Cumaiyi v Taylor [2006] NTSC 72

PARTIES:	CUMAIYI, Matthew
	v
	TAYLOR, Shane Michael
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction
FILE NO:	JA 19/2006 (20612496)
DELIVERED:	22 September 2006
HEARING DATES:	18 September 2006
JUDGMENT OF:	MARTIN AJ
ON APPEAL:	*Police v Matthew Cumaiyi*

REPRESENTATION:

Counsel:

Appellant:	C McAlister
Respondent:	A Nobbs

Solicitors:

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

Judgment category classification:	C
Judgment ID Number:	MBF0601
Number of pages:	5

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

Cumaiyi v Taylor [2006] NTSC 72
No. JA19/2006 (20612496)

BETWEEN:

CUMAIYI, Matthew
Plaintiff

AND:

TAYLOR, Shane Michael
Defendant

CORAM: MARTIN AJ

REASONS FOR JUDGMENT

(Delivered 22 September 2006)

Appeal against conviction and sentence

[1] The appellant was charged on complaint for that on 6 May 2006 at Wadeye he:

1. unlawfully possessed cannabis.

2. behaved in a disorderly manner in a public place, namely, Port Keats Airport carpark, (s 47(a) Summary Offences Act.

3. behaved in a disorderly manner in a police station, namely the Port Keats Police Station.

4. resisted a member of the Police Force in the execution of his duty.

[2] Before the learned magistrate on 8 May, he pleaded guilty to each of the first two charges and the other two were withdrawn. The appellant now seeks to have his conviction upon that plea set aside.

[3] The facts put to his Honour were as follows:

> "During the early hours of 6 May 2006 Matthew Cumaiyi was the defendant in the matter and consumed nine cans of Melbourne Bitter beer in the vicinity of the Darwin Airport becoming intoxicated. At midday the defendant attended Murin Air where he met up with other residents of Port Keats. The defendant was given a small amount – 2 grams of cannabis inside a clipseal bag that was wrapped in tape and tissue paper from an unknown person which he placed in his right jeans pocket.
>
> At 12:30 pm the defendant boarded a charter aircraft that … flew to Port Keats. Upon arrival at 1:30 pm in Port Keats the defendant alighted from the aircraft. At this time the police were waiting at the aircraft as the result of information received that intoxicated males were returning.
>
> *As the defendant walked across the carpark he yelled out, 'Evil, fuck you mob, evil is back', directing his words towards opposing gang members that were near the airport hanger.* The defendant was arrested for disorderly behaviour and conveyed to the police station. Inside the police station the defendant started yelling at police, 'We're going to get you, both of you, all us boys, the evil mob.' At this time the defendant was pointing at both members of police attempting to search the defendant as he would not empty the contents of his pockets.
>
> At the time the defendant became agitated and struggled with members. The defendant would not comply with members request to empty his pockets. Members has to use minimum force to overpower the defendant and search his pockets. As police took out the cannabis, which was still wrapped in tape and tissue paper, he stated, 'Greg Nardoo(?) gave that to me and it ganga, just for me to smoke.' As police unwrapped the tissue paper and tape, members were able to smell cannabis and observe green plant material inside the small clipseal bag.

> After the defendant was searched he was processed and placed in a cell due to his level of intoxication. The defendant was held under provisions of s 137 of the Police Administration Act. The defendant refused to participate in an electronic record of interview and was refused police bail. He was later remanded in custody to appear at the Darwin court today.
>
> At the time of the offence the Wadeye Airport was a public place. At the time of the offence in the police station the defendant was in lawful custody."

The facts relating to the disorderly behaviour charge are in italics.

[4] Plainly, the facts going to the plea of guilty to the two charges which were not withdrawn must be isolated from the alleged facts in relation to the charges which had been withdrawn. Those latter facts are irrelevant.

[5] Notwithstanding that irrelevant material counsel for the appellant informed his Honour that the facts were admitted, his Honour proceeded to find the charges proven and found the appellant guilty.

[6] I am of the opinion that the outcome of the appeal depends upon defining of the elements of the offence charged and consideration of whether the evidence goes to prove each of those elements beyond reasonable doubt. In particular, I note that the behaviour here complained of, the use of words alone, to amount to an offence, must take place "within the hearing …. of any person in any public place". It is not suggested that the appellant did anything, which if seen by any person in a public place could be described as disorderly. What he is said to have done, was to yell out the words

referred to “directing his words towards opposing gang members that were near the airport hanger”.

[7] It is an essential element of the offence that the disorderly behaviour complained of take place within the hearing of a person in a public place. Although the words were said to been yelled out and directed towards opposing gang members that were near the airport hanger, there is no direct evidence or circumstances from which a proper inference could be drawn that they were within the hearing of those words.

[8] Whatever may be the ambit of the words “disorderly behaviour”, (see the differing views of members of the Court of Appeal in *Watson v Trenerry* (1998) 100 Crim R 408) the members of the opposing gang are not shown to have heard the words and thus any impact or tendency to impact upon them can not be assessed. The police heard the words, but it is not the respondent’s case that they considered the word “disorderly” insofar as they impacted upon them.

[9] The authorities indicate that the Court approaches an attempt to go behind the plea of guilty with utmost caution but it will do so where on the admitted facts the charge could not be proved - see note 5 to paragraph 130-13975 Halsbury’s Laws of Australia Vol 9, Criminal Law.

[10] In my opinion the admitted facts could not prove the charge. Accordingly, the appeal is allowed and the conviction set aside.

[11] I do not consider this to be an appropriate case to refer back to the Court of Summary Jurisdiction for retrial.

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