

Jordon Trajkov v Katrina Jane Hatzismalis [1999] NTSC 95

PARTIES: JORDON TRAJKOV
v
KATRINA JANE HATZISMALIS

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: APPEAL from COURT OF SUMMARY JURISDICTION exercising Territory Jurisdiction

FILE NO: JA 46/99 (9720548)

DELIVERED: 2 September 1999, Darwin

HEARING DATES: 26 August 1999

JUDGMENT OF: THOMAS J

CATCHWORDS:

Appeal – Justices – appeal against conviction and sentence – aggravated unlawful assault – Justices Act 1928 (NT).

M v The Queen (1994) 181 CLR 487, applied.

Jones v R (1997) 149 ALR 598, considered.

Gipp v R (1998) 155 ALR 15, considered.

R v Burchielli [1981] VR 611, referred to.

Arthurs v Attorney-General for Northern Ireland (1970) 55 Cr App Rep 161, referred to.

REPRESENTATION:

Counsel:

Appellant: S. Cox
Respondent: A. Fraser

Solicitors:

Appellant: NT Legal Aid Commission
Respondent: Office of Director of Public Prosecutions

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IN SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Trajkov v Hatzismalis [1999] NTSC 95
No. JA46/99 (9720548)

BETWEEN:

JORDON TRAJKOV
Appellant

AND:

KATRINA JANE HATZISMALIS
Respondent

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 2 September 1999)

- [1] This is an appeal against conviction and sentence imposed on the appellant in the Court of Summary Jurisdiction in Katherine.
- [2] The appellant, Jordon Trajkov, was charged as follows.
- [3] That on 21 August 1997 at Katherine he unlawfully assaulted Marjorie Lewis and that the said unlawful assault involved the following circumstances of aggravation:
- (1) the said Marjorie Lewis was a female and the said Jordon Trajkov was a male.
 - (2) The said Jordon Trajkov threatened the said Marjorie Lewis with an offensive weapon, namely a glass.

(3) The said Marjorie Lewis suffered bodily harm.

[4] On 30 April 1999, the defendant, hereinafter referred to as the appellant, entered a plea of not guilty to the charge. The matter proceeded to hearing in the Court of Summary Jurisdiction on 30 April and 4 May 1999. On 4 May 1999, at the conclusion of the hearing, the learned stipendiary magistrate found the offence proved beyond reasonable doubt. He found the aggravating circumstances (1) and (3) proved beyond reasonable doubt and dismissed the aggravating circumstance that alleged Jordon Trajkov threatened the said Marjorie Lewis with an offensive weapon, namely a glass.

[5] The grounds of appeal in the Amended Notice of Appeal dated 18 June 1999, are as follows:

“1. That the learned magistrate convicted the defendant against the weight of the evidence.

2. That there was insufficient evidence for the magistrate to be satisfied beyond reasonable doubt that the defendant committed the offence.

3. That the sentence was manifestly excessive.

4. That the learned magistrate erred in taking into account convictions that were imposed after the date of the offence and by taking into account references in the reports before the magistrate to interstate convictions that had not been admitted by the defendant.”

[6] The appellant appeals against conviction on the basis that the conviction was unsafe and unsatisfactory and the learned stipendiary magistrate should have entertained a reasonable doubt as to the guilt of the appellant. Counsel for

the appellant Ms Cox submitted that on the whole of the evidence it was not open to the learned stipendiary magistrate to be satisfied beyond reasonable doubt that the appellant was guilty. The test to be applied has been laid down in *M v The Queen* (1994) 181 CLR 487. This decision has been affirmed in *Jones v R* (1997) 149 ALR 598 and *Gipp v R* (1998) 155 ALR 15, Gaudron J at 21.

“[18] It is well settled that, where it is contended that a verdict is unsafe or unsatisfactory, in the sense that the jury should have entertained a reasonable doubt as to guilt, ‘[a]n appellate court must itself consider the evidence in order to determine whether it was open to the jury to convict’. And ‘[i]f the evidence, upon the record itself, contains discrepancies, displays inadequacies, is tainted or otherwise lacks probative force in such a way as to lead the court of criminal appeal to conclude that, even making full allowance for the advantages enjoyed by the jury, there is a significant possibility that an innocent person has been convicted, then the court is bound to act and to set aside a verdict based upon that evidence.’”

See also *M v The Queen* (supra) at 493:

“Where, notwithstanding that as a matter of law there is evidence to sustain a verdict, a court of criminal appeal is asked to conclude that the verdict is unsafe or unsatisfactory, the question which the court must ask itself is whether it thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty. But in answering that question the court must not disregard or discount either the consideration that the jury is the body entrusted with the primary responsibility of determining guilt or innocence, or the consideration that the jury has had the benefit of having seen and heard the witnesses. On the contrary, the court must pay full regard to those considerations.”

- [7] The evidence before the learned stipendiary magistrate was given by the complainant, Marjorie Lewis, Raymond Wayne Davidson and Constable Andrew John Meredith for the prosecution. Documents tendered by the

prosecution were a statutory declaration of Rolf Alexander Kidson sworn 9 September 1998 (Exhibit 1), Summary of Incidents for 24 hour period ending 21 August 1997 reported to Katherine Police Station (Exhibit 3), medical report from the Wurli-Wurlinjang Aboriginal Corporation dated 8 October 1998 (Exhibit 2).

- [8] The appellant Jordon Trajkov gave evidence in his own defence.
- [9] The alleged assault occurred on or about 21 August 1997, whilst Ms Lewis and Mr Davidson were walking home past Karama Flats on Riverbank Drive, Katherine. There is no dispute with the fact that Ms Lewis suffered an injury. The point of contention is with the allegation that the appellant caused the injury.
- [10] Ms Lewis gave evidence that she heard Jordon Trajkov's voice and then all of a sudden she felt a great whack hit her across the left eye (t/p 6). Ms Lewis gave evidence that she did not see Jordon Trajkov assault her. She identified the appellant as the defendant in the Court of Summary Jurisdiction in Katherine as the person she was referring to and gave evidence that she had spoken with him prior to the night of the assault. Ms Lewis gave evidence that she did not see the appellant but she did hear them fighting, referring to her assailant and Mr Davidson. Ms Lewis stated there were two other persons present at the time of the assault, Raymond Davidson and Valerie Lennon. It was Ms Lewis' evidence that she did not see the appellant at all. She did see Raymond Davidson fighting with

someone. After the blow she ran off to the unit where her mother lives because she was in pain from the blow to her head. Ms Lewis described the injury she suffered. Her evidence as to the injury she sustained is not challenged. The medical report (Exhibit 2) describing her condition was tendered by consent. Ms Lewis gave evidence that she reported the matter to the police the night of the assault, by telephone from her mother's flat. She also gave evidence she attended the Katherine Police Station the following morning and made a report. Under cross-examination Ms Lewis agreed that it was possible on the night before this incident, the subject of the charge, she had argued with and been assaulted by Raymond Davidson. She agreed that she had been drinking at the pub on the night the assault took place but stated that she was not drunk at the time. Ms Lewis also agreed that when she spoke to police about the matter she did not mention that she had heard Jordon Trajkov's voice. The evidence of Ms Lewis is that she didn't tell this to police because she was worried about her eye and in so much pain. She stated she could not explain why she did not tell police about the glass when she made a statement on 26 August 1997. Ms Lewis agreed she did not see the appellant, she stated that she heard his voice, she did see the glass and felt a whack on her eye. Under cross-examination, Ms Lewis gave evidence she was not sure if she had reported the assault to the police the night it occurred. She could not explain why it had taken her five days to report the matter to police. Ms Lewis confirmed

she did attend the Wurli-Wurlinjang Aboriginal Corporation the morning following the assault on 21 August 1997.

[11] Ms Lewis confirmed that she did not know if the night before the date of the alleged assault, she and Raymond Davidson had an argument and he assaulted her. She agreed that she had made a claim for compensation and maintained her allegation that it was Jordon Trajkov who assaulted her. She stated that she had not been the victim of an assault before or after this incident.

[12] Raymond Davidson stated in his evidence that he and Ms Lewis had been drinking at the Crossways Hotel for a couple of hours. They had a couple of drinks each and were walking home past the Karama Flats. He said hello to Valerie Lennon and they kept walking towards the home of Marjorie Lewis' mother. Mr Davidson gave evidence that "a bloke" whom he identified as the appellant/defendant before the Court of Summary Jurisdiction in Katherine, rushed over and hit Marjorie. Mr Davidson says he pushed Marjorie and told her to go to her mother's place. The man took a swing at him, hit him and they were wrestling on the ground. Mr Davidson says he grabbed the appellant by the throat, gave him a couple of punches and the man "got up and ran away wearing a pair of jocks". Mr Davidson stated the man bit him a couple of times on his back or on his shoulder. He stated he and Ms Lewis had gone to the pub about 8 or 9 o'clock and left about 11pm to 11.30pm. He thought the assault had taken place around midnight. His evidence is that both he and Marjorie Lewis were fairly sober as they walked

home. As they walked, Marjorie was on his right and a bit behind him. Valerie Lennon was standing in the doorway of her flat and he said hello to her. Mr Davidson stated the appellant's flat is straight across from the flat occupied by Valerie Lennon. His evidence is the person he had identified in the Court being the defendant, came running at them, he was yelling and screaming in a language Mr Davidson could not understand. This person went behind Mr Davidson. Mr Davidson says he did not see the man hit Marjorie. He did not see anything in the appellant's hand. Mr Davidson says he grabbed hold of Marjorie and told her to go to her mother's place. He gave evidence that he then had a fight with the appellant, there was a scuffle when they fell to the ground. The appellant got up and ran back to his flat. Mr Davidson gave evidence that he has seen the appellant after this incident standing outside the appellant's flat. Mr Davidson says on the night of the assault, whilst he and the appellant were fighting, Mr Davidson could smell methylated spirits. The appellant appeared to be pretty drunk and staggered as he ran away. The next morning they found a 10 ounce glass smashed on the ground. Immediately after the altercation Mr Davidson says he went to see how Marjorie was. Under cross-examination Mr Davidson said he had seen the appellant around the flat before the night of the assault but he had never spoken to him.

[13] Mr Davidson gave evidence he did not make a report to the police about the incident because he does not get on well with the police. He was subsequently asked by police to make a statement about the matter. Mr

Davidson agreed he had told police that he had never seen the appellant before the night of the assault. His evidence is that he does not know why he said this to police and stated that he has seen the appellant “heaps of times since”.

- [14] Constable Andrew John Meredith gave evidence as to the process involved when a complaint is received by telephone at the Katherine Police Station. A document titled “Summary of Incidents for 24 hour period ending 0600 hours 21.08.1997” was tendered and marked Exhibit 3. This report indicates that at 2354 hours Ms V. Lennon reported a “disturbance at Karimah Flats involving Jordon Trajkov smashing her kitchen window.” This was broadcast at 2355 hours. The report also indicates that at 0010 a police unit attended at the Karimah Flats and the report states:

“Read/Hatzis (being Hatzismalis). All persons intoxicated, compl. to attend station am 21/8, Trajkov visible asleep inside flat, all quiet on departure.”

The report notes the response time was 15 minutes.

- [15] The next entry is a complaint received at 0010 from a “M Lewis of Flat 13 Karimah Flats rpts having received a cut to her face from a flying glass.” This report was broadcast at 11 minutes past midnight. This report also indicates that at 0015 police again attended at the Karimah Flats. The report reads “Read/Hatzis compl intox, advised to attend station AM to make compl.” The response time on this occasion was four minutes.

- [16] Constable Meredith gave further evidence that at 1.00 pm on 27 August 1997 there is a record that Marjorie Lewis attended the Katherine Police Station and made a report alleging an assault upon her by Jordon Trajkov on 21 August 1997 and that Raymond Wayne Davidson may attend the Katherine Police Station to give a witness statement. It is Constable Meredith's evidence that Mr Trajkov was requested to attend the Katherine Police Station, he did so but declined to participate in a record of interview.
- [17] Jordon Trajkov gave evidence that he was asked to attend the Katherine Police Station and police asked him to make a statement about an assault on Marjorie Lewis on 21 August 1997. Mr Trajkov stated he went to the police station on 4 September 1997. It is Mr Trajkov's evidence that he occupies flat 6 at the Karama Flats and Marjorie Lewis lives in flat 13. He stated that on Tuesday 19 August, he observed Marjorie Lewis and her boyfriend fighting and arguing. Mr Trajkov detailed the actions that he observed and the words spoken between Marjorie and her boyfriend. Mr Trajkov states on the morning of 20 August 1997, he was preparing to go fishing. He spoke with Marjorie Lewis and detailed the conversation he had with her. He observed she had two blue eyes and Marjorie told him she had been in a fight with another woman at the hotel. Mr Trajkov stated he went fishing and did not come back until twenty to one that morning. He says he saw Marjorie Lewis, or Margaret as he knew her, and had a conversation with her at Woolworths. Mr Trajkov gave evidence as to difficulties between himself and Valerie Lennon and reports he made to police about Valerie.

Mr Trajkov denied he had assaulted Marjorie and further gave evidence that he does not possess any glassware.

[18] Mr Trajkov was cross-examined at some length about the police officer's statement that he was ranting at Constable Meredith when he attended the Katherine Police Station. Mr Trajkov denied that he had any such exchange with police and stated that he had never spoken with Constable Meredith. Also under cross-examination, Mr Trajkov gave evidence that on the night of 20th - 21st August, he had been fishing at the low level bridge. He left there at 12.20 am arriving home at twenty to one in the morning. He gave further evidence about the difficulties between himself and Valerie Lennon who also lives in the block of flats where he resides. Mr Trajkov denied that he ever had a fight with Raymond Davidson.

[19] The learned stipendiary magistrate noted that at five minutes to midnight, a report had been received from Valerie Lennon at the Katherine Police Station that Jordon Trajkov had smashed her kitchen window. His Worship noted that when police attended they observed Jordon Trajkov asleep in his flat. His Worship found that the failure to call Valerie Lennon to give evidence may raise an adverse inference against the prosecution case. His Worship found that Jordon Trajkov was not correct when he gave evidence that he did not speak with Constable Meredith at the Katherine Police Station. His Worship found that Mr Davidson had several opportunities to compare the person that he fought with as Mr Trajkov and that Mr Davidson did not resile from his identification that the assailant was Jordon Trajkov.

His Worship found that it was most unlikely Mr Davidson had not noticed Jordon Trajkov at the flats before this incident. The learned stipendiary magistrate stated in the course of his reasons, when summarising the evidence of Raymond Davidson (t/p 93):

“..... that Mr Trajkov was the man who he wrestled with, and they were together close enough if the light was good enough, that I think he might well have been able to identify him again and he claims on several occasions after this happened, to have identified Mr Trajkov around the flats.”

[20] The learned stipendiary magistrate expressed his reservation about the evidence of Marjorie Lewis and Raymond Davidson in this way (t/p 95):

“..... I do look with as jaundiced an eye as I can muster on the evidence of these two as they wend their way back from the pub.”

[21] His Worship then stated that he believed the account of the incident given by Mr Davidson. The reasons for decision include a finding that the defendant who was speaking loudly and volubly left his own premises at some speed and in a mindless act propelled himself past Marjorie Lewis toward Raymond Davidson and in the process assaulted Marjorie Lewis. The learned stipendiary magistrate found he was satisfied beyond reasonable doubt that the appellant committed the assault upon Marjorie Lewis, that the appellant was a male and Marjorie Lewis was a female, and that Marjorie Lewis suffered bodily harm. The circumstance of aggravation relating to use of a weapon was found not proved beyond reasonable doubt.

[22] Ms Cox, counsel for the appellant, submitted there was insufficient evidence on the identification of the defendant, that a mistake may have occurred in identifying Jordon Trajkov and that the magistrate failed to adequately warn himself about the dangers with identification evidence (*R v Burchielli* [1981] VR 611 at 617 – 618; *Arthurs v Attorney-General for Northern Ireland* (1970) 55 Cr App Rep 161). Ms Cox submits the learned stipendiary magistrate asks the wrong question; it is not whether the evidence of Raymond Davidson is believable, but whether it is reliable. I note that at t/p 94 the learned stipendiary magistrate says with regard to the evidence of Mr Davidson “Is his evidence unsafe, unreliable must be a question I ask myself.”

[23] I have concluded from a reading of the learned stipendiary magistrate’s reasons for decision , that he adequately addressed the issue of identification. He stated that he thought it unlikely that Mr Davidson had not noticed Jordon Trajkov at the flats before the date of this incident. Mr Davidson’s evidence on this issue is somewhat equivocal. His Worship noted that the two men were in close proximity and they had wrestled together immediately after the appellant had propelled himself past Marjorie Lewis. He accepted Mr Davidson’s evidence that Mr Davidson had seen Jordon Trajkov at the block of flats and that Mr Davidson had an opportunity to compare Jordon Trajkov with the person he fought with that night shortly after the event had taken place.

- [24] I do not consider there is a basis for the attack on the finding of the learned stipendiary magistrate on the issue of identification of the appellant. I note also there is some support on the issue of identification from Marjorie Lewis, who heard Jordon Trajkov's voice immediately prior to the assault. Mr Trajkov, in his own evidence, deposes to certain conversations he had with Ms Lewis on other occasions, indicating Ms Lewis was familiar with Jordon Trajkov's voice on the night of the assault. Ms Lewis also heard fighting between her assailant and Mr Davidson. Ms Lewis gave evidence she observed Raymond Davidson fighting with someone immediately after she had been injured. This supports Mr Davidson's evidence that he was involved in an altercation with the appellant.
- [25] The learned stipendiary magistrate notes that it is significant Mr Davidson gave evidence that the man he fought with reeked of methylated spirits and was very unsteady. The significance being that it would explain why Jordon Trajkov would come out of the unit letting out a torrent of unintelligible language and for no apparent reason fling himself upon Marjorie Lewis and Raymond Davidson.
- [26] The decision delivered by the learned stipendiary magistrate makes it clear that he was very aware of the deficiencies in the prosecution case. I have already referred to the hesitation he had in relation to the evidence of Ms Lewis and Mr Davidson because they had been drinking alcohol. The learned stipendiary magistrate states he concluded Ms Lewis exaggerated her sobriety. He made mention of the failure by the prosecution to call

Valerie Lennon. His Worship noted that Ms Lewis had not mentioned Jordon Trajkov when she reported the incident to the police or the following morning at the health clinic. However, he also found that although this did reflect on her credit, it was “a side wind to the main issue.” He found that at the time of the assault, Ms Lewis “was in drink, she was struck suddenly and she hurt a great deal”. He found this could account for why she did not give a full account of the incident. His Worship noted that Ms Lewis had a motive for putting the blame on Jordon Trajkov, namely that her subsequent claim for victim’s compensation would be strengthened.

[27] With respect to the evidence of Jordon Trajkov, his Worship noted he would have been assisted by an interpreter but indicated that as this evidence proceeded the learned stipendiary magistrate developed an easier familiarity with his register of English “and felt more happy with the case” (t/p 93).

[28] In his reasons for decision, the learned stipendiary magistrate noted that police had been at the Karama Flats at five minutes to midnight on 20 August and the same police officers were there 15 minutes later at eleven minutes past midnight. This is not completely accurate. Exhibit 3 states, in respect of the complaint received from Valerie Lennon, that it was broadcast at 2355. Police then attended Karama Flats at ten minutes past midnight. With respect to the complaint received from Marjorie Lewis, police attended at Karama Flats, according to Exhibit 3, at 15 minutes past midnight, which was five minutes later rather than as the learned stipendiary magistrate found 15 minutes later. This inaccuracy was not the subject of any

complaint on appeal and I do not consider anything turns on this. From the police record Exhibit 3, Ms Lewis is recorded as telephoning Katherine Police Station at 10 minutes past midnight, which is the precise time that police attended another part of the Karama Flats in response to Valerie Lennon's complaint. From this it would follow that the incident, the subject of the complaint by Ms Lewis, took place prior to police attendance at the Karama Flats at 10 minutes past midnight when they noted Mr Trajkov was asleep in his flat. What is relevant is that the two incidents were reported within a period of 16 minutes. The proximity of these two reports to Katherine Police Station may assist in explaining the appellant's state of mind at the time of the assault. It is also possible that Marjorie Lewis received her cut to the eye from the flying glass from the broken window.

[29] However, there was no evidence given by any of the witnesses as to a smashing of a window in Valerie Lennon's flat apart from the evidence in Exhibit 3. Exhibit 3 is only evidence that police recorded receiving a report from Valerie Lennon at 2354 hours on 20 August involving Jordon Trajkov smashing her kitchen window. The report does not indicate what time the smashing of the window is alleged to have occurred. Exhibit 3 then records police receiving a report 16 minutes later at 10 minutes past midnight that Marjorie Lewis received a cut to her face from flying glass.

[30] The theory I have advanced, that Marjorie Lewis may have received her cut to the eye from flying glass at the time Valerie Lennon's window was smashed, was not an interpretation of the facts raised before the learned

stipendiary magistrate. Nor did it form any part of the submissions on behalf of the appellant on appeal. Whilst it is a theory that may explain some of the odd aspects of this case, I have come to the conclusion it is not open to this Court to make such a finding of fact. Neither was it a finding of fact open to the magistrate on the evidence before him. There is no reason to disturb the learned stipendiary magistrate's finding of fact or to cast a doubt on his findings which are supported on the evidence. I have concluded that upon the whole of the evidence it was open to the learned stipendiary magistrate to be satisfied beyond reasonable doubt that the accused was guilty.

[31] Having had an opportunity to read the evidence given in the proceedings and the reasons for decision given by the learned stipendiary magistrate I have come to the conclusion that there was evidence to support the findings made by the learned stipendiary magistrate. I do not consider that he has made a decision against the weight of the evidence or that the evidence was not sufficient for him to be satisfied as to the guilt of the defendant beyond reasonable doubt. The learned stipendiary magistrate had the opportunity to observe and assess the credibility of the witnesses. I do not find any reason to interfere with his findings as to credibility or otherwise of the persons who gave evidence before him.

[32] For these reasons I dismiss the appeal against conviction.

- [33] Grounds 3 and 4 of the appeal are in respect of the sentence imposed on the appellant.
- [34] Mr Jordon Trajkov was sentenced on 15 June 1999 to five months imprisonment with effect from 4 May 1999.
- [35] The submission made by Ms Cox, on behalf of the appellant, is that this sentence is excessive.
- [36] The consequences of the assault upon Ms Lewis is set out in the report from the Wurli-Wurlinjang Aboriginal Corporation (Exhibit 2) in the proceedings. In summary that report states that on examination Ms Lewis had a 1 cm long closed laceration posterior to her left upper eyelid and an area of bruising of red/purple colour of 1 x 1.5 cm size. Ms Lewis subsequently complained of throbbing pain around the left eye, slightly blurred vision, photophobia, headache and a foreign body sensation. There is no objective medical evidence of permanent physical injury although Ms Lewis does complain of pain around the left eye and headaches.
- [37] This offence carries a maximum penalty of five years imprisonment. The maximum penalty when sentence is imposed in the Court of Summary Jurisdiction is two years imprisonment. Mr Trajkov is 55 years of age. He is Macedonian by birth. He has a limited grasp of English. There was evidence that the learned stipendiary magistrate accepted that the appellant has suffered some brain damage and was a person of low intellect. The

learned stipendiary magistrate concluded that the appellant was not a good vehicle for general deterrence.

[38] The learned stipendiary magistrate had before him a record of the appellant's convictions. Mr Trajkov was convicted of aggravated assault on 17 December 1998 the Alice Springs Court of Summary Jurisdiction and sentenced to 14 days imprisonment. (This is not a prior conviction for the purpose of sentencing for this offence which occurred in August 1997). However, a reading of the learned stipendiary magistrate's reasons for sentence does not indicate he took the conviction on 17 December 1998 into account as a prior conviction. Rather he was looking at the overall history of the appellant and noting there was a gap between this offence and the conviction on 17 December 1998. The transcript of evidence (p.110) contains an interchange with Ms Gilmour in which his Worship notes that the conviction on 17 December 1998 was for an offence committed while the hearing of the present charge was pending. This indicates the learned stipendiary magistrate was well aware the conviction on 17 December 1998 was not a prior conviction for the purpose of sentencing on this offence.

[39] Prior convictions include two convictions for assault imposed by the Katherine Court of Summary Jurisdiction on 2 July 1997 for which Jordon Trajkov was sentenced to 21 days imprisonment. A conviction for assault in the Darwin Court of Summary Jurisdiction on 11 September 1996 for which a fine of \$200 was imposed and a conviction for aggravated assault in the

Darwin Court of Summary Jurisdiction on 5 August 1994, for which he was convicted and sentenced to two months imprisonment.

- [40] His Worship (t/p 114) specifically referred to a conviction for rape mentioned in Mr Peter Mals' report. His Worship emphasised that he did not take into account in imposing sentence the prior offence for rape mentioned by Mr Mals. The learned stipendiary magistrate stated he only took into account the prior convictions as disclosed in the official police record which were admitted by the appellant.
- [41] The learned stipendiary magistrate had a report before him dated 4 June 1999, prepared by Mr Mals, psychologist with the Territory Health Service. This report stated that Jordon Trajkov was not suitable for any treatment programs directed at self control of anger or aggression. From this report the learned stipendiary magistrate was entitled to conclude as he did that Jordon Trajkov would not be willing to cooperate in non-custodial community programs.
- [42] His Worship found as he was entitled to do, that the appellant had done significant harm to Ms Lewis. The appellant was not entitled to leniency normally extended to a first offender. Nor could he benefit from the discount given by the Court when a plea of guilty is entered.
- [43] I agree with the submission made by Ms Fraser for the Crown, that although Jordon Trajkov is not an appropriate person for the imposition of a sentence which includes a factor for general deterrence, the community is

nevertheless entitled to protection from a person with his anti social tendencies. The assault was unprovoked and caused bodily harm to the complainant.

[44] I do not consider the sentence was manifestly excessive.

[45] Accordingly, I would dismiss the appeal against sentence.

[46] The order of the Court is that the appeal against conviction and sentence be dismissed.
