

CITATION: *Justin Antony Firth v Virginia Read* [2023] NTLC 23

PARTIES: Justin Anthony FIRTH

v

Virginia READ

TITLE OF COURT: LOCAL COURT

JURISDICTION: CRIMINAL

FILE NO: 22227595

DELIVERED ON: 7 November 2023

DELIVERED AT: Darwin

HEARING DATES: 6, 10 and 14 November 2023

JUDGEMENT OF: Acting Judge Neill

CATCHWORDS:

Assault – when physical contact justified – elements of arrest – lawfulness of arrest
Police General Order Arrest
Mole v Prior [2016] NTCA 2 paragraphs [42] to [48]

Criminal Code Act sections 1A, 27, 187, 188(1) and (2), 208E and 208F
Police Administration Act sections 123, 127, 134 and 148B

REPRESENTATION:

Counsel:

Complainant: Ms McKay
Defendant: Mr O'Brien-Hartcher

Solicitors:

Complainant: DPP
Defendant: Mr O'Brien-Hartcher

Judgement category classification:

B

Judgement ID number:

[2022] NTLC 23

Number of paragraphs:

130

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 22227595

BETWEEN

Justin Anthony FIRTH

Complainant

AND

Virginia READ

Defendant

REASONS FOR JUDGEMENT

(Delivered 17 November 2023)

ACTING JUDGE NEILL

1. The Defendant Virginia Read was born on 19 May 1967 and she is currently 56 years of age.
2. The Defendant is charged with the following offence:

“On the 17th July 2022

at Adelaide River in the Northern Territory of Australia,

1. unlawfully assaulted Skye-lee ANDERSON:

Contrary to Section 188(1) of the Criminal Code

AND THAT the said unlawful assault involved the following circumstances of aggravation, namely:

(i) That the said Skye-lee ANDERSON suffered harm:

Contrary to section 188(2) of the criminal code”.

3. The Defendant has defended this charge and the matter was heard before me for three days being 6, 10 and 14 November 2023.
4. The prosecution was not required by the defence at any stage before the hearing to provide formal particulars of the precise conduct of the Defendant which was alleged to constitute the

charged assault. This meant that the prosecution was not limited in its case at the hearing to any particular conduct of the Defendant. The prosecution can identify and rely on any conduct of the Defendant established by the evidence as constituting the assault.

5. Ms McKay for the prosecution opened her case at the hearing on the limited basis that the Defendant had “pushed” Ms Anderson. Notwithstanding this, I am satisfied that the defence was not taken by surprise nor otherwise prejudiced by the prosecution’s additional reliance in the course of the hearing on some different conduct by the Defendant as constituting the assault.

THE BACKGROUND

6. At the time of the alleged offence on 17 July 2022 the Defendant was a Superintendent in the Northern Territory Police Force. 17 July 2022 was a Sunday and the Defendant was returning from Katherine to Darwin driving north along the Stuart Highway.

7. The Defendant had been in Katherine on a mixture of personal business and Police business and she was driving a Police motor vehicle – Exhibit P8 entry for 0800. This was not a standard Police vehicle. Rather, it was a Police recruitment sedan. Exhibit P10 is a photograph of the vehicle which shows it was brightly painted along its sides with flames and the words “Police Recruitment” in very large, bold white letters. It had the Police crest displaying the word “Police” in white paint in the centre of the bonnet and occupying about 25% of the surface area of the bonnet.

8. The Defendant was not on duty as a Police Officer for the purpose of returning from Katherine to Darwin on 17 July 2022. She had a civilian passenger in the vehicle with her. This was a young man Mr Tristan Stonhill who was the son of a friend of the Defendant who lived in Katherine and he needed a lift to Darwin which the Defendant agreed to provide – evidence of Tristan Stonhill and Defendant’s EROI.

9. Approximately 30 km South of Adelaide River the Defendant took action to pull over another driver. When the two vehicles had come to a stop, there was an interaction between the Defendant and the other driver, a young woman named Skye-lee Anderson. As a consequence of that interaction, Ms Anderson the next day on 18 July 2022 made a formal complaint to Police alleging that the Defendant had assaulted her, leading to the present charge – Exhibits P3 and 4.

10. The Defendant took steps to cause an Infringement Notice to issue on 19 July 2022 imposing fines on Ms Anderson for the traffic offences of driving at 140 kph in a 130 kph area and driving an unregistered motor vehicle – Exhibit P5.

11. The prosecution case is that the Defendant was not in the execution of her duty at the time of her interaction with Ms Anderson, that she did not arrest Ms Anderson, or in the alternative she did not do so lawfully, and that she made a physical contact with Ms Anderson which amounted to an assault as defined in the Northern Territory *Criminal Code Act*. The prosecution says that the assault was aggravated because Ms Anderson suffered harm, also as defined in the *Criminal Code Act*.

ASSAULT AND HARM

12. "Assault" is relevantly defined in section 187 of the *Criminal Code Act* as follows:

"187 Definition

In this Code assault means:

(a) the direct or indirect application of force to a person without his consent or with his consent if the consent is obtained by force or by means of menaces of any kind or by fear of harm or by means of false and fraudulent representations as to the nature of the act or by personation".

13. "Harm" is defined in section 1A of the *Criminal Code Act* as follows:

"1A Harm

(1) Harm is physical harm or harm to a person's mental health, whether temporary or permanent.

(2) Physical harm includes unconsciousness, pain, disfigurement, infection with a disease and any physical contact with a person that a person might reasonably object to in the circumstances, whether or not the person was aware of it at the time.

(3) Harm to a person's mental health includes significant psychological harm, but does not include mere ordinary emotional reactions such as those of only distress, grief, fear or anger.

(4) Harm does not include being subjected to any force or impact that is within the limits of what is acceptable as incidental to social interaction or to life in the community".

STATUTORY DEFENCES

Lawfully Making an Arrest

14. Section 27 of the *Criminal Code Act* provides as follows:

"27 Circumstances in which force not being such force as is likely to cause death or serious harm is justified

In the circumstances following, the application of force is justified provided it is not unnecessary force and it is not intended and is not such as is likely to cause death or serious harm:

(a) to lawfully execute any sentence, process or warrant or make any arrest".

15. In the course of the hearing I received evidence which might justify some application of force by the Defendant to Ms Anderson because the Defendant might have applied that force to lawfully make an arrest of Ms Anderson – evidence of Skye-lee Anderson, video recording Exhibit P2 and Defendant's EROI. Once this evidence was before me the onus shifted to the

prosecution, requiring it to **negate beyond reasonable doubt** that the Defendant in applying some measure of force to Ms Anderson did so in order lawfully to arrest her.

16. If I find that the prosecution has failed to discharge this onus then I must find the Defendant not guilty.

17. If I find that the prosecution has succeeded in discharging this onus then there are two further statutory defences, either of which if made out might excuse the Defendant from criminal responsibility or liability in this case.

Reasonable Conduct of a Police Officer in the Course of her Duty

18. Section 208E of the *Criminal Code Act* provides as follows:

“208E Law enforcement officers

A person is not criminally responsible for an offence against this Part if:

(a) the person is, at the time of the offence, a public officer acting in the course of his or her duty as a police officer, correctional services officer or other law enforcement officers; and

(b) the conduct of the person is reasonable in the circumstances for performing that duty”.

19. This refers to “*an offence against this Part*”. Section 208E appears in Part VI of the *Criminal Code Act*. The Defendant has been charged pursuant to section 188(2) of the *Criminal Code Act* and this too comes within Part VI of that Act.

20. The operation of this section requires that the police officer was acting in the course of her duty, and that her conduct was reasonable in the circumstances for performing that duty.

21. Section 208F deals with the burden of proof in the circumstances of section 208E. It provides as follows:

“208F Evidential burden of proof

A defendant who wishes to deny criminal responsibility by relying on a provision of this Division bears an evidential burden in relation to that matter”.

22. Both section 208F and section 208E come within the same Division, namely Division 9 of Part VI of the *Criminal Code Act*. This means that for the Defendant to rely on the operation of section 208E she must establish the necessary factual basis, but if this is done the onus is again on the prosecution to negate beyond reasonable doubt that at the relevant time the Defendant was acting in the course of her duty as a police officer and that her conduct in so acting was reasonable in the circumstances.

Good Faith

23. Section 148B of the Northern Territory *Police Administration Act* provides as follows:

“148B Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of power or performance of a function under this Act.

(2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(3) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function”.

24. Again, once there is some evidence before the Court that a defendant was exercising a power under the *Police Administration Act*, or even purporting to exercise such a power, and that this was apparently done in good faith, then the onus will be on the prosecution to negative these concepts beyond reasonable doubt.

SOURCES OF EVIDENCE

25. I heard the live evidence of Skye-lee Anderson given on oath and tested in cross-examination.

26. I received and viewed a mobile phone video recording with sound taken by Ms Anderson on her phone which covered a lot but not all of the interaction between her and the Defendant on 17 July 2022 – Exhibit P2.

27. I heard the live evidence of the Defendant’s motor vehicle passenger Mr Tristan Stonhill given on oath and tested in cross-examination.

28. I received the Defendant’s diary record of the interaction, made by her later on 17 July 2022 – Exhibit P8.

29. I received and listened to recordings of Ms Anderson’s two telephone calls to Police on 18 July 2022 making a complaint against the Defendant – Exhibits P3 and 4.

30. I received and viewed the Electronic Record of Interview (EROI) of the Defendant conducted by two Police Officers on 5 August 2022 – Exhibit P11. I received a transcript of that EROI as an *aide memoire*.

31. I received a note written by Police Officer Sergeant Matthew Akers of a telephone call made to him by the Defendant on 24 August 2022 – Exhibit P6.

32. The Defendant did not give evidence at the hearing with the result that while her version of events was before the Court, it was not given on oath and it was not formally tested in cross-examination. It was however tested to some degree by the two interviewing Officers.

ANALYSIS OF EVIDENCE

Skye-lee Anderson - the First Contact

33. Ms Skye-lee Anderson gave evidence first at the hearing. Her video recording of a large part of the interaction between her and the Defendant on 17 July 2022 was played in the course of her evidence in chief and received as Exhibit P2. I noted a marked disparity between Ms Anderson's presentations on the two occasions.

34. In her demeanour in the witness box on 6 November 2023 Ms Anderson presented demurely and spoke so softly that I had to ask her on a number of occasions to repeat herself and to speak more loudly. Counsel for the Defendant Mr O'Brien-Hartcher on an additional number of occasions complained that he could not hear Ms Anderson's answers.

35. In the recording from 17 July 2022 Ms Anderson could be heard speaking very loudly and clearly to the Defendant, interrupting and talking over the Defendant on many occasions, and presenting consistently in a markedly uncooperative and confrontational manner.

36. I formed the opinion that in giving her evidence on 6 November 2023 Ms Anderson was seeking both by her demeanour and in her evidence in chief to present herself as a relatively powerless victim in the circumstances of the interaction on 17 July 2022. The video recording was a two-edged sword in that regard, on the one hand faithfully recording the events of 17 July 2022 while on the other hand showing Ms Anderson not as a victim but rather as a woman very willing and able to stand up for herself.

37. Ms Anderson gave evidence in chief that she first noticed the Defendant's vehicle when it came abreast of the right-hand side of her vehicle in an overtaking lane. She initially thought it was trying to overtake her. She said that she was driving at 130 km/h when this happened. She said that the Defendant's vehicle remained alongside her for "*a long time*" and that her vehicle "*came off the road a little bit*". When this happened, she said the Defendant's vehicle dropped back behind her and flashed its headlights. She then pulled over on the left-hand side of the highway and the Defendant's vehicle pulled over behind her.

38. Ms Anderson said that she did not hear any siren from the Defendant's vehicle and did not notice any flashing lights before the Defendant's vehicle dropped back behind her vehicle. She said that she might not have heard any siren because she was listening to music.

39. Ms Anderson gave evidence in chief that after she pulled over on the left-hand side of the highway: "*I was scared - they had just tried to run me off the road*". She repeated this version of events in her first recorded telephone complaint to police on 18 July 2022 - Exhibit P3. Ms Anderson said: "*She ran me off the road and everything. It was actually very dangerous*".

40. Ms Anderson gave evidence in chief that after she had pulled over to the side of the road and the Defendant had emerged from the other vehicle: "*I was in the middle of nowhere, alone. I was feeling very vulnerable*".

41. Ms Anderson gave evidence in chief that she did not realise that the Defendant's vehicle was a police vehicle or that the Defendant was a police officer until both motor vehicles had pulled over. However, in cross examination Ms Anderson was taken to a statement she had previously

made to police in relation to these events. It was put to her that in that statement she had said: *"At the time I was aware there was a police car behind me as I just overtook it. I knew there would have been a police officer inside"*. Ms Anderson responded to this in her cross-examination by saying: *"I thought it was a police recruitment vehicle. I did not think it was a standard police vehicle"*.

42. In cross examination it was put to Ms Anderson that she had checked her speedometer when she overtook the Defendant's vehicle, because she knew it was a police car. Ms Anderson answered: "Yes".

43. In cross examination it was put to Ms Anderson that in her recorded telephone complaint to police on 18 July 2022 she had told the operator that she had heard some sort of siren behind her. The Defendant conceded she had in fact heard something like a siren before the Defendant's vehicle pulled abreast of her vehicle.

44. In cross examination Ms Anderson conceded that the dog cages and the spare tire in the tray of her utility vehicle adversely affected her capacity to see behind her in her rear view mirror.

45. Exhibit P10 is a photograph of the Defendant's vehicle on 17 July 2022. I have earlier described the clear police insignia on that vehicle in paragraph 7. of these Reasons.

46. On the basis of the foregoing evidence I am satisfied and I find that the witness Skye-lee Anderson knew that the Defendant's vehicle was a police vehicle and that there was likely to be a police officer inside that vehicle, from the time she overtook the Defendant's vehicle.

47. I am satisfied and I find that when the Defendant's vehicle subsequently pulled abreast of Ms Anderson's vehicle in the overtaking lane and then dropped back behind her and flashed its lights, Ms Anderson was aware that the Defendant's vehicle was a police vehicle and that there was likely to be a police officer inside that vehicle.

Skye-lee Anderson – The Physical Contact

48. Ms Anderson gave evidence in chief that: *"She (the Defendant) pushed me off my vehicle and took my keys"*. Ms Anderson said further that she gave her address to the Defendant: *"after she pushed me"*.

49. Ms Anderson said she had been standing at the driver's side of her vehicle with the driver's front door open, between her and the front of her vehicle. The Defendant approached her from the front of Ms Anderson's vehicle. The driver's window was open all the way. Ms Anderson had her left foot up on the running board and her right elbow leaning on the driver's front door window sill. Ms Anderson said that the Defendant pushed her with both hands to Ms Anderson's upper chest, causing her to move backwards towards the rear of her vehicle. She said that the Defendant then kept walking towards her and that she kept walking back away from the Defendant.

50. In her second recorded telephone complaint to police on 18 July 2022 – exhibit P4- Ms Anderson said the following: *"She pushed me and took the keys out of my car and said I'm going to arrest you... on my kind of chest with I think it was two hands – pushed me back"*.

51. In cross-examination, it was put to Ms Anderson that she was lying in her testimony that the Defendant had pushed her. Ms Anderson denied this and maintained that the Defendant had pushed her.

52. Further in cross-examination, Ms Anderson was asked: "*Did Superintendent Read grab your arm?*" Ms Anderson answered: "No". She was further asked: "*She did not try to grab your arm?*" Ms Anderson again answered: "No".

Skye-lee Anderson – the Recorded Interaction

53. Ms Anderson recorded a large part of her interaction with the Defendant in Exhibit P2. The recording starts with the Defendant asking Ms Anderson her date of birth, and Ms Anderson providing that and asking whether she can have her licence back, which suggests that she had previously been asked for and had provided her licence to the Defendant.

54. The evidence before me establishes that the licence was a temporary paper licence which showed an NT Post Office Box address but did not provide a residential address for Ms Anderson – Exhibit P1.

55. The following exchange is recorded in Exhibit P2 between the Defendant and Ms Anderson:

Ms Anderson: No worries. I just don't know, see how you can get me when I was doing 130 if you don't have a radar.

Defendant: Residential address please?

Ms Anderson: Can't you just find it?

Defendant: I'm permitted by the Police Administration Act to ask you for your name and place of address.

Ms Anderson: Aren't you by law meant to show me that I was speeding?

Defendant: It's an offence if you do not provide me... (interrupted by Ms Anderson)

Ms Anderson: Isn't it an offence?

Defendant:... with your name and address if I ask you as a police officer.

Ms Anderson: And aren't I by law allowed to see that I was speeding? Don't you have a radar? No you don't.

Defendant: Are you gonna refuse to answer me?

Ms Anderson: Okay, just look it up. You said you could look it up. Look it up. I was doing 130, don't say I wasn't. What, because I overtook you, you were doing 120. I overtake you to do...

Defendant: (Unclear) Do you want me to take you into custody?

Ms Anderson: What for? Are you gonna arrest me right now?

Defendant: I've asked you for your name and address, all I'm asking you for is your name and address.

Ms Anderson: You got my name, it's Skye.

Defendant: I do not know what your address is. I have asked you for your name and address. I have the authority by the law to arrest you.

Ms Anderson: What for? What did I do wrong?

Defendant: You haven't provided me, you've speeded... (Ms Anderson interrupts).

Ms Anderson: But what, I didn't speed.

Defendant:... you didn't pull over.

Ms Anderson: Show me that I'm speeding.

Defendant: You didn't pull over when I... (Ms Anderson interrupts).

Ms Anderson: You ran me off the road actually.

Defendant: I had been sounding my lights and sirens.

Ms Anderson: Sirens? Sorry I didn't think that was a police car. I didn't know. I wasn't doing anything wrong.

Defendant: So the lights and sirens that the other car saw that you didn't hear.

Ms Anderson: I had music playing. Look, you've got two little lights in the front there. How am I meant to see that?

Defendant: The sirens were going (unclear).

Ms Anderson: I listen to music, so... (Defendant interrupts)

Defendant: So you're... (Ms Anderson interrupts)

Ms Anderson: I didn't, wasn't doing anything wrong so I didn't think... (Defendant continues talking)

Defendant: ... you were not paying any attention either?

Ms Anderson: Pay attention to what, you tried running me off the road?

Defendant: I had to pull up next to you to pull you over, I had been going... (Ms Anderson interrupts)

Ms Anderson: I didn't know you were a police car and I wasn't doing anything wrong.

Defendant: So you didn't look and hear the sirens. This is you are not paying any attention so you're driving without due care too.

Ms Anderson: Oh yeah? Because I was driving. Okay you try and get me for everything.

Defendant: What is your address?

Ms Anderson: You can look it up, you said you can look it up so look it up.

56. I find from the foregoing that at this stage the Defendant had clearly and specifically asked Ms Anderson for her residential address and Ms Anderson had failed to provide that address, on three (3) discrete occasions.

57. I find from the foregoing that the Defendant had specifically advised Ms Anderson that the Defendant had the power to require her name and address and that it was an offence if she did not provide her name and address.

58. I find from the foregoing that the Defendant specifically warned Ms Anderson that she had the authority to arrest her if she did not provide her address.

59. I find that shortly after this warning was given, Ms Anderson for the third time declined to provide her residential address.

60. The recording in Exhibit P2 then continued as follows:

"Defendant: Guess what?"

61. I can see from the reflection in her sunglasses in this recording that as the Defendant says these words she places her right hand on Ms Anderson's left forearm. This is also shown in the frames from the recording isolated by Detective Acting Senior Sergeant Jeshua Kelly in Exhibit P12.

62. The Defendant made a diary entry of these events of 17 July 2022 later that same day – Exhibit P8. This entry made no mention of any physical contact.

63. Exhibit P6 is a note taken by Officer Matthew Akers of a telephone call to him by the Defendant on 24 August 2022 in which she is recorded as saying that she had reviewed the recording in Exhibit P2 and she could see her reflection in her sunglasses showing "*her grabbing the victim*". This appears to be a reconstruction by the Defendant following her reviewing the recording. She had earlier said in her EROI on 5 August 2022 before the recording in Exhibit P2 was shown to her for the first time, as follows:

"I went to place my hand on her elbow, do that as a matter of course to say you're under arrest. As I said, she, I don't think I even touched her".

64. I note Ms Anderson's denial in her cross-examination set out in paragraph 52, above that the Defendant had either grabbed her arm or attempted to grab her arm.

65. I cannot tell from the reflected image in the Defendant's sunglasses whether she gripped or

grabbed or otherwise exerted any degree of force when she placed her hand on Ms Anderson's forearm.

66. I am satisfied and I find from the foregoing that the Defendant made physical contact with Ms Anderson by placing her right hand on Ms Anderson's left forearm as the Defendant said the words: "Guess what?".

67. I am unable to be satisfied on the evidence that this contact involved any degree of unnecessary force.

68. The recording Exhibit P2 then continued as follows:

"Ms Anderson: All right, it's 3015, no don't, I've got work to get to.

Defendant: I don't give a fuck if you cannot tell me... (Ms Anderson interrupts)

Ms Anderson: look, I've been videoing you this whole time.

Defendant: Good.

Ms Anderson: Good.

Defendant: I am asking you your address.

Ms Anderson: 3015 Stuart Highway.

Defendant: Where?

Ms Anderson: Acacia Hills. Give me back my keys please?

Defendant: Do you want me to arrest you?

Ms Anderson: What for? What have I done wrong?

Defendant: I'm telling you, oh I told you. You have sped.

Ms Anderson: I've done everything wrong.

Defendant: Exceeding the speed... (Ms Anderson interrupts).

Ms Anderson: Okay. Can you show me that, please?

Defendant: I do not need to show you that. It's not a requirement.

Ms Anderson: Well I wasn't doing it. Maybe my motor is just better... (Defendant interrupts).

Defendant:... and I actually have a witness.

Sanderson: Okay. Okay.

Defendant: Okay.

Ms Anderson: Because you can see my odometer, can you?

Defendant: No, but I can see my odometer.

Ms Anderson: Exactly, and I can see my odometer, doesn't mean, maybe yours is out. How am I meant to know?

Defendant: And there is a, if you wish to um... (Ms Anderson interrupts)

Ms Anderson: Okay, what was I doing then?

Defendant: You were doing 140 when you passed us.

Ms Anderson: I was not. You were doing 120, hence why I overtook you. Yeah.

Defendant: As I said to you before... (Ms Anderson interrupts)

Ms Anderson: Okay.

Defendant:... there is... (Ms Anderson interrupts)

Ms Anderson: What's the law?

Defendant:... the opportunity for you... (Ms Anderson interrupts)

Ms Anderson: What?

Defendant: You know what the law is. The charge is... (Ms Anderson interrupts)

Ms Anderson: Yeah, I didn't break the law.

Defendant: Okay, I'm not arguing with you (unclear). The issue is, I was doing 130, you sped past me.

Ms Anderson: Okay. Okay. No worries.

Defendant: I then tried to pull you over.

Ms Anderson: Okay.

Defendant: You did not pull over for over 500 metres.

Sanderson: And what was I doing then? What was I doing then? Still 140?

Defendant: You were still speeding.

Ms Anderson: No I wasn't. No I wasn't.

Defendant: I was sitting constantly behind you.

Ms Anderson: Okay, so I don't look at my odometer, do I?

Defendant: I don't know. That's not my issue. I looked at mine.

Ms Anderson: Well how do I know that you were doing 130? How do I know that? How can you get any evidence?

Defendant: As I said if you wish to contest this... (Ms Anderson interrupts)

Ms Anderson: I will test it in court, don't you worry.

Defendant: Good. So that's what's gonna happen.

Ms Anderson: Okay.

Defendant: You're going to get a ticket.

Ms Anderson: Okay. What for? Speeding? All right, I will fight this in court because you have no proof and neither do I what you were doing.

Defendant: What's your address again please?

Ms Anderson: 3015... (Defendant interrupts)

Defendant: 3015... (Ms Anderson keep speaking)

Ms Anderson: Stuart Highway, Acacia Hills.

Defendant: Thank you. So for your recording... (Ms Anderson interrupts)

Ms Anderson: Yep, no worries.

Defendant: And for your information, you will be receiving a ticket for speeding.

Ms Anderson: Okay, well I will take that to court.

Defendant: You may also be receiving a ticket for having an unregistered vehicle because you have been in the Northern Territory longer or after you've obviously had time to change your driver's licence.

Ms Anderson: I only just changed it over, thank you very much.

Defendant: Just, can you please listen to me without interfering, alright?

Ms Anderson: So now you talk nice to me now you're on camera. Okay.

Defendant: I've been on camera the whole time and you have upset me. Ms Anderson: Okay.

Defendant: And passed me when I was sitting on the speed limit.

Ms Anderson: Mmm-hmm.

Defendant: The vehicle is holding a registration from New South Wales, you reside here in the Northern Territory, you work here in the Northern Territory. It should have been registered in the Northern Territory.

Ms Anderson: And I'm getting it changed over.

Defendant: Okay.

Ms Anderson: Okay.

Defendant: When a police officer asked you for your name and address, you are to provide it.

Ms Anderson: I gave you my licence.

Defendant: You gave me your license, it doesn't have any... (Ms Anderson interrupts)

Ms Anderson: Okay. Am I under arrest because I need to go. I've had enough. Thank you. It's okay (end of recording)".

Tristan Stonhill

69. Tristan Stonhill gave evidence that he was a passenger in the front seat of the Defendant's vehicle at all relevant times on 17 July 2022. He said that he knew the Defendant as a friend of his mother. He did not know her well. He said the Defendant was giving him a lift from Katherine to Darwin on 17 July 2022.

70. Mr Stonhill gave evidence he noticed Ms Anderson's vehicle because it appeared to be speeding and driving erratically, overtaking other vehicles when it did not appear to Mr Stonhill to be safe to do so.

71. Mr Stonhill gave evidence that the Defendant turned on her siren and flashing red and blue lights and pursued Ms Anderson's vehicle but Ms Anderson did not stop or slow down.

72. Mr Stonhill gave evidence the Defendant then overtook Ms Anderson's vehicle in a right-hand overtaking lane and gestured to her to pull over. The Defendant's vehicle then dropped back behind Ms Anderson's vehicle. Ms Anderson then pulled over.

73. Mr Stonhill gave evidence that after both vehicles were stationary the Defendant got out of her vehicle and approached Ms Anderson's vehicle. Mr Stonhill remained seated in the Defendant's vehicle with the doors and windows closed. He gave evidence that he could hear nothing but he could clearly see the interaction between Ms Anderson and the Defendant, except where the action might have been obscured by the women's bodies from time to time.

74. Mr Stonhill gave evidence that he did not see the Defendant push Ms Anderson in the chest or at all. He said he did not see the Defendant raise both her arms at the same time. He did not

see the Defendant make any physical contact with Ms Anderson.

75. I gave leave to the prosecution to cross-examine Mr Stonhill pursuant to section 38 of the *Evidence (National Uniform Legislation) Act* on the ground that his evidence was “unfavourable” to the prosecution. Mr Stonhill denied discussing the events of 17 July 2022 with the Defendant after they had resumed their journey or at all.

76. I found Mr Stonhill a credible and reliable witness. I understand that he might not have seen everything that transpired between the Defendant and Ms Anderson because the body of one or other woman might have got in the way. Otherwise, I accept he had a good view of the events of 17 July 2022 and a good recollection of what he saw when he gave his evidence.

The EROI

The Traffic Apprehension

77. The Defendant gave an Electronic Record of Interview on 5 August 2022 conducted by Police Officers Detective Senior Sergeant Mathew Akers and Detective Senior Constable Greg Keane. This took place 19 days after the events of 17 July 2022.

78. The Defendant said that she had attended at the Katherine Show on Saturday 16 July 2022 with Police Recruitment brochures. Her attendance at the Show was related to her duties in the Recruitment Branch of the NT Police.

79. The Defendant said she had stayed with a friend in Katherine and that she offered her friend’s son, Mr Tristan Stonhill, a lift to Darwin on 17 July 2022. She said that she did not otherwise know Mr Stonhill.

80. The Defendant gave evidence that traffic was very busy on 17 July 2022 on the Stuart Highway between Katherine and Darwin, with a lot of semi-trailers and caravans. She said that when she could, she set her cruise control at 130 kph, the maximum speed on the open road in the Northern Territory.

81. The Defendant said she first noticed Ms Anderson’s vehicle because it overtook her vehicle in an overtaking lane, travelling much faster than she was when her cruise control was set at 130 kph. She formed the view that Ms Anderson’s manner of driving presented a danger to other traffic – *aide memoire* pages 19.9 and 37.7 - so she brought herself back on duty, turned on her lights and siren and pursued Ms Anderson’s vehicle.

82. The Defendant said that in the course of that pursuit she travelled at up to 140 kph but Ms Anderson’s vehicle kept ahead of her. Eventually when Ms Anderson’s vehicle pulled into the left-hand lane where there was a right-hand overtaking lane the Defendant pulled up level with her in the right-hand lane and sounded her horn. Ms Anderson appeared to see her and as the overtaking lane was coming to an end, the Defendant pulled back behind Ms Anderson and both vehicles pulled over on the side of the highway.

83. The Defendant recorded events similar to this in her diary entry made later on 17 July 2022 – Exhibit P8.

84. The Defendant stated in her EROI that she did not know Ms Anderson before this day. There is no evidence before me suggesting any reason for the Defendant to have pursued Ms Anderson's vehicle and pulled her over and then advised her she was speeding, other than the explanation provided by the Defendant.

85. On the balance of probabilities I prefer the evidence of the Defendant as to why she pursued Ms Anderson's vehicle and pulled her over to the evidence on that subject from Ms Anderson. I arrive at this conclusion from the Defendant's EROI and her diary entry, corroborated by the evidence of Tristan Stonhill.

86. I find that on 17 July 2022 on the Stuart Highway about 30 kms south of Adelaide River the Defendant brought herself back on duty as a Police Officer in the interests of public safety to effect a traffic apprehension on the vehicle driven by Ms Skye-lee Anderson.

The Push

87. The interviewing Officers put to the Defendant that she had pushed Ms Anderson. The Defendant first responded at page 8.9 of the *aide memoire* transcript of the EROI: "*I didn't push her*". She later said at page 14.7 in response to the allegation she had pushed Ms Anderson as follows: "*I deny that for the record*".

88. Later at page 54.8 the Defendant said as follows:

"Defendant: Oh well I'm gonna make, say something.

Officer Akers: Yeah, sorry, I was about to get to that.

Defendant: There is no way in the world that I assaulted that girl.

Officer Akers: Okay.

Defendant: I did not. The only time I went to lay hands on her was to take her into custody.

Officer Akers: Yep.

Defendant: Um, I did not assault her. And I refute the allegation and I actually am disappointed that ah it's come to this".

89. Finally, at page 56.4 the Defendant said as follows:

"I did not assault that Ms Anderson, um, and as far as I can recall, I don't even think there was any physical um touching on either part. And if it had been, I believe it may well have been, it would have likely to have been unintentional as opposed to a physical pushing".

90. The Defendant conceded at page 20.3 of the *aide memoire*, before she was shown the recording made by Ms Anderson, as follows:

" I didn't want to have to go to that step of having to arrest her, I really didn't, I wanted to avoid that at all cost, and I got frustrated that I felt that I was running out of, um, options. And I think I might

have sworn. At that stage. But I wasn't angry".

91. The Defendant gave evidence in the EROI that she had a problem with her shoulder. She said at page 37.5 of the *aide memoire* as follows:

"Defendant: The fact that, um, I was off duty, um, I was in a remote area, I had a civilian in the car, I'm actually non-operational, I have, I'm recovering from a fracture to my shoulder.

Officer Akers: Right.

Defendant: So I don't have a capacity should someone retaliate to, um, to do anything. The only, the only option I have in that sort of circumstance is to walk away".

92. Once the Defendant had the opportunity to view Ms Anderson's recording away from the EROI and at her leisure, she contacted Officer Akers by phone on 24 August 2022 and conceded that the recording showed her "grabbing victim".

93. I caution myself that the Defendant gave her EROI evidence when she was not under oath and was not subjected to testing by cross-examination.

94. Even so, I found the Defendant to be truthful and willing to make concessions even before she was shown Ms Anderson's recording. She conceded that she might have touched Ms Anderson in the course of effecting an arrest. She conceded that she might have sworn out of frustration.

95. I note the evidence of Tristan Stonhill that he did not see a push or the Defendant raising both her arms.

96. The recording does not show any push, although I accept that the recording does not exclude the possibility of a push. I do not accept the submission by Ms McKay for the prosecution that I can infer from the positions of the Defendant's arms as shown in the reflection in the Defendant's sunglasses that the arms were moving to a pushing position.

97. I note that the Defendant at the relevant date was recovering from a fractured shoulder which in my estimation makes it less likely that she would be raising both arms to push someone, or to engage in a physical confrontation with a much younger woman.

98. The evidence of Ms Anderson was that the Defendant gave her a two-handed push to her upper chest with sufficient force to cause her to move backwards. Ms Anderson corroborated this version of events by her very early complaint about this push provided to Police on 18 July 2022 - Exhibits 3 and 4.

99. There is conflicting evidence on the issue of the push. I cannot resolve that conflict with the result I am left with some doubt. I am not satisfied beyond reasonable doubt that the Defendant gave Ms Anderson a two-handed push or any push at all in the interaction on 17 July 2022.

The Arrest

100. The Defendant said in her EROI that she arrested Ms Anderson. At page 33.1 of the *aide*

memoire she said as follows:

“Defendant: So I was behind the door, as I said, I walked, I moved to bit forward, put my right hand in, pulled the keys out, moved around the door, um, I went to place my hand on her elbow, do that as a matter of course to say that you are under arrest. As I said, she, I don’t think I even touched her, I think she pulled her arm away so quickly that um, I didn’t even make contact. And then she tried to grab to the keys over the top of me.

Officer Akers: Mmm.

Defendant: But at the same time, she obviously realised that um, I wasn’t um, joking and she blurted out the address.

Officer Akers: And when you moved towards her, what did she do? You said that she pulled her arm away.

Defendant: Mmm.

Officer Akers: Did she move her body in any way?

Defendant: All I recall is her moving her arm up.

Officer Akers: Okay.

Defendant: And, as I said, trying to, to grab the keys out of her hand, which once she provided me with the address, I was happy to, to put the keys back and there was no, no intention for, to any um, any further, you know concern of um arrest.

Officer Akers: Yeah.

Defendant: She’d provided the details that I required”.

101. At page 34.5 of the *aide memoire* there was the following discussion:

“Officer Keane: Okay. Now when you say that you went to move forward, and I think you said touching, or attempting to touching of the elbow.

Defendant: Mmm.

Officer Keane: What were you trying to do then?

Defendant: Place her under arrest.

Officer Keane: Okay. Did at any point in time you tell her that?

Defendant: Mm. I went “you’re under arrest”.

Officer Keane: Okay.

Defendant: That's how I do it. I tell them that they're under arrest and place my arm on their shoulder, unless, on the elbow, unless they are, their actions are such that they can't do it that way.

Officer Keane: Okay. Do you remember any other conversation at that time?

Defendant: No, I um, I just recall her blurting out her address".

102. The Defendant later the same day recorded in her diary that she had said to Ms Anderson: "Your (sic) under arrest" - exhibit P8 page 2.7.

103. Having watched Ms Anderson's recording and listened carefully to what was said by each of Ms Anderson and the Defendant in that recording, I am satisfied and I find that the Defendant did not at any time specifically say to Ms Anderson that she was now arresting her, or that Ms Anderson was under arrest.

104. As I have found earlier in these Reasons in paragraphs 57 to 60, the Defendant had told Ms Anderson before she placed her hand on Ms Anderson's arm that she had the power to arrest her or to take her into custody. She then once again asked Ms Anderson for her residential address, and Ms Anderson once again declined to provide that information.

105. I am satisfied from the evidence before me and the overall context as set out earlier in these Reasons and I find that the Defendant purported to arrest Ms Anderson when she said the words "Guess what?" and placed her hand on Ms Anderson's forearm.

VALIDITY OF ARREST

106. Section 123 of the NT *Police Administration Act* provides as follows:

"123 Arrest without warrant by members of Police Force

A member of the Police Force may, without warrant, arrest and take into custody any person where he believes on reasonable grounds that the person has committed, is committing or is about to commit an offence".

107. Section 127 of the *Police Administration Act* goes on to provide as follows:

"127 Person is to be informed of reason for arrest

(1) A member of the Police Force who arrests a person for an offence shall inform the person, at the time of the arrest or as soon as practicable thereafter, of the offence for which he is arrested.

(2) A member who arrests a person for an offence shall be taken to have complied with subsection (1) if he informs the person of the substance of the offence for which he is arrested, and it is not necessary for him to do so in language of a precise or technical nature.

(3) Subsection (1) does not apply to or in relation to the arrest of a person:

(a) if that person ought, by reason of the circumstances in which he is arrested, to know the

substance of the offence for which he is arrested; or

(b) if the person arrested makes it impracticable by reason of his actions, for the member effecting the arrest to inform him of the offence for which he is arrested”.

108. Section 134 of the *Police Administration Act* provides as follows:

“134 Requirement to furnish names and addresses

(1) Where a member of the Police Force believes on reasonable grounds that a person whose name and address is unknown to the member may be able to assist him in his enquiries in connection with an offence that has been, may have been or may be committed, the member may request the person to furnish to the member the person’s name or address, or both.

(2) Where a member request a person under subsection (1) to furnish his name or address, or both his name and address, to the member and informs the person of his reason for the request, the person:

(a) shall not refuse or fail to comply with the request;

(b) shall not furnish to the member a name that is false in a material particular; and

(c) shall not furnish to the member as his address an address other than the full and correct address of his ordinary place of residence.

Maximum penalty: 4 penalty units”.

109. The prosecution submits that no lawful arrest took place on 17 July 2022, and therefore any physical contact by the Defendant with Ms Anderson was an assault. The prosecution makes this submission essentially for two reasons.

110. The first reason is that the Defendant on the evidence was purporting to arrest Ms Anderson for failing to provide her residential address. The prosecution submits that this is a very minor offence with a maximum penalty of a small fine and which could more appropriately have been dealt with by issuing an Infringement Notice. The prosecution submits that as a matter of law an arrest is an infringement of the liberty of the person and therefore it should always be a last resort. Where an arrest is made which is not as a last resort then that arrest is unlawful.

111. The NT Police General Order on Arrest endorses that the arrest of a person should be an action of last resort, and it sets out in paragraph 14 the circumstances in which Police should arrest someone. The prosecution submits the purported arrest in this matter did not comply with any of those circumstances. One of those circumstances is as follows:

“14.3 if it is unlikely a summons or notice to appear will ensure the offenders appearance in court;

Police should only arrest if the situation satisfies one (1) or more of the five (5) circumstances outlined above”.

112. The second reason is that the NT Police General Order on Arrest also sets out in paragraphs

18 to 22 the Method of effecting arrest, and submits that the Defendant did not comply with this.

113. The Defendant gave evidence in her EROI that Ms Anderson attempted to show her something on her phone, but was unsuccessful because there was no coverage – page 28.4 of the *aide memoire*. The Defendant said further starting at page 36.5 of the *aide memoire* that while she had the Police MDEA App on her phone she did not check that to try and locate Ms Anderson’s residential address because the Defendant’s phone had no reception at that place on that date.

114. I am satisfied and I find that the defendant did not have the option at that time on that date at that place of looking up Ms Anderson’s residential address.

115. The Defendant had earlier said that she required Ms Anderson’s residential address because her paper licence only showed a Post-Office Box. Ms McKay for the prosecution submitted that a Post-Office Box would have been sufficient in all the circumstances because an Infringement Notice could have been issued addressed to that Post Office Box, and no residential address was required.

116. This submission ignores the overall context of the situation in which the Defendant found herself on this occasion. She had pursued and pulled over a motor vehicle which was driving in a manner which caused the Defendant who was a senior and experienced Police Officer to be concerned for the safety of other road users. That vehicle was registered outside the Northern Territory and in the State of New South Wales. Ms Anderson had provided a Post-Office Box address but she had repeatedly declined to provide a residential address and she was uncooperative with the Defendant in her manner.

117. In the NT Court of Appeal Decision of *Mole v Prior* [2016] NTCA 2 starting at paragraph [42] through to [48] the Court was considering the analogous situation where a Police Officer had placed a person in protective custody, allegedly not in accordance with the relevant Police General Order. The Court considered a number of cases which had been put before it in support of the principle that an arrest or detention must always be “*a last resort*”. The Court said as follows:

“[42] *One cannot derive from these cases (or these cases in conjunction with the “unnecessary arrest” cases referred to by his Honour) a general proposition that, regardless of the statutory regime, arrest or detention must always be “a last resort”.*

118. The Court went on in paragraphs [47] and [48] to say as follows:

“[47] **Mr Grant for the appellant rightly pointed out that General Order A7 cannot override the statute** (my emphasis). *However, we see nothing inconsistent between the two. Police Administration Act section 128 sets out the circumstances in which a police officer may (not must) take a person into protective custody: it confers a discretion on police officers. The General Order does not purport to limit that discretion: it sets out principles with which officers are expected to comply in exercising the discretion, including the principle that “arrest” (as defined) should be an action of last resort.*

“[48] *The question for the learned magistrate at first instance, for the intermediate court and for this Court remains: was the conduct of the police officer in placing the respondent in protective custody in*

the circumstances of this case clearly inconsistent with the minimum standards which a society such as ours should expect and require of those entrusted with the powers of law enforcement”.

119. In the present matter I am satisfied that the Police General Orders cannot and do not override the general power of arrest provided to Police Officers by section 123 of the *Police Administration Act*. I am satisfied and I rule that a failure to comply with a provision of Police General Orders with respect to arrest does not automatically make that arrest unlawful or invalid.

120. In the circumstances before me I am satisfied and I find that the Defendant was justified in insisting that Ms Anderson provide her residential address so as to ensure she could be served with an Infringement Notice or even be brought to Court at some future time. There was no certainty that her Post Office Box address would be sufficient to effect service on her or locate her.

121. There is nothing in either section 123 or section 127 of the *Police Administration Act* which requires a Police Officer specifically to say to a person when effecting an arrest that the person is under arrest. However, the common law has always required something like that. Police General Order Arrest paragraph 18 provides:

“18. *It is widely regarded in common law that there are three (3) main elements to the making of a lawful arrest:*

- *a sufficient act of arrest;*
- *informing the person that he or she is under arrest;*
- *informing the person of the reason for the arrest”.*

122. I am satisfied and I rule that while it is a required element of effecting an arrest that the person being arrested should be informed they are under arrest, this can be achieved through the use of a range of words and/or actions conveying that message. It is not limited to stating the precise words: “*You are under arrest*”.

123. In the circumstances of this matter as I have set out from the recorded conversation between the Defendant and Ms Anderson, it is clear that Ms Anderson had been informed that she was required as a matter of law to provide her residential address. It is clear that she had been warned that a failure to provide her residential address could lead to her being placed under arrest. It is clear that she was then asked for the third time to provide her residential address and she again declined to do so.

124. I am satisfied and I find that in the foregoing circumstances the action of the Defendant in placing a hand on Ms Anderson’s arm and saying the words “*Guess what?*” was a sufficiently clear indication to Ms Anderson that she was being arrested. This conclusion is supported by Ms Anderson’s immediately changing her approach and providing her address, or at least part of it, when she said immediately afterwards as recorded at page 48.4 in the *aide memoire*: “*All right, it’s 3015, no don’t, I’ve got work to get to*”.

125. The same analysis applies to the requirement that the person being arrested should be informed of the reason for the arrest. Section 127 of the *Police Administration Act* specifically contemplates in subsection (3)(a) that there is no requirement specifically to state the reason

why a person is being arrested if that person ought by reason of the circumstances in which he is arrested to know the substance of the offence for which he is arrested.

126. I am satisfied and I find that Ms Anderson knew or ought to have known in the circumstances I have identified that if she did not provide her residential address she was likely to be arrested, and she persisted in refusing to provide that address, which led to the Defendant's placing her hand on Ms Anderson's arm and saying the words: "Guess what?".

127. I am satisfied and I find that the Defendant in placing her right hand on Ms Anderson's left forearm and saying the words: "Guess what?" in the circumstances I have identified, validly and lawfully arrested Skye-lee Anderson.

CONCLUSION

128. The prosecution has not negated the operation of section 27 of the *Criminal Code Act* beyond reasonable doubt or at all.

129. I find that the Defendant was justified in the physical contact I have found she had with Ms Anderson because she was arresting Ms Anderson and the force involved was not unnecessary force.

130. For the foregoing reasons I find the Defendant Virginia Read not guilty of the charge in count one in this proceeding.