R v Ambyrum [2006] NTSC 45

PARTIES:	THE QUEEN
	v
	AMBYRUM, Jason Arron Abraham
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	20402161
DELIVERED:	22 June 2006
HEARING DATES:	13-14 June 2006
JUDGMENT OF:	RILEY J

REPRESENTATION:

Counsel:

Applicant:	F. Hardy
Respondent:	P. Dwyer

Solicitors:

Applicant:	Office of the Director of Public Prosecutions
Respondent:	Northern Australian Aboriginal Justice Agency

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

R v Ambyrum [2006] NTSC 45
No 20402161

BETWEEN:

THE QUEEN
Applicant

AND:

AMBYRUM, Jason Arron Abraham
Respondent

CORAM: RILEY J

REASONS FOR JUDGMENT

(Delivered 22 June 2006)

In the course of the trial I made a ruling regarding the admissibility of some evidence. I indicated I would publish my reasons at the conclusion of the hearing. These are those reasons.

[1] This is a hearing pursuant to s 26L of the Evidence Act. The accused is charged with having caused grievous harm to his partner, Melissa Leigh Stanton on 15 March 2003.

[2] The issue to be resolved relates to the receipt into evidence of admissions said to have been made by the accused to a police officer on the night.

[3] The Crown case is that on 15 March 2003 Ms Stanton was struck on the head with a rock wielded by the accused. She had been at the family home at 6 Wylie Court in Karama where there had been an argument between herself and the accused. She was subsequently located in the front yard of the premises at 3 Wylie Court and she appeared to be suffering from head injuries. The occupants of 3 Wylie Court called the police. The first officers to arrive were Constables Dalrymple and Marinov. Shortly afterwards Constables Hansen and Karamanidis also arrived.

[4] Constable Dalrymple gave evidence that he was the officer in charge of the investigation. He had been informed by the occupants of 3 Wylie Court that Ms Stanton came from 6 Wylie Court. He spoke with Ms Stanton but her responses were unintelligible to him. He and Constable Marinov remained with Ms Stanton and the other two officers went to 6 Wylie Court. He did not give directions to the other constables as to what should occur at that address.

[5] At 6 Wylie Court Constables Hansen and Karamanidis knocked on the door. The door was open. The accused came to the door and was

described as being in a distressed state. The officers told him to sit down, which he did. They asked if they could look through the house and received permission to do so. Constable Hansen looked through the house and then returned. Constable Karamanidis then said to Mr Ambyrum words to the effect of: "What is going on here?" or: "What happened?" and Constable Karamandis then gave evidence as to the response, which was:

> "He said that she's gone mad, she's on speed and full-drunk.
>
> Did he say who she was?---No, no. And then he stated that she was holding the baby shielding herself while she was swinging the knife at him and then they were fighting. They fell on the ground. He picked up a rock and hit her in the head and hit her in the head until she let go of the baby. Then he stood up, took the baby away to a friend's house, returned and then said she stabbed him with a knife in the nose. …. He said 'Something's got to be done. I swear it I am going to kill her'."

The conversation was not recorded at the time. It was not subsequently adopted by the accused. The first time it was recorded in any way was in a statement made in October 2003.

[6] The Crown seeks to rely upon that evidence and the defence seeks its exclusion. The concern of the defence is the statement: "Something's got to be done. I swear it I am going to kill her". The submission made on behalf of the defence is that Mr Ambyrum must have been a suspect at that time and he was not provided with a caution. There is a

submission that the admission was not voluntary and, further, it is submitted that it should be excluded in the exercise of my discretion.

[7] The cross-examination of the police officers revealed that when Mr Ambyrum came to the door he was suffering from an injury to his nose. There was a cut through his nostril which was described as a deep laceration. There was some blood. Constable Hansen recalled having been told by police at 3 Wylie Court of an altercation and that the assailant may be at 6 Wylie Court. Constable Hansen said that at the time they went to the home and saw the condition of Mr Ambyrum he believed Mr Ambyrum had been involved in the altercation that led to injuries being suffered by Ms Stanton. No other adult was present.

[8] Constable Karamanidis described Mr Ambyrum as a person of interest rather than a suspect. It was during the exchange to which I have referred that Constable Karamanidis formed the view that Mr Ambyrum was a suspect.

[9] The officers did not take notes at the time and had only vague recollections of what had transpired. Constable Karamanidis however was clear that Mr Ambyrum had said the words: "Something's got to be done. I swear it I'm going to kill her". He said there may have been slight variations on those words such as "I will kill her" but the effect was to talk of something that would happen in the future.

[10] At the time of the conversation Mr Ambyrum was not under arrest. Indeed, he was not arrested at any time on that night. According to Constable Karamanidis at that time Mr Ambyrum was in "police custody" only in the sense that they were talking to him and he was in their presence. Had Mr Ambyrum attempted to run away he would have been detained but that did not occur.

[11] In the course of cross-examination it was put to Constable Karamanidis that he was aware that Ms Stanton had been assaulted, that she had come from 6 Wylie Court, that the only person at that address was Mr Ambyrum and Mr Ambyrum had suffered an injury. In those circumstances it was suggested that Mr Ambyrum must have been a suspect. Constable Karamanidis rejected the suggestion and said that at the time, although he suspected Mr Ambyrum had some involvement in the events of the night, he did not know what involvement that was. He therefore asked an open question of him. He did not feel the need to caution Mr Ambyrum.

[12] A review of the evidence shows that at different times Constable Karamanidis acknowledged that he did assume that Ms Stanton had been assaulted by another person. He did not accept that he had been informed that the assailant may be at 6 Wylie Court prior to going to that address, however this was the information known to his partner,

Constable Hansen, and they had been together at all relevant times. In further cross-examination he agreed that when he went to 6 Wylie Court he was looking for "suspects or witnesses". He agreed he had given evidence at the committal that when he first saw the accused at 6 Wylie Court he was of the view that the accused was the man involved in the incident with Ms Stanton. He at first said that he was of that view when the accused came to the front door and then later said "I am not sure". He went on to describe Mr Ambyrum as a "person of interest", saying that "anybody" could have committed the assault. When further questioned he said it was "probable" that Mr Ambyrum was the person who had been involved in the assault. Notwithstanding that observation, he said that Mr Ambyrum "was not a suspect at that stage as such, not until after I spoke to him".

[13] Taking the evidence of Constable Hansen with the concessions made by Constable Karamanidis it is tolerably clear that when they left 3 Wylie Court they were aware that Ms Stanton had been assaulted and that the assailant may be at 6 Wylie Court. When they arrived at 6 Wylie Court they were met by Mr Ambyrum who was in a distressed state and himself suffering injury. He was the only adult person present at the address. In all the circumstances his status must have been of that of a suspect as opposed to a person of interest. Constable Karamanidis

proceeded to question him without issuing a caution. It is likely that he did so through oversight on his part. Nevertheless he failed to caution Mr Ambyrum in circumstances where he should have done so. The evidence he now gives of the reasons for not doing so are not to be accepted and probably arise from a process of reconstruction on his part. His recollection of the general conversation is, as he acknowledges, vague. I do not accept his recollection as to whether he regarded the accused as a suspect as accurate. He was clear and firm only as to that part of the conversation that I have set out above.

[14] In my view, at the time he was questioned, Mr Ambyrum was a suspect for the purposes of the Police Administration Act as discussed by the Court of Criminal Appeal in *Lai v R* (2003) 13 NTLR 139 at par 20-22.

[15] By operation of s 142 of the Police Administration Act evidence of a confession or admission made to a member of the police force by a person suspected of having committed a relevant offence is not admissible as part of the prosecution case unless the questioning was electronically recorded or subsequently adopted in an electronic record. That did not occur in this case. Notwithstanding that provision, s 143 of the Act permits the court to receive the evidence in circumstances where, having regard to the nature of and the reasons for non-compliance, the court is satisfied that in the circumstances of the case

admission of the evidence would not be contrary to the interests of justice.

[16] In this case Constable Karamanidis was firm in his recollection of the conversation which is the subject of dispute. He was not shaken despite being challenged in cross-examination. The evidence has not been shown to be unreliable. It will be for the jury to determine whether it is to be accepted. This was not a case of wilful breach or flagrant disregard of the requirements of the Police Administration Act. There is no evidence to suggest that Mr Ambyrum would not have answered questions had he been appropriately cautioned. The failure of the constable to deliver the caution resulted from oversight on his part. There is no public policy reason that persuades me to reject the evidence in the exercise of my discretion. In my view admission of the evidence would not be contrary to the interests of justice. I propose to admit it.

[17] It was submitted that the admission was not voluntary. The only basis for that submission was that the caution was not delivered. This is not a case where the will of the accused was said to have been overborne. The failure to give an appropriate caution does not necessarily lead to a conclusion that the admission was not voluntary: *Azar* (1991) 56 A Crim R 414 at 419-420. In my opinion it was voluntary.

[18] The evidence is to be admitted.

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