

CITATION: *Police v Allen* [2010] NTMC 063

PARTIES: POLICE

v

VANESSA ALLEN

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Criminal

FILE NO(s): 21014982

DELIVERED ON: 20 October 2010

DELIVERED AT: Alyangula

HEARING DATE(s): 23 September 2010

JUDGMENT OF: Ms Sue Oliver SM

CATCHWORDS:

CRIMINAL LAW – Aggravated Assault – Credibility

REPRESENTATION:

Counsel:

Informant: Mr Tierney
Defendant: Mr Burrows

Solicitors:

Informant: DPP
Defendant: Maleys

Judgment category classification: C
Judgment ID number: [2010] NTMC 063
Number of paragraphs: 28

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

No. 21014982

[2010] NTMC 063

BETWEEN:

POLICE

Complainant

AND:

VANESSA ALLEN

Defendant

REASONS FOR DECISION

(Delivered 20 October 2010)

Ms Sue Oliver SM:

1. The defendant Vanessa Joy Allen is charged with two counts of aggravated assault. Count one alleges an unlawful assault on Sonia Pozzana, the circumstances of aggravation being that Ms Pozzana suffered harm. The second count alleges an unlawful assault on Roderick Bara, who is the husband of Sonia Pozzana, and the circumstances of aggravation alleged are that Roderick Bara suffered harm.
2. The charges arise out of an incident at the Dry Tip area at Angurugu. Ms Pozzana, her husband Roderick Bara, the defendant and the defendant's husband Kurt Lalara and their friend Phillip Kennell were illegally drinking at the Dry Tip on the evening in question. With the exception of Mr Kennell, they had also been drinking earlier in the day at Salt Creek.
3. Ms Pozzana's evidence is that during the evening an argument broke out involving the two couples. She said that an argument started between Vanessa and Kurt with respect to their prospective wedding and that

Roderick and she managed to settle them. Vanessa asked Roderick to take her home saying “Fuck’em, let’s just go.” Ms Pozzana argued with them about leaving Kurt behind and said that she was swearing and carrying on at Roderick. She said that Roderick got out of the car and hit her twice in the back. She described and illustrated this as a slap or open handed push twice to the back. She said she then took off over the hill and waited there for a while where she could hear arguing and fighting so she went back and said to Vanessa “You must be Roderick’s girlfriend”. Vanessa then punched her and she fell to the ground. She said she was punched in the face and that she kept getting hit and she was being dragged by the hair. She managed to get up and she could see that everyone was fighting. Roderick was fighting with Kurt and Phillip and Vanessa then accused her of dobbing her nephew Ricky in and she was pushed and punched by her and then managed to crawl away and ran and called the police.

4. Three 000 calls where made to police and an audio recording of these was tendered. In the first call Miss Pozzana is heard to say “I got bashed by two people... I’m running for my life.” then “I got bashed by my husband and his mistress”.... “His mistress name is Vanessa Allen.” Later she said “but she came with my husband and both of them bashed me”.... “I was trying to help Vanessa’s husband Kurt. She was coaxing my husband to start the car and go.”
5. In the second 000 call she names the four persons who were with her and says that “they were trying to attack me so I wouldn’t call the police”.
6. In the third call she says “they just attacked me. I’ve got grazes and bashed.” She is clearly extremely distressed and fearful in each of the calls.
7. In cross-examination, Ms Pozzana agreed that in a statement she made to police the following day, she gave a different account of the blows from her husband Roderick. In her statement she said that “Roderick did a burn out stopped and hopped out of the vehicle. He then walked over to where I was

and swung punches at me. I managed to turn so he did not hit me in the face, the punches landed twice in the back. I quickly ran away to get away from Roderick. After I ran away Kurt and Roderick started to argue. I did not hear the argument, as I was running a fair bit away from them.”

8. Ms Pozzana maintained in cross-examination that Roderick hit her only in the back twice and denied that he otherwise hit her. Her statement is not inconsistent with her evidence save that the two blows are described as punches rather than pushes as given in her oral evidence.
9. Roderick Bara’s evidence was largely consistent with that of Ms Pozzana. He said that Vanessa had told Ms Pozzana that the wedding was off and then a fight broke out. He said the fight was between Sonia and Vanessa. His account of Vanessa Allen’s attack on Ms Pozzana was consistent with Ms Pozzana’s evidence, that is, that she was struck on the face, grabbed by the hair and dragged along the ground. However he also said that she was kicked. He said he tried to intervene but Kurt “kept coming running to me and hitting me and pushing me away”. He denied hitting his wife at all although he agreed that he had an argument with her. He denied that there was an accusation that he was having an affair with Vanessa but said he could not remember why he had hit his wife because he was too drunk.
10. In cross examination Mr Bara was also asked to look at the statement that he had made to police shortly after the incident. In his statement he said “At around about 1 or 2 o’clock in the morning on 2 May 2010, Sonia and Vanessa started arguing. I didn’t know what they were arguing about. Sonia was getting louder and louder. And also Vanessa was getting louder. Got up and hit Sonia with sort of my right hand on her back just a couple of times, just to make her settle down. It was not really hard. Sonia didn’t settle down because she was too intoxicated.”
11. He conceded that his earlier evidence in court that he had not hit Sonia was not true but maintained that it had not gone past striking her in the back with

what he illustrated was the base of his closed fist. He said that he pushed Vanessa away to stop her from hitting Sonia.

12. Mr Bara did not give any evidence of being struck by Vanessa Allen.
13. Ms Allen gave evidence. Her accounts in both evidence in chief and under cross examination present some difficulty of understanding due to lack of clarity of sequence. The first account given was that she was sitting on the back of Roderick's truck and having looked for the rum bottle in the esky asked Sonia whether she had it under her shirt or skirt. She said Sonia took off her T-shirt then put it back on and then Roderick, who was seated next to Sonia hit Sonia twice in the face. Sonia was seated but then tried to get up. Ms Allen went to her assistance, ultimately falling on top of Sonia. Kurt and Phillip were bear hugging Roderick to get him away. She was giving Sonia time to run away.
14. Next she expanded on this and said that after Sonia had taken her shirt off she (Vanessa) asked Roderick to take her home and stood by the side of the truck waiting for Sonia. She said she wanted to leave **after** Roderick had hit Sonia. Again she says she intervened to protect Sonia who was "raging". Sonia ran off and Roderick got into the car and did doughnuts while Phillip and Kurt were sitting there. There is difficulty in accepting that having intervened to give Sonia time to run away that she would then wait by the car for Sonia to join them.
15. Next she said that Roderick hit Sonia after Sonia accused him and her of having an affair. The accusation was made after she (Vanessa) asked Roderick to take her home. Roderick hit Sonia twice in the face and kicked her twice.
16. Finally she said that Roderick hit and kicked Sonia after Sonia took her T-shirt off. They were big kicks to Sonia's side and belly area and this is when she (Vanessa) said that she didn't want to be there and for Roderick to take

her home. Sonia is raging and Roderick is trying to tell her to “shut up, behave, what’s wrong with you, settle down.” She (Vanessa) said to her “what’s wrong with you friend?” and then Roderick punched Sonia twice in the back (or pushed her) and that is when Sonia fell and she went to her to calm her and then fell on her.

17. Even allowing for the effects of intoxication on observation and memory, the accounts are inconsistent. The last version appears to me to be one in which Ms Allen realised that she had not accounted for the two punches or pushes given in the evidence of Ms Pozzana and (ultimately) Roderick Bara in her earlier versions of events. There is an inherent unlikelihood if Roderick had already punched Ms Pozzana twice in the face and kicked her forcefully twice in the side that Ms Allen would then be asking Sonia what was wrong with her and Roderick approaching Sonia in a similar fashion.
18. Both Mr Kurt Lalara and Mr Phillip Kennell gave evidence in the defence case. Mr Lalara said the argument broke out between Vanessa and Sonia because Vanessa thought Sonia was hiding the rum. Sonia took off her T shirt and Roderick “just went off”. He got up and punched her in the face with a closed fist and kicked her. Mr Lalara thought she was punched twice and kicked once. In cross examination he said that the kick was to the side. He agreed it was a big kick. Roderick then ran to the car and Mr Lalara went after him to stop him. Mr Bara came out of the car with a knife. Vanessa Allen was behind the car while Roderick was running around with the knife. Then Roderick got in the car and started chasing them with the car. Then he got out of the car and ran to Sonia and started hitting her again which is when Mr Lalara grabbed hold of him. On this second occasion Sonia was punched a couple of times and when she fell down she was kicked. He said he was too busy to see if Vanessa hit Sonia but saw her holding and pushing her “like just to get her away from Roderick I think.”

19. When queried about the knife and the car chase in cross examination, Mr Lalara said that he and Phillip were chased round and round the car for about a minute. When Roderick chased them in the car he was doing doughnuts and he and Phillip ran to a hill and climbed up it. He estimated the hill as about 6 foot high.
20. Mr Kennell gave similar evidence to Mr Lalara that there was an argument over the rum and that Sonia took her shirt off. He said Mr Bara “got stuck into her” which he clarified as “punching her”. He said that he didn’t do anything else to her and that he hit on her chest and up. He was not sure how many times but he broke it up and then Roderick went to the car and came back with a knife. Later he said that it was Kurt who broke it up. Then he said Roderick jumped in the car and tried to run them over. He (Phillip) was trying to dodge the car to make sure Roderick didn’t hit them. He and Kurt were dodging left and right. Roderick was skidding around like a maniac. Mr Kennell said he just went home at this point. He did not attempt to restrain Roderick. He said that just before the “coppers” pulled him up and he took off with a bottle of coke with rum in it, he could hear screaming and violence around Roderick and Sonia’s place and he assumed that they must have got there before him. Finally at the conclusion of his evidence in chief he said that he saw Roderick punching and added in this account that he was kicking Sonia.
21. Neither Ms Pozzana or Mr Bara were asked in cross examination whether he had produced a knife in the way suggested by Mr Lalara and Mr Kennell. Ms Allen did not give any evidence about the knife.
22. Again even allowing for the effects of intoxication, the accounts given by Mr Lalara and Mr Kennell have too many inconsistencies, in their own accounts, with each other and with the account of Ms Allen to be reliable. In particular it is my view that Mr Kennell fabricated the account of hearing “screaming and violence around Roderick and Sonia’s place” in order to

implicate Mr Bara. The police were right there at essentially the same time as Mr Kennell outside the home of the defendant and Kurt Lalara, which they knew was opposite the home of Sonia Pozzano and Roderick Bara. Neither of the officers gave evidence of hearing what Mr Kennell described. The officers' evidence is that Sonia was at Natalie Murungun's house in the next street. The evidence of both Mr Lalara and Mr Kennell of Mr Bara chasing them with a knife is in my view contrived. The defendant gave no evidence of this and it is hardly an incidental matter. She could not have failed to see this, yet gave no mention of it in her account of the night's events. Again I think the Mr Lalara and Mr Kennell have fabricated this evidence to paint a bad picture of Mr Bara to support the contention of the defendant that he was solely responsible for an assault and injuries on Sonia Pozzana.

23. The officers' evidence was that neither Vanessa Allen nor Kurt Lalara would say anything to them about what had happened at the Dry Tip. Given that Ms Allen professes now that she had to intervene to protect her friend Sonia and had herself been struck by Mr Bara and she had not seen Sonia after she took off, her silence to police is surprising and inconsistent with a good friend who had earlier that evening acted in a protective fashion to prevent her being harmed.
24. A medical report and photographs of Ms Pozzana's injuries were tendered by consent. The photos showing bruising to her right eye and that her left eye is bloodshot. Abrasions that appear to be made by scraping are on her right leg from the level of the top of her knee to about mid shin and her right knee has a significant scrape abrasion. The report from the Angurugu Health Clinic where she was seen on 2.5.10 states her injuries to be a left side subconjunctival haemotoma; skin abrasions in the right elbow and both knee joints, few bruises on her shoulder. The report states that they are consistent with the history provided but does not say what that history was.

25. Those injuries appear to me to be consistent with the evidence given by Ms Pozzana of what was done to her by the defendant, that is that she was punched in the face and dragged on the ground. Although I think there may have been some tendency of both Ms Pozzana and Mr Bara to minimise the form of the strikes to Ms Pozzana's back, clearly on that report they did not produce an injury and possibly supports the assertion of both that there was more of a push than a blow.
26. The recorded injuries are not consistent with what the defendant and Mr Larara and Mr Kennell say Mr Bara did to Ms Pozzana. The defendant alleged that he had punched her to the face (which is consistent) but also that he kicked her forcefully to the side belly area. Mr Bara is a powerfully built man. The kicks were described as big ones. Mr Larara said Mr Bara punched her in the face (which is consistent) and kicked her to the side. Mr Kennell said she was hit in the chest and "up" and then later added that she was kicked. There are no recorded injuries consistent with Ms Pozzana being kicked in the side and "belly" area as suggested by those witnesses and I reject the evidence as the defendant and Mr Larara and Mr Kennell that Ms Pozzana's injuries were caused by blows inflicted by Mr Bara and not by the defendant.
27. There are, as I have said, too many inconsistencies and matters which are not credible, in the defendant's evidence. By contrast, Ms Pozzana gave a clear and sequenced account of what she said occurred on that evening and what was done to her and by whom. Significantly, her account is consistent with the '000' calls that are contemporaneous. She clearly identifies the defendant as an attacker and refers to the matter (the infidelity accusation) that in her evidence she said sparked the attack. That her husband, Mr Bara, struck her that night, was given in her evidence. That she might now have played down the type of blow does not now, in my view, detract from the reliability of the rest of her evidence. I am satisfied beyond reasonable

doubt that the defendant assaulted Ms Pozzana and that she suffered harm as a result. I find the defendant guilty of count 1.

28. There was no evidence, at the conclusion of the Crown case, of an assault by the defendant on Roderick Bara. Although the defendant did not raise a no case submission and proceeded to call the defendant, in my view, the charge with respect to assaulting Mr Bara should not have proceeded to the defence case. I find that there was no case for the defendant to answer with respect to Mr Bara and count 2 is dismissed.

Dated this 20th day of October 2010.

Sue Oliver
STIPENDIARY MAGISTRATE