IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No B14 of 2016

BETWEEN: **MARK JAMES GRAHAM**
Appellant
and
THE QUEEN
Respondent

APPELLANT'S SUBMISSIONS

PART I

1. **CERTIFICATION**

1.1. This submission is in a form suitable for publication on the internet.

PART II

2. **ISSUES RAISED BY THE APPEAL**

2.1. Whether the prosecutor invited the jury to find that the appellant consented to the assault constituted by the production of the flick knife by Jacques Vetea Teamo ("Teamo").

2.2. Whether the trial judge's directions to the jury were such as to instruct the jury that they could find that the appellant consented to the assault constituted by the production of the flick knife by Teamo.

2.3. Whether there was any evidence upon which the jury could have concluded that the appellant consented to the assault constituted by the production of the flick knife by Teamo.

2.4. Whether the trial judge should have identified the relevant assault to which self-defence was made, namely the production of the flick knife by Teamo, and directed the jury that there was no evidence upon which the jury could find that the appellant consented to the assault, or alternatively given detailed directions to the jury on the issue of consent to the relevant assault.

2.5. Whether the trial judge should have left consideration of s 24 of the *Criminal Code* (Qld) to the jury.

PART III

3. **NOTICES UNDER S 78B OF THE *JUDICIARY ACT* 1903**

3.1. The appellant has considered whether notices should be given in compliance

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with s 78B of the *Judiciary Act* 1903, and considers that no notices need be given to any person.

PART IV

4. CITATION OF DECISION, THE SUBJECT OF THE APPEAL

4.1. *R v Graham* [2015] QCA 137.

PART V

5. RELEVANT FACTS

5.1. On 28 April 2012, both the appellant and Teamo entered the Robina Town Shopping Centre ("the shopping centre") on Queensland's Gold Coast. They were not in each other's company when they arrived at the shopping centre.

5.2. The two men did not plan to meet each other at the shopping centre. That they met seems to have been purely a matter of chance. At the time of entering the shopping centre, Teamo was armed with a flick knife and the appellant was in possession of a handgun and ammunition.

5.3. The pair saw each other while they were both in the Sony shop, located on the second floor of the shopping centre. They then postured aggressively at each other in what was described by one of the witnesses as *"eyeballing"*[1]. The appellant left the Sony shop and walked some distance away. Teamo then came out of the Sony shop and waved his arms aggressively in the direction in which the appellant had walked[2]. The appellant then returned to near where Teamo was standing outside the Game shop, which is adjacent to the Sony shop. At this point, Teamo produced the flick knife and the appellant then fired two shots at him with his handgun[3].

5.4. One of the bullets struck Teamo in the arm and he was not seriously injured. Either the second bullet, or fragments from the first, struck a female shopper[4] who suffered bullet fragments in her buttocks. After the handgun was discharged, the appellant left the shopping centre and Teamo was detained, initially by shopping centre security staff, and later by police.

5.5. The appellant was later arrested and charged, and faced trial on indictment on four counts, namely:

> *Count 1:* *attempted murder*[5] *of Teamo; alternatively*
> *Count 2:* *wounding*[6] *Teamo with intent to maim.*
> *Count 3:* *wounding*[7] *the shopper with intent to wound Teamo.*
> *Count 4:* *unlawful possession of the handgun*[8]*."*

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1 T1-29 line 40 (the evidence of Stephen Dominic Paul)
2 CCTV footage at 13.46.03
3 CCTV footage from 13.46.10
4 Kathy Devitt; her evidence commences at T2-4
5 *Code* s 306(a)
6 *Code* s 317(b) and (e)
7 *Code* s 317(b) and (e)
8 *Weapons Act* 1990 s 50(1)(c)(i)

5.6. Closed circuit television footage showed the movements of the two men in and out of the Sony shop, their movements outside the Sony shop and the Game shop, and the incident when the two shots were fired. There was no contest at the trial that the appellant discharged the firearm and no contest that bullets or bullet fragments struck Teamo and the female shopper. In the end, the issues for the jury were quite confined. They were:

5.6.1.1. Did the appellant have the specific intent to kill Teamo[9]?

5.6.1.2. Did the appellant have the specific intent to maim Teamo[10]?

5.6.1.3. Did the Crown negative the defence of self-defence[11]?

5.6.1.4. Did the Crown negative accident[12]?

5.7. The appellant was convicted of counts 1 and 3 by jury verdict[13]. He pleaded guilty to count 4[14]. The appellant appealed against his convictions on both counts 1 and 3. He also sought leave to appeal against sentence.

5.8. The complaint taken on appeal to the Supreme Court of Queensland, Court of Appeal ("Court of Appeal") against the convictions concerned the manner in which the trial judge directed, or failed to direct, the jury on the issue of self-defence in light of the way in which the prosecutor had addressed the jury.

5.9. The Court of Appeal dismissed the appeal against conviction and dismissed the application for leave to appeal sentence. The appellant applied, and was granted, special leave to appeal against the convictions relevant to counts 1 and 3.

PART VI

6. ARGUMENT

6.1. The trial judge left self-defence to the jury on each of the three bases identified in ss 271(1), 271(2) and 272 of the *Criminal Code* (Qld)[15]. Each provision provides a defence of self-defence, but different tests apply to determine the force justified[16]. Section 271 concerns self-defence against an unprovoked assault. Section 271(1) applies where the force used in self-defence is neither intended nor likely to cause death or grievous bodily harm[17]. Section 271(2) authorises the use of force which causes death or grievous bodily harm if the assault against which defence is made is *"such as to cause reasonable apprehension of death or grievous bodily harm."*

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9 Relevant to count 1

10 Relevant to counts 2 and 3

11 Relevant to counts 1, 2 and 3

12 Section 23 of the *Code*; this was relevant to count 3

13 Count 2 was an alternative to count 1

14 There was no appeal on count 4

15 After discussion with counsel; see T3-22 and following. Note; no suggestion by the Crown prosecutor that he was intending to put to the jury that the production of the flick knife was a *"consensual"* assault: see T3-26 lines 10-25

16 Explained in *R v Allwood* [1997] QCA 257 at 3-4

17 *"Grievous bodily harm"* is defined in s 1

Section 272 prescribes the circumstances in which self-defence may be made to a provoked assault.

6.2. Each of ss 271(1), 271(2) and 272 only provide a defence where defence has been made to an *"assault"*.

6.3. Section 245 of the *Code* defines (relevantly) *"assault"* as including:

> *"(1) A person ... who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose, is said to assault that other person, and the act is called an assault."* (our underlining)

6.4. The operation of ss 271(1), 271(2) or 272 with the definition of *"assault"*, as including a threatened (as opposed to actual) application of force renders lawful a pre-emptive strike by a person who may be assaulted. That is the common law position[18]. In practical terms, self-defence will always be made to a threatened application of force, not to force which has already been applied. Where there has been an actual application of force, defence is made against the threat of further applications of force.

6.5. Here, the real issues for the jury on self-defence were:

6.5.1. Did the production of the flick knife by Teamo constitute a *"threatened application of force"*? alternatively

6.5.2. Did the appellant honestly and reasonably believe that the production of the flick knife was a threatened application of force, even if in fact it was not[19]. In other words, did he honestly and reasonably believed that Teamo would stab or cut him.

6.5.3. Was the firing of the two shots justified force under one of the various tests defined in ss 271(1), 271(2) and 272?

6.6. The prosecutor put to the jury in his closing address that self-defence was not an issue because any threatened application of force by Teamo was made with the consent of the appellant. Consequently, there was no assault by Teamo to which the appellant could make defence.

6.7. The prosecutor said:

> *"Now, there's three central propositions that I want to put to you as to why you would accept, beyond reasonable doubt, that none of the self-defence provisions apply. The first is that both the defendant and Teamo really, at least, started behaving as badly as each other, that what was occurring was, at least until the gun was pulled out, a consensual fight or consensual confrontation – conflict. From the time the gun was pulled out the defendant became the aggressor. He was not acting in self-defence. He was the aggressor. And following from the proposition*

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18 *Beckford v R* [1988] AC 130 at 144; and see *Massey v R* [2013] ACTCA 5 at [97]

19 Code s 24

that it was a consensual fight or conflict is that the production by Teamo of the knife was simply either part of that consensual assault – part of that consensual fight or did not raise enough provocation to require actions in self-defence."[20] (our underlining)

6.8. Then, later he said:

"Don't lose sight of the fact that he also came into a shopping centre armed. I'm going to now try to persuade you or set out the reasons why you'd accept that he too became involved in what was a consensual – willingly became involved, I should say, in what was a very public confrontation and a consensual confrontation between the two of them."[21] (our underlining)

6.9. And then, later he said:

"You might think that at this point, while they are coming together, both are still apparently content to confront each other with whatever implied threats of force you find there was in that."[22] (our underlining)

6.10. The effect of the submissions was that there was consent by the appellant to a *"confrontation"* being a series of events leading up to the shooting. It was, however, necessary for the jury to consider the *"assault"* said to enliven self-defence under ss 271(1), 271(2) and 272[23]. That assault was obviously the threatened application of force constituted by the production of the flick knife[24]. It was then necessary for the jury to consider whether the appellant had consented to that *"assault"*. There was no evidence to suggest that the appellant consented to being threatened with a flick knife or being cut or stabbed. No conduct of that nature had occurred in the Sony shop. There was no evidence to suggest that the appellant even knew that Teamo had a flick knife until it was produced immediately before the shooting. Of course, if the cutting or stabbing had occurred and wounding[25] or grievous bodily harm resulted[26], there could be no consent to Teamo's application of force in any event[27].

6.11. The prosecutor then referred to the evidence of one of the witnesses that the two men had been *"in puffing mode"*[28] and he then said to the jury:

"This started as a consensual confrontation. That's not an unlawful assault. To be unlawful, there must be no consent. It started as a consensual confrontation. The production of the knife if it was not part

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20 T4-10 lines 35-35

21 T4-12:1-7

22 T4-14:15-20

23 *R v Raabe* [1985] 1 Qd R 115 at 121-122

24 T3-27 lines 10-25, T3-28 lines 1-11

25 Code s 317

26 Code s 320, s 1 definition of *"grievous bodily harm"*, ss 323, 246(2), 283, *Houghton v The Queen* (2004) 28 WAR 399, *R v Knutsen* [1963] Qd R 157

27 Code s 320

28 T4-21:31

of that consensual confrontation did not, in the circumstances, provide provocation for a man to lose his self-control."[29] (our underlining)

6.12. That passage is particularly confusing and unhelpful. It invited the jury to consider the *"consensual confrontation"* rather than the particular and relevant *"assault"*. The prosecutor then invited the jury to conclude that the production of the flick knife may have been part *"of that consensual confrontation"*, which of course is not the issue. Then, again unhelpfully, it was said that the production of the flick knife *"did not, in the circumstances, provide provocation for a man to lose his self-control"*, however, a loss of self-control is irrelevant to defences under ss 271(1), 271(2) and 272[30]. The question was not whether the appellant had lost *"his self-control"* during a *"confrontation"*, but whether he made self-defence to an *"assault"* being constituted by a particular act, namely the production of the flick knife.

6.13. Then later, the prosecutor said to the jury:

> *"As I say, the definition of assault is very important to understand: it doesn't only mean coming into contact; it can also mean – and I'm paraphrasing – a threatened application of force by one to another without the other's consent and in circumstances where the first person is in a position to carry out a threat. A threatened application of force; that was what was happening. They were both in puffing mode. But it must be without consent and they were both in it; they were both happy to be doing that"*[31] (our underlining)

6.14. Again, this was very unhelpful to the jury's deliberations. The reference to *"puffing mode"* drew attention away from the relevant *"assault"*. The passage tends to suggest that *"consent"* to the antecedent aggression (the so called *"puffing"*) constituted consent to the *"assault"* to which self-defence was made. When it is said *"they were both in it"*, that begs the question *"in what?"* They may have both consented to being aggressive to each other in the lead up to the production of the flick knife and the shooting, but that is not the point[32].

6.15. Finally, the prosecutor said:

> *"So if the production of the knife itself was not part of that consensual fight, in the circumstances of what had happened, it certainly was not enough for that man to be losing self-control when he knew, if not in his hand, sitting at the front of his waist is a loaded firearm. So issues of who pulled the weapon first and that sort of thing may well come into play, but in my submission to you, it was all consensual and it was all puffing. And any threatened application of force at that time was by consent. Once you're satisfied beyond that proposition beyond a reasonable doubt, any threatened*

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29 T4-21:32-35

30 Cf ss 268 and 269 which deal with the defence of provocation

31 T4-21:45-4-22:5

32 *R v Raabe* [1985] 1 Qd R 115 at 121-122

application – that any application of force was consensual, the assault is not unlawful and all forms of self-defence will be defeated . . . " [33] (our underlining).

6.16. That passage is a further manifestation of the error made earlier, which is to treat a whole series of events as a *"confrontation"* and invite the jury to conclude that because the appellant engaged in the earlier events, he thereby *"consented"* to the *"assault"* constituted by the production of the flick knife.

6.17. It was though, for the judge, to properly fashion directions identifying the real issues for the jury and direct them on the necessary legal principles[34].

6.18. The judge read s 271(1) of the *Criminal Code* (Qld) to the jury[35], directed the jury that any act of self-defence must be to an *"assault"* and then read s 245 to the jury[36]. The judge, however, did not identify the particular *"assault"* which was said to justify the appellant acting in self-defence. Importantly, the judge gave no direction to the jury as to the concept of *"consent"*.

6.19. When directing the jury on s 271(2), the judge returned to the concept of *"assault"* and invited the jury to *"consider the evidence on the video of Mr Teamo and what is said to be a knife in his hand"*[37]. Again though, there was no direction on the issue of *"consent"* and no direction on the significance of the previous *"confrontation"* between the appellant and Teamo.

6.20. When summarising the respective arguments put by counsel, his Honour referred to the prosecutor's submissions on a matter concerning ballistics and then said:

> *"Secondly, he will say to you – he submitted to you that this was not a case in which any of the three, I'll call them again, arms of self-defence apply because this was not in his view, a case in which there was anything other than a consensual confrontation between the two actors, not a case in which one provoked or one assaulted and the other provoked, any of those things that I was talking to you about at some length.*
>
> *Simply – and again he took you to evidence about this and showed you some film – in his submission, the evidence would lead you to conclude that you could forget about self-defence. Just look upon this as an occasion in which two men, for whatever reason and we don't need to know, became involved in a consensual confrontation which ended quite badly for one of them.*
>
> *He also submitted to you that you would look carefully at the video evidence and that you might conclude that the defendant had his gun out before he could see Mr Teamo's knife and was not therefore in fear and*

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33 T4-22:5-12

34 Section 620 of the *Code*; Tully v *R* (2006) 230 CLR 234 at [74]-[77] and particularly *R v Baker* [2014] QCA 5 at 9 and see *Fingleton v R* (2005) 227 CLR 166 at [77]-[80]

35 Summing up page 10 lines 12-20

36 Summing up page 10 lines 37-page 11 line 14

37 Summing up page 13 lines 10-16

not acting in self-defence. Those, as I said to you sometime ago, are submissions. They're arguments. They're not evidence. they're matters that you will take into account when you consider your verdict.

A consensual confrontation, Mr Byrne submitted to you, is not an unlawful assault so self-defence doesn't apply. It was also his argument so far as self-defence is concerned that if you're against him in that respect, you would find that Mr Graham used excessive force which was unnecessary and again he took you to the film. In his submission, if and when Mr Graham produced a gun, Mr Teamo, he suggested to you, was beginning to leave. He was backing away. It was unnecessary to shoot him. These again are not matters of evidence. they are matters of interpretation, construction and argument put to you by the Crown prosecutor."[38] (our underlining).

6.20.1. These statements exacerbated the problem caused by the prosecutor's address. In this passage, the judge emphasised the prosecutor's assertion that the series of events was a *"consensual confrontation between the two actors"*. His Honour inadvertently distracted the jury from the real issue in the case, namely whether the appellant had made proportionate self-defence to the *"assault"* constituted by the production of the flick knife [39].

6.20.2. The trial judge should have clearly identified the relevant *"assault"* as the production of the flick knife. His Honour should then have directed the jury on s 24 of the *Criminal Code* (Qld) to the effect that if the production of the flick knife was not a threatened application of force, but the appellant honestly and reasonably mistook it to be so, then the jury had to proceed on the basis that there was an *"assault"*[40]. His Honour should then have directed the jury that there would be no *"assault"* for the purpose of ss 271 and 272 only if the appellant consented to the particular assault. In other words, it was necessary that he consent to being threatened with the flick knife, but there was no evidence of such consent. The trial judge should have then directed the jury that there was no evidence upon which they could find that the appellant had consented to the relevant assault, which was the production of the flick knife. Alternatively, if there was evidence of consent to the relevant assault, his Honour should have identified the evidence and directed the jury accordingly.

6.21. The Court of Appeal held that it was correct to leave to the jury the question of whether the appellant consented to the *"threat"* posed by the brandishing of the flick knife[41] and thereby seemed to draw a distinction between

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38 Summing up page 20 lines 20-45

39 The Court of Appeal was wrong to hold that the trial judge's directions were correct and adequate; *R v Graham* [2015] QCA 137 at [37] and [38]

40 *Marwey v R* (1977) 138 CLR 630 at 637, *R v Lawrie* [1986] 2 Qd R 502 at 503 and 505 and *R v Allwood* [1997] QCA 257 at 3-4

41 *R v Graham* [2015] QCA 137 at [36]

consenting to the threat and consenting to the application of force had the threat been carried out[42].

6.22. An assault constituted by a *"threat"*, however, is only an assault where the person threatened has an apprehension or expectation that the threat will be carried out. This is made clear in s 245 of the *Criminal Code* (Qld) by the requirement that the person threating to assault *"has actually or apparently a present ability to carry out the threat"*[43]. Therefore, if the threat is to cut and stab, it necessarily follows that to consent to the *"threat"*, one is consenting to the prospect of being cut or stabbed. There is no evidence upon which the jury could have concluded beyond reasonable doubt that the appellant was consenting to being cut or stabbed by Teamo.

6.23. In answer to the appellant's complaints as to the issue of consent, the Court of Appeal said:

> *"The appellant's submissions simplify the submission actually made by the prosecutor at trial. The prosecutor's submission to the jury about whether or not there was an unlawful assault was based on two alternative findings of fact which were open to the jury. If the knife was drawn before the gun, was threatening each other with weapons part of the consensual confrontation?*[44] *If the gun was drawn first, was that provocation for Mr Teamo to pull out his knife? These were questions that the jury could consider in deciding whether or not there was an unlawful assault, and whether or not any such assault was provoked."*[45]

6.24. The Court of Appeal has misunderstood both the submissions of the prosecutor and the directions of the trial judge. Both the prosecutor and the trial judge left the possibility to the jury that the production of the flick knife by Teamo was part of the *"consensual fight"* or *"consensual confrontation"*, with the result that there was no *"assault"* by Teamo upon the appellant and therefore self-defence was not available.

6.25. If the jury accepted, as they were invited by the prosecutor to do, and as they were directed by the trial judge they could do, that the appellant consented to the threatened application of force with the flick knife, then the jury have wrongly excluded the defence without proper consideration of the real issues.

6.26. In dismissing the appellant's submissions on s 24 of the *Criminal Code* (Qld), the court said:

> *"There was no evidentiary basis for suggesting that if the production of the knife was not a threatened application of force, the appellant might nevertheless have honestly and reasonably believed it to be so."*[46]

6.27. If the production of the flick knife was a threatened application of force, namely a real and apparent threat to cut or stab the appellant, then he had not

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42 *R v Graham* [2015] QCA 137 at [34] and [37]

43 *Brady v Schatzel* [1911] St R Qd 206 at 207-208

44 *R v Raabe* (1984) 14 A Crim R 381 at 382, 384, 386 and 489

45 *R v Graham* [2015] QCA 137 at [36]

46 *R v Graham* [2015] QCA 137 at [39]

consented to that threat and was entitled to make self-defence. If the production of the flick knife was not a threatened application of force, in that it was just a brandishing of the flick knife with no threat to cut or stab the appellant, then the appellant could honestly and reasonably have been mistaken that a physical assault (cutting or stabbing) was to ensue (therefore a threat) and s 24 of the *Criminal Code* (Qld) arose. The act of aggression, being the *"confrontation"*, was relevant to the appellant's belief and the reasonableness of him holding that belief[47].

PART VII

10 7. **RELEVANT LEGISLATION**

7.1. See attached schedule.

7.2. The provisions are still in force, without amendment, except where identified in the schedule.

PART VIII

8. **ORDERS SOUGHT**

8.1. The appeal be allowed.

8.2. The conviction on counts 1 and 3 be set aside.

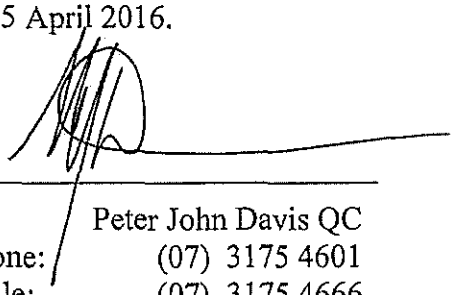
8.3. The appellant be retried on counts 1 and 3.

PART IX

20 9. **ORAL ARGUMENT**

9.1. It is estimated that the oral submissions on behalf of the appellant will occupy one hour.

Dated 15 April 2016.



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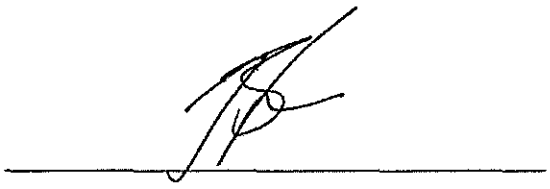

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47 *R v Hagarty* [2001] QCA 558 at [6], *R v Lawrie* [1986] 2 Qd R 502 at 503 and 505 and *R v Gray* (1998) 98 A Crim R 589 at 592-594 (more generally on the interaction between ss 271(1) and 271(2)) and see also the cases concerning s 24 being *Marwey v R* (1977) 138 CLR 630 at 637 and *R v Allwood* [1977] QCA 257 at 3-4 and see *Massey v R* [2013] ACTCA 5 at [97]

SCHEDULE TO THE APPELLANT'S SUBMISSIONS PART (VII)

Criminal Code Act 1899 (Qld)

Section 1 Criminal Code (Qld) definition of "grievous bodily harm"

grievous bodily harm *means -*

(a) the loss of a distinct part or an organ of the body; or

(b) serious disfigurement; or

(c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health;

whether or not treatment is or could have been available.

SECTION 23 AS AT THE TIME OF THE ALLEGED OFFENCES:

23 Intention - motive

(1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for -

(a) an act or omission that occurs independently of the exercise of the person's will; or

(b) an event that -

(i) the person does not intend or foresee as a possible consequence; and

(ii) an ordinary person would not reasonably foresee as a possible consequence.

(1A) However, under subsection (1)(b), the person is not excused from criminal responsibility for death or grievous bodily harm that results to a victim because of a defect, weakness, or abnormality.

(2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

SECTION 23 AS AT THE DATE OF THESE SUBMISSIONS:[1]

23 Intention - motive

(1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for -

(a) an act or omission that occurs independently of the exercise of the person's will; or

(b) an event that -

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1 Commenced on 29 August 2013

(i) the person does not intend or foresee as a possible consequence; and

(ii) an ordinary person would not reasonably foresee as a possible consequence.

Note -
Parliament, in amending subsection (1)(b) by the Criminal Code and Other Legislation Amendment Act 2011, did not intend to change the circumstances in which a person is criminally responsible.

(1A) However, under subsection (1)(b), the person is not excused from criminal responsibility for death or grievous bodily harm that results to a victim because of a defect, weakness, or abnormality.

(2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

24 Mistake of fact

(1) A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as the person believed to exist.

(2) The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

245 Definition of assault

(1) A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the other person's consent, or with the other person's consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose, is said to assault that other person, and the act is called an ***assault****.*

(2) In this section -

applies force *includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such a degree as to cause injury or personal discomfort.*

246 Assaults unlawful

(1) An assault is unlawful and constitutes an offence unless it is authorised or justified or excused by law.

(2) The application of force by one person to the person of another may be unlawful, although it is done with the consent of that other person.

268 Provocation

(1) *The term **provocation**, used with reference to an offence of which an assault is an element, means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under the person's immediate care, or to whom the person stands in a conjugal, parental, filial, or fraternal, relation, or in the relation of master or servant, to deprive the person of the power of self-control, and to induce the person to assault the person by whom the act or insult is done or offered.*

(2) *When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.*

(3) *A lawful act is not provocation to any person for an assault.*

(4) *An act which a person does in consequence of incitement given by another person in order to induce the person to do the act, and thereby to furnish an excuse for committing an assault, is not provocation to that other person for an assault.*

(5) *An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.*

269 Defence of provocation

(1) *A person is not criminally responsible for an assault committed upon a person who gives the person provocation for the assault, if the person is in fact deprived by the provocation of the power of self-control, and acts upon it on the sudden and before there is time for the person's passion to cool, and if the force used is not disproportionate to the provocation and is not intended, and is not such as is likely, to cause death or grievous bodily harm.*

(2) *Whether any particular act or insult is such as to be likely to deprive an ordinary person of the power of self-control and to induce the ordinary person to assault the person by whom the act or insult is done or offered, and whether, in any particular case, the person provoked was actually deprived by the provocation of the power of self-control, and whether any force used is or is not disproportionate to the provocation, are questions of fact.*

271 Self-defence against unprovoked assault

(1) *When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for the person to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.*

(2) *If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that the person can not otherwise preserve the person defended from death or grievous bodily harm, it is lawful for the person to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.*

272 Self-defence against provoked assault

(1) When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults the person with such violence as to cause reasonable apprehension of death or grievous bodily harm, and to induce the person to believe, on reasonable grounds, that it is necessary for the person's preservation from death or grievous bodily harm to use force in self-defence, the person is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous bodily harm.

(2) This protection does not extend to a case in which the person using force which causes death or grievous bodily harm first begun the assault with intent to kill or to do grievous bodily harm to some person; nor to a case in which the person using force which causes death or grievous bodily harm endeavoured to kill or to do grievous bodily harm to some person before the necessity of so preserving himself or herself arose; nor, in either case, unless, before such necessity arose, the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable.

283 Excessive force

In any case in which the use of force by one person to another is lawful the use of more force than is justified by law under the circumstances is unlawful.

306 Attempt to murder

Any person who -

(a) attempts unlawfully to kill another; or

(b) with intent unlawfully to kill another does any act, or omits to do any act which it is the person's duty to do, such act or omission being of such a nature as to be likely to endanger human life;

is guilty of a crime, and is liable to imprisonment for life.

317 Acts intended to cause grievous bodily harm and other malicious acts

Any person who, with intent -

(a) to maim, disfigure or disable, any person; or

(b) to do some grievous bodily harm or transmit a serious disease to any person; or

(c) to resist or prevent the lawful arrest or detention of any person; or

(d) to resist or prevent a public officer from acting in accordance with lawful authority -

either -

(e) in any way unlawfully wounds, does grievous bodily harm, or transmits a serious disease to, any person; or

(f) unlawfully strikes, or attempts in any way to strike, any person with any kind of projectile or anything else capable of achieving the intention; or

(g) unlawfully causes any explosive substance to explode; or

(h) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or

(i) causes any such substance or thing to be taken or received by any person; or

(j) puts any corrosive fluid or any destructive or explosive substance in any place; or

(k) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person;

is guilty of a crime, and is liable to imprisonment for life.

SECTION 320 AS AT THE TIME OF THE ALLEGED OFFENCES:

320 Grievous bodily harm

(1) Any person who unlawfully does grievous bodily harm to another is guilty of a crime, and is liable to imprisonment for 14 years.

(2) If the offender is a participant in a criminal organisation and unlawfully does grievous bodily harm to a police officer while acting in the execution of the officer's duty, the offender must be imprisoned for 1 year with the imprisonment served wholly in a corrective services facility.

(3) It is a defence to the circumstance of aggravation mentioned in subsection (2) to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(4) In this section -

***participant**, in a criminal organisation, see section 60A.*

SECTION 320 AFTER AMENDMENT IN 2013:[2]

320 Grievous bodily harm

(1) Any person who unlawfully does grievous bodily harm to another is guilty of a crime, and is liable to imprisonment for 14 years.

(2) If the offender is a participant in a criminal organisation and unlawfully does grievous bodily harm to a police officer while acting in the execution of the officer's duty, the offender must be imprisoned for a minimum of 1 year with the imprisonment served wholly in a corrective services facility.

(3) It is a defence to the circumstance of aggravation mentioned in subsection (2) to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.

(4) In this section -

***participant**, in a criminal organisation, see section 60A.*

SECTION 320 AS AT THE TIME OF THESE SUBMISSIONS:[3]

320 Grievous bodily harm

(1) Any person who unlawfully does grievous bodily harm to another is guilty of a crime, and is liable to imprisonment for 14 years.

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2 Commenced on 7 November 2013

3 Commenced on 1 December 2014

(2) *If the offender is a participant in a criminal organisation and unlawfully does grievous bodily harm to a police officer while acting in the execution of the officer's duty, the offender must be imprisoned for a minimum of 1 year with the imprisonment served wholly in a corrective services facility.*

(3) *It is a defence to the circumstance of aggravation mentioned in subsection (2) to prove that the criminal organisation is not an organisation that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, criminal activity.*

(3A) *The Penalties and Sentences Act 1992, section 108B also states a circumstance of aggravation for an offence against this section.*

(4) *In this section -*

***participant**, in a criminal organisation, see section 60A.*

SECTION 323 AS AT THE TIME OF THE ALLEGED OFFENCES:

323 Wounding

(1) *A person who unlawfully wounds anyone else commits a misdemeanour.*

Maximum penalty -7 years imprisonment.

(2) *The offender may be arrested without warrant.*

SECTION 323 AS AT THE TIME OF THESE SUBMISSIONS:[4]

323 Wounding

(1) *A person who unlawfully wounds anyone else commits a misdemeanour.*

Maximum penalty - 7 years imprisonment.

(2) *The offender may be arrested without warrant.*

(3) *The Penalties and Sentences Act 1992, section 108B states a circumstance of aggravation for an offence against this section.*

620 Summing up

(1) *After the evidence is concluded and the counsel or the accused person or persons, as the case may be, have addressed the jury, it is the duty of the court to instruct the jury as to the law applicable to the case, with such observations upon the evidence as the court thinks fit to make.*

(2) *After the court has instructed the jury they are to consider their verdict.*

***Weapons Act* 1990 (Qld)**

SECTION 50 AT THE TIME OF THE ALLEGED OFFENCES:

50 Possession of weapons

(1) *A person must not unlawfully possess a weapon.*

Maximum penalty -

(a) *if the person unlawfully possesses 10 or more weapons at least 5 of which are category D, E, H or R weapons -13 years imprisonment; or*

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4 Commenced on 1 December 2014

(b) *if paragraph (a) does not apply and the person unlawfully possesses 10 or more weapons - 500 penalty units or 10 years imprisonment; or*

(c) *if paragraphs (a) and (b) do not apply -*

(i) *for a category D, H or R weapon - 300 penalty units or 7 years imprisonment; or*

(ii) *for a category C or E weapon - 200 penalty units or 4 years imprisonment; or*

(iii) *for a category A, B or M weapon -100 penalty units or 2 years imprisonment.*

10 (2) *A court, in sentencing a person found guilty of an offence against subsection (1), may take into consideration whether the person stored the weapon in the way prescribed under a regulation for the weapon.*

SECTION 50 AS AT THE TIME OF THESE SUBMISSIONS:[5]

50 Possession of weapons

(1) A person must not unlawfully possess a weapon.

Maximum penalty -

(a) *if the person unlawfully possesses 10 or more weapons at least 5 of which are category D, E, H or R weapons - 13 years imprisonment; or*

20 (b) *if paragraph (a) does not apply and the person unlawfully possesses 10 or more weapons -500 penalty units or 10 years imprisonment; or*

(c) *if paragraphs (a) and (b) do not apply -*

(i) *for a category D, H or R weapon -300 penalty units or 7 years imprisonment; or*

(ii) *for a category C or E weapon -200 penalty units or 4 years imprisonment; or*

(iii) *for a category A, B or M weapon -100 penalty units or 2 years imprisonment.*

Minimum penalty -

30 (d) *for an offence, committed by an adult, to which paragraph (a), (b), (c)(i) or (c)(ii) applies -*

(i) *if the person unlawfully possesses a firearm and uses the firearm to commit an indictable offence -18 months imprisonment served wholly in a corrective services facility; or*

(ii) *if the person unlawfully possesses a firearm for the purpose of committing or facilitating the commission of an indictable offence -1 year's imprisonment served wholly in a corrective services facility; or*

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5 Commenced on (to the extent it ins defs *corrective services facility* and *short firearm*) commenced 1 February 2013. Remaining provisions commenced on 11 December 2012

(iii) if the person unlawfully possesses a short firearm in a public place without a reasonable excuse -1 year's imprisonment served wholly in a corrective services facility; or

(e) for an offence, committed by an adult, to which paragraph (c)(iii) applies -

(i) if the person unlawfully possesses a firearm and uses the firearm to commit an indictable offence - 9 months imprisonment served wholly in a corrective services facility; or

(ii) if the person unlawfully possesses a firearm for the purpose of committing or facilitating the commission of an indictable offence - 6 months imprisonment served wholly in a corrective services facility.

(1A) For the purpose of subsection (1), penalty, paragraph (d)(iii), but without limiting that provision, it is a reasonable excuse to unlawfully possess the short firearm in the public place if -

(a) a licence was in force within the 12 months immediately before the day the person committed the offence but is no longer in force at the time of the offence; and

(b) the person would have been authorised under this Act to possess the short firearm in the public place at the time of the offence if the licence was still in force at that time; and

(c) it was not a reason for the licence being no longer in force that the licence had been surrendered, suspended or revoked under this Act.

(1B) It is not a reasonable excuse for subsection (1), penalty, paragraph (d)(iii) to unlawfully possess the short firearm in the public place for the purpose of self-defence.

(2) A court, in sentencing a person found guilty of an offence against subsection (1), may take into consideration whether the person stored the weapon in the way prescribed under a regulation for the weapon.

(3) In this section -

***public place** includes any vehicle that is in or on a public place.*