

***Parnell v Verity* [2011] NTSC 47 (24 June 2011) – Northern Territory Supreme Court**

‘Assaulting police’ – ‘Resisting arrest’

Charge: Resisting arrest, Assaulting police in the execution of duty

Appeal type: Appeal against conviction

Facts: After speaking with the victim, two police officers decided there were grounds to order a police domestic violence order against the appellant. When driving to the station, they saw the appellant outside his mother’s house. After failed attempts to communicate with the appellant, one of the police officers drew his taser, but did not point it at the appellant. After the appellant was notified of his arrest for the purposes of making a domestic violence order against him, he was handcuffed. He then became aggressive, screaming to his mother for help and alleging the police were assaulting him. The appellant attempted to kick one of the police officers. As a result, the officer put his foot on the appellant’s leg. The appellant screamed out in pain and his family started to approach the officers aggressively. One officer again drew his taser and pointed it at the family and the other officer took out his pepper spray. The appellant then kicked one officer in the shin, who then pepper sprayed the appellant.

In relation to this conduct, the appellant was convicted of resisting arrest and unlawfully assaulting a police officer in the execution of his duty with the circumstance of aggravation that the police officer suffered harm.

Issues:

- > Whether the magistrate’s findings of guilt were unsafe and unsatisfactory;
- > Whether the magistrate made findings of fact that were not reasonably open on the evidence; and
- > Whether the magistrate erred in the interpretation of s 84(1) of the *Domestic and Family Violence Act (2007)* NT.

Decision and reasoning: The appeal was allowed and the appellant was acquitted of both charges. In order for the police to remove and detain a person under s 84 of the Act there must be a reasonable belief that there are grounds for making a domestic violence order and it is necessary to remove the person to prevent an imminent risk of harm to another. There was no evidence before the magistrate of 'domestic violence' defined by s 5 of the Act. Therefore, the magistrate erred in finding the police officers had a reasonable belief that grounds existed for making a domestic violence order against the appellant. Further, there was no evidence that the appellant was likely to harm anyone as required by s 84(1)(a)(ii) of the Act. Therefore, the police officers did not have the power to arrest the appellant in order to impose the domestic violence order. The arrest was unlawful and the appellant was justified in resisting arrest and acted in self-defence when kicking the police officer.