

Supreme Court sittings at Yarralin

By Elisabeth Armitage, Prosecutor at the Office of the Director of Public Prosecutions.

R v GJ

Aggravated Assault (male/female; <16years; weapon – boomerang)

Sexual intercourse with a child

On Thursday 11 August the Supreme Court went to Yarralin. Yarralin has never previously appeared on the Supreme Court list. It probably never will again. Those attending from the Court and the ODPF felt privileged to be taking the journey and appearing in court at that community.

The Sheriff, Peter Wilson, had arranged a ten-seater to get us, and the court equipment, to Yarralin. The flight took close to two hours over our wide brown continent – and I'm forced to resort to clichés - dotted with trees, worn down, pushed up and carved out.

Yarralin felt a long way from Darwin and we all know Darwin is a long way from anywhere. There was the usual council room at our disposal. Having made the journey to Yarralin, the room felt quite shut-off from the local people we were hoping to reach. So with minimal sweaty effort, court adjourned to the shade under a tree in front of the council office.

Previously, observers had been scarce, however the move outside promptly saw us surrounded by a gathering of up to 50 community members.

As requested by the community, and because the case involved a senior elder, proceedings were formal and included wigs and gowns. You might have thought that HHCJ Martin would stand out in his brilliant red but it uncannily matched the tractor parked behind him. (Though, I'm sure, some of the kids must have thought Santa had come early).

Whilst we were all in the shadow of the tree early on, the proceedings were punctuated by occasions of table and chair shuffling as we

scrambled to secure a place in the ever decreasing shade. The bar table was practically on top of court recording and the offender was almost in the Associate, Sharon Kraus's, lap by the end of the proceedings. HH hardly moved an inch, having secured prime central position under the tree.

Unbeknownst to HH, this 'prime' position presented hazards of its own. The backdrop of warblings and screechings from our feathered companions will prove a challenge, I am sure, for the poor court reporter. The birds were unperturbed by our presence and felt entitled to perch above and relieve themselves as they normally would. Their only contribution to the bar table was a deposit landing on my submissions. Given the ultimate outcome, I suspect they were trying to tell me something.

Spotting the wildlife from the bar table was a new diversion. There had been a wallaby on the runway when we flew in so I was quite excited when I saw a small furry marsupial – only to discover it was a cat. The camp dog seemed happy with its location at the Court Officer, Graeme Bennett's, feet.

Witness Assistance Service (WAS) officer, Colleen Burns, assisted about ten female community members to follow the proceedings and Jane Munday was spotted with her camera zooming in on the incongruous appearance of the Supreme Court under the trees.

The Supreme Court sat in Yarralin to hear the plea of GJ, a 55-year-old Aboriginal traditional man and elder in that community. He pleaded guilty to assaulting his promised wife, aged 14 years, with a boomerang; and having sexual intercourse with her. He was not aware that 'Gardia' (white mans' law) made these acts illegal. Both

acts were permitted under his view of traditional Aboriginal law.

George and Billy Campbell, community elders, gave evidence about the customary law of that area, particularly about the role of the promised wife system in their traditional law. Interestingly, while Billy Campbell gave evidence to the effect that the promise system was integral to his culture and law, neither of his daughters aged 16 and 18, had been 'promised'. They both were attending school in Darwin.

GJ was sentenced on each count to 5 months and 19 months imprisonment respectively, making a total head sentence of 24 months, suspended after servicing one month's imprisonment. Though the objective facts were serious (forced anal intercourse resulting in injury to the child) significant factors in mitigation were advanced by Stewart O'Connell on behalf of GJ. In particular, HH was cognisant that GJ did not know that it was unlawful, under Territory law, to have sexual intercourse with a child; and that his moral culpability was low because his actions were considered "right" in his culture.

Court sat from 10.45am until 3.45pm without a break. It was hot, and we were drinking plenty of water, so this was no mean feat. It was a pretty intense experience. I found it a little challenging to appear in that small community. Imagine the effect our Supreme Court must have on Indigenous persons arriving from communities to face our justice.

Yarralin is two hours drive south of Timber Creek, five hours drive from Katherine and, as the crow flies, 500km from Darwin.①