

PARTIES: HORNE, Darryl Colin
v
CARLON, Lorraine Joy

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction

FILE NO: JA 87 of 2004 (20407705)

DELIVERED: 8 August 2006

HEARING DATES: 11 July 2006

JUDGMENT OF: THOMAS J

CATCHWORDS:

APPEAL – JUSTICES – APPEAL AGAINST CONVICTION – AGGRAVATED ASSAULT – INDUCING AN INFANT TO TAKE PART IN THE PROVISION OF PROSTITUTION SERVICES – RECEIVE PAYMENT KNOWING IT HAS BEEN DERIVED FROM PROSTITUTION SERVICES PROVIDED BY AN INFANT -- ENTER INTO AGREEMENT UNDER WHICH AN INFANT IS TO PROVIDE PROSTITUTION SERVICES – CARRY ON BUSINESS OF ESCORT AGENCY WITHOUT OPERATORS LICENCE – JUSTICES ACT 1928 (NT) – FINDING OF GUILT REASONABLE AND SUPPORTED BY THE EVIDENCE

Criminal Code Act (NT), s 188

Prostitution Regulation Act (NT) ss 6, 13, 15, 16, 18

M v The Queen (1994) 181 CLR 487, referred to

REPRESENTATION:

Counsel:

Appellant: M Powell

Respondent: J Adams

Solicitors:

Appellant: Maleys

Respondent: Office of the Director of Public Prosecutions

Judgment category classification: C

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

Horne v Carlon [2006] NTSC 61
JA 87 of 2004 (20407705)

BETWEEN:

HORNE, Darryl Colin
Plaintiff

AND:

CARLON, Lorraine Joy
Defendant

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 8 August 2006)

- [1] This is an appeal against findings of guilt which were made at the conclusion of a hearing in the Court of Summary Jurisdiction. The appellant, Darryl Colin Horne, entered a plea of not guilty to the following charges:

“On the 4th February 2004 at Darwin in the Northern Territory of Australia.

1. unlawfully assaulted Vincenzina ZANGARI:

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

(i) That the said Vincenzina ZANGARI suffered bodily harm.

(ii) That the said Vincenzina ZANGARI was a female and the said Darryl Colin HORNE was a male.

Contrary to Section 188(2) of the Criminal Code.

AND FURTHER

Between the 12th January 2004 and 8th February 2004 at Darwin in the Northern Territory of Australia.

2. induced an infant to take part in the provision of prostitution services:

Contrary to Section 13 of the Prostitution Regulation Act.

AND FURTHER

Between the 12th January 2004 and 8th February 2004 at Darwin in the Northern Territory of Australia.

3. you received a payment knowing that it or any part of it has been derived from prostitution services provided by an infant, namely, YK:

Contrary to Section 15 of the Prostitution Regulation Act.

AND FURTHER

Between the 12th January 2004 and 8th February 2004 at Darwin in the Northern Territory of Australia.

4. you entered into an agreement under which an infant, namely, [YK] is to provide prostitution services to another person in return for payment:

Contrary to Section 16 of the Prostitution Regulation Act

.....

Between the 4th February 2004 and 8th February 2004 at Darwin in the Northern Territory of Australia.

5. carried on the business of an escort agency without holding an operators licence in respect of the said business:

Contrary to Section 6(1)(a) of the Prostitution Regulation Act.”

[2] At the conclusion of the hearing, the learned stipendiary magistrate found the appellant guilty on charges 1, 2, 3 and 5. He found the appellant not guilty on Charge 4.

[3] The grounds of appeal are as follows:

- “1. That the findings of guilty are unreasonable and not supported by the weight of the evidence; and
2. That the defendant raised an honest and reasonable mistake of fact that he believed the victim was over eighteen, which having been raised was not disproved on the evidence.”

[4] Mr Powell, who appeared as counsel for the appellant, advised that Ground 2 of the appeal was abandoned and the appeal would proceed solely on the basis of Ground 1: “that the findings of guilt are unreasonable and not supported by the weight of the evidence”.

[5] Mr Powell referred to the High Court decision of *M v The Queen* (1994) 181 CLR 487 per Mason CJ, Dean and Toohey JJ at 493:

“Where, notwithstanding that as a matter of law there is evidence to sustain a verdict, a court of criminal appeal is asked to conclude that the verdict is unsafe or unsatisfactory, the question which the court must ask itself is whether it thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty. But in answering that question the court must not disregard or discount either the consideration that the jury is the body entrusted with the primary responsibility of determining guilt or innocence, or the consideration that the jury has had the benefit of having seen and heard the witnesses. On the contrary, the court must pay full regard to those considerations.

It was with those considerations in mind that some members of this Court have thought it necessary to qualify the statement by Barwick CJ in *Ratten v The Queen* that: ‘It is the reasonable doubt in the mind of the court which is the operative factor. Barwick CJ went on to say:

‘It is of no practical consequence whether this is expressed as a doubt entertained by the court itself, or as a doubt which the court decides that any reasonable jury ought to entertain. If the court has a doubt, a reasonable jury should be of a like mind. But I see no need for any circumlocution; as I have said it is the doubt in the court's mind upon its review and assessment of the evidence which is the operative consideration.’

The qualification was that no circumlocution was involved in speaking of a doubt which a reasonable jury ought to have entertained because account must be taken of the advantage which a jury has in seeing and hearing the witnesses. To ask only whether the court has a doubt may place insufficient emphasis upon the fact that the jury, having seen and heard the evidence given, was in a position to evaluate that evidence in a manner in which a court of appeal cannot.

But it is, we think, possible to make too much both of the view expressed by Barwick CJ and of the qualification suggested. In most cases a doubt experienced by an appellate court will be a doubt which a jury ought also to have experienced. It is only where a jury's advantage in seeing and hearing the evidence is capable of resolving a doubt experienced by a court of criminal appeal that the court may conclude that no miscarriage of justice occurred. That is to say, where the evidence lacks credibility for reasons which are not explained by the manner in which it was given, a reasonable doubt experienced by the court is a doubt which a reasonable jury ought to have experienced. If the evidence, upon the record itself, contains discrepancies, displays inadequacies, is tainted or otherwise lacks probative force in such a way as to lead the court of criminal appeal to conclude that, even making full allowance for the advantages enjoyed by the jury, there is a significant possibility that an innocent person has been convicted, then the court is bound to act and to set aside a verdict based upon that evidence. ...”

- [6] I will deal with each of the four charges on which the learned stipendiary magistrate made findings of guilt.

Charge 1. Aggravated Assault

- [7] On behalf of the appellant, Mr Powell submits there is no direct evidence of the assault other than from the complainant Ms Zangari. He submits the

evidence from the medical reports is inconclusive as the complainant had a previously existing dental condition. Mr Powell noted that although there were witnesses who testified to the complainant suffering a “fat lip” and displayed trauma to the mouth region, this was not referred to by either of the doctors in their report. Mr Powell further submitted that the evidence of the complainant leaving the premises and closing down the agency is equally consistent with her escaping from a situation where it became obvious to her that she may be committing offences against the Act, as it is with her being upset as a result of the assault.

[8] I do not accept these submissions.

[9] Ms Zangari gave evidence she had an escort agency licence which had been granted to her by the Licensing Commissioner on 25 August 2003. Her escort agency was titled “Puss in Boots”. She described her relationship with Mr Horne and his role in the business she was conducting.

[10] Ms Zangari gave evidence she held the licence to operate the business. She gave evidence as to an incident that occurred on the night of the 3/4 February 2004. She stated that she and Mr Horne were in the office having a somewhat unpleasant discussion. Ms Zangari described how she started to follow Mr Horne into the kitchen, she noticed he had a gas stove light with a red handle in his hand. It was about 30 centimetres in length. She described how Mr Horne shoved this piece of kitchen equipment under her chin, near her Adam’s apple, without touching her. She gave evidence

that she continued down to the bathroom. Mr Horne had grabbed her hard by the shoulders and swung her around. Ms Zangari stated she fell into a corner of the bathroom between the showers and the toilets. She stated Mr Horne then grabbed her by the front of dress, causing her dress and bra to rip. She stated he spun her around again causing her to fall against the wall, he then slapped her in the mouth, her mouth began to bleed.

Ms Zangari described how she returned to her office. She stated Mr Horne pretended nothing had happened and that she wanted to avoid it all so she went to bed.

- [11] Ms Zangari gave evidence that the following day her mouth was sore, her teeth were loose and she had a “fat lip”. She gave evidence she telephoned the Police and booked herself into a women’s shelter. Ms Zangari stated that from the women’s shelter she telephoned the licensing agency who informed her she would be placed on supervision and instructed her to have the telephones disconnected. The same date, being Friday 4 February, Ms Zangari stated she made an appointment to see Dr Manias at the Stuart Park Medical Centre in Westralia Street. Dr Manias wrote a report on her injuries which were that her teeth were slightly loose, her knee was sore, her arms had bruises on them. On 6 February she consulted a dentist, Dr Higgins, at the Tooth Replacement Centre where he wired and cemented her teeth together and pushed them back into place. The following Monday she returned to have the top set of teeth attended to. The medical report of

Dr Manias was tendered as Exhibit 2 in the Court of Summary Jurisdiction.

The medical report of Dr Higgins was Exhibit 3.

[12] YK gave evidence that on the night of 3 February 2003, she heard Ms Zangari and Darryl Horne arguing. She saw Mr Horne and Ms Zangari as she faced into the bathroom. Mr Horne had his back to her. Mr Horne hit Ms Zangari on the right side of her face with his right hand. YK states she ran back into the office. Her evidence is Ms Zangari came into the office and YK observed her face and lip were puffed up. YK said “He hit you, didn’t he?”. Ms Zangari sat there and said nothing. YK stated that Mr Horne came in screaming and got angry with Ms Zangari because Ms Zangari could not talk on the telephone. YK stated she went off to do a job. When she returned Ms Zangari had gone, all her stuff had gone and the telephones had been closed down.

[13] Tanya Schultz gave evidence that she worked for “Puss in Boots” from September 2003 to February 2004. Ms Schultz stated that on 4 February 2004 she was upstairs at 21 Giles Street, Fannie Bay where the office of “Puss in Boots” is situated. She heard a lot of yelling and screaming, more so Darryl’s voice, and a big loud thump. She stated she went into the office when she knew she had a job and saw Vicki had a bit of a bruised lip and a bit of a cut on her shoulder. She also observed that Vicki had a bra on and a singlet top or dress and it was ripped. She stated Vicki looked distressed and mumbled to her “just to keep quiet” and “everything is all right”.

[14] Leanne Cameirao gave evidence that she had been working for about five or six years in the sex industry. She entered into discussions with Vincenzina Zangari and Darryl Horne about working for “Puss in Boots”. Ms Cameirao was asked questions about an occurrence on 4 February. She stated when she went out on a job, Vicki was wearing a red dress. When she returned Vicki had on a casual night dress. Vicki had a hand over her mouth, she had a bit of a puffy lip. Vicki didn’t talk to them.

[15] Mr Horne gave evidence that on the night of 3-4 February 2004, the girls were getting ready to go into town. He stated he made a comment that “Tania’s hair looked nice”. He then left the office and went to the toilet. Vincenzina Zangari followed him into the toilet and berated him, she was yelling and shouting at him that he didn’t want to be with her, a 45 year old woman, he wanted to be with young girls and that he had not commented on her hair. Mr Horne gave evidence he tried to explain that he only made the comment because Tania was standing under the light. Mr Horne stated he stepped to the basin to wash his hands. Vicki was still standing there screaming at him. He states he turned, grabbed her dress and said “Vic, for Christ’s sake grow up and fuck off”. Mr Horne denied that he assaulted Vincenzina Zangari or ripped her dress or applied any physical force. Under cross examination (tp 135) Mr Horne agreed he had grabbed Vicki on the front of her dress. He said “That’s all”, when asked if he was angry with Vicki at the time he stated that he wasn’t. The version of events

surrounding the assault as given by Vincenzina Zangari were put to Mr Horne in cross examination. He denied all the allegations of the assault.

- [16] The other evidence relevant to the allegation of assault are the reports of Dr Manias dated 17 March 2004 and report of Dr Higgins dated 17 March 2004. Copies of which are marked Exhibit 1 on the appeal. They are the reports that were before the learned stipendiary magistrate. I agree with the submission made by Mr Adams, counsel for the respondent, that both these reports support the allegation of assault. The report from Dr Manias notes that Ms Zangari's injuries are consistent with a recent physical attack. Dr Manias notes that on examination a number of Ms Zangari's teeth were loose. Dr Manias referred to a number of other injuries she sustained e.g. bruise on her upper right arm, bruise around her left wrist, scratch marks on her upper left arm, abrasions to her lower posterior chest, circular bruises above both knee joints, crepitus in the right knee with movement and a small bruise on her right inner thigh. These injuries are consistent with the nature of the assault as described by Ms Zangari. The report of Dr Higgins, who is a general dental practitioner, also states that her injuries are consistent with the account of the assault given by Ms Zangari. He did also note that she had a chronic ongoing periodontal problem which had existed for some time. He stated a blow delivered with medium to light force would have been enough to cause the loose and painful front teeth that she complained about.

- [17] In his reasons for decision, the learned stipendiary magistrate reviews the evidence of the four women relevant to the assault, the evidence of

Mr Horne and the two medical reports. His Honour noted his doubts that YK was in a position to see what she claimed to have seen. He stated that the medical reports were consistent with Ms Zangari's description of the blow. He mentioned that neither of the reports referred to her having a fat lip. However, he was satisfied the medical evidence was consistent with Ms Zangari's account of the blow she received. The learned stipendiary magistrate found he did not know what Ms Zangari and Mr Horne were arguing about. He then stated (tp 181):

“... But whatever the argument was about, I'm satisfied that in the course of the argument Mr Horne struck either a punch or an openhanded blow strong enough – which wouldn't have to be terribly strong – to loosen these teeth.

It doesn't seem to me in the circumstances I should have any doubt about the unlawfulness of that blow. No matter of excuse has been put before or the evidential burden has not shifted in relation to any matter of excuse for that blow. In the circumstances, it seems to me, I have very little difficulty coming to that conclusion that an aggravated assault was committed.

Anyway, the behaviour of Ms Zangari after the deed is as convincing as the evidence that bears directly on it from her and from the medical staff because it is a matter of record and history that she, for a reason, fled from, walked away, closed down her business which she'd worked at quite hard, it would seem, for some time at a time when she had every reason to expect that business to be making income as never before because American ships were in town.

It would strain my credulity to say that she would do that on some sort of a whim based on anything but the assault she puts forward. The only other item I can see happening in the world at that time which might've caused her to run away from the business was consciousness of the peril she was in arising from YK' age.

I've considered that but it just doesn't seem to me to be – well, it weakens the force of the inference arising from her walking away from the business because there is one alternative motive for that. But taking the three things together, that is her evidence in relation

to the incident which is pretty persuasive, it sounds like the sort of evidence one hears from women who are assaulted; taking the medical evidence as corroboration for that; and taking into account her behaviour after the event, it is in my view evident beyond a reasonable doubt that she was indeed struck as she says she was in the mouth.

I find the charge of assault proved.

I should say that I regard the evidence of loose teeth as comprising bodily harm and there's no contest about the sex of Ms Zangari and Mr Horne. There seldom is in relation to that circumstance of aggravation."

[18] I consider the weight of the evidence does support the learned magistrate's findings.

[19] The ground of appeal with respect to the aggravated assault is dismissed.

Charge 2. Inducing an infant to take part in the provision of prostitution services.

[20] Section 13 of the Prostitution Regulation Act provides as follows:

"13. Causing or inducing infant to take part in prostitution

A person shall not cause or induce an infant to take part, or to continue to take part, in the provision of prostitution services.

Penalty: Where the offence is committed in respect of an infant who has not attained the age of 14 years – imprisonment for 14 years.

In any other case – imprisonment for 7 years."

[21] In dealing with this charge the learned stipendiary magistrate essentially found that Mr Horne passed a card to YK at a nightclub and urged her to contact the number on the card. On the evidence of YK (tp 39) the card said

“Puss in Boots” with a telephone number. That this occurred is supported on the evidence of Ms Zangari and Ms Schultz. It is not disputed that YK was an infant which means as defined in s 19 of the Interpretation Act “a person who has not attained the age of 18 years”.

[22] I agree with the submission made by Mr Powell on behalf of the appellant that the giving of a card is not sufficient to amount to “inducement” of an infant to provide prostitution services. This is acknowledged by the learned stipendiary magistrate in his reasons.

[23] In her evidence YK states (tp 40) that at the Throb Nightclub, Mr Horne talked to her about the escort agency and asked her if she would like to work there doing prostitution business. On YK’s evidence, Mr Horne had explained how much she would earn and offered her somewhere to stay because at that time she had sole care of her 11 year old brother and 14 year old sister. YK gave evidence she thought Mr Horne was the boss, that he took the money and dropped them off at work. The learned stipendiary magistrate stated in his reasons for decision that he found the evidence of YK to be pretty persuasive and stated that it was clear to him Mr Horne had played a substantial part in the recruitment of YK.

[24] The charge for this offence is under s 13 of the Prostitution Regulation Act. His Honour made reference to s 18 of this Act which provides as follows:

“18. Belief by accused that infant was of age

In proceedings for an offence against section 13, 14(1) or (2), 15(1) or 16, it is not necessary for the prosecution to prove that the accused knew that the person concerned was an infant, but it is a defence for the accused to prove that, having taken all reasonable steps to find out the age of the person concerned, the accused reasonably believed at the time when the offence is alleged to have been committed that the person had attained the age of 18 years.”

[25] His Honour noted the heavy burden under that section placed on persons employing prostitutes to ensure those they employ are over the age of 18.

[26] There is evidence of YK that she had a discussion with Mr Horne as to what would be the living arrangements until she turned 18 years of age. YK gave evidence that Mr Horne knew she was 17 years of age. Ms Schultz gave evidence that she knew YK was 17 and that Mr Horne had mentioned that YK was just a cleaner here and to keep quiet otherwise Ms Schultz could get into trouble. Ms Schultz gave evidence she understood by this that YK was an underage worker and Mr Horne could get into serious trouble for having an underage worker. Ms Schultz gave further evidence that YK had told her that she was 17 and she had later told Mr Horne because YK and she had been to the hairdressers and YK had been talking about the work she did and how much she earned. Mr Horne had replied to Ms Schultz that he would have a word to YK to keep quiet as she was only supposed to be a cleaner at the premises.

[27] Leanne Cameirao also gave evidence that someone had drawn to her attention that YK was underage. Ms Cameirao stated she informed

Mr Horne of this and he had told her he was aware of it and would discuss it with her a little later.

[28] His Honour found that neither Ms Zangari nor Mr Horne had asked YK her age. They had not asked to look at her driver's licence. Mr Horne gave evidence that he had never bothered to ask YK her age. He stated he thought she was at least 18 because she had custody of her brother and sister. His Honour considered that in the light of the provisions of s 18 of the Prostitution Regulation Act the lack of belief to the contrary as to YK's age did not assist Mr Horne in this instance.

[29] His Honour found that "Mr Horne has clearly been involved in actions, persuasions and inducement that he has caused her to take part – or rather induced her to take part in the provision of prostitution services".

[30] I consider there was sufficient evidence for the learned stipendiary magistrate to be satisfied beyond reasonable doubt that this charge was proved.

[31] I dismiss the appeal with respect to this charge.

Charge 3. Received payment knowing this was for prostitution services provided by an infant.

[32] Mr Powell, counsel for the appellant, submits that the appellant received no benefit from the monies and rather held the monies in trust for Ms Zangari and the prostitutes.

[33] The learned stipendiary magistrate made the following finding (tp 185-6):

“In the course of that, be it one day or two days, it seems clear to me that he received payments – nobody else received them – knowing them to have been derived from prostitution services provided by an infant. I don’t know that it’s any answer to that charge to say that he was receiving them and holding them in trust for Ms Zangari once she came back from her sulk.

Indeed, I suspect – but I’m not sure about this – that it would be sufficient to comprise or sufficient to make Mr Horne guilty of this charge if, as he had done before Zangari flounced off , that he received money at the door of a hotel unit in the Alatai, for example, and kept it and conveyed it to Zangari. It seems to me in that sense he’s received the money. The fact that he’s going to pass it on to somebody else is immaterial.

Whether I’m right or not about that, when Puss’n’Boots was operating under the direction of ownership and legal direction of Ms Zangari, it seems to me much more clearly the case that that was happening within the meaning of the word ‘received’ at a time when Ms Zangari was not on the scene and Mr Horne was improvising ways of keeping the business going under his own bat and by his own decisions.

So in my view he’s likewise guilty of charge number 3.”

[34] Section 15(1) of the Prostitution Regulation Act provides as follows:

“15. Obtaining payment in respect of prostitution services provided by infant

(1) A person who, except in the ordinary course of a business unrelated to prostitution, receives a payment knowing that it

or any part of it has been derived (directly or indirectly) from prostitution services provided by an infant is guilty of an offence.

Penalty: Where the offence is committed in respect of an infant who has not attained the age of 14 years – imprisonment for 14 years.

In any other case – imprisonment for 7 years.”

[35] I agree with the learned stipendiary magistrate that the fact Mr Horne had received the money is sufficient. It is immaterial that he may be going to pass it on to somebody else. “Payment” is not defined in the Prostitution Regulation Act. In the Concise Oxford Dictionary it is defined as follows:

“... **1** the act or an instance of paying. **2** an amount paid. **3** reward, recompense. ...”

In the Macquarie Dictionary (Third Edition) “payment” is defined as:

“... **1.** the act of paying. **2.** that which is paid; compensation; recompense. **3. requital.**”

[36] Mr Powell further argues that the prosecution did not particularise which payment they were charging in the monies received by Mr Horne between 12 January and 8 February. He also complains the learned stipendiary magistrate did not indicate which payment he was convicting the appellant of receiving. The submission on behalf of the appellant is that there is uncertainty on this issue and the conviction cannot stand.

[37] There is evidence that Mr Horne received money in payment for the services of an infant. YK gave evidence she thought Mr Horne was the boss, he took the girls’ money and dropped them off at work. She gave further evidence

that Darryl Horne would pay her half the money that she had worked for. She further stated Vicki Zangari didn't give her or the other girls money. She gave evidence that after Vicki Zangari left, the girls did the promotional work, they would do a job, keep the money they made and when they returned home would give Mr Horne the money. YK gave evidence she understood she was working for Darryl Horne.

[38] Ms Schultz gave evidence that after Vicki Zangari left that they continued working. She stated Mr Horne was running the business. He was collecting the money from them.

[39] Under cross examination Ms Schultz gave evidence that the procedure was the girls would take the calls, go out on the jobs, get paid, give the money to Darryl Horne and at the end of the evening would go back to the premises at Giles Street and Vicki Zangari would give them their take for the evening. When Vicki Zangari was not present, Mr Horne would pay herself and YK. Ms Cameirao also gave evidence as to arrangements she had with Mr Horne concerning payment of money.

[40] There is considerable evidence that Darryl Horne received payments knowing that it or any part of it has been derived directly, or indirectly, from prostitution services of YK who was an infant. The fact that there is evidence he received more than one payment, in respect of YK, during the relevant period does not mean the charge is not proved because of uncertainty. There is evidence as to a course of conduct that Mr Horne

would receive the payment for each of the girls' work including payments for YK.

[41] I would dismiss the appeal with respect to this offence.

Charge 4: Carried on business unlicensed

[42] Mr Horne was found to have carried on the business following the departure of Ms Zangari between 4-8 February 2004. Section 6(1) of the Prostitution Regulation Act provides as follows:

“6. Operators and managers of escort agency businesses to be licensed

(1) Subject to subsection (4), an individual shall not carry on an escort agency business unless –

- (a) the individual holds an operator's licence in respect of the business; and
- (b) the business is managed either by the individual or by an individual who is authorised to do so by a manager's licence.

Penalty: \$10,000.”

[43] In his reasons for decision, the learned stipendiary magistrate had found that Mr Horne played a role in the everyday goings on of that business.

Essentially his role was to drive the prostitutes to premises where their services were to be provided, he was the person with whom the money was left between jobs diminishing the risk of the prostitute being robbed. His Honour also found that Mr Horne performed many tasks within the agency including sweeping the floor, placing advertisements for the newsagency

either with the concurrence, or at the direction, of Ms Zangari and that he participated in other publicity activities for the agency. His Honour found on the evidence of YK, Ms Cameirao and to a degree, Ms Zangari, that as a subordinate, Mr Horne was a fairly dominant subordinate. There was evidence that Mr Horne had himself taken steps to obtain a licence and believed, apparently having been misled by Ms Zangari, that his application was proceeding to the point where he would become authorised and licensed to adopt a more formal management position.

[44] From the way in which Mr Horne gave his evidence, the learned stipendiary magistrate assessed him as “being a bossy sort of person”. His Honour said he could believe the evidence of Ms Zangari that at times Mr Horne would speak over her, of his being sarcastic, bombastic, loud and overbearing. These qualities his Honour found would be grounds for the evidence given by YK and Ms Cameirao that it was their belief for a period that it was Mr Horne who was running the show. The learned stipendiary magistrate also referred to the evidence that apart from performing many of the mundane duties at the agency, Mr Horne had dreams of creating some method for the provision of sexual services by internet operation. Mr Horne was negotiating with others about the provision of such a service.

[45] In his concluding comments on this issue, the learned stipendiary magistrate said as follows (tp 187):

“I’ve already said that my belief is that Mr Horne during the day or two, perhaps three days, between the departure of Ms Zangari and the

entry of Family and Children's Services into the picture did a number of things without Zangari's authority, of his own bat and using his own initiative. It seem to me that those things – paying the rent, putting in an advertisement and whatever else, making the telephone calls, manning the phones as I am satisfied that he did – amounts to carrying on the business, as that phrase is used in s 6 of the Act.

It's clear that the business was as escort agency within the meaning of that definition, the agency hadn't changed because Ms Zangari had vanished and her licence had been suspended. Mr Horne was running the thing as far as anybody was and in the event that – and it being the case, as I've found it's the case, that Ms Zangari had left because she'd been punched in the mouth and had closed down the business and had pulled the phone, it doesn't seem to me possible to believe that Mr Horne could have thought, after that, that he was running the business waiting for her return.

In short, I find charge 5 proven as well, though in the circumstances of this case that would seem to be the least serious of the charges by a long distance.”

[46] Section 3 of the Prostitution Regulation Act defines “manager” as follows:

“... means a person appointed or authorised by the operator of an escort agency business to carry on or conduct the escort agency business but does not include a person whose principal duty is to act as a receptionist and arrange for the provision of prostitution services...”

[47] Ms Zangari gave evidence that on 4 February after the assault, Darryl Horne had said words to her to pull herself together as he didn't want the girls to have any doubt and confusion about them. She gave evidence Darryl said to her, on 4 February 2004, as they drove back from town to the office after leaving Tania and YK in town, that Ms Zangari could come and work for us “and we will pay you”. Ms Zangari gave evidence that following this she made a report to the police and admitted herself to the women's shelter. Ms Zangari gave evidence that on arrival at the women's shelter she rang the

Licensing Commission to inform them she had fled the office and the reasons for this. She then arranged to have the telephone disconnected as instructed and was placed on suspension. Ms Zangari gave further evidence that from the moment she left in a taxi on 4 February she did not return and received no proceeds from the business.

[48] YK gave evidence that Mr Horne had recruited her to the business and she had formed the opinion he was the boss. YK gave evidence it was Mr Horne who paid her the money and she assumed he was running the business. YK gave further evidence that she was angry with Ms Zangari for shutting the telephones down when she left as the girls needed to work, the sailors were coming to town and there were no communication facilities. She stated in her evidence that after Ms Zangari left the girls worked for themselves and for Darryl Horne. She stated that they would go out to work, return to the premises, give Darryl the money, clean themselves up and go out to work again. It is YK's evidence that she worked under these arrangements for a week after Ms Zangari left. She stopped working when the police found out and she was taken into foster care. She agreed that after Ms Zangari left, Mr Horne was her boss and she was working directly for him.

[49] Tania Schultz gave evidence that Mr Horne had discussed with her some of his plans to expand the business. Ms Schultz gave evidence that when Vincenzina Zangari left the business, the girls had asked Mr Horne if they would still be working. Darryl Horne had told them that Ms Zangari was just having a couple of days off to cool off. It is Ms Schultz's evidence that

the girls continued to work, that Darryl collected the money from them and was running the business.

[50] Ms Cameirao gave evidence that when she was interviewed for the job, Darryl Horne would speak over the top of Ms Zangari and she formed the impression he was the manager of the business. Ms Cameirao gave evidence that she made observations of Ms Zangari on 4 February. She stated she did notice Ms Zangari's lip was a bit puffy. She gave evidence that Ms Zangari and Darryl Horne went to sleep. She stated she, YK and Mia sat around in the early hours of 4 February waiting for a job. She gave evidence that she came into work at about 4.30, 5 o'clock and observed Ms Zangari placing a suitcase in a taxi. They did not speak. Ms Cameirao subsequently asked Darryl Horne what was happening and should she answer the telephone calls that were coming in. Mr Horne said to her, referring to Ms Zangari, "The slut wouldn't lift her game so I sent her packing, sent her walking". When Ms Cameirao asked him where would Ms Zangari go, he had said to her "The bitch can go back to her mother, she can put up with her shit from now on".

[51] Ms Cameirao gave evidence about receiving a telephone call from Ms Zangari after she had left. Darryl Horne asked her if that had been a call from Ms Zangari. When Ms Cameirao told him that it was, he became angry and yelled at her that she could "piss off" if she continued to have contact with Ms Zangari. Ms Cameirao gave evidence Darryl Horne had said that he didn't want his girls talking or having any contact with Ms Zangari and if

they did they could “piss off with her”. Ms Cameirao said she understood from this comment that the girls who were working there were Darryl’s staff. She stated that business proceeded and gave a description of some of the jobs she went on and an altercation she had with Darryl Horne relating to payment of money and provision of drugs.

[52] Mr Powell, counsel for the appellant, submits that the learned stipendiary magistrate raised two other matters that were of significance in his reasons, i.e. the placement of an advertisement in the paper and a rent payment. It is Mr Powell’s submission that the learned stipendiary magistrate did not consider the evidence of the appellant that advertisements were not placed after 4 February. In cross examination of Darryl Horne it was put to him that Ms Cameirao had given evidence that as well as promotional work that he was involved with placing ads on and after 4 February 2004. Mr Horne stated this was (tp 129):

“... That’s totally untrue, there was no ads placed after that, there was ads placed before that and paid up until, I think, Saturday they would’ve been done, maybe even Sunday, I can’t remember, but it closed down Friday. There wasn’t – well, the ads would’ve still been in Friday and I think they were still in Saturday, but the phones were disconnected.”

[53] Mr Powell submits there was no evidence from the prosecution as to when the ads were placed.

[54] There was a further submission on behalf of the appellant that the evidence from Mr Horne that he paid the rent did not support a finding that Darryl

Horne was running the business. It is the evidence of Mr Horne that the owner of the premises came to him with a copy of the lease with “Puss in Boots Vincenzina Zangari”, for the rent money which was overdue and pro rata payment for the power.

[55] It is the submission on behalf of the appellant that Mr Horne was placed on the spot and not a great deal of thought was given to the release of the money.

[56] I would agree with counsel for the appellant that if these were the only two pieces of evidence on which the learned stipendiary magistrate relied, then they would fall short of establishing beyond reasonable doubt that the appellant was carrying on an unlicensed business. However, there was other evidence to which I have already referred which was accepted by the learned stipendiary magistrate and which viewed in combination with the paying of the rent were sufficient to establish the charge beyond reasonable doubt.

[57] Mr Powell renewed his submission that he had made, relevant to the other charges under the Prostitution Regulation Act, that the learned stipendiary magistrate relied on uncorroborated testimony of people who are arguably accomplices. It was submitted on behalf of the appellant that this combined with inconsistencies between witnesses leads to the conclusion that the conviction is unreasonable and cannot be supported on the evidence.

[58] I do not accept this submission. With respect to each of the alleged offences under the Prostitution Regulation Act, the magistrate alerted himself as to

how he would assess the evidence of prostitutes and the fact that some of the witnesses who testified could be regarded as accomplices.

[59] His Honour stated as follows in the course of his reasons for decision

(tp 175):

“In this case of Vincenzina Zangari it is clear to me that, whether those considerations apply or not, she is and must be considered to be an accomplice in relation to the alleged offences against the Prostitution Regulation Act. To the extent her evidence offers any material that tends to prove those charges against Mr Horne, I would have to exercise the usual caution before accepting that evidence, that one does with the evidence of accomplices.

Exactly the same consideration applies to the evidence of – I should say that there isn’t a great deal in Ms Zangari’s testimony which does tend to prove anything much against Mr Horne in that respect, except perhaps in relation to charge number 5, the simple offence that he carried on the business of an escort agency without holding an operator’s licence.

There’s a little bit in her testimony to that effect. I suppose in that sense she’s not perhaps an accomplice to that offence. Indeed, her complaint is quite inconsistent with her being an accomplice. But as far as those offences are concerned, I think I have every reason to be extremely cautious of her evidence. There just isn’t much of it to the point.”

[60] The learned stipendiary magistrate then went on to warn himself with

respect to the testimony of other witnesses when he said:

“The same can be said for [YK] who is, on her own testimony, guilty of offences against s 17 of the Act and plainly a party to whatever offences her juvenile status may have cause to be committed by other people. So again whatever I felt about her as a witness and as a prostitute, I would still have to exercise that extraordinary caution about her evidence that I have to with any accomplice evidence.

I don’t think the same needs to be said of Tania Schultz or Leanne Cameirao who may have been associated with and may have had

various degrees of knowledge of the age of [YK] from time to time, but certainly weren't involved in any obvious offences although both of them were involved, it would seem, in provision of prostitution services in association with her and might thereby have put themselves in a position where they could possibly be charged with something: aiding and abetting, being accessory to the offences committed by [YK] herself, for example.

So in terms of the impediments to the credit of those witnesses in relation to the Prostitution Regulation Act charges, there is a lot there to worry about both in theory and arising from their accomplice status, and that's before I even consider the individual testimony of those witnesses."

[61] With respect to each of the offences under the Prostitution Regulation Act, his Honour gave himself very clear directions about how he should assess the evidence of the witnesses and the caution he should exercise in accepting their testimony including the testimony of those who could be regarded as accomplices.

[62] Mr Powell further submitted that the business more or less ran itself in the absence of Ms Zangari for a short time during which the appellant did no more than he was doing prior to February 4. It was submitted that it was far too early to assess beyond reasonable doubt that the appellant was running a business.

[63] I do not agree with this submission. There was evidence before the learned stipendiary magistrate of the active involvement of Mr Horne both by his deeds and his words on which to base a finding beyond reasonable doubt that the appellant was carrying on an unlicensed business.

[64] I would dismiss this ground of appeal.

[65] The order I make is that the appeal is dismissed. The parties are given liberty to apply on the question of costs.
