

CITATION: *Police v Clancy* [2010] NTMC 046

PARTIES: POLICE

v

AIDAN CLANCY

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Court of Summary Jurisdiction

FILE NO(s): 21004385

DELIVERED ON: 6 August 2010

DELIVERED AT: Darwin

HEARING DATE(s): 31 May and 9 July 2010

JUDGMENT OF: Ms Fong Lim SM

**CATCHWORDS:**

Criminal Law – Oath on Oath – Breach Domestic Violence Order – Alibi  
*Jones v Dunkel* (1959) 101 CLR 298

**REPRESENTATION:**

*Counsel:*

Plaintiff: Ms Nincovic  
Defendant: Mr Ledek

*Solicitors:*

Plaintiff: North Australian Aboriginal Justice Agency  
Defendant: Director of Public Prosecutions

Judgment category classification: C

Judgment ID number: [2010] NTMC 046

Number of paragraphs: 61

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

No. 21004385

BETWEEN:

POLICE  
Plaintiff

AND:

AIDAN CLANCY  
Defendant

REASONS FOR JUDGMENT

(Delivered 6 August 2010)

Ms Fong Lim SM:

1. Aidan Clancy and Sonia Hunt were in a relationship which was, according to Hunt, a relationship characterised by violence. Clancy does not accept that the relationship was problematic. On the 25<sup>th</sup> of January 2010 Clancy was released from gaol and there was a current Domestic Violence Restraining Order which restrained Clancy from any contact at all with Hunt.
2. Hunt claims from the time he was released from gaol Clancy pursued her with phone calls. Hunt says she gave into Clancy's demands and stayed with him on and off at his brother's place during which time they had sex. Hunt claims she only agreed to keep company with Clancy and have sex with him because she was afraid of what he would do to her should she refuse. Clancy says any contact between the two was at Hunt's instigation.
3. On the 3<sup>rd</sup> of February 2010 Hunt went to the Casuarina Club and told her friend about the troubles she was having with Clancy. She was sitting in the beer garden area with her friends when Clancy leaned over the fence and started abusing her. The friends called the police who attended and offered

to take Hunt home. She declined the lift and wandered about the Casuarina Village area for a little while drinking alcohol and then she went to see Clancy. Clancy and Hunt then had a verbal argument which ended in Hunt being punched to the face with a clenched fist apparently breaking her nose. Further insults were exchanged back and forth and then Hunt alleges Clancy grabbed her on the vagina. Hunt managed to get away from Clancy for a little while but then she saw him again and approached him abusing him, they ended up at the back of some flats and he hits her on the head with a mobile phone. She then gets away from him again. Next Hunt calls for help from her friend Orwin who calls the police. Later that night Hunt goes home with Orwin. The next day Orwin takes Hunt to the hospital and she receives treatment for facial injuries.

4. Clancy claims he was not anywhere near Hunt on the relevant days and at the time of the alleged assaults on the 3<sup>rd</sup> of February 2010, he was at Emma Chilcott's place and before that at his Auntie's place on Runge Street.
5. Clancy is charged with 5 counts of breaching a Domestic Violence Restraining Order and 2 counts of aggravated assault on Hunt. The breaches of the Domestic Violence Order are particularised as follows:

Charge 1: On the 25<sup>th</sup> of January Clancy contacted Hunt by phone while she was at the Airport Hotel

Charge 2: On the 25<sup>th</sup> of January Clancy was in the company of Hunt at the Casuarina Sports Club

Charge 3: On the 25<sup>th</sup> of January Clancy was in the company of Hunt in a taxi

Charge 4: On the 3<sup>rd</sup> of February Clancy harassed and verbally abused Hunt at the back of the Casuarina Club

Charge 7: On the 3<sup>rd</sup> of February Clancy was in the company of Hunt at the Caltex Service Station, Trower Road.

6. Clancy is charged with 3 counts of aggravated assault upon Hunt particularised as follows:
  - Charge 5: On the 3<sup>rd</sup> of February Clancy punched Hunt to the face and she suffered harm
  - Charge 6: On the 3<sup>rd</sup> of February Clancy grabbed Hunt on the vagina
  - Charge 8: On the 4<sup>th</sup> of February Clancy hit Hunt on the head with a mobile phone.
7. Clancy pleaded guilty to charges 2 and 3 and charge 7 was dismissed on a no case submission.
8. Given the defendant has raised the defence of an alibi for the assault charges 4, 5, 6 and 8, I must be satisfied beyond a reasonable doubt that the prosecution has proved the alibi cannot be sustained and that the assaults took place as described by Hunt.
9. It is conceded by Clancy there was a Domestic Violence Order current between himself and Hunt, restraining Clancy from having any contact with Hunt.
10. The Court heard evidence from Hunt, Orwin ( Hunt's partner), Cynthia Brown (Hunt's Aunt) , Wilson, Lindsay and Caruana (police officers). The defendant chose to give evidence and called Greta Byrnes (Aunt) and Emma Chilcott (friend).
11. **Issues:** The issues for the Court to decide are:
  - a. Was Clancy at Chilcott's home when Hunt was allegedly assaulted? Does Clancy have a credible alibi?
  - b. Did Clancy contact Hunt by phone while she was at the Airport Hotel on the 25<sup>th</sup> January 2010?
  - c. Did Clancy verbally abuse Hunt at the Casuarina Club on the night of the 3<sup>rd</sup> of March 2010?

- d. Did Clancy punch Hunt to the face on the night of the 3<sup>rd</sup> of February 2010 causing swelling to the nose and possible break of the nose?
  - e. Did Clancy hit Hunt on the head with a mobile phone on the night of the 3<sup>rd</sup> February 2010?
  - f. Did Clancy grab Hunt on the vagina on the 3<sup>rd</sup> of February 2010?
12. **The Alibi** – I address the issue of the alibi first because if I can find the alibi to be credible and the prosecution has not negated that alibi, then Clancy must be found not guilty on charges 4,5,6 and 8.
  13. Clancy’s evidence is that on the 3<sup>rd</sup> of February 2010 he had gone to his Auntie Greta’s place, stayed there from about 1:00pm until about 9:00pm. In between 1:00pm and 9:00pm he says he left and came back a couple of times. At 9:00pm he then went to look for some friends in Nightcliff and when he couldn’t find them, he walked to Emma Chilcott’s house where he socialised with several people and stayed overnight. He says he arrived at Emma’s place at about 11:30pm.
  14. Greta Byrnes, Clancy’s Auntie, was called and confirmed Clancy was at her place “afternoon time” and left at about 4:30pm and did not return. She did not accept that Clancy came and left her place several times that day as was claimed by Clancy.
  15. Emma Chilcott was called and told the Court that she remembers the day and confirmed that Clancy had arrived at her place just before midnight and stayed over sleeping on the couch in her lounge room.
  16. Greta Byrnes’ evidence does not fully support Clancy’s version of events, she only confirms he had been at her place in the afternoon. She was an honest witness and although her evidence as to the actual time of day is uncertain, she was clear that it was not yet dark when Clancy left her place.

17. Emma Chilcott also presents as an honest witness trying to do her best to give truthful evidence. I have no doubt that there was an occasion as she described where Clancy and several others had been at her place after an incident at another's place and that Clancy slept over. There is an inconsistency between her and Clancy about the time he left her place, he says he left at about 8:00am after Chilcott left with the children, she says they all left together at about 10:30am.
18. The significant difficulty in the reliability of Chilcott's evidence is that she had no real memory of the date of this occasion. Her evidence is that it was on the 3<sup>rd</sup> of February 2010, however she was lead into stating that date and then in cross-examination she stated that she only knew it was that date "because NAAJA told me".
19. Defence counsel submitted that it is a common technique for a person to remember dates because of significant events that happened on that day and suggested the significant event was that it was the first time the police had attended her house. I accept that witnesses often relate their evidence to other significant events around the same time, however this is not what Ms Chilcott has done. She has related an occasion when police were apparently called to her house, although she was not there at the time, for something totally unrelated to this matter, and then states it was a particular date because "NAAJA told her" it was that date. It is not that Ms Chilcott remembered it was the 3<sup>rd</sup> of February because on the 3<sup>rd</sup> of February she had a police job card which stated the date. It is not that Ms Chilcott remembered the date because it was the she remembers the date of that significant event. Ms Chilcott claims to remember it being the 3<sup>rd</sup> of February because "that's what NAAJA told" her. There is no independent evidence of the date when the police attended Ms Chilcott's house.
20. Ms Chilcott remembers an occasion where those people were at her place and Clancy was there. She was not asked how she related those events to the

3<sup>rd</sup> of February, she had no independent memory of the date. Her only reference to a date was what has been given to her by defence counsel and therefore that reference to the date is unreliable.

21. Clancy says that he slept over Chilcott's place on the 3<sup>rd</sup> of February and the next morning he went to his brother Bevan's place for a couple of hours. Next he says that he caught the bus to Casuarina and was arrested there at between 12:00 noon and 1:00pm. On Clancy's evidence then he was arrested the day after he stayed over at Chilcott's place. In cross-examination he accepted that the date of his arrest was the 5<sup>th</sup> of February. If I accept that Clancy stayed over at Chilcott's place the night before his arrest for the present charges, then his arrest on the 5<sup>th</sup> of February places him at Chilcott's place on the night of the 4<sup>th</sup> of February not the 3<sup>rd</sup> of February.
22. Clancy's alibi is not sustainable and has been negated beyond a reasonable doubt upon the alibi witnesses not supporting Clancy's evidence, unreliable confirmation of dates by Chilcott and the inconsistencies in Clancy's own evidence about dates.
23. Without the alibi I am then left with the oath on oath evidence of Hunt and Clancy as to the alleged offences.
24. **Credibility of Clancy** – In an oath on oath situation the credibility of the two witnesses is of great importance. In relation to Clancy I do not find him to be a credible witness. In his record of interview he states he has not seen Hunt since he had been released from gaol, he makes no mention of the alibi even though the allegations and dates are put to him directly and he confirms no one but himself has access to his phone. Clancy also says in his interview that on the day he was released he went to his brother's place and stayed there all day.
25. In his oral evidence Clancy claims to have seen Hunt every day since his release at her request, on the first day out of gaol he and his brother went

into town and bought some alcohol and socialised, he further claims that on the day of his release Hunt called him to talk about their son. They spent a couple of hours at the Casuarina Club and then went to her place for sex at her request. Clancy claims in his oral evidence that he was lying in his record of interview because he did not want to incriminate himself. Clancy also confirmed that he lied to police when they spoke to him on the night of the 25<sup>th</sup> of January because he knew he had breached the Domestic Violence Restraining Order by having been at Hunt's residence that night.

26. On his own admissions Clancy has shown to the Court that he is a person who is willing to lie to get himself out of trouble and therefore, his evidence must be viewed with caution.
27. Clancy's evidence of the alibi has been found to be unsupported and his failure to mention the alibi in his record of interview indicates the alibi to be of recent invention.
28. A further reason for treating Clancy's evidence with caution is the evidence of his brother Craig Henderson. Henderson gave evidence that Clancy and Hunt stayed at his place for at least a couple of nights after Clancy's release from prison, corroborating Hunt's evidence. Henderson also recounted a conversation he had with Clancy about a week later about Clancy saying he might be in a bit of trouble and Henderson assumed that Clancy had assaulted Sonia. Henderson says that the conversation also contained a reference about an "indecent act" however he was not sure whether it was regarding an act by Clancy or Hunt. Clancy denies having seen Henderson after the 27<sup>th</sup> of January or having the conversation, however could give no explanation why Henderson would lie about that conversation. It should be noted that the fact that the conversation never took place was not put to Henderson in cross-examination.



29. I find Clancy cannot be believed on the issue of the alibi and I find that his evidence is otherwise internally inconsistent that he cannot be believed at all and I disregard his evidence completely.
30. **Credibility of Hunt** – Hunt’s credibility is also a little problematic. Hunt was clearly angry about the part Clancy played in the death of their son. She contracted syphilis when pregnant and the child died from complication of that disease. She believes Clancy gave her that disease and therefore caused the death of their son. However she explains her willingness to talk to Clancy on the 25<sup>th</sup> of January because she says she felt sorry for him. That willingness to talk to him is inconsistent with her clear anger displayed in the witness box about this issue. Defence counsel submitted this may be a reason for Hunt to fabricate allegations against Clancy.
31. There is some confusion in Hunt’s behaviour of agreeing to see Clancy when she says she was scared of him seems inconsistent on the face of it, however she has explained her reason for doing so was to protect herself from further abuse by Clancy. That explanation is quite feasible.
32. Hunt’s credibility is also bolstered by the corroboration she received from other reliable witnesses. Hunt’s credibility is supported by the evidence of Brown and Orwin and Dr MacPherson. While I find she is still angry with Clancy about the death of their son, I do not find that anger has manifested in her fabricating these allegations against Clancy.
33. The CCTV footage of the Caltex Service Station on the night corroborates Hunt’s evidence of being at that station at the time she says she was there and gives further credence to her story. I note at this point I place no weight on the police officer’s identification of Clancy on that footage because it is clear that identification is unreliable. It is impossible to positively identify the person because of the quality of that footage and the lighting.

34. Hunt's evidence of an assault is corroborated by Orwin who confirms she called him that night and told him of the assault and he later observed her injuries. Her injuries are also corroborated by the observations of Cynthia Brown, her Aunty who was living with Hunt at the time and who saw her when she came home that night. Dr Macpherson confirmed the possibility of a broken nose and noted the history given of an assault at the Casuarina Club.
35. Cynthia Brown and Orwin also gave evidence of Clancy coming around that night calling out for Hunt. They both gave evidence of seeing Clancy's face at the louvres and hearing his voice calling out to Hunt. Brown gave her evidence in a straight forward and honest manner and her identification of Clancy at the window was from the basis of having known him for some time even before his involvement with Hunt. Orwin also gave evidence of Clancy coming around that night and although his identification of Clancy was not from a strong base, he corroborates Brown's view it was Clancy.
36. Orwin's evidence corroborated Hunt in relation to the initial phone calls she received from Clancy on the 25<sup>th</sup> of January and her reaction to those calls. Although he did not hear who was on the other end of the phone he confirmed Hunt advised him it was Clancy and she was shaken by the contact. Orwin also corroborated the calls made to him by Hunt in the early hours of the 4<sup>th</sup> of February and her complaints to him regarding Clancy. It was Orwin who took Hunt to the hospital the next day and stayed with her until she saw a doctor. While Orwin is the present partner of Hunt, he too presented as an honest and straight forward witness, he confirmed he was jealous of Clancy and the hold he seemed to have over Hunt and also that she was "nasty" to him when he went to her place on the night of the 25<sup>th</sup> of January. Even in his jealousy there is no evidence of any violence or even arguing between Orwin and Hunt and the evidence of Brown is that she had never seen any trouble between the two.

37. I find both Brown and Orwin to be honest reliable witnesses and wherever their evidence conflicts with other witnesses their evidence is given more weight.
38. I find Hunt to be an honest but confused witness, she admitted her memory was not good and that she was in a highly emotional state during the period she was in contact with Clancy. Her evidence must be closely scrutinised.
39. **Did Clancy call Hunt at the Airport Hotel on the 25<sup>th</sup> of January?** In relation to Charge, 1 I am satisfied beyond a reasonable doubt that Clancy did call Hunt on that day.
40. I do not accept Clancy as a credible witness and reject his evidence that the contact between him and Hunt was at Hunt's instigation.
41. Orwin observed Hunt receiving calls from Clancy on that night and she appeared to him to be upset and confused. He confirms she asked to be dropped off at the hotel that night because she wanted to be alone.
42. The actions of Hunt when she first started to receive calls from Clancy on the day of his release were actions of a person who was scared, confused and upset. She didn't know what she could do to avoid Clancy and his advances and felt she had to comply in fear of reprisal. She says she has suffered at the hands of Clancy before.
43. Clancy and Hunt then met up at the Casuarina Club and later went back to her house for sex. When Orwin arrived later Hunt told him to go away because Clancy was present. She says she was scared of Orwin or herself being hurt by Clancy should he see Orwin there.
44. The phone records of neither Hunt nor Clancy were produced to the Court and it seems no effort was made by the police to obtain those records.
45. Even without those records I can be satisfied beyond a reasonable doubt Clancy called Hunt while she was at the Airport Hotel. Her reaction to his

calls as observed by Orwin are not consistent with her making any steps to contact Clancy of her own initiative.

46. **Did Clancy attend the Casuarina Club on the 3<sup>rd</sup> of February and shout abuse at Hunt over the fence?** The only direct evidence of this incident is that of Hunt.
47. The evidence of Police Officer Wilson confirmed that a female had made a complaint naming Clancy as a person who had shouted abuse over the fence of the back of the Casuarina Club on the night of the 3<sup>rd</sup> of February. He wasn't sure it was Hunt who had made the complaint. His evidence corroborates Hunt in a limited way that someone had called the police after Clancy had abused her over the fence.
48. This incident was not mentioned in Hunt's statement to the police, however she claimed that her statements did not include all that she wanted to include and she was told they had enough. The police officer who took Hunt's statement confirmed that he always recorded all that a witness told him. He could not remember telling Hunt he didn't need any more information he had enough for his purposes.
49. There was no explanation by the prosecution of why the female friends of Hunt were not called and therefore I must assume that their evidence would not have assisted the prosecution case (*Jones v Dunkel* [1959] 101 CLR 298)
50. Given those circumstances I cannot be satisfied beyond a reasonable doubt that Clancy had abused Hunt over the fence that night and he therefore must be found not guilty of Charge 4.
51. **Did Clancy punch Hunt to the nose and hit her on the head with the mobile phone?**
52. Given Hunt's evidence of the incidents around the alleged assaults is corroborated by credible reliable witnesses, the alibi put forward by Clancy

has been negated and the credibility of Clancy's evidence on other matters is questionable. I find I am satisfied beyond a reasonable doubt that two of the assaults occurred as described by Hunt.

53. I am satisfied beyond a reasonable doubt that Hunt met up with Clancy that night, they argued and the argument turned physical with Clancy attacking Hunt. After several days of being dominated by Clancy, Hunt had not returned to Clancy and he had come looking for her. Hunt was disinhibited by alcohol and had the courage to argue with Clancy to her detriment. She was punched to the face and then later hit on the head with a mobile phone.
54. The punch to the nose is supported by the evidence of Dr Macpherson who treated Hunt the next day. The doctor suspected Hunt had a broken nose and treated her accordingly. The observations of Brown and Orwin also support Hunt having suffered an injury to the face.
55. The hit with the mobile phone to the head of Hunt is supported by the bruising to her face which was also noted and treated at the hospital.
56. Defence counsel pointed out the hospital notes show a history being related by Hunt of being hit at the Casuarina Club and suggested that Hunt was involved in something at the Casuarina Club, not an altercation with Clancy outside of the Club as was her oral evidence. This inconsistency could be explained by a mistake in the note taking or a misunderstanding of what was said. The nurse could not remember anything specific but confirmed her usual practice was to record what she had been told. Hunt cannot remember what she told the nurse and it may be that she said something about the Casuarina Club, having been there earlier that night. This inconsistency is not fatal to Hunt's evidence.
57. Clancy suggested in his evidence that perhaps she got the injuries in some other manner, however that was never put to Hunt in cross-examination and that suggestion cannot be given any weight.

58. **Did Clancy grab Hunt on the vagina?** The assault on Hunt is not recorded in the hospital notes and no treatment was noted. The only treatment given to Hunt, according to her, was an ice pack. That is not corroborated by the notes and while I can accept the history given by a patient may not always be accurately recorded, the record of the treatment afforded is more likely to be accurate given the main aim of medical staff is to give treatment and the note taking on treatment is important medically.
59. In those circumstances, although I have rejected the evidence of Clancy and accepted Hunt's evidence relating to the other assaults, I cannot be satisfied beyond a reasonable doubt that the assault on her vagina took place because I would expect treatment received for that "injury" would have been recorded. That is not to say that the assault never took place, Hunt may be mistaken as to when it took place given her confused state.
60. **Conclusion:** I find that Clancy persisted in his contact with Hunt over the days after his release from goal, I find he contacted her by phone on the 25<sup>th</sup> of January, they met at the Casuarina Club and later went to Hunt's place for sex. Clancy then insisted Hunt stay with him over the following days at his brother's place. I find that on the 3<sup>rd</sup> of February 2010, Hunt was at the Casuarina Club with her friends and Clancy came looking for her. He argued with her after she left the Club on the traffic island near the Club. I find that the argument turned physical and Clancy punched Hunt to the face injuring her nose. After that punch Hunt moved away from Clancy and wandered around the area trying to work out what to do. She then found Clancy again and he took her to some flats across the road where they had a further argument where he then hit her with the mobile phone. After the second assault Hunt moved away from Clancy again and was picked up by her boyfriend and taken home. In the early hours of that day Clancy also went to Hunt's place searching her out. He desisted after he was told the police would be called and was arrested on the 5<sup>th</sup> of February. Hunt received treatment for her injuries at the hospital on the 4<sup>th</sup> of February.

61. Given the above findings Clancy is found guilty of charges 1,2,3,5 and 8 and not guilty on charges 4 and 6. Charge 7 was dismissed on no case submission.

Dated this 6th day of August 2010

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**Tanya Fong Lim**  
STIPENDIARY MAGISTRATE