Hillcoat v Northern Territory of Australia and Concepcion [2001] NTSC 114

PARTIES:	GORDON HILLCOAT v NORTHERN TERRITORY OF AUSTRALIA AND EDUARDO CONCEPCION (DECEASED)
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	146 of 2001 (20112987)
DELIVERED:	18 December 2001
HEARING DATES:	14 December 2001
JUDGMENT OF:	RILEY J

REPRESENTATION:

Counsel:

Applicant:	Mr E A Aughterson
Respondent:	Mr S R Southwood QC

Solicitors:

Applicant:	Morgan Buckley
Respondent:	Priestleys

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

Hillcoat v Northern Territory of Australia and Concepcion [2001] NTSC 114
No. 146 of 2001 (20112987)

IN THE MATTER of Section 5 of the *Crimes (Victims Assistance) Act*

AND IN THE MATTER of a reference of certain questions of law for the opinion of the Court

BETWEEN:

GORDON HILLCOAT
Applicant

AND:

NORTHERN TERRITORY OF AUSTRALIA
First Respondent

AND:

EDUARDO CONCEPCION (DECEASED)
Second Respondent

CORAM: RILEY J

REASONS FOR JUDGMENT

(Delivered 18 December 2001)

[1] In this matter a question of law as to the construction of s 5(1) of the *Crimes (Victims Assistance) Act* has been reserved for the consideration of this Court. Section 19 of that Act permits the Local Court to "reserve for the

decision of the Supreme Court a question of law arising out of an application under section 5".

[2] The question of law was reserved by Mr R.J.Wallace SM and it is in the following terms:

> 2) On 13 August 2001 I heard an Application by Gordon Hillcoat ("the Applicant") for an assistance certificate brought pursuant to section 5 of the Act. I am satisfied of facts as follows:
>
> a) That on 29 October 1999 Eduardo Concepcion ("the Offender") assaulted the Applicant and others by menacing him and them with an axe and advancing on him and them and by uttering threatening words.
>
> b) That the Offender thereby committed an offence of Aggravated Assault contrary to s 188 of the *Criminal Code* ("the Offence").
>
> c) That, acting in self defence, the Applicant, who is a police officer, and another officer, McDonald, fired shots at the Offender and killed him.
>
> d) That the events of 29 October 1999 have given rise to an injury, being a "mental injury" to the Applicant as that term is used within the definition of "injury" in section 4 of the Act.
>
> e) That the mental injury suffered by the Applicant was a reaction to his having killed the Offender, and not a reaction to his having been threatened by the Offender.
>
> 3) The question of law reserved is whether, in these circumstances, on a true construction of section 5(1) of the Act, the Applicant's injury was suffered by him "as a result of" the Offence?

[3] Section 5(1) of the *Crimes (Victims Assistance) Act* provides as follows:

> "A victim … may, within 12 months after the date of the offence, apply to a Court for an assistance certificate in respect of the injury suffered by him as a result of that offence."

[4] Section 4 of the Act includes the following definitions:

> "offence" means an offence, whether indictable or not, committed by one or more persons which results in injury to another person,
>
> "injury" means bodily harm, mental injury, pregnancy, mental shock or nervous shock, and
>
> "victim" means a person who is injured or dies as a result of the commission of an offence by another person.

[5] As was observed by the Court of Appeal in *Woodruffe v The Northern Territory of Australia* (2000) 10 NTLR 52 the Act creates a statutory scheme to provide assistance to "certain persons injured or who suffer grief as a result of criminal acts". The purpose underlying the Act is to provide compensation to victims of crime. The Act permits a person who is injured as a result of the commission of an offence by another person to obtain an assistance certificate and that certificate, in turn, requires the Northern Territory to pay to the recipient a sum of money by way of assistance for the injuries suffered by the victim. The Act is remedial and therefore should be construed beneficially. The Act should be given "a construction so as to give the most complete remedy which is consistent with the actual language employed and to which its words are fairly open": *Woodruffe v The Northern Territory of Australia* (supra at 62).

[6] The findings of his Worship clearly distinguish between the consequences for the health of the applicant arising out of the threatening conduct of the second respondent and the consequences arising out of the response to that assault by the applicant being that he and another officer fired shots at the

second respondent that killed him. The mental injury suffered by the applicant arose solely out of the reaction to the death and not out of the actual assault by the second respondent upon the applicant. The issue for determination is whether, notwithstanding that the relevant mental injury flowed from the applicant having caused the death of another in self defence, the injury is a result of the offence of assault.

[7] In *Fagan v The Crimes Compensation Tribunal* (1982) 150 CLR 666 the High Court considered a similar provision in the Victorian *Criminal Injuries Compensation Act*. That Act provided that an injury gave rise to an entitlement to compensation if it occurred "by or as a result of the criminal act" of another person. There Mason and Wilson JJ (who adopted as their own a judgment prepared by Aickin J) observed (at 673):

> "There is no basis in the context of the Act itself for regarding the words as having a narrow operation. The words are ordinary English words carrying no special or technical meaning. All that is required is a causal relationship; both the word "by" and the phrase "as a result of" indicate a causal connexion. Whether that relationship exists or not is primarily a question of fact. The fact that other unconnected events may also have had some relationship to the occurrence is not material if the criminal act was a cause, even if not the sole cause. The only requirement is that the injury is caused "by or as a result of" a criminal act."

[8] In *Fagan v The Crimes Compensation Tribunal* (supra at 673) their Honours observed that what had to be considered was the meaning of the words contained in the statute "without supposing that they are intending to copy or reproduce common law rules". It is a mistake to suppose the Act is "concerned only with the kind of injuries recognised by the common law as

entitling the plaintiff to damages if they are caused by the negligence of a defendant". The Act does not require a consideration of proximity or foreseeability but only causation.

[9] In the present case the statutory requirement is expressed slightly differently from that in Victoria. The injury must be suffered "as a result of" the offence. However the approach to the interpretation of these words will be the same. I agree with the remarks of Mildren J in *Chabrel v Northern Territory of Australia and Mills* (1999) 9 NTLR 1 where he said that the abovementioned observations of Mason and Wilson JJ in *Fagan v The Crimes Compensation Tribunal* are equally applicable to the Northern Territory Act. It follows that it will be sufficient if the applicant in this case can establish that the mental injury suffered by him was causally related to the offence. That is primarily a question of fact.

[10] In *March v E & MH Stramare Pty Ltd* (1991) 171 CLR 506 the High Court dealt with the difficult concept of causation in relation to negligence. The Court held (as is seen from the headnote) that causation is essentially a question of fact to be answered by reference to commonsense and experience and is one into which considerations of policy and value judgments necessarily enter. Deane J (at 524) stated that the answer to the question whether conduct is a "cause" of injury remains to be determined by a value judgment involving ordinary notions of language and commonsense. He said (at 522):

> "For the purposes of the law of negligence, the question of causation arises in the context of the attribution of fault or responsibility whether an identified negligent act or omission of the defendant was so connected with the plaintiff's loss or injury that, as a matter of ordinary common sense and experience, it should be regarded as a cause of it".

[11] In that case Mason CJ (with whom Toohey and Gaudron JJ agreed) noted (at 517) that the presence of a deliberate or voluntary intervening action does not necessarily mean that the plaintiff's injuries are not a consequence of the defendant's negligent conduct. His Honour went on to say (518):

> "As a matter of both logic and common sense, it makes no sense to regard the negligence of the plaintiff or a third party as a superseding cause or novus actus interveniens when the defendant's wrongful conduct has generated the very risk of injury resulting from the negligence of the plaintiff or a third party and that injury occurs in the ordinary course of things. In such a situation, the defendant's negligence satisfies the "but for" test and is properly to be regarded as a cause of the consequence because there is no reason in common sense, logic or policy for refusing to so regard it."

[12] Although, in the present matter, we are not dealing with actions in negligence but rather with a statutory scheme providing compensation for the victims of crime, the same approach will apply. In my view it is necessary to determine as a matter of logic, commonsense and experience whether the mental injury suffered by the applicant was suffered as a result of the offence.

[13] A reasonable act performed for the purpose of self-preservation being an act caused by the act of the offender does not operate as a novus actus interveniens: *Pagett* (1983) 76 Cr. App. Rep. 279. In *Royall v The Queen*

(1991) 172 CLR 378 Mason CJ discussed causation in relation to the *Crimes Act (NSW)*. He said (at 388):

> "Generally speaking, an act done by a person in the interests of self-preservation, in the face of violence or threats of violence on the part of another, which results in the death of the first person, does not negative causal connexion between the violence or threats of violence and the death. The intervening act of the deceased does not break the chain of causation."

[14] In this case it would be artificial to separate the assault from the necessary, legitimate and lawful response to the assault. The assault and the response were part of the one episode and the act of self defence arose out of the offence by way of direct response. Although proximity is not a prerequisite to an injury being determined to be the "result of" an offence, there was in this case, a direct and proximate causal link between the offence and the injury suffered by the applicant. The applicant would not have discharged his firearm but for the criminal act of the second respondent. It was the assault that led to the death of the second respondent by virtue of the applicant defending himself from that assault. The injury suffered by the applicant was caused by the assault.

[15] In my opinion the question of law reserved for this Court should be answered yes. In the circumstances as found by his Worship the injury to the applicant was suffered "as a result of" the offence.

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