

Paula v R

**27, 30 June 2005
(BR) Martin CJ, Mildren & Thomas JJ
[2005] NTCCA 11**

The applicant was found guilty by a Darwin Supreme Court jury of one count of doing a dangerous act accompanied by the following two circumstances of aggravation (i) that he thereby caused the death of another person and (ii) that he was intoxicated at the time. An extension of time in which to apply for leave to appeal against the finding of guilt was refused by a single judge on 17 December 2004. The applicant then applied to have his application determined by the court constituted by three judges.

The sole ground of the application was that the verdict was unreasonable and could not be supported having regard to the evidence.

The Crown case was that the applicant, a bouncer, ejected the deceased from a Katherine nightclub by pushing or throwing him down steps leading from the landing to the footpath. The deceased immediately attempted to make his way back up the steps either on his hands and knees or in a crouched position. On the Crown case the applicant then committed the offence of dangerous act by kicking the deceased forcefully in the area of his face resulting in the body of the deceased being propelled backwards onto the footpath where the deceased's head struck the pavement causing fatal injury. The applicant denied that the deceased attempted to make his way back up the steps and that he kicked the deceased. The defence case was that the deceased hit his head on the pavement when first ejected and was rendered unconscious. The Crown did not rely on the initial ejection as being part of the dangerous act.

The court unanimously allowed the appeal holding that:

1. The evidence of the six eyewitnesses generally supporting the Crown case was unsatisfactory because of (i) internal inconsistencies, (ii) the fact that several witnesses had changed their account after viewing security camera footage and (iii) the fact that a number of witnesses had met together after the incident and discussed what had happened to the extent of at least one witness being made aware that her version was different from others.
2. An examination of the images recorded on a security camera which was programmed to capture an image every 1.875 seconds failed to show (i) the deceased being ejected from the landing, (ii) the deceased attempting to make his way back up the steps (iii) the applicant kicking the deceased and (iv) the deceased being propelled back down the steps. As all of these events had to have taken place in the space of 1.875 seconds, the images taken by the security camera positively rebutted the Crown evidence of the kick.
3. As the jury was in no better position than the Court of Criminal Appeal to assess the significance of the failure of the security camera to record the alleged kick, a doubt experienced by the Court is a doubt which the jury ought also to have experienced.
4. It was not open for the jury to be satisfied beyond reasonable doubt that the

applicant was guilty.

The court quashed the finding of guilt and directed that a judgment and verdict of acquittal be entered.