Wanambi v Edwards [2010] NTSC 43

PARTIES:	PHILEMON WANAMBI v MELINDA JANE EDWARDS
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING APPELLATE JURISDICTION
FILE NO:	JA 20 of 2010 (21011327)
DELIVERED:	27 August 2010
HEARING DATES:	27 August 2010
JUDGMENT OF:	SOUTHWOOD J
APPEAL FROM:	TRIGG M

CATCHWORDS:

CRIMINAL LAW – APPEAL – Justices Appeal – appeal against conviction – assault of police officer – resisting a member of the police force in the execution of his duty – whether lawful apprehension under Mental Health and Related Services Act s 32A – no error by the Magistrate – apprehension lawful – appeal dismissed

REPRESENTATION:

Counsel:

Appellant:	C Bala
Respondent:	S Geary

Solicitors:

Appellant:	North Australian Aboriginal Justice Agency
Respondent:	Office of the Director of Public Prosecutions

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

Wanambi v Edwards [2010] NTSC 43
No. JA 20 of 2010 (21011327)

BETWEEN:

PHILEMON WANAMBI
Appellant:

AND:

MELINDA JANE EDWARDS
Respondent:

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered ex tempore on 27 August 2010)

Introduction

[1] On 23 June 2010, the Court of Summary Jurisdiction found the appellant guilty of unlawfully assaulting a police officer in the execution of his duty contrary to s 189A of the *Criminal Code*, and of resisting a member of the police force in the execution of his duty contrary to s 158 of the *Police Administration Act*. The prosecution case was that the police officer, who is said to be the victim of the appellant's crimes, was acting under the provisions of s 32A of the *Mental Health and Related Services Act*[1]. The police had received a complaint that the appellant was attempting to commit suicide and the police officer in question had apprehended the appellant so

[1] Hereafter referred to as "the Act"

they could bring him to a medical practitioner for assessment under s 33 of the Act. After the appellant was apprehended by police, he assaulted the victim and resisted police.

[2] The appellant appeals against his conviction. The sole ground of appeal is:

> The learned trial Magistrate erred in finding that the apprehension of the appellant was lawful, in particular, the learned Magistrate erred in interpreting section 32A(4) of the *Mental Health and Related Services Act* by finding that police compliance with that section was not required to be completed once the appellant was apprehended and before bringing of the appellant to the practitioner had commenced.

[3] The principal question in the appeal is: Must a police officer inform a person that he or she has been apprehended for the purposes of an assessment under s 33 of the Act before the police officer starts to bring the person to the medical practitioner for assessment? In my opinion, the answer to this question is no and the appeal should be dismissed.

[4] The learned trial Magistrate correctly interpreted s 32A of the Act to mean: (1) the apprehension of the person must take place on reasonable grounds; (2) the police officer should bring the person to a practitioner for assessment as soon as practicable; (3) before the person is brought to a practitioner for an assessment, the police officer must inform the apprehended person that he or she was apprehended for the purposes of an assessment by a practitioner under the Act.

Section 32A(4) of the Act

[5] Section 32A(4) of the Act states:

> However, before the person is brought to the practitioner, the police officer must inform the person that he or she has been apprehended for the purposes of an assessment by a practitioner under this Act.

[6] On a plain reading of the text of s 32A(4), the subsection requires a police officer to inform the apprehended person that he or she has been apprehended for the purposes of an assessment by a practitioner before the process of bringing the person to the practitioner is complete; not before the process of bringing him or her to the practitioner starts. The apprehended person may be informed of the reason why he or she has been apprehended at any time before the person has been physically delivered to the practitioner. The meaning of the subsection is clear and beyond ambiguity. The use of the past tense in s 32A(3) and s 32A(4) of the Act stands in stark contrast to the use of the present tense in s 32A(2). What is contemplated by s 32A(3) is that the person who is apprehended is to be physically delivered to the practitioner as soon as practicable, that is, the process is to be completed as soon as practicable. Likewise, so far as s 32A(4) is concerned, it is the end of the process of bringing the apprehended person to the practitioner that is referred to.

[7] Section 32A(4) of the Act contemplates that the apprehended person is to be informed that he or she is to be compulsorily taken to a practitioner for an assessment for the purposes of the Act before the person is placed in the hands of the practitioner who is going to conduct the assessment. The purpose of this is to ensure that the person is aware they may be dealt with under the involuntary treatment provisions of the Act before the first

substantive step towards such treatment is taken under the relevant provisions of the Act. The Legislature has drafted the Act so as to try and ensure that people are aware of how they may be treated under the Act and what their rights are under the various treatment provisions of the Act.

[8] This construction of s 32A(4) is consistent with the principle of the Act that a person is to be provided with appropriate information about his or her proposed treatment[2]. It is not inconsistent with the provisions of s 8(b)[3] of the Act.

Orders

[9] The appeal is dismissed. I make no order as to costs.

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[2] Section 9(3) of the Act states: "the person is to be provided with appropriate and comprehensive information about his or her mental illness, proposed and alternative treatment and services available to meet the person's needs".

[3] Section 8(b) of the Act states: "in providing for the care and treatment of a person who has a mental illness and the protection of members of the public, any restriction on the liberty of the person and any other person who has a mental illness, and any interference with their rights, dignity, privacy and self respect is kept to the minimum necessary in the circumstances".