

70/78

SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

R v CAPOBIANCO

McGregor J

12 May 1978 — (1978) 20 ACTR 29

EVIDENCE – ASSAULT – PLEA OF GUILTY – DENIAL OF ONE FACT IN A RECORD OF INTERVIEW – EVIDENCE GIVEN BY COMPLAINANT – ACCEPTED BY THE COURT – DEFENDANT DID NOT GIVE EVIDENCE – WEIGHT TO BE AFFORDED TO SUCH DENIAL IN THE RECORD OF INTERVIEW.

The witness who gave evidence was accepted as a truthful witness who accurately described what had happened and accordingly it was open to the Court to accept the hair pulling as part of the assault. The explanation of this matter which was referred to as being the words of the accused in the record of interview was not accepted, though as counsel pointed out, such self-serving statements in a record of interview are evidence for the accused; but the weight of such exculpatory matter is a matter for the court.

Herbert v Benson [1942] NSWStRp 18; 61 WN (NSW) 240; (1942) 44 SR (NSW) 382 at 388, referred to.

McGREGOR J: Capobianco has pleaded guilty to assault on 14th April 1977 at Speakeasy Restaurant, Canberra. The facts were stated from the Bar table by the Crown Prosecutor and accepted as an accurate account of what happened, except as to one incident in the case of the charge concerning Miss Percy.

'She turned round and slapped Mr Capobianco's face, whereupon Mr Capobianco, from his sitting position adjacent to Miss Percy, grasped her in his hands and pulled her down across his knees. He then took a grasp of her hair and pulled her head back so that it came in contact with the table and he said words to the effect: "Don't do that again, or I'll smash your face in". She was lying across his knees face upwards and the incident was observed by her friends.'

In respect of the assault on Miss Percy, the accused denied that he had seized her by the hair. I thereupon indicated to the learned Crown Prosecutor that, since this was denied, the Crown would have to prove it if it relied on it. The Crown had to prove beyond reasonable doubt if it wished to have it established as part of the assault charged.

At the adjourned hearing Miss Percy gave in evidence the action which she described thus: 'Mr Capobianco pulled me down across his knees, held my head back – I was facing upwards on his knees ... He held my head back – I was lying face up across his knees ... Held my head back holding a handful of hair – I had longer hair then – and he held my head, the right side of my face against a table, and he said to me, "Don't you ever touch me again or I'll smash your face in."'

No evidence to the contrary of this was given, but the accused relied upon his denials in effect of this aspect in the case in his record of interview.

I accept Miss Percy as a truthful witness who accurately described what has happened and so accept the hair pulling as part of the assault. I do not accept the explanation of this matter which was referred to as being the words of the accused in the record of interview (Exhibit 'A' - Question 20), though as counsel pointed out, such self-serving statements in a record of interview are evidence for the accused; but the weight of such exculpatory matter is a matter for the court: see eg. *Herbert v Benson* [1942] NSWStRp 18; 61 WN (NSW) 240; (1942) 44 SR (NSW) 382 at 388. *Lopes v Taylor*.