

CITATION: *Rodney Ernest Huddleston v The Northern Territory of Australia and Tanya Dawn Turner* [2004] NTMC 079

PARTIES: RODNEY ERNEST HUDDLESTON
v
THE NORTHERN TERRITORY OF
AUSTRALIA AND TANYA DAWN TURNER

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victims Assistance) Act

FILE NO(s): 9919788

DELIVERED ON: 29 October 2004

DELIVERED AT: Darwin

HEARING DATE(s): 19 July 2000

JUDGMENT OF: R J Wallace SM

CATCHWORDS:

Criminal Injuries Compensation –Crimes (Victims Assistance) Act –
s 15(3) “Evidence” - s 12(f) “the commission of a crime by the victim”.

REPRESENTATION:

Counsel:

Applicant: D Howard
1st Respondent: C Spurr

Solicitors:

Applicant: Hunt & Hunt
1st Respondent: Halfpennys

Judgment category classification: B
Judgment ID number: [2004] NTMC 079
Number of paragraphs: 25

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 9919788

BETWEEN:

RODNEY ERNEST HUDDLESTON
Applicant

AND:

**THE NORTHERN TERRITORY OF
AUSTRALIA**
1st Respondent

AND

TANYA DAWN TURNER
2nd Respondent

REASONS FOR DECISION

(Delivered 29 October 2004)

Mr R J WALLACE SM:

1. This is an application for assistance pursuant to s 5 of the *Crimes (Victims Assistance) Act* (“the Act”). The applicant, Mr Huddleston, was injured by the second respondent, Ms Turner, on 18 September 1998. The injury was to his left eye; “there was a huge laceration of the sclera from one end of the eye to the other” (report of Dr Verma dated 1/6/99). The eyeball had to be removed.
2. Ms Turner was charged – I presume with causing grievous harm (Code s181) – but the charges were not proceeded with. The only explanation before me for their being withdrawn is a letter from Ms Nanette Hunter, Coordinator of the DPP’s Victim Support Unit, to Ms Spurr (counsel for the first

respondent, the Northern Territory of Australia) dated 21 November 2000.

Ms Hunter wrote;

“I confirm that Tanya Turner appeared before the Court of Summary Jurisdiction (McGregor SM) sitting in Darwin on 17 November 2000. All charges were withdrawn on that day as the matter of self-defence was clearly raised on the final evidence”.

3. I have no idea what Ms Hunter meant by “final evidence”. Perhaps Mr Huddleston was called and cross-examined before the charges were withdrawn. Perhaps the prosecutor proofed him and thereby discovered the “matter of self defence”, and withdrew the charges without calling any evidence. Perhaps something was discovered from the medical material bearing on injuries to Ms Turner. Perhaps, whatever “the final evidence” might mean, Ms Hunter was present when it became evident; perhaps not. It would certainly not have been her decision to terminate the prosecution.
4. The prosecution having been terminated there was, of course, no finding that Ms Turner was guilty of any offence associated with Mr Huddleston’s injury. In order to establish that he is a “victim” within the meaning of the Act, Mr Huddleston must prove that he was injured “as a result of the commission of an offence by another person”. That is the first hurdle for Mr Huddleston. The second hurdle, Ms Spurr argued, is created by s 12(f) of the Act, which provides:

“the court shall not issue an assistance certificate - (f) in respect of an injury or death that occurred during the commission of a crime by the victim.”

5. Section 12 (f) did not exist at the time Mr Huddleston lost his eye: it was introduced into the Act by s 6(d) of the *Crimes (Victims Assistance) Amendment Act 2002* (No 57 of 2002) which came into effect on 1 November 2002. However, the Amendment Act’s transitional provision, s 17, provides that, with some exceptions, the amendments apply in relation to all applications whether made before or after 1 November 2002.

6. The third hurdle for Mr Huddleston, Ms Spur argued, is created by s 10(2) of the Act;

“where the court Is satisfied that the victims conduct contributed to the injury or death of the victim it shall reduce the amount of assistance specified in the assistance certificate by such amount as it considers appropriate in all the circumstances”.

7. In respect of the first hurdle, the burden of proof is borne by Mr Huddleston: in respect of the second and third hurdles, by the respondent. Proof is on the balance of probabilities (s 17 of the Act).
8. Each of the hurdles calls for a consideration of the circumstances in which Mr Huddleston came by his injury. Section 15(3) provides: “subject to this Act, the court is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks fit”. The material put forward in this case is unusually far from what the rules of evidence would permit. I have not rejected consideration of any of it. The combination of s 15(3) with the procedural changes designed to cut costs and expedite decisions by increasing reliance on written evidence, and decreasing opportunities for cross-examination, leave the court to rely on such ropy material.

THE EVIDENCE

9. Mr Huddleston swore an affidavit on 6 June 2003, and the contents of that affidavit are the main evidence in respect of his case, at least in respect of the live issues. The relevant portions of the affidavit read:

2. On 18 September 1998 I was at home at my flat in Kurrajong Crescent, Nightcliff. I had resided at this flat for approximately 1 month with my ex-defacto Tanya Dawn Turner. We had been together for approximately 3 months.
3. On that day I received a telephone call from Tanya whilst I was at work asking me to come home. She sounded upset on the phone as she had received news that her Uncle was gravely ill.

4. I left work at approximately 3.40pm and went and picked Tanya up from the Shack, the Red Cross Centre near the Casuarina Village. Tanya and I went and bought a dozen VB stubbies and went to visit Fiona Stokes an aunty of Tanya's. Fiona wasn't home so we left a message with her Nanna and we drove home.

5. Shortly after arriving home Fiona Stokes arrived at our place and had a discussion with Tanya about her Uncle. Fiona and Tanya went out and I stayed at home. I consumed several beers whilst they were out. When Tanya arrived home she appeared agitated and upset. I asked her if she had sorted everything out with her Uncle and she just snapped and started yelling at me, do not recall what. I was sitting on a stool next to the kitchen bench and I tried to calm her down. In my statutory declaration I stated that we were having an argument but I do not remember what over. We were yelling at each other but the reason an argument had started in the first place was because Tanya had accused me of having an affair with Pam. I yelled back at Tanya stating it wasn't true. I have boarded with Pam and Whim on and off for a number of years and they have looked after me. Pam is like a second mum to me. The argument escalated from that point. I yelled at her because she hadn't gone back to see the psychologist.

6. Tanya then went into the bedroom and I followed her. Tanya started turning everything upside down and was screaming hysterically. I tried to calm her down and I had a hold of her shoulders and she broke free. I did not at any time grab Tanya around the neck or hit her. I then walked into the hallway near the kitchen. Tanya came back out with incense burner and threw it at me. I turned away and it hit me in the shoulder blade area, causing some pain. Tanya then walked over to the kitchen bench and she picked up another incense burner bottle and threw it at me. Tanya then picked up beer and wine bottles that were next to the front door and threw them at me. Each time Tanya threw something at me I turned away to protect myself. Some of the bottles hit me and others flew past me hitting the wall and floor and smashing. The next thing I recall is Tanya lunging towards me quickly and I felt a sharp pain like a knife being stuck into my face. I placed my hands up to my left eye and saw blood everywhere. I didn't realise what had just happened. I was in shock.

and:

9. “A while later I heard a knock at the door and the person identified himself as a police officer. He told me that he had ambulance officers with him. I was really upset, hurt, embarrassed and humiliated by what had happened to me by me ex-defacto and I didn’t want to let them in. The police officer talked me into opening the door. I was treated by the St John’s officers but refused to go to the hospital. I needed time to come to terms with what had just happened. I was very confused as I had been hurt by someone I loved dearly. A couple of hours later I called the police back and requested that they take me to the Emergency Department of the RDH”.

and:

13. “I went to Adelaide for further medical treatment and after I got out of hospital I went and stayed with Auntie Coral Wilson. Coral is not my real aunty but I call her aunty out of respect. Coral is in fact Tanya’s aunt. I wrote a letter to Tanya as I still loved her and wanted to be with her. I was still feeling hurt and confused about the assault. When I stated in my letter that I wished I could turn back the hands of time and put things right I wish that I had never taken her call at work. I was just about to take the truck out when a workmate said that Tanya was very upset and needed to speak to me. As I was also working long hours I felt I wasn’t there for her enough.
 14. Tanya had told me that she was abused when she was younger and sometimes she heard voices in her head. She said that she would often get angry and would know what she was doing but couldn’t stop herself. Tanya sent once to psychologist in Nightcliff, I think her name was Jan Isherwood-Hicks. Tanya only went the once and the visit took about two hours. When we argued on 18 September 1998 it was because she hadn’t continued on with her counselling.
 15. On one occasion I came home after attending a concert and Tanya had been at work that evening. I recall getting home at about 2 am and she was angry that I hadn’t arrived home earlier. She started banging her head on the floor. The floor was covered with lino. I had to pick her off the floor to stop her from hurting herself”.
10. Annexed to that affidavit is a copy of Mr Huddleston’s statement made to police, declared on 5 November 1998. In relation to the events of 18 September 1998, the affidavit largely recapitulates the contents of the

statement. There is some additional material in the affidavit, no doubt in response to what Mr Huddleston had, by 2003, come to understand was Ms Turner's version of events. Thus the statement, corresponding to paragraphs 5 and 6 of the affidavit:

“A couple of hours later Tanya returned home. She appeared agitated and upset. I asked her if she sorted things out about her uncle and she just snapped and started yelling, I don't recall what she was yelling out. I was sitting on a stool next to the kitchen bench and tried to calm her but she continued yelling, so I started yelling back and next thing I knew we were having an argument, but I don't know what over.

Tanya then went into the bedroom, and I followed. I saw her up-end the bed which uplifted the bed against the wall and then start screaming uncontrollably. I walked away and went into the hallway near the kitchen. Shortly after she came back out with an incense burner in her right hand and threw it, I turned away but it hit me in the shoulder blade area, causing pain”.

11. In respect of the live issues, the single most important assertion in the affidavit is in paragraph 6, where Mr Huddleston swore, “I did not at any time grab Tanya around the neck or hit her.”
12. Ms Turner's version of events is not available directly from her, even in affidavit form. Both parties appear to have tried earnestly to find her. Ms Howard, solicitor and counsel for Mr Huddleston, wished to serve on her a Notice of Hearing. Her affidavit sworn 19 July 2004 sets out the efforts made both within her office and by process service outside it, to locate Ms Turner. Ms Spurr had a conference with Ms Turner on or about 21 November 2000 – a few days after the charges against her were withdrawn. Ms Turner at that conference provided Ms Spurr with an account which was to be formed into an affidavit. Ms Spurr's affidavit goes on:

8. “At our interview on 21 November 2000 she advised me of an address in South Australia where she would be staying.

9. On or about 24 January 2001 we forwarded a draft affidavit to the second respondent at her address in South Australia. That affidavit was never returned.
 10. We again forwarded the affidavit to the second respondent on 23 June 2003 in South Australia.
 11. We then obtained details that the second respondent was residing in Coober Pedy. We spoke with the second respondent by telephone and we again forwarded a further affidavit to her and provided her with the applicant's affidavit dated 6 June 2003.
 12. The second respondent again indicated that she did not want the applicant to know her address. Her work place had been instructed to say that she did not work there. She advised that she did this because she did not want the applicant to know where she was.
 13. On or about 26 August 2003 the second respondent advised that she would forward her signed affidavit back to us.
 14. On or about 21 October 2003 she advised us that the affidavit had been sent and that she would check with the post office why it had not arrived.
 15. I attempted to chase the second respondent for her affidavit through letters and phone calls.
 16. On or about 4 February 2004 I was advised by her workplace that she had left her workplace, that she no longer resided in Coober Pedy and that they had no forwarding address for her.
 17. We have been unable to get in contact with her since that time.
 18. We have no knowledge as to the second respondent's current whereabouts".
13. Ms Turner's evasiveness with regard to swearing the affidavit raises suspicions, chief among them being the thought that much or some of the account she had given Ms Spurr was false, and that she had second thoughts about swearing up to that lie or those lies. I must say that in my experience there have been few liars deterred from persisting in falsehood by the administration of an oath. However, the suspicion remains. It may be, of

course, that Ms Turner was too disorganised to get around to finding a suitable witness, or too lazy; or too afraid that an affidavit might help Mr Huddleston to locate her; or too upset by her memories of the event to want to revisit it; or secretly sympathetic to Mr Huddleston so as to desire not to obstruct the success of his claim, or feeling guilty about the harm she had done to the same effect; or any other imaginable explanation, not touching upon the truthfulness of her account.

14. The account, for what it is worth, went as follows:

“I had received a message from my father in Adelaide stating to ring him. So I did. The message was about my Uncle Banjo who was suffering from cancer in Modbury Hospice. My father had stated that he had approximately 24 hours to live.

On Friday 18 September I went to work at the Red Cross Shak at 3pm. I had explained the situation to my boss Robbie Fletcher of the family crisis, and that I may have to fly to Adelaide.

Unable to concentrate on my job properly I asked my boss if I could go home. Robbie understood and said it was okay to go home, and to notify him of what was going to happen.

I rang Rodney at work, to see if he could come and pick me up at work. He did come and pick me up. Before going home he went to Bi-Lo Shopping Centre to get some groceries for dinner and also bought ½ dozen VB's.

On the way home I asked him if he could drop into see Fiona Stokes at her house. Unfortunately she was not home, so I left a message with her mum to come around and see me ASAP.

As we got home Fiona pulled up around the same time. I spoke with Fiona about borrowing some money to help me get to Adelaide, and she said she would. This was spoken in front of Rodney. He also said he would lend me some money to get to Adelaide.

I informed Rodney of what I was going to do (this was also said in front of Rodney). This would be to go with Fiona and change a cheque at the Millner Shops.

I went with Fiona for approximately 45 minutes, to change the cheque. During this time Fiona had to pick up her daughter from

basketball training. Unfortunately Vanessa was running a little bit late, so was unable to change the cheque.

I stated to Fiona that I better hurry up and get home, the reason being that Rodney would be wondering where I was and what I was doing. So she dropped me off home, with Fiona understanding the situation I was in.

Fiona dropped me off at the unit, and said that she would return with the money later around 8.30pm or 9pm and that I should start packing my suitcase.

Once inside the unit Rodney has questioned of my whereabouts for the duration of the 45 minutes. When I did explain to him of my whereabouts, he obviously didn't believe me, because he kept asking me again and again.

I was preparing dinner and talking to Rodney about Uncle Banjo (who I was very close to, like my Poppa). During this time I was sipping on a beer. Once dinner was cooked I asked Rodney if he was having any and his reply was no. So I then turned the stove off. I went into the bedroom to get my suitcase and returned to the lounge room and started packing a few items.

As I was packing a few items Rodney started asking of my whereabouts during the 45 minutes I was gone with Fiona. So I stated again, again and again of what happened. I said to Rodney that if he has a problem with my explanation to ask Fiona. Rodney kept saying that I was lying, and that I went somewhere else with Fiona. I had noticed that Rodney had quite a bit more to drink.

During this time he kept asking how long I was going to be away and where I was staying and what I was going to do in Adelaide, if I was going to go out in Adelaide. I answered all his questions and told him that I was going for my Pops funeral and then I was coming back to Darwin.

After convincing Rodney of the reasons why I was going to Adelaide he then demanded for his car keys. My reply was that I didn't have them and I don't know where they were. (But I did know where they were). Rodney kept demanding for his car keys and I kept refusing to give them to him. The reason for this was that Rodney has a tendency to drive his car under the influence of alcohol. At the time of Rodney demanding the car keys he was extremely intoxicated by alcohol and I was concerned about him drinking and driving. Rodney's safety and the safety of other people.

He (Rodney), then went into the main bedroom and was standing in front of the wardrobe, I followed in after. I then asked him what he was doing and he didn't reply and then the next thing you know he hit me in the left ear. This threw me off balance and I fell to the ground.

After a few seconds I then got to my feet and I pushed him back away from me. Rodney obviously didn't like this and it triggered him into a violent rage. Whilst in the bedroom he kept constantly hitting me with his hands and hitting my head on the floor (lino floor), Rodney was sitting on top of me hitting my head constantly on the floor. Somehow I managed to get off and away from him and went into the lounge room and crouched in the corner nearest to the entertainment unit. Rodney came out of the bedroom and came near me and I told him to get lost. I was crying and calling out for my mum. This obviously upset Rodney more because then he started hitting and dragging me around. I tried to fight back and to get away but I couldn't (as both screen doors and door were locked).

Somehow I ended up in the kitchen and recall Rodney choking me to the point of not breathing and banging my head on the kitchen tap. He then stopped after about 5 – 8 min, he then headed off towards the main bedroom. All of a sudden he turned around and was coming towards me (evil in his eyes, and an enraged bull) like he was going to kill me or do something drastic to me. With the look in his eyes I feared for my life so I picked up the closest/nearest object to me (which happened to be an empty bottle) and threw in the direction of Rodney (not aiming it directly at him). I threw the bottle so it hit the wall, with the bottle smashing into small pieces.

After that I ran to the back door and had time to unlock both doors, jumped over next doors backyard and then ran down the street. I could hear Rodney in the background calling out to me, saying nasty horrible things.

I ran to the closest telephone box and rang my father in Adelaide, briefly told him what had happened. Then I rang my friend Chiquita Bin-Saris to come and pick me up. She was unable because her fiancée had the car, but she would ride her bike down and for me to stay where I was. Whilst I was waiting for her I hid in the darkest spots so that Rodney couldn't find and do something to me.

I saw Chiquita and went over to meet her. When she looked at me she saw how upset and bruised I was. We sat down outside a set of flats on Progress Drive (next to the 10 Pin Bowling) and told her what happened. She sat and listened.

Whilst talking to Chiquita we both saw Fiona's car and hailed her over to stop. She did. I told Chiquita what I was going to do and thanked her for coming down and helping and I would catch up with her later on.

I jumped into Fiona's car and she asked me straight away what happened, so I told her of the events that happened. She sat and listened to what I had to say, then she asked if I wanted to go to the hospital and the police station, but I refused. The reason being that I wanted to forget about it and not to cause any hassles.

Fiona then drove back to her house. Stayed there for a couple of hours and then went back to the unit. Upon our arrival Rodney's car was still there and proceeded to enter the unit, had noticed that the mess was cleaned up and there was not sight of Rodney. Fiona stayed with me until the morning. My head and whole body was aching and in pain. I managed to get a couple of hours sleep. I got up and started packing the rest of my stuff to go to Adelaide for the funeral. After I finished packing my bag I then proceeded to pack up all Rodney's stuff and put it into his car. I gave his car keys to Fiona so that she could pass them onto him later on that day and that he could get his stuff.

After that we had to get some more money as to help with the fares to Adelaide. After finally getting the rest of the money Fiona then took me to the airport and I paid for the fare and said my good-byes and thanked Fiona for her help and support. I then boarded the plane that afternoon.

My ear was in pain during the flight down to Adelaide, but I kept thinking and worrying about what was to come.

Once I arrived in Adelaide we went to my sister in laws house and then to the hospital. Later that evening I told my mother of the events that happened in Darwin. She also told me to see Dr Le Cong first thing on Monday. Which I did".

15. This account was not the first Ms Turner had given. On 1 September 1999, Ms Turner took part in an electronically recorded interview. She seems then to have been living in Perth, and the interview was conducted by Western Australian police. The interview was transcribed (in, I think Darwin), and a copy of the transcript is annexed to Ms Spurr's affidavit of 13 February

2004. The transcript is some 53 pages long, and I will summarise rather than quote its contents.

Ms Turner had very recently received a message from her family that her Uncle was dying – had 24 hours or so to live. She was making rapid arrangements to go to his deathbed in Adelaide. Mr Huddleston offered to lend her some money for the fare and gave her a cheque. Ms Turner's attempt to cash the cheque miscarried for everyday reasons, and that started an argument between her and Mr Huddleston. As the evening went on he drank an amount of beer, and the couple went on arguing. Mr Huddleston expressed suspicions as to Ms Turner's fidelity to him, and as to the true motives behind her trip to Adelaide.

Their arguing became heated. At about that point Mr Huddleston asked for his car keys. Ms Turner refused to let him have them because, according to her, he was too drunk to drive. After some debate about this he hit her – a punch or a slap – on her left ear. This blow sat Ms Turner down, but she got up and started hitting Mr Huddleston back. Mr Huddleston went on pushing and hitting Ms Turner, and he grabbed her by the hair and banged her head on the concrete floor.

The fight began in the main bedroom. Ms Turner eventually broke free and went into the living room. There was further arguing there, and fighting in the kitchen, during the course of which Mr Huddleston choked Ms Turner and banged her head against the tap. Eventually Mr Huddleston desisted, went a few steps away, then turned back towards Ms Turner, she, believing that his face manifested an intention further to assault her, threw an empty wine bottle which was to hand, aiming to miss him narrowly. She did, the bottle hit the wall, and she left the unit, leaving Mr Huddleston at home cursing.

Ms Turner went to Adelaide. She saw a doctor Le Cong there. He sent her to a specialist.

16. In addition to the suspicions raised by her elusiveness, Ms Turner gave further reasons to doubt her complete truthfulness when she spoke to her then boyfriend Jeffrey Arnold Kropinyeri at about the time of the aborted court hearing in the latter half of 2000. In his Statutory Declaration of 28/06/04, annexed to Ms Howard's affidavit of 1 July 04, Mr Kropinyeri declared as follows;

“I was in a relationship with Tanya Turner. I met her at a 50th birthday party in early June 2000.

In late September early October 2000, Tanya spoke to me about having to go back to Darwin for a court case. I asked what it was for, she said that her and her boyfriend at the time had a fight and that she threw a stubbie bottle at him hitting him in the head and blinding him in one eye, he deserved it. I asked her what the fight was about she said that he was being unfaithful. So she waited to get home to sort him out.

Tanya was very concerned about the prospect of being locked up because she flew out of Darwin the next day back to Adelaide and went and seen a doctor here in Adelaide.

Before going back to Darwin for the court case she put our relationship on hold. As she felt it would be best because she might not be coming back after the court case. Tanya rang me in Adelaide and said I think they messed up I'm free, see you soon.

17. It is impossible to guess what, if any, distortions Ms Turner may have deliberately introduced into the story she told her latest boyfriend of her maiming an earlier one. It is likewise impossible to guess how her account, whatever it was, may have got muddled in Mr Kropinyeri's memory in the nearly four years that passed between his hearing it and his setting it down in writing. To my mind Mr Kropinyeri's Statutory Declaration suggests that something or somethings in Ms Turner's story (in her instructions to Ms Spurr and interview with WA police) were known by her to be untrue. I cannot know exactly which thing or things. A similar inference arises in my mind, in relation to the veracity of Mr Huddleston's account, from the abandonment of the prosecution of Ms Turner, and from Ms Hunters' letter. I have no way of telling from that letter exactly what the falsehood(s) was or were, but there must have been something.
18. A reason to believe at least part of Ms Turner's account is provided by the medical notes annex ures 1 and 2 to Ms Spurr's affidavit of 13 February 2004. Annexure 2 is a copy of notes the provenance of which is not

apparent on the face, but which are dated 21 September 1998 and must be from Dr Le Cong. They read (doing my best):

“Story per report. Left ear drum (drawing) blood shot. Tender larynx. Scratch mark? Fingers on neck (photo), 2 lumps on scalp related to bruising of tissues over parietal occipital area. Bruised right upper arm above right elbow, several bruises over right hip (3 illegible wounds) Dr Marzec RV.”

19. Annexure 1 is a report by the Dr Marzec to Dr Le Cong dated 22 September 2004, Dr Marzec wrote (inter alia)

“The lady was hit on the left ear 5 days ago and she developed a postero-central perforation of about 8% of the surface area of the drum”

20. Notwithstanding the arguments of Ms Howard, counsel for Mr Huddleston, I find it difficult to imagine this injury to be self inflicted, and I find it easy to believe that it and the other injuries listed by Dr Le Cong were incurred at the hands of Mr Huddleston.
21. Similarly I find it difficult to believe that Mr Huddleston’s eye was injured by a fragment of the flying glass after a thrown bottle shattered against a wall near him. His account of being stabbed in the face by Ms Turner with a broken bottle is far more credible.
22. On the balance of probabilities, on this dubious material, I find it more likely than not that Mr Huddleston assaulted Ms Turner before she began to fight him. I am unpersuaded by Ms Turner’s eloquence in her police interview as to being in fear of her life at any time that night, and find that, it is more likely than not that Ms Turner’s use of the bottle (which was likely to and did cause grievous harm) was not justified. On the balance of probabilities I am satisfied that Ms Turner did commit the offence of Unlawfully Causing Grievous Harm (Criminal Code s 181) to Mr Huddleston. If not guilty of that offence by reason of the operation of s 31 of the Code, she must have been guilty of aggravated assault (Code s

188(2)), the circumstances of aggravation being the weapon, and the occasioning of bodily harm.

23. In relation to the issue raised by s 12(f) of the Act, I am satisfied that it is more likely than not that Ms Turner stabbed Mr Huddleston in the course of a substantially uninterrupted passage of harsh words and violence from each to the other, and that the violence was started by Mr Huddleston. As he has chosen to assert (what I do not believe) that he offered no violence to Ms Turner, he has foreclosed providing any evidence which might excuse his acts on the basis of provocation. I am far from convinced that Ms Turner's accounts of the violence is complete and accurate, but it is the only account I have and it is credible enough as to how the violence began. On the balance of probabilities, Mr Huddleston was engaged upon a crime (Criminal Code s 188(2)) at the time he suffered his injury. Apropos of the meaning and intent of s 12(f) (which is in any event clear enough on its face, in my opinion) I note that in his second reading speech moving the bill that contained that amendment the Attorney General said (uncorrected proof from the NT Government Intranet of the Assembly's proceedings on 22/10/02):

“Section 12 is also being amended to provide that assistance will not be available to a person who is injured while committing a crime. For example, this will mean that claims for assistance will not be successful where both parties were involved in a pub brawl. In those cases, it has been known for a victim to claim assistance sustained from an assault by another person, even though the victim also assaulted the other person. This is not the aim of the scheme. The aim is to assist the innocent victims in our community. Because this is restricted only to crimes, it will not affect those victims who suffer injury from a serious offence while committing only a minor offence, for example, trespass”.

24. In my opinion the Northern Territory has discharged its burden of proof in this respect and the claim must be dismissed.

25. If I am wrong about this, there is the question of contribution, pursuant to s 10. This may be swiftly dealt with. Given how little I can be persuaded of even on the balance of probabilities as to the facts in the matter, I cannot see how the Respondent could persuade me to reduce any award by more than, say, 75%. In my opinion the appropriate amount in respect of pain, suffering and loss of amenities of life for so serious an injury as this would be in excess of \$100,000. It follows that, even without Mr Huddleston's proved loss of wages, if it were not for the operation of s 12(f), an assistance certificate should issue in the maximum amount of \$25,000.

Dated this 29th day of October 2004.

R J Wallace
STIPENDIARY MAGISTRATE