

CITATION: *The King v Dixon* [2024] NTSC 40

PARTIES: THE KING

v

DIXON, Bernadine

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 22302263

DELIVERED: 16 May 2024

HEARING DATE: 1 March 2024

JUDGMENT OF: Kelly J

REPRESENTATION:

Counsel:

Crown: T Hayward

Accused: S Leonard

Solicitors:

Crown: Director of Public Prosecutions

Accused: Northern Territory Legal Aid
Commission

Judgment category classification: C

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

The King v Dixon [2024] NTSC 40
No. 22302263

BETWEEN:

THE KING

AND:

BERNADINE DIXON

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 16 May 2024)

- [1] On 1 March 2024, the defendant, Ms Dixon, pleaded guilty to one count of recklessly endangering serious harm to Morgan Abbott on 20 January 2023 by pouring hot water from a billy can over him.
- [2] Agreed facts were tendered as exhibit P1. Two areas of dispute were highlighted in the agreed facts:
- (a) the events that occurred in the car while the defendant and the victim were travelling home to Ti Tree from Alice Springs on 19 January 2023; and
 - (b) the events that occurred immediately before the defendant poured the hot water over the victim.

- [3] Evidence was called regarding these areas of dispute from the victim, Morgan Abbott, and the defendant, Bernadine Dixon. Mr Abbott's brother, Murphy Abbott, and a police officer also gave brief evidence.

The first area of dispute (the events on the highway)

- [4] Mr Abbott gave evidence that he and Ms Dixon left Ti Tree to come into town after work, at about 5 o'clock. They did some shopping, then went to Eastside Club and had dinner and some drinks. They left Alice Springs to go home at about 10.00 pm. He was driving.
- [5] They were going through a problem – troubles in their relationship all the time. He thought he wanted to talk about it – trying to find out what's going on and all this. He was talking to Ms Dixon about that. He was talking about trying to fix their problem. But she didn't like what he was saying, or talking about. Ms Dixon was saying, "I don't want to talk about it," and, "Why you gone through this again, talking about it?"
- [6] He was trying a little bit more to talk to her in a good way and then she didn't like it, and she punched him while he was driving the car. She punched him once on the left side of the head and he tried putting his arm out and trying to block her. She wanted to punch him again. He tried to put his arm out trying to block her. That was it. There was no more physical stuff happening in the car.

- [7] So then he stopped the car and got off, and then she wanted to drive the car. They swapped over. He got in the front passenger seat and Ms Dixon started driving back towards Ti Tree.
- [8] Then he was trying to keep talking to her and all this and she was driving slow, and then he jumped out of the car. He did this just to get away from what was going on in the car. He just wanted to get away from the problem that he was trying to talk about. When he jumped out of the car, he got a scrape down the left side of his leg.
- [9] And then Ms Dixon drove off towards Ti Tree. He was just standing there for a while, and then he started walking. Ms Dixon drove past him and didn't stop or turn back.
- [10] His brother came and picked him up later, after he had been walking for a while and drove him home.
- [11] Ms Dixon gave evidence about the incident on the highway while they were driving home from Alice Springs. She said they had been to Alice Springs shopping. As they were driving home, Mr Abbott started complaining about the court case that he had. (*This was a charge or charges of assaulting Ms Dixon.*) He was telling her to talk to her lawyer and drop the charges. Mr Abbott was driving and she was in the front passenger seat.
- [12] She said she would take care of it, talk to her lawyer and told him to just calm down, don't worry. He was angry and not himself. He kept yelling at

her. She was scared and panicking, upset and worried. Then she reached her hand and blocked his mouth because he was yelling. She told him calm down, it's all right. Then he punched her in the chest while he was driving.

[13] He said he wanted to crash the car with them in it. He was driving funny, on and off the road and she reached out again and tried to grab the steering wheel and keep safe. But he was strong. They went off the road and crashed into the bushes.

[14] He was upset and he got out of the car, yelling and crying. He went to her side of the car, opened the door, grabbed her neck and he was punching her in the face near her mouth and strangling her. He was also pushing her back into the seat. She pushed him back and told him not to hurt her anymore.

[15] Then he got out of the car and ran off into the bushes. She got into the driver's seat, searched for the car keys, found them on the floor, and started the car. She yelled out, calling his name for him to come back. Then he came back. She said to him, "It's going to be all right. Just jump in and we'll go back. I'll take care of this."

[16] Then she drove off and he started yelling at her again. He was angry and worried and he was crying. He wanted to hurt himself. She grabbed his shirt and held his arm and told him not to do that, but he jumped out of the car.

- [17] She stopped the car and got out. She went looking for him and he wasn't there. He ran into the bushes again. She was calling out to him. She was frightened and crying and scared. She was panicking. Then she jumped back into the car and drove to the community to get help. She talked to Mr Abbott's brother who went to pick him up from the highway.
- [18] In cross-examination in relation to the first disputed issue, Mr Abbott agreed that Ms Dixon had grabbed the steering wheel but said that had happened while he was driving safely. In cross-examination he also agreed he was yelling in the car. He agreed that he had court in March 2023 in Ti Tree regarding allegations against him involving Ms Dixon. He said he was suggesting to Ms Dixon to "fix it our own way". He agreed that he did not tell police in his initial statement that he was punched by Ms Dixon in the car ride. He disagreed that he punched Ms Dixon while he was driving, and suggested he could have touched her face while he was trying to block her from getting her hands on him. He also denied choking, pushing or swinging at her or putting his hands around her neck. He agreed that he told police that in the car she scratched him, grabbed and slapped at him with one hand and that he punched her to stop her, but denied that he had actually punched her. He agreed that once the car stopped that he ran to the passenger's side of the car where Ms Dixon was and grabbed her to get her to drive the car.
- [19] Mr Abbott said that he did not notice an injury to Ms Dixon's lip the following day. He also denied in cross-examination a series of other

propositions put to him, including driving in a dangerous manner, swerving on and off the road, punching Ms Dixon outside of the car, and choking Ms Dixon.

- [20] In cross-examination in relation to the first disputed issue, Ms Dixon confirmed that Mr Abbott was talking about dropping the charges in the car. She conceded that she hit Mr Abbott in the car by punching him to the head after he punched her, but then clarified that it was a slap. (Her evidence-in-chief was that she pushed him.) She confirmed that she got her swollen face from Mr Abbott punching her whilst she was in the passenger seat.

The second disputed issue (the events in the morning before the assault with the hot water)

- [21] Mr Abbott gave evidence that the next morning he woke up and made himself a cup of tea. Then Ms Dixon came into the house.
- [22] She told him she had called the police and told them what happened. He said he was only talking about their problem - how are they going to fix it and all this. Then he got a cup of tea in his cup, and he did swing it, wetting her and all that. There was about half a cup of tea in the cup. When he swung it, it went everywhere. It got a little bit on her too, just on her chest and that area. He wasn't trying to get the tea on Ms Dixon and the tea wasn't hot.

- [23] He said he had just had enough from what he was going through and talking about and all that. He wasn't happy. She said, "We're not going to fix this." That's what he told her.
- [24] Prompted by the prosecutor, Mr Abbott agreed that before he swung the cup of tea, he used his thong when he was talking to her. He hit the floor, like, used one of the thongs to smack the floor.
- [25] Then he was still sitting on the floor, and Ms Dixon got up from where she was sitting down, and then got the hot tea in the billy on the stove and spilled it on him.
- [26] After the next minute, he got pain and all that. He grabbed her on the shoulder with both hands and told her, like, "What's going on? Why have you done that? It's hot tea. You've burned me now." He yelled at her and said that. When he was grabbing onto her shoulders and yelling at her, she scratched him on the side of his neck and choked him.
- [27] In relation to the events of the following morning, Ms Dixon gave evidence that she was sleeping on a mattress in the kitchen. Mr Abbott came and woke her up. He said, "Get up, I need you to call your lawyer. I can't be doing this." He had a cup of tea with him when he woke her up.
- [28] She told him, "Don't worry, I'll talk to my lawyer. I'll drop the charges, I'll fix it."

- [29] He kept going on and yelling and he was not happy. He was worried that he might go to jail and that's why he was upset. He was saying he can't do this - go to court and go to jail.
- [30] She said, "If you keep going on, I'm going to call the police." Then he threw one of his things at her. It hit her on the face.
- [31] Then she told him not to do that and he poured the tea on her. The tea was warm. The tea landed on her face and her hair. That made her feel angry.
- [32] Then he came. She got up and tried to run away from him. He got up and grabbed her. He grabbed her neck; he pushed her and he was hurting her.
- [33] She pushed him back. Then she ran to the stove to grab the billy and she poured the hot water on him. He was in the doorway when she poured the hot water on him.
- [34] After she poured the hot water on him, Mr Abbott grabbed her on the shoulder, and he pushed her. Then she pushed him back, and he ran to the sink. She went out. She was scared. She ran to get help and found Dan the Aboriginal police officer.
- [35] In cross-examination in relation to the second disputed issue, Mr Abbott agreed that in his statement to police, he had told police that Ms Dixon had said, "I'm leaving, I don't want to listen to you. You're right. I'm just using you". When asked why he swung his tea cup, his answer was incoherent, but involved something about the problems of their relationship.

He said that at some point in the conversation that morning, Ms Dixon said that she would call police. He agreed later that Ms Dixon said, “If you don’t stop arguing, I’ll call the police”.

[36] He agreed that he did not tell police previously that Ms Dixon had choked him that morning. His explanation for not telling police about that was that he was going through the hurt and trying to keep Ms Dixon away from him. He also agreed that he did not tell the Crown Prosecutor that Ms Dixon had choked him in their conference in the week before the disputed facts hearing.

[37] In cross-examination in relation to the second disputed issue Ms Dixon conceded that she had scratched Mr Abbott when he grabbed her on the shoulder after she had poured the hot water on him. Ms Dixon initially gave evidence that Mr Abbott also threw the actual cup at her and it hit her forehead, but conceded in cross-examination that it was just the actual tea not the cup. (It may be that the distinction between a cup of tea meaning the tea itself and a cup full of tea – including the cup - was unclear as a result of English not being Ms Dixon’s first language.)

Legal Principles

[38] The Court may not take facts into account in a way that is adverse to the interests of the offender unless those facts have been established beyond a reasonable doubt. The offender has an onus of proving on a balance of probabilities for matters which are submitted in their favour. Where the

Court cannot be satisfied beyond reasonable doubt of alleged matters unfavourable to an accused and cannot be satisfied on the balance of probabilities of an asserted version of events about those matters which is favourable to the accused, the Court must sentence the defendant on the basis that the relevant matters are simply unknown.¹

Analysis and conclusion

[39] Where the evidence of Mr Abbott and the evidence of Ms Dixon conflict, on the whole I prefer the evidence of Ms Dixon.

[40] I agree with the defence submission that Mr Abbott's version of events changed in material ways from his police statement to his evidence at Court.

(a) He agreed that he initially told police in his statement that he did punch Ms Dixon in the car. However he did not give evidence about this in examination-in-chief and denied having done so in cross-examination. No reason was given for this inconsistency and I agree with defence counsel's submission that this is a material and important area of evidence, and that this inconsistency puts the reliability of his evidence in question.

(b) He also gave evidence that Ms Dixon had choked him the following morning after pouring the hot water on him, but again agreed that this was not in his statement to police.

¹ *The Queen v Olbrich* (1999) 199 CLR 270 at [27] – [28]; *Filippou v The Queen* (2015) 89 ALJR 776; 323 ALR 33; [2015] HCA 29 at [64]

No reason was given for these significant omissions and I agree with the defence submission that they bear the hallmarks of recent invention and that this has a significant negative effect on the assessment of his reliability and credibility.

[41] In addition, Mr Abbott's evidence was at times incoherent, even making allowance for the fact that English is not his first language. He appeared to struggle with questions which asked him for an explanation of what he said he had done or what he said had occurred and this does not reflect well on his credit.

[42] It seemed to me that in giving his evidence to the Court, Mr Abbott was concerned to minimise any wrongdoing on his part and to paint himself in a good light. For example, he initially told the Court in examination-in-chief that he was talking in a 'good way' to Ms Dixon in the car about their relationship. However he later conceded, when tested in cross-examination, that he was yelling and talking to her about fixing their relationship in their own way, rather than going through Court.

[43] Further, Mr Abbott did not disclose in examination-in-chief that he physically grabbed Ms Dixon from the passenger seat of the car, though he conceded this in cross-examination. He appeared to be selective about what evidence to give in examination-in-chief, and it was only after being tested in cross-examination that evidence that might be seen as adverse to him was

able to be discovered. His selectivity and lack of forthrightness negatively affects the assessment of his credibility and reliability.

[44] Some of Mr Abbott's evidence was inconsistent with the objective evidence. Mr Abbott denied punching Ms Dixon in the car and further denied in cross-examination observing any injury that she had to her lower lip. It is clear from watching Exhibit 3 that Ms Dixon had a significantly swollen lip, and this was observed by police. It is fanciful for Mr Abbott to suggest that he did not notice this.

[45] Also, elements of Mr Abbott's evidence seemed to me to be objectively unlikely. His evidence that on 20 January 2023 Ms Dixon said she was just 'using' Mr Abbott is in that category. I agree with the defence submission that it appears Mr Abbott has dramatized his position as the victim in the relationship, and minimised his violent response to the argument.

[46] By contrast, Ms Dixon's evidence was consistent during examination-in-chief and cross-examination and consistent with what she told police when they first attended. Exhibit P3 shows Ms Dixon telling police before being cautioned that Mr Abbott "started it" because he was upset about Court, and that her jaw was paining from last night. In the cells the next day a police officer observed swelling to her lip and she told them her tooth hurt. She said the injuries occurred on the highway the night before.

[47] She was not shaken in cross-examination and did not seem to me to be exaggerating or attempting to either dramatize her situation or minimise her

conduct. I agree with the defence contention that Ms Dixon gave a coherent, detailed and logical version of events. She made appropriate concessions – such as agreeing that she had scratched Mr Abbott when he grabbed her after she poured the hot water on him, that the cup itself was not thrown at her prior to the assault, just the contents, and that she had slapped Mr Abbott after he punched her in the car. Not only that, but the matters she conceded were only a variation on the versions she initially gave – tea from a cup rather than tea and a cup, and a slap rather than a push – and are understandable coming from a witness whose first language is not English. Further, her evidence about what happened in the car and on the journey home is supported by the objective evidence of her swollen lip the next day.

[48] Having said that, it seems to me that Mr Abbott and Ms Dixon were talking about the same thing when she said he was telling her to drop the charges against him and he said he wanted to talk about the troubles in their relationship and work things out their way. No doubt to Mr Abbott, the assault on Ms Dixon over which Mr Abbott was facing charges would have come under the description “troubles in their relationship” as would the fact that Ms Dixon made a complaint to police; and working things out their way would have entailed Ms Dixon dropping the charges against him.

[49] So far as the violence involved in that disagreement is concerned, in my view, Ms Dixon’s evidence is to be preferred, and I accept her account of what occurred both in the car and on the highway, and immediately before the assault giving rise to the charge to which she has pleaded guilty.

Fact finding

- [50] I am satisfied on the balance of probabilities that during the drive home from Alice Springs Mr Abbott became angry with Ms Dixon. In his mind he wanted to talk about their problems and work things out their way without involving the police. What this meant in practical terms is that he wanted Ms Dixon to drop the charges against him and was badgering her to do so. I am satisfied on the balance of probabilities that he was angry and yelled at her and that at some time during this altercation, he punched Ms Dixon in the chest. I am also satisfied on the balance of probabilities that when he stopped the car, Mr Abbott punched Ms Dixon in the face and grabbed her by the throat and that she pushed and/or slapped him in return and told him not to hurt her anymore. (To the extent that it is relevant, I also find that the events that followed occurred essentially as Ms Dixon related.)
- [51] I am not satisfied beyond reasonable doubt that Ms Dixon punched Mr Abbott while he was driving. In fact I am satisfied on the balance of probabilities that she did not. I accept Ms Dixon's evidence that she reached over to block his mouth because he was yelling and that he responded by punching her in the chest.
- [52] I also accept Ms Dixon's evidence about what happened the next morning. I am satisfied on the balance of probabilities that Ms Dixon was sitting on the mattress and Mr Abbott was sitting on the floor. He started arguing with her again, telling her to call her lawyer and drop the charges against him. He

was angry and upset and he threw one of his thongs at her face. Later in the argument, he threw the contents of his cup of tea at her. Then he grabbed her neck and hurt her.

[53] Following that, Ms Dixon tried to leave but by that time Mr Abbott was standing in the doorway preventing her from doing so. She then went to the stove, picked up the billy of hot water and poured it on him. After that happened, Mr Abbott grabbed her by the shoulders and she scratched him. He let her go and she went to get help.
