Watson v Chambers **[2013] NTSC 7 (12 February 2013) – Northern Territory Supreme Court**

'Aboriginal and Torres Strait Islander people' – 'Aggravated assault' – 'Breach of domestic violence order' – 'Cumulative sentences' – 'Double jeopardy' – 'People living in regional, rural and remote communities' – 'Perpetrator intervention program' – 'Physical violence and harm' – 'Sentencing' – 'Totality'

Charges: Breach of domestic violence order (two counts), aggravated assault

Appeal type: Appeal against sentence

Facts: The appellant and the victim were in a relationship and resided together in the remote town of Maningrida. A domestic violence order was in place to protect the victim from the appellant harassing, threatening or verbally abusing her or assaulting or threatening to assault her. One afternoon the victim left their house when the appellant became angry and demanded she stay, saying 'Don't you move, I'm going to get a hammer and smash you in the arm' (count 2). Several days later the appellant accused the victim of having an affair. He subsequently struck her in the arm with a metal cup, grabbed her hair and dragged her to their room where he threw her on the ground, punched her twice in the face and struck her with a steel mop handle (counts 4 and 6). In relation to this conduct, the appellant was charged and convicted of two counts of contravening a domestic violence order (counts 2 and 4) and one count of aggravated assault with the circumstances of aggravation under s 188(2)(b) *Criminal Code 1983* (NT) that the victim suffered harm, it was a male-on-female offence and the victim was threatened with a weapon (count 6). The effective head sentence imposed by the magistrate was 11 months' imprisonment to be suspended after the service of 6 months' imprisonment, subject to the appellant completing the Indigenous Family Violence Offender Program (IFVOP). This head sentence comprised of:

- Count 2: two months' imprisonment
- Count 6: six months' imprisonment cumulative on the sentence imposed on count 2
- Count 4: three months' imprisonment cumulative on the sentence imposed on count 6

The magistrate initially made the sentence on count 4 concurrent with count 6, making the effective sentence 8 months imprisonment. However, this was adjusted as a result of s 121(7) of the *Domestic and Family Violence Act 2007* (NT) and the effective sentence was increased to 11 months.

Issues: Some grounds of appeal were whether the magistrate:

- Erred by finding the appellant guilty on count 4 and count 6 on the same facts; and
- Erred in her application of the totality principle.

Decision and reasoning: The appeal was allowed on both grounds and the appellant was resentenced.

- Counts 4 and 6 referred to the same incident. Citing *Ashley v Marinov* [2007] NTCA 1, Blokland J noted that where the facts of the breach of the domestic violence order were the same or similar to the facts constituting the assault, the two findings cannot stand. To do so would violate the principle against double jeopardy. The conduct of the appellant in accusing the victim of having an affair did not constitute 'harassing, threatening or verbally abusing' as provided in the domestic violence order. The conduct was not particularised at trial and the magistrate erred in convicting the appellant on count 4. Blokland J ordered the quashing of the conviction and sentence in respect to count 4.
- Blokland J agreed with Barr J's remarks in *Idai v Malogorski* [2011] NTSC 102 in finding that the mandatory accumulation of sentences does not displace the principle of totality. The conduct that constituted counts 4 and 6 was a continuation of the offending of count 2. Therefore, while the sentences had to be accumulated, there should have been an adjustment to the individual sentences when the magistrate made the correction.

The appellant was resentenced to 14 days' imprisonment on count 2 and 6 months' imprisonment on count 6. The total effective term of imprisonment of 6 months and 14 days was suspended after the service of five months and one week imprisonment. The condition of the appellant completing the IFVOP was upheld.