted the Defendant did not know the police conduct was lawful. I accept that to succeed the prosecution must negative that knowledge. In my view, the evidence and the circumstances do negative this assertion on the part of the Defendant. Clearly the Defendant’s brother was being

arrested (given the incident with ACPO Danganbarr and the presence of home brew), he resisted and the police used some force in arresting him. I have concluded the Defendant must have known the police arresting his brother was lawful and given his brother's resistance, the Defendant must have known some degree of force was lawful. The Defendant's recollections may not be entirely accurate given the *home brew* he had consumed. The circumstances as a whole point to him knowing police could arrest his brother in the manner they did. Simply stating he thought the police could injure his brother does not alter this conclusion.

15. This matter was originally listed to be concluded at Galiwink'u at the next sittings on 2 June 2010. As I will no longer be a Magistrate at that time, I will not be able to complete these proceedings. In the interests of the administration of justice, I have authorised Mr Cavanagh SM to publish these reasons to the legal representatives of the parties at the Nhulunbuy sittings on 8 April 2010. To that end, I confirm I have found counts 1 and 3 proven and dismiss count 2. I make findings of guilt on counts 1 and 3. The Defendant is not required until 2 June 2010. It is a summons matter and I trust a Magistrate can sentence the Defendant at that time.

Dated this 8th day of April 2010

Jenny Blokland
CHIEF MAGISTRATE