Watt & Ors v The Queen [1999] NTSC 11

PARTIES:	WATT, Gary William, EATON, Scott Anthony and KNIGHT, James Scott Parnwell v THE QUEEN
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NOS:	9712853, 9712979, 9712774
DELIVERED:	11 February 1999
HEARING DATES:	8 February 1999
JUDGMENT OF:	MARTIN CJ.

CATCHWORDS:

CRIMINAL LAW AND PROCEDURE
Evidence – admissibility – corroboration of sexual assault – whether self inflicted injury to prosecutrix admissible as evidence of corroboration

R v Flannery (1969) VR 587 at 591, followed
R v Schlaefer (1984) 37 SASR 207, followed

REPRESENTATION:

Counsel:

Applicant Watt:	Mr Priest QC
Respondent:	Mr R Noble

Solicitors:

Applicant Watt:	Diana Elliott
Respondent:	DPP

Counsel:

Applicant Eaton	Mr Shaw QC
Respondent:	Mr R Noble

Solicitors:

Applicant Eaton	Withnall Maley & Co
Respondent	DPP

Counsel:

Applicant Knight	Mr P Loftus
Respondent	Mr R Noble

Solicitors:

Applicant Knight	Withnall, Maley
Respondent	DPP

Judgment category classification:	C
Judgment ID Number:	mar99004
Number of pages:	5

mar99004
IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

Watt & Ors v The Queen [1999] NTSC 11
Nos. 9712853, 9712979, 9712774

BETWEEN:

GARY WILLIAM WATT, SCOTT ANTHONY EATON and JAMES SCOTT PARNWELL KNIGHT
Applicants

AND:

THE QUEEN
Respondent

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 11 February 1999)

[1] These are my reasons for ruling that certain evidence proposed to be led by the Crown from the complainant Ms H was not capable of amounting to corroboration of her story as to sexual assaults and was thus inadmissible.

[2] In brief, the Crown case is that the three accused each sexually assaulted Ms H over a period of time during the early morning hours of 31 May 1997. She is said to have been the subject of five separate acts of sexual intercourse without consent, involving fingers in the vagina, penis in the vagina and penis in her mouth.

[3] The complainant's recollection is unsure, she being affected by alcohol, and probably drugs, and having apparently lost consciousness at some stage during the course of the evening. No physical violence beyond that associated with the act of sexual intercourse is alleged. She says she was put in fear of the accused, and that she did not freely consent to what happened because of that.

[4] The evidence as to times and events after the alleged assaults is confusing, but Ms H was home before about 10am when her sister happened to call to see her. There was evidence to suggest that the complainant may have made telephone calls prior to that, but nothing to suggest that she exhibited signs of distress relating to the assaults. She told Mr Keeley: "John, I'm in trouble – I've done something stupid – my life is ruined". She said to her sister: "Don't look at me like that I've had a hard night on the piss". I understand her sister, who spent about half an hour or so with her, not to have given any evidence indicating any relevant distress on Ms H part and she left to go about her own business at about 11am.

[5] After her sister left, the complainant drank an unknown quantity of alcohol and then cut her wrists with a serrated steak knife. I use the word "cut" in a neutral way, the injuries being variously described, but they were not such as to cause significant blood loss to require significant medical attention. The Crown says she still has scars on her wrist.

[6] Mr G Jnr arrived at the house at about 12.30pm. He had been asked to go there by Mr Keeley who had received a telephone call from the complainant which caused him to suggest to Mr G that she was "tripping out". On arrival, Mr G found the complainant unconscious with dried blood on each wrist. An ambulance was called at 12.59pm, and on arrival the officers found Ms H to be uncooperative. She asked the police not to be called.

[7] There is no evidence of complaint to be led. The Crown seeks to rely on the cutting of her wrists as evidence of the complainant's distressed condition as being capable of affording corroboration of her evidence as to the alleged sexual attacks.

[8] I take as guidance to my consideration of this matter what was said by the Full Court of the Supreme Court of Victoria in *R v Flannery* (1969) VR 587 at 591 cited with approval in the *Queen v Schlaefer* (1984) 37 SASR 207 at 216.

[9] The passage referred to is as follow:

> "In our opinion, evidence of the distressed condition of a prosecutrix may or may not be capable of amounting to corroboration according to the particular facts of each case. In determining whether it is so capable, regard must be had to such factors as the age of the prosecutrix, the time interval between the alleged assault and when she was observed in distress, her conduct and appearance in the interim, and the circumstances existing when she is observed in the distress condition."

[10] The particular facts are uncertain, but doing the best I can on what I was told, are set out above. The complainant was 19 at the time. The time

interval between the alleged assaults and when she was observed to have cut her wrists was at least two and a half-hours. Her conduct and appearance in the interim, as could be gauged by her conversations with Mr Keeley and her sister, did not evidence any distress which could be put down to the alleged assaults, I do not think, the cutting of her wrists was such an action from which an inference could be reasonably drawn by the jury that there was a causal connection between the alleged assaults and that act.

[11] The case for the defence is that the complainant consented to the acts of sexual intercourse alleged. The whole of the events of the evening were in the context of her being at the clubhouse of the Hells Angels Motorcycle Club where the activity took place and during which she ingested significant amounts of alcohol and what she believed to be drugs.

[12] It is put on behalf of the accused that the act of her cutting her wrists is equally consistent with the case of the prosecution and the case for the defence, her action being taken when she realised just what she had done, and recognising that her father and one of the accused, Knight, were known to each other. The cutting of her wrists could well be seen as being equivocal, either arising from distress because of the sexual assaults upon her, or because of her recognition that she could well be in trouble should she be found out in having been at the clubhouse during the night, drinking and taking drugs and engaging in consensual sexual activity.

[13] I bore in mind the need to look at the proposed evidence of distress with caution and that I must rule whether it is reasonably open to the jury to find that the independently observed signs of distress are consistent only with having been caused by the alleged sexual assault, and are not consistent also with having been caused by other events which may reasonably have occurred (*Schlaefer* at p217).

[14] In all the circumstances, and bearing in mind the guidance provided by the authorities I referred to and others put in the course of argument, I ruled the evidence was inadmissible.
