

CITATION: *The King v Ross* [2026] NTSC 5

PARTIES: THE KING

v

ROSS, Cyrus

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 22429574

HEARING DATE: 16 January 2026

RULING GIVEN: 16 January 2026

REASONS DELIVERED: 22 January 2026

JUDGMENT OF: Kelly J

Evidence (National Uniform Legislation) Act 2011 (NT), s 55, s 97, s 97(1),
s 98, s 101, s 101(2), s 135, s 137

Ebborn v The King [2025] NTCCA 2; *Hughes v The Queen* [2017] HCA 20;
R v Lockyer (1996) 89 A Crim R 457; *Taylor v The Queen* [2022] NSWCCA
355; *The Queen v Beasley* [2022] NTSC 16, referred to

REPRESENTATION:

Counsel:

Crown: M Raheem

Accused: J Rabl

Solicitors:

Crown: Office of the Director of Public
Prosecutions

Accused: North Australian Aboriginal Justice
Agency

Judgment category classification: C

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

The King v Ross [2026] NTSC 5

No. 22429574

BETWEEN:

THE KING

AND:

CYRUS ROSS

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 22 January 2026)

- [1] The accused is charged with six offences alleged to have been committed on 11 and 12 October 2024:
- (a) one charge of aggravated assault against NP (“the complainant”) on 11 October 2024 (Count 1);
 - (b) one charge of contravening a domestic violence order on 11 October 2024 (Count 2);
 - (c) one charge of aggravated assault against the complainant on 12 October 2024 (Count 3);

- (a) one charge of contravening a domestic violence order on 12 October 2024 (Count 4);
- (b) one charge of aggravated unlawful entry of a dwelling house at night armed with a hammer with intent to commit an assault on 12 October 2024 (Count 5); and
- (c) one charge of intentionally causing damage to property (a door) belonging to WP (Count 6).

[2] The Crown allegations are as follows.

- (a) The accused and the complainant are, or have been, in a domestic relationship. There was a domestic violence order in place naming the accused as the defendant and the complainant as the protected person.
- (b) On 11 October 2024 the accused became intoxicated. At about 10.00 pm he drove to the home of the complainant's parents, WP and JF at [address redacted], Indarpa Camp, Alice Springs ("the house"). The complainant was outside the house. The accused approached the complainant, shouting at her, accusing her of cheating on him. The accused raised his left arm and used the back of his hand to slap the complainant on the face. (Counts 1 and 2)
- (c) On 12 October 2024 at about 12.50 pm, the accused returned to the house. The complainant was outside the house with other family members, holding her one year old daughter. The accused approached

the complainant and tried to pull the child away from her. The complainant gave her daughter to another family member who took her inside the house. The accused grabbed the complainant by the hair and began pulling her towards his car. He dragged her about two metres before she managed to break free. (Counts 3 and 4)

(d) After the conduct described in (c), the complainant hit the accused in the face with the palm of her hand and then ran inside the house and locked herself in her father's bedroom or the bathroom. The accused tried to chase her into the house and her father told him not to enter as it was his house. The accused armed himself with a hammer and entered the house. He tried to break down the door by kicking it. Then he hit the door handle with the hammer a number of times causing it to break off. (Counts 5 and 6)

[3] The accused has indicated an intention to plead guilty to counts 1 to 4 and not guilty to counts 5 and 6.

[4] By a Tendency Notice dated 9 January 2026 ("the Notice") the Crown has given notice pursuant to s 97(1) of the *Evidence (National Uniform Legislation) Act 2011* (NT) ("ENULA") that it intends to adduce tendency evidence at the trial of the accused. The Notice states that the proposed tendency evidence relates to the following facts in issue:

- (a) whether the accused, on 12 October 2024, entered or remained in [address redacted] with the intention of unlawfully assaulting the complainant armed with a hammer, as particularised in Count 5;
- (b) whether the accused, on 12 October 2024, caused damage to a door belonging to WP, as particularised in Count 6;
- (c) whether on or about 5 April 2022, the accused unlawfully assaulted the complainant; and
- (d) to negate any defence proposition that the conduct was excused or justified in the circumstances.

[5] The tendencies sought to be proved by adducing the tendency evidence is the tendency of the accused to:

- (a) have a particular state of mind, namely:
 - (i) a violent disposition towards women with whom he is in a domestic relationship and a preparedness to act on it; and
 - (ii) a determination to pursue a domestic partner trying to escape an episode of violence once it has commenced for the purpose of further assaulting a domestic partner.
- (b) act in a particular way, namely:

- (i) to attempt to control the movement of a domestic partner against whom an assault by the accused has commenced, including by dragging;
- (ii) to pursue and continue to assault a domestic partner trying to escape an episode of violence once it has commenced for the purpose of further assaulting a domestic partner; and
- (iii) to arm himself with an improvised weapon to inflict harm upon the complainant after an unarmed application of force.

[6] In summary, the evidence which the Crown proposes to adduce as tendency evidence is evidence of the conduct the subject of the present charges, and evidence of five prior convictions for aggravated assaults two committed against a former domestic partner DG, one committed against a former domestic partner KA and two committed against the complainant.

Summaries of these incidents are set out in a table attached to the Notice.

[7] In one of the prior incidents (incident number 3), the accused started dragging the victim (KA) towards Bagot Road. In one of the prior incidents (incident number 5) the victim (the present complainant) ran away from the accused after he had punched her and he chased her and further assaulted her using an improvised weapon – a metal pole.

[8] The Crown also intends to adduce evidence of the two prior convictions for assaults against the complainant as relationship evidence.

[9] The accused does not oppose leading the evidence of the 2022 convictions (incidents 4 and 5) as relationship evidence but opposes the application to lead tendency evidence.

Tendency evidence

[10] ENULA s 97(1) provides:

The tendency rule

- (1) Evidence of the character, reputation or conduct of a person, or a tendency that a person has or had, is not admissible to prove that a person has or had a tendency (whether because of the person's character or otherwise) to act in a particular way, or to have a particular state of mind unless:
 - (a) the party seeking to adduce the evidence gave reasonable notice in writing to each other party of the party's intention to adduce the evidence; and
 - (b) the court thinks that the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, have significant probative value.

[11] ENULA s 101 provides (relevantly):

Further restrictions on tendency evidence and coincidence evidence adduced by prosecution

- (1) This section only applies in a criminal proceeding and so applies in addition to sections 97 and 98.
- (2) Tendency evidence about a defendant, or coincidence evidence about a defendant, that is adduced by the prosecution cannot be used against the defendant unless the probative value of the evidence outweighs the danger of unfair prejudice to the defendant.

Principles

[12] Under ENULA s 97 evidence of the conduct of a person is not admissible to prove that a person has or had a tendency to act in a particular way, or to

have a particular state of mind unless the appropriate notice has been given and the court thinks that the evidence will (either by itself or having regard to other evidence to be adduced), have significant probative value.

[13] There is no issue about the adequacy of the Notice. The accused opposes the reception of the proposed tendency evidence on the grounds that it lacks significant probative value and that its probative value does not outweigh the danger of unfair prejudice to the accused.

[14] The potential probative value of tendency evidence was explained by the High Court in *Hughes v The Queen*:¹

The probative value of evidence is the extent to which the evidence could rationally affect the assessment of the probability of the existence of a fact in issue. Tendency evidence will have significant probative value if it could rationally affect the assessment of the probability of the existence of a fact in issue to a significant extent. The trier of fact reasons from satisfaction that a person has a tendency to have a particular state of mind, or to act in a particular way, to the likelihood that the person had the particular state of mind, or acted in the particular way, on the occasion in issue. ... The starting point in either case requires identifying the tendency and the fact or facts in issue which it is adduced to prove. The facts in issue in a criminal proceeding are those which establish the elements of the offence. [citations omitted]

[15] Assessing the probative value of proposed tendency evidence is therefore a two stage process. As the plurality said in *Hughes*:²

The assessment of whether evidence has significant probative value in relation to each count involves consideration of two interrelated but separate matters. The first matter is the extent to which the evidence

¹ [2017] HCA 20 (“*Hughes*”) at [16] per Kiefel CJ, Bell, Keane and Edelman JJ

² *Hughes* at [41]

supports the tendency. The second matter is the extent to which the tendency makes more likely the facts making up the charged offence. Where the question is not one of the identity of a known offender but is instead a question concerning whether the offence was committed, it is important to consider both matters. By seeing that there are two matters involved it is easier to appreciate the dangers in focusing on single labels such as “underlying unity”, “pattern of conduct” or “modus operandi”. In summary, there is likely to be a high degree of probative value where (i) the evidence, by itself or together with other evidence, strongly supports proof of a tendency, and (ii) the tendency strongly supports the proof of a fact that makes up the offence charged.

[16] The first question is the extent to which the evidence sought to be adduced tends to establish that the accused had the tendency to act in the ways asserted in the Notice. The assessment of the probative value of the evidence is to be determined by a trial judge on the assumption that the jury will accept the evidence. This does not involve any assessment of the credibility or reliability of the evidence except in an extreme case in which the evidence is so inherently incredible, fanciful or preposterous that it could not be accepted by a rational jury and so does not meet the criterion of relevance. Nor is it permissible to have regard to the possibility that the evidence may be the result of collusion, concoction or contamination.

Consideration

[17] In my view, the evidence set out in the Notice is capable of supporting proof of a tendency in the accused to have:

- (a) a violent disposition towards women with whom he is in a domestic relationship and a preparedness to act on it;

- (b) a determination to pursue a domestic partner trying to escape an episode of violence once it has commenced for the purpose of further assaulting a domestic partner; and
- (c) to arm himself with an improvised weapon to inflict harm upon the complainant after an unarmed application of force.

[18] The accused submits that the incidents in the table on the Notice do not in fact strongly support the alleged tendencies. Only incident 5 involved chasing and the use of an improvised weapon. The Crown contends that all of the incidents, including those in which the victim was a former domestic partner, demonstrated a degree of persistence in the assaults which go to proving the existence of the alleged tendencies. The accused takes issue with that categorisation of the assaults contending that the only really relevant one in establishing the alleged tendencies is incident 5.

[19] It is true that the only example of a prior conviction for aggravated assault in which the accused demonstrated a tendency to pursue a domestic violence victim trying to escape is incident 5 in which the accused assaulted the complainant with his fists; she ran away; he chased her and then he assaulted her again using a metal bar. In my view that is sufficient, particularly in light of the evidence of the other incidents demonstrating the tendency in the accused to have a violent disposition towards women with whom he is in a domestic relationship.

[20] The question is whether proof of those tendencies strongly supports the proof of a fact that makes up the charged offences. In considering this question, the Court must focus on the facts actually in issue in the proceeding.³ In this case the accused will plead guilty to the assaults. The only charges in issue are the aggravated burglary and property damage.

[21] Accordingly, the facts in issue will be whether the accused chased the complainant into the house having been denied entry by the complainant's father; whether he did so with the intention of assaulting the complainant and whether he damaged the door trying to accomplish that purpose. The tendency evidence is not relevant to prove the assaults to which the accused will plead guilty. I am of the view it would be open to the jury to find that proof of the tendencies set out in [17] would make it more likely that the accused had those states of mind, and acted on them on the occasion in issue in relation to counts 5 and 6 and to add that in the balance when considering whether they are satisfied beyond reasonable doubt of his guilt on counts 5 and 6.

[22] In particular, proof of a tendency in the accused to have a violent disposition at least towards the complainant, and a preparedness to act on it and a tendency to chase her with an improvised weapon after initially assaulting her, is likely to be of significant assistance to the jury in determining whether they are satisfied beyond reasonable doubt that the

3 *Ebborn v The King* [2025] NTCCA 2 at [87]

accused entered the house with the intention of assaulting the complainant, rather than with some other intention. Evidence of the same tendencies towards previous domestic partners, while undoubtedly relevant, is likely to be of less assistance in answering that question and hence to have a lesser probative value.

[23] I am satisfied that the tendency evidence has significant probative value having regard to other evidence to be adduced by the Crown and, accordingly, that the threshold test in s 97 has been met.

[24] The next step is to consider whether the evidence satisfies the requirements of ENULA s 101. In a criminal trial such as this, tendency evidence is not admissible unless the probative value of the evidence outweighs the danger of unfair prejudice to the defendant. This involves a balancing exercise assessing and weighing the probative value of the evidence against any potential prejudicial effect it may have on the accused.

[25] When undertaking this balancing exercise, the dominant consideration is to ensure that the accused is not deprived by prejudice of a fair trial. The notion of prejudice in this general context means the danger of improper use of the evidence. It does not mean its legitimate tendency to inculcate. Something more is required, such as the possibility that the evidence may be misused by the jury in some unfair way.

[26] The plurality in *Hughes* explained the kinds of potential prejudice that can arise in a criminal trial such as this:

In criminal proceedings in which the prosecution seeks to adduce tendency evidence about the accused, s 101(2) of the *Evidence Act* imposes a further restriction on admissibility: the evidence cannot be used against the accused unless its probative value substantially outweighs any prejudicial effect that it may have on the accused. The reception of tendency evidence in a criminal trial may occasion prejudice in a number of ways. The jury may fail to allow that a person who has a tendency to have a particular state of mind, or to act in a particular way, may not have had that state of mind, or may not have acted in that way, on the occasion in issue. Or the jury may underestimate the number of persons who share the tendency to have that state of mind or to act in that way. In either case the tendency evidence may be given disproportionate weight. In addition to the risks arising from tendency reasoning, there is the risk that the assessment of whether the prosecution has discharged its onus may be clouded by the jury's emotional response to the tendency evidence. And prejudice may be occasioned by requiring an accused to answer a raft of uncharged conduct stretching back, perhaps, over many years.

[27] The test of danger of unfair prejudice is not satisfied by the mere possibility of such prejudice. There must be a real risk of prejudice by reason of the admission of the evidence.

[28] The Court must be vigilant to guard against the danger of rank propensity reasoning. However, the use of tendency evidence involves a kind of permissible propensity reasoning. As the plurality said in *Hughes*:

The trier of fact reasons from satisfaction that a person has a tendency to have a particular state of mind, or to act in a particular way, to the likelihood that the person had the particular state of mind, or acted in the particular way, on the occasion in issue.

[29] The accused has identified what he asserts to be three significant prejudices from the admission of the proposed tendency evidence:

- (a) an inevitability that prior illegal acts will be prejudicial in terms of their impact especially perhaps where the illegal acts relate to acts of

domestic violence, and that there is, accordingly, a high likelihood of a sympathetic and emotional reaction on the part of jurors. This sympathetic reaction would lead to a natural inclination of the jury to punish the accused for past wrongs and distract the jury from its proper task;

- (b) a real risk that the jury would draw adverse inferences against the respondent, or fail to consider innocent hypothesis, because the respondent will be seen as someone given to violence against the complainant; and
- (c) a real risk that the jury would impermissibly place undue weight on the evidence, in particular because of the large number of incidents.

[30] The potential prejudice outlined in [29](a) is simply the risk of generalised propensity reasoning. The jury will be warned against such generalised propensity reasoning and there is a presumption that the jury will heed such a warning. Such warnings may not be “a panacea for all forms of prejudice”⁴ but there is an illogicality to rank or generalise propensity reasoning which jurors understand when warned of its inappropriateness. However, in considering this asserted risk, a distinction must be made between evidence of prior convictions for assaults against the complainant and evidence of prior convictions for assaulting previous domestic partners.

⁴ Defence submissions para [36] citing Bell P in *Taylor v The Queen* [2022] NSWCCA 355 at [122]

As explained above, evidence of prior assaults against the complainant will necessarily have greater probative value in determining the issue of intention than evidence of similar assaults against other women.

Conversely, it seems to me that the risk of general propensity reasoning is greater in relation to the evidence of assaults against other women, especially as there are two former partners. As counsel for the accused contends, there is a much greater risk of the jury reasoning, “He’s just a wife beater.”

[31] The alleged prejudice outlined in para [29](b) is, in reality, the appropriate use of the evidence. The use of propensity evidence involves a permissible form of propensity reasoning. As explained in *Hughes*, the jury “reasons from satisfaction that a person has a tendency to have a particular state of mind, or to act in a particular way, to the likelihood that the person had the particular state of mind, or acted in the particular way, on the occasion in issue”. That does not, of course, involve failing to consider an available innocent hypothesis and the jury will be directed that they should not draw an inference adverse to the accused unless it is the only reasonable inference in the circumstances. It is simply that evidence of the relevant tendency may assist the jury to draw relevant inferences.

[32] The jury will be entitled to draw an inference about the accused’s intention when entering the house (if satisfied he did so) from the whole of the evidence and in my view they will be significantly assisted in doing so by proof that the accused had the relevant tendencies in relation to the

complainant. It would be quite proper for them to place weight on the number of prior instances of conduct evidencing the tendency in determining whether they are satisfied that the accused did have the relevant tendencies. This does not involve placing undue weight on the evidence and they can be warned not to do so.

[33] I do not think there is a great risk that the tendency evidence in relation to assaults in which the complainant was the victim, if admitted, will cause unfair prejudice to the accused. Balanced against this, I consider the probative value of the evidence to be high. I do not consider that the probative value of the tendency evidence in relation to assaults against the complainant is outweighed by any potential for unfair prejudice to the accused and I decline to exclude it under s 101(2). Evidence of incidents 4, 5, 6, 7 and 8 will be admitted as tendency evidence.

[34] The balancing exercise is different in relation to the proposed tendency evidence in which women other than the complainant were the victims (incidents 1 to 3). In relation to those incidents it seems to me that the probative value is lower and the risk of rank propensity reasoning is higher and I do not think the probative value of the evidence outweighs the danger of unfair prejudice to the accused. Evidence of incidents 1, 2 and 3 on the table will not be admitted as tendency evidence.

Relationship evidence

[35] The evidence of prior convictions for assaulting the complainant is also sought to be relied upon by the Crown to throw light on the relationship between the accused and the complainant.

[36] The admissibility of evidence for that purpose is governed by the general test of relevance in ENULA s 55, subject to the obligation to exclude the evidence in the circumstances set out in ENULA s 137 and the discretion to exclude in s 135. As Grant CJ said in *The Queen v Beasley*:⁵

Relationship evidence will be admissible if it is necessary for and capable of providing context to a complainant's allegations, including:

- (a) as essential background against which the evidence of the complainant and the accused necessarily falls to be evaluated, to show the continuing nature of the conduct, and to explain the offences charged;
- (b) to ensure that the jury is not required to decide issues in a vacuum, and to overcome a false impression that the event was an isolated one, or that the offence happened 'out of the blue', where the acts are closely and inextricably mixed up with the history of the offence;
- (c) to assess the credibility of a complainant's evidence;
- (d) to explain why a complainant has made a delayed complaint to witnesses and/or the police;
- (e) to prove that the accused had a motive to commit the acts charged; and
- (f) to negative issues concerning lawfulness (such as the question of intention or consent).

In order for context or relationship evidence to be relevant it must be shown that the evidence would make the complainant's version of the particular incident subject to the charge more capable of belief when seen in the context of that relationship. If the evidence does tend to explain the relevant occurrence, or to assist the choice between two

5 [2022] NTSC 16 at [40] – [41]

explanations of the occurrence, then it will be relevant and *prima facie* admissible. The overarching purpose of relationship evidence is to place the accused's alleged conduct and/or state of mind within the surrounding events or a series of incidents which form part of a chain of events. For that reason, background evidence will generally need to have a sufficiently close temporal connection with the incident giving rise to the charge(s). It was to this requirement that Barwick CJ was referring in *Wilson v The Queen* when his Honour said that: 'It is quite apparent that the nature of the current relationship between the applicant and his wife was relevant to the question to be decided by the jury'. [footnotes and citations omitted]

[37] The evidence of the accused's two prior convictions for domestic violence assaults against the complainant is self-evidently relevant to a consideration of count 5 and to a somewhat lesser extent, count 6. The incidents illustrate the continuing nature of the relationship between the complainant and the accused and neither is so remote in time from the current allegations as to lack a 'close temporal relationship' with the events in issue. The relationship evidence is important so that the jury are not required to decide the issues in the case in a vacuum or to gain the false impression that the alleged events occurred "out of the blue". The relationship evidence makes the complainant's version of the particular incident subject to the charges more capable of belief when seen in the context of that relationship.

[38] The accused does not object to the admission of this evidence as relationship evidence. However, the accused contends that the use of that relationship evidence should be limited to assisting the jury to understand the complainant's actions in running into the house to escape from the accused but should not be used to assist the jury to assess the accused's intention in entering the house (should they be satisfied he did so). I do not agree. It

seems to me that once this evidence is in, the jury is almost inevitably going to see it as relevant to the question of the accused's intention. Further, for the reasons set out above, I consider its probative value for that purpose is high and that it should be admitted for tendency purposes.

[39] For these reasons, evidence of the accused's prior convictions for assaults against the complainant will be admitted as both tendency evidence and relationship evidence.
