Raymond v Willmett [2024] NTSC 68

PARTIES:	RAYMOND, Courtney v WILLMETT, Garry
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	APPEAL from LOCAL COURT exercising Territory jurisdiction
FILE NO:	LCA 6 of 2024 (22108593)
DELIVERED:	13 August 2024
HEARING DATES:	12 August 2024
JUDGMENT OF:	Riley AJ

CATCHWORDS:

CRIMINAL LAW—Appeal—Appeal against conviction—Unreasonable verdict unsupported by the evidence—Whether witnesses' evidence related to events unrelated to the particularised charge—Path to conviction open—Appeal dismissed

Libke v The Queen (2007) 230 CLR 599; *M v The Queen* (1994) 181 CLR 487; *Pell v the Queen* (2020) 268 CLR 123, referred to.

REPRESENTATION:

Counsel:

Appellant:	L Waugh
Respondent:	R McGlinn

Solicitors:

Appellant:	Northern Territory Legal Aid Commission
Respondent:	Director of Public Prosecutions

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

Raymond v Willmett [2024] NTSC 68
No. LCA 6 of 2024 (22108593)

BETWEEN:

COURTNEY RAYMOND
Appellant

AND:

GARRY WILLMETT
Respondent

CORAM: RILEY AJ

REASONS FOR JUDGMENT

(Delivered 13 August 2024)

[1] On 25 March 2024, following a trial in the Local Court, the appellant was found guilty of having committed an aggravated assault upon Ajay Nilco. She appeals that decision on the sole ground that the verdict was unreasonable and could not be supported having regard to the evidence.

[2] As was observed by the High Court in *Pell v The Queen*[1] the issue for this Court is "whether it was open to the (Local Court Judge) to be satisfied of guilt beyond reasonable doubt, which is to say whether (the Local Court Judge) *must*, as distinct from *might*, have entertained a doubt about the appellant's guilt". Further, the High Court commented that, to say a jury (or

1 *Pell v The Queen* (2020) 268 CLR 123 at [44]-[45]. See also *Libke v The Queen* (2007) 230 CLR 599 at [113] and *M v The Queen* (1994) 181 CLR 487 at 494.

in the present case the Local Court Judge) "must have had a doubt" is another way of saying that it was "not reasonably open" to the jury to be satisfied beyond reasonable doubt of the commission of the offence.

[3] The Court also observed:[2]

> The function of the court of criminal appeal in determining a ground that contends that the verdict of the jury is unreasonable or cannot be supported having regard to the evidence, in a case such as the present, proceeds upon the assumption that the evidence of the complainant was assessed by the jury to be credible and reliable. The court examines the record to see whether, notwithstanding that assessment – either by reason of inconsistencies, discrepancies, or other inadequacy; or in light of other evidence – the court is satisfied that the jury, acting rationally, ought nonetheless to have entertained a reasonable doubt as to proof of guilt.

[4] The hearing was conducted in the Local Court sitting at Wadeye. It is apparent from the transcript that there were technical difficulties in the course of the hearing but it is not suggested that those difficulties affected the outcome. The evidence was presented in the course of a single day and at the conclusion of the evidence his Honour received submissions from both counsel. His Honour then immediately proceeded to deliver ex tempore reasons for decision.

[5] His Honour succinctly discussed the evidence of each of the witnesses, noted the onus resting upon the Crown and observed that he needed to scrutinise the Crown evidence very carefully. His Honour then concluded:

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2 *Pell v The Queen* (2020) 268 CLR 123 at [39].

> I am satisfied beyond reasonable doubt that in March 2021, Courtney Raymond, very angry, struck twice with her fists to Ajay Nilco … I am satisfied beyond reasonable doubt that … Courtney Raymond assaulted Ajay Nilco.

[6] The witnesses called for the prosecution included the complainant, Ajay Nilco, who confirmed he continued to be in a relationship with the appellant. He initially said he had no memory of any incident relating to the appellant in March 2021. Leave was granted to the prosecution to cross-examine him regarding a prior inconsistent statement. Under cross-examination the complainant acknowledged an incident in March 2021 in which he had been playing cards and the appellant had been sitting with him. She started yelling at him about seeing other people and he told her to walk away and she did so. When asked whether he recalled being punched by her he said he did not remember that occurring. He recalled that on that occasion his grandfather called the police but he did not know why. He said that the appellant had not hit him before.

[7] His Honour did not accept the complainant as a witness of truth and said he was "deliberately vague". Nevertheless, it was noted that the complainant confirmed that the appellant "was angry and yelling" at that time.

[8] The second witness, Dalina Nilco, was crucial to the Crown case and was the focus of the challenge by the appellant. Ms Nilco is the sister of Ajay Nilco and the cousin of the appellant. She gave evidence of an incident occurring at Wadeye at her grandfather's home in "dry time" 2021. People were playing cards and there was a "big mob" present including her brother

and the appellant. She said the appellant was angry and hit her brother twice with her fist on his back. She said that the appellant hit him "hard". The appellant had then been told to leave the house and did so. In relation to the time of this incident she said it was "a long time ago" and her "baby was inside". When asked how old her baby is now she said "one years old. This make two years now. Two or three years, that …".

[9] In cross-examination she said that the event occurred when she was pregnant and that her child was now one year old. Counsel did not seek to clarify the reference to "two or three years" in her evidence-in-chief. Her evidence was left in that unsettled state.

[10] In further cross-examination she said the appellant kicked the complainant but she did not see that herself. She did see the punching. She agreed that she was angry at the time of trial because her brother was in prison and she believed this was as a result of the actions of the appellant. It was forcefully put to her that the events didn't occur in March 2021 and she said she did not remember because it was a long time ago. In later questions she was asked whether she saw the appellant hit her brother and she said she did so. In re-examination she confirmed that she saw this "in my own eyes".

[11] The next witness was Robin Nilco, who is the grandfather of the complainant. He recalled calling police when the appellant and the complainant had an argument. There was a "big mob" at his house and his family were playing cards. He said the appellant was "kicking and stuff" and

he called the police because he thought the complainant may "do something silly". In cross-examination he said he called the police because the appellant was making a "big noise". He did not see any physical assault.

[12] The officer in charge was called and confirmed an incident had occurred on 7 March 2021. His statement was tendered. It disclosed that on that day a report of domestic violence between the appellant and the complainant was received. He and another officer attended at the address and spoke with the grandfather and the complainant. The complainant said that he had been punched by his girlfriend, Courtney Raymond. The officer later took a statement from the complainant.

[13] On appeal it was submitted on behalf of the appellant that the evidence of Delina Nilco could not be relied upon because it "suggests that she was talking about an entirely separate incident, distinct in time" to that the subject of the charge. It was noted that the events took place some three years before Ms Nilco gave her evidence and she was vague about the date. It was observed that it was clear people had gathered at the home of the grandfather and played cards on other occasions. However, it is not clear that any other assault by the appellant upon the complainant occurred in the course of such games and no suggestion was put to Ms Nilco or, indeed, any other witness that there had been another assault upon the complainant by the appellant on such an occasion or at all. The only suggestion of another incident between them was that at the time of the trial in 2024 the complainant was in prison and Ms Nilco thought it was because of the

appellant that he was in prison. The reason why the complainant was in prison was not explored with any witness. The reason why Ms Nilco thought the complainant was in prison because of the actions of the appellant was not explored. Taken at its highest, and without further exploration, there is a suggestion of an assault by the complainant upon the appellant rather than what is alleged to have occurred on this occasion.

[14] The appellant also relied upon the fact that Ms Nilco gave evidence that she was pregnant at the time of the offending and that her daughter was one year old in 2024 suggesting that the alleged assault was not an event that occurred in 2021. It was submitted she was referring to a different incident altogether. In that regard it should be noted there was no exploration of the additional information provided by the witness in response to the same question that "This make two years now. Two or three years, that …". His Honour did not regard the evidence referring to the pregnancy as sufficient to raise a reasonable doubt regarding her evidence that the incident she described was the incident the subject of the complaint which occurred in March 2021 as identified by other evidence. His Honour observed in the course of discussion with counsel that the witness was not asked how many children she had and whether she could have her children mixed up.

[15] His Honour went on to say in relation to the evidence of Ms Nilco:

> Look, we have discussed her evidence at length. There was aspects of confusion with her evidence, although she seemed to be consistent that, with her own eyes, that she repeated a number of times, that she saw, with her own eyes, Courtney Raymond strike Ajay.

[16] I see no error in his Honour so concluding.

[17] Further, it was submitted that the Local Court Judge relied upon the stereotype that Aboriginal people can struggle with time. In my opinion his Honour did not do so but, rather, acknowledged that there were aspects of her evidence which were confusing but nevertheless concluded that she was consistent and compelling in relation to her evidence of the assault.

[18] There was strong evidence to support the conclusion that the incident described by Ms Nilco was the one which was the subject of the charge. There was no evidence or suggestion of any other such incident occurring at any time. Further, the complainant confirmed that there had been trouble between himself and the appellant in March 2021. He was not asked and did not mention any other trouble between himself and the appellant on some other occasion. He agreed that his grandfather had called the police at that time. The grandfather confirmed calling the police. The officer in charge confirmed that the call had been received at that time and that there was a complaint by the complainant that he had been punched by the appellant on that day.

[19] The evidence taken as a whole provides a clear basis for the conclusions reached by the Local Court Judge. It cannot be said that the Local Court Judge must have entertained a doubt about the appellant's guilt. In all the circumstances, in my opinion, it cannot be said that the verdict was unreasonable and could not be supported having regard to the evidence.

[20] In the course of submissions counsel for the appellant raised, for the first time, the issue of defensive conduct. This issue was not raised in the Local Court, it was not raised as a ground of appeal and, in my opinion, a review of the evidence does not suggest that defensive conduct was or could have been an issue to be determined.

[21] The appeal is dismissed.
