Grey v Tudor-Stack [2004] NTSC 33

PARTIES:	CARL ANTONY GREY v PAUL TUDOR-STACK
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	APPEAL FROM THE COURT OF SUMMARY JURISDICTION EXERCISING TERRITORY JURISDICTION
FILE NO:	JA 169 of 2003 (20313730)
DELIVERED:	16 July 2004
HEARING DATES:	16 July 2004
EX TEMPORE DECISION OF:	RILEY J

REPRESENTATION:

Counsel:

Appellant:	T. Berkley
Respondent:	L. McDade

Solicitors:

Appellant:	Woodcock Solicitors
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	C
Judgment ID Number:	ril0414
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Grey v Tudor-Stack [2004] NTSC 33
No JA 169 of 2003 (20313730)

IN THE MATTER OF the *Justices Act*

AND IN THE MATTER OF an appeal against decision handed down in the Court of Summary Jurisdiction at Darwin

BETWEEN:

CARL ANTONY GREY
Appellant

AND:

PAUL TUDOR-STACK
Respondent

CORAM: RILEY J

EX TEMPORE
REASONS FOR DECISION

(Delivered 16 July 2004)

[1] On 21 November 2003 the appellant was found guilty in the Court of Summary Jurisdiction of one count of aggravated indecent dealing with a child under the age of 12 pursuant to s 132 of the Criminal Code. He was also found guilty of one count of aggravated assault on the same child

pursuant to s 188(2) of the Criminal Code. He was not convicted on the second count.

[2] I have confirmed with Mr Berkley, for the appellant, that the appeal relates to the finding of guilt on both counts.

[3] As her Worship observed, the two counts arose out of the same alleged facts which involved an allegation that the appellant placed his hand on the inside of the 8-year old complainant's bathers, touching her on the vagina. The offence was said to have occurred at Berry Springs on 18 July 2003.

[4] The appellant appealed on the following grounds:

> "(1) The conviction was against the evidence and weight of evidence;
>
> (2) Her Worship failed to warn herself sufficiently on:
>
> (a) lack of corroboration of the complainant's version of events,
>
> (b) the danger of convicting on the evidence of an 8-year old child, and
>
> (c) the danger of convicting in circumstances when the complainant's evidence would be or possibly was influenced by other persons."

Ground 2

[5] It is convenient to deal with ground 2 first. A reading of the reasons for decision reveals that her Worship specifically adverted to each of the matters identified by the appellant.

[6] In relation to the suggestion that she failed to warn herself concerning a lack of corroboration, reference to her reasons for decision reveals that, after a detailed examination of the evidence of the complainant in the context of the evidence of others, her Worship concluded:

> "Even though I warn myself as to the dangers of convicting without corroboration, I consider the evidence compelling enough to find the charges proven beyond reasonable doubt (without) it. In any event there is some partial corroboration by virtue of those parts of the record of conversation isolated and discussed."

[7] The only challenge to her Worship's findings as to the presence of corroboration related to the suggestion there was an Edwards lie told. However her Worship did not find it necessary to rely upon corroboration, as she clearly stated. In any event I see no reason to interfere with her Worship's finding that, when the appellant distanced himself from the victim in the circumstances that prevailed, this amounted to an Edwards lie. She saw the witnesses and she referred to and applied the reasoning in *Edwards* (1993) 178 CLR 193 at 210-211.

[8] Throughout her reasons for decision the learned magistrate was aware of and made repeated reference to the age of the child concerned. She observed

that the child did not appear to be "prone to gratuitous concurrence or giving in readily to persons who have authority over her". The child exhibited "strong cognitive development, probably over and above that usually demonstrated by children of her age". Her Worship went on to identify some points of apparent conflict between the evidence of the child and the evidence of the two adults who were present. The differences to which her Worship referred included those identified before me by Mr Berkley during his submissions. Having identified those conflicts, her Worship warned herself of the danger of acting upon the testimony of the child alone in such circumstances. Her Worship considered the evidence, including those matters of conflict, and then said:

> "I found her a compelling witness who was quite matter of fact about what had happened. She was spontaneous and on occasions corrected herself or gave qualification about her recollections on various points. That is not however enough in relation to the criminal standard of proof beyond reasonable doubt."

[9] Her Worship went on to further review the evidence and concluded:

> "I am reluctant to find a serious charge proven beyond reasonable doubt if I have any doubt at all. In this matter, notwithstanding some minor discrepancies in the prosecution I find the evidence of close and intimate opportunity on the part of the defendant along with the evidence of the complainant and the lack of credibility in the explanations in the record of conversation; compelling evidence leading me to conclude these charges proven beyond reasonable doubt."

[10] The only error in that summation is that her Worship proposed a test that was higher than is called for under the criminal law. The error cannot be a matter of complaint by the appellant.

[11] Finally, the submission that her Worship failed to warn herself sufficiently that the evidence of the child was or "possibly was" influenced by other persons must be rejected. Mr Berkley specifically took me to the evidence of complaint. Her Worship considered the evidence of the child in detail and specifically warned herself that this evidence may be influenced by other persons. She acknowledged that there may be some "albeit slight" risk of the child being subject to influences from her family. However, following her review, her Worship concluded that the evidence should be accepted. I see no error in the approach or findings of her Worship.

[12] The learned magistrate specifically warned herself of the matters which the appellant now says should have been of concern to her. It is not necessarily the case that she was obliged to do so in all instances but in any event she clearly did so. There is nothing to support the submission that she failed to "sufficiently" warn herself in relation to those matters. This ground of appeal is dismissed.

Ground 1

[13] In relation to ground 1, being the complaint that the conviction was against the evidence and the weight of the evidence, I note that her Worship, in a careful and considered judgment, canvassed all of the evidence to which I

have referred and warned herself as to the need for great care in considering that evidence. There was a real and identified evidentiary basis for the conclusions reached by the learned magistrate and for those conclusions to have been reached to the standard of finding guilt on the part of the appellant beyond reasonable doubt. I see no basis for interfering with the verdict of her Worship.

[14] The appeal is dismissed.

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