

R v NLR [2008] NTSC 10

PARTIES: THE QUEEN

v

NLR

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
TERRITORY EXERCISING
TERRITORY JURISDICTION

FILE NO: 20716950

DELIVERED: 20 February 2008

HEARING DATES: 15 & 18 February 2008

JUDGMENT OF: MILDREN J

CATCHWORDS:

CRIMINAL LAW – unlawful sexual intercourse – definition of sexual intercourse – whether “cunnilingus” includes licking or kissing the mons pubis – whether indictment defective – Criminal Code s 1, s 192(3)

Bibliography:

Collins English Dictionary, 3rd edn

Concise Oxford Dictionary

Gray’s Anatomy, 37th edn

Lewis’s Medical-Surgical Nursing, Brown & Edwards

Macquarie Dictionary, 3rd edn

Mosby’s Dictionary of Medicine, Nursing and Health Professions

Shorter Oxford English Dictionary

Statutes:

Criminal Code Act, s 1, s 192(3)

Citations:

Followed:

DPP Ref (No 1 of 1992) (1993) 65 A Crim R 197

Jordan v The Queen (1996) 136 FLR 109

Randall v R (1991) 55 SASR 447

REPRESENTATION:

Counsel:

Plaintiff: Ms K Sharafeldin

Defendant: Mr I Rowbottom

Solicitors:

Plaintiff: Office of the Director of Public
Prosecutions

Defendant: Withnalls

Judgment category classification: B

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

R v NLR [2008] NTSC 10
No. 20716950

BETWEEN:

The Queen
Plaintiff

AND:

NLR
Defendant

CORAM: MILDREN J

REASONS FOR RULING

(Delivered 20 February 2008)

- [1] The accused is charged with having had sexual intercourse namely cunnilingus without consent contrary to s 192(3) of the Criminal Code. The Crown facts are that the accused kissed the victim once on the mons pubis and licked her there once. The question is whether on these facts I should accept a plea of guilty to the charge as laid.
- [2] The definition of sexual intercourse in s 1 of the Code is as follows:
- ““sexual intercourse” means –
- (a) the insertion to any extent by a person of his penis into the vagina, anus or mouth of another person;

(b) the insertion to any extent by a person of any part of the person's body or an object into the vagina or anus of another person, except for the purpose of performing a medical examination or administering medical treatment; or

(c) cunnilingus or fellatio,

and continues until the withdrawal of the part of the body or object from the mouth, vagina or anus into which it was inserted or the cessation of cunnilingus or fellatio, as the case may be”

[3] The word “cunnilingus” is not defined and therefore bears its ordinary meaning.

[4] I have been referred to a number of dictionary definitions of the word.

According to *Collins English Dictionary*, 3rd edn, the definition is “a sexual activity in which the female genitalia are stimulated by the partner’s lips and tongue”. The *Concise Oxford Dictionary* defines it as “stimulation of vulva or clitoris by licking”. The *Macquarie Dictionary*, 3rd edn, defines it to mean “oral stimulation of the female genitals”. The *Shorter Oxford English Dictionary* definition is “oral stimulation of the vulva or clitoris”.

[5] In *Randall v R* (1991) 55 SASR 447, Cox J, with whom King CJ agreed, said at pg 452:

“In my opinion, it denotes the licking or sucking of the vagina or vulva, including the labia majora, with the tongue or mouth. No distinction is to be drawn between the outer and inner aspects of the labia.”

[6] In *Jordan v The Queen* (1996) 136 FLR 109 at 113 the Court of Criminal Appeal said:

“Cunnilingus is defined in Vol IV at 129 as “oral stimulation of the vulva or clitoris”, the external female genitalia.”

- [7] In *DPP Ref (No 1 of 1992)* (1993) 65 A Crim R 197 at 203, Malcolm CJ and Walsh J said:

“Both cunnilingus and fellatio in their ordinary meaning are mutual activities in which one person engages with another or performs on another. According to the Oxford English Dictionary (2nd edn), Vol IV at p 129 cunnilingus is the licking of the vulva or clitoris. The term is derived from the Latin *cunnus* (vulva) and *lingua* (tongue). The Latin verb *linguere* means “to lick”. According to Schmidt, Attorneys Dictionary of Medicine, Vol 1 at p C-152, cunnilingus is:

“The practice of licking, kissing, sucking or otherwise fondling the vulva (the sex organs of the female) with the mouth usually by a male but also by a female homosexual.”

The term “cunnilinctio” is a synonym for cunnilingus. The former means simply “licking of the vulva” according to Butterworth’s Medical Dictionary (2nd edn) at p 441.

In our opinion, cunnilingus as defined in the dictionaries, does not involve penetration of the vagina. It is an act of stimulation. In this respect we agree with what was said by Cox J in *Randall* (19991) 55 SASR 447 at 449-452; 53 A Crim R 380 at 381-384.”

- [8] There is no doubt that the mons pubis is part of the female external genitalia: see *Gray’s Anatomy*, 37th edn, at p 1446. The *Macquarie Dictionary*, 3rd edn, defines “vulva” to mean “the external female genitalia, specifically, the two pairs of labia and the cleft between them”. According to *Mosby’s Dictionary of Medicine, Nursing and Health Professions* at p 1820, the vulva is defined as “the external genitalia of the female. It includes the labia majora, labia minora, mons pubis, clitoris, vestibule of the

vagina, greater and lesser vestibule glands, and the vaginal orifice”. *Lewis’s Medical-Surgical Nursing*, Brown & Edwards, defines the external genitalia at p 1344:

“The external portion of the female reproductive system, commonly called the vulva, consists of the mons pubis, labia majora, labia minora, clitoris, urethral meatus, ducts of Skene’s glands, vaginal introitus (opening) and Bartholin’s glands.”

[9] In *Gray’s Anatomy*, op cit, at p 1446, it is said that “the term *pudendum* or *vulva* includes all these parts (i.e. all of the parts of the female external genitalia including the mons pubis)”.

[10] Accordingly I am satisfied that the licking of the mons pubis amounts to cunnilingus. I also consider that kissing the mons pubis amounts to cunnilingus as it involves oral stimulation of the vulva.

[11] I therefore consider that the facts as alleged by the Crown are sufficient to make out the charge as laid.
