

CITATION: *Steven Bott v CP* [2014] NTMC 018

PARTIES: Steven Bott
v
CP

TITLE OF COURT: YOUTH JUSTICE COURT

JURISDICTION: CRIMINAL

FILE NO(s): 21405583

DELIVERED ON: 11 August 2014

DELIVERED AT: Darwin

HEARING DATE(s): 7 July & 14 July 2014

JUDGMENT OF: Sue Oliver SM

CATCHWORDS:

CRIMINAL LAW – EVIDENCE – Record of interview – admissibility – Youth Justice Act.

CRIMINAL LAW – Criminal Responsibility – Parent/Child Relationship

REPRESENTATION:

Counsel:

Plaintiff: Mr Gillard
Defendant: Ms MacCarron

Judgment category classification: A
Judgment ID number: 018
Number of paragraphs: 12

IN THE YOUTH JUSTICE COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21405583

BETWEEN:

Steven Bott

AND:

CP

REASONS FOR JUDGMENT

(Delivered 11 August 2014)

Ms SUE OLIVER SM:

1. CP is charged with an offence of unlawfully assaulting a person, namely Cathryn Morris, who was working in the performance of her duties at the time of the assault, contrary to section 188A(1)(2)(b) the Criminal Code. She has pleaded not guilty to that charge.

The Interview

2. During the course of the hearing I ruled that the electronic record of interview conducted by police was inadmissible and indicated that I would provide reasons in due course.
3. The evidence of the police officer who conducted the interview and the record of interview itself clearly illustrate a lack of understanding of the requirements of the *Youth Justice Act* for the conduct of an interview with a youth. The officer was not able to provide a full explanation of the role of a support person for the purpose of the interview. It appears that the first time

the youth came to the police station she came with Ms Morris the alleged victim. She was given “about a week to organise someone [else] to come in”. CP was 14 years old. She next attended with a co-worker of Ms Morris who sat in the interview. No explanation was given to the support person as to her role. Although CP was told that the interview might go to court she was not told what the consequence of that might be. The interview was conducted in a perfunctory way with the officer essentially moving through a pro forma and ticking the boxes off. It went for only 13 minutes. Most concerning is that the interview commenced with the Officer telling CP that she wanted to talk to her about the assault on Ms Morris. In essence CP was being told that police had already decided that what had occurred was an assault rather than her being interviewed to give her own account of what occurred. Not only does that approach taint the way in which CP may have responded to questioning, it taints the whole interview process because the police have already pre-determined the issue. Although, as will become apparent in this decision, an iPod was central to what had occurred, no questions were asked about it because the officer had accepted what Ms Morris said about where the iPod was.

4. There is a multiplicity of improper conduct in relation to the conduct of the interview. Consequently I exercised my discretion to exclude it because in my view it was not fairly conducted and therefore it could not be viewed as reliable.

The iPod incident

5. Ms Morris gave evidence that at the relevant time in January this year she was employed as a home carer with Safe Pathways. Although not fully elicited in the evidence, the organisation is understood to provide home care for children under protection orders pursuant to the *Care and Protection of Children Act* who are under the parental responsibility of the CEO of the Department of Children and Families. As Ms Morris said “So the houses

were staffed 24/7. So any sort of –we were there to care for them. So the general day to day needs that a parent would normally provide.”

6. Ms Morris’ evidence in chief was that on 23 January she thought she started work about 04.00pm and that she was working with “Thanuja”. She said that CP was yelling at them about different things “and any action we’d taken we were just getting yelled at.” The last thing she remembered being yelled at was about taking a cup from the lounge room to the kitchen to wash it and that CP came over to the kitchen and was shouting at her how dare she touch the cup and not to touch her cup.
7. She said as a consequence for this behaviour she saw CP’s iPod on the couch and that was something that “we would use as a behavioural consequence” so she walked over to the couch to take the iPod to put it in the staff room. As she reached to get the iPod, CP came up from behind her, “tackled” her to the ground and she threw the iPod and it slid away on the tiles. CP then grabbed the iPod and ran into her room. She was not asked to elaborate or explain what “tackled” meant. She went on to say that CP had run at her from behind. She said that when she was tackled she went to the ground and CP was on top of her. When CP went to her room, Ms Morris called the police.
8. A co-worker, Ms Thanuja Bataduwege, also gave evidence. Ms Bataduwege said that she had been working in the house that morning from about 9.00am. She had been on her own during the day. She was about to finish her shift at 5.00pm and that is when Ms Morris came and she gave her a handover. As she was about to leave, Ms Morris and CP “had an argument or discussion and then it was just - ended in an argument and Cathryn [Ms Morris] was not happy about what Catrina was saying and Catrina said I’m not listening to you and then- yeah, it caused argument.”
9. She said that Ms Morris was upset and that she saw the iPod on the couch and that she grabbed it. CP followed her and tried to take it from her. CP

“tackled Ms Morris” and then she grabbed the iPod and then she went to her room. She said that CP was trying to get it off from “Cat” [Ms Morris] and then this time Cat was screaming get off and then CP grabbed her iPod and she went to the room”. Ms Bataduwege was 2-3 feet away at the time.

10. From her description overall it is apparent that the incident was over very quickly. It was her interpretation of events that CP was not trying to assault Ms Morris but was trying to get her iPod.
11. There are inconsistencies between the evidence of Ms Morris and Ms Bataduwege. Ms Morris gave an impression of events in which CP had been difficult and yelling about various things over an extended period of time. However Ms Bataduwege’s evidence is that the incident with the iPod occurred very soon after Ms Morris commenced her shift that day. Ms Bataduwege did not say that there had been ongoing unruly behaviour during the day by CP. She said that Ms Morris was angry.
12. Ms Morris’ evidence was that taking the iPod was something that could be done by the carers as a consequence of bad behaviour. Ms Bataduwege said that this was not a usual thing to take away belongings as a form of punishment or consequence. Her evidence was that where if there was to be a consequence that a young person would be advised of that in advance.
13. CP gave evidence. She said she was sitting on the couch charging her iPod and playing on it when Ms Morris came up and took the cup of water that was sitting there and that she had been drinking because she had a headache. She said that Ms Morris said “whose cup of water is this” and she said “it’s mine and please don’t touch it”. She said she ignored her, picked it up and took it to the kitchen and tipped it out. She then got up to get another cup of water. Ms Morris had gone back to the staffroom after she got up. She said that she then came out of the staffroom and was walking towards the kitchen. CP thought she was going to the kitchen to start dinner but then she turned around and snatched the iPod.

14. Ms Morris did not in my view give a satisfactory account of why it was necessary to remove the cup of water from CP. Her evidence overall was coloured by an attempt to paint CP's behaviour generally in a bad light rather than contain her evidence to what happened on the day in question. I think it was very clear that they did not have a good relationship.

What act constituted the alleged assault?

15. The evidence of what physical acts are therefore said to constitute the alleged assault are somewhat mixed. Ms Morris describes being "tackled" but as I have said there was no elaboration as to what this meant in terms of actual physical contact. It is a somewhat pejorative term that does not elucidate what physical act is said to constitute the assault. Significantly in cross examination Ms Morris said:

"I felt her shoulder dig into me when we- we went to the ground as I'm a lot smaller than Catrina is, so the – the sheer force of her running behind me was what, you know, that that caused us to – to fall over...and it was the area where her shoulder had dug into the back that is tender."

16. Later in cross examination there was the following exchange:

And so she reacted to you taking the iPod without telling her, didn't she?---Yes

And she came over and she grabbed it back from you? ---She attempted to grab the iPod, but she was also intending to hurt me in the process. She ran at me.

She ran at you or she ran at the iPod, to get the iPod?---Sorry?

Are you---?---She ran at me to get the iPod.

To get the iPod and there was a struggle over the iPod? ---Yes.

17. Ms Bataduwege also used the word “tackled” in her initial description but expanded on this by describing what she saw as CP trying to get her iPod back from Ms Morris.

18. CP said:

“I pushed her to [grab] the – I got up, pushed her to the [side or aside] to grab my iPod back and but then it – she fell, she tripped over the extension cord..”¹

19. All witnesses seem to agree that CP was on top of Ms Morris for what appears to have been a relatively short moment.

20. It is therefore unclear what act is said to constitute the assault. At its highest it seems to me I could only be satisfied beyond a reasonable doubt that there was some sort of bodily contact that resulted in them going to the ground after a short struggle with the iPod.

Is CP criminally responsible for this conduct?

21. Criminal responsibility for this offence is in terms of section 31 of the Criminal Code. Section 31 provides:

- (1) A person is excused from criminal responsibility for an act, omission or event unless it was intended or foreseen by him as a possible consequence of his conduct.
- (2) A person who does not intend a particular act, omission or event, but foresees it as a possible consequence of his conduct, and that particular act, omission or event occurs, is excused from criminal responsibility for it if, in all the circumstances, including the chance of it occurring and its nature, an ordinary person similarly circumstanced and having such foresight would have proceeded with that conduct.
- (3) This section does not apply to a crime defined by section 155.

¹ Having reviewed the audio it is my view that what was said includes those words that I have indicated in brackets.

22. On all of the evidence I am satisfied that there was no deliberate act of CP to push Ms Morris to the ground but rather that occurred as a consequence of their disparity in size when there was a struggle over the iPod.
23. Not every physical encounter between persons amounts to an assault within the meaning of the Criminal Code. Indeed, the definition of assault in section 187 excludes from that meaning applications of force that are used for and are reasonably necessary for the common intercourse of life. It seems to me important to view what occurred in the overall context of CP's placement for care in an out of home placement arranged by her lawful guardian, the CEO of the Department of Children and Families. As Ms Morris said her job as a worker for Safe Pathways was to provide the general day to day needs that a parent would provide. In placing a child in a home with contracted carers the CEO of the Department of Children and Families is delegating her or his responsibility at law for the physical responsibility of daily care and control of that child to the persons providing that care. That being the case in my view the carers exercise the duties and rights in relation to the care of a child in the same way that a natural parent would do.
24. It is not an uncommon occurrence in a home for there to be physical interactions around possessions (either between parent and child or between siblings) or around discipline of a child. In my view all the evidence in this case points to CP acting to attempt to retrieve her iPod from Ms Morris and not an attempt to apply bodily force to her. The fact that Ms Morris went to the floor was consequential to the grabbing of the iPod, not an intentional application of force to her on the part of CP. In my view a struggle between a parent and child over a possession which inevitably would involve some physical interaction would generally not be an act that met the definition for an assault under the Criminal Code.

25. The question then is whether by reason of that physical interaction CP should have foreseen Ms Morris falling to the ground with her on top of her as a possible consequence of her conduct. Even if she does foresee that consequence she will nevertheless be excused from criminal responsibility if, in all the circumstances, including the chance of it occurring and its nature, an ordinary person similarly circumstanced and having such foresight would have proceeded with that conduct.
26. In my view there is no evidence upon which I could be satisfied beyond a reasonable doubt that CP foresaw that Ms Morris would fall to the ground with her on top as a result of the attempt to grab the iPod from her.
27. Even if she did, CP is 14 years old and like many young people her age has a strong attachment to her iPod. On the evidence in her case the iPod had special meaning for her as her mother had given it to her. The “ordinary person similarly circumstanced” is to be measured against a similar young teenager. In my view an ordinary 14 year old in similar circumstances would be entirely focused on retrieving the iPod not on the struggle itself or its consequences.
28. Finally I should say that calling the police over such an incident was an overreaction on the part of Ms Morris. She was there to essentially parent CP in the home provided for her. That was her job. In my view the normal and responsible parental reaction to an incident of this nature would be to allow time for emotions to cool and then to discuss with the child the incident in an appropriate way and determine a proper consequence. I am not suggesting that there cannot be instances where conduct in a care placement amounts to an assault. It is a question of degree as to whether it is an ordinary incident concomitant of a parent/child relationship or exceeds that. This was not an incident that did so.
29. I am not satisfied beyond a reasonable doubt that CP is guilty of assault as charged.

Dated this 11th day of August 2014.

Sue Oliver
YOUTH MAGISTRATE